

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KARIN BJORK,  
Plaintiff/Petitioner,  
v.  
COUNTY OF PLACER DISTRICT  
ATTORNEY'S OFFICE, and DOES 1  
through 10, inclusive,  
Defendant/Real Party in Interest.  

---

PLACER COUNTY CIVIL SERVICE  
COMMISSION,  
Respondent.

No. 2:14-cv-01983-MCE-EFB

**MEMORANDUM AND ORDER**

In this action, Respondent Placer County Civil Service Commission ("the Commission") moves to dismiss the state claim filed against it by Plaintiff/Petitioner Karin Bjork ("Plaintiff") on grounds that this Court lacks subject matter jurisdiction over said claim pursuant to Federal Rules of Civil Procedure 12(b)(1). ECF No. 11. For the following reasons, the Commission's motion is GRANTED.<sup>1</sup>

<sup>1</sup> Because oral argument would not have been of material assistance, the Court ordered this matter submitted on the briefs. E.D. Cal. Local Rule 230(g).

## BACKGROUND<sup>2</sup>

1  
2  
3 Plaintiff is a female attorney who worked with the Placer County District Attorney's  
4 Office ("County") for over 21 years. For 11 years, Plaintiff served as a Supervising  
5 District Attorney. On October 25, 2012, Plaintiff was demoted, allegedly in retaliation for  
6 refusing to participate in the discrimination of a male subordinate attorney who was over  
7 40 years old. Thereafter, Plaintiff claims that she complained, including via an internal  
8 complaint to County, of discrimination and retaliation against herself and other women.

9 On August 5, 2013, Plaintiff filed her first civil action against County, alleging  
10 gender discrimination and retaliation. Bjork v. Cnty. of Placer Dist. Attorney's Office,  
11 2:13-cv-01616-MCE-EFB ("Bjork I"). County continued to engage in other acts of  
12 discrimination, and while her initial action was pending, on January 28, 2014, County  
13 terminated Plaintiff's employment. Approximately a week later, Plaintiff appealed her  
14 termination to the Commission, and an evidentiary hearing was conducted over five days  
15 between April 29 and May 8, 2014.

16 Plaintiff did not present her claims of retaliation and discrimination to the  
17 Commission, nor did she present any evidence connected to those allegations. Indeed,  
18 Plaintiff expressly stipulated at the outset of the hearing that the merits of the federal  
19 lawsuit, with its claims of retaliation and discrimination, were beyond the Commission  
20 hearing's scope. Moreover, Plaintiff, in her opposition to the present motion, concedes  
21 that she presented no evidence of any alleged discrimination and retaliation at the  
22 hearing. Pl.'s Opp., 3:25-27. On May 28, 2014, the Commission issued its decision,  
23 reducing her discipline from termination to a demotion<sup>2</sup> and a 120-day suspension.

24 On August 26, 2014, Plaintiff filed a second case for gender discrimination and  
25 retaliation against County. Bjork v. Cnty. of Placer Dist. Attorney's Office, 2:14-CV-  
26 01983-MCE-EFB ("Bjork II"). Shortly thereafter, she filed her operative First Amended

---

27 <sup>2</sup> The following recitation of facts is taken, at times verbatim, from Petitioners' Opposition to  
28 Commission's Motion to Dismiss (ECF No. 14) and her FAC (ECF No. 7).

1 Complaint (“FAC”) and added a state writ of mandamus claim directed to the  
2 Commission, seeking to overturn its decision. Plaintiff contends jurisdiction over the  
3 state claim is based on supplemental jurisdiction pursuant to 28 U.S.C. § 1367.<sup>3</sup> On  
4 September 30, 2014, the Commission filed a Motion to Dismiss based on lack of subject  
5 matter jurisdiction.<sup>4</sup> ECF No. 12. Plaintiff filed a timely Opposition. ECF No. 14.

## 7 STANDARD

8  
9 Pursuant to Federal Rule of Civil Procedure<sup>5</sup> 12(b)(1), a motion to dismiss may be  
10 made on the basis of a “lack of subject-matter jurisdiction.” A Rule 12(b)(1) motion tests  
11 “whether the plaintiff has a right to be in the particular court....” Trs. of Screen Actors  
12 Guild–Producers Pension & Health Plans v. NYCA, Inc., 572 F.3d 771, 775 (9th Cir.  
13 2009) (internal quotation marks and citations omitted). Federal courts are limited in  
14 jurisdiction, and it is presumed that a case lies outside the jurisdiction of the court unless  
15 the plaintiff proves otherwise. Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375,  
16 377 (1994); Stock W., Inc. v. Confederated Tribes, 873 F.2d 1221, 1225 (9th Cir. 1989).

## 19 ANALYSIS

20  
21 In her Fourth Claim for Relief, Plaintiff seeks a writ of mandamus, pursuant to  
22 section 1094.5 of the California Code of Civil Procedure, ordering the Commission to  
23 alter or vacate its disciplinary decision in the hearing on Plaintiff’s appeal of her

---

24 <sup>3</sup> The Court ordered Bjork I and II to be related on grounds that the two cases share common  
25 questions of law and fact. ECF No. 9.

26 <sup>4</sup> Additionally, Plaintiff has filed a Motion to Consolidate this action with Bjork I (ECF No. 13), and  
27 Defendant County has filed a separate Motion to Dismiss (ECF No. 11). Those motions will be decided by  
a separate order.

28 <sup>5</sup> All further references to “Rule” or “Rules” are to the Federal Rules of Civil Procedure unless  
otherwise noted.

1 termination. FAC at ¶ 52-60. The Commission moves to dismiss Plaintiff's state writ of  
2 mandamus claim for lack of subject matter jurisdiction. Plaintiff argues that the Court  
3 has supplemental jurisdiction over the state claim because the claim is supplemental to  
4 her federal discrimination claim brought under Title VII, 42 U.S.C. § 2000e. The Court  
5 disagrees and finds that the state claim is wholly independent of Petitioner's federal  
6 claim against County.

7 Federal district courts have original jurisdiction over "all civil actions arising under  
8 the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. In this case,  
9 the Court has original jurisdiction over the Title VII gender discrimination claim because it  
10 arises out of federal law, 42 U.S.C. § 2000e. If the Court has original jurisdiction over a  
11 case, it also has supplemental jurisdiction "over all other claims that are so related to  
12 claims in the action within such original jurisdiction that they form part of the same case  
13 or controversy." 28 U.S.C. § 1367(a). A single case or controversy exists if the state  
14 and federal claims "derive from a common nucleus of operative fact" such that the  
15 petitioner "would ordinarily be expected to try them all in one judicial proceeding."  
16 United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966).

17 In her Opposition, Plaintiff argues that the Court has supplemental jurisdiction  
18 over her writ of mandamus claim because it is part of the same case or controversy as  
19 her federal discrimination claim. That argument is unpersuasive. Plaintiff herself  
20 concedes that she did not discuss or present evidence on gender discrimination at the  
21 hearing before the Commission. Therefore, even though her termination is a common  
22 event between the allegedly unlawful hearing and the discrimination, all the other facts of  
23 the two claims diverge significantly. Specifically, Plaintiff alleges that the Commission  
24 failed to rule in her favor at the evidentiary hearing appealing her termination and that  
25 the Commission erroneously admitted prejudicial evidence at the hearing. FAC at ¶¶ 56-  
26 58. In contrast, Plaintiff's discrimination claim turns on her proving there is a "pattern  
27 and practice of gender discrimination" by County, and that Plaintiff suffered adverse  
28 acts, including her termination, as a result of that discrimination. There are little to no

1 facts that overlap between these two claims. Indeed, Plaintiff alleges no facts that the  
2 Commission discriminated against her based on her gender, and, in fact, Plaintiff herself  
3 made the decision not to raise gender discrimination as an issue at the evidentiary  
4 hearing before the Commission. True, County's decision to terminate Plaintiff's  
5 employment triggered her appeal of that decision and the subsequent evidentiary  
6 hearing by the Commission. However, any overlap in the facts ends there, and the facts  
7 surrounding the evidentiary hearing stand independently of any allegations of gender  
8 discrimination. Moreover, the two matters are procedurally distinct since the state claim  
9 would be decided by a judge, while Plaintiff seeks a jury trial for the gender  
10 discrimination and retaliation claims against County. Based on these substantial  
11 differences in the two cases, the state and federal claims do not derive from the same  
12 case or controversy. As a result, the Court does not have supplemental jurisdiction over  
13 Plaintiff's state mandamus claim directed at the Commission. See 28 U.S.C. § 1367(a).

14 In addition, even if the claims do arise from a common case or controversy, the  
15 Court, in its discretion, may decline to exercise jurisdiction over a state claim. A federal  
16 district court may decline to exercise supplemental jurisdiction in four situations  
17 enumerated in 28 U.S.C. § 1367(c):

- 18 (1) the claim raises a novel or complex issue of State law,  
19 (2) the claim substantially predominates over the claim [ ]  
20 over which the district court has original jurisdiction, (3) the  
21 district court has dismissed all claims over which it has  
original jurisdiction, or (4) in exceptional circumstances, there  
are other compelling reasons for declining jurisdiction.

22 “[Supplemental] jurisdiction is a doctrine of discretion, not of Petitioner's right.”  
23 Gibbs, 383 U.S. at 726. Before exercising supplemental jurisdiction, the Court should  
24 weigh considerations of “economy, convenience, fairness and comity.” Acri v. Varian  
25 Assocs., Inc., 114 F.3d 999, 1001 (9th Cir. 1997) (en banc) (internal quotation marks  
26 omitted).

27 ///

28 ///

1 Here, Plaintiff's state claim involves mandamus proceedings "that are uniquely in  
2 the interest and domain of state courts." Clemes v. Del Norte County Unified Sch. Dist.,  
3 843 F. Supp. 583, 596 (N.D. Cal. 1994), overruled on other grounds by Maynard v. City  
4 of San Jose, 37 F.3d 1396, 1403 (9th Cir. 1994). Nevertheless, Plaintiff argues that the  
5 Court should retain the state law claim because it does not raise any unique issues of  
6 state law. Once again, the Court disagrees. Because state mandamus claims raise  
7 "serious considerations regarding comity and federalism," federal courts appropriately  
8 exercise their discretion in declining to hear state mandamus claims. Fresno Unified  
9 Sch. Dist., 980 F. Supp. 2d, 1160, 1184-85 ("Where a state law claim is inextricably tied  
10 to a request for a writ of mandamus, a federal district court appropriately declines  
11 supplemental jurisdiction.") (internal citations omitted); see City Limits of N. Nevada, Inc.  
12 v. Cnty. of Sacramento, No. 2:06-cv-1244-GEB-GGH, 2006 WL 2868950, at \*3 (E.D.  
13 Cal. Oct. 6, 2006); Tomlinson v. Cnty. of Monterey, No. C-07-00990 RMW, 2007 WL  
14 2298038, at \*2 (N.D. Cal. Aug. 8, 2007)). Plaintiff has failed to indicate why  
15 supplemental jurisdiction is warranted in this particular case, and grounds exist under  
16 28 U.S.C. § 1367(c)(1) to decline jurisdiction over Plaintiff's mandamus action.  
17 Accordingly, Plaintiff's mandamus claim is DISMISSED without prejudice so that plaintiff  
18 may renew the claim in state court. See, e.g., Gibbs, 383 U.S. at 726-27 (holding that if  
19 supplemental jurisdiction is not exercised over a state claim, then the state claims may  
20 be dismissed without prejudice and left for resolution to state tribunals).

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CONCLUSION**

For the foregoing reasons, the Motion to Dismiss filed on behalf of Respondent Placer County Civil Service Commission (ECF No. 12) is GRANTED without prejudice. The Fourth Claim against the Commission, as set forth in Plaintiff's First Amended Complaint, is accordingly DISMISSED.

IT IS SO ORDERED.

Dated: April 23, 2015

  
MORRISON C. ENGLAND, JR., CHIEF JUDGE  
UNITED STATES DISTRICT COURT