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**IN THE STATE OF WASHINGTON
KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES**

*IN RE: THE INQUEST INTO THE
DEATH OF ISAIAH OBET*

NO. 417I17199

Family Motion on Factual Scope

The Family of Mr. Obet requests the following information be presented at the Inquest into the Death of Isaiah Obet.

After requesting substantial information from the City of Auburn on August 9, 2019, it wasn't until three months later, November 25, 2019, that the Family received much of the discovery that was initially requested. This discovery now comprises over 5,000 pages of documentation including several dash cam videos and recordings that take substantial hours to review. As outlined in other pleadings the Family has still requested more information, including but not limited to the psychological evaluations conducted in the course of Officer

1 Nelson's duties. This delay by the City to disclose the entire investigative file and other
2 information has in turn delayed the Family's ability to investigate the cause and manner of Mr.
3 Obet's death.

4 Before going into specific detail about what factual information should be included in the
5 scope of the Inquest into the Death of Isaiah Obet, it is important to note that the Family has not
6 had an opportunity to review the discovery in its entirety, nor consult completely with experts
7 regarding all the received materials, nor has the Family been able to conduct any interviews if
8 the witnesses.
9

10 With all due respect to the Administrator, the Family is unable to adequately respond to
11 "factual scope" question proposed by the Administrator by the deadline of December 13, 2019.
12 From the Family's perspective, until the discovery process and a thorough review of the
13 voluminous discovery is completed, the factual scope cannot be reliably determined. The Family
14 therefore requests until January 31, 2020 to answer the Administrator's question thoroughly and
15 completely.
16

17 Given the limited information the Family has been able to review the following is a best
18 estimation of the issues the Family foresees at this point.
19

20 **1. The incidents on June 10, 2017, prior to Officer Nelson encountering Mr. Obet,**
21 **should not be admissible during the inquest proceeding.**
22

23 The Family objects to the admission of any of the factual information about the incidents that
24 took place prior to the killing of Mr. Obet that Officer Nelson was not a witness to nor involved
25 in. The only relevant inquiry in this Inquest is whether the killing of Isaiah Obet by Officer
26 Nelson complied with his training and department policy. Therefore, the only relevant facts that
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1 are necessary to present to the panel are facts that illuminate what officer Nelson knew at the
2 time he shot and killed Mr. Obet. Officer Nelson only knew what he heard over dispatch and the
3 Family concedes it is appropriate to play that recording for the panel. Anything beyond that
4 would be beyond the scope of the inquest and inadmissible under ER 401, 402, 403, and 404.

5 The Executive Order is clear that the rules of evidence apply to inquest proceedings PHL-7-
6 1-3 EO Sec 12.2. Under the rules of evidence prior misconduct is not admissible under ER
7 404(b) unless offered for an admissible purpose. *State v. Fisher*, 165 Wash. 2d 727, 750, 202
8 P.3d 937, 948 (2009). In this case, Officer Nelson only knew of what was told to him by
9 dispatch. Admitting anything else beyond that would be applying an admission standard to
10 evidence that goes beyond anything that has ever been contemplated by ER 404(b).

11 Moreover, the Executive clearly contemplated whether prior bad acts by a decedent should
12 be admitted in an Inquest. Sec. 4.5 clearly says that any prior bad acts of the decedent must be
13 limited to the “greatest extent possible” and may only be included if it is “actually known to the
14 officer at the time and informed forming a basis for the decision to use deadly force...” PHL-7-
15 1-3-EO. The Executive could not have been clearer. The inquest inquiry is only interested in
16 what the officer knew, not what Mr. Obet did earlier in the day.

17 Therefore, this evidence must be excluded pursuant to the Executive Order and under ER
18 401, 402, 403, and 404 (b).

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22 **2. The Family objects to the exclusion of prior misconduct and or use of force by**
23 **Officer Nelson at this time.**
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25 The Family is still investigating and looking into the 65 use of force complaints against
26 Officer Nelson from 2011 until 2019. From our initial investigation it appears that many of these
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1 uses of force incidents may be relevant and admissible to judge the credibility of officer Nelson,
2 his bias, uncover a pattern, and/or highlight what his mental state was at the time of the killing of
3 Mr. Obet. There is a substantial amount of material and witnesses to investigate regarding these
4 numerous use of force complaints and the Family is not prepared to assert which incidents are
5 probative at this time. However, the Family does intend on briefing these issues once the
6 investigation into his prior conduct is complete. The Family requests a deadline of January 31,
7 2020, to brief the issue as to what issues of prior conduct of officer Nelson may or may not be
8 relevant.¹

10 **3. The Family requests the inclusion of both statements made by Officer Nelson, the**
11 **first statement he made to Officer Byers on scene on June 10, 2017, within minutes**
12 **of the killing of Mr. Obet, and the second recorded interview he made to detectives**
13 **with his lawyer present on June 16, 2017 after he had been read his *Garrity* rights.**

15 The City conceded that the first statement made by Officer Nelson is admissible, it is only
16 the second statement that they have purportedly objected to which will be addressed herein.

18 The Garrity statements made by the Officer Nelson must be admissible. Use of these
19 statements in the inquest proceedings does not raise constitutional concerns. Indeed, the United
20 States Supreme Court—in no uncertain terms—expressly held that Garrity “statements obtained
21 under threat of removal from office” are only “prohibit[ed from] use in subsequent criminal
22 proceedings[.]” *Garrity v. New Jersey*, 385 U.S. 493, 500, 87 S. Ct. 616, 620, 17 L. Ed. 2d 562
23 (1967). See also *Seattle Police Officers' Guild v. City of Seattle*, 80 Wash. 2d 307, 310, 494 P.2d
24 485, 487 (1972) (affirming that the Garrity decision confined its attention and holding to the

26 ¹ The Family recognizes that Officer disciplinary history is admissible in an inquest under limited circumstances according to
27 EO- PHL-7-1-3 Sec 4.6.

1 single proposition that statements obtained in the course of a disciplinary investigation under
2 threat of dismissal from office could not be used as evidence in subsequent criminal
3 prosecutions).

4 The inquest is not a criminal proceeding wherein constitutional protections would bar use of
5 the Garrity statements obtained during the investigation of the law enforcement involved death
6 of Mr. Obet. The stated purpose of the inquest makes this clear, “an inquest shall be held to find
7 facts and review the circumstances of any death involving a member of the law enforcement
8 agency[.]” PHL-7-1-2-EO, Conducting Inquests in King County (Oct. 3, 2018). See also Appx. 1
9 at 2.3 (noting that “[t]he purpose of the inquest is not to determine whether the law enforcement
10 member acted in good faith or should be disciplined or otherwise held accountable, or . . . to
11 determine civil or criminal liability”). Further, “[t]he inquest is an administrative hearing
12 intended to be a fact-finding, non-adversarial process.” Appx. 2 at 1.1.

13 As the inquest is a fact-finding process meant to ensure public accountability of law
14 enforcement actions, allowing the use of Garrity statements is consistent with the policy
15 undergirding Garrity statements themselves, including the fact that there is strong public policy
16 in favor of promoting honesty and integrity in law enforcement employees, the goal of this
17 policy being the encouragement of public trust in law enforcement. *Kitsap Cty. Deputy Sheriff's*
18 *Guild v. Kitsap Cty.*, 167 Wn.2d 428, 449–50, 219 P.3d 675, 685 (2009) (Johnson, C.
19 concurring).

20 Not only does use of the Garrity statements not trigger any constitutional concerns, the
21 Family must have the ability to use those statements if they are needed for impeachment
22 purposes. See Evidence Rule 613(a) (allowing for the examination of a witness concerning a
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1 prior statement made by the witness); ER 613(b) (allowing the use of extrinsic evidence of a
2 prior inconsistent statement). ER 806 (allowing use of prior inconsistent statements for
3 impeachment purposes).

4 In this case, it is imperative that the fact finder hear and review both of Officer's Nelson's
5 statements in order to properly assess the facts of the case, judge the credibility of witnesses, and
6 determine what happened when Isaiah Obet was killed.
7

8 **4. The Family requests the use of experts during the inquest to explain evidence to the**
9 **jury.**

10 The court in the prior Pre-inquest order gave the Family until December 31, 2019, to
11 declare experts. The Family will defer briefing this issue until such, if any, declaration are made.
12 However, PHL-7-1-1-EO section 12.1 clearly anticipates this type of testimony.
13

14 **5. The Family requests the following witnesses be subpoenaed by the administrator in**
15 **the inquest.**

16 The Family reserves the right to request the Administrator add additional witnesses to
17 this list when and if the Family is able to review the discovery complete and/or more thoroughly.
18

- 19 1. Officer Jeffrey Nelson
- 20 2. Det. Darin Beam
- 21 3. Det. Doug Carlton
- 22 4. APD DeRoche
- 23 5. APD Gould
- 24 6. APD Byers
- 25 7. APD Bruce
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- 1 8. APD Bateman
- 2 9. APD P Douglas
- 3 10. APD Evans
- 4 11. Former Chief William Pierson
- 5 12. Acting Chief Mark Caillier
- 6 13. Dr. Lubin (Medical examiner)
- 7 14. Jing Martz
- 8 15. Stacy Cowell
- 9 16. Daniel Langidrick
- 10 17. Alter Milne
- 11 18. Amber Lightner
- 12 19. Leo Mattox
- 13 20. Jennifer Steed

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18 **6. The Family reserves addressing issues regarding what specific training protocols,**
19 **policies, trainings will be relevant to these proceedings until a full and fair review of**
20 **discovery can occur.**

21 The Family anticipates being ready and able to identify the specific trainings and policy
22 that will be relevant to the factual scope of these proceedings by February 28, 2020.
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1 DONE this 13 day of December, 2019.

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4 /s/ Amy Parker

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DECLARATION OF SERVICE

Declarant certifies that I am over the age of eighteen (18), a citizen of the United States, not a party to this action, and competent to be a witness; and that I emailed the foregoing document as indicated:

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I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Executed on December 13, 2019 in Seattle, Washington.

/s/ Amy K. Parker

Amy K. Parker, Attorney for the Family of Mr. Obet