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TEXT-MESSAGE SCANDAL

# City Council urges Mich. Supreme Court to allow release of Kilpatrick documents

BY ZACAHRY GORCHOW AND DAVID ASHENFELTER • FREE PRESS STAFF WRITERS • FEBRUARY 18, 2008

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The Detroit City Council's independent attorney today urged the Michigan Supreme Court to reject Mayor Kwame Kilpatrick's effort to block the release of secret documents in the text-messaging scandal that has cost taxpayers more than \$9 million.



ERIC SEALS/Detroit Free Press

Bill Goodman, special counsel for the Detroit City Council, today asked the Michigan Supreme Court to release documents in the text-message scandal surrounding Detroit Mayor Kwame Kilpatrick's office.



"The City Council is determined that it and the people of the city of Detroit be fully informed as to the circumstances of any settlement, but particularly this settlement, because it was so widely publicized," Detroit attorney William Goodman said Monday.

Goodman filed a brief in the administration's appeal of a lawsuit the Free Press filed early last month after the city repeatedly refused to release documents in a police whistleblower lawsuit settled last October for \$8.4

million. The contents of the brief are believed to be under seal.

The settlement topped \$9 million with legal costs.

City lawyers initially denied that the documents existed, but after they came to light, they tried to persuade Wayne County Circuit Judge Robert Colombo Jr. not to release them. He refused, prompting the city to appeal the release of some of the documents to the Michigan Court of Appeals. That court upheld Colombo, leading the city on Friday to take its case to the Michigan Supreme Court, which could take up the case as early as today.

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As Goodman announced his plans, legal experts continued to challenge the administration's position that releasing the documents will compromise the ability of the city and private individuals to mediate lawsuits – the process of trying to settle them out of court. If Colombo's order stands, city Law Department chief John Johnson Jr. said last week, the confidentiality protections critical to mediation will be eliminated.

The legal experts – including two former chief circuit court judges who specialize in mediation – disagreed.

“He has a fundamental misunderstanding between the settlement process and the settlement result,” said Farmington Hills lawyer Richard Kaufman, former chief judge of Wayne County Circuit Court and former general manager of SMART, the regional bus system. Kaufman, a mediation specialist, said he has conducted about 5,000 mediations.

“I don't have any problem with what he's saying about the need for confidentiality while the parties are negotiating,” Kaufman added. “But once the negotiations are over and a public entity enters into a settlement, it's clear to me that the settlement results must be made public.”

Barry Howard, former chief judge of Oakland County Circuit Court, said judges like Colombo have always had the right to require confidential settlements to be made public.

“This seems like a rear guard action to prohibit what a circuit judge and the Court of Appeals said should be turned over,” Howard said.

In his ruling, Colombo said the lawsuit was settled after mediation had failed and that confidentiality provisions don't apply in situations where they could conceal a crime.

The Free Press reported last month that text messages between the mayor and his then-chief of staff Christine Beatty showed they lied at the whistleblower trial when they denied having an extra marital affair and gave misleading testimony about firing a deputy police chief. Wayne County Prosecutor Kym Worthy is investigating their conduct, which could include charges of perjury.

Larry Dubin, a University of Detroit Mercy law professor, said he would be shocked if the Supreme Court reverses Colombo because the settlement involves public funds.

He said Johnson's argument is “nonsense.”

Johnson said Monday that the settlement was reached as a result of court-ordered mediation over legal fees for Mike Stefani, the attorney for three cops involved in whistleblower suits.

He added that Michigan court rules indicate that all communications between the parties and their lawyers in mediation are confidential and cannot be disclosed without the written consent of all parties.

“The court rule doesn't distinguish between whether the parties are public or private,” Johnson said.

However, Colombo disagreed.

The judge ruled last month that the lawsuit was settled last Oct. 17 after negotiations over Stefani's fee had failed.

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Afterward, Colombo said, Stefani handed the mayor's lawyer an envelope containing something that prompted the mayor to settle the case at hand and another one that hadn't gone to trial.

Contact **DAVID ASHENFELTER** at [dashenfelter@freepress.com](mailto:dashenfelter@freepress.com).

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