

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

CHRISTINA PAOLI,)	
)	
Plaintiff/Appellant)	C.A. No. 04-12-077
)	
)	
vs.)	
MICHAEL MALKIEWICZ,)	
)	
Defendant/Appellee)	

Submitted September 30, 2005
Decided October 28, 2005

Christina Paoli, *Pro Se*, Plaintiff/Appellant
Michael Malkiewicz, *Pro Se*, Defendant/Appellee

**DECISION ON APPEAL FROM COMMISSIONER'S
RECOMMENDATION**

Plaintiff Christina Paoli appeals the Commissioner's recommendation that her complaint on *de novo* appeal from the Justice of the Peace Court be dismissed.

BACKGROUND

Plaintiff filed the complaint in this action against Defendant, a member of the Delaware Bar, alleging that Defendant's representation of his client in several actions between his client and Plaintiff damaged her in that it caused her stress and caused her to incur attorney's fees in litigating those matters. Defendant moved for judgment on the pleadings or, in the alternative, for dismissal for failure to state a claim upon which relief may be granted. After a hearing on

April 11, 2005, on April 13, 2005 the Commissioner of this Court issued his Report recommending that the motion to dismiss be granted, upon his finding that the complaint failed to state a claim upon which relief could be granted. On April 25, 2005, the Commissioner deemed a letter from Plaintiff to be motion for reargument. The Commissioner reviewed and reiterated his previous findings in more detail, and denied the motion. The Plaintiff appeals from the Commissioner's findings and recommendations, pursuant to this Court's Civil Rule 112 (A) (4) (ii).

STANDARD OF REVIEW

A recommendation to dismiss a complaint for failure to state a claim is a case-dispositive matter. When reviewing case-dispositive matters the Judge of the Court reviews the Commissioner's decision *de novo*. CCP Civ. R. 112 (A) (4) (iv).

DISCUSSION

The Complaint alleges that certain acts of the Defendant, in the representation of his client, an adversary of Plaintiff's, caused Plaintiff "financial damage, as well as emotional stress." The Complaint further alleges that Defendant, on behalf of his client, filed a new suit in the Justice of the Peace Court rather than a counterclaim to an existing action filed by Plaintiff against Defendant's client, and that Defendant "refused to have [these cases] consolidated." Plaintiff complains that such actions caused her to expend funds to retain the legal services of Darryl Fountain, Esq. Plaintiff also alleges that Defendant has telephoned Mr. Fountain, who has not appeared in this proceeding, to discuss either the case at bar or some other matter in which

Plaintiff had appeared *pro-se*, again causing her to incur legal fees. Finally, Plaintiff alleges that Defendant and his staff have refused to answer her phone calls, presumably causing further stress.

In addressing a motion to dismiss a complaint for failure to state a claim for which relief can be granted, the Court must assume the facts pleaded as true, and must view all inferences therefrom in the light most favorable to the non-moving party. *Wal-Mart Stores v. AIG Life Insurance Co.*, 868 A. 2d 312 (Del Super. 2004). If the Court finds that the plaintiff could not be entitled to relief under any set of facts that could be proven in support of his claim, the Court may dismiss the claim. *Rabkin v. Philip A. Hund Chemical Corp.*, 498 A. 2d 1099 (Del. 1985).

After a review of the pleadings and motion, the verbatim transcript of the hearing held in this matter, and the Commissioner's written recommendation, the Court finds that the Commissioner correctly determined that the allegations of the Plaintiff's complaint, when assumed true and viewed in the light most favorable to the Plaintiff, do not give rise to a recognizable cause of action against the Defendant under Delaware law. The Plaintiff essentially claims that the Defendant, through the course of representation of his client in various litigation matters involving the Plaintiff as an adverse party, caused her to incur attorneys' fees. The facts alleged by Plaintiff do not amount to abuse of process or unethical conduct by Defendant. Even if Plaintiff was *pro se* in one of those matters and Defendant erroneously communicated about that matter with Plaintiff's attorney of record in another matter, such prudent and cautious action on the part of Defendant to avoid direct communication with a possibly

represented opposing party is not actionable to recoup any fees Plaintiff may have been charged by her attorney for that communication.

CONCLUSION

After a *de novo* review of the law and facts, I find that the Commissioner's recommendation to dismiss the complaint for failure to state a claim was proper. The Commissioner's recommendation is **ACCEPTED**, and the complaint is **DISMISSED**.

IT IS SO ORDERED, this ____ day of October, 2005.

Kenneth S. Clark, Jr.
Judge