

**KING COUNTY
DEPARTMENT OF EXECUTIVE SERVICES
INQUEST PROGRAM**

INQUEST INTO THE DEATH OF
EUGENE DEWAN NELSON
INQUEST # 417IQ2075

APRIL 13, 2023 PRE-HEARING CONFERENCE ORDER

Family of the decedent:	The Family of Eugene Dewan Nelson represented by Teri Rogers Kemp (family not present at this hearing)
Law enforcement officers and Employing government department:	Kent Police Department and Officer John Waldo and Officer Jacob Reed represented by Jeremy Culumber (Officer Reed present in audience but not participating in hearing, Officer Waldo not present at this hearing)
Inquest Administrator:	Robert McBeth
Inquest Program Attorney:	Claire Thornton and Cady Nicol
Inquest Program Coordinators:	Flo Armah (primary); Angelina Jimeno (secondary)

Having held a Pre-Hearing Conference on the date noted above, Inquest Administrator (IA) McBeth hereby orders the following:

Experts

Background

At the October 6, 2022 Pre-Hearing Conference, IA McBeth continued the Inquest Hearing to allow the Inquest Program and the Family time to consult with use of force experts.

On October 11, 2022, Ms. Rogers Kemp informed the parties that she intended to consult with Gregory Gilbertson. On December 1, 2022, Mr. Culumber informed the Inquest Program about the existence of potential impeachment material related to Mr. Gilbertson. Inquest Program Attorney Claire Thornton conveyed this information by phone to Ms. Rogers Kemp on December 2, 2022, including a summary of the impeachment material as described to her.



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At the December 16, 2022 Pre-Hearing Conference, IA McBeth set a deadline of 5:00 PM on March 1, 2023 for the Family to make any request for the IA to call an outside expert as a witness at the Inquest Hearing. IA McBeth noted that any such request “must include sufficient information for the IA to determine the expert’s qualifications and relevance, including the anticipated scope of testimony.”

On February 6, 2023, Ms. Rogers Kemp contacted the Inquest Program Attorneys to indicate that she had become aware that Mr. Gilbertson was the proposed Family expert in the Seavers Inquest, and that a party to that Inquest was seeking to impeach and limit Mr. Gilbertson’s testimony. On February 10, 2023, Inquest Program Attorney Cady Nicol responded that, after consulting the Inquest Program staff working on that inquest, it appeared that Inquest Administrator Garratt was waiting until after Mr. Gilbertson’s February 21, 2023 interview with the parties to that inquest to make any determinations about Mr. Gilbertson’s testimony, but that IA McBeth had not made any determinations about Mr. Gilbertson for the Nelson Inquest. IPA Nicol reiterated the March 1, 2023, deadline for requesting that IA McBeth call an expert witness, whether Mr. Gilbertson or someone else, at the Nelson Inquest Hearing.

On February 15, 2023, and February 17, 2023, Ms. Rogers Kemp asked the Inquest Program to provide Mr. Gilbertson with access to the discovery on ShareFile, and the Inquest Program provided that access. On February 17, 2023, Ms. Rogers Kemp requested permission to attend Mr. Gilbertson’s interview in the Seavers Inquest. However, the IA Garratt limited attendance at Mr. Gilbertson’s interview to the parties in the Seavers matter. After Mr. Gilbertson’s interview in the Seavers Inquest, he informed the Inquest Program and Ms. Rogers Kemp that he would no longer be working on any inquests, including the Nelson Inquest.

On February 27, 2023, Ms. Rogers Kemp spoke with Lead Inquest Program Attorney Matt Anderson and indicated that she was no longer planning to use Mr. Gilbertson as her expert for the Inquest into the Death of Eugene Nelson. She indicated that she had interviews with alternative experts set up on March 1, 2023, and March 6, 2023. Mr. Anderson informed Ms. Rogers Kemp that he had informed IA McBeth, and that IA McBeth would require that she request funding and update the Inquest Program within a day of speaking to these experts if she intended to hire them. Further, if she wanted them to be called as a witness at the Nelson Inquest Hearing, she should provide the expert’s CV and a report not later than April 7, 2023 (or provide a specific alternative proposal).

On March 1, 2023, Ms. Rogers Kemp informed the Inquest Program that she intended to retain Captain Spencer Fomby and that she would meet with him to obtain his opinions about the Nelson Inquest on April 7, 2023. She indicated that Captain Fomby estimated 30-40 days after



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that to produce a report. IPA Anderson informed her that IA McBeth had directed that she should accelerate the production of a report if possible and inform the parties on April 10, 2023, of any request to call Captain Fomby as a witness. If she was requesting that he be called, she should also provide his CV and proposed scope of testimony. The Inquest Program provided Mr. Fomby the discovery for his review on March 1, 2023.

On March 17, 2023, IPA Nicol emailed the Nelson Inquest parties to update everyone on the Family's use of force expert (as described above) and that IA McBeth intended to call James Pugel as an expert at the Inquest Hearing. Mr. Culumber responded, noting the Involved Officers' and Department's serious concerns about whether use of force experts are permitted under the Executive Order, the lack of consultation with the Involved Officers and Department, the missed deadlines, and the constraints the proposed timeline placed on their ability to review and respond (including consulting their own expert).

On March 27, 2023, Ms. Rogers Kemp requested that the Inquest Program provide biomechanical engineering expert Geoffrey Desmoulin with access to the discovery on ShareFile. The Inquest Program did so, including Mr. Culumber in the response, and indicated that any request to call Mr. Desmoulin as an expert at the Inquest Hearing would need to include notice and a summary of his expected testimony in time for all parties and the IA to review the request and respond.

On April 2, 2023, the IA circulated James Pugel's report to the parties.

On April 11, 2023, Ms. Rogers Kemp emailed the parties with a brief summary of Captain Fomby's opinion, indicated that she was still deciding whether to ask the IA to allow the jury to hear from Captain Fomby, and requested additional discovery about the training the Involved Officers received.

Use of Experts at the Inquest Hearing

During this Pre-Hearing Conference, Ms. Rogers Kemp reserved on whether to request that IA McBeth call either Captain Fomby or Mr. Desmoulin as experts at the Inquest Hearing. Ms. Rogers Kemp also asserted, without basis, that Mr. Culumber caused her to lose her initial expert, Mr. Gilbertson. To the contrary, IPA Thornton made Ms. Rogers Kemp aware of the existence of potential impeachment information she had received from Mr. Culumber at the beginning of December 2022, and had no role in the other inquest where Mr. Gilbertson had been retained as a potential witness.



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Mr. Culumber asserted both that the Executive Order did not contemplate the kind of expert testimony that either Captain Fomby or James Pugel would provide, and specific concerns with the missed deadlines and insufficient time and information for the Involved Officers and Department to respond to Ms. Rogers Kemp's potential experts prior to the current May 8, 2023 hearing date.

Considering that there has still been no request to call Captain Fomby or Mr. Desmoulin, no report from either, and the Involved Officers and Department would have no time to adequately review and respond to either expert's opinion prior to the May 8, 2023 Inquest Hearing, neither Captain Fomby nor Mr. Desmoulin shall be permitted to testify at the Inquest Hearing.

IA McBeth has also determined that he will not call James Pugel at the Inquest Hearing, based on the limited time available for the parties to review and respond to Mr. Pugel's opinions. However, the Policy & Training Designee from the Kent Police Department shall be made aware of James Pugel's report and any other expert opinions that can be timely provided to him (see below).

If any party wishes to move for reconsideration of this ruling on expert testimony, that party must file such a motion by 5:00 PM on Friday, April 21, 2023. A responding party must file any written response by 5:00 PM on Wednesday, April 26, 2023.

Inquest Preparations

Finalizing Documents

Seven months ago, on September 15, 2022, the Inquest Program circulated draft documents to the parties, including the juror questionnaire, opening instructions, closing instructions, and interrogatories. IA McBeth initially set an October 4, 2022 deadline for party input on these documents. Each of the parties provided input and proposed edits on each of those documents by October 19, 2022 (with the exception of a photo and Family statement about the life of Mr. Nelson for inclusion in the opening instructions, which has not yet been submitted).

IA McBeth has carefully reviewed the parties proposed edits and attempted to incorporate them as appropriate. He has also made edits for clarity and updated the juror questionnaire to reflect changes in public health and King County Superior Court's COVID policy. Updated drafts of the juror questionnaire, opening instructions, closing instructions, and interrogatories will be circulated to the parties on April 17, 2023. Any party who wishes to provide any further



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suggested edits or additions to these documents (including any photo or Family statement for the opening instructions) should do so by **4:30 PM on Wednesday, April 26, 2023**.¹ The documents will then be finalized, to the extent possible, at the April 27, 2023 Pre-Hearing Conference.

Exhibit List

The Inquest Program also circulated a draft exhibit list to the parties on September 30, 2022. During the subsequent months, Inquest Program made significant efforts to reduce the exhibit list so that it is more manageable for the parties and the jury. A revised draft exhibit list will be circulated to the parties. The parties should note any proposed additions, substitutions, or deletions by **4:30 PM on Wednesday, April 26, 2023**, so that any disagreements may be addressed during the April 27, 2023 Pre-Hearing Conference.

Policy & Training Designee Interview

Kent Police Department has designated Assistant Chief Stansfield as the policy and training designee. Pursuant to the 2021 Executive Order, PHL-7-1-5-EO, App. 2, § 12.3, he shall “provide testimony concerning applicable law enforcement agency training and policy as they relate to the death.”

Inquest Program staff will coordinate with the parties to schedule an interview of Assistant Chief Stansfield prior to the Inquest Hearing. Prior to the interview, IA Stansfield shall be provided with the Inquest’s policy scope, relevant sections of the policy manual, the involved officers’ training histories, and the report of James Pugel. The Family may also choose to provide Assistant Chief Stansfield with an expert report or summary of their expert’s conclusions, so long as that material is provided to the expert at least two business days prior to the interview. The parties shall coordinate with Assistant Chief Stansfield prior to the interview to determine whether any additional training materials should be obtained and reviewed prior to the interview. During the interview, the parties may inquire about Assistant Chief Stansfield’s opinions on compliance with training and policy and whether those opinions are consistent with any expert opinions that were timely provided to him.

¹ Please note that this date differs from the date proposed during the Pre-Hearing Conference. This change was made because the previously proposed date was after the April 27, 2023 Pre-Hearing Conference, which will address these documents.



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Inquest Program staff will coordinate with the parties about any further concerns about the scope of Assistant Chief Stansfield's interview. Any further determinations about the scope of Assistant Chief Stansfield's testimony at the Inquest Hearing shall be made after his interview.

Next Pre-Hearing Conference

A Pre-Hearing Conference will be held via Zoom at **9:00 AM on Thursday, April 27, 2023**, to address any briefing related to expert issues and to finalize the jury questionnaire, interrogatories, and opening and closing jury instructions.

A final Pre-Hearing Conference to complete jury selection and address motions in limine and any remaining matters will be scheduled for the week of May 1-5, 2023. An exact date and time will be determined at the next PHC.

Dated: April 17, 2023



Inquest Administrator Robert McBeth



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