

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES
INQUEST PROGRAM

INQUEST INTO THE DEATH OF:

No. 4171Q2075

Eugene Dewan Nelson,

MOTION TO DISQUALIFY
COUNSEL FOR THE FAMILY OF
DECEDENT

I. INTRODUCTION AND RELIEF REQUESTED

Under the County Charter, the County Code, the Rules of Professional Conduct, and Washington state case law, three things are clear. First, a lawyer participating in a legal matter must be representing an actual client. Second, the client’s participation in a legal proceeding – an inquest here – is the decision of, and must be directed by, the client, not the lawyer. And third, the identity of the client is not privileged in any way.

Here, over the 5+ years this matter has been pending, it has become increasingly clear that “the family” of decedent Eugene Nelson either does not exist or has no interest in participating in this matter. In recent months, despite repeated requests, the attorney appointed to represent “the family” has been unable – or simply unwilling - to state whether such a client exists, let alone identify that client or otherwise provide any evidence that such an entity has any desire to be represented in this matter. As a result, her participation in this

1 proceeding is not appropriate, and the City of Kent respectfully requests she be disqualified
2 from further participation as an attorney here.

3
4 **II. STATEMENT OF FACTS**

5 **A. “The Family” Was initially Represented by a Private Attorney, Todd Maybrow**

6 On August 9, 2017, Kent Police Officer Jacob Reed shot and killed Eugene Nelson
7 in the City of Kent, WA. By September 26, 2017, King County Executive Dow Constantine
8 had already ordered an inquest into the matter, and it had been scheduled for February 5,
9 2018. *See Exhs. 1 and 2.* By that time, the family of Mr. Nelson was already represented by
10 Todd Maybrow, a private attorney, who appeared at the pre-hearing conference on
11 December 24, 2017. *See Exh. 1.* At that point, the executive order on inquests did not provide
12 for publicly-funded representation, so the “family” appeared to have hired Mr. Maybrow
13 privately.
14

15 As the Administrator is aware, legal wrangling among the parties to then-pending
16 inquests resulted in lengthy delays. Eventually, on October 28, 2019, King County Executive
17 Dow Constantine officially requested an inquest jury for the Nelson matter. *See Exh. 2.* More
18 delays resulted, including yet another executive order, a writ action to the Superior Court,
19 and a hearing before the Washington State Supreme Court. Eventually, the process of
20 scheduling this inquest recommenced in early 2022.
21

22 **B. Mr. Maybrow Loses Touch With “The Family;” He Eventually Names a**
23 **“Family Representative”**

24 On February 10, 2022, Inquest Attorney Claire Thornton emailed the parties about
25 potential dates for the Nelson inquest. *Exh. 3 at p. 10.* Four days later, Mr. Maybrow
26 responded that he would “touch base with the Nelson family and be back in touch.” *Id. at p.*
27 *9.* Another four days passed with no word, and Ms. Thornton again emailed Mr. Maybrow,

1 asking “if you have heard back from the Nelson family...?” *Id. at p. 8.* Later that day,
2 Maybrown responded that “I have yet to touch base with the Nelson family and will continue
3 my efforts.” *Id.* He indicated that given the amount of time that had passed since he had had
4 any contact with them, “I will need confirmation – which I hope to have soon – before I can
5 proceed as counsel for the family.” *Id.*

7 On March 2, 2022, after another two weeks with no response from Mr. Maybrown,
8 Ms. Thornton again emailed, asking “if you have an update on your representation of the
9 Nelson family...?” *Id. at p. 6.* Maybrown responded that “I am disappointed to report that I
10 have been unable to locate good contact information for any members of the Nelson family.
11 But I am trying.” *Id. at p. 5.*

13 More than a week later, on March 11, 2022, Maybrown simply indicated that “Juan
14 Arias, who is copied here, will be the point person for the Nelson family...” *Exh. 5.* He went
15 on to state that “The Nelson family asks the county to assign a King County Public Defender
16 to represent the family’s interests.”¹

17 On March 15, 2022, Ms. Thornton emailed Mr. Arias that she would put him in touch
18 with the Department of Public Defense “to start the process of asking for an attorney to be
19 appointed.” *Id. at p. 3.* Nearly three weeks later (April 5, 2022), having had no response
20 from Mr. Arias, Ms. Thornton again emailed Mr. Arias, asking about the family’s availability
21 for a July hearing date. It was another 10 days before Mr. Arias responded on April 15, 2022,
22 stating only that he would be in Mexico in July, and not available to attend the inquest that
23 month. *Id. at p. 2.* He made no mention of any actual family members, but merely said “if
24 there is any chance to push to a later date I would attend.” *Id.*

27 ¹ The 07-28-2021 Executive Order, which had been upheld by the State Supreme Court, established publicly-
funded representation for the family of a decedent in an inquest.

1 On April 18, 2021, Ms. Thornton asked Mr. Arias “[a]s the family representative,
2 could you please let me know what your relationship was to Mr. Nelson...” It does not appear
3 Mr. Arias responded in any way to that request.
4

5 **C. Ms. Rogers-Kemp Substitutes for Maybrow; Still no Apparent Contact with**
6 **the Family**

7 On May 8, 2022, Mr. Maybrow formally withdrew as attorney for the Nelson family,
8 and was substituted by Teri Rogers Kemp. *Exh. 4.* Ms. Rogers Kemp had apparently been
9 appointed by the Department of Public Defense, though no record of that has yet been
10 provided to the undersigned counsel.

11 Over the course of the ensuing months, it became apparent that Ms. Rogers Kemp had
12 likely never had any contact with anyone from the Nelson family, and appeared to be making
13 all decisions about how to proceed in the inquest entirely on her own, with no input, advice,
14 or consent from any alleged client. For example, pursuant to the current executive order, the
15 family of the decedent is allowed to submit a personal statement about the decedent. By
16 October 5, 2022, five months after she had been appointed, and barely 10 days before the
17 inquest was scheduled to begin, Ms. Rogers Kemp admitted she had not provided a draft
18 statement because “I have not been able to raise my family for a statement as yet. I have
19 reached out to their representative.” *Exh. 5.* Her admission that she was unable to even
20 contact her own “client” was even more surprising given her repeated claims that she was
21 acting directly on their behalf. For example, in the same email where she admitted that she
22 had never spoken to a member of the family, she nevertheless alleged “the Family requests
23 an interview with the named civilian witnesses,” that “the Family has just cause to seek an
24 expert,” and that “the Family... objects to the release from subpoena of any witness.” *Id.*
25
26
27

1 Given the growing evidence that Ms. Rogers Kemp did not actually have any client,
2 and was merely participating as a third-party activist in this case, counsel for the City of Kent
3 emailed IA staff and Ms. Rogers Kemp, requesting clarity on the issue:
4

5 Finally, please consider this a formal request that you identify any members
6 of the Nelson family with whom you are actually in contact as your “client.”
7 Recent events have made it increasingly unclear whether the “family” is
8 involved here at all, or whether you are merely working at the behest of some
9 as-yet unidentified third party “representative,” which would be inconsistent
10 with the inquest rules.

11 *Exh. 6.* Ms. Rogers Kemp ignored that request.

12 **D. Prehearing Conference on October 6, 2022: Ms. Rogers Kemp Essentially**
13 **Admits She Has No Client**

14 On October 6, 2022, the Administrator held a prehearing conference, and the parties
15 addressed the issue on the record. *See Exh. 7 (Transcript of 10/6/22 PHC).* Counsel for the
16 City and involved officers asserted that “as parties to this proceeding... we have a right to
17 know what the party is on the other side.” *Id. at 25:19-25.*

18 I know from my involvement early on in this case that no real family
19 was located or involved; no family has appeared at any hearing in the last five
20 years. Ms. Rogers Kemp was appointed for the family, but we remain unclear
21 exactly who that is outside of some third-party representative, which we
22 would say does not qualify as the family[.]

23 Now, it may be an easy answer. There may be brothers, sisters -- I
24 don't know -- that we haven't heard of. But we would like to make sure
25 specifically because of recent communications that there is actually a family
26 that Ms. Rogers Kemp has actually been appointed for, that she does have an
27 actual client, someone she can confer with and someone to whom she is
beholden to advise in her decision-making and someone who can direct the
representation, like the rules of professional conduct require.

...
There has to be an actual client....The family can't be no one. If Ms. Rogers
Kemp is an attorney, she has to be representing an entity in this case. And that
entity has to be identifiable to some respect.

Id. at 26:5-21, 27 8-16.

1 In response, the Administrator not only indicated “I’m not sure I agree or disagree
2 with that,” but also inferred that the identity of Ms. Rogers Kemp’s client – or even whether
3 such a client actually existed – was somehow privileged, stating “I don’t want to put Ms.
4 Kemp in the posture of having to disclose confidential information with her clients, if there
5 are clients or not clients. So let me put that one off. I’ll reserve that issue.” *Id. at 27:17-22.*

7 Despite being told she need not respond, Ms. Rogers Kemp insisted on addressing the
8 issue on the record. Her response was illuminating for several reasons. First, she began by
9 echoing the Administrator’s inference that the identity of her client is privileged information,
10 stating that “I would not deem to venture into the territory of answering that which counsel
11 posits” – *i.e.*, whether she has a client in the first place – because “counsel has ventured into
12 a private area of my work.” *Id. at 28:6-17.* Second, she essentially admitted she does not
13 represent any of Mr. Nelson’s actual family, and repeatedly claimed she is somehow entitled
14 to represent Mr. Nelson’s *estate* in this proceeding, “regardless of whether or not this young
15 man has a family.” *Id. at 28:10-11.*

17 This young man, while he does not have all the accoutrements and all of the
18 materials that one of us might consider create an estate, the fact that this young
19 man lived, by itself alone, creates an estate for this young man after he has
died.

20 *Id. at 28:11-14* (emphasis added)². She went on to claim that by even asking whether
21 she has an actual client here, counsel for the City has “thoroughly and altogether disregarded
22 that this young man lived and breathed,” again arguing that even though Mr. Nelson “didn’t
23 have any generational wealth to pass on, no houses to put into a trust or probate, nonetheless,
24 he still existed, and he still of himself is an estate.” *Id. at 28:15-22* (emphasis added). She
25

27 ² Even that assertion is wrong. As the Administrator is undoubtedly aware, no legal estate is created
automatically upon an individual’s death, particularly for purposes of legal representation.

1 then claimed to “feel troubled that the issue would come up,” and again claimed it is irrelevant
2 whether there is any “family member as identified by counsel [for the City] – because counsel
3 suggests that it is not a blood relative or some extended generational family member[.]” *Id.*
4 *at 28:23-29:2*. She concluded by claiming she is not simply representing a client here, but
5 rather is “speaking for all of those marginalized individuals who come from foster homes...”
6 *Id. at 29:2-4*.

8 The Administrator reserved the issue for later briefing, and this motion follows.

9 **III. ARGUMENT AND ANALYSIS**

10 **A. To Participate in Legal Proceeding, a Lawyer Must Have an Actual Client**

11 Under general legal principles applicable to all proceedings, and under the specific
12 law applicable to inquests in King County, it is well-established that a lawyer can only
13 participate if he or she has an actual client whose interests are being represented, and who is
14 responsible for directing the purpose and course of the representation.
15

16 **1. General Legal Principles: There Must Be an Actual Client**

17 The Washington Rules of Professional Conduct make clear that a lawyer can only act
18 on behalf of – and at the direction of – an actual, identifiable client. For example, RPC 1.2
19 states that a lawyer “shall abide by a client’s decisions concerning the objectives of
20 representation,” and that he or she “shall consult with the client as to the means by which
21 they are to be pursued.” *WA RPC 1.2(a) (emphasis added)*. Subsection (f) explicitly states
22 that “A lawyer shall not purport to act as a lawyer for any person or organization if the lawyers
23 knows or reasonably should know that the lawyer is acting without the authority of that
24 person or organization[.]” *WA RPC 1.2(f) (emphasis added)*.
25
26
27

1 The RPCs also contain extensive requirements for communication with an actual
2 client during the course of representation. For example, a lawyer “shall reasonably consult
3 with the client about the means by which the client’s objectives are to be accomplished.”
4 *RPC 1.4(a)(2) (emphasis added)*. A lawyer is likewise required to “keep the client reasonably
5 informed about the status of the matter, and to “explain a matter to the extent reasonably
6 necessary to permit the client to make informed decisions.” *RPC 1.4(a)(3), (b) (emphasis*
7 *added)*.

9 **2. Inquests in King County: “The Family of the Decedent” is an Identifiable**
10 **Entity**

11 The rules applicable to inquests in King County likewise make clear that the parties
12 to an inquest are actual, identifiable entities. For example, Executive Order PHL-7-1-5-EO
13 provides a list of “Participating Parties” in an inquest, which includes “[t]he family of the
14 deceased, who shall be allowed to have an attorney(s) present.” *Exh. 8, at p. 6*. The Executive
15 order goes on to make clear that (1) “the family” is an actual identifiable entity who (2) is
16 entitled to make actual substantive decisions, including whether it wants to participate in the
17 first place.

19 The Department of Public Defense is empowered to “[a]ssign counsel for the
20 family of the decedent unless the family indicates they have retained other
21 inquest counsel or do not wish to be represented...” *Id. at p. 5, sec. 8.16*
(emphasis added).

22 **3. The Inquest Administrator Must Identify the Individuals Comprising**
23 **“the Family” and Approve Their Participation**

24 Even more importantly, the County Code and the County Charter also address the
25 issue. First, the County Code explicitly defines “Family” – for purposes of inquest
26 representation – as the “group of individuals determined by the person conducting the inquest
27 to have a right to participate as the family of the decedent.” *KCC 2.60.052.C.1*. In other

1 words, the Inquest Administrator (*i.e.*, the person conducting the inquest per the executive
2 order), must (1) identify a specific “group of individuals,” and (2) determine that specific
3 group of individuals is entitled to participate in the inquest “as the family of the decedent.”
4 Here, neither of those things appear to have happened, and it is unclear on what basis or under
5 what authority Ms. Rogers Kemp was allowed to appear in this matter to begin with.
6

7 Failure to identify any actual family is particularly important here, where Ms. Rogers
8 Kemp – and Mr. Maybrow before her – have repeatedly admitted they have been unable to
9 contact any member of Mr. Nelson’s actual family for several years; the only purported
10 contact either attorney has claimed since 2019 is with a third-party family representative –
11 “Juan Arias” – who himself has failed to indicate what, if any, connection he has to Mr.
12 Nelson or his actual family. Even more significantly, the County Code’s definition of
13 “Family” for purposes of inquest representation is in direct contrast to Ms. Rogers Kemp’s
14 repeated claims that she is entitled to participate in this inquest because “the fact that this
15 young man lived, by itself alone, creates an estate for this young man after he has died,” or
16 that she is representing “all of those marginalized individuals who come from foster
17 homes...”
18

19
20 **4. The Family Must Approve and Direct the Representation**

21 Next, the Code and Charter both make clear that “the family,” as a specifically-
22 identifiable entity, is entitled to directly control both the existence and nature of any lawyer’s
23 participation in the inquest on its behalf:

24 “The county shall assign an attorney to represent the family of the decedent in
25 the inquest proceeding, but the family has the option of accepting the attorney
26 or not.” *King County Charter, sec. 895 (emphasis added).*
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

“There is a public benefit in providing publicly financed legal counsel to families of the decedents wishing to fully participate in the inquest process.” *King County Code, sec. 2.60.052.A.*

“Representation shall not be provided if the family does not wish to be represented by the department’s attorneys.” *Id. (emphasis added).*

These requirements are consistent with the general rules of professional conduct discussed above, which require an attorney to consult with her client on the nature of representation and abide by the client’s wishes on that issue (*RPC 1.2(c)*), only act to the extent explicitly authorized by the client (*RCP 1.2(f)*), consult with the client about the means by which the objectives are accomplished (*RPC 1.4(a)(2)*), keep the client informed about the status of the matter (*RPC 1.4(a)(3)*), and communicate sufficiently to allow the client to make informed decisions (*RPC 1.4(b)*).

Here, even if a “family” had actually been identified and properly assigned counsel as required by KCC 2.60.052.C.1, Ms. Rogers Kemp’s admitted failure to have any legitimate communication with any family member means she has failed to comply with the most basic requirements of the County Charter, the County Code, or the Rules of Professional Conduct.

B. The Identity of a Lawyer’s Client Is Not Privileged

Finally, not only do the rules require that an actual group of individuals be identified as “the family” to be assigned representation in an inquest, but the law is also clear – contrary to Ms. Rogers Kemp’s claims – that the identity of those individuals is not privileged in any way. Our State Supreme Court has long held that “the identity of an attorney’s clients... are not confidential communications protected by the attorney-client privilege. *State v. Sheppard*, 52 Wash. App. 707, 711 (1988) (*citing Seventh Elect Church*, 102 Wash.2d at 531 (1984)). Nor is this a novel concept; it is a basic tenet of American jurisprudence:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

[E]stablishing the existence of an attorney-client relationship usually requires the identification of the client. The client's identity, moreover, is not important to the substance of the legal advice or assistance sought. Therefore, that information usually is not protected by the attorney-client privilege. This is also true of the names of prospective clients.⁴ Similarly, it does not protect the identity of those who are agents of the client, and through whom the client has communicated with the attorney. The client cannot reasonably assume that his identity will be confidential.

1 Attorney-Client Privilege in the U.S. § 6:15.

If, in fact, Ms. Rogers Kemp has a client in this matter, the other parties are entitled to know their identity.

IV. CONCLUSION

In this inquest, it does not appear the Administrator has ever determined whether any group of individuals is entitled to participate as “the family” of the decedent as required by County Code. Nor does it appear the attorney appearing for the family is in contact with any individual or group of individuals acting as her client, or is otherwise being directed in her representation by anyone at all. In the absence of an actual, identifiable client, Ms. Rogers Kemp’s participation in this matter is not appropriate, and she should be disqualified from further involvement.

DATED: November 28, 2022.

KEATING, BUCKLIN & McCORMACK, INC., P.S.

By: /s/Jeremy W. Culumber
Jeremy W. Culumber, WSBA #35423
801 Second Avenue, Suite 1210
Seattle, WA 98104
Phone: (206) 623-8861
Fax: (206) 223-9423
Email: jculumber@kbmlawyers.com

1 **DECLARATION OF SERVICE**

2 I declare under penalty of perjury under the laws of the State of Washington that on
3 November 28, 2022, a true and correct copy of the foregoing document was served upon the
4 parties listed below via the method indicated:

5 **Attorneys for Nelson Family**

6 Teri Rogers Kemp, WSBA #24701
7 *Terri Rogers Kemp Attorney at Law, P.S.*
8 PO Box 3454
9 Seattle WA 98114
10 Ph: 206-518-7088
11 Fax: 206-238-9986
12 Email: kemplegalresearch@gmail.com

13 E-mail United States Mail Legal Messenger

14 **Inquest Program Attorney**

15 Claire Thornton, WSBA #28036
16 Attorney at Law
17 DES-Dept. of Executive Services
18 401 Fifth Avenue, Suite 131
19 Seattle, WA 98104
20 Phone: 206-477-1938
21 Email: claire.thornton@kingcounty.gov

22 E-mail United States Mail Legal Messenger

23 **Attorneys for King County Department of Executive Services Inquest Program**

24 Dee Sylve
25 Claire Thornton
26 DES-Dept. of Executive Services
27 401 5th Ave., Suite 131
MS: CNK-DES-135
Seattle, WA 98104
Email: dee.sylve@kingcounty.gov
Claire.thornton@kingcounty.gov

E-mail United States Mail Legal Messenger

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

DATED this 28th day of November, 2022, at Seattle, Washington.

/s/ Cindy Marlatte
Cindy Marlatte, Legal Assistant

EXHIBIT 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

KING COUNTY DISTRICT COURT

)	
)	
IN RE INQUEST INTO THE DEATH OF)	No. 417IQ2075
)	
EUGENE DEWAN NELSON)	
)	PRE-INQUEST ORDER
)	
_____)	

The above entitled cause, having come before the Honorable David Christie on December 14, 2017; the State being represented by Daniel T. Satterberg, King County Prosecuting Attorney, by and through his deputy, Stanley L. Lloyd; Kent Police Officers Jacob Reed and John Waldo being represented by Jeremy Culumber; and the family of Eugene Deway Nelson being represented by Todd Maybrown; and the City of Kent being represented by Jeremy Culumber, the court having heard from the parties now makes and enters the following order:

I. PRE-INQUEST RULINGS

1. The inquest shall begin on February 5th, 2018, at 9:00 a.m. in Courtroom 1T, Maleng Regional Justice Center Courthouse, King County District Court.
2. The inquest shall be recorded by a certified court reporter.
3. The scope of the inquest hearing shall be limited to an inquiry into the identity of the decedent, where and by what means the person came to meet death, and the

Daniel T. Satterberg, Prosecuting Attorney
District Court Unit
W554 King County Courthouse, 516 Third Ave
Seattle, Washington 98104
(206) 296-9540, FAX (206) 296-2901

1 circumstances attending to the death. RCW 36.24.040; Executive Order PHL 7-1-1,
2 Appendix 1, Section 5.0 (March 16, 2010). An inquest is not a culpability-finding
3 proceeding. State v. Ogle, 78 Wn.2d 86, 88, 469 P.2d 918 (1970). The parties may
4 inquire into who died, the cause of death, and the circumstances surrounding the death.
5 The parties may inquire into readily observable facts or conditions at the time of, or
6 leading up to, the death. The parties may not inquire as to the reasonableness of any
7 person's actions, or whether anyone is civilly or criminally liable.
8

- 9
- 10 4. The State's proposed voir dire questions were filed on December 14th, 2017, and are
11 incorporated into this order by reference. Should any other parties wish to submit
12 proposed voir dire questions, they should be sent to the prosecutor who will then file
13 them with the court. The court will complete the voir dire questions prior to the inquest.
14
- 15 5. The State's proposed jury instructions were filed on December 14th, 2017, and are
16 incorporated into this order by reference. Should any other parties wish to submit
17 proposed jury instructions, they should be sent to the prosecutor who will then file them
18 with the court. The court will complete the jury instructions and will read them to the jury
19 at the end of the presentation of evidence.
20
- 21 6. The State's proposed interrogatories will be filed no later than January 16th, 2018, and are
22 incorporated into this order by reference. Should any other parties wish to submit
23 proposed interrogatories, they should be sent to the prosecutor who will then file them
with the court. The court will complete the interrogatories, after testimony is taken, and
will provide them to the jury at the end of the inquest.
7. The State's proposed narrative statement will be filed no later than January 16th, 2018,
and is incorporated into this order by reference. The State will work with the parties to

1 craft an agreed upon statement. The court will complete the narrative statement prior to
2 the inquest.

3
4 8. Mr. Maybrow will draft a brief outlining his motion to stay the proceeding of this
5 inquest based upon a statement released by King County Executive, Dow Constantine,
6 regarding the creation of an inquest review committee. This brief will be provided to the
7 parties and the Court no later than January 16, 2018.

8
9 9. Discovery has been provided to all entitled parties. If any additional discovery is
10 obtained, the State shall immediately provide copies to all entitled parties.

11
12 10. Witnesses shall be excluded from the courtroom, except Officer Jacob Reed and Officer
13 John Waldo, who may be present during the entire proceeding. Executive Order PHL 7-
14 1-1, Appendix 2, Section 13 (March 16, 2010). The primary case detective Christopher
15 Edwards may be present for the entire proceeding as well.

16 17 **II. INQUEST WITNESSES**

18 The following witnesses are expected to testify at this inquest. The below list is
19 expansive and may change depending on the availability of witnesses. If any party believes that
20 additional witnesses should be called or that a listed witness is not necessary, that party may
21 petition the court to expand or reduce the following witness list. It is possible that some
22 witness testimony may be offered by way of stipulation.
23

Police Officers:

Renton Detective Chris Edwards
Kent Officer John Waldo
Kent Officer Jacob Reed
Kent Officer Christopher Mills
Kent Officer Garth Corner
Kent Officer Albert Kim

Daniel T. Satterberg, Prosecuting Attorney
District Court Unit
W554 King County Courthouse, 516 Third Ave
Seattle, Washington 98104
(206) 296-9540, FAX (206) 296-2901

1 **Medical and Forensic Witnesses:**

2 Dr. Richard C. Harruff, Chief King County Medical Examiner

3 Jamie Douglas (crime lab)

4 **Civilian Witnesses:**

5 Sahra Rashid Mohamed

6 Shirin Damirchell

7 Suhur R. Mohamed

8 **III. EXHIBITS**

9 The following exhibits may be offered:

10 Photographs of scene and evidence collected at scene

11 Photographs of Officer Reed, Officer Waldo, and the other involved officers

12 Diagrams of scene

13 Wound Diagram used by the Medical Examiner

14 Photographs of bullets collected by the Medical Examiner

15 DOL photo of Eugene Dewan Nelson

16 CAD Report

17 911 phone call

18 Recordings of Radio Traffic and Transcript

19 Surveillance video from the Sultan Hookah Bar

20 Pursuant to the Inquest Rules of King County, all evidence must be admitted through the
21 prosecutor. Should any party believe that additional exhibits and evidence become relevant
22 during the inquest, the court will rule on the admissibility of such evidence prior to it being
23 shown to the jury.

24 **IV. OTHER RULINGS**

- 25 1. All jury questions will be reviewed by the court and the parties outside the presence of the
26 jury prior to being read to a witness.
- 27 2. There will be no scene view taken at this inquest.
- 28 3. No witnesses will be photographed or videotaped while testifying. No photographs will be
29 taken in the courtroom of any witness' face without permission of that witness.

Daniel T. Satterberg, Prosecuting Attorney
District Court Unit
W554 King County Courthouse, 516 Third Ave
Seattle, Washington 98104
(206) 296-9540, FAX (206) 296-2901

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Done in open court this ____ day of _____, 2017.

Judge David Christie

Presented by:

Stanley L. Lloyd
Deputy Prosecuting Attorney
WSBA #47827

Approved as to Form:

Todd Maybrown, WSBA#18557
Attorney for the family of Eugene Dewan Nelson

Jeremy Culumber, WSBA# 35423
Attorney for Officer Jacob Reed, Officer John Waldo, and City of Kent

EXHIBIT 2



King County

Dow Constantine

King County Executive Office

401 Fifth Avenue, Room 800

Seattle, WA 98104

206-263-9600 Fax 206-296-0194

TTY Relay: 711

www.kingcounty.gov

October 28, 2019

The Honorable Jim Rogers
Presiding Judge, King County Superior Court
King County Courthouse, East 942
516 Third Avenue
Seattle, WA 98104

Re: Order of Inquest into the death of Eugene Dewan Nelson

Honorable Judge Rogers,

Under the authority of RCW 36.24.020, I hereby order an inquest into the shooting death of Eugene Dewan Nelson by a Kent Police Officer on August 9, 2017. I respectfully request that Superior Court provide a courtroom for the inquest and persons to serve as a jury of inquest.

As background, on September 26, 2017, I sent a letter regarding an inquest into the death of Mr. Nelson to the Honorable Donna Tucker, Presiding Judge, King County District Court. This letter is sent to you today to initiate this inquest consistent with the requirements found in *BNSF Railway Company v. Thomas Clark, et. al.*, 192 Wn.2d 832 (2019).

Please coordinate the scheduling of this matter with my Inquest Program Manager, Dee Sylve.

Sincerely,

Dow Constantine
King County Executive

cc: Rafael Padilla, Chief of Police, Kent Police Department
The Honorable Dan Satterberg, King County Prosecuting Attorney (KCPAO)
Mark Larson, Chief Deputy, Criminal Division, KCPAO
Dee Sylve, Inquest Program Manager, King County Department of Executive Services
Alex Fryer, Director of Communications, KCEO
Todd Maybrown, Allen, Hansen and Maybrown, Attorney for the family of Eugene Dewan Nelson
Jeremy Culumber, Keating, Bucklin and McCormack, Attorney for Officer Jacob Reed

EXHIBIT 3

Jeremy W. Culumber

From: Thornton, Claire <Claire.Thornton@kingcounty.gov>
Sent: Tuesday, April 19, 2022 11:32 AM
To: Jeremy W. Culumber
Cc: Thornton, Claire
Subject: FW: Eugene Nelson Inquest -Appointing a Lawyer for Family

Jeremy – here’s a thread between the family rep and me. He is not available during the timeframe that IA McBeth was hoping to schedule the Nelson Inquest (week of July 18). I have asked McBeth if I can let you and your clients know that July 18 is off the table so you no longer have to tentatively hold that time open. I have a meeting tomorrow with McBeth tomorrow afternoon, so I should be able to let you know what his thoughts are. In addition to this info about the family rep, given the lack of counsel for the family yet, I highly doubt we’ll be ready to go in July anyway. A bit frustrating to have another delay, but it is what it is . . .

Do you have time off scheduled for the summer? At least I could start tracking that, if you want to send it to me, so I can discuss additional dates with McBeth.

Thanks!
Claire

From: Thornton, Claire <Claire.Thornton@kingcounty.gov>
Sent: Monday, April 18, 2022 1:03 PM
To: Juan Arias <j.ant.arias18@gmail.com>
Cc: Thornton, Claire <Claire.Thornton@kingcounty.gov>
Subject: RE: Eugene Nelson Inquest -Appointing a Lawyer for Family

Mr. Arias – no apologies necessary. Thank you for letting me know about your schedule. My sincere condolences about your grandmother and that you were not able to attend her funeral. I will let the Inquest Administrator know about your scheduled trip. Even though it is optional for family members and other parties to attend, we certainly would not want to prevent anyone who wants to attend from doing so.

As the family representative, could you please let me know what your relationship was to Mr. Nelson so that we can update our file?

Thank you again for getting in touch and I will be in touch as soon as I have any updates on appointing an attorney, scheduling, etc.

Claire

From: Juan Arias <j.ant.arias18@gmail.com>
Sent: Friday, April 15, 2022 3:34 PM
To: Thornton, Claire <Claire.Thornton@kingcounty.gov>
Subject: Re: Eugene Nelson Inquest -Appointing a Lawyer for Family

[EXTERNAL Email Notice!] External communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Hi Claire,

Thank you for the update, unfortunately I will be in Mexico from 7/20 - 8/1. Apologies for a late response, I was waiting on my family to confirm the dates we would be leaving. I missed my grandmother's funeral in Mexico due to having covid in January, and the last two weeks of July is when all of my family and larger extended family go back every year, otherwise if this was just a normal vacation I would plan around the inquest. I see you mentioned that it's optional to attend, but if there is any chance to push to a later date I would attend.

Thank you,
Juan Arias

On Tue, Apr 5, 2022 at 4:09 PM Thornton, Claire <Claire.Thornton@kingcounty.gov> wrote:

Mr. Arias,

I just wanted to give you an update on the progress in the Nelson Inquest. The Department of Public Defense is working on having an attorney for your family and we hope to have the attorney's information to pass along to you by the end of this week. I will check in with the public defender in charge of this later this week and let you know if I learn any new information.

In the meantime, I wanted to let you know that the Inquest Administrator (he is like a judge for the case) would like to hold the inquest hearing during the week of 7/18/22. The hearing could take a week or two. I am hoping that all of the parties can make a note of the dates and plan to keep those dates open until you hear from me.

So, if you plan to attend the hearing, please let me know if you are available between the dates 7/18/22 and 8/2/22. The hearing will be in person, but there will also be an option of listening to a live stream of the hearing. You are not required to attend, but are welcome to attend any and all dates of the hearing.

Please feel free to email or call me at the number below if you have any questions about the process. I will keep in touch with you and will pass along any new information I have until we get your lawyer in touch with you.

Claire

Claire Thornton

Inquest Program Attorney

Department of Executive Services

(206) 477-1938

From: Thornton, Claire <Claire.Thornton@kingcounty.gov>
Sent: Tuesday, March 15, 2022 10:40 AM
To: Todd Maybrow <todd@ahmlawyers.com>
Cc: j.ant.arias18@gmail.com; Sylve, Dee <Dee.Sylve@kingcounty.gov>; Thornton, Claire <Claire.Thornton@kingcounty.gov>
Subject: RE: Eugene Nelson Inquest -Setting Inquest Hearing Date

Todd – thank you so much for the update. We will ask Department of Public Defense to be in touch with you about transferring the file.

Hello Mr. Arias – I will put you in touch with the King County Department of Public Defense to start the process of asking for an attorney to be appointed. There may be a little bit of a delay because many of the attorneys (including me) are participating in a two week hearing right now. So if you do not hear back until end of the month, please don't worry. It will be in the works and I'll stay on top of it.

Claire

Claire Thornton

Inquest Program Attorney

Department of Executive Services

(206) 477-1938

From: Todd Maybrow <todd@ahmlawyers.com>
Sent: Friday, March 11, 2022 4:21 PM
To: Thornton, Claire <Claire.Thornton@kingcounty.gov>
Cc: j.ant.arias18@gmail.com
Subject: RE: Eugene Nelson Inquest -Setting Inquest Hearing Date

[EXTERNAL Email Notice!] External communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Hi Claire:

I was able to make contact with members of the Nelson family and I now have an update for you:

1. Juan Arias, who is copied here, will be the point person for the Nelson family regarding the inquest into the death of Eugene Nelson.
2. The Nelson family asks the county to assign a King County Public Defender to represent the family's interests during the inquest. Please let me know who will be handling the case so I can share a copy of my file materials.

Thank you for your attention to these matters.

Best,

Todd

Todd Maybrow

Allen, Hansen, Maybrow & Offenbecher, P.S.

One Union Square

600 University Street, Suite 3020

Seattle, Washington 98101-4105

(206) 447-9681 - Phone

(206) 447-0839 - Fax

www.ahmlawyers.com

The information contained in this message is intended only for the addressee or addressee's authorized agent. The message and enclosures may contain information that is privileged, confidential, or otherwise exempt from disclosure. If the reader of this message is not the intended recipient or recipient's authorized agent, then you are notified that any dissemination, distribution or copying of this message is prohibited. If you have received this message in error, please notify the sender by telephone and return the original and any copies of the message by mail to the sender at the address noted above. Thank you.

From: Thornton, Claire <Claire.Thornton@kingcounty.gov>
Sent: Thursday, March 3, 2022 8:36 PM
To: Todd Maybrow <todd@ahmlawyers.com>
Subject: Re: Eugene Nelson Inquest -Setting Inquest Hearing Date

Anything I can do to assist?

From: Todd Maybrow <todd@ahmlawyers.com>
Sent: Wednesday, March 2, 2022 5:06:46 PM
To: Thornton, Claire <Claire.Thornton@kingcounty.gov>
Subject: RE: Eugene Nelson Inquest -Setting Inquest Hearing Date

[EXTERNAL Email Notice!] External communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Claire:

I am disappointed to report that I have been unable to locate good contact information for any members of the Nelson family. But I am trying.

Todd

Todd Maybrow

Allen, Hansen, Maybrow & Offenbecher, P.S.

One Union Square

600 University Street, Suite 3020

Seattle, Washington 98101-4105

(206) 447-9681 - Phone

(206) 447-0839 - Fax

www.ahmlawyers.com

The information contained in this message is intended only for the addressee or addressee's authorized agent. The message and enclosures may contain information that is privileged, confidential, or otherwise exempt from disclosure. If the reader of this message is not the intended recipient or recipient's authorized agent, then you are notified that any dissemination, distribution or copying of this message is prohibited. If you have received this message in error, please notify the sender by telephone and return the original and any copies of the message by mail to the sender at the address noted above. Thank you.

From: Thornton, Claire <Claire.Thornton@kingcounty.gov>
Sent: Wednesday, March 2, 2022 4:44 PM
To: Todd Maybrown <todd@ahmlawyers.com>; Jeremy W. Culumber <JCulumber@kbmlawyers.com>
Cc: Sylve, Dee <Dee.Sylve@kingcounty.gov>; Alex Rosenthal <alex@ahmlawyers.com>; Cindy Marlatte <cmarlatte@kbmlawyers.com>; Sarah Conger <sarah@ahmlawyers.com>; Thornton, Claire <Claire.Thornton@kingcounty.gov>
Subject: Eugene Nelson Inquest -Setting Inquest Hearing Date

Hello everyone.

Todd - touching base as promised to see if you have an update on your representation of the Nelson family and availability for an Inquest Hearing the week of July 18?

Jeremy – checking back with you to see if your clients are available that week?

And lastly, can we talk Pre-Hearing Conference (PHC) dates? IA McBeth asks for your availability for an initial PHC (one to two hours in length) on one of the following days:

3/28 – 3/31

4/18 – 4/22

Thanks much!

Claire

From: Thornton, Claire <Claire.Thornton@kingcounty.gov>
Sent: Friday, February 18, 2022 3:27 PM
To: Todd Maybrow <todd@ahmlawyers.com>; Jeremy W. Culumber <JCulumber@kbmlawyers.com>
Cc: Sylve, Dee <Dee.Sylve@kingcounty.gov>; Alex Rosenthal <alex@ahmlawyers.com>; Cindy Marlatte <cmarlatte@kbmlawyers.com>; Sarah Conger <sarah@ahmlawyers.com>; Thornton, Claire <Claire.Thornton@kingcounty.gov>
Subject: RE: Nelson Inquest -Setting Inquest Hearing Date

Todd - No problem at all. Totally understood. Thanks for the update. I'll touch base after I return to the office on 2/28.

From: Todd Maybrow <todd@ahmlawyers.com>
Sent: Friday, February 18, 2022 3:23 PM
To: Thornton, Claire <Claire.Thornton@kingcounty.gov>; Jeremy W. Culumber <JCulumber@kbmlawyers.com>
Cc: Sylve, Dee <Dee.Sylve@kingcounty.gov>; Alex Rosenthal <alex@ahmlawyers.com>; Cindy Marlatte <cmarlatte@kbmlawyers.com>; Sarah Conger <sarah@ahmlawyers.com>
Subject: RE: Nelson Inquest -Setting Inquest Hearing Date

[EXTERNAL Email Notice!] External communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Greetings Claire:

I apologize for the delayed response. I have yet to touch base with the Nelson family and will continue my efforts. Given the passage of time, I will need confirmation – which I hope to have soon – before I can proceed as counsel for the family.

Best,

Todd

Todd Maybrow

Allen, Hansen, Maybrow & Offenbecher, P.S.

One Union Square

600 University Street, Suite 3020

Seattle, Washington 98101-4105

(206) 447-9681 - Phone

(206) 447-0839 - Fax

www.ahmlawyers.com

The information contained in this message is intended only for the addressee or addressee's authorized agent. The message and enclosures may contain information that is privileged, confidential, or otherwise exempt from disclosure. If the reader of this message is not the intended recipient or recipient's authorized agent, then you are notified that any dissemination, distribution or copying of this message is prohibited. If you have received this message in error, please notify the sender by telephone and return the original and any copies of the message by mail to the sender at the address noted above. Thank you.

From: Thornton, Claire <Claire.Thornton@kingcounty.gov>
Sent: Friday, February 18, 2022 3:08 PM
To: Todd Maybrown <todd@ahmlawyers.com>; Jeremy W. Culumber <JCulumber@kbmlawyers.com>
Cc: Sylve, Dee <Dee.Sylve@kingcounty.gov>; Alex Rosenthal <alex@ahmlawyers.com>; Cindy Marlatte <cmarlatte@kbmlawyers.com>; Sarah Conger <sarah@ahmlawyers.com>; Thornton, Claire <Claire.Thornton@kingcounty.gov>
Subject: RE: Nelson Inquest -Setting Inquest Hearing Date

Hey, Todd. I'll be out of the office next week, so just wanted to check in before I go to see if you have heard back from the Nelson family regarding availability for a July 18 Inquest Hearing date?

Thanks much,

Claire

From: Thornton, Claire
Sent: Monday, February 14, 2022 3:27 PM
To: Todd Maybrown <todd@ahmlawyers.com>; Jeremy W. Culumber <JCulumber@kbmlawyers.com>
Cc: Sylve, Dee <Dee.Sylve@kingcounty.gov>; Alex Rosenthal <alex@ahmlawyers.com>; Cindy Marlatte <cmarlatte@kbmlawyers.com>; Sarah Conger <sarah@ahmlawyers.com>
Subject: RE: Nelson Inquest -Setting Inquest Hearing Date

Sounds good. Thank you.

From: Todd Maybrown <todd@ahmlawyers.com>
Sent: Monday, February 14, 2022 1:43 PM
To: Thornton, Claire <Claire.Thornton@kingcounty.gov>; Jeremy W. Culumber <JCulumber@kbmlawyers.com>
Cc: Sylve, Dee <Dee.Sylve@kingcounty.gov>; Alex Rosenthal <alex@ahmlawyers.com>; Cindy Marlatte <cmarlatte@kbmlawyers.com>; Sarah Conger <sarah@ahmlawyers.com>
Subject: RE: Nelson Inquest -Setting Inquest Hearing Date

[EXTERNAL Email Notice!] External communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Claire:

Thank you for the note. I will touch base with the Nelson family and be back in touch.

Todd

Todd Maybrown

Allen, Hansen, Maybrown & Offenbecher, P.S.

One Union Square

600 University Street, Suite 3020

Seattle, Washington 98101-4105

(206) 447-9681 - Phone

(206) 447-0839 - Fax

www.ahmlawyers.com

The information contained in this message is intended only for the addressee or addressee's authorized agent. The message and enclosures may contain information that is privileged, confidential, or otherwise exempt from disclosure. If the reader of this message is not the intended recipient or recipient's authorized agent, then you are notified that any dissemination, distribution or copying of this message is prohibited. If you have received this message in error, please notify the sender by telephone and return the original and any copies of the message by mail to the sender at the address noted above. Thank you.

From: Thornton, Claire <Claire.Thornton@kingcounty.gov>
Sent: Thursday, February 10, 2022 11:51 AM
To: Todd Maybrown <todd@ahmlawyers.com>; Jeremy W. Culumber <JCulumber@kbmlawyers.com>
Cc: Sylve, Dee <Dee.Sylve@kingcounty.gov>; Alex Rosenthal <alex@ahmlawyers.com>; Cindy Marlatte

<cmarlatt@kbmlawyers.com>; Sarah Conger <sarah@ahmlawyers.com>; Thornton, Claire
<Claire.Thornton@kingcounty.gov>

Subject: Nelson Inquest -Setting Inquest Hearing Date

Hi all – we are in the process of calendaring numerous inquest hearings for 2022.

IA McBeth asked me to reach out to you and start the conversation about setting a date for the Nelson Inquest Hearing. IA McBeth's first preference would be to conduct the Nelson Inquest in July, if the parties would be ready to proceed. The week of July 18 is currently open for us. Are counsel available that week? Is that a realistic timeframe for everyone to be ready? Feel free to call or email me with your thoughts.

We also would like to set the first Pre-Hearing Conference (PHC). Are counsel generally available in the latter part of March for a PHC? Is there a day of the week that is better for everyone – we've been trying to hold PHCs in other cases on Fridays to avoid when folks might be in trial, if that works for you. Just let me know what your preferences are and I will convey them to IA McBeth.

I'm still getting up to speed on the case, but I am happy to discuss any aspect of the case (or at least do my best!). Please don't hesitate to reach out anytime.

Claire

Claire Thornton

Inquest Program Attorney

Department of Executive Services

(206) 477-1938

EXHIBIT 4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**THE STATE OF WASHINGTON
DR. MARTIN LUTHER KING, JR. COUNTY
DEPARTMENT OF EXECUTIVE SERVICES**

<p>Inquest into the Death of Eugene Dewan Nelson</p>	<p>Case No.: 417IQ2075 NOTICE OF WITHDRAWAL AND SUBSTITUTION OF ATTORNEY</p>
---	--

TO: Department of Executive Services;

AND TO: Inquest Administrator;

Please take notice that Attorney Todd Maybrowm hereby withdraws as attorney of record for the family of Mr. Eugene D. Nelson J. and consents to the substitution of Teri Rogers Kemp Attorney at Law, P. S. and Teri Rogers Kemp as counsel for the family of Mr. Eugene D. Nelson in the above-entitled matter.

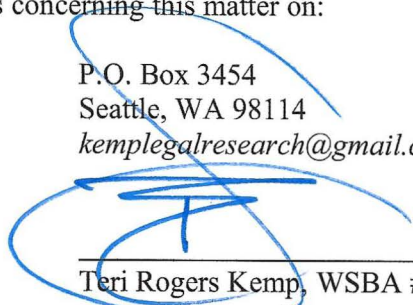
Please serve all documents and notices concerning this matter on:

Teri Rogers Kemp
Attorney at Law

P.O. Box 3454
Seattle, WA 98114
kemplegalresearch@gmail.com

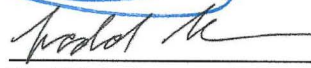
DATED this 8th day of May 2022

Respectfully submitted;



Teri Rogers Kemp, WSBA #24701

Notice Received;



Todd Maybrowm, WSBA #18557

**TERI ROGERS KEMP
ATTORNEY AT LAW**
P.O. Box 3454
Seattle, Washington 98114
Ph.: 206.518.7088
Fax.: 206.238.9986
kemplegalresearch@gmail.com

EXHIBIT 5

Jeremy W. Culumber

From: Teri Rogers Kemp <kemplegalresearch@gmail.com>
Sent: Wednesday, October 05, 2022 5:06 PM
To: McBeth, Robert
Cc: Jeremy W. Culumber; Thornton, Claire; Nicol, Cady; Sylve, Dee; Anderson, Matthew (DES); Zangri, Anuradha; Reilly, Kaela; Jimeno, Angelina (DES); Armah, Florence; Patreece Spence
Subject: Re: Email Concerns
Attachments: EUGENE NELSON INQUEST - MOTION FOR USE OF FORCE EXPERT.pdf

Good evening;

Please notice attached, the Nelson Family's Motion for Use of Force Expert.

I will file a Motion to Continue shortly, which I hope that the IA and parties will consider this motion in light of the Motion to Continue, also.

Thank you very much.

Respectfully;

Teri
Teri Rogers Kemp
for The Family of Eugene Nelson

On Wed, Oct 5, 2022 at 2:05 PM Teri Rogers Kemp <kemplegalresearch@gmail.com> wrote:
Good afternoon Judge McBeth and Counsels;

With respect;

I will submit my motion for an expert today. do intend also to seek a continuance to obtain the expert which briefing I expect to complete next.

I do hear and respect the Administrator and Officer's Counsel' concerns regarding the timing of the request for an expert. I believe that the Family has just cause to seek an expert and also a continuance.

Regarding the edits to the Jury Interrogatories, I did send those over with my edits to the group, yesterday. I understand that the IA will forward the factual scope and parties are to weigh in on that draft as soon as we have received it. Please let me know if I missed any document edits.

I did alert the IA Counsel, that the Family requests an interview with the named civilian witnesses, and objects to the release from subpoena of any witness.

I have not been able to raise my family for a statement as yet. I have reached out to their representative. I am hoping that, as it is their family member that has died, time will be allowed for them to respond, even if it is the eve of the hearing; I am asking for grace.

Thank you very much.

Respectfully;

Teri
Teri Rogers Kemp

On Wed, Oct 5, 2022 at 12:31 PM McBeth, Robert <Robert.McBeth@kingcounty.gov> wrote:

I am taking the liberty of making direct contact with counsel in hopes of speeding up the process of dealing with Ms. Kemp's recent email. First, it will be very difficult to deal with a Motion for Continuance without knowing what is involved in the request for a Use of Force expert witness (which, by the way, will be reviewed by Judge Spearman). Separately, we have an 18-month deadline to do each inquest—which expires this week and was set over to October 17th by agreement of the parties. The impact of a continuance needs to address that concern as well. So—if it is at all possible, can whatever submission is made address both of these concerns. Thanks. Judge McBeth

--

NOTICE: This Email and its attachment(s) is for the sole use of the intended recipient(s). The information in this Email, including attachments, may be confidential and/or legally privileged and may contain protected health information. If you believe that it has been sent to you in error, please notify Teri Rogers Kemp, P.S. and Teri Rogers Kemp by reply Email and delete the message and all its attachments. Any disclosure, copying, distribution or use of this information by someone other than the intended recipient is strictly prohibited. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of Teri Rogers Kemp, P.S.

--

NOTICE: This Email and its attachment(s) is for the sole use of the intended recipient(s). The information in this Email, including attachments, may be confidential and/or legally privileged and may contain protected health information. If you believe that it has been sent to you in error, please notify Teri Rogers Kemp, P.S. and Teri Rogers Kemp by reply Email and delete the message and all its attachments. Any disclosure, copying, distribution or use of this information by someone other than the intended recipient is strictly prohibited. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of Teri Rogers Kemp, P.S.

EXHIBIT 6

Jeremy W. Culumber

From: Jeremy W. Culumber
Sent: Wednesday, October 05, 2022 5:11 PM
To: Teri Rogers Kemp
Cc: Thornton, Claire; Nicol, Cady; Sylve, Dee; Anderson, Matthew (DES); Zangri, Anuradha; Reilly, Kaela; Jimeno, Angelina (DES); Armah, Florence; Patreece Spence
Subject: RE: Email Concerns

Counsel (I have removed Judge McBeth from this string)

The prehearing order, issued by Judge McBeth on 9/21, required us to provide our edits on the following documents, by October 4:

- Jury Questionnaire;
- Introductory jury instructions, including a brief description of Mr. Nelson and a photo;
- Jury interrogatories; and
- Closing instructions.

On Friday, September 30, I provided you all my edits to the questionnaire, introductory instructions, and the interrogatories. Later that same day, you indicated you had received them, and that you would provide your responses within the next two days (i.e., before the 10/4 deadline). On Monday afternoon (the deadline), you sent a single document; the jury questionnaire. It is now after 5:00 pm two days after the deadline, and you have still provided no comments at all on the interrogatories, introductory instructions, or closing instructions, and no description of Mr. Nelson.

Finally, please consider this a formal request that you identify any members of the Nelson family with whom you are actually in contact as your "client." Recent events have made it increasingly unclear whether the "family" is involved here at all, or whether you are merely working at the behest of some as-yet unidentified third party "representative," which would be inconsistent with the inquest rules.

Thank you.

Jeremy W. Culumber

Keating Bucklin & McCormack, Inc., P.S.

801 Second Avenue, Suite 1210

Seattle, WA 98104

jculumber@kbmlawyers.com

www.kbmlawyers.com

Phone: 206.623.8861

This message is confidential, intended only for the named recipient(s) and may contain information that is privileged, attorney work product or exempt from disclosure under applicable law. If you are not the intended recipient(s), you are notified that the dissemination, distribution or copying of this message is strictly prohibited. If you receive this message in error, or are not the named recipient(s), please notify the sender at either the e-mail address or telephone number above and delete this e-mail from your computer. Receipt by anyone other than the named recipient(s) is not a waiver of any attorney-client, work product, or other applicable privilege. Thank you.

From: Teri Rogers Kemp <kemlegalresearch@gmail.com>
Sent: Wednesday, October 5, 2022 2:06 PM
To: McBeth, Robert <Robert.McBeth@kingcounty.gov>
Cc: Jeremy W. Culumber <JCulumber@kbmlawyers.com>; Thornton, Claire <Claire.Thornton@kingcounty.gov>; Nicol, Cady <canicol@kingcounty.gov>; Sylve, Dee <Dee.Sylve@kingcounty.gov>; Anderson, Matthew (DES) <Matt.Anderson@kingcounty.gov>; Zangri, Anuradha <azangri@kingcounty.gov>; Reilly, Kaela <Kaela.Reilly@kingcounty.gov>; Jimeno, Angelina (DES) <ajimeno@kingcounty.gov>; Armah, Florence

<farmah@kingcounty.gov>; Patreece Spence <patreecejs@gmail.com>

Subject: Re: Email Concerns

Good afternoon Judge McBeth and Counsels;

With respect;

I will submit my motion for an expert today. do intend also to seek a continuance to obtain the expert which briefing I expect to complete next.

I do hear and respect the Administrator and Officer's Counsel' concerns regarding the timing of the request for an expert. I believe that the Family has just cause to seek an expert and also a continuance.

Regarding the edits to the Jury Interrogatories, I did send those over with my edits to the group, yesterday. I understand that the IA will forward the factual scope and parties are to weigh in on that draft as soon as we have received it. Please let me know if I missed any document edits.

I did alert the IA Counsel, that the Family requests an interview with the named civilian witnesses, and objects to the release from subpoena of any witness.

I have not been able to raise my family for a statement as yet. I have reached out to their representative. I am hoping that, as it is their family member that has died, time will be allowed for them to respond, even if it is the eve of the hearing; I am asking for grace.

Thank you very much.

Respectfully;

Teri
Teri Rogers Kemp

On Wed, Oct 5, 2022 at 12:31 PM McBeth, Robert <Robert.McBeth@kingcounty.gov> wrote:

I am taking the liberty of making direct contact with counsel in hopes of speeding up the process of dealing with Ms. Kemp's recent email. First, it will be very difficult to deal with a Motion for Continuance without knowing what is involved in the request for a Use of Force expert witness (which, by the way, will be reviewed by Judge Spearman). Separately, we have an 18-month deadline to do each inquest—which expires this week and was set over to October 17th by agreement of the parties. The impact of a continuance needs to address that concern as well. So—if it is at all possible, can whatever submission is made address both of these concerns. Thanks. Judge McBeth

--

NOTICE: This Email and its attachment(s) is for the sole use of the intended recipient(s). The information in this Email, including attachments, may be confidential and/or legally privileged and may contain protected health information. If you believe that it has been sent to you in error, please notify Teri Rogers Kemp, P.S. and Teri Rogers Kemp by reply Email and delete the message and all its attachments. Any disclosure, copying, distribution or use of this information by someone other than the intended recipient is strictly prohibited. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of Teri Rogers Kemp, P.S.

EXHIBIT 7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES

INQUEST PROGRAM

)	
)	
)	
INQUEST INTO THE DEATH OF:)	No. 417IQ2075
Eugene Dewan Nelson.)	KBM Matter ID: 1036-00023
)	
)	

HEARING

The Honorable Robert McBeth Presiding

October 6, 2022

Transcribed by: Sara L. Kern, CET
 Reed Jackson Watkins
 206.624.3005

1 A P P E A R A N C E S

2 On Behalf of the Inquest Program:

3 CLAIRE THORNTON

4 CADY NICOL

5 Inquest Program

6 King County Courthouse

7 516 Third Avenue

8 Seattle, Washington 98104

9

10 On Behalf of the Estate of Eugene Dewan Nelson:

11 TERI ROGERS KEMP

12 Teri Rogers Kemp Attorney At Law, P.S.

13 P.O. Box 3454

14 Seattle, Washington 98114-3454

15

16 On Behalf of Kent Police Department, Chief Rafael Padilla,

17 Officer Jacob Reed and Officer John Waldo:

18 JEREMY WADE CULUMBER

19 Keating Bucklin & McCormack, Inc., PS

20 801 2nd Avenue, Suite 1210

21 Seattle, Washington 98104-1518

22

23

24

25

1 -o0o-

2 October 6, 2022

3
4 THE PROGRAM COORDINATOR: Good afternoon, everyone.

5 Before we start, please be aware that a recording of this

6 hearing will be made available in the King County inquest

7 site listed on the screen. The Inquest Program

8 administrator has ordered that recording by media of private

9 parties is not allowed without explicit written consent of

10 the Inquest Administrator in advance.

11 I will now turn this hearing over to Inquest Program

12 attorney Claire Thornton.

13 MS. THORNTON: Thank you. This is a prehearing conference

14 scheduled rapidly today to address a number of items into --

15 inquest into the death of Eugene Dewan Nelson, Inquest

16 No. 417IQ2075.

17 I'm Claire Thornton, one of the Inquest Program attorneys

18 assigned to this case. My co-counsel Cady Nicol is also

19 present. We are assisting Inquest Administrator Robert

20 McBeth. And I'd ask counsel for the family and then counsel

21 for the police department and involved officers to please

22 introduce yourselves for the record.

23 MS. ROGERS KEMP: Thank you. Good afternoon. My name is

24 Teri Rogers Kemp. And I represent the family of Eugene

25 Nelson. Good afternoon.

1 MR. CULUMBER: Jeremy Culumber for the City and the
2 involved officers.

3 THE COURT: Thank you all for jumping through hoops to be
4 able to get here for what I consider to be an emergency
5 hearing to determine a couple of really critical things.

6 Ms. Kemp, in emails you have indicated -- well, first of
7 all, you have filed a request for funding for an expert
8 witness, use of force expert witness, and have indicated
9 that you were going to be filing a motion for a continuance.

10 I don't know that we have received a motion for
11 continuance. I wanted to address it because the two are
12 intertwined somewhat in their resolution.

13 The request for funding for an expert use of force expert
14 witness has been referred to Judge Spearman, and we will
15 address that issue separately. But it is intertwined with
16 the apparent request for continuance.

17 So, Ms. Rogers Kemp, I'm going to turn it over to you to,
18 I guess, make your motion, since I have not received it yet,
19 and to address the reasons why you think the continuance
20 would be in order.

21 MS. ROGERS KEMP: Thank Your Honor. And good afternoon,
22 again, Your Honor.

23 And I intended to file the continuance motion first but
24 wanted to, upon reflection, file the expert service funding
25 request for use of force expert.

1 I'm asking for a continuance and do intend to make a
2 record by briefing and, yes, have begun that work to brief
3 the issue.

4 I am asking a continuance to get an expert. I just
5 finished the most recent inquest hearing last week on
6 Friday. And turning to Mr. Nelson, and reviewing the
7 discovery has been ongoing. There are several hundred pages
8 of discovery. I've had this case since March and have been
9 preparing simultaneously for two inquest hearings. And this
10 is not my only work because of the nature of compensation
11 until very recently.

12 So I understand that, after interviewing Dr. Harris, that
13 there is an argument that may be made that this young man
14 was surrendering at the time that he was shot, based upon
15 the trajectory landing of one of the projectiles. And it
16 warrants a closer look and either confirmation or an
17 alternative view with regard to the use of force, the
18 decision policies and/or training with the circumstances of
19 the officers found themselves engaged thusly.

20 Your Honor, it also is important to nail down an issue
21 that is -- has to do with the police officers and the
22 ordering by one or more departments (inaudible) that
23 includes officers testify. It is important to me that I
24 nail down whether or not, and I have inquired and am
25 awaiting a response with regard to that issue.

1 That issue is something that warrants a closer look at the
2 impact of the possible behavior on the intent of the program
3 to proceed in at least a transparent manner and the strength
4 of the argument that these orders will grant (inaudible) if
5 there's anything to be concerned of -- concerned about in
6 that respect. And it -- if the impact on the family, on the
7 community, if any.

8 And then to continue and complete a final preparation to
9 represent the families in this case.

10 I also expect that I will be interviewing all of the
11 civilian witnesses, and have spoken with IA counsel
12 regarding a witness that was released from the subpoena, but
13 counsel for the family now is asking to interview that
14 witness.

15 For these reasons, Your Honor, and those others that I
16 would detail in my motion, which, again, I'm -- I've already
17 begun the preparation for that -- I will have that completed
18 into the IA by tomorrow, close of business.

19 THE COURT: The difficulty I have is that Mr. Culumber is
20 not available tomorrow to address the issue. And I think we
21 need to get it resolved.

22 So I need to have you put on the record right now
23 everything you want to have me consider in determining
24 whether or not a continuance will be granted.

25 MS. ROGERS KEMP: All of those things that I have said,

1 the swiftness with which these inquests are proceeding is so
2 swift that it is risking the possibility of forgoing or not
3 being at diligently prepared, as we all should be, on all of
4 the issues, including the proper use of force or not and a
5 second opinion in that regard.

6 I think that is principal. And that is the last reason
7 that I would ask for one, to consider the speed of the
8 swiftness with which these hearings are happening.

9 But I uplift the necessity to have an expert. And I have
10 also heard Counsel Culumber's concern with, well, these
11 inquests have been here for five years. I have approached
12 these hearings, I have approached these matters in the way
13 that they have been presented, which is these are
14 nonadversarial processes. I take that also to mean that all
15 of the parties are equally concerned and responsible to get
16 to the bottom of the issue. These are not proceedings where
17 one is defending oneself as much as the parties are working
18 to get to the bottom of the issue whether or not the use of
19 force was justified or not. And, thus, all of the parties
20 should have looked to get a second opinion with regard to
21 the manner in which this young man was shot.

22 I think every attorney and every other party has been on
23 this case for at least five times the amount of time that
24 I've been here. And the issue is apparent and it is
25 present.

1 And so I think all of us has a responsibility to bear that
2 out.

3 That is what I would detail, Your Honor. Thank you.

4 THE COURT: All right.

5 Mr. Culumber.

6 MR. CULUMBER: Thank you, Your Honor. And thank you for
7 fitting us in here.

8 A couple of quick things. One, I wasn't prepared to argue
9 most of what Ms. Kemp Rogers brought up -- I'm sorry --
10 Rogers Kemp brought up just now because none of that was
11 mentioned in the motion she filed yesterday, nor, as you
12 pointed out, as she actually filed the motion for a
13 continuance at all.

14 I heard a couple of troubling things. One, I heard her
15 repeatedly refer to speed at which these hearings are
16 proceeding. I mean, with respect, that's preposterous.
17 It's been five years that we've been waiting for this, five
18 years that the officers and the City have been waiting for
19 this with no decision at all. It's been over two years
20 since the Supreme Court sent everything back and started
21 this process again. The speed with which these things have
22 happened has been glacial, to say the least. And we're not
23 looking for any more continuances here.

24 Again, with respect, if Ms. Rogers Kemp is too busy with
25 her work to have addressed any of this stuff in the last two

1 years, somebody else should have been appointed. I also
2 have other work. I have a full-time job too. But this is
3 important, and the fact she just hasn't done anything yet --
4 we're 11 days out from the hearing, Your Honor. And
5 everybody's ready to go.

6 The other troubling thing that she kept referring to was
7 that this inquest is to decide whether the use of force was
8 proper and whether it was justified or not.

9 I would point out that that's a clear indication of where
10 the family's coming from despite the fact that that is
11 absolutely not a subject for this inquest. We are not here
12 to decide if the use of force was proper or if it was
13 justified or not. And the fact that that seems to be the
14 tone and the direction is also troubling less than two weeks
15 before we start. It's certainly not a basis to put things
16 off and allow discovery to be reopened and new experts to be
17 added.

18 I believe that she indicated one of the concerns she had
19 is that he may have been surrendering. Based on the medical
20 examiner's testimony, I would encourage input from
21 Ms. Thornton, and I would encourage the administrator to
22 listen to the record of that interview and see if that bears
23 any resemblance to what Dr. Harris actually said.

24 Mr. Nelson has an entry wound here on the outside of his
25 forearm and an exit wound on the inside of his forearm that

1 matches an entry wound on his chest, which means his arm was
2 like this and the bullet went through.

3 That's what the pictures show. That's what Dr. Harris
4 testified to.

5 Now Ms. Rogers Kemp is asking questions about could he
6 have given -- remember he's in a vehicle, driving down the
7 street. Could he have been standing with his hands up? And
8 all the medical examiner said was, however you can arrange
9 the body so that those bullets line up will be consistent
10 with the evidence.

11 That's all he said. It's -- no offense -- ridiculous to
12 claim that somehow he had his hands up surrendering while
13 he's driving down the street in a vehicle. That's not what
14 the medical examiner testified to.

15 That's also not what they've asked for in their motion.
16 They haven't asked for a forensic medical exam here.
17 They've asked for a use of force expert. So, again, what
18 she has described here today is not what the motion actually
19 asked for.

20 With regard to what the motion actually asked for, there
21 are a couple of issues, two in particular. One, it's far
22 too late in the process. The family, who is the actual
23 party here -- Ms. Rogers Kemp is not a party any more I am.
24 It's the family.

25 The family has had every opportunity to participate in

1 this process. The family was represented by private counsel
2 five years ago when we had our first inquest hearing in this
3 matter. Five years ago. Todd Maybrown was their attorney.
4 Very well respected. And he appeared.

5 This inquest has been ordered for more than five years.
6 We had our first pre-inquest hearing in 2017. The
7 investigative reports, all the witness statements, including
8 all of the medical examiner's reports, were disclosed by the
9 prosecutor nearly five years ago to the family in this case.

10 The administrator and Ms. Thornton, in particular, raised
11 the issue of potential experts months ago in email and in
12 person to both myself and the family's attorney. And both
13 of us said we'd have no plans so hire any experts.

14 The IA has produced a series of draft witness lists. Not
15 a single one of them has mentioned experts. And no party
16 has objected to any of the witnesses identified. We
17 addressed this issue last month at our prehearing
18 conference, that no experts would be called.

19 At this point, five years later, we are 11 days out from
20 the start of this hearing, that's already been delayed by
21 years. It's just too late in the process to start over
22 again, add an entire other layer of time and complexity in
23 this process, particularly when there is no reason any of
24 this couldn't have been done years ago.

25 I would also note that, despite asking for a use of force

1 expert, Ms. Rogers Kemp's email yesterday indicated they
2 don't even now who they would hire and haven't contacted
3 anyone yet. And she said that she would try to identify
4 someone by next week, which would be about five days before
5 we were scheduled to start the hearing.

6 On a related note, as the administrator, Your Honor noted
7 yesterday, if you grant this motion, it would by default
8 require that the inquest be put on hold again. The statute
9 requires these to occur within 18 months. That period has
10 already expired. The only reason we've agreed to
11 October 17th is for scheduling purposes.

12 The -- neither the City nor the officers consent to an
13 additional time period that will put us well outside the
14 18-month legal requirement. So if we are extended again,
15 this is going to raise a whole host of other issues, and
16 we're going to be talking about this with the Superior Court
17 (inaudible) claim.

18 THE COURT: Talk to me a little bit about the 18 months --
19 (Simultaneous conversation)

20 THE COURT: Talk to me about the 18 months' deadline, if
21 you would, why you think it's a deadline as opposed to a
22 target.

23 MR. CULUMBER: I think there's no point in establishing
24 something that says these have to happen within this period
25 of time if that's not actually how it has to go. You know,

1 we made that argument initially, and the County's only
2 response was, "Well, the time period doesn't start until
3 we've actually asked the Superior Court for a panel."

4 You know, okay. That's what the state Superior Court
5 agreed with.

6 That 18-month period has started again. I am -- I'm
7 fairly confident that, you know, at a certain point a
8 deadline has to be a deadline. These have been hanging out
9 there for years. Just as the family has a right to some
10 sort of resolution, we can't lose track of the fact that so
11 do the officers and so does the City, both entities who have
12 potentially very serious consequences attached to the
13 outcome of this hearing, particularly the officers
14 particularly in the current environment.

15 Aside from just the timeliness, I don't see anything in
16 the motion that identifies any topic that would even be an
17 appropriate topic for expert testimony. The executive order
18 on inquests here says expert testimony can be allowed for
19 "factual areas," and it gives two examples: Ballistics and
20 forensic medical examinations, that sort of scientific
21 factual area of expertise.

22 The motion, on the other hand, says we want an expert to
23 testify about the tactics of the police department, the
24 training of the officers, the policies of the police
25 department, an expert to testify about how Mr. Nelson was

1 killed, and an expert to "determine whether his killing was
2 by criminal means." Those are the things that they actually
3 asked for an expert on. None of these things are
4 appropriate topics for an expert in an inquest.

5 When it comes to policies and training, the executive
6 order explicitly requires that the chief or his designee
7 testify about what policies exist and how they're generally
8 applied. Neither of those things are amenable to some
9 third-party expert testimony. They're just issues of what's
10 in the policies and what does it mean.

11 The only other question regarding policies in the inquest
12 is whether the officers complied with the specific policies
13 at issue. And that is one hundred percent a question that
14 the jury is required to answer. That is not an appropriate
15 topic for expert testimony. You can't ask a jury to say was
16 this consistent with policy and have an expert show up and
17 issue an opinion on that exact question.

18 So policies, procedures, there's no reason and they
19 haven't described any basis on which policies and procedures
20 could possibly be a subject for expert testimony, especially
21 the expert that they asked for, which is a use of force
22 expert.

23 The other subject they mentioned is "how Mr. Nelson was
24 killed." It's unclear how a use of force expert could
25 testify about how Mr. Nelson was killed. It's unclear

1 whether there's any real dispute about how Mr. Nelson was
2 killed. He was shot eight times by a single officer who was
3 in the car with him. Nobody else shot him. Nothing else
4 happened. I mean, this is no mystery about how he was
5 killed. The medical examiner testifies, "Yeah, there's
6 eight gunshot wounds. There's eight bullets missing from
7 Reed's gun. Here's all the injuries." Right? We now how
8 he was killed. And specifically they haven't asked that
9 a -- I mean, it seems like today what they're asking for is
10 a forensic medical examiner to redo the autopsy or relook --
11 I mean, it's -- there is no -- there's no confusion about
12 any of that here.

13 And then finally, the other subject that they say they
14 would like an expert to testify on, they explicitly say we
15 want an expert to testify about "whether the killing was by
16 criminal means." That, again, is explicitly a question for
17 the inquest hearing. That's not an appropriate factual
18 topic on which an expert can testify. I'm sure they could
19 find an expert to walk and say, "This was murder. You
20 should charge these guys."

21 That's not what the inquest is for. That's the jury's job
22 to decide whether it was by criminal means. It's certainly
23 not something amenable to factual expert testimony,
24 particularly a use of force expert. Again, whether the
25 death was by criminal means will be word for word one of the

1 interrogatories that the jury has to answer.

2 And then finally the last issue is there seems to be some
3 confusion in the motion about what an expert actually is in
4 this situation. The motion repeatedly refers to this as a
5 third-party independent and neutral expert.

6 That's not what we're talking about here. That may be
7 what happens in a criminal case when the court will appoint
8 a neutral court expert. This would be the family's expert
9 and that expert would have to be opposed by the City's
10 expert and the officers' expert.

11 So to be clear, this is not "Let's get to the facts.
12 Let's all find some sort of arbiter, neutral third party to
13 tell us what happened."

14 This would be a forensic witness hired by and testifying
15 on behalf of the family just like happens in civil case,
16 which, ironically, is the specific sort of thing that these
17 inquests are not supposed to turn into.

18 Those are the issues related to what was brought up today.
19 I do have an ancillary issue that I would like to address at
20 some point, but it's probably better to finish this first.

21 THE COURT: Ms. Rogers Kemp, any response?

22 MS. ROGERS KEMP: Yes, Your Honor. Thank you.

23 I have not had the pleasure of working with everyone for
24 two years. I've only had the pleasure of working with
25 everyone since the end March, the very beginning of April.

1 And, again, I've been working two cases simultaneously.

2 Your Honor, I think that if it is appropriate for an
3 expert and that issue pops up at any time, I think that
4 the -- my job is to raise that, regardless of what the
5 parties might consider as an inconvenient time. I have
6 determined that a use of force expert is necessary to
7 determine -- or (inaudible) to weigh in with an opinion, the
8 same way that the police department's expert weighs in with
9 its expert opinion regarding whether or not the use of force
10 was appropriate, whether there was any other course that the
11 shooting officer could have taken.

12 I'd consider that this person is neutral to the same
13 degree that the police department and officers' expert is
14 neutral. So, yes, it's the family's wish to hire this
15 expert, but it is a person who's independent of the police
16 department for the family, for the matter.

17 And to be clear, I don't think that it's appropriate that
18 the inquest proceedings seek to determine whether or not
19 someone is at fault in the sense of determining culpability.
20 That's not the point of it. And that certainly is not what
21 we would seek an expert for.

22 I think that it has to be a fair hearing on both sides.
23 And thankfully we don't have to weigh in at all whether or
24 not someone should be charged or held accountable in any
25 particular way.

1 The medical examiner, as I recall that conversation was
2 that Mr. Nelson's arm was facing the muzzle of the firearm.
3 And I do not recall that the medical examiner testified that
4 the way that this young man died was any other way than
5 homicide and did not weigh in at all on whether or not this
6 was a wrongful death or not. So another opinion can be
7 gleaned, I would think -- or the same or equal opinion one
8 way or the other would be gleaned from the medical examiner,
9 which is the medical examiner didn't take a position; just
10 the facts with regard to how did this person die.

11 I am not certain about counsels previously with respect to
12 that particular issue with regard to experts. I am just
13 saying that I am visiting this issue. I'm visiting this
14 issue now. And in researching the matter I actually came on
15 to the case -- thank you very much -- on May 8th of this
16 year and had not looked at any of -- and, again, preparing
17 for two cases simultaneously.

18 So when I'm talking about the speed and the swiftness, I'm
19 talking about having been hired to represent the families
20 and to be able to do so thoroughly and diligently and to
21 have an opportunity to look at the matter. It being four
22 months -- and I'm certain that I -- I probably took less
23 time off than the rest of the parties here. I think I was
24 gone for a week at the beginning in May and have not been
25 gone since then. Have not -- and have been able to work on

1 my cases since then.

2 And with respect to other work, yes. There are some
3 dynamics with the program that made it necessary for me to
4 have one or two extra cases, but my caseload is quite low.
5 This has to do with working two cases that have volumes of
6 discovery and doing so at the same time.

7 I am not asking for a magnificent amount of time. I think
8 that we're still within the gauge, the test of 18 months. I
9 am not asking for a significant amount of time.

10 I think it's appropriate for counsel to be thoroughly and
11 well-prepared to explore the opinion that a use of force
12 expert might give outside of our good police department and
13 to properly represent the program as it's intended.

14 Thank Your Honor.

15 THE COURT: All right.

16 Mr. Culumber, do you want -- final comments?

17 MR. CULUMBER: Yeah, the only thing that was brought up
18 again there, she indicated that the police department has an
19 expert.

20 The police department does not have an expert.

21 And she indicated that the police department's expert will
22 "testify about whether the use of force was appropriate."

23 That's just false. If I ask the commander who's going to
24 testify about policies whether he thinks the use of force
25 was appropriate and justified, I expect that counsel for the

1 family will be out of her seat objecting, and I expect I'll
2 get a stern warning from the administrator. Nobody's going
3 to testify about whether use of force was appropriate. The
4 City doesn't have an expert. The only City staffer who's
5 testifying is the commander who's testifying about policy.
6 And the only reason he's testifying about policy is because
7 it's required by the executive order.

8 So this idea that somehow the family is fighting with one
9 hand behind its back because the City has an expert, the
10 administrator and everyone here knows that's just not true.

11 Again, this is not about our schedules. Ms. Rogers Kemp
12 agreed to this hearing months and months and months ago and
13 took it on, just like I did. I will put the number of hours
14 that I spend working every week next to everybody here in
15 this room. We're all busy. This is the job. And we can't
16 just cancel inquests because we've got another case we're
17 working on.

18 We would ask that we go forward like everyone here has
19 been prepared to do the whole time.

20 Thank you.

21 THE COURT: Okay. I am very aware of the administrator's
22 responsibility to ensure a fair and transparent presentation
23 of evidence. I'm concerned mightily about the timing of
24 this request. Mr. Culumber is absolutely correct that we
25 should have resolved this issue weeks and months ago. So I

1 take it on as my responsibility to have addressed the issue
2 more formally. But we are here.

3 I am well aware also that in the two prior inquests where
4 jurors have expressed concerns about the lack of independent
5 testimony regarding policy and training, feeling that there
6 was only the officers' -- or the commander's testimony in
7 that regard.

8 And the length of the inquest that we just completed,
9 jurors did not actually express that concern but did express
10 the concern when they were asked.

11 So as we evaluate whether or not expert use of force
12 testimony would be appropriate here, I think it's necessary
13 to explore that option. Not to determine whether or not
14 alternatives the officers may have followed, but instead
15 whether or not the officers' actions complied with the
16 policies that were in place.

17 Accordingly, we had discussions all day long about whether
18 the continuance should be granted or not granted. And I'm
19 sympathetic to Ms. Rogers Kemp's -- the pressure on her and
20 the lack of resources that are available to the family in
21 that regard.

22 I've been listening to Mr. Culumber today. I appreciate
23 all of the arguments that you have made, understand the
24 arguments that you have made. But I'm going to order the
25 matter continued to January 9. I hope that both parties can

1 make whatever adjustments are necessary to make that week
2 work.

3 I will myself inquire about the possibility of obtaining a
4 use of force consultant and determine whether or not there
5 is any testimony that might be relevant in that regard.

6 So if the parties have some names to suggest for a use of
7 force expert that I might consider, this would not be the
8 family's use of force expert at this point, but it will
9 allow me to determine whether or not the use of force
10 testimony is appropriate and taking into consideration
11 Mr. Culumber's arguments to the contrary.

12 So I'm going to order the matter continued to January 9,
13 2023. And I will explore the possibility that use of force
14 testimony may or may not be appropriate.

15 Now, Mr. Culumber, you have raised in a separate email
16 that has just been sent to me -- I'll give you an
17 opportunity to address your issues in that regard.

18 But let me just turn it over to you.

19 MR. CULUMBER: Could I ask a couple of follow-ups just so
20 the order -- I'm clear about what's going on?

21 THE COURT: Sure.

22 MR. CULUMBER: Are you continue -- well, first, I am not
23 available until probably March or April. I've got
24 back-to-back-to-back trials scheduled through the spring.
25 So that's not going to work for me. I am not going to be

1 available for a week-long hearing on 60 days' notice.

2 Second, as we talked about before, the only reason that we
3 declined to have an expert with Ms. Thornton was because the
4 family didn't have one. Obviously, if the family has one,
5 then the officers and the City will also need one.

6 I am not sure that 60 days, anyway, is enough time to get
7 an expert up to speed and do the discovery and have
8 everybody get their stuff done before then. But,
9 regardless, I am not available January 9th.

10 Putting the scheduling aside, is the order that that it's
11 been continued to analyze and brief and decide, A, whether
12 an expert would be needed and on what issues? Or just --

13 THE COURT: It is for me to --

14 MR. CULUMBER: -- bring your expert.

15 THE COURT: It is for me to explore whether or not a use
16 of force expert is appropriate at all.

17 So I am not asking for any briefing at this point. It's
18 an opportunity for staff to put together a scenario in which
19 the use of force could or could not testify, you know,
20 whether it would be appropriate.

21 MR. CULUMBER: Okay. Thank you for that clarification.

22 THE COURT: And --

23 MR. CULUMBER: The other --

24 THE COURT: Well, in terms of scheduling, that's
25 problematic for me. But, okay. I would need to have from

1 you, then, what your schedule is and what the conflicts are.

2 The same for --

3 MR. CULUMBER: Sure.

4 THE COURT: -- so that I can try to work out the schedule.

5 MR. CULUMBER: Sure. Yeah, I know that -- I believe the
6 very next week after that, I have a trial, civil trial
7 scheduled in Benton County that will be a week or two, at
8 least. That's what I know of for sure. That's what I'm
9 shooting towards right now for the end of the year.

10 I will talk to Ms. Thornton, communicate with her and with
11 Ms. Rogers Kemp about scheduling.

12 Would you like to move on to the --

13 THE COURT: Yes, I would.

14 MR. CULUMBER: -- other issue?

15 The first, I guess, other issue that Ms. Rogers Kemp
16 brought up is this demand from her that we identify whether
17 or not we -- whether the City has given the officers
18 immunity or somewhat Garrity-related issue.

19 I would point out that Garrity doesn't give immunity from
20 anything. And any immunity that would come from any
21 criminal prosecution certainly doesn't come from the City of
22 Kent. If that were the case, this would be a very different
23 proceeding.

24 I don't believe that it is relevant to these
25 proceedings -- what Garrity means, how it was applied, and

1 when a Garrity order was issued.

2 I think that we're mixing apples and oranges with some
3 sort of criminal --

4 THE COURT: Yeah, let me jump in.

5 That wasn't part of I thought we were going to be trying
6 to address today. It popped up in --

7 MR. CULUMBER: Okay.

8 THE COURT: -- it popped up in the (inaudible) and so I
9 assumed that it's being --

10 MR. CULUMBER: Yup.

11 THE COURT: -- being brought up here as kind of follow-up.

12 So if Ms. Rogers Kemp is --

13 MR. CULUMBER: Okay.

14 THE COURT: -- be raising that issue, you're going to have
15 to file an appropriate motion so that we can address it in
16 due course. But that wasn't what I was referring to.

17 You had raised the issue of whether or not Ms. Kemp could
18 or should be representing the family.

19 MR. CULUMBER: Yeah, we would just like to know did --
20 we -- I'm sorry. Yeah, I think that as parties to this
21 proceeding, litigation, whatever it's called, I think we
22 have a right to know what the party is on the other side.

23 The executive order on inquest allows an attorney to be
24 appointed for the family. And King County ordinance
25 specifically says that the family is the group of

1 individuals determined by the person conducting the
2 inquest -- that would be the Inquest Administrator -- who
3 the Inquest Administrator decides has a right to participate
4 as the family of the decedent.

5 I know from my involvement early on in this case that no
6 real family was located or involved; no family has appeared
7 at any hearing in the last five years. Ms. Rogers Kemp was
8 appointed for the family, but we remain unclear exactly who
9 that is outside of some third-party representative, which we
10 would say does not qualify as the family and would not
11 justify interpretation.

12 Now, it may be an easy answer. There may be brothers,
13 sisters -- I don't know -- that we haven't heard of. But we
14 would like to make sure specifically because of recent
15 communications that there is actually a family that
16 Ms. Rogers Kemp has actually been appointed for, that she
17 does have an actual client, someone she can confer with and
18 someone to whom she is beholden to advise in her
19 decision-making and someone who can direct the
20 representation, like the rules of professional conduct
21 require.

22 And so, again, our just question is after five years, we
23 still don't have any idea who that is and would like to
24 know, just to make sure that there is actually a family
25 member.

1 THE COURT: Well, the --

2 MR. CULUMBER: And they are actually family.

3 THE COURT: Under the executive order, Ms. Kemp has been
4 appointed to represent the family's interests in this
5 matter.

6 So you're arguing that unless there is an identified
7 family, that that appointment is invalid?

8 MR. CULUMBER: Yes, if there's no family, then there's no
9 interest to be protected. There has to be an actual client.
10 Otherwise, Ms. Rogers Kemp is just the prosecutor's office
11 or the county. There are parties and participants to this
12 inquest: the involved officers, the IA, the City as the
13 employment agency, and the family. The family can't be no
14 one. If Ms. Rogers Kemp is an attorney, she has to be
15 representing an entity in this case. And that entity has to
16 be identifiable to some respect.

17 THE COURT: I'm sure that I agree or disagree with that.
18 So I may schedule that for further discussion. I don't know
19 that that necessarily -- that it necessarily follows. I
20 don't want to put Ms. Kemp in the posture of having to
21 disclose confidential information with her clients, if there
22 are clients or not clients. So let me put that one off.
23 I'll reserve that issue.

24 MS. ROGERS KEMP: (Inaudible).

25 THE COURT: Yes?

1 MS. ROGERS KEMP: May it please the Court that I be heard
2 just very briefly?

3 THE COURT: Okay. I wasn't -- I am not foreclosing
4 speaking, but I was going to take you off the hook, but go
5 ahead.

6 MS. ROGERS KEMP: I'm grateful for that, Your Honor. And
7 I would not deem to venture into the territory of answering
8 that which counsel posits.

9 I feel troubled. I feel somewhat as if I might take
10 offense for young Mr. Eugene Nelson regardless of whether or
11 not this young man has a family. This young man, while he
12 does not have all the accoutrements and all of the materials
13 that one of us might consider create an estate, the fact
14 that this young man lived, by itself alone, creates an
15 estate for this young man after he has died. And so I
16 suppose that I'm troubled because notwithstanding counsel
17 has ventured into a private area of my work, but counsel has
18 thoroughly and altogether disregarded that this young man
19 lived and breathed, and, perhaps, while he didn't have any
20 generational wealth to pass on, no houses to put into a
21 trust or a probate, nonetheless, he still existed, and he
22 still of himself is an estate.

23 But I feel troubled that the issue would come up that
24 because this young man might not have a family member as
25 identified by counsel -- because counsel suggests that it is

1 not a blood relative or some extended generational family
2 member -- that this young man have a family at all, and so
3 speaking for all of the marginalized individuals who come
4 from foster homes --

5 MR. CULUMBER: Oh, come on. This is getting ridiculous.
6 I take offense to this.

7 MS. ROGERS KEMP: (Inaudible), counsel. I beg your
8 pardon --

9 MR. CULUMBER: Give me a break.

10 THE COURT: Okay. Enough. Enough from both of you.

11 I indicated that I'm going to take this under -- I'm going
12 to reserve (inaudible) and we'll have further argument at
13 some point. But at this stage, there's no reason to have
14 this back-and-forth between the two of you.

15 So at this stage, I explore the issue, and I take it -- I
16 will reserve further conversation.

17 Ms. Thornton, you have your hand up, so --

18 MS. THORNTON: Thank you, I just wanted to add for the
19 record what the program is aware of the family
20 representative, and in case counsel have forgotten or are
21 misremembering, that Todd Maybrown, the former attorney, was
22 the one that gave us the name of the representative for the
23 family that I then communicated with until Ms. Rogers Kemp
24 was on board and then turned that person over to Ms. Rogers
25 Kemp and -- for them to communicate with each other.

1 So there was a representative followed through from prior
2 counsel.

3 And I think we all know from the record in discovery that
4 Mr. Nelson did have blood relatives that were in contact
5 with the police, and whether they choose to participate or
6 not, of course, is up to them. And there was also a
7 godmother that one of the detectives was in touch with.

8 So I just wanted to make sure that the record was clear
9 that -- with those facts.

10 THE COURT: All right. I'll reserve further conversation
11 on this issue. And we'll proceed.

12 All right. That will cancel the jury selection for next
13 week and the prehearing conference for next week.

14 And we will have to have communications through
15 Ms. Thornton about schedule.

16 MS. THORNTON: I'm sorry. I didn't hear that. Are you
17 saying we will have the prehearing conference? Or we'll
18 strike it?

19 THE COURT: We will strike it.

20 MS. THORNTON: Okay.

21 THE COURT: We will cancel the prehearing conference for
22 next week.

23 Is there anything further that we need to address today?

24 Then, Ms. Thornton, if you'll stay on, we'll let everybody
25 else go. Thank you.

1 MS. ROGERS KEMP: Thank Your Honor, Counsels.

2 MR. CULUMBER: Thank you.

3 (October 6, 2022, hearing concluded)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF WASHINGTON)
)
COUNTY OF KING)

I, the undersigned, do hereby certify under penalty of perjury that the foregoing recorded statements, hearings and/or interviews were transcribed under my direction as a certified transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of October, 2022.

Sara L. Kern
s/ Sara L. Kern, CET
Reed Jackson Watkins, LLC
800 Fifth Avenue, Suite 101-183
Seattle, Washington 98104
Telephone: (206) 624-3005
E-mail: office@rjwtranscripts.com

EXHIBIT 8

Document Code No.: PHL-7-1-5-EO

Department/Issuing Agency: County Executive Office

Effective Date: July 28, 2021

Approved: /s/ Dow Constantine

Type of Action: Supersedes PHL 7-1-4-EO, "Conducting Inquests in King County" June 11, 2020



King County

WHEREAS, Revised Code of Washington (RCW) Chapter 36.24 authorizes the county coroner to summon a jury to inquire into the death of a person by suspicious circumstances; and

WHEREAS, per the Supreme Court's recent decision in *Family of Butts v. Constantine*, No. 98985-1 (July 15, 2021), determined that there are certain "mandatory duties" under (RCW) Chapter 36.24 that must be performed by either the coroner or the inquest jury; and

WHEREAS, Section 895 of the King County Charter, as amended, provides that an inquest shall be held to investigate the causes and circumstances of any death where an action, decision or possible failure to offer the appropriate care by a member of any law enforcement agency might have contributed to an individual's death; and

WHEREAS, King County Code (KCC) Chapter 2.35A created a division of the medical examiner within the Seattle-King County Department of Public Health and assigned to it most of the coroner's duties under RCW Chapter 36.24, "except for the holding of inquests, which function is vested in the County Executive" under KCC 2.35A.090.B; and

WHEREAS, the Supreme Court affirmed in *Family of Butts* that the County Executive may establish policies and procedures for conducting coroner's inquests by Executive Order, so long as there is no "direct and irreconcilable conflict" with state law; and

WHEREAS, the County Executive retains the ultimate responsibility for the exercise of the inquest power and the performance of the delegated duty.

NOW, THEREFORE, I, Dow Constantine, King County Executive, do hereby order, direct, and implement the following policy and procedures for conducting an inquest, at Appendices 1 and 2.

Signed this 28th day of July 2021.

Dow Constantine
King County Executive

Attest:

Norm Alberg

Director, Records and Licensing Services Division, Department of Executive Services

**Appendix 1 - Conducting Inquests in King County:
Conducting Inquests in King County**

1.0. SUBJECT TITLE

Conducting Inquests in King County.

2.0. PURPOSE

- 2.1. To establish policies and procedures for conducting reviews into the facts and circumstances of any death of an individual where an action, decision or possible failure to offer the appropriate care by a member of any law enforcement agency might have contributed to an individual's death, and occasionally in other cases, as determined by the County Executive.
- 2.2. The purpose of the inquest is to ensure a full, fair, and transparent review of any such death, and to issue findings of fact regarding the facts and circumstances surrounding the death. The review will result in the issuance of findings that satisfy the mandatory duties imposed by Chapter 36.24 RCW, as well as other determinations specified in this order, including whether the law enforcement member acted pursuant to policy and training.
- 2.3. The purpose of the inquest is to investigate a death, not to make any binding adjudicative determinations of civil or criminal liability.

3.0. ORGANIZATIONS AFFECTED

King County Department of Public Defense; King County Executive; King County Prosecuting Attorney; King County Superior Court; King County Medical Examiner's Office; King County Department of Executive Services; Law Enforcement agencies within King County.

4.0. REFERENCES

- 4.1. RCW 36.24 Counties; County Coroner.
- 4.2. King County Charter, Section 320.20 - The Executive Branch, Powers and Duties.
- 4.3. King County Charter, Section 895 - General Provisions: Mandatory Inquests.
- 4.4. King County Code 2.35A.090(B).

5.0. DEFINITIONS

- 5.1. "King County Executive" or "County Executive" means the official, or the designee

of the official, who is elected and serves as the County Executive of King County pursuant to Article 3 of the King County Charter.

- 5.2. "King County Prosecuting Attorney" means the official, or the designee of the official, who is elected and serves as Prosecuting Attorney for King County pursuant to Article XI, Section 5 of the Washington State Constitution.
- 5.3. "Inquest" means an administrative, fact-finding inquiry into and review of the manner, facts and circumstances of the death of an individual where an action, decision or possible failure to offer the appropriate care by a member of any law enforcement agency might have contributed to an individual's death, and occasionally in other cases, as determined by the County Executive, where death occurs in the custody of or in the course of contact with other non-law enforcement government agencies or employees.
- 5.4. "Law enforcement agency" means any agency having police powers as authorized under Washington State law. For the purposes of this policy, "a member of any law enforcement agency" shall include commissioned officers, noncommissioned staff and agents of any local or state police force, jail, detention facility or corrections agency.
- 5.5. "Attorney representing the family of the deceased" means a privately retained or publicly funded attorney, pursuant to KC Ordinance 18652.
- 5.6. "Rules of Evidence" means the evidentiary rules adopted by the Supreme Court of the State of Washington governing proceedings in the courts of the State of Washington, and such rules as may be adopted by the King County Hearing Examiner pursuant to KCC 20.22.
- 5.7. "Voir dire" means an examination of a prospective panel as defined below.
- 5.8. "In camera review" means an examination of materials by the administrator in private proceedings to rule on admissibility and use.
- 5.9. "Panel" refers to the jury of inquest provided by Superior Court pursuant to RCW Chapter 36.24.
- 5.10. "Administrator" means the presider of the inquest proceeding, selected from a roster approved by the County Executive, who presides over a particular inquest proceeding.
- 5.11. "Manager" means the staff assigned to oversee the inquest program, to assign an administrator and inquest program attorney to a particular inquest, to provide clerical support to the administrator and inquest program attorney, and to report annually to the County Executive.
- 5.12. "Inquest program attorney" means the inquest program attorney assigned to assist the administrator and to facilitate an inquest.

6.0. POLICIES

- 6.1.** The public has a strong interest in a full and transparent review of the circumstances surrounding the death of an individual involving law enforcement. As such, in accord with King County Charter Section 895, there shall be an inquest into the manner, facts, and circumstances of any death of an individual where an action, decision or possible failure to offer the appropriate care by a member of any law enforcement agency might have contributed to an individual's death, and in any other case as determined by the County Executive where death occurs in the custody of or in the course of contact with other non-law enforcement government agencies or employees. The Charter requirement for an inquest does not apply where the County Executive determines, based on a review of the investigation, that the role of law enforcement was de minimis and did not contribute in any discernable way to a person's death. When active criminal charges are pending against a law enforcement officer for the death of an individual, the County Executive may delay the inquest referral pending resolution of those charges in order to avoid compromising the criminal case.
- 6.2.** At the discretion of the County Executive, in exceptional circumstances there may be an inquest into the causes and circumstances of a death involving an individual in King County other than a member of a law enforcement agency.
- 6.3.** It is the Executive's intent that Administrators exercise independent decision-making authority in conducting inquest proceedings under this Executive Order. In order to maintain independence and impartiality, Administrators shall follow applicable provisions of the Code of Judicial Conduct. Attorneys participating in inquest proceedings shall be bound by the Rules of Professional Conduct.

7.0. RESPONSIBILITIES

- 7.1.** The King County Prosecuting Attorney shall inform the King County Executive whenever the 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. If the King County Prosecuting Attorney advises that an inquest may be initiated, the King County Prosecuting Attorney shall supply a complete copy of the available investigative file to the manager.
- 7.2.** The King County Executive shall determine whether an inquest will be held. If an inquest is to be held, the Executive shall direct an administrator to conduct the inquest on the Executive's behalf. The County Executive shall also request that the King County Superior Court facilitate the inquest by supplying (a) jury, which shall be referred to as a panel; and (b) appropriate facilities, including a courtroom, appropriate staff, and any necessary security. The inquest shall be conducted pursuant to this Executive Order and to RCW 36.24, as amended.

8.0. PROCEDURES

Action By: Prosecuting Attorney

- 8.1.** Receive information from a law enforcement agency within King County of a death of an individual involving law enforcement that may require an inquest.
- 8.2.** Promptly inform the County Executive of such a death.
- 8.3.** Review the information and the investigative file and advise the County Executive as to whether an inquest should be held.
- 8.4.** Upon request of the County Executive, forward the investigative file to the manager.

Action By: Inquest Program Attorney

- 8.5.** Upon request by an administrator, issues subpoenas for witnesses and/or documents for the inquest hearing.
- 8.6.** Upon request by an administrator, seeks issuance of pre-hearing subpoenas for witnesses and/or documents from the King County Superior Court.
- 8.7.** Assists Inquest Administrators with facilitating the inquest proceedings.

Action By: County Executive

- 8.8.** Upon receiving the King County Prosecuting Attorney's advisory opinion, determine whether to hold an inquest.
- 8.9.** If an inquest is to be held, direct the manager to proceed with the inquest.

Action By: Manager

- 8.10.** Select an administrator to preside over the inquest and an inquest program attorney to assist.
- 8.11.** Support the administrator in scheduling a pre-inquest conference and with clerical tasks.
- 8.12.** Respond to any public records requests for the program file.

Action By: Administrator

- 8.13.** Hold a pre-inquest conference.
- 8.14.** Conduct the inquest according to the procedures in Appendices 1 and 2.
- 8.15.** May stay an inquest where charges are pending against an accused person and the stay is necessary to avoid compromising the criminal case.

Action By: Department of Public Defense

- 8.16.** Assign counsel for the family of the decedent unless the family indicates they have retained other inquest counsel or do not wish to be represented by the King County Department of Public Defense. The Department of Public Defense will not be assigned in inquests where the family is to be represented by private counsel.

Action By: Superior Court

8.17. If an inquest is to be held, the Superior Court shall coordinate with the manager and administrator to supply a panel, recorder, and facilities pursuant to RCW36.24.020.

9.0. APPENDICES

Procedures for Conducting Inquests.

10.0. PRIOR ORDERS

This Executive Order rescinds and replaces PHL 7-1-4, "Conducting Inquests in King County," dated June 11, 2020.

Appendix 2 - Procedures for Conducting Inquests:

If an inquest is to be held, the King County administrator shall conduct the review in accordance with these procedures.

1.0. FACILITIES/COURTROOM

1.1. The inquest is an administrative hearing intended to be a fact-finding, non-adversarial process. However, the King County Superior Court administers the jury process and maintains facilities appropriate to comfortably support a jury. Therefore, where requested by the County Executive, the Superior Court will coordinate with the manager to provide persons to serve as a jury of inquest ("panel") and secure appropriate facilities. The manager shall arrange the room in a manner that promotes transparency to the public and fair treatment of all participating parties.

2.0. PARTICIPATING PARTIES

2.1. The family of the deceased, who shall be allowed to have an attorney(s) present.

2.2. The law enforcement member(s) involved in the death, who shall be allowed to have an attorney(s) present.

2.3. The employing government department, which shall be allowed to be represented by its statutory attorney or lawfully appointed designee.

2.4. The manager, who shall assign an administrator and an inquest program attorney to assist the administrator.

2.5. An administrator, who shall preside over the inquest.

2.6. A representative appointed by the involved federally recognized Indian tribe, in the event that a death occurs on a federal Indian reservation or involves an enrolled member of a

federally recognized Indian tribe. Such representative shall be allowed to have an attorney present.

3.0.ROLE OF THE ADMINISTRATOR/SCOPE OF THE INQUEST

3.1. An administrator shall conduct the inquest. The proceedings shall be conducted as a formal proceeding, with represented parties, and the presentation of evidence through direct and cross- examination, and subject to the Rules of Evidence. Administrators 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. Although an inquest is not a court proceeding, administrators shall be guided by open courts principles and GR 16.

3.2. The administrator, after consultation with the participating parties, shall determine the inquest scope. Consistent with the purpose as set forth in the amended Charter, Executive Order, and Appendix 1 and 2, the inquest scope shall include an inquiry into and the panel shall make findings regarding the cause, manner, and circumstances of the death, including applicable law enforcement agency training and policy. The panel shall make findings regarding whether the law enforcement officer complied with applicable law enforcement agency training and policy as they relate to the death.

3.3. The Rules of Evidence shall generally apply but may be supplemented and/or modified by additional rules governing administrative proceedings, at the discretion of the administrator. The administrator shall construe the Rules of Evidence in a manner consistent with the goal of administrative fact-finding proceedings and to promote fairness and to minimize the delays, costs, and burdens that can be associated with judicial proceedings.

4.0.DISCOVERY AND ADMISSIBILITY OF EVIDENCE

4.1. Discoverable material shall be exchanged among: the administrator and any inquest program attorney; and counsel for all participating parties.

4.2. Discovery materials are to be used by the attorneys solely for the inquest proceeding. Such materials include the police and/or agency investigative file of the incident that resulted in the death. They also include the report of the medical examiner, crime laboratory reports, and the names, addresses, and summaries and/or copies of statements of any witnesses obtained by any party.

4.3. In the event that confidential materials in the possession of any person or agency are sought for use in the inquest, the administrator, upon a prima facie showing of necessity, relevancy, and lack of an alternative source for the materials, shall examine the materials in camera. These materials may include, and the administrator shall have the discretion to consider the admissibility and use of, information that may be relevant to the incident. The legal representative of the person or agency in possession of the materials shall have the right to participate in the review of these materials.

4.4. The decedent's criminal history may not be introduced into evidence unless the administrator first determines that: it is directly related to the reason for an arrest, detention, or use of force (e.g. officers were arresting an individual convicted of a felony who they believed was carrying a firearm); it served as the basis for an officer safety caution (or equivalent warning) that the member(s) of the law enforcement agency was aware of prior to any use of force; or other, contemporaneous knowledge of the individual's criminal history was relevant to the actions the officer(s) took or how the officer(s) assessed whether the person posed a threat.

4.5. If decedent's criminal history is admitted, it must be limited to the greatest extent possible. It may only include information both actually known to officer(s) at the time, and actually forming a basis for the decision to use deadly force or the tactics in approaching the individual. It may not include the specific crime of conviction, the nature of the crime (e.g. violent or nonviolent), the deceased's incarceration history, or any other criminal charge, unless the administrator makes a specific finding of relevance to a contested issue in the inquest.

4.6. The disciplinary history of the law enforcement member(s) involved may not be introduced into evidence unless the administrator first determines that it is directly related to the use of force. If such information is admitted, it must be limited to the greatest extent possible.

4.7. Protective orders may be used to limit discovery, and the administrator may order the return of all discretionarily-ordered discovery.

5.0 SCHEDULE AND PRE-INQUEST CONFERENCE

5.1. It is in the best interests of affected parties and the community to hold the inquest in a timely manner. It is the goal of the Executive that an inquest hearing will proceed in front of a panel within four months of the completion of law enforcement's investigation of the death. The Executive acknowledges that as of the date of this EO's issuance there is a backlog of inquests awaiting to be commenced which may impact meeting this goal for some time. The manager and administrator will strive for timeliness and to limit unnecessary delays consistent with this goal; extensions shall be limited and granted only upon a showing of good cause.

5.2. The manager and administrator shall schedule a pre-inquest conference with the participating parties and may hold additional conferences if necessary. The administrator will obtain proposed witness and exhibit lists, proposed panel instructions, and inquest time estimates, and will inquire whether any special needs such as interpreters are required. The conference shall be public unless compelling circumstances require an in camera hearing, in which case the administrator must make findings of fact and conclusions of law justifying such measures under Washington law.

5.3. The administrator shall solicit proposed stipulations of fact from the participating parties and work diligently to narrow the scope of inquiry at the inquest. The administrator shall share the stipulated facts with the panel at the start of the inquest.

5.4. The administrator shall instruct the panel at the start of the inquest.

5.5. The manager shall maintain a website publishing the schedule for the inquest, stipulated facts, inquest file and, where possible, inquest recordings.

6.0. PANEL POOL

The administrator shall select the panel from the regular Superior Court juror pool pursuant to RCW 36.24.020.

7.0. PANEL QUESTIONING (VOIR DIRE)

7.1. The administrator shall conduct voir dire, after consultation with the participating parties.

7.2. There is no set limit to the number of panelists the administrator may excuse. Panelists may be excused for cause and/or because serving on the inquest panel will present a hardship.

8.0. PANEL QUESTIONS FOR PARTICIPANTS

After all parties have had an opportunity to examine a witness, panelists are allowed to submit questions to the administrator that the panel wishes to pose to the witness. After consultation with the parties, the administrator shall determine whether to submit a question to the witness and the manner of the submission.

9.0. RECORDING

The manager shall ensure that the inquest proceedings are audio recorded and that the audio recordings are made accessible to the public to the greatest extent consistent with GR 16.

10.0. MEDIA GUIDELINES

Consistent with Section 9, above, the administrator shall make the proceedings available to the public and to the media, this includes video and audio recording and still photography.

11.0 ORDER OF PRESENTATION OF EVIDENCE

11.1. There shall be no opening statements by the parties. The judge's introduction will include an instruction in substantially the following form: "You have been empaneled as members of a coroner's panel in the inquest. This is not a trial. The purpose of the inquest is to provide public inquiry into the causes and circumstances surrounding the death of [decedent]. It is not the purpose of this inquest to determine the criminal or civil liability of any person or agency. Your role will be to hear the evidence and answer questions according to instructions given to you at the close of the proceedings. The inquest program attorney's role is solely to assist the

administrator in presenting the evidence. As administrator I have determined who will be called as witnesses and the issues which you will be asked to consider."

11.2. The administrator through the inquest program attorney has the first opportunity to introduce witnesses and evidence. The parties may then each introduce their own witnesses and evidence.

11.3. The administrator, after consultation with the parties, decides the order of presentation of evidence and witnesses. The administrator may direct that the inquest program attorney conduct the initial examination of each witness.

11.4. The administrator shall make rulings on the admissibility of evidence and testimony based on the Rules of Evidence and these procedures.

12.0 WITNESSES AND TESTIMONY

12.1. Each party, including the administrator, through the inquest program attorney, may proffer its own witnesses to provide testimony that aids the panel in the understanding of the facts, including factual areas of experts (e.g. ballistics and forensic medical examination).

12.2. The administrator shall base rulings on the admissibility of such testimony and/or limitations to such testimony on the proposed witness's qualifications, the Rules of Evidence, and these procedures. Testimony regarding changes that should be made to existing policy, procedure, and training will generally not be permitted on relevance grounds.

12.3. The employing government department shall designate an official(s) to provide a comprehensive overview of the forensic investigation into the incident (e.g., statements collected by investigators, investigators' review of forensic evidence, physical evidence collected by investigators, etc.). Additionally, the chief law enforcement officer of the involved agency or director of the employing government department or the designee of such chief/director shall provide testimony concerning applicable law enforcement agency training and policy as they relate to the death.

12.4. The inquest is intended to be a transparent process to inform the public of the circumstances of the death of a person that involved a representative of government. As such, there is a strong presumption against the exclusion of witnesses until after their testimony, and relevant, non-cumulative witnesses should only be excluded by the administrator in exceptional circumstances.

12.5. At the conclusion of the testimony, the administrator will solicit from the inquest program attorney and/or from the participating parties additional submissions of proposed stipulated facts. The administrator will determine which, if any, proposed stipulated facts should be submitted to the panel.

13.0. STATEMENTS OF SUMMATION

The inquest program attorney and the participating parties may offer statements of summation only if preapproved by the administrator in consultation with the parties. Statements must be consistent with the fact-finding purpose of the inquest.

14.0. PANEL QUESTIONS

14.1. After the conclusion of testimony, each party shall submit to the administrator proposed questions for the panel. After consultation with the parties, the administrator shall determine which questions are within the scope of the inquest and should be submitted to the panel. Prior to the statements of summation, the administrator shall provide the panel with the list of questions.

14.2. The inquest administrator shall give written instructions to the panel and shall submit questions to be answered, subject to the limitations of Section 3 (above), Chapter 36.24 RCW, and keeping in mind the purpose of an inquest. At a minimum, per RCW 36.24.070, the panel must render a verdict setting out who was killed, when, where, how, by whom, and whether that killing was by criminal means. If the jury finds that the killing was by criminal means, the jury must identify who is guilty thereof, if known. The panel shall also make findings regarding whether the law enforcement officer complied with applicable law enforcement agency training and policy as they relate to the death.

14.3. Beyond these limitations, the panel shall not be confined to the stipulated facts but may consider any testimony or evidence presented during the inquest proceeding. In answering any question, the panel may not consider any information learned outside of the inquest.

14.4. Whenever possible, questions submitted to the panel must provide three response options: "yes," "no," and "unknown." A panelist shall respond "yes" when the panelist believes a preponderance of the evidence supports responding to the question in the affirmative. A panelist shall respond "no" when the panelist believes a preponderance of the evidence supports responding to the question in the negative. A panelist shall respond "unknown" if either (1) the weight of the evidence equally supports responding to the question in the affirmative and the negative or (2) not enough evidence was presented to allow the panelist to answer the question in the affirmative or the negative.

14.5. The panel shall deliberate and panelists shall exchange their interpretations of the evidence. However, the panel need not reach unanimity and each panelist shall be instructed to answer the questions individually.

14.6. After every question, each panelist shall have the opportunity to provide a written explanation of the panelist's answer. The administrator shall direct each panelist that the panelist need only provide a written explanation when the panelist believes that a written explanation would provide information helpful in explaining or interpreting the panelist's answer.

15.0. FINDINGS

15.1. The manager shall transmit the panel's findings to the County Executive and to the King County Prosecuting Attorney's Office.

15.2. The manager shall ensure the findings and recommendations are published on its website along with the inquest recording. Such findings and recordings shall be accessible via the website for a minimum of one year from the date of the panel's inquest findings and should be retained beyond that time pursuant to the Washington State retention guidelines.

16.0. ANNUAL REVIEW

16.1. The manager shall submit a report to the County Executive at the end of each year on the operations of inquests.

16.2. The County Executive will call for a periodic review of the inquest process by an independent review committee to determine if the inquest process is conforming to updated laws and adequately meeting the principles of transparency, community engagement, and respect for all those involved in the inquest process.