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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. 417IQ7199

DEFENDANT CITY OF AUBURN'S
MOTION TO STAY

The City of Auburn moves the administrator to stay the proceeding until after Officer Nelson's pending criminal trial. This motion is based upon PHL 7-1-5-EO, Section 8.15 (hereafter EO).

The Obet incident happened June 10, 2017. The original inquest was scheduled for January 2018, when it was cancelled by executive order.

The Sarey incident happened May 31, 2019. The King County Prosecutor filed an Information charging Officer Nelson with murder on August 20, 2020. The criminal trial is set for February of 2022.

King County, acting through its prosecutor, has indicated an intent to put on evidence from the Obet case as part of its proof in the Nelson murder case. King County, acting through its public defender's office in the inquest for the above-captioned case, has indicated an intent

1 to call Officer Nelson and compel him to testify or assert the 5th Amendment in a public trial.¹
2 King County, acting through its public defender's office, has also indicated an intent to put
3 on evidence of uses of force by Officer Nelson that postdate the Obet incident. *See*, Motion
4 Regarding Scope of Inquest. Presumably, this would include introducing evidence of the
5 Sarey incident, and potentially policies, practices, and uses of force that will also likely be
6 introduced by King County in the criminal matter. Simply put, given the nature of the two
7 cases, and King County's role in litigating both, it is not in the interest of justice to proceed
8 with the Obet inquest until after resolution of the criminal matter.
9

10 This would be consistent with the EO which states that the Administrator: "May stay
11 an inquest where charges are pending against an accused person and the stay is necessary to
12 avoid compromising the criminal case." EO 8.15.
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14 Washington case law has addressed the issue of parallel proceedings involving
15 criminal and non-criminal actions and set forth rules of "general application to requests for
16 stays in the context of parallel proceedings." *King v. Olympic Pipeline Co.*, 104 Wn. App.
17 338, 349, 16 P.3d 45, 51 (2000), as amended on reconsideration (Feb. 14, 2001). In evaluating
18 a request for a stay the court should consider the following factors:
19

- 20 (1) Similarities between the civil and criminal cases;
- 21 (2) Status of the criminal case;
- 22 (3) The interest of the plaintiffs in proceeding expeditiously with litigation or any
23 particular aspect of it, and the potential prejudice to plaintiffs of a delay;
- 24 (4) The burden which any particular aspect of the proceedings may impose on
25 defendants;
- 26

27 ¹ Previously, the Public Defender has requested live video streaming of the inquest.

- 1 (5) The convenience of the court in the management of its cases, and the efficient use
2 of judicial resources;
- 3 (6) The interests of persons not parties to the civil litigation; and
- 4 (7) The interest of the public in the pending civil and criminal litigation.

5
6 *Id.*

7 In *King*, the Court found two factors were important. One was whether there had been
8 an indictment or not. *Supra*, at p. 354. The presence of an indictment eliminates the need to
9 speculate about the issue of criminal jeopardy if the subject of the indictment will be called as
10 a witness in the parallel proceeding. The other key factor was whether a party could be
11 compelled in the civil proceeding and forced to assert the 5th Amendment. Invoking the 5th
12 Amendment “impairs the right of the invoking party to defend the civil claims; the caution
13 required in the face of criminal charges may leave civil defendants unable to offer truthful
14 testimony that would assist in defense of the civil claims.” *King v. Olympic Pipeline Co.*, 104
15 Wn. App. 338, 356, 16 P.3d 45, 54 (2000), as amended on reconsideration (Feb. 14, 2001).

17 In the absence of a stay, the Administrator will have to wrestle with a number of very
18 challenging issues. They include the question of whether the Inquest, and attendant publicity,
19 will cause un-remediable damage to Officer Nelson’s criminal case. The Administrator will
20 have to decide whether Officer Nelson can be compelled to testify in the Inquest, whether he
21 will be required to testify to the Sarey event, and whether he will be forced to assert his Fifth
22 Amendment rights in front of the inquest jury. And, the Administrator will have to decide
23 if King County, the entity serving as prosecutor in Sarey, advocate against Nelson in Obet,
24 and convening and compelling the testimony in the Inquest, has an inherent conflict of
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1 interest.² Many of these issues, and the putative damage to Officer Nelson's criminal due
2 process rights, would be eliminated or vitiated by a stay.

3 The City seeks resolution of the Obet inquest but a fair and just process for all involved
4 must take precedence and to allow the parties to testify fully before the inquest jury.
5

6
7 DATED this 13th day of October, 2021.

8
9 KEATING, BUCKLIN & McCORMACK, INC., P.S.

10
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27 ² If King County, acting through the inquest program, creates pre-trial publicity, taints a jury pool, or otherwise
impairs Nelson's right to a fair trial, then it may be taking action that will lead to dismissal of those criminal
charges.

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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on the below date, a true and correct copy of the foregoing document was served upon the parties listed below via E-mail only, per agreement:

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DATED this 13th day of October, 2021, at Seattle, Washington.

/s/ Cindy Marlatte
Cindy Marlatte, Legal Assistant