



KWAME M. KILPATRICK, MAYOR
CITY OF DETROIT
EXECUTIVE OFFICE

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June 23, 2008

Mr. Kelly Keenan
Legal Counsel to the Governor
The Honorable Jennifer M. Granholm
George W. Romney Bldg
111 South Capitol Avenue
Lansing, Michigan 48909

Re: In the Matter of the Official Request of the Detroit City Council, by only five members, for the removal of Mayor Kwame M. Kilpatrick from the Office of Mayor of the City of Detroit, No. EO-008-004-LO

Dear Counselor Keenan,

This letter is written in response to your letter of June 3, 2008, in which you request that the counsel for the Office of the Mayor and the attorney for the Detroit City Council forward any suggestions that either of us might have regarding the structure and timing of the process in connection with the above-referenced petition.

I appreciate this opportunity to share with you my thoughts regarding this matter: In so doing, I intend to avoid (as much as possible) reference to the merits of the so-called "charges" leveled by the City Council against Mayor Kilpatrick as well as those proffered by the Wayne County Prosecutor, Kym Worthy.

Preliminarily, it is our view that the petition filed by Mr. William H. Goodman is defective on its face and thus, is not properly before the Governor. The petition was forwarded to the Governor as an action of the entire City Council, and not as the act of one member. An official resolution of the legislative body of the City of Detroit might raise concerns that would have to be considered by the Governor; but such a resolution



would have to have the votes of two-thirds of the elected members of Council. The petition from Mr. Goodman is sent pursuant to a vote of Council, which vote was by simple majority (5 to 4).

Although perhaps one might argue that one member could have made the request, in this case we are not faced with that scenario. Moreover, it is extremely unlikely that any Governor would want to open the floodgates to the politics inherent in allowing one person to seek removal of an elected official. Of course, it is not necessary for the Governor to reach that issue, in that the petition was an official act of the Detroit City Council and was forwarded without the requisite supermajority vote.

Assuming that the Governor decides to take jurisdiction of the petition, it is our position that the process undertaken by the Detroit City Council in attempting to remove the Mayor of the City of Detroit, is nothing more than a political process designed to allow some members to run for Mayor, without having to give up their Council seats to do so: There is absolutely no legitimacy to it and it would be a mistake to treat it as if it were legitimate.

The foundation of the petition is one assertion and only one assertion: That the Mayor of the City of Detroit "failed to advise" the City Council of certain information of a personal nature, which they would have expected to have been given prior to approval of the amount of a settlement of a case brought by a demoted appointee of the Mayor. As a former member of the Detroit City Council, I can tell you without fear of contradiction, that in fact, there is not now, nor has there ever been, any rule or process by which Council members are advised of such allegations or facts; the Council is never shown a final settlement agreement; the Council is never shown a confidentiality agreement, whether part of the settlement or not. In fact, as Council members well know, several of them have been sued for such violations as sexual harassment and wrongful termination:



No mention of the facts of those cases was ever made prior to the vote taken by Council to approve a settlement amount and, in at least one case, the Council member himself voted on the resolution approving the settlement of the case that involved his own conduct.

Most of us want to believe that our elected officials would not engage in politically motivated attacks on each other: But the truth is, this happens all the time. From the wrongful charges leveled at the Rosenbergs in 1953 to the more recent release of wrongfully charged and convicted death row prisoners in Illinois, it is clear that officials sworn to uphold the law will use their power to persecute, and prosecute, without regard to the law: This is such a case. If, as we suggest will happen, it is ultimately found that the Council had no procedure in place by which they should have seen the final documents in the Brown case, or any procedural basis to have been told of the personal allegations against the Mayor, then their "hearings", their "forfeiture action" as well as their petition to the Governor are without foundation and will be reversed.

Should Governor Granholm decide to create a process pursuant to the request of a simple majority of the Detroit City Council, we would suggest that a stay be issued pending the resolution of the charges filed by the Wayne County Prosecutor. Further, we ask that any hearings by or before the Governor, take place only after summary judgment motions that would allow counsel to brief the legal issues as referenced in the definition of "official misconduct". See Krajewski v. City of Royal Oak, 126 Mich App 695 (1983) (i.e.: misconduct is defined as "....such as affects his performance of his duties as an officer and not such only as affects his character as a private individual".)

As I indicated, we are prepared to deal directly with the allegations made by the Detroit City Council at such time as the Mayor is free to discuss these matters and to testify on his own behalf in these administrative proceedings:



Clearly, the Mayor should not do that while criminal charges, however lacking in foundation they may be, are pending against him.

Please feel free to contact me at your convenience should you have any questions or concerns, or require any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Sharon McPhail".

Sharon McPhail
General Counsel
Office of the Mayor of the City of Detroit