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Wednesday, February 6, 2008

## Council frustrated it didn't have all facts

Christine MacDonald and Paul Egan / The Detroit News

**DETROIT** -- Frustrated City Council members said Tuesday they still are in the dark on what exactly was withheld from them in a secret side deal that ended the ex-cops' lawsuit, and why they didn't get all the facts.

The council plans to meet privately with its attorneys next week to discuss its options, which may include suing the mayor in an attempt to force him to personally pay the settlement costs.

On Tuesday, hours after a judge confirmed the secret deal and determined it could not be withheld from the public, the council ordered a wide-ranging audit of spending by Mayor Kwame Kilpatrick and his city law department -- stretching back to 2002, the beginning of his first term -- to in part find out just how much the city has spent defending the whistle-blower lawsuits.

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Council President Kenneth Cockrel Jr. said it's premature to say if the council was defrauded when the settlement agreement was presented to it for its approval, "but it doesn't look good."

"It's like a big missing puzzle piece that wasn't given to us," said Cockrel, an attorney. "It raises the question: If we had that additional information, would we have approved the settlements?"

"We apparently acted without all the information. That's a problem."

The City Council will hold a closed meeting Feb. 12 to discuss the lawsuit brought against the city by the Detroit Free Press and joined by The Detroit News and aimed at making all the settlement details public.

The council likely can't reopen the \$8.4 million in whistle-blowers' settlements, even if key details surrounding the pact were withheld before they voted on the deals, legal experts say.

Judge Robert Colombo Jr., on Tuesday ordered the release of all the settlement documents, plus most of the transcript of a deposition of Michael Stefani, the attorney who represented the police officers in the suit against the city. Stefani was questioned under oath by the newspapers' lawyers at a closed hearing Friday.

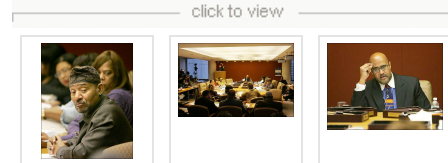
Colombo delayed the release until at least Friday to give the city a chance to appeal his ruling.

Sharon McPhail, general counsel to Kilpatrick, said Tuesday afternoon that the city would appeal, and that the council was not tricked. "When (the council) finds out all the things that occurred in the process they will know that," McPhail said.

Cockrel, Councilman Kwame Kenyatta and Council President Pro Tem Monica Conyers, through her spokesman, said they oppose any appeal by the mayor of Colombo's ruling to release all the settlement



City Councilman Kwame Kenyatta opposes an appeal by the mayor of the judge's ruling on Tuesday. (Daniel Mears / The Detroit News)



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information.

"I think it's a waste of time," Cockrel said. "They are going to lose."

But Cockrel said the council doesn't have much control over whether Kilpatrick orders his staff to appeal the case if he uses city attorneys. The council, however, could deny requests by Kilpatrick to spend more money on outside attorneys -- if the amount exceeds \$25,000 -- but he hasn't requested that as of Tuesday, officials said.

A prominent Bloomfield Hills employment lawyer said Tuesday she was shocked by the size of the settlement that the council approved for the two ex-cops who sued the city because they were fired or demoted for probing activities in the mayor's office. A jury awarded them \$6.5 million plus interest, and the city didn't appeal.

Lawyer Deborah Gordon, who has specialized in employment and civil rights law for 30 years and won numerous large judgments against municipalities, said the fact the city settled the case for \$8.4 million was "a red flag" that something unusual had happened.

"It's totally unheard of," for a city to settle a jury award for 100 cents on the dollar -- let alone an amount in excess of that, Gordon said. Even with interest and attorney fees, the \$8.4 million figure was excessive, she said.

"There's only one reason they did that: There was something incredibly scary that could happen, and they were willing to pay taxpayer money to avoid the other shoe dropping."

Even if the council acted on wrong or incomplete information, it can't reopen the lawsuit settlements, said Gordon and another legal expert, Wayne State University Law Professor Peter Henning. Gordon said that since "the city of Detroit agreed" to the settlement, "they're stuck with it."

Henning said even if they acted improperly, any city attorneys who signed a confidential agreement were acting as agents for the city and "the sins of the lawyer are visited on the client."

There's a possibility the council could sue the mayor or city officials involved in the secret agreement, but their prospects of success are not great, experts said. The mayor has absolute immunity from liability for actions taken when he is acting in his scope of authority, said Jennifer Henderson of University of Detroit Mercy School of Law.

Councilwoman Sheila Cockrel is pushing the council to appoint a special outside attorney to advise it on how to proceed. Some council members have questioned whether it's proper for the city law department to advise them, since that department also reports to Kilpatrick.

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