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6 **IN THE STATE OF WASHINGTON**
7 **KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES**

8
9 *IN RE: THE INQUEST INTO THE*
10 *DEATH OF ISALIAH OBET*

NO. 417IQ7199

MOTION TO STAY
PROCEEDINGS AND
MEMORANDUM IN SUPPORT

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13 **MOTION**

14 Officer Jeffrey Nelson (Ofc. Nelson), represented by Emma C. Scanlan and Tim Leary,
15 brings this motion for an Order staying these proceedings until the resolution of Ofc. Nelson's
16 pending criminal prosecution in King County Case No. 21-1-06432-3 KNT.

17 **MEMORANDUM**

18 **I. PROCEDURAL AND FACTUAL HISTORY**

19 On June 10, 2017, Ofc. Nelson responded to a report of a fleeing suspect who had
20 entered a home and pointed a knife at the residents while demanding money. Ofc. Nelson
21 located Isaiah Obet on D Street SE in Auburn, Washington. After spotting Ofc. Nelson, Obet
22 ran up to a woman in a vehicle and attempted to enter the vehicle by stabbing at the driver's
23 window with a knife. Ofc. Nelson shot Obet to prevent Obet from forcibly gaining entry to the
24 vehicle and access to the vehicle's driver. This shooting is the subject of the above-captioned
25 inquest.
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1 On May 31, 2019, Ofc. Nelson attempted to effectuate a routine misdemeanor arrest of
2 Jesse Sarey for disorderly conduct after efforts at de-escalation had failed. Ofc. Nelson was
3 met with violent resistance, including attempts by Sarey to take Ofc. Nelson’s firearm. When
4 Sarey ripped Ofc. Nelson’s knife off the front of his uniform a struggle ensued and Ofc. Nelson
5 shot and killed Sarey. On August 20, 2020, King County filed an information charging Ofc.
6 Nelson with murder in the second degree and assault in the first degree for the Sarey shooting.
7 Trial is currently scheduled for February 28, 2022.

8 Meanwhile, the scope of coroner’s inquests has undergone significant changes. King
9 County Executive Order PHL 7-1-4-EO (2020 EO) provides, in part, that the inquest
10 administrator is to instruct the inquest jury “that it may not comment on fault . . . such as . . .
11 the criminal or civil liability of a person.” *See Family of Damarius Butts v. Constantine*, 98985-
12 1, at *1 (Wash. July 15, 2021). The Supreme Court held that this provision violated RCW
13 36.24.070, which requires an inquest jury to determine “the means by which a person was
14 killed” and “who is guilty thereof, if known.” *Id.*

15 In response to this ruling, King County amended its inquest procedures with Executive
16 Order PHL-7-1-5-EO (2021 EO). The 2021 EO provides, in relevant part,

17 the panel must render a verdict setting out who was killed, when, where, how,
18 by whom, and whether that killing was by criminal means. If the jury finds that
19 the killing was by criminal means, the jury must identify who is guilty thereof,
20 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.

21 2021 EO, Policy 14.2.

22 II. ANALYSIS

23 A. A STAY IS NECESSARY TO AVOID COMPROMISING OFC. 24 NELSON’S PENDING CRIMINAL CASE.

25 The King County Prosecuting Attorney’s Office has made clear through its discovery
26 productions that it intends to attempt to introduce evidence from the Obet matter in the Sarey
27 criminal trial in addition to evidence regarding other use of force occurrences and training

1 noted in Ofc. Nelson’s personnel file. If the inquest proceeds without a stay, Ofc. Nelson will
2 therefore be compelled to assert his Fifth Amendment right against self-incrimination in
3 response to questions regarding the Obet matter, other prior use of force, policies and training.
4 A stay is necessary to avoid compromising the criminal case. Granting a stay will also advance
5 the fact-finding purpose of the inquest.

6 Policy 6.1 in the 2021 EO provides, in part, “[w]hen active criminal charges are
7 pending against a law enforcement officer for the death of an individual, the County Executive
8 may delay the inquest referral pending resolution of those charges in order to avoid
9 compromising the criminal case.” Policy 8.15 provides further that the inquest administrator
10 “[m]ay stay an inquest where charges are pending against an accused person and the stay is
11 necessary to avoid compromising the criminal case.” 2021 EO.

12 The *Olympic Pipeline* factors are instructive in applying these policies here, and weigh
13 in favor of granting a stay. *See King v. Olympic Pipeline Co.*, 104 Wash. App. 338, 352, 16
14 P.3d 45 (2000); *Chaffee v. Keller Rohrback LLP*, 200 Wash. App. 66, 78, 401 P.3d 418 (2017).
15 *Olympic Pipeline* established that, in determining whether a stay of civil proceedings should be
16 granted due to parallel criminal proceedings, the interests at stake are of constitutional
17 magnitude and require careful consideration and protection. 104 Wn. App. at 348-69. This
18 includes both the Fifth Amendment right against self-incrimination, to which the court must
19 give “serious consideration,” as well as the right to fully and fairly defend the civil claims,
20 which is likewise of constitutional magnitude. *Id.* at 353, 362 (right to defend civil claims is a
21 corollary of the right to sue and has “equivalent constitutional foundation”). In this case, Ofc.
22 Nelson’s right to defend himself in the inquest has gained importance due to the *Butts* decision
23 and the 2021 EO, which now task the inquest panel with determining criminal culpability.

24 The non-exhaustive *Olympic Pipeline* factors to be considered include, but are not
25 limited to, “the extent to which a party’s right against self-incrimination is implicated in the
26 civil proceedings,” “the similarities between the civil and criminal cases,” and “the plaintiffs’
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1 interests in expeditious litigation and potential prejudice.” *Chaffee*, 200 Wn. App. at 78
2 (quoting *Olympic Pipeline*, 104 Wn.App. at 352-53, 16 P.3d 45).

3 While Fifth Amendment considerations are not necessarily dispositive, they “must be
4 given ‘serious consideration’ in the balancing of interests.” *Chaffee*, 200 Wn. App. at 79
5 (citations omitted). “The Fifth Amendment privilege permits a person to refuse to testify at a
6 criminal trial, or to refuse to answer official questions asked in any other proceeding, where the
7 answer might tend to incriminate [the person] in future criminal proceedings.” *Olympic*
8 *Pipeline Co.*, 104 Wn.App. at 351. As the Court recognized in *Olympic Pipeline*, the pendency
9 of parallel proceedings creates a “Hobson’s choice” in which the Fifth Amendment right
10 against self-incrimination of a witness is lost if the witness testifies in the civil proceeding, or
11 conversely, if the witness exercises his Fifth Amendment right against self-incrimination, the
12 truth-finding function of the civil proceeding is severely compromised, and the constitutional
13 right to fully and fairly defend the civil claims is lost. *See* 104 Wn. App. at 349-66.

14 This is precisely the position Ofc. Nelson will be in if the inquest is not stayed.
15 Although Ofc. Nelson maintains evidence from the inquest is irrelevant and inadmissible in the
16 criminal matter, the State intends to use this evidence in prosecuting Ofc. Nelson. The State
17 will also seek to introduce evidence obtained in the Obet inquest regarding officer training and
18 police department policies against Ofc. Nelson in the pending criminal matter.

19 If the inquest is not stayed, Ofc. Nelson will be forced to either waive his Fifth
20 Amendment rights or lose the ability to fully and fairly defend himself in the inquest
21 proceeding. This is particularly problematic now that the inquest proceeding includes an
22 assessment of criminal culpability. Allowing the inquest to proceed under these circumstances
23 will hamper the fact-finding objective of the inquest and allow the King County Prosecutor’s
24 Office use the inquest proceedings as an unauthorized discovery tool for the criminal
25 proceedings, placing Ofc. Nelson at an unfair disadvantage in both proceedings.

1 The fact that Ofc. Nelson contests the admissibility of evidence from the Obet matter in
2 the criminal proceeding does not alter the analysis. *Olympic Pipeline* held that Fifth
3 Amendment rights are implicated where there is a genuine fear of self-incrimination. *Id.* at 354-
4 55, 359. Thus, in *Olympic Pipeline*, the Supreme Court reversed the trial court (which had
5 twice denied a stay) based on the moving parties’ status as “potential” criminal defendants, and
6 where they “believed” the status of the criminal investigation would be “clarified” in about five
7 months. *Id.* at 347-48. Here, the evidence demonstrates a genuine fear of self-incrimination,
8 despite Ofc. Nelson’s position that it would be error for the trial court in the criminal
9 proceeding to allow any evidence related to Obet. *See id.* at 359.

10 In *Olympic Pipeline*, it was the prosecution’s *belief* that it would obtain evidence in the
11 civil proceeding for use in the criminal proceeding that led the Court to conclude that there is
12 “complete correspondence between the civil and criminal cases” under the “similarity” of
13 proceedings factor. 104 Wn. App. at 358. Here, Ofc. Nelson will not be able to fully participate
14 in the inquest without providing answers about the Obet matter, training, policies and even the
15 Sarey incident. If he choses to provide those answers, Ofc. Nelson risks incriminating himself
16 in the Sarey criminal trial. If he invokes to avoid potentially incriminating himself, the inquest
17 inquiry will necessarily be limited.

18 For the reasons set out in this motion, this inquest should be stayed until resolution of
19 Ofc. Nelson’s pending criminal prosecution.

20 Respectfully submitted the 18th day of October, 2021.

21
22 /s/ Emma C. Scanlan

23 Emma C. Scanlan, WSBA #37835
24 Attorney for Jeffrey Nelson

25 /s/ Timothy Leary

26 Timothy Leary, WSBA #30355
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