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King County Superior Court
Seattle Division

IN RE INQUEST INTO THE DEATH OF)
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CHARLEENA CHAVON LYLES,) No. 517IQ9301
)
) CITY OF SEATTLE AND SEATTLE
) POLICE OFFICERS' RESPONSE TO
) MOTION TO CLARIFY PARTIES
)
)

I. INTRODUCTION AND RELIEF REQUESTED

The family has sought to exclude legal representatives for the Seattle Police Officers and the Seattle Police Department (“SPD”) from engaging in the inquest process on a claim that their clients are not proper parties. As outlined below, the two SPD officers, via Mr. Buck and Ms. Cobb, and the SPD, via its legal advisor, Ms. Boatright, have a right to representation in the proceedings and the Administrator should deny the family’s motion to exclude them.

The very nature of an inquest invokes the constitutional rights of the involved officers. A prosecutor may use the factual findings from such proceedings to support the filing of criminal charges against an officer. For that reason—whether or not an officer has any concerns that his or her conduct could be deemed criminal—officers cannot be compelled to testify in an inquest. Along with an admitted pecuniary interest in the civil case, Ms. Lyles’ family members and their counsel

1 have publicly been very outspoken that arrest and conviction of the officers is their goal, regardless
2 of the absence of any legal basis. With such serious constitutional rights in jeopardy, the family
3 nonetheless argues that unless the officers agree to waive their constitutional rights and take the
4 stand, they are barred from engaging their own counsel in the inquest process. Instead, they hope to
5 control the flow and presentation of evidence in a manner skewed toward their own agendas. The
6 City cannot represent the interests of the officers. The officers are entitled to independent counsel of
7 their choosing to ensure the proper end to the inquest – assuring that all relevant facts within the
8 scope of the proceeding are presented to the jury in a full and fair manner.

9 The family’s skewed interpretation of the intent of the new inquest processes is
10 constitutionally defective, contrary to the stated goals of the inquest process and illogical from a
11 traditional “participation” analysis. The motion must be denied.

12 **II. AUTHORITY AND ARGUMENT**

13 **A. Officers McNew and Anderson have a constitutional right to representation.**

14 The family of Ms. Lyles asserts that law enforcement officers that choose not to testify in
15 conformity with their constitutional rights are not “participating” and are not entitled to
16 representation of counsel during the pre-inquest and inquest proceedings. It is a staggering and
17 dystopian suggestion – that to participate in a public proceeding a party necessarily must forfeit
18 constitutional rights. One can only imagine the family’s counsel’s response should it be suggested
19 that a party with equivalent rights, a criminal defendant, not be allowed to “participate” with counsel
20 in her trial unless she agreed to waive her constitutional rights. The goal of an inquest is a full, fair,
21 and non-biased panel evaluation of the facts and circumstances, a process our system of justice has
22 *forever* recognized requires advocacy on *both sides of the issue* to render a faithful finding.

1 Disposing of a party for retaining constitutional rights cannot in any possible sense advance that
2 seminal American justice ideal.

3 The purpose of an inquest is to determine the identity of the deceased, the cause of death, and
4 the circumstances of the death, including an identification of any actors who may be criminally
5 liable. RCW 36.24.040; Carrick v. Locke, 125 Wash.2d 129, 133, 882 P.2d 173 (1994), citing State
6 v. Ogle, 78 Wash.2d 86, 88, 469 P.2d 918 (1970). This potential for criminal charges makes the
7 right to invoke constitutional protections and the right to representation sacrosanct.

8 Washington courts have recognized the fundamentally different position officers occupy in
9 an inquest due to their unique risk of prosecution. In Miranda v. Sims, 98 Wn. App. 898, 908–09,
10 991 P.2d 681, 687 (2000), for example, the court confirmed that law enforcement officers have a
11 fundamentally different interest in “participating” by way of representative counsel in inquest
12 proceedings because they have the potential be held civilly or criminally liable: “Here, the family’s
13 participation and interest in the proceeding is fundamentally different from that of the [officers]. The
14 [officers] involved in the inquest may have had important knowledge of [decedent’s] death and may
15 be civilly or criminally liable.” Miranda cited to seminal federal precedent acknowledging the
16 unique situation officers occupy. Id., citing Garrity v. New Jersey, 385 U.S. 493, 87 S.Ct. 1489
17 (1967) & Malloy v. Hogan, 378 U.S. 1, 84 S.Ct. 1489 (1964).

18 This line of U.S. Supreme Court cases impresses the privileges of the Fifth Amendment upon
19 state proceedings through the due process clause of the Fourteenth Amendment. Sims, supra. It is
20 highly unlikely the King County Executive intended to coerce testimony of a law enforcement
21 officer by barring the officer from being represented by counsel unless the officer agrees to waive
22 his or her Fifth Amendment rights. More reasonably, the provision regarding participation simply
23 makes it solely the officers’ option to be present and/or to have counsel present, even if they decide

1 not to testify. The family calls it “cherry-picking”; our jurisprudence calls it a right guaranteed
2 under the United States Constitution. Public employees, like all other persons, are entitled to the
3 benefit of the Constitution, including the privilege against self-incrimination. Seattle Police Officers’
4 Guild v. City of Seattle, 80 Wn.2d 307, 309–15, 494 P.2d 485, 487–90 (1972).

5 Likewise, the family seems to suggest that if an officer chooses to be present and participate
6 so that he or she can also have an attorney, the inquest rule that entitles parties to “offer witness
7 testimony” can be used to compel officer testimony when the court cannot—a ludicrous suggestion.¹
8 The availability of the Fifth Amendment privilege does not turn upon the type of proceeding in
9 which its protection is invoked, but upon the nature of the statement or admission and the exposure
10 or penalty which it invites. State v. Post, 118 Wn.2d 596, 604–05, 826 P.2d 172, 177 (1992),
11 amended, 118 Wn.2d 596, 837 P.2d 599 (1992), citing In re Gault, 387 U.S. 1, 49, 87 S.Ct. 1428,
12 1455 (1967).

13 Finally, the family suggests that their cockeyed interpretation of the rules is supported by
14 State v. Keller, 143 Wn.2d 267 (2001), which requires that “statutes must be construed so that all
15 language is given effect with no portion rendered meaningless or superfluous.” Here the executive
16 order merely notes that an officer’s participation is voluntary, and that if she opts to participate she
17 may be represented. Nothing in the order or rules provides that she must agree to sacrifice
18 constitutional protections – indeed, the order specifically recognizes those protections. Should the
19 executive have intended such a draconian course, he would have done so in plain language given the
20 obvious consequences. Utilizing an individual’s interest in a full and fair proceeding as leverage to
21 force that individual to abandon his constitutional would be unprecedented. The executive and his
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24 ¹ The family admits that officers cannot be compelled, but still states that an officer must appear and testify if the
officer chooses to “participate” by having counsel present.

1 advisory team are not fools, they recognized the officers’ rights, and included no language to support
2 the staggering abuse of those rights now advocated by the family.

3 Moreover, any administrative or legislative act that runs afoul of constitutional rights is
4 necessarily defunct. The family simply ignores that fundamental tenet of our justice system.

5 Contrary to the family’s interpretation of the new rules, the Constitution demands that
6 officers are entitled to “participate” by having counsel represent their interests even if they do not
7 intend to testify or even appear. The “penalty” exception to the general rule that the Fifth
8 Amendment is not self-executing excuses a privilege holder’s failure to assert the privilege in
9 situations where the State threatens to sanction the exercise of the privilege. Post, supra, at 609. The
10 penalty could be economic loss or deprivation of liberty. Id., at 610, citing Minnesota v. Murphy,
11 465 U.S. 420, 434-435, 104 S.Ct. 1136 (1984). The analysis would focus on whether a particular
12 disclosure that is later used in a criminal prosecution is (1) incriminating and (2) coerced by the
13 threat of a penalty. Post, supra, at 610-611.

14 Although there are no criminal proceedings pending or anticipated against the officers, there
15 has also been no grant of immunity or guarantee that there will not be such charges considered in the
16 future; indeed, inquests include that prospect by statute. In this case, the family and their counsel
17 have publicly expressed that arrest and prosecution of [these] officers is their ultimate goal; the
18 threat is made even more realistic in light of the passage of I-940 (which makes it easier to charge
19 officers’ who use lethal force). See Post, supra (The court found that Post did not face a realistic
20 threat of incrimination when he made the statements because all questions were related to conduct
21 for which Post had already pleaded guilty or been convicted, so his answers did not expose him to
22 new or additional liability.)

1 Finally, a simple exercise in practical possibilities evidences the dramatic consequence that
2 could follow should the family's convoluted theory be followed. There is a distinct prospect that a
3 family member could be an important witness for the inquest process, as a participant or observer of
4 the underlying event.² That family member may well assert her Fifth Amendment privilege at the
5 inquest. By the family's reasoning, the family would then be prohibited from participating in the
6 proceeding with counsel. To argue otherwise would patently place the family in a superior position
7 to the involved officers, raising the obvious specter of a different constitutional violation – equal
8 protection. Nothing in the executive's order or the procedures suggests that any party is to be treated
9 differently than any other. The family's request is unfounded, dangerous and unconstitutional.

10 **B. Rebecca Boatright is the client representative for the Seattle Police Department and has**
11 **a statutory right and obligation to be involved in the Inquest process.**

12 The Family's request to exclude SPD's legal representative from the inquest process is
13 confounding. It is the City's understanding that the Seattle Police Department is required to
14 participate and be involved in the inquest process. This requires much logistical planning and
15 scheduling, as well as understanding records/processes for the purposes of facilitating discovery. Ms.
16 Boatright is the Executive Director of Legal Affairs for the Seattle Police Department, and therefore
17 entitled to be involved in the logistics of scheduling and planning for the purposes of inquests. Ms.
18 Boatright does not intend to examine witnesses or write briefs. In fact, she has not. Arbitrarily – and
19 without any legal justification – seeking to exclude her from being included on scheduling e-mails
20 and from hearings is absurd. Granting this request would serve only to complicate matters and
21 further delay the facilitation of the inquest process. The Administrator should deny this request.

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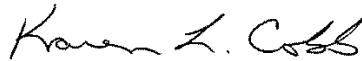
² Indeed, the sister of Damarius Butts, whose death is the subject of a parallel inquest, potentially fits this mold. It is not an uncommon event.

1 **III. CONCLUSION**

2 Ms. Boatright has a right to participate as SPD’s legal representative as a matter of
3 practicality and in keeping with inquest rules. Officer McNew and Officer Anderson are entitled to
4 representation at and leading up to the inquest, whether or not they intend to appear or testify in
5 keeping with the letter and spirit of the inquest rules and in recognitions of their constitutional rights.
6 There is no basis to argue the executive intended to use participation as a lever to force involved
7 officers to forfeit their rights.

8 Dated this 6th day of September, 2019.

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10 FREY BUCK P.S.

11 

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24 **Certificate of Service**

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

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20 DATED this 6th day of September, 2019, at Seattle, Washington.

21 /s/ Matthew C. Kniffen

22 Matthew C. Kniffen, Paralegal