SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, Delaware 19801-3733
(302) 255-0664

Ms. Beverly Prather
815 Trophy Way
Bear, Delaware 19701
Plaintiff

Shakuntla L. Bhaya, Esquire
Doroshow, Pasquale, Krawitz & Bhaya
1701 Pulaski Highway
Bear, Delaware 19701
Attorney for Defendant Doroshow, Pasquale, Krawitz & Bhaya

Re: Beverly Prather v. Doroshow, Pasquale, Krawitz & Bhaya
C.A. No. 11C-02-139 RRC

Submitted: April 12, 2011
Decided: April 14, 2011

On Defendant Doroshow, Pasquale, Krawitz & Bhaya's Motion to Dismiss.
GRANTED.

Dear Ms. Prather & Ms. Bhaya:

INTRODUCTION

The instant motion to dismiss is predicated on Delaware Superior Court Rule of Civil Procedure 12(b)(6) and asserts that *pro se* Plaintiff Beverly Prather ("Plaintiff") has failed to state a claim for which relief can be granted. Plaintiff's Complaint is essentially unintelligible, although it seems that Plaintiff alleges that Defendant Doroshow, Pasquale, Krawitz, & Bhaya ("Defendant"),[1] a law firm, retained money due to her from an unspecified

[1] Her case caption, on her praecipe and on her Case Information Statement, suggests (although it is not clear) that Plaintiff has included the United States District Court for the Eastern District of Pennsylvania and the United States Court of Appeals for the Third

settlement. Plaintiff does not allege that there was ever an attorney-client relationship with Defendant, but nonetheless claims that Defendant somehow obtained and withheld settlement funds due to her.

On a motion to dismiss, the facts and all reasonable inferences flowing therefrom must be viewed in the light most favorable to Plaintiff. However, even when viewing the allegations of Plaintiff's Complaint in this light, Plaintiff has not established any conceivable set of circumstances and inferences wherein she could recover. Thus, Plaintiff's Complaint has failed to state a claim upon which relief can be granted.

Upon review of the facts, the law, and the parties' submissions, Defendant's Motion to Dismiss is **GRANTED**.

FACTS AND PROCEDURAL HISTORY

Plaintiff filed her "complaint" in this Court on February 17, 2011.[2] The Complaint states that her claim is for "Probable Attorney Malpractice." In

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Circuit as defendants; however, claims against these defendants are not within this Court's jurisdiction. *See infra* note 8. In any event, no direct claims seem to be asserted against these two judicial defendants.

[2] The facts giving rise to the instant claim were apparently the subject litigation in federal court. In March 2007, Plaintiff, then also *pro se*, commenced an action in the United States District Court for the Eastern District of Pennsylvania. *Prather v. Prudential Fox & Roach*, 2:07-cv-01264-SD (E.D. Pa. Mar. 23, 2007). In that case, Plaintiff brought her claim under Title VII, alleging that she had been the victim of sexual harassment and a hostile work environment; the District Court granted summary judgment for the defendant, and the Third Circuit affirmed. *Prather v. Prudential Fox & Roach*, 326 Fed.Appx. 670 (3d Cir. 2009). Notably, at that time, Plaintiff seemingly made similar allegations against the federal courts with respect to the improper receipt and retention of funds to which she was entitled. *See id.* at 673 ("Finally, we will deny Prather's 'demand' for disclosure and restitution. To the extent she seeks disclosure of the 'amount of funds' this Court has received, we remind her that all fees for appeals are payable to the District Court, not the Court of Appeals. Her request for restitution of such funds is thus denied. Costs will be assessed to the appellant."). For purposes of the instant motion to dismiss, this Court takes judicial notice of the federal docket of the Pennsylvania litigation and the foregoing decision of the Court of Appeals for the Third Circuit. D.R.E. 201(b) ("A judicially noticed fact must be one not subject to reasonable dispute in that it is. . .capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."); *see also In re Career Educ. Corp. Derivative Litigation*, 2007 WL 2875203, *9 (Del. Ch. 2007) ("When considering a motion to dismiss, the court

support of this claim, Plaintiff attached a letter dated February 8, 2011 from Defendant (the "Letter"); the Letter reads, in relevant part, as follows:

> This letter confirms that you came into [Defendant's office] on February 8, 2011. You attempted to record a conversation with my staff regarding a matter involving you, Rose Reed, Diane Reed and the U.S. District Court of Eastern Pennsylvania.
>
> First, this letter confirms that I asked you to turn off the tape recorder as we did not give any consent to a recording.
>
> Second, please be advised that my firm has not represented you nor Rose Reed or Diane Reed. We are a Delaware law firm.
>
> Third, you kept asking if we received any monies from the Trustee. I explained I had no idea what you were talking about.
>
> If you continue to send letters or come to my office, I will be forced to contact the authorities for harassment.[3]

Plaintiff alleged that she "[has] reason to believe the statements in the letter are not true," and "[t]his constitutes attorney [m]alpractice." According to Plaintiff, she has "suffered loss of a large amount of funds as a result."[4]

Plaintiff's Complaint sets forth a lengthy account of her Pennsylvania federal court litigation (the "Pennsylvania litigation"). Specifically, Plaintiff contends that "a number of lawyers, private individuals, possibly court personnel, entered appearance, without notice to me, in a law suit that I filed Pro Se, and won. . .I have not been paid on the case."[5] According to Plaintiff, the Pennsylvania litigation arose from the "multiple serious violent felony sexual assaults by the same assailant;" this alleged assailant was Plaintiff's employer at that time.[6] Plaintiff alleged that her alleged assailant "raped [her] until [she] begged for death" and "makes pornography of raping women."[7]

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also may take judicial notice of publicly filed documents, such as documents publicly filed in litigation pending in other jurisdictions.") (citations omitted).

[3] Pltf.'s Complaint Ex. A.

[4] Pltf.'s Complaint.

[5] *Id.* Plaintiff's contention that she "won" this lawsuit is belied by the Third Circuit's decision affirming summary judgment in favor of the defendant. *See supra* note 2.

[6] The Third Circuit decision indicates that Plaintiff was employed via a staffing agency. *See supra* note 2.

[7] Pltf.'s "Pleading" of Mar. 9, 2011 (Lexis I.D. 36367933); *see also id.* ("[T]here are women and children raped and murdered on this case, the rapist is at large.").

Plaintiff set forth numerous allegations of misconduct on the part of the federal courts in Pennsylvania.[8] Plaintiff contends that her alleged assailant was not incarcerated "directly due to [the United States District Court Judge's] non-prosecution order," and the District Court "had full knowledge of [her alleged assailant's] many serious violent felony assaults."[9] Plaintiff alleges that she was "not paid" on her lawsuit, but "[s]everal people" have told her that "the funds from that suit were divided to other third parties."[10] Plaintiff claims that the United States District Court for the Eastern District of Pennsylvania and the United States Court of Appeals for the Third Circuit "ignored [her petitions to have her alleged assailant incarcerated], and took lots of money, handing it out to rich people, to many third parties, and denied they took money."[11] Plaintiff also implicates the executive branch of the United States government; she states that she "[has] reason to believe that [the

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[8] Although it is not entirely clear, it seems that these allegations were included in the instant complaint based on the joinder of the United States District Court for the Eastern District of Pennsylvania and the United States Court of Appeals for the Third Circuit as defendants, as reflected in the case caption. However, this Court has no jurisdiction over claims against these federal courts; the United States District Court is vested with exclusive jurisdiction over such claims. *See* 28 U.S.C. § 1346(b)(1) (West 2011) ("Subject to the provisions of chapter 171 of this title, the district courts. . .shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.").

[9] Pltf.'s Complaint.

[10] *Id. See also id.* ("I suspect that law clerks at that court. . .were directly involved in those transfers of funds, while the court DENIED having funds in court orders."). Plaintiff also stated that an unspecified "detective" from Chester County, Pennsylvania told her that "the court and 'a bunch of lawyers' got on [her Pennsylvania lawsuit], and took the money, declaring me incompetent."). *Id.* Plaintiff repeatedly references a "settlement," but it is manifest from both the federal docket and the substance of the Third Circuit decision that summary judgment was entered in favor of the defendant's. *See, e.g. id.* ("The [United States Court of Appeals] forced settlement, rather than make entry of Judgment due to me. Judgment should have been entered against Prudential."). Moreover, Plaintiff acknowledges that the Third Circuit assessed costs against her, as the unsuccessful party on appeal. *Id.* ("They 'Taxed costs' against me when Judgment was due to me."). However, contrary to Plaintiff's implication that the assessment of costs against her was somehow improper, the Courts of Appeals assess costs against an unsuccessful appellant as a matter of course. *See* F.R.A.P. 39(a)(2) ("[I]f a judgment is affirmed, costs are taxed against the appellant.").

[11] Pltf.'s "Pleading" of Mar. 9, 2011 (Lexis I.D. 36367933).

White House] DID become directly involved" because "the docket sheet indicates "sealed-DC."[12]

In short, Plaintiff asserts that the purpose of her instant claim is to "recover the funds from [the Pennsylvania litigation]" and that she "should have had entry of Judgment" on her Pennsylvania lawsuit.[13] She contends that her alleged assailant "belongs in prison, but corporate money, paid to the court, transacted in 'non-disclosed settlements' by the federal court, purchased [her alleged assailant's] way out of prison, allowing him to assault more women and causing much harm to [her] life."[14] Plaintiff also states that "[n]o trial is necessary" in this case, because "it is a matter of public knowledge that [her alleged assailant] has sexually assaulted more than a dozen women."[15] In her response in opposition to Defendant's motion to dismiss, Plaintiff contends that Defendant's motion should be denied because the relief sought is "clearly pleaded;" that is, that "the federal court took money to allow serious violent felony crimes. . .I seek payment on this claim."[16]

While the instant motion was pending, Plaintiff filed a complaint with the Office of Disciplinary Counsel.[17] According to a March 25, 2011 letter

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[12] Pltf.'s Complaint. Plaintiff appears to have attempted to correspond with the office of the President of the United States; the President's office responded by letter dated April 2, 2009 and informed Plaintiff that, due to the separation of powers, it was not within the President's office's power to become involved in her legal case. *Id.* Ex. E.

[13] *Id.*

[14] *Id*. *See also* Pltf.'s "Pleading" of Mar. 9, 2011 (Lexis I.D. 36367933) ("I am certain the Philadelphia federal court takes money from the rapist['s] [her alleged assailant] attorneys, to allow rape."). At one point in her moving papers, Plaintiff also alleged that the federal courts attempted to cause her physical harm. *See* Pltf.'s Letter of Mar. 31, 2011 (Lexis I.D. 36795315) ("I am certain that third parties were contacted by the court, to cause harm to my person. It is possible they were paid to harm me.").

[15] Pltf.'s Complaint. *See also id.* ("Trials should not be necessary for the 10th victim on the same assailant."); Pltf.'s Resp. to Motion to Dismiss at ¶1 ("There is not [sic] need for a trial by jury in this case. The felony offenses DID occur, as did perjury by the corporate lawyers, and Doroshow and Pasquale. Their actions demonstrated by their letter does constitute malpractice against the Plaintiff.").

[16] Pltf.'s Reply to Mot. to Dismiss.

[17] The subject of Plaintiff's "complaint" with the Office of Disciplinary Counsel is not clear; the Office of Disciplinary Counsel's response to Plaintiff references only Plaintiff's "complaint."

from Chief Counsel of the Office of Disciplinary Counsel,[18] Plaintiff alleged that she had been offered a settlement check by someone from the Office of Disciplinary Counsel; Chief Counsel's letter unequivocally denied any involvement in the incidents alleged by Plaintiff.[19] In turn, Plaintiff filed a letter with this Court alleging that the Office of Disciplinary Counsel "did involve themselves in this matter, without my knowledge or consent, and against my will."[20] According to Plaintiff, the Office of Disciplinary Counsel is "deliberately untruthful" and "did involve third parties."[21]

In its motion to dismiss, Defendant asserted that the allegations of Plaintiff's complaint "provide no support" for her claim of "Probable Attorney Malpractice."[22] Defendant noted that claims for legal malpractice (assuming that is the basis of Plaintiff's claim(s)) must be pled with specificity, pursuant to Superior Court Civil Rule 9(b),[23] and Plaintiff has failed to articulate her claims against Defendant.[24] Defendant further argued that there is nothing in its letter to Plaintiff that "would constitute or even allude to legal malpractice," and in fact the letter "evidences the lack of an attorney-client relationship."[25] According to Defendant, Plaintiff's complaint "is so incomprehensible that Defendant is unable to ascertain what relief Plaintiff is seeking."[26]

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[18] This letter from the Office of Disciplinary Counsel was attached to Plaintiff's Letter of March 31, 2011.

[19] In relevant part, Chief Counsel's letter read as follows: "The Office of Disciplinary Counsel does not handle lawsuits or settlement checks and had nothing to do with any case in which you were involved. Our Office made no telephone calls to your home, gave no funds to [an individual third party named by Plaintiff], made no deals with third parties, made no offers to your neighbor [], has no releases signed by you, and ha conducted no video surveillance of you or your home as your letter references. Your complaint does not make sense to me and as previously advised the ODC has limited jurisdiction and our jurisdiction does not apply to the information you have supplied."

[20] Pltf.'s Letter of Mar. 31, 2011 (Lexis ID 36795315).

[21] *Id.*

[22] Def.'s Mot. to Dismiss at 1.

[23] "In all averments of fraud, negligence or mistake, the circumstances constituting fraud, negligence or mistake shall be stated with particularity. Malice, intent, knowledge and other condition of mind of a person may be averred generally."

[24] Def.'s Mot. to Dismiss at 1.

[25] Def.'s Reply to Pltf.'s Response to Def.'s Motion to Dismiss at 1.

[26] *Id.*

STANDARD OF REVIEW

When deciding a motion to dismiss pursuant to Delaware Superior Court Rule of Civil Procedure 12(b)(6), "the complaint generally defines the universe of facts that the trial court may consider. . . ."[27] All well-pled allegations must be accepted as true.[28] A plaintiff's complaint may only be dismissed if "it appears to a certainty that the plaintiff could not recover under any reasonably conceivable set of circumstances susceptible of proof."[29] Factual issues cannot be resolved at the motion to dismiss stage; it "cannot be assumed at the pleading stage that the defendant will carry the burden [of establishing a defense to the plaintiff's claim.]"[30]

Also, when appropriate, this Court will hold a *pro se* Plaintiff's complaint to a less demanding standard of review.[31] However, "there is no different set of rules for *pro se* plaintiffs,"[32] and this Court will accommodate *pro se* litigants only to the extent that such leniency does not affect the substantive rights of the parties.[33]

DISCUSSION

Neither the facts of this case nor the relief which Plaintiff is seeking is entirely clear. However, even when taking all of Plaintiff's allegations as true for purposes of a motion to dismiss, Plaintiff has not established reasonable circumstances and inferences wherein she could recover against Defendant.

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[27] *In re Gen. Motors Shareholder Litigation*, 897 A.2d 162, 168 (Del. 2006).
[28] *See, e.g.*, *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).
[29] *Klein v. Sunbeam Corp.*, 47 Del. 536, 538 (Del. 1952).
[30] *Krasner v. Moffett*, 826 A.2d 277, 287 (Del. 2003).
[31] *See, e.g.*, *Vick v. Haller*, 522 A.2d 865, *1 (Del. 1985) ("A *pro se* complaint, however inartfully pleaded, may be held to a somewhat less stringent technical standard than formal pleadings drafted by lawyers. . . ."). *Cf. In re Estate of Hall*, 882 A.2d 761 (Del. 2005) ("While this Court allows a pro se litigant leeway in meeting the briefing requirements, the brief at the very least must assert an argument that is capable of review.").
[32] *Draper v. Med. Ctr. of Del.*, 767 A.2d 796, 799 (Del. 2001).
[33] *Alston v. State*, 2002 WL 184247, *1 (Del. Super. Ct. 2002) ("While procedural requirements are not relaxed for any type of litigant (barring extraordinary circumstances or to prevent substantial injustice), the Court may grant *pro se* litigants some accommodations that do not affect the substantive rights of those parties involved in the case at bar.").

Accordingly, Plaintiff has failed to state a claim on which relief can be granted.

Although Plaintiff's complaint alleged "attorney [m]alpractice," this allegation was entirely predicated on Plaintiff's allegation that statements contained in the Letter were false.[34] As stated, the Letter merely advised Plaintiff that Defendant had no involvement in the Pennsylvania litigation, and that Defendant wished to have no further association with Plaintiff.[35] Plaintiff made no independent allegation of negligence or wrongdoing to support a claim against Defendant. Indeed, it seems that Plaintiff utilized the Letter as a vehicle to interject her disparate accusations against the federal courts, the Office of Disciplinary Counsel, and various other entities.[36]

Although this Court must accept all "well-pleaded" allegations as true for purposes of a Rule 12(b)(6) motion to dismiss, it will also "ignore conclusory allegations that lack specific supporting factual allegations."[37] At a minimum, Plaintiff's complaint must place Defendant on notice of the claim being asserted.[38] Plaintiff's complaint has failed to satisfy this requirement; instead, Plaintiff merely stated that the Letter "constitutes attorney [m]alpractice," notwithstanding the fact that Plaintiff did not allege that an attorney-client relationship ever existed between her and Defendant, nor did

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[34] Pltf.'s Complaint.
[35] Pltf.'s Complaint Ex. A.
[36] Given that the Letter and Plaintiff's subsequent submissions are incorporated into Plaintiff's claims, and integral to such claims, they may properly be considered on a Rule 12(b)(6) motion to dismiss; the Court need not treat Plaintiff's instant motion as one for summary judgment. Super. Ct. Civ. Rule 12(c) ("If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56. . . ."); *Mell v. New Castle County*, 835 A.2d 141, 144 (Del. Super. Ct. 2003) ("Delaware courts follow the federal practice when determining whether the presentation of matters outside of the pleadings will convert a motion to dismiss to a motion for summary judgment. The critical questions in the analysis are whether the extraneous matters are integral to and have been incorporated within the complaint and whether they have been offered to the court to establish the truth of their contents.") (citations omitted); *Lagrone v. American Mortell Corp.*, 2008 WL 4152677, *4 (Del. Super. Ct. 2008) ("Matters attached to a complaint, and incorporated by reference, are not 'extraneous' for purposes of Rule 12.") (citation omitted).
[37] *Ramunno v. Cawley*, 705 A.2d 1029, 1034 (Del. 1998) (citation omitted).
[38] *See, e.g.*, *Precision Air, Inc. v. Standard Chlorine of Del., Inc.*, 654 A.2d 403, 406 (Del. 1995) ("An allegation, though vague or lacking in detail, is nevertheless 'well-pleaded' if it puts the opposing party on notice of the claim being brought against it.")

she plead any facts that would support or even suggest that Defendant breached any legal duty owed to her. Thus, in no sense does Plaintiff's Complaint put Defendant on notice of her claims; at best, Plaintiff's complaint can be read to express her dissatisfaction at the disposition of the Pennsylvania litigation, together with her discontent at Defendant's request that Plaintiff stop contacting its offices and engaging in unauthorized recordings of conversations with Defendant's staff. These are not claims on which relief can be granted. Even if holding Plaintiff's Complaint to a "somewhat less stringent technical standard,"[39] it is nonetheless devoid of any legal or factual basis on which Plaintiff could recover from Defendant.

Finally, this Court concludes that allowing Plaintiff leave to file an Amended Complaint (but this potential alternative relief was not requested by Plaintiff in her Response), pursuant to Rule 15, would not be warranted. Given the tenor of Plaintiff's allegations, any such amendments would certainly be futile and again subject to dismissal under Rule 12(b)(6); under such circumstances, Plaintiff will not be permitted to amend her complaint, even if she had sought to do so.[40] Put simply, there is no conceivable set of allegations that would permit Plaintiff to recover from Defendant given that Plaintiff's claims, *in toto*, consist of wholly unsubstantiated and incendiary allegations arising from supposed out-of-state occurrences and the resulting federal litigation. Neither the underlying occurrences nor the litigation appears connected to Defendant in any way. Instead, Plaintiff merely has made conclusory and unsupported accusations that Defendant somehow converted or misappropriated funds due to her, apparently as part of an alleged larger conspiratorial design to deprive her of unspecified "settlement" funds, a design devised by her alleged assailant, together with the federal courts, the Department of Justice, the Office of Disciplinary Counsel, the office of the President of the United States, and other "third parties."[41] Given the nature of Plaintiff's allegations, she cannot recover from Defendant under

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[39] *See supra* note 31.

[40] *See, e.g., F.S. Parallel Fund, L.P. v. Ergen*, 879 A.2d 602, *2 (holding that, under the analogous Court of Chancery Rule 12(b)(6), Plaintiff need not be given leave to amend the complaint if any such amendments would be futile and subject to dismissal under Rule 12(b)(6)); *E.I. du Pont de Nemours & Co. v. Allstate Ins. Co.*, 2008 WL 555919, *1 (Del. Super. Ct. 2008) ("However, a motion to amend must be denied if the amendment would be futile in the sense that it would not survive a motion to dismiss under Rule 12(b)(6).") (citation omitted).

[41] *See* Pltf.'s Letter of Mar. 31, 2011 (Lexis I.D. 36795315).

any "reasonably conceivable set of circumstances susceptible of proof."[42] Consequently, Plaintiff has failed to state a claim upon which relief can be granted.[43]

Accordingly, for all the reasons stated above, Defendant's motion to dismiss is **GRANTED**.

Richard R. Cooch

RRC/rjc

oc: Prothonotary

[42] *Klein v. Sunbeam Corp.*, 47 Del. 536, 538 (Del. 1952).

[43] It should also be noted that the relief sought by Plaintiff is not clear; at varying times in her submissions, she sought restitution and incarceration of her alleged assailant. *Compare* Pltf.'s Letter of Mar. 31, 2011 (Lexis I.D. 36795315) ("Restitution in full-the amounts transacted by [the United States Court of Appeals] paid by [the law firm representing the defendant in the Pennsylvania litigation], for rendering that unlawful Judgment is appropriate.") *and* Pltf.'s "Pleading" of Mar. 9, 2011 (Lexis I.D. 36367933) ("Maybe [this Court] can grant an injunction, incarceration of [her alleged assailant] to prevent sexual assault, and physical and mental abuse of more women. Please help me get [her alleged assailant] in prison.").