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KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES
INQUEST PROGRAM

IN RE INQUEST INTO THE DEATH OF
DAMARIUS DEMONTA BUTTS

No. 517IQ8013

SEATTLE POLICE DEPARTMENT’S
MOTION TO STAY AND CONTINUE
INQUEST

The Seattle Police Department (“SPD”) respectfully requests a stay and continuance of this Inquest. In Support thereof, SPD states the following:

INTRODUCTION

Less than two days before the first inquest under the revised Executive Order, the office of the King County Executive, without any notice to or consultation with any of the involved parties, dropped a new Executive Order fundamentally changing the procedural posture of the inquest process – and the due process rights of the involved officers. The lack of transparency smacks of a last-minute effort by the Executive to obstruct months of thoughtful hard work by the involved parties and the Administrator to have a fair and process-driven inquest. Depriving the involved

1 officers of representation and the ability to protect their rights – when the entirety of the inquest
2 centers around their actions - is a flagrant violation of due process principles and the principles of
3 justice and equity. The decision places the Department in a position of confusion about its role in
4 the inquest process, its employment responsibilities, and its commitment to transparency and
5 effective due process. SPD regrettably requests a short stay and continuance of these inquest
6 proceedings Under the Executive Order (present and past), the “[A]dministrators shall strive to
7 promote an atmosphere consistent with administrative fact-finding and shall strive to minimize
8 delay, cost, and burden to participants, while promoting fair and open proceedings.” (E.O. 3.1). A
9 stay and continuance is necessary to ensure that the principle of fairness is met. Under the Order,
10 “[e]xtensions shall be limited and granted only upon a showing of good cause.” (E.O. 5.1). There
11 is no better cause than to evaluate and assess the mandated deprivation of the rights of the
12 Individual Officers from participating in an inquest that they are the subject of.

13 RELIEF REQUESTED

14 The Seattle Police Department and Involved Officers respectfully requests the Administrator
15 stay this Inquest.

16 ARGUMENT

17 In the middle of a pre-inquest interview, the parties received a PDF of the “new” Executive
18 Order effective immediately. The Order did not identify any changes on its face. The parties
19 immediately began to review the Order and terminated the interview. One aspect of the Order is
20 clear: The relevant change states, **“The law enforcement member(s) involved in the death, who
21 shall be allowed to have an attorney(s) present, provided that the law enforcement member(s)
22 elect(s) to offer testimony subject to examination by the other participating parties.”** (EO ¶
23 2.2.) (emphasis added). The EO deprives the involved officers, whose actions are the subject of the

1 inquest, from having legal counsel unless they consent to testify and be subject to cross-examination.
2 In effect, this deprives the officers of due process rights, by requiring them to waive their rights or
3 be deprived of attorney representation at a proceeding addressing their actions.

4 Throughout these proceedings, SPD and the involved officers have had different legal
5 counsel with differing ethical obligations. Counsel for SPD has taken a position that it advocates for
6 the Department. The Officers' counsel obviously advocates for the Involved Officers. The
7 Department has its own independent obligations and responsibilities under the consent decree and
8 policy to independently evaluate the officers' alleged actions. At times, the Officers and SPD
9 presented differing positions throughout these inquest proceedings. Nonetheless, the change in the
10 inquest process now would force SPD to take the role of officer advocate. Alternatively, the
11 Department would be required to participate in an imbalanced proceeding where the Family is
12 represented by capable advocates, the Department takes the position of a neutral, and the involved
13 officers have no representation should they decline to waive their due process rights.

14 While the Administrator has discretion, the sudden and unexpected change in the Executive
15 Order requires a brief stay and continuance for the parties to evaluate the Executive Order, to assess
16 their rights, and consider their options.¹ The Officers must have time to assess their participation,
17 SPD must take time to assess its obligations to the Department, its employees, and its independent
18 employment obligations. Requests for a stay typically balance the interests of the parties involved.
19 In this case, there is no question that the actions of the Executive prejudiced all parties. The Family,
20 seeking closure has been impacted. However, the need for expediency is overwhelmingly
21 outweighed by the overarching need to have a fair hearing with the due process rights of all
22 participants protected.

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¹ By way of example, the parties have yet to receive a redline copy noting the changes in the Order.

1 Even in criminal matters subject to speedy trial requirements, Washington law identifies that
2 “continuances and compulsory process in criminal cases involve such disparate elements as surprise,
3 diligence, materiality, redundancy, due process, and the maintenance of orderly procedures.” *See*
4 *State v. Downing*, 151 Wash. 2d 265, 273, 87 P.3d 1169, 1173 (2004) (citing *State v. Eller*, 84 Wn.2d
5 90, 95, 524 P.2d 242, 246 (1974)). These “disparate elements” are all met here. There is no doubt
6 that the parties were surprised by the Executive Order. The parties were diligent in their cooperation
7 and preparation. The ability of the officers whose conduct is being assessed by the jury is material
8 to the proceedings. The issue of participation is not redundant of SPD’s involvement, involves heavy
9 due process implications, and will be exceptionally disruptive to the maintenance of orderly
10 procedure.

11 CONCLUSION

12 The Executive’s actions place SPD in an unfortunate and uncomfortable position to ask the
13 Administrator for a stay and continuance. The stay and continuance are essential for SPD to evaluate
14 next steps in finding a way to meaningfully participate in the inquest process. SPD must have the
15 ability to represent its own interests separate from that of the Family or the Individual Officers. This
16 is an essential element to SPD’s continuous commitment to self-review and transparency. This
17 eleventh hour change corners SPD in a position of either serving as the Officers’ substitute advocate
18 or participating in a structure where there is a clear void of Officer advocacy. Such an expectation
19 is untenable. The inquest process thus far has been an exceptionally thoughtful and dedicated
20 process by all parties, the inquest attorney, and the Administrator. The parties’ search for balance
21 and fairness in these proceedings has been overshadowed by the Executive’s sudden change. For

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1 good cause, fairness, due process, and equity, the Administrator should impose a brief stay and
2 continue this Inquest.

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4 DATED this 6th day of December, 2019.

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6 PETER S. HOLMES
Seattle City Attorney

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CERTIFICATE OF SERVICE

I certify that on the 6th day of December, 2019, I caused a true and correct copy of this document to be served on the following in the manner indicated below:

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