

Statement from the office of the Norfolk District Attorney:

As of this afternoon, Judge Coven has finished hearing witnesses at this time in his Inquest into the death of Seth Bishop in 1986. The District Attorney's Office is informed that Judge Coven is keeping the Inquest proceedings open should he choose to call or recall any additional witnesses for added testimony as he reviews the material already before him.

Chapter 38 of the Massachusetts General Laws, establishing and defining judicial Inquests, does not stipulate any specific time constraints for the filing of the judge's report of the Inquest.

Attached to this document please find a summary of information on the Massachusetts Inquest prepared by the District Court Department.

## FREQUENTLY ASKED QUESTIONS ABOUT INQUESTS

### 1. What is an inquest?

An inquest is an procedure in which a judge investigates the circumstances of a death and determines whether it resulted from any crime. An inquest is conducted by a District Court judge at the request of the District Attorney or the Attorney General. It is an investigation rather than a prosecution.

The object of an inquest is for a judge to elicit sufficient evidence to enable the judge to reach conclusions on a number of specific points, which the judge then sets forth in a formal written report. By statute the judge must “report in writing when, where, and by what means the person met his death, the person’s name, if known, and all material circumstances attending the death, and the name, if known, of any person whose unlawful act or negligence appears to have contributed” to the death (Massachusetts General Laws c. 38, § 10).

Because inquests are infrequent, there is comparatively little written law about them. Judges are guided by the inquest statute (G.L. c. 38, §§ 8-11), the Supreme Judicial Court’s decision in *Kennedy v. Justice of the Dist. Court of Dukes Co.*, 356 Mass. 367 (1969), and the District Court Department’s Standards of Judicial Practice, *Inquest Proceedings* (June, 1990). The Supreme Judicial Court has indicated that “inquests shall be conducted in the sound discretion of the inquest judge” to effectively investigate the circumstances and cause of the death.

### 2. Is an inquest similar to other judicial functions?

No. An inquest is a unique judicial task. It is the only situation in which a court, rather than an Executive Branch agency, is responsible for investigating (rather than conducting a trial of) whether a crime has been committed.

In all other court proceedings, a judge, while he or she may actively inquire into the matter, is essentially in the posture of an umpire, standing between two competing adversaries who choose what evidence to present and what issues to argue.

The judge’s role in an inquest is fundamentally different. There are no “parties” to an inquest in the usual sense, and it is not an adversarial proceeding. In an inquest, the judge has an inquisitorial role in which the judge is responsible to seek out and weigh all the relevant information.

### 3. How is an inquest initiated?

If the Commonwealth’s Chief Medical Examiner determines during an investigation that a death “may have been caused by the act or negligence of another” (G.L. c. 38, § 7), the Chief

Medical Examiner is required to notify the District Attorney with responsibility for the place where the body was found or where the act or negligence occurred. The Chief Medical Examiner may also recommend that the District Attorney cause an inquest to be conducted.

Whether or not the Chief Medical Examiner is involved or has made such a recommendation, the District Attorney or the Attorney General may request the First Justice of the District Court for that area to conduct an inquest, and the court must then do so.

#### **4. Who can be present at an inquest?**

By statute, the District Attorney or the Attorney General is entitled to be present at the inquest. The parents, guardian or next of kin of the deceased are also entitled to be present. Any person who has been identified by the District Attorney or the Attorney General as a target of an investigation in connection with the death is entitled to be present along with counsel. Other witnesses are present during their testimony.

All others are excluded from the inquest by statute, including the public and the media. The Supreme Judicial Court has explained that, like grand jury proceedings, the closed nature of an inquest is based on the need to ensure “a fair trial in any criminal proceedings which may follow the inquest.”

#### **5. How is an inquest conducted?**

Normal procedural court rules of criminal and civil procedure do not apply to inquests. Usually the judge requests the District Attorney to assist the judge by organizing the relevant documents and presenting and questioning witnesses. The judge, however, retains control and responsibility over the course of the inquest.

During the inquest hearings, the court may summon any additional witnesses whom the judge determines may contribute to the investigation. Witnesses give their testimony under oath and are entitled to have an attorney accompany them and advise them during their testimony. The District Attorney is entitled by statute to examine any witnesses. As a matter of discretion, the judge may permit others, who are entitled to be present, to examine or cross-examine witnesses or offer other evidence. As in other proceedings, witnesses are entitled to assert their Fifth Amendment privilege against self-incrimination, and when such a claim is made the judge determines whether the witness is entitled to invoke the privilege in the circumstances.

In appropriate cases, the judge may leave the courthouse to view any relevant location or object to better understand the evidence presented.

Formal rules of evidence do not apply to inquest hearings, and reliable hearsay may be admitted and given appropriate weight. All proceedings are either recorded by a stenographer or

electronically recorded.

## **6. What is the outcome of an inquest?**

At the conclusion of the inquest, the judge files a report, along with a transcript of the proceedings. The report indicates the judge's conclusions as to the causes and circumstances of the death and identifies "any person whose unlawful act or negligence appears to have contributed thereto." (In this context, criminal "negligence" is roughly equivalent to wanton or reckless conduct.) The report includes the judge's assessments of credibility when witnesses do not agree, and often has relevant documents, such as police reports and medical examiner's reports, appended.

## **7. Is the judge's report available?**

The judge's inquest report and a transcript of the evidence are initially impounded and filed with the clerk of the Superior Court for the county in which the inquest was held. They are available only to the District Attorney or Attorney General and the report may also be inspected by anyone who was identified as the target of an investigation in connection with the death.

The transcript remains impounded "until the district attorney files a certificate with the superior court indicating that he will not present the case to a grand jury, or files notice with the superior court that the grand jury" has returned an indictment or declined to do so after consideration of the matter (G.L. c. 38, § 10). The report itself may then be made available for public access in the discretion of the judge who conducted the inquest.