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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

Case No. 517IQ9301

INQUEST INTO THE DEATH OF
CHARLEENA CHAVON LYLES,

Deceased.

MOTION TO CLARIFY PARTIES

TO: DEE SYLVE, Inquest Program Manager

AND TO: ALL OTHER PARTIES AND THEIR COUNSEL OF RECORD

I. INTRODUCTION AND RELIEF REQUESTED

The Family of Charleena Lyles moves the Administrator to clarify the parties to this proceeding. Ms. Rebecca Boatright does not claim to represent a party to this proceeding and, accordingly, should not be permitted to participate. Officer Anderson and Officer McNew are only entitled to have an attorney present in the inquest if they elect to participate in the proceeding. Conducting Inquests in King County, PHL-7-1-2-EO, Appendix 2, § 2.1-2.5 (2018). Electing to participate in the proceeding would necessarily entail following the rules of the proceeding, including offering testimony if called as a witness. Consequently, Officers McNew

1 and Anderson should only be permitted to have an attorney present at the inquest (and associated
2 pre-inquest hearings) if they will offer testimony when so called.

3 **II. EVIDENCE RELIED UPON**

4 This motion is based on the Declaration of Corey Guilmette.

5 **III. LEGAL AUTHORITY**

6 **A. Attorneys Must Represent a Participating Party in Order to Participate in the** 7 **Inquest**

8 Ms. Rebecca Boatright should not be permitted to participate as an attorney in the inquest
9 as she does not represent a party to the proceeding. There are five parties to the inquest
10 proceeding:

- 11 1. “The family of the deceased, who shall be allowed to have an attorney(s) present.
- 12 2. The law enforcement member(s) involved in the death, who shall be allowed to
13 have an attorney(s) present, provided that the law enforcement member(s) elect(s)
14 to participate in the inquest proceeding.
- 15 3. The employing government department, which shall be allowed to be represented
16 by its statutory attorney or lawfully appointed designee.
- 17 4. The manager, who shall assign an administrator and a pro tem attorney to assist
18 the administrator.
- 19 5. An administrator, who shall preside over the inquest.”

20 Conducting Inquests in King County, PHL-7-1-2-EO, Appendix 2, § 2.1-2.5 (2018). Ms.
21 Boatright, who is employed by the Seattle Police Department, has stated that she is not the
22 Department’s litigation attorney. Declaration of Corey Guilmette. On July 30, 2019, Ms.
23 Boatright sent an email to Matt Anderson, the pro-tem attorney in this proceeding and cc’d the
24 parties to the inquest, including myself. *Id.* In that email, Ms. Boatright was responding to a prior
25 email from Mr. Anderson asking for attorneys to provide contact information and the name(s) of

1 their client(s). *Id.* Ms. Boatright wrote, in relevant part, “My position should be reflected as
2 Executive Director of Legal Affairs, SPD—I am a legal advisor to the Chief and the Department,
3 but I am not her (or the Department’s) litigation attorney.” *Id.* Since Ms. Boatright has instructed
4 that she is not representing the Seattle Police Department, she is not representing a party to this
5 proceeding and, thus, should not be permitted to file motions, offer oral argument, or otherwise
6 participate in this proceeding.

7 **B. Officers Anderson and McNew May Only Have an Attorney Present During the**
8 **Inquest if the Officers Elect to Testify in the Inquest Proceeding**

9 Officer Anderson and McNew are only entitled to have an attorney present during the
10 inquest if the officers elect to participate in the inquest proceeding. In outlining the participating
11 parties in an inquest proceeding, the inquest rules provide for the participation of the “the law
12 enforcement member(s) involved in the death, who shall be allowed to have an attorney(s)
13 present, provided that the law enforcement member(s) *elect(s) to participate* in the inquest
14 proceeding.” Conducting Inquests in King County, PHL-7-1-2-EO, Appendix 2, § 2.2 (2018)
15 (emphasis added). Electing to participate in the proceeding would necessarily entail following
16 the proceeding’s rules. Among those rules is offering testimony if called as witness by any party
17 to the proceeding. PHL-7-1-2-EO, Appendix 2, § 12.1 (“Each party, including the administrator,
18 through the pro tem staff attorney, may proffer its own witnesses to provide testimony that aids
19 the panel in the understanding of the facts. . .”). As a result, Officers Anderson and McNew may
20 only have an attorney present during this inquest proceeding (and the accompanying pre-inquest
21 hearings) if the officers testify if offered as a witness by any party to the proceeding.

22 This conclusion is further supported by the language, intent, and history of the inquest
23 rules. If electing to participate did not require the officers to participate in some aspects of the
24 inquest proceeding, such as offering testimony if called as a witness, then the inquest rules would
25 have been expected to make such an exception clear. One would particularly expect such an

1 exception to be spelled out given the significance of the involved officers' decision as to whether
2 to offer testimony. Unlike a normal trial, in an inquest, there are no opening statements, limits
3 are placed on closing statements, and the jury does not determine guilt or liability. With these
4 normal trial elements eliminated or limited, witness testimony takes on special importance—
5 especially the potential testimony of the involved officers who would have the most
6 consequential testimony to offer. The officers' decision whether or not to testify is all the more
7 important because, unlike all other witnesses, officers cannot be compelled to offer testimony
8 through subpoena, and, thus, the only way their testimony will be heard is if they elect to offer
9 testimony.¹ PHL-7-1-2-EO, Appendix 1, § 8.5. Given the importance of the officers' decisions as
10 to whether to offer testimony, if electing to participate in the inquest did not require the officers
11 to participate in all aspects of the inquest proceeding, such as offering witness testimony, then
12 the inquest rules would make that exception clear.

13 Additionally, it is significant that law enforcement members are the only parties only
14 entitled to representation if they elect to participate in the inquest. This distinction suggests that
15 the law enforcement members are somehow different from the other parties and thus special
16 rules are needed to govern their right to have counsel present. The main difference between the
17 involved law enforcement members and the other parties, as it relates to potential participation in
18 the inquest, is that the involved law enforcement members are always potential witnesses. Given
19 this distinction, the main reason to subject law enforcement members to a special limit on
20 representation is to prevent law enforcement from cherry-picking which parts of the proceeding
21 to participate in—refusing to offer testimony but still availing themselves of all of the benefits of
22 having an attorney to represent their interests. It is thus no coincidence that the limitation on the
23 right to representation was added to the inquest rules at the same time that language was added to

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25 ¹ Officers are not subject to subpoena authority because compelling officers to offer testimony would violate their 5th Amendment rights to avoid self-incrimination. U.S. Const. amend. V.

1 exempt officers from subpoena power. *Comparing PHL 7-1-1 EO (2010) & PHL-7-1-2-EO*
2 (2018). The fact that limits on the right to inquest representation and subpoena power were added

3 to the inquest rules at the same time, along with officers' unique positioning as the only parties
4 who are always potential key witnesses and the only parties with a limited right to representation,
5 leads to a strong logical inference that the limit on officers' right to inquest representation was
6 added to prevent officers from cherry-picking which parts of the proceeding they participate in.

7 A public summary of the inquest process issued by the King County Executive's office
8 offers even further support for the conclusion that officer participation in the inquest involves
9 offering testimony. On October 4, 2018, when publicly announcing the new inquest rules, the
10 County Executive's Office emailed individuals who attended one of the Inquest Process Review
11 Committee's public focus groups. Declaration of Corey Guilmette. Attached to that email was a
12 high-level summary of the inquest process changes King County Executive Dow Constantine
13 announced that day. *Id.* In the high-level summary, the County Executive's Office wrote,
14 "Officer involved in the death may participate at their request but will not be subpoenaed. There
15 is a presumption that the involved officer will not participate." *Id.* This language shows, for two
16 reasons, that participation in the inquest proceeding requires the officer to offer testimony. First,
17 stating that an officer may participate at their request but will not be subpoenaed, directly equates
18 participation with offering testimony. Second, the County Executive's Office stated that officers
19 are presumed not to elect to participate—a conclusion that can only be logically drawn if
20 participation was intended to involve offering testimony. If participation did not require officers
21 to provide testimony, then, contrary to the presumption of the County Executive's Office,
22 officers would almost always choose to participate in the new inquest process, as having an
23 attorney present would only be to their benefit. Only if participation also required officers to
24 provide sworn testimony would the analysis shift to align with the presumption of the County

1 Executive's Office, such that it would not be advantageous for officers, given the risk of self-
2 incrimination, to participate in the inquest process.

3 Finally, any definition of participation that does not require officers to offer testimony,
4 renders the term "elect(s) to participate" meaningless and superfluous, contrary to the
5 Washington Supreme Court's ruling in *State v. Keller* 143 Wash. 2d 267 (2001). In *State v.*
6 *Keller*, the Washington Supreme Court instructed that "statutes must be construed so that all
7 language is given effect with no portion rendered meaningless or superfluous." 143 Wash. 2d
8 267, 277 (2001). Excluding testimony from the definition of participation eliminates the one way
9 the officers, themselves, would participate in the inquest. As a result, participation would be
10 defined to only include *only those actions performed by an attorney* (filing motions, oral
11 argument, calling witnesses, questioning witnesses, etc.). Under this reading of the rules, PHL-7-
12 1-2-EO, Appendix 2, § 2.2 becomes circular: the officers are allowed to have an attorney present
13 if the officers elect to participate in the inquest, with officer participation defined as the actions
14 of an attorney who is present. Put another way, under this theory, officers would be entitled to
15 have an attorney present if an attorney is present, rendering the term "elect to participate"
16 meaningless. Since, *Keller* instructs that all language must be "given effect with no portion
17 rendered meaningless and superfluous," then participation cannot simply be defined as an
18 attorney's advocacy. *Keller* at 277.

19 **IV. CONCLUSION AND PRAYER FOR RELIEF**

20 The Family of Charleena Lyles respectfully requests that the Administrator clarify the
21 parties to this proceeding. The Family of Charleena Lyles requests that Administrator not permit
22 Ms. Boatright's participation in this proceeding as she does not represent a party. Furthermore,
23 the Family of Charleena Lyles requests that Officers Anderson and McNew only be permitted to
24 have an attorney present at the inquest (and associated pre-inquest hearings) if they will offer
25 testimony when so called.

1 JOINTLY filed this 13th day of August, 2019.
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4 s/ Corey Guilmette
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CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury according to the laws of the United States and the State of Washington that on this date I caused to be served in the manner noted below a copy of this document entitled **MOTION TO CLARIFY PARTIES** on the following individuals:

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9 DATED this 13th day of August, 2019.

s/ Corey Guilmette

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