

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LARRY R. HEDLUND,)
)
 Plaintiff,)
)
 vs.)
)
 STATE OF IOWA; K. BRIAN LONDON,)
 COMMISSIONER OF THE IOWA)
 DEPARTMENT OF PUBLIC SAFETY,)
 Individually; CHARIS M. PAULSEN,)
 DIRECTOR DIVISION OF CRIMINAL)
 INVESTIGATION, Individually;)
 GERARD F. MEYERS, ASSISTANT)
 DIRECTOR, DIVISION OF CRIMINAL)
 INVESTIGATION, Individually; and)
 TERRY E. BRANSTAD, Individually,)
)
 Defendants.)

Case No. LACL128372

**MOTION TO STAY, OR IN
THE ALTERNATIVE, MOTION
TO CONTINUE TRIAL**

COME NOW the Defendants, by and through their undersigned counsel, and for their Motion for Stay, or in the alternative Motion to Continue Trial, respectfully state the following:

INTRODUCTION

1. This motion raises several important issues that may be more fully understood with a recitation of the case’s procedural history and other relevant facts. On August 8, 2013 Plaintiff, Larry Hedlund (Hedlund), filed his Petition in this matter. On August 27, 2013 Hedlund filed an Amended Petition. On September 25, 2013 Defendants filed a Motion to Stay the court proceedings pending the resolution of two administrative appeals Hedlund filed related to his employment with the Department of Public Safety. The request for a stay was granted by this Court on November 1, 2013. On April 30 2014 the stay was lifted after Hedlund voluntarily dismissed the pending administrative appeals.

2. On May 1, 2014 Hedlund filed a Second Amended Petition. On May 19, 2014 Defendants filed a Motion to Dismiss Second Amended Petition. On September 15, 2014 the

motion to dismiss was granted in part and denied in part. On November 25, 2014 Hedlund filed a Third Amended Petition which, notably, added then Governor Branstad as a defendant, both individually and in his official capacity. On November 26, 2014 Hedlund filed an Application for Interlocutory Appeal of the Court's Order on Defendants' Motion to Dismiss. On December 19, 2014 the Supreme Court granted the application for interlocutory appeal. On March 28, 2016 Hedlund's appeal was dismissed and procedendo issued.

3. Since the issuance of procedendo, the parties have diligently proceeded with extensive discovery, including the production of tens of thousands of pages of documents, multiple sets of interrogatories, requests for admission and multiple depositions. Substantial written discovery propounded by both parties remains outstanding. Additionally, Hedlund has requested additional depositions. Now, Plaintiff has filed a motion for leave to file a Fourth Amended Petition that is pending before this Court. The Fourth Amended Petition raises an entirely new claim that will require additional discovery and depositions. If granted, Defendants will need additional time to investigate the claim, complete additional discovery, and file any motions deemed appropriate.

4. Additionally, Defendants have filed for summary judgment on each of the claims pled in Plaintiff's Third Amended Petition. Because of the significant legal issues raised in Hedlund's claims, and the issues raised in Defendants' summary judgment motion, it is imperative that the Court have an opportunity to consider a dispositive motion on those issues prior to trial. The State and several Defendants have immunities and privileges from several claims made by Plaintiff that must be ruled on prior to trial. Further, it is unrealistic to believe discovery can be completed, dispositive motions fully briefed and a ruling thereon entered in the short time remaining before trial, which is currently set to commence on December 4, 2017.

5. Against this procedural backdrop is Governor Branstad's appointment as the United States Ambassador to China—certainly one of the most important, if not the most important, diplomatic appointment with respect to the United States' economic and security interests. The importance of the issues facing the United States and China including North Korea cannot be understated. Governor Branstad has been named as a defendant in both his personal and official capacities. As discussed below, Ambassador Branstad is unable to attend trial, and his vital duties to this country make it extraordinarily difficult for him to participate in discovery and otherwise defend himself from the allegations raised by Mr. Hedlund. For reasons related to Ambassador Branstad, as well as multiple other reasons, good cause exists to stay these proceedings and/or continue this trial to a later date.

MOTION TO STAY PROCEEDINGS

6. This Court should stay this case until such time as Ambassador Branstad is no longer serving in his diplomatic capacity as Ambassador to China. The importance of the diplomatic posting that Ambassador Branstad is in charge of cannot be overstated. China, the most populous country in the world, that borders both Russia and North Korea, and is one of the world's largest economies is arguably the most important diplomatic posting of the United States. Clearly, the interests of the United States as a whole outweigh the importance of keeping the set trial date. Branstad's service as ambassador during this highly tumultuous time for our country must override any reason to keep the scheduled trial date.

7. The power of the Court to grant a stay "is incidental to the power in every court to control the disposition of cases on its docket with economy of time and effort for itself, for counsel, and for the litigants." *Chicoine v. Wellmark*, 894 N.W.2d 454, 460 (Iowa 2017). Our Supreme Court further states, "district courts have broad discretion in deciding whether to grant or

deny a stay.” *Id.*

8. Here, one of the named defendants is an acting ambassador to a country that has extraordinarily significant security, diplomatic, and economic interests of the United States at stake. The Ambassador is not able to return for the scheduled trial of this matter, and the vital interests of the United States must take precedence over the allegations against Ambassador Branstad made by Mr. Hedlund.¹ Additionally, because of Ambassador Branstad’s heavy schedule attending to the interests of our country, as well as difficulty with communication, it is extraordinarily difficult for the Ambassador to participate in defending himself from afar from the claims made in this lawsuit. This is especially important given he has been named in his personal capacity. He has a right to participate in and defend his personal interests. Requiring this matter to go to trial as scheduled severely prejudices Ambassador Branstad as well as the citizens of Iowa and the entire country.

9. Defendant Branstad has a right to be personally present at trial. *See Heck v. Anderson*, 12 N.W.2d 849, 851 (Iowa 1944) (recognizing, “courts are jealous in defense of the right of a litigant to be present at the trial of his own case,” and stating “the right should not be denied him unless for weighty reasons”); *see also In re Rogers’ Estate*, 283 N.W. 906 (Iowa 1939) (finding court had improperly denied motion to continue based on defendant’s unavailability due to illness and recognizing “the important privilege of a party to be present at trial of his case, which should not be denied on a proper application made, unless for weighty reasons”).

10. Additionally, a stay should be issued pending a ruling by the Iowa Supreme Court. One of Defendants’ arguments in support of summary judgment is that Mr. Hedlund was required

¹ Hedlund’s claims against Ambassador Branstad are premised on the preposterous proposition that while Governor of the state of Iowa, Branstad was not acting in the scope of his office when giving a gubernatorial press conference.

to exhaust his administrative remedies for certain of his claims and failed to do so. This significant, and dispositive, legal issue involves Hedlund's whistleblower claim. The Iowa Supreme Court currently has a case pending where the issue of exhaustion in the specific context of a whistleblower claim is squarely before it. *See Joseph Walsh v. Teresa Wahlert and the State of Iowa*, No. 17-0202. The Supreme Court's ruling will provide direct guidance on this issue. Staying this matter until such time as a decision is issued could avoid having to retry the matter due to an intervening decision of our Supreme Court coming about after a jury verdict or trial court decision in this case. Further, the exhaustion issue Defendants have raised was previously addressed by the Iowa Court of Appeals in *Wright v. State*, No. 15-0782, 2015 WL 3272248 (Iowa Ct. App. June 15, 2016), a case procedurally similar to the present case. Wright, a sergeant with DPS, was demoted in 2011 and thereafter resigned. *Id.* at *1. Wright did not appeal the demotion under Iowa Code section 80.15. *Id.* at *1. However, Wright then filed suit claiming constructive discharge in violation of public policy, retaliation for complaining against his supervisor, and breach of contract. *Id.* at *1. The Court of Appeals held the administrative appeal process set forth in Iowa Code section 80.15 was an adequate administrative remedy that must be exhausted. *Id.* at *3. The Court held, "because Wright failed to exhaust his administrative remedies, the district court was deprived of authority to hear the case" and affirmed the district court's grant of summary judgment. *Id.* at *3. This Court should stay the matter until such time as the Supreme Court has an opportunity to decide this dispositive issue.

This matter should be stayed until such time as Ambassador Branstad has completed his vital diplomatic duties. A stay is also warranted due to the similarity of legal issues between this case and a case currently pending before the Iowa Supreme Court.

MOTION TO CONTINUE TRIAL

11. Alternatively, Defendants seek a continuance of the trial of this matter. In addition to the matters relating to named Defendant Ambassador Branstad being unavailable due to his appointment as Ambassador as well as significant issues awaiting a decision by the Supreme Court, other reasons require a continuance of the trial.

12. These additional reasons that satisfy the rules of civil procedure justifying a continuance include, but are not limited to, the factual and legal complexities of the issues involved in this case, including legal issues that will need to be resolved by this Court prior to trial including, as noted above, a resolution of the exhaustion of remedies issue, and significant discovery yet to be concluded. Additional issues will relate to a determination of scope of office and employment as well as a number of immunity issues, all of which present legal issues which must be addressed prior to trial. Each and every one of Mr. Hedlund's claims raise substantial legal issues affecting the viability, in whole or in part, of each of those claims. Those legal issues must be addressed prior to trial commencing in this matter.

13. Additionally, while the parties have worked diligently at completing discovery, substantial discovery remains outstanding and incomplete. The parties have taken numerous depositions and have produced many tens of thousands of pages of documents. Defendants have responded to numerous sets of interrogatories and multiple sets of requests for admissions. Yet, substantial written discovery, propounded by both sides of this case, remain outstanding. Additionally, Hedlund is currently taking the depositions of ten additional people, including persons certain to be claimed by Hedlund as required to respond to the summary judgment filed by the Defendants.

14. Further, the scope of inquiry during depositions and discovery make it quite evident this trial is not going to be finished in two weeks. It is clear Hedlund intends to put Defendants on trial for every rumor or innuendo of misconduct he has heard regarding them over the last twenty plus years, none of which he has any personal knowledge of and none of which actually involved him. Such a trial strategy will require numerous “trials within a trial”—most likely outside the presence of the jury. The likelihood that a trial of this breadth would be finished in two weeks is miniscule.

15. Additionally, if Plaintiff is allowed to amend his petition, Defendants will be required to undertake additional discovery, both written and depositions, to investigate the claim and adequately prepare a defense.

16. While this case has a long procedural history, the delays are not attributed to Defendants. In fact, this is Defendants’ first continuance request. This case was originally stayed because Plaintiff had pending administrative appeals involving his notice of termination. The case resumed after Plaintiff decided to retire and dismissed those challenges. The case was again stayed after Plaintiff filed an interlocutory appeal with the Supreme Court challenging the district court’s dismissal of his wrongful discharge claim.

17. Iowa Rule of Civil Procedure 1.911 states, “A continuance may be allowed for any cause not growing out of the fault or negligence of the movant which satisfies the court that substantial justice will be more nearly obtained.” Rulings on motions to continue are left to the discretion of the district court and are presumed correct. *State of Iowa ex rel Miller v. New Womyn, Inc.*, 679 N.W.2d 593, 595 (Iowa 2004). As noted above, the need for a continuance arises due to the complexity of this case, the unique circumstance of named Defendant Terry Branstad, the fact that named Defendant Brian London resides outside of the United States, the

number of defendants named in their individual capacities, the amount of discovery yet to be completed as well as the need to allow sufficient time to address, pre-trial, the significant legal issues raised in this case so that all involved know before any trial what, if any, claims a trial will actually encompass.

CONCLUSION

For the reasons stated herein, it is respectfully requested that the Court enter an order staying, or in the alternative, continuing these proceedings. It is further requested that should the trial be continued that a date be set for a trial scheduling conference in order to obtain a new trial date and for such other and further relief as the Court may deem appropriate.

Respectfully submitted,

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