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IN THE DISTRICT COURT OF THE STATE OF WASHINGTON
KING COUNTY

IN RE INQUEST INTO THE DEATH OF
CHARLEENA LYLES

No. 517IQ9301

SEATTLE POLICE DEPARTMENT'S
MOTION TO STAY INQUEST PENDING
DISPOSITION OF CIVIL ACTION

[Clerk's Action Required]

INTRODUCTION

Under the Executive Order, the “[A]dministrators shall strive to promote an atmosphere consistent with administrative fact-finding and shall strive to minimize delay, cost, and burden to participants, while promoting fair and open proceedings.” (E.O. 3.1). The Seattle Police Department (“SPD”) is engaged in highly publicized civil litigation with the very attorneys participating in this Inquest. The civil litigation was filed shortly after the death of Ms. Lyles and continues today, with the underlying circumstances of Ms. Lyles’ death at its crux. However, the civil litigation is far greater in scope than that permitted by the Executive Order. Now, over two years after the underlying incident and two years after initiating the litigation, this Inquest serves as a parallel

1 proceeding to one underway, causing significant cost and burden to the participants and with few
2 additional benefits to the public. The purpose of the Inquest process is for a public fact-finding into
3 the circumstances surrounding a death and to evaluate whether an officer complied with policy. The
4 civil litigation is serving this purpose and others. Forcing a parallel proceeding before the other is
5 complete is prejudicial, a waste of judicial resources and public funds, and inconsistent with the
6 principles of judicial economy.

7 **RELIEF REQUESTED**

8 The Seattle Police Department respectfully requests the Administrator stay this Inquest
9 pending disposition of the civil matter that has been in litigation for nearly two years.

10 **STATEMENT OF FACTS AND PROCEDURAL BACKGROUND**

11 Ms. Lyles' shooting death occurred on June 18, 2017. The Estate of Charleena Lyles and her
12 four children sued Officers Anderson and McNew and the City of Seattle in September 2017 (*See*
13 Case No. 17-2-23731-1 SEA, King County Sup. Ct., Dkt. 1). This Inquest was initially called in
14 November 2017 before Executive Constantine stayed pending and active inquests for an assessment
15 and reform process. The Inquest was called again by the Executive two years later, on July 9, 2019.
16 However, review of this matter through several processes could not and did not wait on the Inquest.

17 The Seattle Police Department's Force Investigation Team investigated the matter
18 thoroughly and presented that investigation to the Force Review Board, which is attended by the
19 Office of Police Accountability, now the Office of the Inspector General, the Department of Justice,
20 and the Monitoring Team. That investigation was disclosed by SPD.

21 (<https://spdblotter.seattle.gov/wp-content/uploads/2017/12/SPD-Force-Review-Board-Officer-Involved-Shooting.pdf>). During the pendency of that investigation, the Seattle City Council
22 mandated that SPD provide answers to questions, all of which were provided publicly and
23

1 thoroughly. ([https://spdblotter.seattle.gov/wp-content/uploads/2017/12/Response-to-Council-](https://spdblotter.seattle.gov/wp-content/uploads/2017/12/Response-to-Council-Questions_Final.pdf)
2 [Questions_Final.pdf; https://spdblotter.seattle.gov/wp-content/uploads/2017/12/SPD-Response-to-](https://spdblotter.seattle.gov/wp-content/uploads/2017/12/SPD-Response-to-Second-Council-Inquiries-Re-OIS.pdf)
3 [Second-Council-Inquiries-Re-OIS.pdf](https://spdblotter.seattle.gov/wp-content/uploads/2017/12/SPD-Response-to-Second-Council-Inquiries-Re-OIS.pdf)). Additionally, one half of the Family’s counsel, the
4 Officers, and City have been involved in active and continuing litigation about the underlying
5 events for the last two years. These proceedings have been the subject of much media reporting. To
6 date, this is not an unexamined matter and the urgency of transparency by the inquest process is
7 diluted by time – indeed the Inquest was dormant for two years – and by the other reviews and
8 examinations.

9 The Lyles civil litigation is in two phases. On January 4, 2019, Honorable Judge Julie
10 Spector dismissed claims against Defendant Officers Anderson and McNew. (Case No. 17-2-
11 23731-1 SEA, King County Sup. Ct., Dkt 250). On January 9, 2019, Ms. Koehler and Mr. Moore
12 filed a notice of appeal, appealing the court’s granting the Officers’ Motion for Summary
13 Judgment; and the denial of Plaintiffs’ Motion for Summary Judgment against all Defendants.
14 (Case No. 17-2-23731-1 SEA, King County Sup. Ct., Dkt 253). On January 31, 2019, the City
15 moved for Summary Judgment (Case No. 17-2-23731-1 SEA, King County Sup. Ct., Dkt 270)
16 seeking dismissal of all Plaintiffs’ claims against it. A day later, on February 1, 2019, Ms. Koehler
17 and Mr. Moore filed the Estate and Children’s Motion to Stay Proceedings (Case No. 17-2-23731-1
18 SEA, King County Sup. Ct., Dkt 277). On February 13, 2019, Judge Spector granted the Plaintiffs’
19 Motion to Stay. Despite the City’s efforts in both superior court and the appellate court, the stay
20 continues against the City pending the appeal, which is in mid-briefing. The last remaining brief is
21 the Estate and Children’s Reply brief due 10 days after the first pre-inquest hearing. (*See* Case No.
22 79480-9-I, Div. I Ct. App.). Ms. Koehler and Mr. Moore are confident that the ruling will get
23 reversed and remanded. (*See e.g.* Motion Regarding Separate Counsel, p. 4).

1 **STATEMENT OF ISSUES**

2 Whether the Administrator should stay the Inquest during the pendency of the civil litigation
3 where a stay promotes the interests of justice, protects against prejudice, promotes judicial
4 economy, appropriately using public funds, and consistency of findings.

5 **EVIDENCE RELIED UPON**

6 The Declaration of Ghazal Sharifi and attached exhibit and the record referenced herein.

7 **ARGUMENT**

8 **I. Legal standard.**

9 The Administrator has the discretionary power to stay its proceedings where the interest of
10 justice so requires. *King v. Olympic Pipeline Co.*, 104 Wn. App. 338, 350, 16 P.3d 45, 52-53
11 (2000), *as amended on reconsideration* (Feb. 14, 2001) (citing *Landis v. N. Am. Co.*, 299 U.S. 248,
12 254-55, 57 S.Ct. 163, 81 L.Ed. 153 (1936)). Like courts, the Administrator, under EO 3.1, is vested
13 with the authority “to control the disposition of the causes on its docket with economy of time and
14 effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of
15 judgment, which must weigh competing interests and maintain an even balance.” *Landis*, 299 U.S.
16 248, 254-55. In *King*, the Court of Appeals identified several factors courts can consider in
17 balancing a stay request. The court noted:

18 Washington courts have identified and considered [] the following:
19 similarities between the civil and criminal cases; status of the criminal
20 case; the interest of the plaintiffs in proceeding expeditiously with
21 litigation or any particular aspect of it, and the potential prejudice to
22 plaintiffs of a delay; the burden which any particular aspect of the
23 proceedings may impose on defendants; the convenience of the court in
the management of its cases, and the efficient use of judicial resources;
the interests of persons not parties to the civil litigation; and the interest
of the public in the pending civil and criminal litigation.

1 *King v. Olympic Pipeline Co.*, 104 Wn. at 352-53. The Court further identified that “[t]he balancing
2 process presents ‘a complex area of jurisprudence,’ in which ‘a wide array of options are available
3 to courts in performing this balancing.’ The balancing must be conducted on a case by case basis ‘in
4 light of the particular circumstances and competing interests involved in the case.’” *Id.*

5 The principles underlying the priority of action rule similarly apply.

6 Under the priority of action doctrine, the court which first gains
7 jurisdiction of a cause retains the exclusive authority to deal with the
8 action until the controversy is resolved. This rule applies where two
9 actions share “identity” of certain elements. Generally, courts look to
10 whether the actions share identity of (1) subject matter, (2) parties, and
11 (3) relief. While the general rule looks to these three elements, these
12 elements are not to be applied inflexibly. Rather, courts have looked
13 beyond these elements and to the policy behind the doctrine.

14 *Bunch v. Nationwide Mut. Ins. Co.*, 180 Wn. App. 37, 41-42, 321 P.3d 266, 269 (2014) (citing *City*
15 *of Yakima v. Int'l Ass'n of Fire Fighters, AFL-CIO, Local 469, Yakima Fire Fighters Ass'n*, 117 Wn.
16 2d 655, 818 P.2d 1076, 1078 (1991)) (internal quotations omitted).

17 These factors identified by Washington courts balance heavily for a stay. The Family’s own
18 briefing supports that the civil action’s progress fulfills the test set forth in *King* and that beginning
19 a parallel process is detrimental to the interests of justice.

20 **II. The Family admits that the civil action is premised on the same underlying events
21 and an expanded scope.**

22 In their series of filings in anticipation of the September 10, 2019 pre-Inquest hearing, the
23 Family makes repeat reference to the overlap between the civil action and the instant action. In the
Family’s Motion RE: Admitting Evidence, counsel writes, “[t]he parties in the civil action engaged in
extensive discovery regarding the facts surrounding the shooting and the events leading up to it.”
(Family’s M. RE: Admitting Evidence, p. 2). The Family then details a non-exhaustive list of discovery
spanning from the issues pertinent in this Inquest – the circumstances surrounding the death and

1 whether the officers complied with policy – to those much broader such as Ms. Lyles’ previous police
2 encounters, her mental health history, her domestic violence history, her residential history etc. In
3 their Motion Regarding Separate Counsel, the Family writes, “[t]his litigation and the inquest are
4 separate yet intertwined. While the inquest process was stayed, the parties to the civil litigation
5 have engaged in substantial discovery, much of which is relevant to the subject of the inquest.”
6 (Motion Regarding Separate Counsel, p. 3).

7 “The purpose of the inquest is to ensure a full, fair, and transparent review of any such
8 death, and to issue findings of fact regarding the facts and circumstances surrounding the death.”
9 (EO 2.2). An inquest jury panel then issues “findings regarding the cause and manner of death, and
10 whether the law enforcement member acted pursuant to policy and training.” *Id.* The Family
11 admits in its own writing that the civil litigation is fulfilling these requirements. (*See* Family’s M.
12 RE: Admitting Evidence, p. 2; Motion Regarding Separate Counsel, p. 3). While *King* concerned
13 overlapping criminal and civil proceedings – inquest proceedings are quasi-judicial in nature (EO
14 3.1) and may have potential criminal implications. The Executive Order notes, “[t]he purpose of the
15 inquest is **not** to determine whether the law enforcement member acted in good faith or should be
16 disciplined or otherwise held accountable, or to otherwise find fault, or to determine if the use of
17 force was justified, or to determine civil or criminal liability. It is acknowledged that the facts
18 determined in the course of the inquest *may sometimes have an indirect bearing on such*
19 *determinations.*” (EO 2.3) (emphasis added).

20 **III. The civil litigation is proceeding expeditiously.**

21 The Family admits in its own brief regarding separate representation that “[p]rohibiting
22 separate representation . . . would [] have the deleterious and prejudicial effect of depriving this
23 inquest of the wealth of discovery uncovered by the civil litigation . . . the materials are substantial,

1 and would require significant time and resources for the maternal family to develop the familiarity
2 with those materials that Plaintiff's counsel already has." (Motion Regarding Separate Counsel at p.
3 7). There is an admission that the civil matter has moved far ahead of this Inquest, which is just
4 beginning. There is an admission that substantial discovery has been done on overlapping issues.
5 There is an admission that the interests are addressed in the civil litigation. Therefore, the *King*
6 factors requiring the Administrator to assess the status of the parallel litigation, and evaluate
7 expeditious outcome is already fulfilled by the civil action. The priority of action doctrine is also
8 fulfilled. There is no purpose in beginning a parallel proceeding litigating issues already at play in
9 the civil action before the conclusion of the civil action.

10 **IV. The burden and prejudice imposed by duplicative litigation of identical issues is**
11 **heavy.**

12 The Family seeks discovery and admission of all the content of the civil litigation –
13 amounting to somewhere around 50,000 records, several depositions, and additional material. The
14 Family will inevitably seek interviews and testimony of individuals already at issue in the civil
15 litigation. The Family will bring in expert witnesses, as the Estate and children are doing in the civil
16 litigation. The civil action is much broader in scope than that of this Inquest. While it encompasses
17 what is required in this Inquest, the civil action has and continues to extend far beyond this Inquest.
18 The Family is now clearly using this Inquest and the civil action as a tool to circumvent discovery
19 limitations in both matters. This is evidenced by the Family's preliminary motions to the
20 Administrator to "admit" evidence and to permit dual representation. By way of clear example, the
21 Family repeatedly references the impact of the discovery already done in the civil litigation and its
22 "wealth" of information. (*See e.g.* Motion Regarding Separate Counsel at p. 7). The prejudice to
23 SPD and the City in the civil action to maneuver around discovery tactics of the Family's counsel is

1 clear. The result is duplicative written document discovery, witness testimony, and a strain on the
2 resources of the parties, particularly the Seattle Police Department. This strategy certainly does not
3 promote the purpose of public fact-finding of the circumstances surrounding the death.

4 The burden on all parties of prosecuting and defending parallel cases with identical facts is
5 an unnecessary strain on resources and a financial burden. The Family itself raised very real issues
6 of prejudice in its own brief discussing the need for separate counsel, “[t]he inquest will be a public
7 event that will impact the civil litigation by, if nothing else, the level of media attention that it will
8 garner, which ultimately will impact issues like the ultimate civil jury pool. *Protecting the civil*
9 *litigation during the inquest process is a matter for the civil counsel.*” (Motion Regarding Separate
10 Counsel, p. 4) (emphasis supplied). The Administrator must minimize “delay, cost, and burden to
11 participants.” The fundamental principles of fairness and judicial economy are not met when a
12 parallel action may not reach its natural conclusion before *beginning* another matter with the same
13 general purpose and underlying facts, especially when the second matter will admittedly prejudice
14 the integrity of the first. While a stay may temporarily delay proceedings, the conclusion of the civil
15 action may expedite fact-finding goals ultimately required of this Inquest. A stay would reduce cost
16 and would heavily reduce the burden on all parties involved.

17 **V. The public interest is fulfilled by the public nature of the civil proceedings.**

18 The underlying shooting incident is a matter of significant public attention. Since the event
19 itself, there have been multiple public hearings regarding the circumstances surrounding Ms. Lyles’
20 death. There was a series of Q&A sessions between SPD and Seattle City Council discussing details
21 surrounding the circumstances of the shooting. ([https://spdblotter.seattle.gov/wp-](https://spdblotter.seattle.gov/wp-content/uploads/2017/12/Response-to-Council-Questions_Final.pdf)
22 [content/uploads/2017/12/Response-to-Council-Questions_Final.pdf](https://spdblotter.seattle.gov/wp-content/uploads/2017/12/Response-to-Council-Questions_Final.pdf);
23 <https://spdblotter.seattle.gov/wp-content/uploads/2017/12/SPD-Response-to-Second-Council->

1 Inquiries-Re-OIS.pdf). There was a detailed force investigation and review with a 38-page Force
2 Review Board report. ([https://spdblotter.seattle.gov/wp-content/uploads/2017/12/SPD-Force-
3 Review-Board-Officer-Involved-Shooting.pdf](https://spdblotter.seattle.gov/wp-content/uploads/2017/12/SPD-Force-Review-Board-Officer-Involved-Shooting.pdf)). There were (and are) multiple advocacy platforms
4 that the members of the Family have been involved in.

5 The civil litigation itself has also been a matter of significant public attention and reporting.
6 Ms. Koehler’s own website has an entire page dedicated to the *Lyles* civil action under the heading,
7 “high profile cases.” This page collects nine entries citing multiple news outlets’ reporting of the
8 civil litigation. *See* [https://karenkoehler.com/high-profile-cases-
9 1/category/Lyles+v.+City+of+Seattle](https://karenkoehler.com/high-profile-cases-1/category/Lyles+v.+City+of+Seattle) (last accessed Sept. 8, 2019) Ms. Koehler also maintains an
10 active twitter feed and blog concerning her work, including this underlying litigation. A simple
11 Google search reveals that a myriad of news outlets – both local and national - continue to report on
12 all the stages of the litigation. *see e.g.* [https://www.king5.com/mobile/article/news/local/family-of-
13 charleena-lyles-sues-seattle-officers-involved-in-shooting/472463099](https://www.king5.com/mobile/article/news/local/family-of-charleena-lyles-sues-seattle-officers-involved-in-shooting/472463099); [https://www.solid-
14 ground.org/solid-ground-response-to-being-added-to-lyles-lawsuit/](https://www.solid-ground.org/solid-ground-response-to-being-added-to-lyles-lawsuit/);
15 http://archive.kuow.org/post/judge-dismisses-solid-ground-charleena-lyles-lawsuit;
16 [https://www.seattletimes.com/seattle-news/crime/attorneys-in-charleena-lyles-lawsuit-allege-
17 seattle-police-officer-perjured-himself/](https://www.seattletimes.com/seattle-news/crime/attorneys-in-charleena-lyles-lawsuit-allege-seattle-police-officer-perjured-himself/); [https://www.seattletimes.com/seattle-news/seattle-city-
18 attorneys-dispute-perjury-allegation-in-charleena-lyles-lawsuit/](https://www.seattletimes.com/seattle-news/seattle-city-attorneys-dispute-perjury-allegation-in-charleena-lyles-lawsuit/);
19 [https://www.kiro7.com/news/local/judge-lawyers-to-pay-24k-over-perjury-claim-in-lyles-case-
20 1/808857159](https://www.kiro7.com/news/local/judge-lawyers-to-pay-24k-over-perjury-claim-in-lyles-case-1/808857159); [https://www.huffpost.com/entry/seattle-lawsuit-dismissed-fatal-police-shooting-
21 charleena-lyles_n_5c361dd4e4b070b69ae0119d](https://www.huffpost.com/entry/seattle-lawsuit-dismissed-fatal-police-shooting-charleena-lyles_n_5c361dd4e4b070b69ae0119d) (all last accessed Sept. 8, 2019).

22 Widespread public coverage of the underlying events is satisfied by the civil proceedings
23 during the pendency of a stay. Again, the civil action and the underlying event are not strangers to

1 public scrutiny and attention. The transparency and public attention to date fulfills the public
2 interest prong of *King* balancing factors and the underpinnings of the Executive Order. This stay
3 request is not intended to deprive the public of its inquiry. Rather, it is to fulfill the balancing
4 considerations as contemplated by the Executive Order and Washington law.

5 **VI. Precedent in other parallel Inquest matters supports a stay.**

6 This Inquest is one of five inquests stayed pending revision of the inquest procedures. The
7 first two in time are already pending before the Administrator. (Sharifi Dec., Ex. 1). The third in
8 time was the shooting of Mr. Tommy Le. That inquest, like this one, was initially called. (*See*
9 [https://www.seattletimes.com/seattle-news/inquest-to-examine-deadly-shooting-of-20-year-old-](https://www.seattletimes.com/seattle-news/inquest-to-examine-deadly-shooting-of-20-year-old-man-by-king-county-deputy/)
10 [man-by-king-county-deputy/](https://www.seattletimes.com/seattle-news/inquest-to-examine-deadly-shooting-of-20-year-old-man-by-king-county-deputy/), last accessed September 9, 2019). It was then stayed pending the
11 inquest reform process. Meanwhile, the Estate of Mr. Le initiated a civil action, which is pending
12 before Judge Zilly in the Western District of Washington. *Le et al. v. Urquhart et al.*, No. 18-cv-
13 0055. That civil action, like the *Lyles* civil litigation, is stayed pending appeal of a summary
14 judgment ruling. (No. 18-cv-0055, Dkt. 209). The *Le* and *Lyles* civil actions are procedurally in the
15 same position – with *Lyles* farther along in the appellate court. When the undersigned counsel
16 inquired about the status of other inquests, the Executive’s office responded in relevant part, “Le
17 was not called, at this time, due to the families wishes of wanting to focus their efforts on the civil
18 trial that is already in progress.” (Sharifi Dec, Ex. 1). This communication reveals there is precedent
19 in this post-inquest reform era for staying or halting an inquest for disposition of civil litigation.
20 This solution makes sense and promotes efficiency, judicial economy, and preservation of the
21 parties’ resources.

22 **VII. The use public funds warrant a stay.**

23 The Inquest process is publicly funded. King County Ordinance No. 18652 identifies, “[t]he

1 that junction, the Administrator and parties can assess if any further determination of findings of
2 fact are necessary to fulfill the Executive Order.

3
4 DATED this 9th day of September, 2019.

5 PETER S. HOLMES
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CERTIFICATE OF SERVICE

I certify that on the 9th day of September, 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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22 Jennifer Litfin, Legal Assistant