

SUPREME COURT OF NEW JERSEY

Comments, Explanations and Annotations
by Kenneth F. Irek

In the Matter of Kenneth F. Irek,
An Attorney at Law

“... and good cause appearing;”

(Page 1, first paragraph,
Supreme Court Order, D-112,
Filed May 13, 1993)

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Comments, Explanations and Annotations

Quote from the record:

“... and good cause appearing; It is ORDERED that KENNETH F. IREK, formerly of COLTS NECK, who was admitted to the bar of this State in 1981, be disbarred and that his name be stricken from the roll of attorneys of this State, effective immediately; ...”

Legal Question: Does the New Jersey Supreme Court’s mandatory review of all decisions of the DRB that recommend disbarment, pursuant to Rule 1:20-16, require specific findings of facts and conclusions of law that would indicate a “Review De Novo”?

Discussion:

“Good cause appearing” must be entirely based upon the DRB’s report since no additional findings are stated, no testimony, no subpoenas, no oral arguments, and no briefs.

No order to show cause is in the record, although the Ethics Committee Manual states one should be sent to the Respondent by the Court.

A review de novo is mandated by the Court Rules:

Rule 1:20-16 Action by the Supreme Court

(a) Review of Recommendations for Disbarment. The Supreme Court shall review all decisions of the Board that recommend disbarment. The review shall be on the basis of the decision, the transcript of the hearing before the Board, any briefs filed with the Board, and the record of the proceedings before the Ethics Committee, if any. The record shall be supplemented by the filing of briefs and by oral argument before the Supreme Court in accordance with R. 2:5, 2:6 and 2:11, insofar as applicable.

(b) Review of Other Final Disciplinary Determinations. In all matters other than those in which disbarment has been recommended, the Board's decision shall become final on the entry of an appropriate Order by the Clerk of the Supreme Court. Unless the Court otherwise orders, entry of a final Order of discipline shall be stayed by the filing of a timely petition for review of the Board's decision by the respondent or the Office of Attorney Ethics or by the entry of an Order scheduling the matter for briefing and, where appropriate, oral argument on the Court's own motion. The Court may, on its own motion, decide to review any determination of the Board where disbarment has not been recommended. Either respondent or the Office of Attorney Ethics may seek review by filing a notice of petition for review within twenty days of the filing of the Board's decision with the Court. The notice shall be accompanied by nine copies of a petition for review, which shall be a brief that meets the format requirements of Rule 2:12-7(a). The responding party shall serve and file a responding brief within ten days of the filing of the petition for review. A reply brief, if any, shall be served and filed within seven days thereafter. If the Court grants the petition for review, the record before it shall consist of the briefs filed on the petition and the record developed below, consistent with paragraph (a) of this Rule. The Court may, in its discretion, elect to determine any matter on the papers submitted to it, without oral argument. Unless the Court otherwise directs, the entry of its disposition shall vacate any stay in effect.

(c) De Novo Review. Supreme Court review shall be de novo on the record.

There are numerous New Jersey Supreme Court cases discussing the facts and conclusions of their review, de novo, of the DRB recommendations for discipline. These opinions specifically describe the evidence found in the record below, and apply the Court's understanding of New Jersey law, to them.

But in this case, Chief Justice Wilentz choose to substitute the boilerplate phrase; "and good cause appearing", for any mention of the evidence and conclusions of law, that would have indicated the Supreme Court actually conducted a de novo review on the record.

Conclusion:

The Order of disbarment of Kenneth F. Irek, signed by Chief Justice Wilentz on May 11, 1993, does not state that the record was reviewed, as Rule 1:20-16 requires, only that the Disciplinary Review Board filed a report recommending disbarment.

Suggested Revisions to Existing Procedure(s):

In all cases where Permanent Disbarment is ordered, as a mandatory part of the order, the Supreme Court should be required to file a detailed opinion, such as in any other Supreme Court case, with a complete summary of the evidentiary facts and conclusions of law.

Fact Summary:

In May of 1990, Plaintiff, Kenneth Frank Irek (Irek) advertised the sale of a vacant construction lot in Jackson, New Jersey, owned by his solely owned New Jersey corporation, Kirex Development Company, Inc. Zontan Szatmary and his wife, Cathleen Szatmary, decided to purchase the lot and retained a licensed New Jersey attorney, Dennis D. Poane to represent them. A "Contract for Sale of Real Estate" was signed by both parties and Cathleen Szatmary made a \$5,000 check payable to "Kirex Dev. Co", dated May 29, 1990, as the initial deposit of the purchase price of \$35,000. Irek, acting in his official capacity as the President of Kirex Development Company, Inc., endorsed the check as "Kirex Development Co", and deposited it into the Kirex business bank account. Dennis D. Poane, Esq, proceeded to prepare for closing with a series of correspondences back and forth with Fran Donahue, a Realtor friend of Irek, at the end of June and early July, 1990. The liens and judgments that Poane knew of would not have exceeded the total purchase price of the lot. On or about August, 1990, Irek became unavailable and the closing never took place and the \$5,000 deposit was not returned. On February 27, 1991, the Szatmarys ("Claimants") filed an Attorney Grievance with the District IX

Ethics Committee. On April 12, 1991, Claimants filed a written "Statement of Claim" with the NJLFCP, stating that they lost Five Thousand dollars from Kenneth Irek, based on a Fiduciary Relationship (escrow agent). On July 29, 1992, Cathleen Szatmary testified before the District IX Ethics Committee. On May 11, 1993, Chief Justice Robert N. Wilentz signed an Order that permanently disbarred Kenneth F. Irek and restrained and enjoined him from practicing law in New Jersey. On November 26, 1993, the Trustees of the NJLFCP paid to Zontan and Cathleen D. Szatmary the sum of \$5,000, 'arising from the dishonest conduct of their attorney, Kenneth Irek ...', and received a signed 'Release, Assignment and Subrogation Agreement from the Szatmarys. On December 29, 1994, the New Jersey Lawyers' Fund for Client Protection, filed a Civil Complaint in the Superior Court of New Jersey, Law Division, Mercer County, demanding Kenneth Irek reimburse the NJLFCP for the Five Thousand Dollars (\$5,000), paid on his behalf to the Szatmarys, plus interests and costs of suit. Paragraph 4 of the NJLFCP Complaint states:

"4. In or about August 1990, while representing Zontan and Cathleen Szatmary, defendant embezzled, misapplied and converted to his own use the sum of \$5,000.00 received by him on behalf of Mr. and Mrs. Szatmary as funds to be held, in a fiduciary capacity, in escrow in connection with a real estate transaction."

On March 22, 1995, the Superior Court of Mercer County, Law Division, entered a Five Thousand dollar (\$5,000) Default Judgment against Kenneth Frank Irek and in favor of the NJLFCP. Twenty-five years later, on November 9, 2020, Plaintiff filed a six-count Verified Complaint in the Superior Court of New Jersey, Mercer County, Law Division, claiming, inter alia, that Defendant, the New Jersey Lawyers' Fund for Client Protection, fraudulently obtained the above-described Default Judgment and to declare it void *ab initio*. On November 27, 2020, Plaintiff filed a Motion for Injunctive Relief Temporary Restraints, preliminarily enjoining and restraining Defendants from, inter alia, continuing to engage in conduct related to compelling Plaintiff to reimburse the NJLFCP for the \$5,000 claim they had paid to the claimants. On December 9, 2020, Defendants filed a Cross-Motion to Dismiss Plaintiff's Verified Complaint and deny injunctive relief, claiming, inter alia, lack of subject matter jurisdiction; failure to state a claim upon which relief can be granted; absolute immunity in law and equity; and no showing of irreparable harm or substantial hardship if injunction denied. On December 14, 2020, Plaintiff filed a Reply to Defendants' Cross-Motion, opposing dismissal of his Verified Complaint and Injunctive Relief. On December 15, 2020, Defendants filed a request for leave of court to file a sur-reply. On December 15, 2020, Plaintiff filed a response to Defendants' request to file a sur-reply. On December 18, 2020, a telephonic oral argument was held for 34 minutes, before Judge Douglas H. Hurd, P. J. Cv. On December 21, 2020, Judge Hurd signed an Order granting

Defendants' Cross-Claim to dismiss Plaintiff's Verified Complaint, with prejudice, for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted, and granting Defendants' objection to Plaintiff's Motion for Injunctive Relief. It is from this Order that Plaintiff appealed to the Superior Court, Appellate Division. On December 21, 2020, Judge Douglas H. Hurd put his motion decision on the record. On January 7, 2021, Plaintiff filed a Notice of Appeal of Judge Hurd's Order. On March 3, 2022, in-person oral argument was heard. On May 18, 2022, the Appellate Division's Per Curiam decision affirmed the Superior Court's dismissal of Irek's Verified Complaint and denial of injunctive relief. On May 18, 2022, Plaintiff filed a Notice of Petition for Certification with the Supreme Court of New Jersey. On June 15, 2022, Plaintiff filed a Petition for Certification with the Supreme Court of New Jersey.