

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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IOWA DISTRICT COURT

LINDA PIPPEN, et. al,  
Plaintiffs,

CASE NO. CL 107038  
(consolidated with  
Case Nos. CL 103856 & 103122)

v.

THE STATE OF IOWA, et. al,  
Defendants.

**PLAINTIFFS' MOTION TO AMEND  
PETITION TO ADD ADDITIONAL  
PLAINTIFFS AND CLARIFY  
DEFENDANTS**

COME NOW the Plaintiffs and for their Motion to Amend their Petition to Add Additional Plaintiffs and Clarify Defendants state as follows:

1. The lawsuit alleging a putative class action was filed on October 26, 2007.
2. Plaintiffs first amended their lawsuit prior to an Answer being filed on December 20, 2007, and the current litigation is pending under the Plaintiffs First Amended Petition. In their First Amended Petition, Plaintiffs allege they and all other similarly situated African Americans have been and continue to be denied employment opportunities as a result of a state-wide pattern or practice of discrimination and retaliation by Iowa's executive branch agencies. (*See, e.g.*, First Amended Petition at ¶¶ 20-30, 45-47, 110-11). Defendants denied these allegations in the Answer filed on February 1, 2008.
3. A scheduling order was entered on May 8, 2008. Discovery is proceeding on class certification issues, but not merits. A date for closing pleadings has not been set.
4. Plaintiffs seek to amend their First Amended Petition to add Plaintiffs and clarify Defendants. Specifically, Plaintiffs seek leave to amend their First Amended Petition to add nine

additional Plaintiffs, all of whom allege they have been victims of the ongoing pattern or practice of discrimination and retaliation by the State and its executive branch agencies. Plaintiffs also seek to formally clarify that they assert claims against each executive branch agency by specifically naming agencies identified in prior pleadings.

5. Plaintiffs propose adding additional paragraphs between current paragraphs 17 and 18 (as 17(a) through 17(i)) to identify each additional proposed Plaintiff and to provide his or her residence.

6. Plaintiffs also propose amending current paragraph 110 to add sub-paragraphs 110(o) – 110(w) to demonstrate examples of positions that the proposed additional Plaintiffs were denied and the executive branch agencies involved in those positions. In light of discovery, Plaintiffs also specifically name all executive branch agencies as Defendants.

7. A copy of Plaintiffs' proposed Second Amended Petition, which Plaintiffs request they be allowed to file, is attached hereto as Exhibit 1 with the proposed newly-added allegations in bold and italicized.

8. Plaintiffs' propose no other amendments at this time, but may seek leave to amend in the future as discovery continues.

9. Iowa Rule 1.402(4) permits amendments to pleadings by leave of court or by written consent of the adverse party. Iowa Rule 1.402(4) also states that “[I]leave to amend, including leave to conform to the proof, shall be freely given when justice so requires.” Furthermore, Iowa Rule 1.402(5) states that “[w]henver the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of filing of the original

pleading.”

10. For the reasons stated below, Plaintiffs should be permitted under the Iowa Rules to amend their First Amended Petition as requested.

**ADDING ADDITIONAL PLAINTIFFS**

11. The nine proposed additional Plaintiffs allege claims identical to the existing fourteen Plaintiffs. As explained in Plaintiffs’ prior briefing in support of their motion for consolidation, the claims arise from the same conduct, transaction, or occurrence alleged in Plaintiffs’ First Amended Petition – namely, “Defendants’ pattern and practice of intentional and unintentional discrimination on the basis of race and color, retaliation and failure to fulfill Affirmative Action duties.” (First Amended Petition ¶ 25). Plaintiffs specifically alleged that pattern and practice of discrimination was ongoing and continued through the present. (First Amended Petition ¶¶ 27, 38, 40, 41, 45, 46). The proposed additional Plaintiffs are more recent victims of the same un-remedied harm originally alleged by already-named Plaintiffs in the First Amended Petition.

12. Further, Defendants have been aware that many of these proposed additional Plaintiffs alleged claims identical to already-named Plaintiffs – either through administrative filings with the Iowa Civil Rights Commission and/or Equal Employment Opportunity Commission or because Plaintiffs’ counsel informed Defendants’ counsel that they were represented and would be joining the lawsuit.

13. Moreover, when Defendant served discovery on already-named Plaintiffs, Defendants improperly served discovery on some of these proposed additional Plaintiffs under the caption of this lawsuit, implicitly acknowledging their inclusion in the lawsuit was

appropriate.

14. Thus, this Court should grant Plaintiffs' leave to amend to add the proposed additional Plaintiffs. If the proposed additional Plaintiffs are not allowed to join this action, the proposed additional Plaintiffs will be forced to file a new action and the parties will again brief consolidation. Without consolidation, multiple judges in multiple courtrooms will be forced to address virtually identical claims and may reach inconsistent or conflicting decisions regarding the same evidence and facts. Respectfully, allowing the proposed additional Plaintiffs to join this lawsuit is the more efficient means of adjudicating the parties' claims.

#### **CLARIFYING EXISTING DEFENDANTS**

15. Additionally, the Court should allow Plaintiffs to clarify their claims against all executive branch agencies to formally name them in the caption. Plaintiffs originally named as Defendants the State of Iowa, certain specific agencies and "all other agencies similarly situated in using the hiring and promotion processes of the Department of Administrative Services" (First Amended Petition Caption). Plaintiffs pled their claims against the State and all agencies. *See* First Amended Petition ¶ 47 ("The pattern or practice of discrimination and retaliation is statewide in scope"); ¶ 48 ("The State utilizes a centralized, uniform hiring and promotion system applicable to all agencies"); *see also* Defendant's Answer to First Amended Petition (wherein Defendants "admit paragraph 48 only to the extent that the State of Iowa uses central hiring and promotion system for many Executive Branch agencies").

16. To prevent any remaining ambiguity, Plaintiffs' counsel clarified through an April 29, 2008 letter to Defendants' counsel that "Plaintiffs contend that all departments (including subdivisions or entities within each department) that use the State's centralized hiring and

promotion system provided through the Department of Administrative Services (“DAS”) are subject to the lawsuit.” See Exhibit 2 (April 29, 2008 Letter to Grant Dugdale). Plaintiffs even provided Defendants with a list of all such agencies. See Exhibit 2-A (which was Exhibit A of April 29, 2008 Letter to Grant Dugdale). Thus, Defendants have long been on notice that Plaintiffs’ First Amended Petition asserted claims against all executive branch agencies.

17. During discovery, Defendants’ witnesses confirmed that the agencies on Exhibit 2-A all use either the Affirmative Action services offered by DAS and/or the hiring and promotion services provided by DAS. See Exhibit 3 (excerpt from DAS Human Resources Enterprise Chief Operating Officer Nancy Berggren’s deposition and Exhibits 7 (PL002078) and 9 (PL000899) from her deposition). Although Plaintiffs first confirmed these facts during discovery, Defendants were obviously aware of those facts all along.

18. Thus, Defendants will not be prejudiced by the Court granting Plaintiffs’ amendment to clarify the prior allegations by formally naming all such agencies in the caption.

#### **RELATION BACK OF AMENDMENT**

19. Finally, Plaintiff’s amendment relates back to the additional date of filing, because Plaintiffs’ proposed amendment amplifies their previously filed claims and formally clarifies that they allege claims against all State agencies.

20. Defendants have been on notice that Plaintiffs allege claims against all State executive branch agencies since Plaintiffs filed their First Amended Petition.

21. Defendants also have long been aware that Plaintiffs would seek to add additional plaintiffs, as Plaintiffs explained to the Court at the parties’ first status conference.

22. Finally, Defendants knew the proposed additional Plaintiffs alleged claims

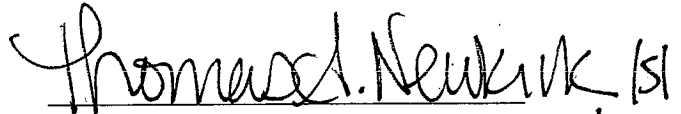
identical to the already-named Plaintiffs resulting from the alleged state-wide pattern or practice of discrimination and retaliation (i.e., the same conduct, transaction, or occurrence).

23. Thus, the Plaintiffs request that the amendments relate back to the date of original Petition (October 26, 2007).

WHEREFORE, Plaintiffs respectfully request that their Motion for Leave to Amend Petition to Add Additional Plaintiffs and Clarify Defendants be granted and respectfully requests that the Court direct the Clerk of Court to file Exhibit 1. A proposed Order is attached for the Court's convenience if the Court so chooses.

Respectfully submitted.

FIEDLER & NEWKIRK, P.L.C.

  
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PROOF OF SERVICE	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on <u>11-12</u> , 2008 by:	
<input checked="" type="checkbox"/> U.S. Mail	<input type="checkbox"/> Hand Delivery
<input type="checkbox"/> Fax	<input type="checkbox"/> Overnight
<input checked="" type="checkbox"/> Email	<input type="checkbox"/> Other
Signature: 