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7 **THE STATE OF WASHINGTON**  
8 **KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES INQUEST PROGRAM**

9  
10 *IN RE: THE INQUEST INTO THE*  
11 *DEATH OF DAMARIUS BUTTS*

NO. 517IQ8013

12 THE FAMILY'S MOTION TO COMPEL  
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15 **I. INTRODUCTION**  
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17 In the September 6, 2019 Pre-Inquest Conference Order, the Administrator ordered the  
18 Involved Officers to declare whether they would testify at the inquest hearing. *See* Inquest Order  
19 at 10(b). The Administrator set October 7<sup>th</sup> as the deadline for this disclosure. *Id.*

20 On October 7<sup>th</sup>, the Involved Officers refused to declare whether they would testify at the  
21 inquest hearing and instead asked the Administrator to allow the Involved Officers to both avoid  
22 declaring whether they will voluntarily testify at the inquest and, if they do elect to testify, avoid  
23 pre-inquest interviews by the Family.  
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1 That same day, the remaining officers, who the parties agree have relevant information  
2 regarding use of force that killed Damarius Butts, refused *en masse* to any pre-inquest  
3 interviews. Indeed, SPD informed the Family that the only pre-inquest interviews of officers that  
4 will be allowed are of officers who oversee SPD's policy and training. Subsequently, SPD  
5 informed the Administrator that the remaining officers also refused to provide pre-hearing  
6 testimony. On October 8, 2019, the Pro-Tem Attorney informed the Family that Officer Bandel,  
7 who is no longer employed by SPD, refused to participate in a pre-inquest interview.

## 8 II. ARGUMENT

9 The Family respectfully moves the Administrator issue subpoenas for pre-inquest hearing  
10 testimony from all officers who will or are likely to provide testimony at the inquest hearing.

### 11 A. The Administrator Has Authority to Subpoena Testimony from Witnesses Likely to 12 Testify at the Inquest Hearing

13 The King County Prosecuting Attorney and the Pro-Tem Attorney are required to "issue  
14 subpoenas to witnesses" for testimony when the Administrator deems such testimony necessary.  
15 Appx. 1 at 7.1. The Inquest Rules do not limit the Administrator's subpoena power to testimony  
16 just to the inquest hearing. Instead, the rules demand that such subpoenas issue "at the  
17 [A]dministrator's request." *Id.*

18 The fact that the rules allow for subpoenaing pre-inquest hearing testimony is not  
19 surprising. Instead, that the Inquest Rules would provide the Administrator with this authority is  
20 consistent with the authority granted under state law to all who performed inquests, which provides  
21 pre-inquest hearing subpoena authority for documents and testimony. *See* R.C.W. 36.24.200  
22 (noting that "[a] subpoena for production may be joined with a subpoena for testimony, or it may  
23 be issued separately").  
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1       **B. Pre-Inquest Interviews Are Available to the Family Under the Discovery Rules**

2           Parties to a lawsuit may discover any relevant matter, and evidence is relevant if it has any  
3 tendency to make the existence of any fact that is of consequence to the determination of the action  
4 more probable or less probable than it would be without the evidence. *See* CR 26(b)(1); ER 401.  
5 Because there is no video footage of the shooting incident, pre-inquest interviews are discoverable  
6 to the Family as it is the only source of evidence and information that would allow the Family to  
7 investigate and understand why and how the shooting occurred. As such, clearly each pre-inquest  
8 interview would produce relevant facts and information. Further, “[t]he purpose of discovery is to  
9 allow production of all relevant facts and thereby narrow the issues and to promote efficient and  
10 early resolution of claims.” *Cedell v. Farmers Ins. Co. of Washington*, 176 Wn.2d 686, 698, 295  
11 P.3d 239 (2013). *See also Richardson v. Gov’t Employees Ins. Co.*, 200 Wn. App. 705, 712, 403  
12 P.3d 115, 121 (2017). Allowing the Family to engage in pre-inquest hearing interviews will also  
13 narrow the length and scope of testimony the Family will need to elicit during the inquest hearing  
14 thereby saving significant resources and time for all parties involved.

15       **C. Subpoenas for Testimony from SPD Officers Must Issue for the Family to**  
16       **Meaningfully Participate in the Inquest Hearing**

17           The reformed inquest process developed by the King County Executive and implemented  
18 through the Inquest Program was purposefully designed so that all families that lose a loved one  
19 to police violence are able to meaningfully participate in the inquest process. This is why, under  
20 the reformed procedure, the Department of Public Defense will now be appointed to represent a  
21 family who is unable to obtain private counsel. SPD and the Involved Officers now seek to  
22 undermine this the Family’s right to fully participate in the inquest process by denying them the  
23 opportunity to adequately prepare to the Inquest Hearing.  
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1        *First*, the officers’ blockade on providing pre-inquest testimony only negatively impacts  
2 the Family. SPD and the Involved Officers have information and details regarding what occurred  
3 during and up to the shooting. The Family does not. If SPD and the Involved Officers are not  
4 required to provide pre-inquest testimony, the Family will be the only party not able to effectively  
5 develop a strategy for approaching the inquest hearing precisely because SPD and the Involved  
6 Officers hold the most important and relevant information regarding the shooting of Damarius  
7 Butts. The Family would be forced to “wing it” in a formal inquiry into the death of their loved  
8 one.

9        *Second*, the purpose of the pre-inquest hearing subpoena authority arises from an interest  
10 in operating efficient inquests and in judicial economy. Acknowledging and utilizing the  
11 Administrator’s pre-inquest hearing subpoena power would serve the same purposes here.  
12 Otherwise, the Family, as the only party without pre-inquest hearing access to information the  
13 officers, will have would have to explore all avenues of questioning with the officer on the stand  
14 during the inquest hearing. Considering the number of officers who may testify in this inquest, the  
15 trial time currently slated may be insufficient.

16        *Third*, the Involved Officers’ refusal to inform the Family if they will testify and to refuse  
17 participate in pre-inquest interviews, along with SPD’s *laissez-faire* approach to requiring its  
18 employee officers to provide testimony regarding their actions and observations taken during the  
19 line of duty, effectively bars the Family from obtaining any information regarding the shooting  
20 prior to the inquest hearing. The refusals disregard the inquest process and undermine the Family’s  
21 ability to fully participate in the newly developed inquest process. Further, the Family should be  
22 able to interview the non-involved officers without a subpoena as they are employees of a party  
23 for which subpoenas as not required. *See* Rule 30(b)(1).  
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1       **D. The Involved Officers Must Declare Whether They Will Testify or Forego Doing so**  
2       **at the Inquest Hearing**

3       In order the Family to meaningfully prepare for and fully participate in the Inquest Hearing,  
4       the Involved Officers must provide meaningful notice as to whether each will testify at the Inquest  
5       Hearing.

6               **1. The Involved Officers Must Declare Whether They Will Voluntarily**  
7               **Provide Testimony**

8       Now that the Administrator has ruled on both the scope of discovery and scope of the  
9       inquest, the Involved Officers have information sufficient to make an informed decision as to  
10      whether each will provide testimony. Failure to provide notice in a manner timely enough for the  
11      Family to prepare for the inquest hearing thwarts the reformed inquest process' central goal of  
12      permitting families meaningful participation in the inquest process. The Family requests that the  
13      Administrator order the Involved Officers to declare whether they each intend to provide testimony  
14      by November 8, 2019, two weeks after the Administrator's ruling regarding scope.<sup>1</sup> This gives the  
15      Family one month prior to the inquest to conduct pre-inquest interviews and otherwise prepare.

16      Once the Administrator sets a final deadline for the Involved Officers to declare whether  
17      they will provide testimony, the remedy for failure to abide by the Administrator's order must be  
18      exclusion of testimony from any Involved Officer who did not declare that they would voluntarily  
19      testify. No other remedy makes the Administrator's deadline meaningful. Moreover, the  
20      Administrator's ruling after the November 1 pre-inquest hearing is expected to be the last  
21      substantial pre-inquest ruling regarding issues of scope, subpoena power, and pre-inquest

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<sup>1</sup> Assuming that the Administer rules on the issues that will be litigated at the November 1 pre-inquest hearing by  
24      November 5, this gives the Involved Officers' three days to make a final decision, presuming those rules at all affects  
    their decision making.

1 interviews. The Involved Officers do not need any additional information in order to make a final  
2 decision.

3 Further, although the Involved Officers attempt to hide behind heightened criminal  
4 protections, they cannot avoid declaring whether they will testify as defendants can in criminal  
5 proceedings in a quasi-judicial proceeding that does not and will not carry criminal sanctions. This  
6 is consistent with Washington law that finds a party in a civil proceeding can be required to provide  
7 testimony but “need not answer questions where the answer might incriminate him in future  
8 criminal proceedings.” *Alsager v. Bd. of Osteopathic Medicine and Surgery*, 196 Wn. App. 653,  
9 668-69, 384 P.3d 641 (2016) (internal quotation marks omitted). Indeed, the *Alsager* court rejected  
10 a blanket refusal to participate on a civil proceeding based on the Fifth Amendment’s protection  
11 against self-incrimination and instead affirmed that “the practitioner must assert his rights through  
12 specific, individual objections[.]” *Id.* This is because there is “no absolute right to avoid choosing  
13 between testifying in a civil matter and asserting [one’s] Fifth Amendment privilege[.]” *Smith v.*  
14 *Smith*, 1 Wn. App. 122, 130, 404 P.3d 1001 (2017).

15 The same rules must apply here. The Involved Officers can take the stand and invoke Fifth  
16 Amendment protections for any particular question that may be concerning. However, they cannot  
17 use constitutional protections for criminal defendants to avoid participating in the inquest—  
18 including by declaring an intent to voluntarily provide testimony and to provide such testimony  
19 pre-inquest hearing.

20 Any additional delay in informing the Family whether the Involved Officers will  
21 participate in the inquest hearing impedes the Family’s ability to fully prepare for this inquest.  
22 Further, any Involved Officer that declares an intent to voluntarily testify at the inquest hearing  
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1 should also be required to provide pre-inquest hearing testimony. This will allow the Family the  
2 opportunity to prepare for their testimony at the inquest hearing.

3 **2. If the Involved Officers Do Not Voluntarily Provide Testimony at the**  
4 **Inquest Hearing They, and Their Attorneys, Should Be Excluded**

5 Requiring the Involved Officers to declare their intent to provide testimony and to provide  
6 pre-inquest hearing testimony is consistent with the inquest rules' requirement that, in order to  
7 have counsel present during the inquest proceedings, the involved officers must "participate" in  
8 the inquest. *See Appx. 2 at 2.2.* This burden of participating only attaches to the involved  
9 officers—not to the family of the deceased nor to the employing government department. The  
10 participation burden is unique to the involved officers and must mean that something more is  
11 required of them than of other parties. It is also meaningful that this requirement attaches to the  
12 only party that is exempted from the subpoena authority of the Administrator—the involved  
13 officers. *See Appx. 1 at 8.5.*

14 If the Involved Officers chose not to voluntarily participate in the inquest proceedings by  
15 providing testimony they—and their attorneys—should be excluded from participating in the  
16 inquest hearing. *See Appx. 2 at 2.2* (requiring participation for the guarantee of counsel). This is  
17 consistent with the inquest rules' conditional guarantee of representation during the inquest  
18 hearing.

19 **III. CONCLUSION**

20 For the foregoing reasons the Family requests that you limit the scope of the inquest as  
21 detailed above.  
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1 DATED this 21st day of October, 2019

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3 /s La Rond Baker  
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