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KING COUNTY DEPARTMENT OF EXECUTIVE  
SERVICES INQUEST PROGRAM

INQUEST INTO THE DEATH OF:  
  
DAMARIUS DEMONTA BUTTS,  
  
Deceased.

No. 517IQ8013  
  
INVOLVED OFFICERS' MOTION  
TO MAINTAIN  
ADMINISTRATOR'S EARLIER  
ORDER OR STAY/CONTINUE  
THE INQUEST

Over the past six months the family, the Seattle Police Department, the involved officers, the inquest manager, Mr. Anderson and the Administrator have all worked diligently and respectfully to navigate the directives and ambiguities of the 2018 executive order (PHL-7-1-2-EO) in preparation for the inquest scheduled to begin December 9, 2019. The parties have participated in numerous pre-inquest conferences, spent countless hours reviewing materials and preparing briefing, and engaged in hundreds of email and phone exchanges with the seminal goal of fairly representing *every parties' interests* in the inquest process to promote a full, fair and transparent review of Mr. Butts' death. While the parties have not always agreed, all worked together to make the process successful.

1 Now, two court days before the scheduled commencement, with no prior notice, the  
2 executive has issued a new order (PHL-7-1-3-EO) changing the rules. Specifically, the new order  
3 states that an involved officer shall only be permitted to participate through counsel if the officer  
4 elects to testify in the inquest proceeding. Put more bluntly, involved officers will not be allowed  
5 to have an attorney present to represent their interests or perspectives in the inquest unless they  
6 agree to waive their Fifth Amendment and employment-related rights – a precondition that does  
7 not apply to any other party and is antithetical to the stated goals of the inquest process.

8 Prior to the issuance of the executive’s new order, the Administrator determined that the  
9 officers may participate through counsel whether or not they elect to testify and, more recently,  
10 determined that the officers’ *Garrity* statements would be used if an officer did not testify. The  
11 Administrator’s decisions were sound, reasoned, and developed through the efforts of all parties  
12 through briefing, argument, and discussion. Importantly, the Administrator’s orders  
13 acknowledged one of the tenets of the inquest process – “**respect for all those involved in the**  
14 **inquest process.**”

15 Although touted as a “transparent,” “fair,” and an “open” process, the executive has  
16 arbitrarily elected to deprive the involved police officers of the right to participate on the same  
17 footing as every other party, notwithstanding that their interest in the proceeding is at least equal  
18 to that of any other party, and their perspective on the offered evidence is of paramount  
19 importance to a complete and fair analysis of the incident. While the executive’s decision was  
20 not explained, its timing frankly suggests a disdain not just for involved officers, but also for the  
21 extensive, good faith effort undertaken by all involved in this process, not to mention raising the  
22 specter of due process and equal protection issues..

1 For the foregoing reasons, the involved officers ask the Administrator to permit counsel  
2 for the involved officers to participate consistent with the Administrator’s earlier ruling or  
3 alternatively, stay the proceeding so the involved officers may weigh their rights in this  
4 supposedly “fair” process.

5 *First*, PHL-7-1-3-EO itself provides the Administrator the authority to make this  
6 decision: “the County Executive, in exercising the authority to hold inquests, *has discretion to*  
7 *determine how inquest proceedings are to be conducted, and to delegate the duty of presiding*  
8 *over an inquest to another impartial public official.”* The Executive has delegated this authority  
9 to the Administrator, including the discretion on how to conduct inquests. In exercising that  
10 discretion, and in keeping with the monumental effort expended by all involved, the  
11 Administrator should maintain the status quo of this proceeding and his earlier orders.

12 *Second*, amending the Administrator’s earlier order regarding officer participation runs  
13 contrary to Paragraph 16.2, Appendix 2 of PHL-7-1-3-EO which reads:

14 The County Executive will call for a period review of the inquest process by an  
15 independent review committee to determine if the inquest process is conforming to  
16 update laws and adequately meeting the principles of transparency, community  
17 engagement, and respect for all those involved in the inquest process.<sup>1</sup>

18 Instead of permitting this inquest, the first inquest under this new framework, to run its course  
19 under the sound judgment and oversight of this Administrator, the executive disregarded his own  
20 order, ignoring the independent review committee and the principles of transparency, community  
21 engagement, and especially respect for all those involved in the process. Because the order  
22 expressly delegates the authority to decide how inquests are to be conducted, the involved  
23 officers respectfully ask the Administrator to stand by his earlier order and allow the involved  
officers to have attorneys present as participating parties in the inquest.

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<sup>1</sup> This language is verbatim that provided in the 2018 executive order, PHL-7-1-2-EO.

1           *Third*, if the Administrator does not believe he can maintain his earlier ruling under the  
2 new executive order, he should grant a stay and/or continuance of these proceedings so the  
3 involved officers may adequately assess their position, rights and privileges under the new  
4 process. Counsel for the involved officers have spent the last six months preparing for these  
5 proceedings and working directly with the parties and the inquest manager to create an  
6 environment for a successful and meaningful inquest. The involved officers deserve not only the  
7 respect claimed in the executive order but the right to due process in these proceedings, which  
8 includes the opportunity to fully assess the implications of this new order and related legal  
9 ramifications. By placing the involved officers in a position of precondition to participation that  
10 is not applicable to any other party, by requiring them to waive rights conferred by the  
11 Constitution of the United States and by the United States Supreme Court (*Garrity*) and by  
12 implementing such requirements without even scant due process, the executive's decision  
13 implicate due process guarantees, equal protection issues, state law requirements and concerns  
14 under the county charter itself. It is a physical impossibility to address these issues in the 1.5  
15 court days' notice the executive provided the parties. Under the executive order, "[e]xtensions  
16 shall be limited and granted only upon a showing of good cause." (EO 5.1). Certainly good cause  
17 exists in the wake of this executive petard.

18           Nor could the executive legitimately claim that he did not anticipate a stay would occur  
19 by this dramatic, eve-of-inquest amendment. The executive has be advised by lawyers through  
20 this process who had to have been aware that inquest processes can and have been challenged in  
21 the courts upon the organic authority of the coroner statute, who must have known that  
22 elementary procedural and equal protection interested may be impacted and that the county  
23 charter provisions may well also be implicated. While the executive is evidently indifferent to

1 the efforts put forth by counsel in this inquest or the emotional impact of these proceedings on  
2 ALL parties involved, as show by the untimeliness of his order, the Administrator undoubtedly  
3 does. The involved officers accordingly respectfully request a reasonable continuance so they  
4 may assess their available options while also respecting the needs and concerns of the other  
5 involved parties and the fundamental purpose of the process – a fair, open and transparent review  
6 of the facts and circumstances.

7  
8 DATED this 5th day of December, 2019, at Seattle, Washington.

9 **FREY BUCK, P.S.**

10 By:           /s/ Ted Buck            
11 Ted Buck, WSBA #22029  
12 Evan Bariault, WSBA #42867  
13 Attorney for Seattle Police Department Involved  
14 Officers  
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1 **CERTIFICATE OF SERVICE**

2 I certify that on the 27th day of November, 2019, I caused a true and correct copy of this  
3 document to be served on the following in the manner indicated below:

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Matthew Anderson <a href="mailto:Matt.Anderson@kingcounty.gov">Matt.Anderson@kingcounty.gov</a>	(x) Via Email
Dee Sylve <a href="mailto:Dee.Sylve@kingcounty.gov">Dee.Sylve@kingcounty.gov</a>	(x) Via Email
Adrien Leavitt <a href="mailto:Adrien.Leavitt@kingcounty.gov">Adrien.Leavitt@kingcounty.gov</a>	(x) Via Email
La Rond Baker <a href="mailto:lbaker@kingcounty.gov">lbaker@kingcounty.gov</a>	(x) Via Email
Lori Levinson <a href="mailto:Lori.Levinson@kingcounty.gov">Lori.Levinson@kingcounty.gov</a>	(x) Via Email
Rebecca Boatright <a href="mailto:Rebecca.Boatright@seattle.gov">Rebecca.Boatright@seattle.gov</a>	(x) Via Email
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Viktor Vodak <a href="mailto:vvodak@kingcounty.gov">vvodak@kingcounty.gov</a>	(x) Via Email
Kelly Nakata <a href="mailto:Kelly.Nakata@seattle.gov">Kelly.Nakata@seattle.gov</a>	(x) Via Email

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21 DATED this 27th day of November, 2019, at Seattle, Washington.

22 /s/ Evan Bariault

23 Evan Bariault