

**NEW JERSEY  
LAWYERS' FUND  
FOR CLIENT PROTECTION**

**Comments, Explanations and Annotations  
by Kenneth F. Irek**

Letter to Mr. Kenneth F. Irek stating that if he did not contact Ruby D. Cochran, Deputy Counsel, within ten (10) days of the date of the letter, the NJLFCP will request a Bench Warrant for his arrest. He will then only be released from incarceration upon the payment of \$225.00.  
(Letter dated January 17, 2017).

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## Comments, Explanations and Annotations

Quote from the record: “You will then only be released from incarceration upon the payment of \$225.00”

Legal Question: Can the NJ Comprehensive Enforcement Program be used to enforce a civil judgment for restitution in violation of the New Jersey Constitution, Article I, Paragraph 13. ‘No person shall be imprisoned for debt in any action, or on any judgment founded upon contract, ...’

### Discussion:

The Legislative History of the CEP, February 24, 1994, describes its purpose within its beginning few lines:

“The Legislature finds and declares that: a. The Judiciary routinely enters judgments, and court orders setting forth assessments, surcharges, fines and restitution against litigants pursuant to statutory law.” ... and “d. The Judiciary has successfully developed a hearing officer program in child support enforcement and a pilot criminal enforcement court project... that have demonstrated significant increases in collection and compliance.”

Clearly, the CEP was created to increase the collections of monies related to directly obtained Judiciary judgments, assessments, surcharges, fines and restitution; mainly for child support enforcement and criminal enforcement; not civil judgments that have their own procedures for collections. The NJLFCP argues that the use of the CEP for issuing Bench Warrants is not for non-payment; it was for not appearing. A distinction without a difference. Ruby Cochran’s oral argument statement:

“I also wanted to point out that Mr. Irek is, apparently, let’s say confused about the comprehensive enforcement program. The comprehensive enforcement program does not allow for bench warrants to be issued or driving privileges to be suspended for nonpayment. There’s no debtor’s prison in New Jersey. What we have, however are multiple situations where Mr. Irek refused to appear at hearings before hearing officers, or he could have appeared before a judge had he chosen to do so. And as a result of what appeared to be contempt of court, this comprehensive enforcement program does

allow for the bench warrants to be issued and the driving privileges to be suspended. Those were approved. Those orders were approved and signed off on by the judge that was overseeing the comprehensive enforcement program in Mercer County for the Client Protection Fund. That was not for nonpayment. It was for not appearing.”

The ability to have Irek, a judgment-debtor, arrested and sent to New Jersey for a hearing, is not a normal remedy available to enforce civil judgments, but rather a remedy used in criminal matters. This Bench Warrant was issued March 23, 2015, To: The Sheriff of Los Angeles County, CA: or any other Authorized Person:

...

“THEREFORE, we command you to take KENNETH F. IREK between the hours of 8:30 a.m. and 3:30 p.m. on Monday through Friday and safely and closely keep him in your custody in the common jail of the County of Los Angeles until he shall be brought before the Honorable William Anklowitz, J.S.C., Superior Court of New Jersey, Mercer County, or until said Court shall make Order to the contrary.”

Use of the Comprehensive Enforcement Program seems to be a violation of Paragraph 8 of the New Jersey State Constitution:

“8. No person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases now prosecuted without indictment, or arising in the army or navy or in the militia, when in actual service in time of war or public danger”.

The record is void of any presentment or indictment being issued.

The NJLFCP has been a party to many civil cases regarding reimbursement to the NJLFCP for money the Fund paid to claimants, from parties adjudicated liable for the reimbursement, including banks, insurance companies, and title companies. These were civil actions based upon contract and tort law. If the use of the CEP by the NJLFCP was to be applied to any of these parties, you could have a situation where an officer of the bank could have their driver license suspended and possible have a Bench Warrant issued against them.

The full power of the use of the CEP by the NJLFC can be witnessed by the letter dated January 17, 2017, from Ruby D. Cochran, Deputy Counsel, to Mr. Kenneth F. Irek. It virtually

allows a Bench Warrant to be issued for the arrest of Kenneth F. Irek, and then only be released from incarceration upon the payment of \$225.00:

(in pertinent part) January 17, 2017

Mr. Kenneth F. Irek

Re: New Jersey Lawyers' Fund for Client Protection v. Kenneth F. Irek

Docket No.: MER-L-005664-94; J-082161-95

Enclosed please find a copy of the Consent Order that was entered by the Court at the Comprehensive Enforcement Hearing on December 9, 2016.

This Consent Order authorizes us to pursue a Bench Warrant for your arrest. We have given you every opportunity to contact us and make payment arrangements on the amount due and owing to the Fund. If we do not hear from you within ten (10) days from the date of this letter, we will forward the enclosed Order, together with a request for a Bench Warrant for your arrest to the proper authorities. You will then only be released from incarceration upon the payment of \$225.00.

It is essential that you contact me within ten (10) days of the date of this letter to resolve this issue. If I do not hear from you, then I will take the necessary steps to begin the above process.

By: \_\_\_/s/\_\_\_\_\_

Ruby D. Cochran

Deputy Counsel

The clear meaning of Ruby D. Cochran's letter is that the NJLFCP can have you incarcerated, in your residence state of California, unless and until you pay the Fund \$225.00. Conceivably, Irek could be confined in the Los Angeles Men's Central Jail for the remainder of his natural life, if he did not capitulate to the coercion and threats and pay \$225. The Fund received the default judgment against Irek for \$5,000, on March 22, 1995. The above letter was dated January 17, 2017, a period of almost 22 years. It is unlikely that Ms. Cochran and her cohorts will ever cease collection activities until judicially stopped by either the New Jersey Supreme Court or the U.S. Supreme Court.

Conclusion:

The use of the Comprehensive Enforcement Program by the NJLFCP may be in violation of the New Jersey Constitution:

#### 1:28-5. General Powers of Trustees

(a) ...

(b) to enforce claims which the Fund may have for reimbursements, including utilization of the Comprehensive Enforcement Program; pursuant to N.J.S.A. 22A:2-23, the Fund shall not be liable for the payment of any fee provided for by N.J.S.A. 22A:2-1 et seq.; (c) to employ and compensate consultants, agents, legal counsel and such other employees as they deem necessary and appropriate consistent with personnel policies of the judiciary.

(c) ...

#### Suggested Revisions to Existing Procedure(s):

1. Require the New Jersey Supreme Court remove the NJLFCP's authorization to utilize the Comprehensive Enforcement Program for enforcement of civil Judgments obtained from Civil Actions based on contractual matters.
2. Institute a transparent and public oversight procedure permitting the New Jersey attorneys who pay into the Fund to see if claims have been properly paid according to the applicable Rules.

#### 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.