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King County Superior Court  
Seattle Division

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

After submitting their response to the family’s Motion to Clarify Parties, counsel for the involved officers were alerted to public disclosure request responses from King County that provided information related to the development of the inquest order and appendices at issue in this motion. Review of the disclosed information provides significant insight into the executive's intent with regard to the role of involved officers as participating parties. This information is essential to the Administrator's decision.

The drafting history of the Executive Order establishes that an officer need not testify as a pre-condition to participating through counsel. The original draft of the Executive Order, like the final version, defined the “Participating Parties” without any verbiage requiring testimony as a prerequisite to participation for law enforcement officers. As shown below, language requiring testimony in order to “participate” was suggested and added to later drafts of the appendices;

1 “...provided that the law enforcement member(s) elects(s) to participate in the inquest proceeding  
2 **and offer testimony** subject to examination by the other participating parties”. (Emphasis added)  
3 The final version, however, eliminated the requirement that the officers testify in order to  
4 participate. It now states merely “...provided that the law-enforcement member(s) **elect(s) to**  
5 **participate** in the inquest proceeding.” (Emphasis added). Clearly, the claimed requirement to  
6 testify was considered and rejected by the executive. The significance of this drafting history is  
7 amplified by the fact that the origin of the rejected proposal to require testimony as a prerequisite  
8 to participation was the family’s attorney, Mr. Guilmette. While he plainly knew this history, and  
9 despite a compelling opportunity on this motion, he failed to reveal this significant fact to the  
10 Administrator.

11 On July 16, 2018, Mr. Guilmette, then under the auspices of representing a "community  
12 coalition," emailed proposed changes to a draft of the inquest executive order and appendices,  
13 which he described as a "community–law enforcement inquest agreement" and "formatted against  
14 the backdrop of the inquest review committee's proposal...." Declaration of Ted Buck Regarding  
15 Motion to Clarify Parties (“Buck Decl.”), Exhibit 1, p. 1. Mr. Guilmette sent his revised draft to,  
16 among others, Gail Stone, Calli Knight and other King County personnel involved in the  
17 development of the new inquest procedures. In the preamble to Mr. Guilmette’s revised draft, he  
18 specifically notes that, "the proposed resolution addresses the six areas identified by law  
19 enforcement at the June 20th meeting where immediate agreement could not be reached." *Id.* A  
20 footnote to the document provides, among others, the following law enforcement concerns:

21 . . .

22 5. Insuring involved law enforcement officers have the same legal rights as other parties;  
23 and

1 6. Allowing counsel for law enforcement officers to participate in the inquest even if the  
2 officers declined to participate (**this was the only outstanding area of concern where the  
community coalition could not support the position of law enforcement**).

3 *Buck Decl., Ex. 1*, p. 1. (Emphasis added).<sup>1</sup>

4 In Mr. Guilmette’s proposed version of the inquest appendices, under "PARTICIPATING  
5 PARTIES," he added language that would have required officer testimony and cross examination  
6 as a prerequisite to participating with attorney representation:

7 b. The law enforcement member(s), if known, who shall be allowed to have an attorney(s)  
8 present, provided that the law enforcement member(s) elect(s) to participate in the inquest  
proceeding and offer testimony subject to the examination by the other participating  
9 parties.

10 *Id.*, p. 7 (underline in original as tracked change).

11 On July 17, 2018, King County's Calli Knight sent an email to fellow executive staffers  
12 Gail Stone (who coordinated the executive’s inquest review process) and Gina Topp with  
13 comments to the Guilmette inquest procedure proposal. *Buck Decl., Ex. 2*. Ms. Knight attached a  
14 comment to the aforementioned definition of participating law-enforcement members, plainly  
15 indicating that the executive's office was contemplating how to treat officers in the process. At  
16 that juncture, the executive’s office retained the proposed obligation that officers agree to testify  
17 as a prerequisite to participation: “...provided that the law enforcement member(s) elect(s) to  
18 participate in the inquest proceeding **and offer testimony subject to examination by the other  
19 participating parties.**” *Id.*, p. 7 (emphasis added).

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22  
23 <sup>1</sup> It is revealing that one of the concerns raised by law enforcement that Mr. Guilmette’s  
24 “community coalition” could not agree with was that officers be treated the same as other parties.  
Obviously fundamental fairness is not a concern to the group.

1 On October 1, 2018, another draft of the proposed inquest procedures was circulated. *Buck*  
2 *Decl., Ex. 3*. In that version, the executive's office retained the earlier proposed language with its  
3 mandate of testimony to “participate”:

4 2.2 The law enforcement member(s), if known, who shall be allowed to have an attorney(s)  
5 present, **provided that the law enforcement member(s) elect(s) to participate in the**  
6 **inquest proceeding and offer testimony subject to examination by the other**  
7 **participating parties.**

8 *Id.*, p. 8 (emphasis added).

9 In the next iteration of the draft inquest procedures developed by the executive’s staff,  
10 however (Oct. 2, 2018), the executive dropped the requirement of officer testimony and cross-  
11 examination as a condition of participation. *Buck Decl., Ex. 4*. The executive’s new definition  
12 provided as follows:

13 2.2 The law enforcement member(s) involved in the death, shall be allowed to have  
14 attorney(s) present, **provided that the law-enforcement member(s) elect(s) to**  
15 **participate in the inquest proceeding.**

16 *Id.*, p. 6. (Emphasis added).

17 The final inquest order and appendices adopted by Executive Constantine just one day  
18 later, on October 3, 2018, made minor revisions to the definition, but retained the revised definition  
19 of participating law enforcement officers, rejecting the requirement that officers testify and be  
20 cross-examined in order to participate in the process. The final order provides the following  
21 definition:

22 2.2 The law enforcement member(s) involved in the death, who shall be allowed to have  
23 an attorney(s) present, provided that the law enforcement member(s) elect(s) to  
24 participate in the inquest proceeding.

*Buck Decl., Ex. 5*, p. 7.

It is well established that where a governmental decision maker considers, then rejects,  
specific language in legislation or other acts, that rejection signals that the decision maker

1 purposefully chose to not authorize the rejected provision; the affected governmental entity is not  
2 then authorized to take up that which the decision maker has rejected. *See, e.g., Washington State*  
3 *Human Rights Commission ex rel. Spangenberg v. Cheney School Dist. No. 30*, 97 Wash.2d 118,  
4 123, 641 P.2d 163 (1982) (“The rejection of this bill by the legislature implies that the legislature  
5 did not want the subject tribunal to have the power to award damages for humiliation and mental  
6 suffering for age discrimination violations. As the legislature rejected this request for expanded  
7 powers, municipalities or the Commission itself cannot change this rejection to approval by means  
8 of municipal ordinances and the Washington Administrative Code.”); *see also State v. Schwab*,  
9 103 Wash.2d 542, 551–52, 693 P.2d 108 (1985) (legislative history that the senate considered,  
10 then rejected, an amendment to add residential landlord-tenant act to list of Consumer Protection  
11 Act application evidences that the Senate “was well aware of the effect of what it was doing when  
12 it turned down the amendment extending the Consumer Protection Act”).

13 Here the executive specifically contemplated requiring testimony and cross-examination  
14 as a prerequisite to officer participation in the inquest process; he subsequently rejected that  
15 requirement. In this “quasi-judicial” proceeding, where the Administrator is acting in the guise of  
16 the executive (who retains the statutory authority of the coroner in the wake of the advent of the  
17 medical examiner system), the Administrator must hew to the executive's rejection of that  
18 prerequisite to participation.

19 Accordingly, in addition to the constitutional and common sense bases previously raised  
20 for rejecting the family’s motion to exclude the officers, this historical perspective makes it clear  
21 that the applicable authority – the executive – rejected that requirement and that the family’s  
22 counsel was well aware of that decision. The Administrator must find that involved officers are  
23

1 entitled to have representation before and during an inquest, regardless of whether they choose to  
2 testify.

3 Dated this 6<sup>th</sup> day of September, 2019.

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5 FREY BUCK P.S.

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9 Karen L. Cobb, WSBA # 34958  
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1 **Certificate of Service**

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

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Personal Representative of the Estate of

Charleena Lyles  
Commissioner Eric Watness  
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21 [X] Via Electronic Mail

22 DATED this 6<sup>th</sup> day of September, 2019, at Seattle, Washington.

23 /s/ Megan Riley

24 Megan Riley, Paralegal