

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR

**In the Matter of the Request for the
Removal of Kwame M. Kilpatrick
from the Office of Mayor of the City
of Detroit**

**No. EO-2008-004-LO
Hon. Jennifer M. Granholm**

SUPPLEMENTAL PREHEARING ORDER

WHEREAS, pursuant to Section 327 of the Michigan Election Law, 116 PA 1954, MCL 168.327, a hearing is scheduled to begin in this matter on September 3, 2008 at 9:00 a.m. in the Cadillac Place State Office Building in Detroit;

WHEREAS, on August 11, 2008, the Governor issued a Prehearing Order to establish rules of practice and procedure for that hearing in order to assure both the fairness and efficiency of the hearing process;

WHEREAS, on August 26, 2008, the Governor issued a Notice of Prehearing Conference, which was subsequently held on August 28, 2008 with counsel for the parties appearing via teleconference, for the purpose of finalizing the procedures to be followed and the exhibits and testimony to be introduced at the September 3, 2008 hearing;

IT IS THEREFORE ORDERED:

1. Schedule: The Governor will commence the hearing promptly at 9 a.m. on Wednesday, September 3, 2008. On the morning of Thursday, September 4, counsel should expect to start within 1 hour after the conclusion of the previously scheduled court proceeding in Respondent's pending criminal case. Thereafter, if additional hearing days are necessary, counsel should be prepared to start at 8 a.m. each day.

2. Burden of proof: The burden of proof to be used in this proceeding is prescribed by MCL 168.327 as "sufficient evidence" satisfactory to the Governor. This term is not typically used in civil, criminal, or administrative proceedings; it is defined in Black's Law Dictionary (8th Ed., 2004) as being interchangeable with the term "satisfactory evidence," which in turn is

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defined as “evidence that is sufficient to satisfy an unprejudiced mind seeking the truth.” For the purpose of this hearing and resolution of this matter, the Governor will apply the “sufficient evidence” as specified in MCL 168.327.

3. Procedure: This is not a criminal or civil trial by a court of law and is not subject to the rules, procedures, and evidentiary standards governing those proceedings; rather, it is administrative or executive hearing authorized by statute. While many administrative hearings conducted by state agencies are governed by the APA, the Governor is expressly excluded from the definition of an “agency” subject to the provisions of the Administrative Procedures Act. The APA, may, however, be used as a guide for the process in process in this hearing and the rulings the Governor may make. As specified in the August 11 Prehearing Order, in determining the admissibility of evidence, the Governor will be guided by the rules of evidence as applied in civil nonjury trials but will ultimately determine the admissibility of evidence and may admit and consider evidence under the more relaxed standards applicable in administrative hearings, allowing admission of evidence of a type commonly relied upon by reasonably prudent people in the conduct of their affairs.

4. Issues: The issues before the Governor at the hearing are limited by MCL 168.327 to those specified in the petition. Consequently, testimony and evidence at the hearing is limited to the following two questions as identified in the Governor’s August 25 Opinion and Order:

- a. Did Respondent, in his official capacity as Mayor, authorize settlements in the *Brown* and *Harris* cases in furtherance of his personal and private interests?
- b. Did Respondent, in his official capacity as Mayor conceal from or fail to disclose to the City Council information that material to its review and approval of the settlements?

The Governor will refuse to admit testimony or evidence that is not relevant and material to these two issues. In the interests of efficiency, the Governor may also limit testimony or exhibits that are cumulative or redundant.

5. Exhibits:

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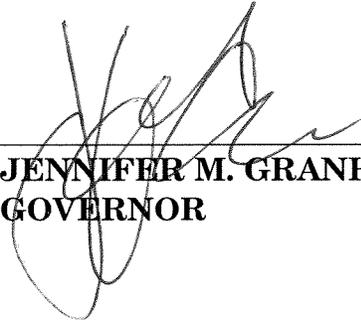
a. The Petition, including the attached exhibits, is a part of the record and will be labeled as Petitioner's Exhibit 1. The documents submitted as exhibits to that petition will be labeled accordingly, e.g., Petitioner's Exhibit 1-A, Petitioner's Exhibit 1-J-3. One labeled and tabbed copy of the Petition and attached exhibits will be provided to each attorney and a third copy will be available for use by witnesses. The parties may challenge the weight, accuracy, or credibility of any of these materials and may introduce additional exhibits or testimony relevant to that determination.

b. Any party wishing to introduce additional exhibits must provide at least five additional copies -- three for the Governor, one for opposing counsel, and one for use by witnesses.

c. If counsel plan to utilize large charts or other visual aids, they must provide a legible 8 ½ x 11 reproduction of each such chart or aid for inclusion in the record and for use by counsel and the Governor. These copies are to be produced and proffered in the same manner as ordinary exhibits, with three copies for the Governor, one for opposing counsel, and one for use by witnesses.

6. Witnesses: The parties are responsible for securing the attendance of their proposed witnesses. The Governor reserves the authority to question witnesses.

7. Stipulations: Counsel for the parties are directed to meet and confer no later than Tuesday, September 2, 2008, and to make a good faith effort to resolve objections and concerns each may have and, to the extent feasible, stipulate to the admissibility of evidence and proposed witnesses.



JENNIFER M. GRANHOLM
GOVERNOR

Dated: September 2, 2008

Index of Petitioner's Exhibits

In the Matter of the Request for the Removal of Kwame M. Kilpatrick from the Office of the Mayor of the City of Detroit, No. EO-2008-004-LO

- EXHIBIT I: May 20, 2008 Letter and attachments from William Goodman to the Governor hand delivering the Petition and Charges of the Detroit City Council against Honorable Kwame M. Kilpatrick Seeking his Removal for alleged Acts of Official Misconduct
- EXHIBIT I-A: March 18, 2008 Resolution Seeking the Resignation of Mayor Kilpatrick
- EXHIBIT I-B: May 5, 2008 Special Counsel's Report
- EXHIBIT I-C: May 13, 2008 Resolution Censuring and Condemning the Conduct of Mayor
- EXHIBIT I-D: May 13, 2008 Resolution to Adopt the Special Counsel's Findings of Fact
- EXHIBIT I-E: April 8, 2008 Transcript of City Council Public Hearing
- EXHIBIT I-F: April 10, 2008 Transcript of City Council Public Hearing
- EXHIBIT I-G: April 11, 2008 Transcript of City Council Public Hearing
- EXHIBIT I-H: September 19, 2007 Transcript of Closed Session Minutes
- EXHIBIT I-I: Plaintiffs' Supplemental Brief in Support of Their Motion for Attorney Fees and Costs (Michael Stefani Brief)
- EXHIBIT I-J: April 2008 Public Hearing Documents Re: The Brown, Nelthrope, and Harris Settlements & Related Matters
- EXHIBIT I-J-1: Chronology of Events
- EXHIBIT I-J-2: Summary of the Michael Stefani Deposition
- EXHIBIT I-J-3: October 17, 2007 Settlement Agreement
- EXHIBIT I-J-4: Lawsuit Settlement Memoranda
- EXHIBIT I-J-5: October 27, 2007 Notice of Rejection of Proposed Settlement Terms Arising Out of October 17, 2007 Facilitation

Attachment A to Supplemental Prehearing Order

- EXHIBIT I-J-6: November 1, 2007 Notice of Mayor Kwame Kilpatrick's Approval of Terms and Conditions of Settlement as Approved by City Council on October 23, 2007
- EXHIBIT I-J-7: November 1, 2007 Settlement Agreement and General Release in the matter of *Brown v Detroit Mayor*, Wayne Circuit Court (Docket No. 03-317557-NZ)
- EXHIBIT I-J-8: November 1, 2007 Settlement Agreement and General Release in the matter of *Harris v Detroit Mayor*, Wayne Circuit Court (Docket No. 03-337670-NZ)
- EXHIBIT I-J-9: November 1, 2007 Confidentiality Agreement
- EXHIBIT I-J-10: October 17, 2007 Escrow Agreement
- EXHIBIT I-J-11: October 22, 2007 Supplement to Escrow Agreement
- EXHIBIT I-J-12: November 1, 2007 Notice of Designation of Representative for Purposes of Receipt of Records and Notices of Inquiries under Confidentiality Agreement
- EXHIBIT I-J-13: October 19, 2007 Letter from Detroit Free Press to Detroit Law Department Requesting Settlement Agreements Under the Freedom of Information Act
- EXHIBIT I-J-14: October 29, 2007 Letter from Detroit Law Department to Detroit Free Press regarding Freedom of Information Act Request
- EXHIBIT I-J-15: November 13, 2007 Letter from Detroit Free Press to Detroit Law Department Requesting Settlement Agreements Under the Freedom of Information Act
- EXHIBIT I-J-16: December 7, 2007 Letter from Detroit Law Department to Detroit Free Press regarding Freedom of Information Act Request
- EXHIBIT I-J-17: Billing Records from Grier, Copeland, & Williams in the matter of *Brown v Detroit Mayor*, Wayne Circuit Court (Docket No. 03-317557-NZ)
- EXHIBIT I-K: Handwritten Notes by Michael Stefani
- EXHIBIT I-L: February 5, 2008 Transcript of Hearing before Honorable Judge Colombo