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END OF THE APPEALS

Ruling called victory for public, council

BY DAVID ASHENFELTER AND JOE SWICKARD • FREE PRESS STAFF WRITERS • FEBRUARY 28, 2008

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A Wayne County judge Wednesday released the last of the secret documents showing how Detroit Mayor Kwame Kilpatrick and his city-paid lawyers schemed to conceal text messages that could result in perjury charges against him and his former chief of staff, Christine Beatty.

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Circuit Judge Robert Colombo Jr. handed out the documents hours after the Michigan Supreme Court unanimously refused to hear the mayor's appeal, saying, in effect, the public has a right to see settlement agreements when public funds are involved.

Kilpatrick had appealed a Feb. 5 ruling by Colombo ordering the release of all documents in the scandal in response to a Free Press lawsuit.

The documents released Wednesday contradict the mayor's initial claims that an \$8.4-million settlement in two police whistleblower lawsuits was driven by advice from friends, advisers and ordinary citizens. They show that Kilpatrick and his city-paid attorneys -- Samuel McCargo, Valerie Colbert-Osamuede and Wilson Copeland II -- made the deal to hide the text messages.

The documents reveal "a gigantic fraudulent scheme was imposed on the city, and a lot of people are going to have a lot of explaining to do," said Larry Dubin, a University of Detroit Mercy law professor. "If this happened in a private corporation rather than a city, some of the lawyers would be looking for new jobs -- if they still had their legal licenses."

The documents show the mayor discarded the original Oct. 17 version of the settlement

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WHAT COMES NEXT: CHARGES POSSIBLE

• Wayne County Prosecutor Kym Worthy continues to investigate possible criminal charges against Mayor Kwame Kilpatrick: his former chief of staff, Christine Beatty, and

agreement after the Free Press asked for the document with a Freedom of Information Act request. A second agreement -- split into two parts -- was then concocted to conceal the text messages, which show that the mayor and Beatty lied under oath last summer when they said they did not have a sexual relationship. The messages also show they gave misleading testimony about firing one of the three cops involved in the whistle-blower suits.

The public agreement showed how much money the ex-cops would get. The other one -- the confidential side deal -- swore the ex-cops and their lawyer to secrecy about the text messages under threat of forfeiting most of their settlements and legal fees.

"The ruse was designed to conceal evidence of perjury," Free Press lawyer Herschel Fink said.

He called the documents' release a victory for the City Council and Detroit taxpayers, who were kept in the dark about the side agreement. The settlement topped \$9 million with legal costs.

Colombo also released a 196-page transcript of a deposition with the ex-cops' lawyer, Mike Stefani. In it, Stefani said the mayor's lawyers initially refused to settle the suits on Oct. 17 when they met in a court-ordered session to resolve how much he would be paid after winning a \$6.5-million jury verdict for two of the cops the previous month.

When the negotiations broke down, Stefani said, he handed the facilitator an envelope to give to the mayor's lawyer. The envelope contained a request Stefani planned to file the next day with the trial judge to justify his fees. The motion indicated that he had the text messages.

Stefani said lawyers for the mayor and from the city's Law Department then reversed course and agreed to settle that lawsuit and a still-pending suit involving another cop.

The Free Press revealed the text messages last month.

Detroit Law Department chief John Johnson Jr. said he was disappointed with the Supreme Court ruling.

"Opening up settlement information to public view will most certainly put a chilling effect on parties trying to settle cases," he said. "This ruling discourages the city from entering into the time-honored and cost-effective process of mediation."

Legal experts have said Johnson's reasoning doesn't apply to lawsuits settled with public funds.

Councilwoman Sheila Cockrel was incredulous to learn that the mayor and the Law Department failed to disclose the Oct. 17 settlement document before the council voted to settle the suits.

"It is deeply, deeply troubling," she said. "It's unprecedented in my experience on the council to have this kind of apparent deception by the corporation counsel's office."

Stefani said he is "glad that the public has all the facts."

Peter Letzmann, former city attorney for Troy and a former lawyer in the Detroit Law Department, said Kilpatrick "should hire a national-class criminal lawyer. He has really put himself in harm's way -- with the Detroit Board of Ethics, with the prosecutor, he might even

perhaps others.

- The City Council continues to investigate the \$8.4-million settlement of the former police officers' whistle-blower lawsuits, and to try to audit the mayor's office and the city's Law Department, which recommended approving the settlement.

- The Michigan Attorney Grievance Commission could charge lawyers with professional misconduct if it finds they helped conceal possible perjury by the mayor and Beatty.

- At least one recall petition has been filed with the Wayne County Clerk's Office against the mayor. A hearing on the language of the petition is scheduled for March 5.

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have some federal criminal liability. And his law license could be in jeopardy."

The mayor is being investigated for possible perjury charges by Wayne County Prosecutor Kym Worthy. The ethics board is reviewing the issue.

Wednesday's Supreme Court decision came two weeks after a similar decision by the Michigan Court of Appeals.

"There is no FOIA exemption for settlement agreements," the high court said in a 2-page ruling, referring to the state Freedom of Information Act. "Moreover, a public body may not contract away its obligations under the FOIA."

Free Press Editor Paul Anger said he was pleased. "This is complete vindication for the idea that public officials cannot lie under oath and go behind closed doors in secrecy to make decisions with so much public money in the balance," he said.

Contact **DAVID ASHENFELTER** at dashenfelter@freepress.com. Staff writers Zachary Gorchow, Ben Schmitt, Bill McGraw and Jim Schaefer contributed to this report.

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