

D.U.P. NO. 82-35

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

PARKER, McCAY & CRISCUOLO, P.C.,
STEPHEN J. MUSHINSKI, ESQ.,
FERG & MORTON, ESQS.,

Respondents,

-and-

DOCKET NO. CI-82-51

MARY A. O'HARA,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an allegation by a charging party that her attorneys have represented her improperly. The Director concludes that the Commission does not have the jurisdiction to review this charge and traditional forums are available to the charging party to assert her claims.

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Charging Party.

REFUSAL TO ISSUE COMPLAINT

On April 30, 1982, Mary Alice O'Hara (the "Charging Party") filed an Unfair Practice Charge with the Public Employment Relations Commission (the "Commission") against two law firms, Ferg & Morton and Parker, McCay & Criscuolo (the "Respondents"). The Charging Party alleges that these two firms were negligent and failed to observe appropriate standards of professional conduct in handling earlier unfair practice charges which she had initiated. The Charge does not allege that any public employer or employee organization has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., (the "Act").

Pursuant to the Act, the Commission has the power to prevent a public employer or employee organization from engaging in any unfair practices and has the authority to issue a complaint stating

the unfair practice charge. ^{1/} The Commission has delegated its authority to the undersigned to issue complaints and has established a standard upon which an unfair practice complaint may be issued. ^{2/} The undersigned shall issue a complaint if it appears that the allegations of the Charging Party, if true, may constitute an unfair practice within the meaning of the Act. ^{3/} The Commission rules also provide that the undersigned may decline to issue a complaint. ^{4/}

For the reasons stated below, the undersigned has determined that the Commission's jurisdiction is not implicated in this matter and that no cause of action arises under the Act.

Under the Act's prohibitions at § 5.4(a) and (b), unfair practices may be actionable only against public employers or employee organizations, and their representatives or agents. The Charging Party herein is presenting an action against her own attorneys and attorneys whom she claims should not be representing her.

The fact that the Charging Party is currently litigating certain unfair practices against a public employer and her majority

^{1/} N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

^{2/} N.J.A.C. 19:14-2.1

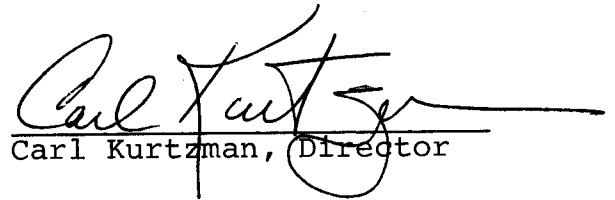
^{3/} Id.

^{4/} N.J.A.C. 19:14-2.3

representative does not establish the Commission as a forum to air complaints against her attorneys. The traditional avenues of relief available to the charging party are still applicable.

Accordingly, the undersigned declines to issue a complaint as the charge is deficient.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: May 27, 1982
Trenton, New Jersey