APPENDIX A

District of Columbia
Court of Appeals

No. 19-CV-567

MARGIE E. ROBERTSON,

Appellant,

v.

CAB5617-18

DISTRICT OF COLUMBIA, *et al.*,

Appellees.

On Appeal from the Superior Court of the District of Columbia
Civil Division

BEFORE: Glickman, Thompson,* and Deahl, Associate Judges.

JUDGMENT

This case was submitted to the court on the transcript of record and the briefs filed, and without presentation of oral argument. On consideration whereof, and for the reasons set forth in the opinion filed this date, it is now hereby

ORDERED and ADJUDGED that the judgment of the Superior Court is affirmed.

For the Court:

Julio A. Castillo

JULIO A. CASTILLO
Clerk of the Court

Dated: February 17, 2022.
Opinion by Associate Judge Thompson.

* Judge Thompson was an Associate Judge of the court at the time of submission. Although her term expired on September 4, 2021, she will continue to serve as an Associate Judge until her successor is appointed and qualifies. *See* D.C. Code § 11-1502 (2012 Repl.). She was appointed on October 4, 2021, to perform judicial duties as a Senior Judge. *See* D.C. Code § 11-1504(b)(3) (2012 Repl.). She will begin her service as a Senior Judge on a date to be determined after her successor is appointed and qualifies.

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 19-CV-567

MARGIE E. ROBERTSON, APPELLANT,

v.

DISTRICT OF COLUMBIA, *et al.*, APPELLEES.

Appeal from the Superior Court
of the District of Columbia
(CAB-005617-18)

(Hon. John M. Campbell, Trial Judge)

(Submitted September 24, 2020 Decided February 17, 2022)

Margie E. Robertson, *pro se.*

Karl A. Racine, Attorney General for the District of Columbia, *Loren L. AliKhan*, Solicitor General, *Carl J. Schifferle*, Acting Deputy Solicitor General at the time of submission, and *Jacqueline R. Bechara*, Assistant Attorney General at the time of submission, were on the brief for appellees.

Before GLICKMAN, THOMPSON*, and DEAHL, *Associate Judges.*

---

* Judge Thompson was an Associate Judge of the court at the time of submission. Although her term expired on September 4, 2021, she will continue to serve as an Associate Judge until her successor is appointed and qualifies. *See* D.C. Code § 11-1502 (2012 Repl.). She was appointed on October 4, 2021, to perform judicial duties as a Senior Judge. *See* D.C. Code § 11-1504(b)(3) (2012 Repl.). She will begin her service as a Senior Judge on a date to be determined after her successor is appointed and qualifies.

(continued...)

THOMPSON, *Associate Judge*: In July 2017, while she was a probationary employee of the District of Columbia Courts (the "D.C. Courts"), plaintiff/appellant Margie E. Robertson was terminated from her position as a supervisor in the Superior Court's Warrants and Special Proceedings Division. She responded by filing suit against defendants/appellees the District of Columbia, the D.C. Courts, and D.C. Courts' employees Daniel Cipullo, Yvonne Martinez-Vega, Belinda Carr, Alicia Shepard, Anne Wicks, James McGinley, and Tiffany Adams-Moore. Her Amended Complaint alleged *inter alia* (1) that she was subject to discrimination, retaliation, and, ultimately, termination based on her race (African-American), gender, age (60+), and dark skin, all in violation of the District of Columbia Human Rights Act of 1977 (the "DCHRA")[1]; (2) that her termination violated Title VII of the Civil Rights Act of 1964 ("Title VII")[2]; (3) that the defendants defamed her and inflicted emotional distress through statements about her they made to potential employers and former coworkers; (4) that she was wrongfully terminated in violation of public policy; and (5) that defendants conspired to terminate her employment. In this appeal, she contends that the

(...continued)

[1] *See* D.C Code §§ 2-1401.01 to 2-1431.08 (2016 Repl. & 2021 Supp.).

[2] *See* 42 U.S.C §§ 2000e to 2000e-17.

Superior Court erred in granting defendants' motion to dismiss.[3] For the reasons that follow, we affirm the judgment of the Superior Court, including its determination that the DCHRA affords appellant no remedy for the claims she has raised.

I.

Appellant alleges that beginning in March 2017, defendant Carr, the Superior Court's Branch Chief of Special Proceedings, began to pressure appellant to intimidate and bully her own staff, and that when appellant refused, Carr began to bully her. Appellant, who had been employed by the D.C. Courts for only seven months at the time, responded by filing an internal Equal Employment Opportunity ("EEO") complaint with defendant Adams-Moore, the D.C. Courts EEO Officer. Appellant amended her internal complaint on July 24, 2017, to add allegations against defendant Cipullo, then-Director of the Superior Court Criminal Division; defendant Martinez-Vega, Deputy Director of the Criminal Division, and defendant Shepard, Branch Chief. Three days later, appellant received an email

[3] The Amended Complaint also alleged a violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621 to 634 (the "ADEA") and asserted a breach of contract claim, but appellant has not assigned as error the dismissal of those claims.

from defendant Cipullo transmitting a letter informing her that she was terminated. The termination notice stated that appellant had failed to demonstrate satisfactory performance during her probationary period. Thereafter, appellant filed complaints with the federal Equal Employment Opportunity Commission (the "EEOC") and with the District of Columbia Office of Human Rights ("OHR"). By letter dated October 12, 2017, she received from the EEOC a notice dismissing her complaint and notifying her of her right to file suit under the statutes enforced by the EEOC (including Title VII and the ADEA). OHR dismissed her complaint for lack of jurisdiction on March 20, 2018. Appellant filed her lawsuit on August 7, 2018.[4]

Ruling on defendants' motion to dismiss, the Superior Court determined that the Amended Complaint failed to state a claim upon which relief could be granted. As noted above, appellant challenges all aspects of the court's ruling except for its dismissal of her ADEA and breach of contract claims. Below, we address each portion of the Superior Court's rationale for dismissal. Our review of the Superior

[4] In her reply brief, appellant asserts that her Amended Complaint was primarily about retaliation, and she emphasizes the "temporal proximity" between her protected activity (i.e., her having expanded the scope of her internal EEO complaint) and her termination, as well as the absence of any "legitimate mentions of performance issues" prior to her filing (and thereafter amending) her internal complaint.

Court's ruling granting defendants' motion to dismiss is de novo. *Grimes v. District of Columbia*, 89 A.3d 107, 112 (D.C. 2014).

II.

A.

In dismissing appellant's DCHRA discrimination and retaliation claims, the Superior Court found that it is "established law" that the DCHRA is inapplicable to employees of the D.C. Courts. The court relied on *Mapp v. District of Columbia*, 993 F. Supp. 2d 26, 28 (D.D.C. 2014) (holding that the broad power the DCHRA gives District of Columbia executive agencies to remedy discrimination in all aspects of employment "fatally conflicts" with the 1970 District of Columbia Court Reorganization Act (the "Court Reorganization Act"[5]) and the 1973 District of Columbia Home Rule Act (the "Home Rule Act"[6])); *see also Cornish v. District of Columbia*, 67 F. Supp. 3d 345, 366 (D.D.C. 2014) (agreeing that "[t]he D.C. City

[5] Pub. L. No. 91-358, Title I, 84 Stat. 473, codified at D.C. Code § 11-101 et seq. (2012 Repl.).

[6] Pub. L. 93-198, 87 Stat. 774, codified at D.C. Code § 1-201.01 et seq. (2016 Repl.).

Council may not regulate matters covered by the Reorganization Act, which expressly reserves management of personnel policies to the [D.C. Courts] Joint Committee [on Judicial Administration,]" quoting *Mapp*, 993 F. Supp. 2d at 28 (internal quotation marks omitted)).[7]

This court has not previously addressed whether the DCHRA applies to the D.C. Courts. Considering that issue for the first time in this case, we hold that it does not, i.e., that the DCHRA does not provide an employment-discrimination remedy for D.C. Courts employees.

As the courts did in *Mapp* and *Cornish*, we begin our analysis with the language of the Court Reorganization Act and the Home Rule Act. The Court Reorganization Act established the District of Columbia Court of Appeals and the Superior Court of the District of Columbia as components of "a wholly separate court system designed primarily to concern itself with local law and to serve as a

[7] Mapp was a former probation officer for the Superior Court who alleged multiple counts of employment discrimination in violation of the DCHRA. *Mapp*, 993 F. Supp. 2d at 27. Cornish asserted causes of action for hostile work environment and disparate treatment based on personal appearance in violation of the DCHRA, based on allegations about her treatment during her tenure as a program specialist in the Superior Court's Paternity and Child Support Branch. *Cornish*, 67 F. Supp. 3d at 348-49, 364.

local court system for a large metropolitan area." *Palmore v. United States*, 411 U.S. 389, 408 (1973). The Court Reorganization Act also established the Joint Committee on Judicial Administration (the "Joint Committee"), conferring on it "responsibility within the District of Columbia court system for . . . [g]eneral personnel policies, including those for recruitment, removal, compensation, and training" and for "other policies and practices of the District of Columbia court system." D.C. Code § 11-1701(b)(1), (9). The Reorganization Act further specified that "[a]ppointments and removals of court personnel shall not be subject to the laws, rules, and limitations applicable to District of Columbia employees." D.C. Code § 11-1725(b). As we have previously observed, "[t]hese provisions, among others, manifest Congress's overall intent to vest 'final authority' over the operations of the D.C. Courts in the Chief Judges and the Joint Committee." *Martin v. District of Columbia Courts*, 753 A.2d 987, 992 (D.C. 2000).

In enacting the Home Rule Act, Congress mandated that the District of Columbia court system "shall continue as provided under the . . . Court Reorganization Act," "subject to . . . [D.C. Code] § 1-206.02(a)(4)."[8] D.C. Code § 1-207.18(a). Section 1-206.02(a)(4) states that the Council of the District of Columbia (the "Council") "shall have no authority to . . . [e]nact any act,

[8] Section 1-206.02 is entitled "Limitations on the Council."

resolution, or rule with respect to any provision of Title 11 (relating to organization and jurisdiction of the District of Columbia courts)."

The *Mapp* court relied on the foregoing provisions to conclude that, under the "plain and unambiguous" statutory language, the Council "may not [including through the DCHRA] regulate matters covered by the Reorganization Act, which expressly reserves management of [D.C. Courts] personnel policies to the Joint Committee[.]" 993 F. Supp. 2d at 28. The court reasoned that a holding that the DCHRA applies to the D.C. Courts "would permit regulation of court personnel by the Office and Commission on Human Rights" through their broad power under D.C. Code § 2-1411.03 "to receive, review, investigate, and mediate employment discrimination claims" and "to remedy discrimination in all aspects of employment" in the District, and would "fatally conflict[]" with the Reorganization and Home Rule Acts. *Id.*[9]

---

[9] The *Mapp* court specifically rejected the argument that § 1-206.02(a)(4) merely "limits the prohibition on [C]ouncil action to regulations regarding organization and jurisdiction" of the D.C. Courts, *id.* at 29, reasoning that the argument "is defeated by the absence of any limiting language in the [Home Rule] statute," *id.* at 28. The court acknowledged that the prohibition in § 1-206.02(a)(4) refers in a parenthetical to Title 11 as "relating to organization and jurisdiction of the District of Columbia courts[,]" but cited the holding of other courts that "'relating to' parentheticals are 'descriptive and not limiting.'" *Id.* at 29. We express no view as to whether the *Mapp* court's analysis on this point is correct.

We have no difficulty agreeing with the *Mapp* court that because the DCHRA gives the Executive Branch "broad power [under the DCHRA] to remedy discrimination," *Mapp*, 993 F. Supp. 2d at 28, permitting D.C. Courts employees to seek remedies for alleged employment-related discrimination through administrative complaints filed with OHR would be inconsistent with the Joint Committee's plenary power with respect to court-system personnel policies and practices.[10]

---

[10] And indeed neither the DCHRA nor OHR's operating procedures make any provision for an administrative complaint process or remedy with respect to any personnel practices by the D.C. Courts. The statute provides for the Mayor to make "[t]he final administrative determination" in matters involving administrative complaints alleging violations of the DCHRA by "District of Columbia government agencies, officials and employees." D.C. Code § 2-1403.03(a). The Commission on Human Rights — which the OHR website describes as "an agency within [OHR] that adjudicates private sector discrimination complaints brought under the [DCHRA]" — may order private-sector respondents to take "affirmative action" to remedy unlawful discriminatory practices, "including but not limited to" hiring, reinstating, or upgrading an employee who has been the victim of discrimination. D.C. Code § 2-1403.03(a)(1)(A). By contrast, in dismissing appellant's administrative complaint, OHR explained that it "does not have jurisdiction to accept or investigate complaints of discrimination against [the D.C. Superior Court]". Its operating procedures state the same. See https://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/OHR%20Standard%20Operating%20Procedures_October2017_FINAL.pdf; https://perma.cc/E435-R3FW at 10 (last visited January 14, 2022).

This court has recognized the Council's "inten[t] to allow the courts of this jurisdiction to grant broader relief under the DCHRA than the OHR [i]s authorized to grant" in resolving administrative complaints. *Arthur Young & Co. v. Sutherland*, 631 A.2d 354, 371 (D.C. 1993). Thus, the same issue presented by OHR's broad power to remediate DCHRA violations arises with respect to the broad remedial powers of courts in this jurisdiction, which likewise could be employed in a way that encroaches on the Joint Committee's responsibility to determine personnel policies and practices for the D.C. Courts. However, given the "strong presumption . . . in favor of judicial reviewability" and our recognition that "the general equitable jurisdiction of the Superior Court extends to challenges by public employees of official decisions affecting their tenure," *Martin*, 753 A.2d at 991 (internal quotation marks omitted), we cannot easily conclude that an employee of the D.C. Courts may not sue the D.C. Courts to seek redress for what the employee alleges are the D.C. Courts' violations of the DCHRA.[11]

[11] It also is not clear why a D.C. Courts employee's suit against the D.C. Courts alleging breach of contract, wrongful termination, or violation of a District of Columbia law enacted for the protection of employees — any of which presumably could implicate the Joint Committee's plenary authority over D.C. Courts' personnel policies and practices — should be allowed, while an employment-discrimination suit based on alleged violations of the DCHRA would be inconsistent with the Joint Committee's authority.

The *Mapp* court did not grapple with the issue of whether a judicial remedy would be inconsistent with the Court Reorganization Act's reservation of "regulation of court personnel for the Joint Committee," but concluded instead that "[a]ny legislation concerning [D.C. Courts] personnel policies exceeds th[e] boundaries [drawn by Congress]." 993 F. Supp. 2d at 29.[12] In other words, it reasoned that the DCHRA simply "is inapplicable to employees of the D.C. Superior Court and the D.C. Court of Appeals." *Id.* at 28 ("The D.C. City Council may not regulate matters covered by the Reorganization Act, which expressly reserves management of personnel policies to the Joint Committee and explicitly exempts appointments and removals of court personnel from regulations generally applicable to District employees."). As the language of the foregoing parenthetical shows, in reaching that conclusion, the *Mapp* court relied in part on the Court Reorganization Act language codified at D.C. Code § 11-1725(b) that exempts "[a]ppointments and removals of court personnel" from "laws, rules, and limitations applicable to District of Columbia employees." *See* 993 F. Supp. 2d at 28 (paraphrasing § 11-1725(b) and adding the modifier "generally" before "applicable").

---

[12] *See also Cornish*, 67 F. Supp. 3d at 366; *Council of the District of Columbia v. Gray*, 42 F. Supp. 3d 134, 140 n.2 (D.D.C. 2014) (interpreting D.C Code § 1-206.02(a)(4) as prohibiting the Council from regulating the D.C. Courts), *vacated as moot*, 2015 U.S. App. LEXIS 8881 (D.C. Cir. 2015).

We can agree that the DCHRA *is* a law applicable (or generally applicable) to District of Columbia employees. But so, for example, is Title VII; yet, as the *Mapp* court acknowledged, Title VII is applicable to D.C. Courts employees. *Id.* at 29. This leads us to conclude that insofar as the *Mapp* court's reasoning that the DCHRA "is inapplicable to employees of the [D.C. Courts]" was premised on the exemption expressed in § 11-1725(b),[13] the *Mapp* court's reasoning is not persuasive.

However, for purposes of our analysis here, what *is* instructive about the Court Reorganization Act provision codified at § 11-1725(b) is that it mandates that D.C. Courts employees are not generally to be considered "District of Columbia employees" (even though the D.C. Courts is the District's "local court

[13] In *Martin*, we observed that a "noteworthy" result of the exemption expressed in § 11-1725(b) is that the Comprehensive Merit Personnel Act (the "CMPA"), which establishes personnel policies for most employees of the District of Columbia government, "designedly does not apply to employees of the D.C. Courts." 753 A.2d at 993. At least arguably, the (explicitly mandated and anticipated) CMPA or its predecessor merit personnel statute and the attendant regulations were the law and rules Congress had in mind in enacting the exemption expressed in § 11-1725(b). When Congress adopted the Court Reorganization Act, it certainly did not have in mind the later-enacted (and Council-enacted) DCHRA.

system"[14]). What persuades us that D.C. Courts employees have no employment-discrimination remedy under the DCHRA is the Council's understanding, reflected in statements it made when enacting the 2002 amendments to the DCHRA, that in the area of employment, the universe of individuals to whom the DCHRA applies includes, on the one hand, "District of Columbia employees," and on the other hand, their "private sector counterparts" (and no one else). *See* Committee of the Whole, Report on Bill 14-132, "Human Rights Amendment Act of 2002" (April 16, 2002), at 5. The 2002 legislation amended the DCHRA to remedy the disparity that "though their private sector counterparts do not have to, District of Columbia employees must first exhaust all administrative remedies before proceeding to court." *Id.* The Council resolved this disparity "by allowing complaints by District employees alleging discrimination by the District to be filed either administratively or in Superior Court."[15] *Id.* The Council found that the DCHRA should afford "the right to elect one's remedy." *Id.* This legislative history

---

[14] *Palmore*, 411 U.S. at 408.

[15] The legislation, D.C. Law 14-189, § 2(h), added a new subsection (b) to D.C. Code § 2-1403.03. *See* 49 D.C. Reg. 6523, 6524 (July 12, 2002). Section 2-1403.03(b) reads: "A person claiming to be aggrieved by an unlawful discriminatory practice on the part of District government agencies, officials, or employees may elect to file an administrative complaint under the rules of procedure established by the Mayor under this section or a civil action in a court of competent jurisdiction under § 2-1403.16."

persuades us both that (1) the Council did not intend that the employment-discrimination provisions of the DCHRA would apply to D.C. Courts employees (who are neither District of Columbia employees nor private-sector employees), and (2) it would be inconsistent with the Council's intended "right to elect one's remedy" regulatory scheme to interpret the DCHRA as affording D.C. Courts employees a DCHRA-lawsuit remedy for alleged employment discrimination while, for the reasons discussed above, denying them access to an administrative remedy through OHR.[16] We therefore conclude that, as a matter of Council intent, the DCHRA simply does not afford any remedy to D.C. Courts employees (who, the Court Reorganization Act establishes, are not District of Columbia employees).

We hasten to add, however, echoing the *Mapp* and *Cornish* courts' observations, that any concern that the "District's courts would escape anti-discrimination regulation is diminished by the fact that local courts remain

[16] "While the action of a later Council usually does not provide definitive evidence of the intent underlying the action of a former Council," the rationale for an amendment may support an interpretation regarding the Council's original intent. *Coleman v. Cumis Ins. Soc.*, 558 A.2d 1169, 1172-173 (D.C. 1989) (citations omitted). To borrow language from the Supreme Court, if the Council did not intend to create a DCHRA remedy for D.C. Courts employees to obtain redress for employment discrimination, "a cause of action [for them under the DCHRA] does not exist and [this court] may not create one, no matter how desirable that might be as a policy matter, or how compatible with the [goals of] the statute." *Alexander v. Sandoval*, 532 U.S. 275, 286-87 (2001).

subject to Title VII[.]"[17] *Mapp*, 993 F. Supp. 2d at 29; *Cornish*, 67 F. Supp. 3d at 366. We also note that for federal employees, Title VII "provides the exclusive remedy for claims of federal workplace discrimination on the basis of membership

---

[17] See 42 U.S.C. § 2000e-2(a)(1) (providing that "[i]t shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin").

Appellant alleged discrimination not only on the basis of race and sex but also on the basis that she is dark-skinned; her complaint refers to this as discrimination based on "personal appearance," which is a prohibited basis of discrimination under the DCHRA but not under Title VII. However, the DCHRA prohibition against discrimination on the basis of "personal appearance" is a prohibition against discrimination based on "the outward appearance of any person, irrespective of sex, with regard to bodily condition or characteristics, manner or style of dress, and manner or style of personal grooming, including, but not limited to, hair style and beards." D.C. Code § 2-1401.02(22). Discrimination on the basis of dark skin would seem to constitute discrimination on the basis of color or race. *Cf. Howard v. District of Columbia Pub. Sch.*, 501 F. Supp. 2d 116, 121 n.15 (D.D.C. 2007) ("Title VII claims based on color have been interpreted by the courts as relating to the complexion of one's skin."). Color and race are prohibited bases of discrimination under both Title VII and the DCHRA. *See* 42 U.S.C. § 2000e-2(a)(1) and D.C. Code § 2-1402.11(a). In addition, retaliation for having opposed discrimination on any of the prohibited bases is an unlawful practice under both Title VII and the DCHRA. *See* 42 U.S.C. § 2000e-3(a) ("It shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice by this title.") and D.C. Code § 2-1402.61(a) ("It shall be an unlawful discriminatory practice to coerce, threaten, retaliate against, or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected under this chapter.").

in classes protected by Title VII."[18] Because D.C. Courts non-judicial employees "shall be treated as employees of the Federal Government" for some (limited but significant) purposes, D.C. Code § 11-1726(b)(1), it is neither untoward nor incongruous that D.C. Courts employees, like federal employees, are foreclosed from pursuing employment-discrimination claims through city or state anti-discrimination or human rights laws.[19] Finally, we note in addition that Policy No. 0400(I) of the D.C. Courts Comprehensive Personnel Policies ("CPP") adopted by the Joint Committee precisely tracks the DCHRA provision listing the prohibited bases of employment discrimination, thereby affording protection from invidious employment discrimination.[20]

---

[18] *Moore v. Carson*, 775 F. App'x 2, 2 (D.C. Cir. 2019); *see also, e.g.*, *Howard v. Pritzker*, 775 F.3d 430, 432 (D.C. Cir. 2015) ("In Title VII, Congress enacted 'an exclusive, pre-emptive administrative and judicial scheme for the redress of federal employment discrimination.'" (quoting *Brown v. Gen. Servs. Admin.*, 425 U.S. 820, 829 (1976))); *Chennareddy v. Bowsher*, 935 F.2d 315, 318 (D.C. Cir. 1991) ("[T]he ADEA provides the exclusive remedy for a federal employee who claims age discrimination.").

[19] *See Pretlow v. Garrison*, 420 F. App'x 798, 801 (10th Cir. 2011) (explaining that federal employee's exclusive remedy for complaints of discrimination and associated retaliatory conduct was provided by Title VII and that claims under state anti-discrimination law were precluded); *Rivera v. Heyman*, 157 F.3d 101, 105 (2d Cir. 1998) (agreeing that federal employee could not sue under the Human Rights Laws of the State and City of New York because "Title VII provides the sole remedy for federal employees alleging employment discrimination").

[20] *Compare* CPP Policy No. 400(I) ("It is the policy of the District of Columbia Courts to provide equal employment opportunity for all persons; to (continued...)

To sum up, we conclude that D.C. Courts employees have no remedy under the DCHRA for employment discrimination, and we therefore uphold the Superior Court's ruling dismissing appellant's DCHRA discrimination and retaliation claims.

(...continued)
prohibit discrimination in employment on account of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, political affiliation, status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking, or credit information of any individual[.]") *with* the DCHRA section codified at D.C. Code § 2-1402.11(a) (prohibiting employment discrimination based on actual or perceived "race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, political affiliation, status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking, or credit information of any individual"). Thus, the *Cornish* court's observation that the D.C. Courts personnel policies "include[] similar language to the DCHRA about prohibiting discrimination," 67 F. Supp. 3d at 367, is something of an understatement.

Appellant's complaint did not assert a violation of the CPP, and this appeal does not raise the issue of whether a D.C. Courts employee may sue to recover damages (the relief appellant seeks) for an alleged violation of Policy No. 400(I). Accordingly, we express no opinion as to that question. *But see Martin*, 753 A.2d at 993-94 (holding that although no section of the CPP provides for judicial review, the procedures specified in the CPP are binding regulations and are enforceable through judicial review); *Cornish*, 67 F. Supp. 3d at 367 (concluding that nothing in sections of the CPP "grants an employee the right to sue the District or the D.C. Courts for monetary damages based on alleged employment discrimination").

B.

The Superior Court dismissed appellant's Title VII claim (as well as her ADEA claim) as time-barred because appellant failed to file suit within ninety days from the date when she received notice from the EEOC of her right to file. *See* 42 U.S.C. §§ 2000e-5(f)(1) and 2000e-16(c) and 29 U.S.C. § 626(e). Appellant's EEOC right-to-sue notice was dated October 12, 2017, but she did not file her complaint until August 7, 2018, which the Superior Court aptly observed was "well beyond the filing period." We therefore uphold the dismissal of these claims.

C.

The Superior Court found that the Amended Complaint failed to allege facts that could support a claim for defamation. The statements about which appellant complains were (1) alleged statements by defendants to appellant's former coworkers that appellant was not permitted to return to the workplace during business hours and (2) alleged statements to prospective employers that appellant was terminated for failure to perform.

To prove a claim of defamation, a plaintiff must show that (1) the defendant made a false and defamatory statement concerning the plaintiff; (2) the defendant published the statement without privilege to a third party; (3) the defendant's fault in publishing the statement amounted to at least negligence; and (4) publication of the statement caused the plaintiff special harm or the statement was actionable as a matter of law irrespective of special harm. *See Carter v. Hahn*, 821 A.2d 890, 893 (D.C. 2003). In this jurisdiction, "one who in the regular course of business is asked by a prospective employer . . . for information concerning a person, is entitled to the defense of qualified privilege if his reply would otherwise be regarded as defamatory." *Smith v. District of Columbia*, 399 A.2d 213, 220 (D.C. 1979) (quoting *Collins v. Brown*, 268 F. Supp. 198, 200 (D.D.C., 1967)); *see also Edwards v. James Stewart & Co.*, 160 F.2d 935, 936 (D.C. Cir. 1947) (concluding that former employer's letter to a prospective employer, stating that the former employee's "services were not satisfactory," was a privileged communication). Where (as here) the existence of such a privilege is apparent from the face of the complaint, to state a claim and withstand a motion to dismiss, the complaint must "plead facts which, if true, would demonstrate that defendants had lost the privilege by making statements with actual malice." *Issaenko v. Univ. of Minn.*, 57 F. Supp. 3d 985, 1033 (D. Minn. 2014) (citing *Elkharwily v. Mayo Holding Co.*,

955 F. Supp. 2d 988, 999-1000 (D. Minn. 2013)); *see also Mosrie v. Trussell*, 467 A.2d 475, 477 (D.C. 1983) ("[T]he defense [of qualified privilege] is lost by the showing of malice."); *Hargrow v. Long*, 760 F. Supp. 1, 3 (D.D.C. 1989) (stating that privilege can be overcome if the plaintiff shows that the statements were "knowingly false [] or made in bad faith or reckless disregard of the truth").

The Superior Court dismissed appellant's defamation claims on the ground that the alleged statements were not false. The court reasoned that the first of the alleged statements accurately restated what appellant was told in the termination notice, i.e., that as a former employee, she was allowed to retrieve personal items from the court building and to return D.C. Courts property only outside of office hours. The court also found that the alleged statements implied nothing defamatory, but instead reflected "a standard and predictable aspect of workplace policy in an organization concerned about security." Regarding the alleged statements to prospective employers, the court noted that they accurately reflected the statement in the termination notice that appellant was terminated for "failure to demonstrate satisfactory performance." The record supports the Superior Court's analysis on these points.

Moreover, as numerous courts have held, "mere allegations of unsatisfactory job performance do not generally rise to the level of defamation per se." *Mann v. Heckler & Koch Def., Inc.*, 639 F. Supp. 2d 619, 635 (E.D. Va. 2009) (quoting *McBride v. City of Roanoke Redevelopment & Housing*, 871 F. Supp. 885, 892 (W.D. Va. 1994); *see also, e.g., ITT Rayonier, Inc. v. McLaney*, 420 S.E.2d 610, 613 (Ga. App. 1992) (although supervisor asserted that the plaintiff's job performance was unsatisfactory, the expression of that opinion did not constitute an actionable defamation). Further, although appellant alleges that the statements to prospective employers were pretextual and made with knowledge that the stated rationale of "failure to demonstrate satisfactory performance" was untrue, her Amended Complaint does not identify who allegedly conveyed the information in question to the prospective employers, and does not allege that those particular individuals knew what appellant claims were the actual (retaliatory) reasons for her termination. Rather, the Amended Complaint refers vaguely to "Defendants' negative comments" and asserts that unspecified "Defendants have reportedly told prospective employers who called for a reference that Plaintiff was terminated for performance."[21] In short, the complaint does not "plead facts which, if true, would

[21] *Cf. Stencel v. Augat Wiring Sys.*, 173 F. Supp. 2d 669, 681 (E.D. Mich. 2001) (dismissing defamation claim against corporation and concluding that it was not pled with sufficient detail where the plaintiff failed to name as defendant(s) any individual person(s) who made the allegedly defamatory statement).

demonstrate that defendants . . . lost the privilege" by making statements with bad faith, malice, or reckless disregard of the truth. *Issaenko*, 57 F. Supp. 3d at 1033. For these reasons, too, we agree that appellant failed to plead facts sufficient for a plausible claim of defamation. *See Clampitt v. American Univ.*, 957 A.2d 23, 29 (D.C. 2008) (explaining that to withstand a motion to dismiss, a complaint's "[f]actual allegations must be enough to raise a right to relief above the speculative level" (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

For the foregoing reasons, we uphold the dismissal of appellant's defamation claim.

D.

We likewise uphold the court's dismissal of appellant's intentional infliction of emotional distress ("IIED") claim. To state a claim for IIED, a plaintiff must prove (1) extreme and outrageous conduct by the defendant that (2) intentionally or recklessly (3) caused the plaintiff severe emotional distress. *See Kotsch v. District of Columbia*, 924 A.2d 1040, 1045 (D.C. 2007). To be "extreme and outrageous," conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly

intolerable in a civilized community." *Kerrigan v. Britches of Georgetowne, Inc.*, 705 A.2d 624, 628 (D.C. 1997) (internal quotation marks omitted) (quoting *Bernstein v. Fernandez*, 649 A.2d 1064, 1075 (D.C. 1991)).

The Superior Court found that appellant had alleged no facts that satisfy that demanding standard; it reasoned that it is customary for prospective employers to inquire about a prospective employee's work performance, and that a bare statement that appellant failed to demonstrate satisfactory performance was neither extreme nor outrageous. The court also found that appellant alleged nothing in the Amended Complaint to support a finding that she suffered severe emotional distress. We agree.[22]

E.

Appellant's wrongful termination claim was also properly dismissed. She was still a probationary employee at the time of her termination and thus was an at-will employee who could be discharged "at any time and for any reason, or for no

[22] *See also Ray v. Reich*, No. 93-5294, 1994 WL 148105, at *1 (D.C. Cir. Apr. 13, 1994) (per curiam) ("[A]s Title VII provides the exclusive remedy for federal employees asserting discrimination claims, [appellant's] claim[] for intentional infliction of emotional distress . . . w[as] properly dismissed.").

reason at all." *Adams v. George W. Cochran & Co.*, 597 A.2d 28, 30 (D.C. 1991). There is, as the Superior Court recognized, a narrow exception to the at-will-employee doctrine that applies where an at-will employee is terminated for refusal to violate the law, or where the termination violates public policy. *See id.* at 32. Appellant did not allege that she was terminated for refusal to violate the law. As for her claim that her termination was discriminatory and retaliatory and thus against public policy, that claim was not cognizable. As we have explained, where there is "a specific, statutory cause of action to enforce" a public policy (such as a policy against workplace discrimination and against retaliation based on invocation of rights under the antidiscrimination statute), this court will "defer to the legislature's prerogatives and . . . decline to recognize a novel, competing cause of action for wrongful discharge at common law." *Carter v. District of Columbia*, 980 A.2d 1217, 1226 (D.C. 2009). Thus, the fact that appellant could have timely pursued her rights under the public policies that are embodied in Title VII[23] and the ADEA means that she may not pursue a claim for termination in violation of public policy based on the same factual allegations she asserted in support of her Title VII and ADEA claims. *See Nolting v. National Capital Group, Inc.*, 621 A.2d 1387, 1390 (D.C. 1993) ("[W]e do not think [the 'very narrow' public policy

[23] *See, e.g.*, 42 U.S.C. § 2000e-3(a) (prohibiting retaliation for complaining of Title VII violation).

exception] can be invoked where the very statute creating the relied-upon public policy already contains a specific and significant remedy for the party aggrieved by its violation."); *see also, e.g.*, *Kassem v. Washington Hosp. Ctr.*, 513 F.3d 251, 255 (D.C. Cir. 2008) (upholding dismissal of wrongful-discharge claim because "the District's *own* common law extinguishes [such a claim] when the statute giving rise to the public policy at issue contains an alternative remedy"); *Jones v. District of Columbia Water & Sewer Auth.*, 943 F. Supp. 2d 90, 96 (D.D.C. 2013) ("To the extent that Jones asserts a cause of action that rests on a public policy already advanced by Title VII, the DCHRA, or the District's Whistleblower Protection Act, for example, [a public-policy exception] claim would fail."); *Stevens v. Sodexo, Inc.*, 846 F. Supp. 2d 119, 126 (D.D.C. 2012) (The public-policy exception must rest on "a statute or regulation that does not provide its own remedy."); *Carson v. Giant Food, Inc.*, 187 F. Supp. 2d 462, 483 (D. Md. 2002) (rejecting public-policy exception where remedy already exists under Title VII).

F.

Finally, the Superior Court dismissed appellant's conspiracy claim on the ground that the defendants constitute a single entity, such that, as a matter of law,

there could be no agreement among them establishing a conspiracy. *See, e.g.*, *Hamilton v. District of Columbia*, 720 F. Supp. 2d 102, 109 (D.D.C. 2010) (explaining that when D.C. government officials act within the scope of their employment, they are considered members of a single entity); *McMillian v. District of Columbia*, 466 F. Supp. 2d 219, 223 (D.D.C. 2006) (noting that an action for civil conspiracy does not encompass acts performed by a single entity, and concluding that because the defendant District of Columbia government and its officials constitute a single entity, the plaintiff's allegations could not make out a case for civil conspiracy).

Appellant contends that her Amended Complaint sufficiently alleged that the individual defendants agreed on a course of conduct that was not part of their employment responsibilities. We need not resolve that issue because, in our jurisdiction, conspiracy is not an independent tort but depends upon the establishment of some other tortious conduct by the defendants. *See Saucier v. Countrywide Home Loans*, 64 A.3d 428, 446 (D.C. 2013) ("[[C]ivil] conspiracy is not independently actionable; rather it is a means for establishing vicarious liability for the underlying tort.") (internal quotation marks omitted) (quoting *Halberstam v. Welch*, 705 F.2d 472, 479 (D.C. Cir. 1983)). Because appellant's other claims fail for the reasons explained above, her conspiracy claim likewise fails.

For all the foregoing reasons, the judgment of the Superior Court is

Affirmed.

APPENDIX B

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

MARGIE ROBERTSON,

Plaintiff,

v.

DISTRICT OF COLUMBIA, *et al.*

Defendants.

Civil Action No. 2018 CA 005617 B
Judge John M. Campbell

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

This is before the Court on Defendants' Motion to Dismiss Plaintiff's Amended Complaint with Prejudice. Plaintiff Margie Robertson opposes the motion.

This is an employment discrimination case brought against Defendants District of Columbia, District of Columbia Courts ("DC Courts"), Daniel Cipullo, Yvonne Martinez-Vega, Belinda Carr, Alicia Shepard, Anne Wicks, James McGinley, and Tiffany Adams-Moore. In July 2017, Plaintiff was terminated as a supervisor at the DC Courts' Warrants and Special Proceedings division, some seven months after she was hired. Her Amended Complaint has five claims: (1) that her termination was an act of retaliation and discrimination in violation of the District of Columbia Human Rights Act of 1977, D.C. Code §§ 22-1402.11 to 2-1402.13 ("DCHRA"); Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-1 to 2000e-16 ("Title VII"); and under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 to 634 ("ADEA"); (2) that Defendants defamed her and inflicted emotional distress when they made statements about her to potential employers and former coworkers at the DC Courts; (3) that she was wrongfully terminated; (4) that Defendants breached her employment contract when she was terminated; and (5) that Defendants conspired to terminate her employment. For the reasons

stated below, the Motion to Dismiss is granted.

I. FACTUAL SUMMARY

By letter dated December 14, 2016, the plaintiff was offered a position as Supervisor in the District of Columbia Courts Warrants and Special Proceedings division. The letter offering her the job stipulated that the offer was not a guarantee of continued employment and that the position had a one-year probationary period. The plaintiff accepted the position and started work in January 2017. She alleges that beginning in March 2017, Defendant Belinda Carr, Branch Chief of Special Proceedings, began to pressure her to intimidate and bully her own staff. The plaintiff alleges that she refused, and that this caused Defendant Carr to bully her. As a result, the Plaintiff filed an internal Equal Employment Opportunity Commission ("EEOC") complaint claiming that Defendant Carr was bullying her and her staff. She amended this complaint on July 24, 2017, to include allegations against Defendant Daniel Cipullo, Director of the Criminal Division; Yvonne Martinez-Vega, Deputy Director of the Criminal Division; and, Alicia Shepard, Branch Chief.

On July 27, 2017, Plaintiff received an email from Defendant Cipullo attaching a memorandum informing her that she was terminated ("Termination Letter"). The Termination Letter stated that she failed to demonstrate satisfactory performance during her probationary period. The letter stated that she either could have her personal items shipped to her and could mail back any DC Court issued property, or could contact Defendant Cipullo to arrange a time outside of office hours to personally retrieve her belongings at the office and personally return DC Court issued property. Plaintiff, however, went to the DC Courts during office hours to return court issued property. After she left, she alleges, Defendants Cipullo, Shepard, and Carr questioned the staff about what she had said and done while she was there, and also told the staff

that Plaintiff was not allowed in the building. Plaintiff received her personal items from her former workspace in the mail; she claims that her belongings were improperly wrapped and that some were broken. On August 13, 2017, Plaintiff's termination became effective.

Plaintiff brings a wrongful termination claim against Defendants Cipullo; Martinez-Vega; Carr; Shepard; Tiffany Adams-Moore, EEOC Officer for the DC Courts; Anne B. Wicks, Executive Officer of the DC Courts; and James D. McGinley, Clerk of the Court for D.C. Superior Court. Plaintiff claims that all the individual Defendants conspired to have her wrongfully terminated. Plaintiff further claims that the individual Defendants criticized her to prospective employers who called to inquire about her employment at the DC Courts. Plaintiff alleges that these criticisms are defamatory statements that hindered her ability to secure a job.

II. LEGAL STANDARD

District of Columbia courts have adopted the pleading standard set forth in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). To survive a Super. Ct. Civ. R. 12(b)(6) motion to dismiss, a Complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. This standard is met when the pleadings allow "the court to draw the reasonable inference that defendant is liable for the misconduct alleged." *Comer v. Wells Fargo Bank, N.A.*, 108 A.3d 364, 371 (D.C. 2015); *see also Twombly*, 550 U.S. at 556 (explaining that the plausibility pleading standard "simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of" the defendants' misconduct).

A Complaint does not "suffice if it tenders naked assertion[s] devoid of further factual enhancement." *Iqbal*, 556 U.S. at 678 (internal quotation marks omitted). This standard "does not require detailed factual allegations," but it does "demand more than an unadorned, the-

defendant-unlawfully-harmed-me accusation." *Id.* at 678 (internal quotation marks omitted). The plaintiff's burden is not meant to be onerous at the pleading stage. *See Equal Rights Ctr. v. Props. Int'l*, 110 A.3d 599, 603 (D.C. 2015). If a Complaint's factual allegations are sufficient, "the case must not be dismissed even if the court doubts that the plaintiff will ultimately prevail." *Doe v. Bernabei & Wachtel, PLLC*, 116 A.3d 1262, 1266 (D.C. 2015) (internal quotation marks omitted).

III. ANALYSIS

The Amended Complaint fails adequately to state any claim upon which relief can be granted, and so cannot survive the motion to dismiss.

a. Discrimination and Retaliation

The discrimination and retaliation claims fail under the District of Columbia Human Rights Act of 1977, D.C. Code §§ 22-1402.11 to 2-1402.13 ("DCHRA"); Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-1 to 2000e-16 ("Title VII"); and under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 to 634 ("ADEA").

First, it is established law that the DCHRA is inapplicable to employees of the District of Columbia Courts ("DC Courts"). *Mapp v. District of Columbia*, 993 F. Supp. 2d 26, 28 (D.D.C. 2014). Therefore, the plaintiff's claims under the DCHRA are dismissed.

Second, claims brought under Title VII and ADEA must be filed within ninety days from the date of receiving notice of rights to file. On October 12, 2017, Plaintiff received her notice of rights letter from the Equal Employment Opportunity Commission ("EEOC"). Under 42 U.S.C. § 2000e-5 (f)(1), Plaintiff was provided ninety days from the date she received her notice of rights to file a civil complaint under Title VII. She filed the Complaint on August 7, 2018. This is well beyond the filing period. Therefore, the plaintiff's discrimination claims under Title VII and ADEA also must be dismissed.

b. Defamation

The Amended Complaint fails to provide sufficient facts to assert a defamation claim. To establish a defamation claim, Plaintiff must show:

> (1) that the defendant made a false and defamatory statement concerning the plaintiff;
> (2) that the defendant published the statement without privilege to a third party;
> (3) that the defendant's fault in publishing the statement amounted to at least negligence; and
> (4) either that the statement was actionable as a matter of law irrespective of special harm or that its publication caused the plaintiff special harm.

Carter v. Hahn, 821 A.2d 890, 893 (D.C. 2003) (quoting *Beeton v. District of Columbia*, 779 A.2d 918, 923 (D.C. 2001)).

Defendants' alleged statement to Plaintiff's former coworkers that she was not permitted to return to her former workplace fails to establish a defamation claim. First, as is apparent from the Amended Complaint, the statement is not false. Rather, that statement accurately restates what the plaintiff was told in the letter: as a former employee, she was allowed to retrieve personal items from her former workspace and return DC Court issued property only outside of office hours. It therefore is a true statement. Second, and in any event, there is nothing remotely "defamatory" about the statement. It articulates a standard and predictable aspect of workplace policy in an organization concerned about security. It has nothing to do with the plaintiff personally. Defendants' statement to Plaintiff's former coworkers cannot support a defamation claim.

Defendants alleged statements to the plaintiff's prospective employers that she was terminated for failure to perform also does not establish a defamation claim. The Termination Letter states that Plaintiff was terminated for "failure to demonstrate satisfactory performance." Any communication to prospective employers restating this is not defamatory because it is true:

Defendants were merely stating the reason Plaintiff was terminated.

c. Intentional Infliction of Emotional Distress

The Amended Complaint fails to establish an Intentional Infliction of Emotional Distress (IIED) claim. To state a claim for IIED, Plaintiff must prove, "(1) 'extreme and outrageous' conduct on the part of the defendant which (2) intentionally or recklessly (3) causes the plaintiff 'severe emotional distress.'" *Kotsch v. District of Columbia*, 924 A.2d 1040, 1045 (D.C. 2007). "Conduct is 'extreme and outrageous' where it is 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" *Kerrigan v. Britches of Georgetowne*, 705 A.2d 624, 628 (D.C. 1997) (quoting *Bernstein v. Fernandez,* 649 A.2d 1064, 1075 (D.C. 1991)). Courts require a higher standard of proof to find an IIED claim in the employment context. *See id.*

Plaintiff claims that Defendants' "extremely negative unsolicited comments" about Plaintiff's performance at the DC Courts to her prospective employers establishes an IIED claim. There are no facts alleged, however, in the Amended Complaint that would support such a claim. First, Defendants' alleged statements are not "extreme and outrageous." The statements provided the DC Courts' reasoning for Plaintiff's termination – namely, that she failed to demonstrate satisfactory performance. There is nothing extreme, outrageous, or intolerable about this. It is customary for prospective employers to inquire about a prospective employee's work performance at his or her former workplace. Defendants were merely restating a former employee's performance to a prospective employer. Moreover, there is nothing in the Amended Complaint to support a finding that Plaintiff suffered severe emotional distress.

d. Wrongful Termination

The Amended Complaint fails to support a wrongful termination claim. The Offer Letter

stipulated that the offer was not a guarantee of continued employment and the position had a one-year probationary period. Plaintiff thus was an at-will employee. It is well established under DC law that, "an employer may discharge an at-will employee at any time and for any reason, or for no reason at all." *Adams v. George W. Cochran & Co.*, 597 A.2d 28, 30 (D.C. 1991).

There is a narrow public policy exception to the at-will doctrine that can be invoked when an at-will employee is terminated for his or her refusal to violate a statute, or when the termination itself is in violation of public policy. *See id.* at 32. There is no allegation here, however, that the plaintiff refused to violate a statute, and no allegation of any applicable public policy that her termination violated.[1] Accordingly, this allegation must be dismissed.

e. Breach of Contract

Plaintiff's breach of contract claim fails because Defendants did not have a contractual obligation to continue to employ Plaintiff. To state a breach of contract claim, Plaintiff must allege, "(1) a valid contract between the parties; (2) an obligation or duty arising out of the contract; (3) a breach of that duty; and (4) damages caused by breach." *Brown v. Sessoms*, 774 F.3d 1016, 1024 (D.C. Cir. 2014) (quoting *Tsintolas Realty Co. v. Mendez*, 984 A.2d 181, 187 (D.C. 2009)). Plaintiff claims that the Offer Letter was an employment contract. The Offer Letter, however, stipulated that it was not a guarantee of employment and the position had a one-year probationary period. Plaintiff failed to complete her probationary period when she was terminated within approximately seven months of starting her position at DC Courts. Therefore, Defendants had no contractual obligation or duty to Plaintiff.

f. Conspiracy

The civil conspiracy claim fails. The elements of a civil conspiracy are: "(1) an agreement between two or more persons; (2) to participate in an unlawful act, or in a lawful act

[1] As noted, the DCHRA is inapplicable to employees of the DC Courts. *See Mapp*, 993 F. Supp at 28.

in an unlawful manner; and (3) an injury caused by an unlawful overt act performed by one of the parties to the agreement (4) pursuant to, and in furtherance of, the common scheme." *Weishapl v. Sowers*, 771 A.2d 1014, 1023 (D.C. 2001). Plaintiff fails to establish a conspiracy because she is asserting the claim against a single entity. "D.C. government officials, acting within the scope of their employment, are considered members of a single entity for the purposes of § 1985 [of Title 42]." *Hamilton v. District of Columbia*, 720 F. Supp. 2d 102, 108-09 (D.D.C. 2010). Even if the Plaintiff is suing the DC government and individual DC government employees, all of the defendants constitute one entity. *See McMillian v. District of Columbia*, 466 F. Supp. 2d 219, 223 (D.D.C. 2006) (holding the conspiracy claim fails because Defendant DC government and its officials constitute a single entity). Since Defendants constitute one entity, no agreement can be found to establish a conspiracy claim. In any event, the Amended Complaint fails to allege any facts to articulate an agreement among Defendants. Moreover, there are no facts that alleged any overt act in furtherance of the scheme.

IV. CONCLUSION

The Amended Complaint fails to state a claim upon which relief can be granted. Therefore, the Amended Complaint is dismissed.

Accordingly, it is this 29th day of May, 2019, hereby

ORDERED, that Defendants' Motion to Dismiss Plaintiff's Amended Complaint with Prejudice is **GRANTED**.

John M. Campbell
Associate Judge

Copies to:

Cara J. Spencer, Esq.
Alicia Cullen, Esq.
Margie E. Robertson
Via CaseFileXpress

APPENDIX C

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT and CIVIL DIVISION

Margie E. Robertson
Plaintiff/Petitioner

v.

18-0005617
Case No.

District of Columbia Courts/Daniel W. Cipullo, et al.
Defendant/Respondent

ORDER

Having considered X Plaintiff/Petitioner's Defendant/Respondent's Application to Proceed without Prepayment of Costs, Fees, or Security, it is hereby ordered that the Application is:

GRANTED in this Family Court case and, pursuant to Domestic Relations Rule 54-II, witnesses will be subpoenaed without prepayment of witness fees;

✓ GRANTED in this Civil Division case and, pursuant to Civil Rule 54-II, the officers of the Court will issue and serve all process; witnesses will be subpoenaed without prepayment of witness fees;

DENIED

For the following reasons: _____

_____

For the reasons stated on the record in open court and in the presence of the applicant or his or her counsel;

8-7-18
Date

Judge

Rule 24. Proceeding Without Prepayment of Fees and Costs (In Forma Pauperis).

(a) Appeals from the Superior Court.

(1) Prior Approval. A party who was permitted to proceed in forma pauperis in the Superior Court, or who was determined by the Superior Court to be eligible for court-appointed counsel under D.C. Code § 11-2601 et seq. (2001) (Criminal proceedings) or D.C. Code § 16-2304 (2001) (Family Court proceedings), may proceed on appeal in forma pauperis without further authorization.

(2) Motions to be Filed in the Superior Court.

(A) Except as stated in Rule 24 (a)(1), a party to a proceeding in the Superior Court who desires to take an appeal without the prepayment of fees must file in the Superior Court within the time for filing an appeal:

(i) A notice of appeal containing the information prescribed in Form 1 or Form 2; and

(ii) A motion and affidavit containing the information prescribed in Form 7a and Form 7b, showing an inability to pay fees and costs or to give security therefor.

(B) If the Superior Court grants the motion, the party may proceed on appeal without prepaying or giving security for fees and costs.

(C) If the Superior Court denies the motion, that court must issue an order in writing stating the reason for its denial. Within 10 days after entry of the order denying the motion, the party may file in this court a motion to proceed on appeal in forma pauperis. The motion must include:

(i) A copy of the motion, affidavit, and notice of appeal filed in the Superior Court, and any order of the Superior Court stating the reasons for its denial; and

(ii) A statement of the reasons why the party believes the Superior Court's denial was in error. If no affidavit was filed in the Superior Court, the party must include with the motion an affidavit containing the information prescribed in Form 7b.

(3) Motions to be Filed in the Court of Appeals. If a party desires to proceed on appeal in forma pauperis after having filed a notice of appeal and paid the required fees, the party must file with this court a motion to proceed in forma pauperis, see Form 7a, and an affidavit containing the information prescribed in Form 7b.

(b) Review of Agency Decisions.

(1) Petition for Review; Motion and Affidavit. When review of an order or decision in a proceeding before an agency of the District of Columbia proceeds directly to the Court of Appeals, a party may file in this court, along with the petition for review, a motion to proceed on

APPENDIX D

EEOC Form 161 (11/16) **U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

DISMISSAL AND NOTICE OF RIGHTS

To: **Margie E. Robertson**
P.O. Box 140356
Memphis, TN 38114

From **Washington Field Office**
131 M Street, N.E.
Suite 4NW02F
Washington, DC 20507

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No	EEOC Representative	Telephone No.
570-2017-02075	**Alan W. Anderson, Deputy Director**	**(202) 419-0756**

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐ Your charge was not timely filed with EEOC, in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒ The EEOC issues the following determination. Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge

☐ Other *(briefly state)*

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

FOR

Mindy E. Weinstein,
Acting Director

OCT 12 2017
(Date Mailed)

Enclosures(s)

cc

DC GOVERNMENT
Dc Superior Court
500 Indiana Ave., N.W.
Washington, DC 20001

Enclosure with EEOC
Form 161 (11/16)

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)*

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you *receive* this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was *mailed* to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit before 7/1/10 – *not* 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

APPENDIX E

Further Explanation:

In a review of the Employment Intake Questionnaire Form, that was submitted by Complainant on August 22, 2017, Complainant names The DC Superior Court as the Respondent. The OHR does not have jurisdiction to accept or investigate complaints of discrimination against this Respondent.

For this reason, Complainant's complaint must be dismissed.

Private Cause of Action

OHR has administratively dismissed this matter without making a determination on the merits. Accordingly, Complainant may file a private cause of action in the D.C. Superior Court. D.C. Code § 2-1403.16(a). The DC Human Rights Act allows claims to be filed within one (1) year from the incidents in question. D.C. Code § 2-1403.04(a). "The timely filing of a complaint with the office shall toll the running of the statute of limitations while the complaint is pending." D.C. Code § 2-1403.16(a).

Request to Reopen

A request that OHR reopen an administratively dismissed Human Rights complaint must be submitted to the OHR Director, at ohr.ogc@dc.gov, within fifteen (15) days of the date of this letter. 4 DCMR § 120.4. However, a request by a Complainant to reopen a voluntarily withdrawn complaint may be submitted within thirty (30) days of such dismissal. 4 DCMR § 108.3. A complaint may be reopened by the OHR Director for good reason or in the interest of justice, based on the Director's discretion, if there has been no OHR determination on the merits. 4 DCMR § 108.4. Complainant has thirty (30) days from the date of service of this decision to file a Petition for Review with the D.C. Superior Court. 4 DCMR § 121.3.

Notice Regarding Potential Federal Claims

Complainant may wish to file an employment discrimination complaint with the Equal Employment Opportunity Commission (EEOC) at 131 M Street, N.E., Fourth Floor, Suite 4NWO2F, Washington, DC 20507-0100, or a housing discrimination complaint with the Department of Housing and Urban Development (HUD) at http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination based on the allegations contained within the complaint which OHR has dismissed. Or, if a case has already been cross-filed with the EEOC, Complainant may wish to contact the EEOC or to request a right to sue letter.

Sincerely,

Monica Palacio,
Director

Office of Human Rights
DISTRICT OF COLUMBIA
ohr.dc.gov phone: (202) 727-4559 fax: (202) 727-9589 441 4th Street NW, Suite 570N, Washington, DC 20010