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## TEXT MESSAGE SCANDAL

# Plan for ouster hearing: No votes for no-shows

BY BEN SCHMITT AND JOE SWICKARD • FREE PRESS STAFF WRITERS • JUNE 11, 2008

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Any attempt by the Detroit City Council to oust Mayor Kwame Kilpatrick will require that a majority of the council's nine members sit through every minute of the forfeiture hearings. And only those members who attend every minute can vote on the mayor's fate under proposed rules made public Tuesday.

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The proposals were unveiled by council President Ken Cockrel Jr. as he filed 10 pages of rules Monday with the city clerk's office. The unprecedented ouster hearings are scheduled to begin July 7.

The council is to meet Monday with its special counsel, Bill Goodman, to review the proposals before voting on them, perhaps by Tuesday. Under the plans, Goodman would assume the part of prosecutor and present evidence to the council, which would sit as jury.

Mayoral spokeswoman Denise Tolliver said Tuesday that the mayor's office had not reviewed the rules and declined comment. The mayor's lawyers did not return calls for comment.

To remove Kilpatrick, the rules require that the council be swayed by "clear and convincing evidence" that the mayor violated any provision of the city charter.

That standard means substantially more likely than not. It is higher than the burden of proof in civil lawsuits, which is "a preponderance of evidence," but lower than the burden of proof in criminal cases, which is "beyond a reasonable doubt."

The proposals also contemplate giving Goodman a chance "to ask questions but then for the mayor's attorney, should he choose to have attorneys represent him, to cross-examine," Cockrel said.

Cockrel said the council also is contemplating whether to have a



KATHLEEN GALLIGAN/Detroit Free Press

The Detroit City Council President Kenneth V. Cockrel Jr. votes both for ousting Mayor Kwame Kilpatrick and asking Gov. Jennifer Granholm to expel him in this May 13 photo.

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visiting judge at the hearings in an advisory role.

As council president, Cockrel would preside.

### Concerns about the rules

Wayne State law professor Peter Henning raised concerns about the proposals, noting for instance that Goodman may want to abandon his prosecutor's role to counter accusations that the deck is unfairly stacked against the mayor.

The council, Henning said, is already in a potentially awkward position because it is drafting the rules with little precedent to guide it, and its president is sitting in judgment of an official he stands to replace if Kilpatrick is ousted.

"I think they've done a pretty good job," Henning said. "This is not a kangaroo court, but certainly they are going to be accused of being one."

Goodman said those concerns are overblown: "Maybe he has a point, but I don't think so."

Goodman said he could act as a prosecutor even though he helped craft the rules for the hearings: "I don't see why not. Administrative agencies draft their own rules of procedure all the time. And essentially, that is what is happening here."

Goodman said he is sure questions of fairness will be raised, but that Kilpatrick's ability to seek a fresh hearing in state court if he is ousted gives the mayor protection: "The forfeiture is the initial step -- and you must remember this ends in circuit court."

Larry Dubin, a University of Detroit Mercy law professor, agreed with Goodman, saying the mayor's ability to essentially win a new trial in state circuit court is key to ensuring fairness. Such a hearing "takes it right from scratch," Dubin said. "It's not the normal way a civil trial is handled, but it guards the mayor's due process."

Goodman and a majority of council members have said Kilpatrick violated the charter by not revealing all aspects of an \$8.4-million settlement involving three former police officers, before asking the council to approve the deal last October.

The council also has asked Gov. Jennifer Granholm to oust the mayor under state law. That process is in its early stages.

Before the council, Kilpatrick's lawyers will have the right to obtain copies of evidence used against him and to cross-examine witnesses at the hearings.

"I think the odds of the mayor himself participating in this are probably somewhere between slim to nonexistent," Cockrel said Tuesday. "But he does have that right."

The proposed rule relating to attendance by council members states: "There can be no decision by council, as to forfeiture of elective office, unless those members voting have been present through the entire proceeding and have heard all the testimony and seen all the exhibits."

Both Henning and Dubin said it would be essential for a majority of council members to make every session.

"You better hope nobody gets sick or has a flat tire," Henning said.

Goodman responded that a session always could be delayed or rescheduled to make sure all council members could attend.

He said he did not believe any council member would try to undermine the process by staying

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away: "I cannot imagine any responsible official boycotting."

## Mayor revokes request on lawyer

Also Tuesday, the Kilpatrick administration withdrew from the council a request to have the city pay the legal bills of Detroit city attorney Valerie Colbert-Osamuede, who is under investigation for professional misconduct for her work in the text message scandal.

James Canning, a spokesman for Kilpatrick, said contract work to have an outside attorney represent Colbert-Osamuede has not been completed, adding that there is no target date for resubmitting the request to the council.

The two proposed contracts -- totaling \$33,000 -- were for the Southfield law firm of Collins, Einhorn, Farrell & Ulanoff to represent Colbert-Osamuede, Detroit's chief assistant corporation counsel.

She is one of at least 10 attorneys under investigation by the state Attorney Grievance Commission for their roles in settling police whistle-blower cases for \$8.4 million last October. The deal included a secret side agreement to bury text messages that were damaging to Kilpatrick and his then chief of staff, Christine Beatty.

Contact **BEN SCHMITT** at 313-222-4296 or [bschmitt@freepress.com](mailto:bschmitt@freepress.com).

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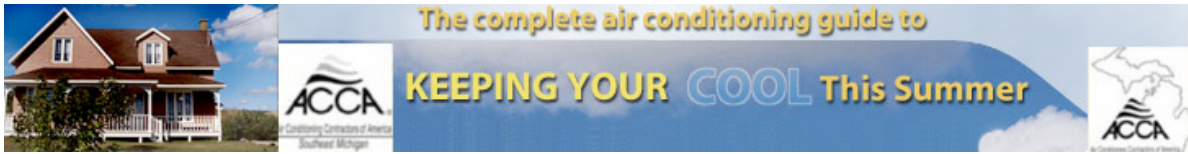
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