

In the United States Court of Federal Claims

No. 09-334C

No. 09-335C

No. 09-348C

Filed November 6, 2009
NOT FOR PUBLICATION

CAROLYN E. O'CONNOR,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

Carolyn E. O'Connor, Richmond, Virginia, *pro se*.

Armando A. Rodriguez-Feo, Trial Attorney, Kirk T. Manhardt, Assistant Director, Jeanne E. Davidson, Director, Tony West, Assistant Attorney General, United States Department of Justice, Washington, D.C., for defendant.

OPINION AND ORDER

This Opinion and Order addresses three of the ten complaints Ms. O'Connor has filed in this court, specifically those assigned docket numbers 09-334, 09-335 and 09-348. Defendant filed motions to consolidate and dismiss these three complaints in each case on July 22, 2009. For the reasons enumerated below, the motion to consolidate is **DENIED**, but the motions to dismiss are **GRANTED**.

Pro se plaintiffs are entitled to liberal construction of their pleadings. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). But this leniency does not allow the court to hear cases outside of its jurisdiction. So the *pro se* plaintiff, like all plaintiffs, must meet jurisdictional requirements before her case can be heard. *Kelley v. Sec'y, U.S. Dep't of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987); *Biddulph v. United States*, 74 Fed. Cl. 765, 767 (2006). If plaintiff fails to establish that the court possesses subject matter jurisdiction, then the court must dismiss the

complaint under Rule 12(h)(3) of the Rules of the Court of Federal Claims (“RCFC”).

For the purposes of determining subject matter jurisdiction, the Court will assume that all undisputed facts alleged in the complaints filed are true and draw all reasonable inferences in Ms. O’Connor’s favor. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). But even after doing so, Ms. O’Connor’s complaints do not state any claim that is within the power of this court to hear.

I. CASE NUMBER 09-334

Plaintiff filed a complaint in Case Number 09-334 on May 26, 2009 alleging “intentional acts and misconduct of Judge Joseph L. Tauro of the U.S. District Court, District of Massachusetts, in the handling of case number 02-11708 and the intentional acts and misconduct of Circuit Judges: Torruella, Selya and Lipez, of the U.S. Court of Appeals for the First Circuit, in the handling of the case number 03-1205.” Complaint at 1-2 (docket entry 1). These allegations refer to a case filed in the District Court for the District of Massachusetts titled *O’Connor v. Choicepoint/CP Commercial Specialists*. The case was assigned to Judge Tauro, who, on April 7, 2003, told the plaintiff she had 35 days in which to demonstrate why her complaint should not be dismissed for lack of jurisdiction. Plaintiff’s complaint asserted claims under Title VII and the Age Discrimination in Employment Act, but district courts lack jurisdiction over those cases unless and until the plaintiff has exhausted her administrative remedies, which usually means obtaining a “right to sue” letter from the Equal Employment Opportunity Commission. *Bonilla v. Muebles J.J. Alvarez, Inc.*, 194 F.3d 275, 278 (1st Cir. 1999); *Tapia-Tapia v. Potter*, 322 F.3d 742, 744 (1st Cir. 2003). Because Ms. O’Connor’s complaint did not state that she had exhausted her administrative remedies, Judge Tauro gave her an opportunity to make that showing. Order, No. 02-11708 (D. Mass. April 7, 2003). Ms. O’Connor appealed this order to the United States Court of Appeals for the First Circuit and was given an appellate docket number of 03-1811.¹ On July 31, 2003, Judges Torruella, Selya and Lipez of the First Circuit dismissed appeal 03-1811 as an improper interlocutory appeal because Judge Tauro had not yet entered final judgment in case 02-11708. Order, No. 03-1811 (1st Cir. Aug. 5, 2003). On December 15, 2003, Judge Tauro concluded that Ms. O’Connor had failed to show that she exhausted her administrative remedies and that the court therefore lacked jurisdiction. Order, No. 02-11708 (D. Mass. Dec. 15, 2003). The complaint in case number 02-11708 was thus dismissed without prejudice. *Id.*

The District Court thereafter issued an order barring plaintiff from filing any additional complaints in the District of Massachusetts without leave of court. Complaint at 6. Plaintiff then

¹ The reference to appellate case number 03-1205 thus appears to be an error, because that number belongs to a case originating in the District Court for the District of Puerto Rico to which Ms. O’Connor was not a party. Ms. O’Connor did have three appellate cases in the Court of Appeals for the First Circuit beginning with “03-12,” but in each of those cases the defendant was the Equal Employment Opportunity Commission, not Choicepoint. *O’Connor v. EEOC*, No. 03-1245; *O’Connor v. EEOC*, No. 03-1246, *O’Connor v. EEOC*, No. 03-1247. Judges Torruella, Selya and Lipez affirmed the judgment in these three cases on September 23, 2003.

“changed venue from the Massachusetts courts to the U.S. District Courts, Eastern District of Virginia, in order to refile her cases and obtain due process[. T]he Virginia court also dismissed Plaintiff’s claims/lawsuits against the Massachusetts judges for judicial misconduct, etc., refusing to let these cases go forward or, in fact, any of these refiled cases to go forward.” Complaint at 6.

Plaintiff then sued in this court, seeking to hold the United States “vicariously liable for the wrongful actions of its employees,” and alleging that the Government is “negligent and grossly negligent” in failing to supervise its employees, namely, Judges Tauro, Torruella, Selya and Lipez, along with “intentional acts” by those employees to deprive plaintiff of her rights. Plaintiff asserted violations of Section 35 of the Judiciary Act of 1789, deprivation of “life, liberty and property without due process” in violation of the Fifth Amendment to the Constitution, and deprivation of the right to jury trial under the Seventh Amendment. Plaintiff maintains that she “meets the criteria of a claim against the United States/the Federal government under The Tucker Act, as Plaintiff’s claim is founded on violation of Constitution, Federal statute and Federal regulation.” Complaint at 10.

Plaintiff included a “motion for specific performance” that requested that the court “dismiss said judges and rescind their licenses to practice law.” *Id.* at 10. A second “motion for specific performance she sought would direct the “executive office and executive power to oversee payment of monies due plaintiff.” *Id.* at 11. Finally, plaintiff requested \$22,000,000 in compensatory damages. *Id.* After defendant filed its motion to dismiss case number 09-334 and consolidate it with cases 09-335 and 09-348, plaintiff filed an opposition to the motion to consolidate (docket entry 5, Aug. 6, 2009), and an amended complaint (docket entry 6, Aug. 14, 2009).² The amended complaint largely reiterated the claims in the first complaint, but added references to the Universal Declaration of Human Rights and allegations that the Department of Justice was “strictly liable” for plaintiff’s losses and had acted “in bad faith and intentionally seeks to deprive [plaintiff of] the monies owed.” Am. Complaint at 2-3. She also sought “her Amendment VII rights in the form of Jury trial” and amended her requested compensatory damages to \$15,600,000. *Id.* The underlying allegations of wrongdoing, however, remained the same. Defendant filed a renewed motion to consolidate and dismiss (docket entry 8, Aug. 19, 2009), to which Ms. O’Connor did not respond.

Ms. O’Connor states that she understands “that the misconduct of lower court judges are not addressed in this Court on a disciplinary basis.” Complaint at 2. Plaintiff is correct—but such misconduct is precisely what she alleges in Case Number 09-334 (as well as cases 09-335 and 09-348). She wishes to have the judges who dismissed her case disciplined, which is exactly what a judicial misconduct complaint is for. Tacking on an allegation that the United States is “vicariously liable” for that misconduct does not change the fundamental fact that the wrong alleged is her belief that the judges mishandled her cases and her desire for their employer to take disciplinary action against them. Judicial misconduct complaints are not properly brought in this

² Defendant filed a reply in support of its motion to consolidate on August 17, 2009 (docket entry 7).

court; they must be brought in the court of appeals for the circuit in which the alleged judicial misconduct occurred. Further, to assert a proper claim under the Tucker Act, the plaintiff must both allege a violation of a constitutional provision or statute and point to substantive law creating a right to money damages for that violation. *Mitchell v. United States*, 463 U.S. 206, 216-17 (1983); *United States v. Testan*, 424 U.S. 392, 398 (1976); *see also Fisher v. United States*, 402 F.3d 1167, 1173 (Fed. Cir. 2005) (noting that “absence of a money-mandating source [is] fatal to the court’s jurisdiction”). Because the statute regarding judicial misconduct does not mandate the payment of money for its violation, no such case may be brought in this court. *See* 28 U.S.C. §§ 351-355 (2006).

The fact that Ms. O’Connor also requests damages does not assist her. Judges—and their employers—are immune from suits for damages arising out of disagreements with the judges’ decisions. *Pierson v. Ray*, 386 U.S. 547, 553-54 (1967) (“Few doctrines [are] more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction.”); *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991) (“[J]udicial immunity is not overcome by allegations of bad faith or malice”); *Falade v. United States*, 237 Fed. App’x 723 (3d Cir. June 6, 2007) (plaintiff may not sue United States for wrongs allegedly committed by judges). To the extent that Ms. O’Connor wishes to file a disciplinary action against Judges Tauro, Torruella, Selya and Lipez, such a complaint must be filed in the court of appeals for the circuit in which the misconduct occurred. 28 U.S.C. § 351.

If Ms. O’Connor is asking this Court to re-examine the facts underlying the dismissal of Massachusetts case no. 02-11708 and the associated appeal, it cannot do so. This Court cannot review the decisions of federal district courts or courts of appeals. *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994) (“[T]he Court of Federal Claims does not have jurisdiction to review decisions of district courts . . . relating to proceedings before those courts.”); *Matthews v. United States*, 72 Fed. Cl. 274, 282 (2006) (noting that this court has no jurisdiction to consider whether a district court “abused its discretion in failing to consider the merits of plaintiff’s claims”); *Naylor v. United States*, 53 Fed. Cl. 172, 175 (2002) (“[T]his court has no jurisdiction to review decisions of United States district courts or courts of appeals.”).

Ms. O’Connor’s allegations of “intentional acts,” “bad faith” and gross negligence are tort claims that this Court likewise lacks the power to hear. *Dachman v. United States*, 73 Fed. Cl. 508, 518 (2006) (“It is well and long established that the Court of Federal Claims lacks jurisdiction over cases sounding in tort.”).³ Even if the Court possessed jurisdiction over the complaint in case 09-334, it could not grant plaintiff’s requests for “specific performance.” “Except in strictly limited circumstances, which are inapplicable here,” this Court does not possess authority to order “equitable relief such as specific performance, a declaratory judgment, or an injunction.” *Smalls v. United States*, 87 Fed. Cl. 300, 307 (2009).

³ A tort is a “civil wrong, other than breach of contract, for which a remedy may be obtained.” BLACK’S LAW DICTIONARY 1526 (8th ed. 2004).

For all these reasons, the Court concludes that it lacks jurisdiction over the allegations contained in the complaint and amended complaint in Case Number 09-334, and defendant's motion to dismiss is **GRANTED**. The Clerk is directed to dismiss the complaint without prejudice pursuant to RCFC 12(h)(3).

II. CASE NUMBER 09-335

On the same date that she filed Case Number 09-334, plaintiff also filed a complaint in Case Number 09-335. Like 09-334, this new case alleged "intentional acts and misconduct" of judges, although the underlying case and one of the judges are different. Complaint at 1 (docket entry 1). Case number 09-335 arises out of a case previously filed in the District Court for the District of Massachusetts and assigned, in that court, number 02-11709.

In Massachusetts case 02-11709, plaintiff accused the Equal Employment Opportunity Commission ("EEOC") of "negligence, gross negligence, bad faith, [and] malicious and intentional acts" in its handling of a complaint she filed with the EEOC against Choicepoint. *O'Connor v. EEOC*, No. 02-11709 (D. Mass. Dec. 18, 2002). Plaintiff sought to proceed *in forma pauperis*, and thus Judge George O'Toole of the Massachusetts district court reviewed her complaint under 28 U.S.C. § 1915, which authorizes federal courts to dismiss actions filed without prepayment of fees when they "lack[] an arguable basis either in law or fact." *Id.* After observing that "the right to sue one's former employer *de novo* is the sole remedy for the kind of EEOC malfeasance alleged by plaintiff," and that plaintiff did not properly allege torts against the Government within the meaning of the Federal Tort Claims Act, Judge O'Toole dismissed her complaint for failure to state a claim. *Id.* Plaintiff appealed that decision to the United States Court of Appeals for the First Circuit, and Judges Torruella, Selya and Lipez affirmed Judge O'Toole's ruling. *O'Connor v. EEOC*, No. 03-1245 (1st Cir. Sept. 23, 2003).

As in 09-334, plaintiff's complaint in 09-335 further alleges that after dismissal of her action, the District of Massachusetts barred her from filing complaints. She therefore "changed venue" to the Eastern District of Virginia, and "the Virginia court also dismissed Plaintiff's claims/lawsuits against Massachusetts judges for judicial misconduct." Complaint at 8-9. Plaintiff also asserts that the United States is grossly negligent in failing to supervise its employees and adequately discipline judges, and that the United States is vicariously liable for the "wrongful actions of its employees." Complaint at 7, 9. She contends that she is "personally injured and economically damaged from the failure to honor Plaintiff's right to pursue her civil case in a court of law as sanctioned under Section 35 of the Judiciary Act of 1789." Complaint at 10. She maintains that her Fifth Amendment rights have been violated due to deprivation of "life, liberty and property without due process," she has been deprived of the right to trial by jury in violation of the Seventh Amendment, and that she "meets the criteria of a claim against the United States . . . under the Tucker Act, as plaintiff's claim is founded on violation of Constitution, Federal statute and Federal regulation." Complaint at 10-11. Her original complaint sought (1) an order directing the Government to provide her a complete copy of her EEOC case file; (2) an order directing the "executive office" "to dismiss said judges and rescind their licenses to practice

law”; (3) an order directing the “executive office” “to cease and dismiss the investigative operations/duties of the EEOC”; (4) a trial; (5) compensatory damages of \$500,000; and (6) punitive damages of \$3,000,000.

On July 22, 2009, defendant moved to dismiss case number 09-335 and consolidate it with cases 09-334 and 09-348 (docket entry 4). On August 6, plaintiff filed an opposition to the motion to consolidate that included a request for jury trial, (docket entry 5), and on August 13, she filed an amended complaint (docket entry 6). The amended complaint largely reiterates the claims of the original complaint, but adds references to the Universal Declaration of Human Rights and allegations that the Department of Justice acted in bad faith and is strictly liable. *Id.* It also includes Judge Walker of the Eastern District of Virginia among those judges whom she seeks to have disciplined and dismissed. *Id.* at 4. Her requested monetary damages also differ. *Id.* at 8. On August 17, defendant filed a reply in support of its motion to consolidate, and on August 19, defendant submitted a renewed motion to consolidate and dismiss (docket entries 7 & 8). Ms. O’Connor did not further respond.

Case Number 09-335 suffers from the same infirmities as case 09-334—namely, it is a complaint of judicial misconduct against judges of other federal courts and it is not within this Court’s power to hear. For the reasons enumerated above, the Court lacks the power to enter orders for “specific performance” requiring the Executive Branch to fire judges or disband the EEOC. The Court must dismiss case 09-335 for the same reasons that it dismissed case 09-334.

Even if these were not sufficient grounds to dismiss plaintiff’s complaint (which they are), the legal bases on which plaintiff rests are insufficient. Neither the Seventh Amendment,⁴ the Due Process Clause of the Fifth Amendment,⁵ the Universal Declaration of Human Rights,⁶ nor Section 35 of the Judiciary Act of 1789,⁷ can fairly be read to mandate the payment of money if

⁴ *Fullard v. United States*, 77 Fed. Cl. 226, 230 (2007). Ms. O’Connor requests a jury trial, but there are no jury trials in the Court of Federal Claims—all cases are decided by the judge as the trier of fact. *Persyn v. United States*, 34 Fed. Cl. 187, 194 (1995).

⁵ *LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995); *Crocker v. United States*, 125 F.3d 1475, 1476 (Fed. Cir. 1997). Plaintiff does not allege any facts even minimally suggesting a taking without just compensation in violation of the Takings Clause of the Fifth Amendment.

⁶ *Gimbernat v. United States*, 84 Fed. Cl. 350, 354 (2008) (“The [Universal Declaration of Human Rights] does not contain any substantive rights enforceable against the federal government for money damages, as required under the Tucker Act, and therefore such claims cannot be heard in this court.”).

⁷ Section 35 of the Judiciary Act of 1789 reads, in pertinent part, that “in all courts of the United States, the parties may plead and manage their own causes personally or by assistance of

they are violated. Therefore, “[e]ven if [these] laws were violated, they are not laws that promise to pay plaintiff money, and thus are not within this Court’s power to address.” *Smith v. United States*, No. 04-1685C, 2005 WL 6114553, at *2 (Fed. Cl. May 31, 2005). The dismissal of both cases 09-334 and 09-335 is further supported by the evident lack of legal foundation for this Court’s jurisdiction.

For all these reasons, the Court concludes that it lacks jurisdiction over the allegations contained in the complaint and amended complaint in Case Number 09-335, and defendant’s motion to dismiss is **GRANTED**. The Clerk is directed to dismiss the complaint without prejudice pursuant to RCFC 12(h)(3).

III. CASE NUMBER 09-348

The allegations in Case Number 09-348, filed on June 1, 2009, overlap substantially with those in plaintiff’s complaint in Case Number 09-116, which this Court dismissed on August 7, 2009. *O’Connor v. United States*, No. 09-116 (Fed. Cl. Aug. 7, 2009). As in case 09-116, the complaint in case 09-348 involves Judge Robert Payne’s handling of case number 06-339 in the Eastern District of Virginia. Complaint at 1 (docket entry 1, June 1, 2009). And Virginia case 06-339 was a re-filing of a case originally filed in Massachusetts Superior Court. *Id.* Judge Robert Payne of the Eastern District of Virginia dismissed the re-filed lawsuit, due in part to a previous order of that court banning Ms. O’Connor from filing further lawsuits. *O’Connor v. Commonwealth of Mass.*, No. 06-339 (E.D. Va. June 5, 2006).

The difference between the two cases filed in this court, Case Number 09-348 and Case Number 09-116, appears to be that while Case 09-116 principally discussed one of the several defendants in the Massachusetts lawsuit, Mark Livermore, Case 09-348 focuses on Massachusetts defendants Robert A. Cornetta and Patrick Riley (both state court judges in Massachusetts), whom plaintiff refers to as “Tory Oppressors and Redcoat Sympathizers.” Complaint at 2-3.

In her complaint in Case Number 09-348, plaintiff asserted that the defendants in the Massachusetts lawsuit defaulted, but the Superior Court did not rule in favor of plaintiff. *Id.* Plaintiff concluded that it was “open and obvious . . . that Plaintiff would not have due process in Massachusetts courts” and she therefore “changed her venue to the Commonwealth of Virginia, U.S. District Court, Eastern District of Virginia.” *Id.* at 2-3. Plaintiff contends that the judge in the Eastern District of Virginia, Robert Payne, “denied Plaintiff due process on all Plaintiff’s re-filed cases, and issued an **ORDER** against Plaintiff, barring Plaintiff from filing any further lawsuits in this court.” *Id.* at 3.

such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein.” Section 35 of the Judiciary Act of 1789, 1 Stat. 73, 92 (1789). As subsequently amended, it is now 28 U.S.C. § 1654, which reads: “In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.”

As in her other lawsuits, plaintiff contends that the United States is grossly negligent in failing to uphold the rights of *pro se* litigants and failing to “adequately discipline judges.” *Id.* at 4. She likewise maintains that the Department of Justice is grossly negligent in failing to pay her monies she believes are due. *Id.* at 13. This complaint adds allegations that the Government is grossly negligent in failing to monitor the courts of the Commonwealth of Massachusetts and that the Government “sets a wrongful example” by “sanctioning . . . abuse in the State/Commonwealth courts.” *Id.* She maintains that the United States is vicariously liable for the wrongful actions of Judge Payne and other employees who through their intentional acts “denied Plaintiff equality under the law.” *Id.* at 9-10. She also seeks to hold liable “the legal professionals, who concocted this sovereign immunity defense” which is, she states, “designed as an answer from a tyrant and that has no validity in a democracy.” *Id.* at 10. She specifically names Barack Obama and former Attorney General Gonzalez as individuals who were grossly negligent in failing to “uphold the integrity of the Constitution of the United States.” *Id.* at 5, 14.

Plaintiff again asserts that the legal bases for her complaint are Section 35 of the Judiciary Act of 1789, the Due Process Clause of the Fifth Amendment and the Tucker Act. *Id.* at 11. The complaint seeks (1) an order “to dismiss Robert E. Payne from position of judge and rescind Robert E. Payne’s license to practice law,” *id.* at 12; (2) an order to the Government to oversee “due payment of said default” monies to her, *id.* at 15; (3) an order to “oversee removal of unconstitutional laws, regulations, orders, statutes, procedures from [the] body of laws governing the Commonwealth of Massachusetts,” *id.* at 15-16; and (4) compensatory damages in the amount of \$8,600,000 plus \$100,000,000 per year since 2006. *Id.* at 17.

As in her other lawsuits, plaintiff maintains that the orders of courts in Massachusetts and Virginia barring her from filing additional complaints are “a sly game or bad faith dealings against Plaintiff,” that are “designed to ascertain that any lawsuits filed by the Plaintiff are targeted and Plaintiff is subject to special unequal treatment under the law.” *Id.* at 7.

On July 22, 2009, defendant filed a motion to consolidate Case Number 09-348 with cases 09-334 and 09-335, and to dismiss all three (docket entry 4). As in the other cases, plaintiff opposed the motion to consolidate and requested separate jury trials (docket entry 5, August 6, 2009). In this case, plaintiff also filed a “motion to Rescind the Department of Justice Handling of Case,” seeking to disqualify the Department of Justice from serving as the attorney for the United States on the grounds of conflict of interest (docket entry 6, Aug. 6, 2009). On August 14, 2009, she filed an amended complaint (docket entry 7). This amended complaint added references to the Universal Declaration of Human Rights, *id.* at 2, and allegations regarding the bad faith dealings, intentional acts, and strict liability of the Department of Justice, *id.* at 3. It also requested a jury trial pursuant to the Seventh Amendment, *id.* at 9, and altered the requested damages. *Id.* Defendant filed a reply to the opposition to the motion for consolidation and an opposition to the “motion to rescind the Department of Justice Handling of Case.” (docket entry 8, Aug. 17, 2009). On August 19, the Government filed a renewed motion to dismiss and consolidate these three cases (docket entry 9). Ms. O’Connor did not respond to this renewed motion.

As is explained above, this Court does not supervise the judges of other courts (federal or state) and does not hear complaints of judicial misconduct or claims for damages arising out of disagreement with a judge's handling of a case. This Court does not have jurisdiction to hear tort claims for "negligence," "gross negligence" or intentional harm. Nor can this Court hear claims involving violations of statutes that do not mandate the payment of money for their violation. None of the legal provisions Ms. O'Connor cites in 09-348 are "money mandating" and none provide a basis for jurisdiction in this Court. This Court does not possess general injunctive power, and certainly cannot globally enjoin the Commonwealth of Massachusetts to rewrite its statutory and regulatory law. For the same reasons that the Court lacks jurisdiction over cases 09-334 and 09-335, it also lacks jurisdiction over Case Number 09-348.

The Court recognizes plaintiff's continuing objection to the requirement for pre-filing review of new complaints imposed upon her by this court and others. As the Court observed in its order dismissing Case Number 09-116, however, "[a]lthough plaintiff objects to the requirement imposed in these other courts that she obtain permission before filing complaints, the Court finds it necessary to prescribe a similar bar here because plaintiff refuses to recognize that she may not re-litigate issues or claims, and files (or re-files) complaints that lack any basis in law and/or are outside the jurisdiction of the court. Courts may prevent such prolific litigants from filing documents without court approval." *O'Connor v. United States*, No. 09-116 (Fed. Cl. Aug. 7, 2009).

Because the court does not have the power to hear any of the claims Ms. O'Connor asserts, the complaint in 09-348 is therefore **DISMISSED** without prejudice pursuant to RCFC 12(h)(3). Ms. O'Connor's request to "rescind" the Department of Justice is **DENIED**. The United States Code mandates that the Department of Justice act as the attorney for the United States in litigation to which the United States Government is a party. 28 U.S.C. § 516. Removing the Department of Justice as counsel from a case involving the United States would violate the law as set forth by Congress.

CONCLUSION

Because the Court lacks jurisdiction over the allegations of the complaints in Case Numbers 09-334, 09-335 and 09-348, the Court has dismissed all three complaints. Because Ms. O'Connor objects to the consolidation of the cases, however, the Court has **DENIED** defendant's motion to consolidate.

When the court lacks subject matter jurisdiction over a case, the court may transfer the complaint to a more appropriate court if the transfer is "in the interest of justice." 28 U.S.C. § 1631. Each of these cases has, however, been previously litigated and judgment entered by a court with proper jurisdiction. Once a case has been decided, it cannot be re-litigated. Because other courts have issued judgments in these cases and the time for appeals from those judgments has expired, the cases cannot be brought again in this court or in any other court. *Allen v. McCurry*, 449 U.S. 90, 94 (1980) ("Under *res judicata*, a final judgment on the merits of an action

precludes the parties or their privies from relitigating issues that were or could have been raised in that action.”). A transfer of these cases would be futile, and transfer will therefore be **DENIED**.

The Clerk is directed to enter judgment in each of these three cases in accord with this Opinion and Order. Plaintiff may appeal the Court’s judgments to the Court of Appeals for the Federal Circuit within sixty (60) days of the date of entry of judgment. Failure to file a timely notice of appeal will waive the right to an appeal, and the Court’s order will be final.

IT IS SO ORDERED.

GEORGE W. MILLER
Judge