

1  
2  
3  
4  
5  
6  
7 KING COUNTY DEPARTMENT OF EXECUTIVE  
8 SERVICES INQUEST PROGRAM

9 INQUEST INTO THE DEATH OF:

No. 517IQ8013

10 DAMARIUS DEMONTA BUTTS,

MOTION FOR  
RECONSIDERATION RE  
SUBPOENA AUTHORITY

11 Deceased.  
12  
13

14 **I. INTRODUCTION**

15 The involved officers respectfully request the Administrator reconsider his November 5,  
16 2019 Pre-Inquest Order. Specifically, the officers request the Administrator reconsider his ruling  
17 that RCW 36.24.200 provides him authority to issue pre-inquest subpoenas for deposition  
18 testimony or interviews for the following reasons.

19 *First*, the King County council delegated all of the coroner's statutory investigation  
20 powers to the medical examiner. The executive possesses no authority to issue investigative  
21 subpoenas.

22 *Second*, the authority contained in RCW 36.24.200 was granted solely to the coroner (i.e.,  
23 the medical examiner). The County Code does not grant the executive any investigative powers.

*Last*, the legislative history surrounding RCW 36.24.200 and our Supreme Court’s ruling in *BNSF Ry. Co. v. Clark* confirm the Executive’s lack of authority to issue investigative subpoenas.

## II. LEGAL AUTHORITY

The Inquest Administrator does not have authority to issue subpoenas for pre-inquest discovery. The legislative authority to issue subpoenas originates from the Coroner’s Act. In 2019 Washington’s Legislature authorized the coroner (i.e., the medical examiner in King County) to issue investigative subpoenas for records. However, the King County council previously delegated all of the coroner’s statutory investigation powers to the medical examiner rather than the executive: indeed, the medical examiner has all of the statutory authority of the coroner save “holding inquests.” Thus, the county executive has no investigative authority to delegate, whether to the Inquest Administrator or anyone else. In fact, the Code mandates that the medical examiner perform all investigative functions.

The Administrator's role is limited to conducting the inquest hearing; he or she is not authorized to order any pre-inquest investigation through witness or document subpoenas. This is made clear through statute, legislative history and Washington Supreme Court precedent.

- 1. The King County council delegated to the medical examiner the power to investigate deaths and granted the executive only the power to conduct inquest hearings.**

King County’s home rule charter tracks the Coroner’s Act: “An inquest shall be held to investigate the causes and circumstances of any death involving a member of the law enforcement agency of the county in the performance of the member’s duties.” Section 895, King County Charter, *Mandatory Inquests*. This section was part of the original 1966 charter.

Although King County conducts inquest hearings, they are not conducted by the coroner

1 (now the medical examiner, authorized to replace the coroner, *see* RCW 36.24.190).<sup>1</sup> Rather, the  
2 County code delegated the coroner's statutory authority to conduct such hearings to the  
3 executive. However, the coroner's investigative duties were delegated to the medical examiner.

4 As the Supreme Court observed:

5 [King County] has broken up the responsibilities of the coroner, as described in  
6 the general law of RCW Chapter 36.24, assigning most of the coroner's duties to  
7 the division of the medical examiner, but retaining the authority to conduct  
8 inquests in the County Executive.

9 *Carrick v. Locke*, 125 Wn.2d 129, 141, 882 P.2d 173 (1994).

10 The Code split up the duties as follows:

11 B. The chief medical examiner shall assume jurisdiction over human remains,  
12 perform autopsies and perform such other functions as are authorized by chapter  
13 68.50 RCW and such other statutes of the state of Washington as are applicable,  
14 ***except for the holding of inquests, which function is vested in the county***  
15 ***executive***. The chief medical examiner has the authorities granted under K.C.C.  
16 2.35A.100.

17 C. ***The chief medical examiner shall institute procedures and policies to ensure***  
18 ***investigation into the deaths*** of persons so specified in chapter 68.50 RCW and to  
19 ensure the public health, except for the holding of inquests, which function is  
20 vested in the county executive.

21 KCC 2.35A.090 (emphasis supplied).

22 Thus, the medical examiner alone is charged with pre-inquest investigation authority, the  
23 only investigative role authorized by the statute, which is completely separate from the quasi-  
judicial inquest process. As discussed in prior briefing and explained below, the Legislature  
recently authorized "the coroner" to issue investigative subpoenas. This power in King County  
resides only in the medical examiner, not the executive.

<sup>1</sup> The County's Medical Examiner is employed within the Prevention Division of the Department of Public Health. KCC 2.35A.010.A.1 ("The department of public health, which is also known as public health - Seattle & King County ... shall include: ... a prevention division"). The County assigned many of the Coroner's duties, found Chapter 36.24 RCW, to the Prevention Division of the Department of Public Health. "The duties of the prevention division shall include the following: Performing medical examiner and statutory coroner duties as described in K.C.C. 2.35A.090. (Ord. 17733 § 7, 2014)." KCC 2.35A.050.E.

1           **2. The authority contained in RCW 36.24.200 was granted solely to the coroner;**  
2           **The County code does not grant the executive any investigative powers.**

3           Investigative subpoenas associated with inquests for “discovery” purposes are  
4 impermissible. The Legislature recently granted investigative subpoena power to the coroner, but  
5 the statute plainly limits this power to ongoing death investigations, which are necessarily  
6 outside of the inquest arena. As noted, the code delegates this investigation authority only to the  
7 medical examiner, not the county executive. Only a medical examiner may request pre-inquest  
8 investigative subpoenas.

9           Here, the medical examiner does not have an “active or ongoing death investigation”;  
10 accordingly, the medical examiner no longer has authority to request subpoenas related to this  
11 death. Moreover, by definition, the executive may only request an inquest when the medical  
12 examiner’s investigation is completed:

13           The King County Prosecuting Attorney shall inform the King County Executive  
14 *whenever an* investigation into a death involving a member of any law  
enforcement agency in King County *is complete* and also advise whether an  
inquest should be initiated pursuant to the King County Charter.

15 Appendix 1, Section 7.1. *Executive Order*. Applying the County’s own rules, there is no legal  
16 basis or purpose for the medical examiner to request the Superior Court to issue a subpoena that  
17 would allow inquest parties to conduct a “medical investigation” on his behalf, let alone the  
18 executive or his designee.

19           **3. Legislative history and Washington Supreme Court precedent affirms the lack**  
20 **of investigative authority held by the executive.**

21           In addition, the Administrator’s decision, in reliance of RCW 36.24.200, also ignores the  
22 legislative history of that statute. In 2017, Pierce County Medical Examiner Thomas Clark, MD,  
23 attempted to subpoena a video held by BNSF Railway Company of a fatal train-pedestrian  
collision. BNSF resisted, and the Supreme Court held that because the ME had not requested the

1 Superior Court to convene an inquest jury, the subpoena was invalid. The Court also held that the  
2 coroner has no authority to issue investigative subpoenas prior to the inquest hearing itself.  
3 Rather, the coroner “may demand only that the witness bring the evidence to the inquest jury.”  
4 *BNSF Ry. Co. v. Clark*, 192 Wn.2d 832, 844, 434 P.3d 50 (2019).

5 In response to this holding, the Legislature expanded the scope of the coroner’s subpoena  
6 power:

7 In addition to any of its existing authorities, *the coroner may, in the course of an*  
8 *active or ongoing death investigation*, request that the superior court issue  
9 subpoenas for production of documents or other records and command each  
10 person to whom the subpoena is directed to produce and permit inspection and  
11 copying of documentary evidence or tangible things in the possession, custody, or  
control of that person at a specified time and place. A subpoena for production  
must substantively comply with the requirements of CR 45. A subpoena for  
production may be joined with a subpoena for testimony, or it may be issued  
separately.

12 RCW 36.24.200 (*Laws of 2019*, Ch. 237, §1, Senate Bill 5300). By its plain language the statute  
13 only applies to pre-inquest death investigations. The history of the statute only cements this plain  
14 result. The Senate Bill Report reads in relevant part:

15 This will help coroners and medical examiners get more accurate information during a  
16 death investigation. *This provision could avoid the need for inquests in some*  
*circumstances.*

17 The Legislature enacted the statute to address the scenario in *BNSF Ry. Co. v. Clark*, a pre-  
18 inquest death investigation:

19 Because Dr. Clark did not request a jury, he did not commence an inquest and he did not  
20 have authority to issue the subpoena.

21 *BNSF Ry. Co.*, 192 Wn.2d at 836-37. RCW 36.24.200 in no way altered our Supreme Court’s  
22 opinion as it relates to a coroner’s authority once an inquest is ordered:

23 Moreover, RCW 36.24.020 does not allow preinquest inspection of the evidence, and for  
good reason. The inquest jury must “hear *all* the evidence concerning the death.” RCW  
36.24.020. “The coroner must summon and examine as witnesses ... *every* person, who,

1 in his or her opinion or that of any of the jury, has *any* knowledge of the facts.” RCW  
2 36.24.050 (emphasis added). This strong language shows that the coroner who convenes  
3 an inquest has no need to see the evidence in advance because he or she does not have the  
discretion to view a piece of evidence or hear a particular witness statement and decide  
not to present it to the jury.

4 *Id.* at 845-46. If the Legislature intended the outcome the Administrator now suggests, it would  
5 have amended RCW 36.24.020 and .050 – it did not. *See Rivas v. Overlake Hosp. Medical*  
6 *Center*, 164 Wn.2d 261, 266-67, 189 P.3d 753 (2008) (“Our primary goal when interpreting  
7 statutes is to effectuate the legislature’s intent. We glean legislative intent by considering the  
8 legislation as a whole and interpreting words in context.”) (citations omitted); *In re Det. of*  
9 *Boynton*, 152 Wn. App. 442, 452, 216 P.3d 1089 (2009) (“Statutes on the same subject matter  
10 must be read together to give each effect and to harmonize each with the other.”) (quoting *US*  
11 *West Commc'ns, Inc. v. Wash. Util. & Transp. Comm'n*, 134 Wn.2d 74, 118, 949 P.2d 1337  
12 (1997), *review denied*, 168 Wn.2d 1023, 228 P.3d 18 (2010)). To validate the Administrator’s  
13 legal interpretation, RCW 36.24.020 and .050 have to be ignored, along with *BNSF Ry. Co. v.*  
14 *Clark*, and RCW 36.24.200’s legislative history.

15 Further, the King County executive never had the authority to delegate subpoena power  
16 in the first place. The power to conduct inquests was removed from the coroner and given to the  
17 executive, but the Code preserved the coroner’s (i.e., medical examiner’s) investigative  
18 authority, including subpoena authority.

19 The power to issue subpoenas is, at best, bifurcated to two different entities for two  
20 different functions.<sup>2</sup> The coroner may issue subpoenas for its pre-inquest “investigation,” and the  
21 executive may issue subpoenas for the inquest itself.

22 Recall that while the County transferred the coroner’s authority to conduct an inquest

---

23 <sup>2</sup> It is not clear that the executive was granted any subpoena authority at all, including to summon  
witnesses before an inquest panel. If subpoena authority is read into the delegation of authority to conduct  
inquests, it certainly cannot eclipse the organic authority of RCW 36.24.020 and 050, as limited by *BNSF*.

1 hearing to the executive, it did not relieve the coroner of its duty to investigate a death prior to an  
2 actual inquest. The County Code states “[t]he chief medical examiner shall institute procedures  
3 and policies to ensure *investigation* into the deaths of persons so specified in chapter 68.50 RCW  
4 and to ensure the public health, except for the holding of inquests, which function is vested in the  
5 county executive.” KCC 2.35A.090.C (emphasis supplied).

6 Thus, only the King County medical examiner has the authority to issue pre-hearing  
7 investigation/discovery subpoenas. The legislative history of SB 5300 compels this conclusion:

8 Coroners may ask the superior court to issue a subpoena to produce records during an on-  
9 going or active death investigation.”  
SB 5300, *Final Bill Report*.

10 Summary of Bill: In the course of an active or ongoing death investigation, a coroner may  
11 request that the superior court issue subpoenas for production of documents or other  
12 records and command each person to whom the subpoena is directed to produce and  
13 permit inspection and copying of documentary evidence or tangible things in the  
possession, custody, or control of that person at a specified time and place.”  
*Bill Analysis*.

14 Even the County’s own Code says this. “*The chief medical examiner may issue*  
15 *subpoenas* to compel the production of medical and dental records, and other documents as are  
16 necessary *for the full investigation* of any case under the jurisdiction of the medical examiner  
17 from any person, organization or other entity in possession of the records or documents.” KCC  
18 2.35A.090.E (emphasis supplied).

### 19 III. CONCLUSION

20 Based on the foregoing, the involved officers respectfully request the Administrator  
21 reconsider his ruling regarding his subpoena authority.

22 //

23 //

//

1 DATED this 15th day of November, 2019, at Seattle, Washington.

2 **FREY BUCK, P.S.**

3 By: /s/ Evan Bariault  
4 Ted Buck, WSBA #22029  
5 Evan Bariault, WSBA #42867  
6 Attorney for Seattle Police Department Involved  
7 Officers  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23



## CERTIFICATE OF SERVICE

I certify that on the 15th day of November, 2019, I caused a true and correct copy of this document to be served on the following in the manner indicated below:

Matthew Anderson <a href="mailto:Matt.Anderson@kingcounty.gov">Matt.Anderson@kingcounty.gov</a>	(x) Via Email
Dee Sylve <a href="mailto:Dee.Sylve@kingcounty.gov">Dee.Sylve@kingcounty.gov</a>	(x) Via Email
Adrien Leavitt <a href="mailto:Adrien.Leavitt@kingcounty.gov">Adrien.Leavitt@kingcounty.gov</a>	(x) Via Email
La Rond Baker <a href="mailto:lbaker@kingcounty.gov">lbaker@kingcounty.gov</a>	(x) Via Email
Lori Levinson <a href="mailto:Lori.Levinson@kingcounty.gov">Lori.Levinson@kingcounty.gov</a>	(x) Via Email
Rebecca Boatright <a href="mailto:Rebecca.Boatright@seattle.gov">Rebecca.Boatright@seattle.gov</a>	(x) Via Email
Jennifer Litfin <a href="mailto:Jennifer.Litfin@seattle.gov">Jennifer.Litfin@seattle.gov</a>	(x) Via Email
Ghazal.Sharifi <a href="mailto:Ghazal.Sharifi@seattle.gov">Ghazal.Sharifi@seattle.gov</a>	(x) Via Email
Erika Evans <a href="mailto:Erika.Evans@seattle.gov">Erika.Evans@seattle.gov</a>	(x) Via Email
Viktor Vodak <a href="mailto:vvodak@kingcounty.gov">vvodak@kingcounty.gov</a>	(x) Via Email
Kelly Nakata <a href="mailto:Kelly.Nakata@seattle.gov">Kelly.Nakata@seattle.gov</a>	(x) Via Email

DATED this 15th day of November, 2019, at Seattle, Washington.

/s/ Evan Bariault  
Evan Bariault