

NEW JERSEY
LAWYERS' FUND
FOR CLIENT PROTECTION

Comments, Explanations and Annotations
by Kenneth F. Irek

Bench Warrant issued March 23, 2015 for “the
arrest of KENNETH F. IREK....” sent to the
“Sheriff of Los Angeles County, CA: or any
other Authorized Person”
(Signed by Sue Regan, Deputy Clerk of the
Court Superior Court of New Jersey, Mercer
County).

This page is for information
only and is Not part of the
attached document(s). It was
created by Kenneth F. Irek for
clarification and indexing.

Comments, Explanations and Annotations

Quote from the record: Bench Warrant issued March 23, 2015, for “the arrest of Kenneth F. Irek”.

Legal Question:

Does the New Jersey Lawyers’ Fund for Client Protection have territorial jurisdiction outside of New Jersey?

Discussion:

The NJ Comprehensive Enforcement Program was used outside the territorial jurisdiction of New Jersey to serve a Bench Warrant on a resident of California in California, for failure to appear in a civil contract matter. The Bench Warrant was sent to the “The Sheriff of Los Angeles County, CA; or Other Authorized Person”. There are formal, authorized procedures for enforcing judgments and other legal orders in states outside of the state attempting enforcement.

The NJLFCP was aware of the proper method of enforcing a New Jersey money judgment in California, as explained in a letter, dated April 18, 1995, sent to Kenneth Irek, in Chatsworth, California, by Michael T. McCormick, Deputy Counsel to the NJLFCP (in pertinent part):

New Jersey Lawyers’ Fund for Client Protection v.
Kenneth Irek; J-082161-95; CPF-520

Dear Mr. Irek:

Enclosed please find a copy of the Default Judgment entered against you in the above captioned matter. As you are aware, this judgment is a result of the Fund’s payment of the claim of Szatmary v. Irek in the amount of \$5,000. To date you have not reimbursed the Fund for any portion of this amount; the entire debt of \$5,000 remains as your personal obligation.

We would hope to be able to resolve this matter amicably. Please call or write upon receipt of this letter to propose a repayment plan which is appropriate in light of your current financial condition. Even a minimal, good faith monthly payment may be acceptable until such time as your circumstances permit you to increase your monthly remittance.

Again, we wish to work with you, but cannot do so without your cooperation. If I do not hear from you by May 10, 1995 I will be forced to assume you wish to begin a potentially protracted collection process. This Fund will retain local counsel, enter its judgment in California and thereafter pursue all available remedies to obtain satisfaction of its judgment.

Please be guided accordingly.

Very truly yours,

_____/s/_____

Michael T. McCormick

Michael T. McCormick knew that the New Jersey judgment had to be entered in California. Attempting to enforce a New Jersey civil judgment in California is a formal and specific procedure, since California is only one of 2 states that has not adopted the Revised Uniform Enforcement of Foreign Judgments Act (UEFJA), and has their own, more stringent requirements. Sending a letter to a county sheriff or the Motor Vehicle division requesting that, because the NJLFCP is an entity of the New Jersey Supreme Court, actions should be taken without complying with existing California laws, is an unlawful extension of New Jersey's jurisdiction. They should have utilized the proper procedure found in California's Sister State Money-Judgments Act:

Cal Code Civ Proc § 1710.15. Application for entry of judgment

(a) A judgment creditor may apply for the entry of a judgment based on a sister state judgment by filing an application pursuant to Section 1710.20.

(b) The application shall be executed under oath and shall include all of the following:

(1) A statement that an action in this state on the sister state judgment is not barred by the applicable statute of limitations.

(2) A statement, based on the applicant's information and belief, that no stay of enforcement of the sister state judgment is currently in effect in the sister state.

(3) A statement of the amount remaining unpaid under the sister state judgment and, if accrued interest on the sister state judgment is to be included in the California judgment, a statement of the amount of interest accrued on the sister state judgment (computed at the rate of interest

applicable to the judgment under the law of the sister state), a statement of the rate of interest applicable to the judgment under the law of the sister state, and a citation to the law of the sister state establishing the rate of interest.

(4) A statement that no action based on the sister state judgment is currently pending in any court in this state and that no judgment based on the sister state judgment has previously been entered in any proceeding in this state.

(5) Where the judgment debtor is an individual, a statement setting forth the name and last known residence address of the judgment debtor. Where the judgment debtor is a corporation, a statement of the corporation's name, place of incorporation, and whether the corporation, if foreign, has qualified to do business in this state under the provisions of Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code. Where the judgment debtor is a partnership, a statement of the name of the partnership, whether it is a foreign partnership, and, if it is a foreign partnership, whether it has filed a statement pursuant to Section 15800 of the Corporations Code designating an agent for service of process. Except for facts which are matters of public record in this state, the statements required by this paragraph may be made on the basis of the judgment creditor's information and belief.

(6) A statement setting forth the name and address of the judgment creditor.

(c) A properly authenticated copy of the sister state judgment shall be attached to the application

Another example of the NJLFCP sidestepping the proper legal procedures is the NJLFCP Deputy Counsel, Ruby D. Cochran's sending a letter to the California Department of Motor Vehicles, requesting that they suspend or refuse to renew the driving license of Kenneth F. Irek:

(in pertinent part) Gentlemen:

Please be advised that I serve as Deputy Counsel to the New Jersey Lawyers' Fund for Client Protection ("Fund"). The Fund exists as a Committee of

the Supreme Court of New Jersey pursuant to R. 1:28-1 et seq. for the purpose of compensating the clients of disciplined attorneys who have misappropriated money from them. Kenneth F. Irek was such an attorney. His conduct, while acting as a New Jersey lawyer, has resulted in a claim or claims with the Fund. The Fund has a Judgment against Mr. Irek in the amount of \$5,000.00, which he has refused to pay.

On July 28, 2006, we obtained an Order (copy enclosed) to suspend the driving license of Kenneth F. Irek in New Jersey for failure to reimburse the Fund for the monies it has paid to his victims. Mr. Irek is now living in California. Could you please suspend or refuse to renew the driving license of Mr. Irek based on this Order? If not, could you please contact me at (609) 984-7179 to discuss our options.

Thank you for any help you can give us in this matter.

Sincerely,

_____/s/_____

Ruby D. Cochran

Kenneth Irek's New Jersey driver license was suspended because of a failure to pay a money judgment to the NJLFCP, not for any motor vehicle infraction. There is an Interstate Compact whereby one state which has a motor vehicle law violation conviction can send to another state where that person is residing, a request to enforce that conviction in their state. But in this case the Compact cannot be used because Irek's suspension was not based upon a motor vehicle law violation. Ruby D. Cochran attempted to explain the Fund's use of extrajudicial methods in their collection activities, during the oral argument for the Cross –Motion to Dismiss Plaintiff's Verified Complaint. When asked why she sent the above-described letter directly to the California Department of Motor Vehicles, she stated, in pertinent part:

“And the suspension for the driving privileges, again, there's a national database that these are supposed to be entered into and we have found that if we send the -- the notification directly to the state, they're more inclined to be aware of the driving privilege suspension, as opposed to merely relying on them to check the database. We have no control over what the other state will do with that information.”

Rebuttal answer from Kenneth Irek:

“And, plus, how do you get to California -- how do you ask California to -- to not renew my license or suspend it? There’s no compact -- she was talking about the Interstate Compact, but that’s for driver violations. It has nothing to do with this. And they didn’t use it anyhow, they just informally sent a letter. So that’s not part of their official duties.”

The Fund’s souciant attitude in disregarding procedures that other litigants must abide by may be attributed to their mistaken understanding that their purpose is some higher cause that is so important that the normal statutes, rules, regulations, and procedures that apply to other parties, do not apply to them. Their opening sentences in most all of the correspondences in the record of this matter, begin with:

“The Fund exists as a Committee of the Supreme Court of New Jersey pursuant to R. 1:28-1 et seq. for the purpose of compensating the clients of disciplined attorneys who have misappropriated money from them.”

Lofty purpose; noble cause but still beholden to New Jersey’s laws.

Conclusion:

The record is brimming with evidence of the unregulated, cavalier conduct of the NJLFCP; from violations of the Defendant’s due process guarantees, to interstate publishing of libel and defamation against Defendant. Most of which can be considered conduct that is Not in the performance of their official duties.

Suggested Revisions to Existing Procedure(s):

1. Require the NJLFCP to include a written disclaimer, in any litigation or other transactions were the rights of others are in jeopardy, that the Fund enjoys no special privileges and is governed by the same rules as their opposing party.
2. Allow certain specified and unlawful actions to pierce the Complete Immunity shield found in Rule 1:28-1(f).
3. Require the Fund Trustees to publish online, a written Facts and Conclusions of Law, for each Claim paid.

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.