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Friday, March 21, 2008

Worthy will announce mayor probe result on Monday

Robert Snell and Christine MacDonald / The Detroit News

DETROIT -- Wayne County Prosecutor Kym Worthy will announce Monday whether Mayor Kwame Kilpatrick and his former chief of staff will face criminal charges over the text-message scandal and handling of the \$8.4 million whistle-blower settlement.

Worthy, who has scheduled an 11 a.m. news conference Monday, previously had said she would announce possible charges next week in a case that has gripped the city and drawn national attention. If she wasn't going to charge the mayor, which remains a possibility, Worthy likely wouldn't wait to make that announcement, said Larry Dubin, a professor at the University of Detroit Mercy School of Law.

"I think there is a greater likelihood than not that criminal charges will be brought," Dubin said. "It will be a momentous moment in the city of Detroit when she announces her decision."

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Worthy is looking into whether Kilpatrick and former Chief of Staff Christine Beatty committed any crimes when they testified during a whistle-blower trial last year or afterward, when the city negotiated to obtain copies of the text messages that include intimate exchanges between the two.

Kilpatrick and Beatty testified that they did not have a physical relationship though the text messages appear to contradict that.

Kilpatrick's spokeswoman did not return a call seeking comment Thursday.

Perjury, a felony that carries a maximum penalty of 15 years in prison, is at the top of the list of possible criminal, civil and professional discipline charges

Kilpatrick and Beatty could face, legal experts say.

Other possible charges Worthy could consider include official misconduct; obstruction of justice, if there was evidence of a secret agreement to conceal perjury or another crime; and embezzlement, if there was evidence Kilpatrick used city funds to pay for hotel rooms or other personal expenses associated with an apparent tryst with Beatty.

"It is speculation, but I would not be surprised to see (Beatty) charged with a perjury-related offense," Dubin said.

Since 1999, the Prosecutor's Office has charged about 45 people with perjury, with the most common punishment being probation, but in one case the defendant was sentenced to 19 months in prison, according to a review of several cases. The charges were against people who lied as part of homicide investigations, tried to file false charges against others or lied about their identity.

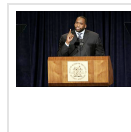
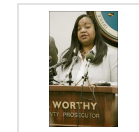
'The city needs to move on'

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Worthy

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What's next

Wayne Circuit Judge Robert Colombo will hear a motion this morning from the Detroit City Council to join a case brought by The Detroit News and Detroit Free Press aimed at releasing all records related to the whistle-blowers settlement.

Possible charges

Detroit City Councilwoman Barbara-Rose Collins said waiting for Worthy's decision is stressful.

"This city needs to move on and it's hard to move on waiting for her," Collins said. "We have so much to do. We have the budget hanging out there.

"We really need to get this behind us."

If Worthy files charges, don't expect the prosecutor to try the case herself. Worthy, who rose to prominence prosecuting two white former Detroit police officers in the 1992 beating death of black motorist Malice Green, has not personally tried any cases during her tenure as prosecutor.

"She has indicated that she would certainly like to handle a case in trial but she's busy running the office and doesn't anticipate trying any cases this year," spokeswoman Maria Miller said.

Documents released by the Wayne Circuit Court earlier this month reveal that Kilpatrick cut a side deal to settle the whistle-blowers suits with ex-Detroit cops in exchange for the text messages between him and Beatty.

The text messages contradicted sworn testimony that they did not have an affair or discuss the firing of Deputy Chief Gary Brown. Those details were withheld from City Council members when they approved the settlement. But records also show that taxpayer dollars were spent on private attorneys to research and set up a safe deposit box that eventually was used as the depository for the roughly 14,000 text messages that are at the vortex of the scandal.

The council will hold hearings in early April on the whistle-blowers' settlement.

Any charges filed against Kilpatrick likely would affect how the council proceeds with its investigation, said Council President Kenneth Cockrel Jr. He said getting Kilpatrick to appear for upcoming council hearings on the scandal would likely be "problematic" if he's criminally charged.

What to expect if he's charged

If Kilpatrick is charged with a crime, Dubin and other legal experts expect the prosecutor to handle the case with dignity and not parade a handcuffed mayor past the media.

"My sense is she would not do anything to embarrass the mayor in any way or undermine his authority with grandstanding procedures that would be demeaning," Dubin said.

Tom Cranmer, a well-known local criminal defense attorney who represented former Detroit Police Chief William Hart among others charged with corruption, said if the mayor is charged with a felony it will be a straightforward process.

First, the Prosecutor's Office will draft a complaint that specifies where, when and what laws were violated. State complaints have little detail in Michigan unlike the "richness of detail" of a federal grand jury indictment. Grand juries are rarely used in Michigan -- except for one-person grand juries investigating long unsolved crimes.

The complaint would then be taken by the investigating officer to a 36th District Court judge or magistrate in what's known as the "swear to."

The officer must swear under oath that there is probable cause that the person committed the crimes of which they are accused in the complaint.

Cranmer said Worthy's office would alert the mayor's attorney so the mayor could make arrangements to turn himself in to face arraignment in 36th District Court. The mayor would be fingerprinted, photographed and likely released on personal bond, which means he wouldn't have to put up any money.

The judge or magistrate would set a date for a preliminary examination typically with 14 days. Then the Prosecutor's Office would have to prove by a preponderance of the evidence that there was probable cause to believe that the mayor had committed these actions. If so, the mayor would be bound over to Wayne Circuit Court for a jury trial.

Former Mayor Dennis Archer said fighting a criminal charge would impair Kilpatrick's ability to run the city. He said Kilpatrick would have to decide if he had the stamina and focus to put the city before himself, but stopped short of calling for the mayor to resign.

"I've worked with people who were immensely concerned and preoccupied with criminal charges," said Archer, an attorney who spoke Thursday at a Detroit News editorial board meeting about a possible gubernatorial run. "It will take an enormous amount of time and an enormous amount of energy."

If Kilpatrick is charged, "for people who live in the city, no one ever envisioned anything like this would occur," Archer said.

Also on Thursday, the City Council's attorney William Goodman sent a number of subpoenas ordering

Charge: Perjury, a felony

Penalty: Prison term of up to 15 years

Definition: "Any person who, under any of the proceedings required or permitted by this act shall willfully swear falsely, shall be guilty of perjury "

Charge: Official misconduct, a felony

Penalty: Prison term of up to 5 years

Definition: "Corrupt behavior by an officer in the exercise of the duties of his office or while acting under color of his office."

Charge: Willful neglect of duty, a misdemeanor

Penalty: Prison term of not more than 1 year; fine of not more than \$1,000

Definition: "When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful neglect to perform such duty" shall constitute an offense.

Charge: Obstruction of justice, a misdemeanor

Penalty: Up to 2 years in prison or fine up to \$1,000

Definition: "A person shall not attempt to intimidate, hinder, or obstruct a public officer or public employee or a peace officer in the discharge of his or her official duties by a use of unauthorized process."

Source: State of Michigan

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Metro-Detroit-mayor

people to appear for council hearings in early April, including Kilpatrick. James Canning, a Kilpatrick spokesman, said it hasn't been determined whether the mayor will show.

Goodman also sent subpoenas to the city's law department and Kilpatrick's office for a long list of records related to the whistle-blower lawsuits, even ordering the departments to produce the hard drives that contained any documents related to the lawsuits.

Detroit News Staff Writers Francis X. Donnelly, David Shepardson and David Josar contributed to this report. You can reach Robert Snell at (313) 222-2028 or rsnell@detnews.com.

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