

NEW JERSEY  
LAWYERS' FUND  
FOR CLIENT PROTECTION

Comments, Explanations and Annotations  
by Kenneth F. Irek

“Question 15. How Did You Learn  
About The Fund?  
Answer: Through Dennis Poane  
(Our Attorney)”

Zontan and Cathleen Szatmary,  
signed, sworn and Notarized Statement of  
Claim, received April 16, 1991)

NJDISBARRED.COM- K 01

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:

“ 15. How did you learn about the fund?  
Through Dennis Poane (Our Attorney)”

### Legal Question:

Is the New Jersey Lawyers' Fund for Client Protection, authorized to pay a claim against a New Jersey attorney that was neither representing the claimant as an attorney or fiduciary?

### Discussion:

Rule 1:28 of the Rules Governing the Courts of the State of New Jersey, governs the New Jersey Lawyers' Fund for Client Protection.

Rule 1:28-3 contains the requirements for “Eligible Claims”:

1:28-3. Payment of Claims (a) Eligible Claims. The Trustees may consider for payment all claims resulting from the dishonest conduct of a member of the bar of this state or an attorney (i) admitted pro hac vice, (ii) holding limited license as in-house counsel, (iii) registered as multijurisdictional practitioner, (iv) certified as a foreign legal consultant or (v) permitted to practice under Rule 1:21-3(c), if the attorney was acting either as an attorney or fiduciary, provided that: ...

The attorney must have been acting as an attorney or fiduciary. The Rules do not define what acting as an attorney is, but statutory construction rules dictate that the normal and ordinary meaning of “acting as an attorney”, is implied, which is the representation of a client in a legal matter, pursuant to an agency-type relationship.

The Rules also do not specifically define “fiduciary” but the common meaning that is accepted by the ABA and the vast majority of state Client Protection programs is:

#### ABA Comment:

[2] Fiduciary relationships are included because lawyers traditionally serve in that capacity as executors, conservators and guardians ad litem. Rejection of claims based upon technical distinctions between this sort of service and a client-lawyer relationship would not serve the purpose or mission of the Fund. [ABA Model Rules]

Additionally, the NJLFCP Statement of Claim form explains that the types of relationships with an attorney that are considered “Fiduciary” are “Guardian, Executor, Trustee”:

4. How long have you known this attorney? 5. How long did this attorney represent you?  
6. How much loss are you claiming? \$ 7. What is your claim based on? (Select one)  Attorney-client relationship  Fiduciary relationship (Guardian, Executor, Trustee) 8. a.) State how you met and when you hired the attorney, b.) State the amount(s) paid and date(s) of payment (Attach proof of payment), and c.) Describe the dishonest conduct that caused your loss.

[Verbatim wording from a portion of the paper form –Revised 05/2022, CN:1162]

Cathleen Szatmary testified, in sworn oral testimony and Notarized claim forms and other documents, that her and her husband's attorney was Dennis D. Poane, and Mr. Poane also stated he was their attorney:

1) Attorney Grievance Form, not dated, but received by the District IX Ethics Committee on or about February 27, 1991, from Zontan and Cathleen Szatmary, stating:

"Was the specific lawyer complained of your lawyer? X NO"

"Please see letter filed by our Attorney (Dennis D. Poane)"

2) Letter from Dennis D. Poane, Esq., to Ronald Troppoli, Director-Special Prosecutions Unit, dated November 14, 1990 and signed by Dennis D. Poane:

"Dear Mr. Troppoli,

As you may remember, we have converse several times with regard to the above-entitled matter, wherein I represented prospective purchasers of property, being Zontan and Cathleen Szatmary." ...

3) Statement of Claim, New Jersey Lawyers' Fund for Client Protection, sworn and signed by Zontan J. Szatmary and Cathleen D. Szatmary, on April 12, 1991 (received April 16, 1991):

" 15. How Did You Learn About The Fund?

*Through Dennis Poane (Our Attorney)" [handwritten]*

4) Testimony of Cathleen D. Szatmary, before the District IX Ethics Committee, July 29, 1992:

"... Q. Now, after you spoke to Ken Irek and saw the lot, did you retain legal counsel to represent you in connection with this purchase?

A. Right.

Q. And who represented you?

A. Dennis Poane, Esq.” ...

The record clearly demonstrates that Dennis D. Poane was the Szatmary’s attorney, not Kenneth Frank Irek, therefore the “acting as an attorney” portion of Rule 1:28-3, does not apply. Neither does the second part, that the attorney was acting as a fiduciary, apply since this was a contractual real estate sale, where no attorney acted in the capacity of an executor, conservator, guardian ad litem, or trustee.

As early as April 16, 1991, the NJLFCP knew Dennis D Poane was representing the Szatmarys. Yet, the Trustees paid their \$5,000 claim on November 26, 1993, falsely stating Kenneth Irek was their attorney:

“... The Trustees of the Client Protection Fund, pursuant to R. 1:28-3, having considered the claim of Zontan Szatmary and Cathleen D. Szatmary, arising from the dishonest conduct of their attorney, Kenneth Irek, it is now mutually agreed:

1. The Client Protection Fund will pay to Zontan Szatmary and Cathleen D. Szatmary the sum of \$5,000 upon execution of this Agreement by all parties.” ...

And Michael T. McCormick, who was Deputy Counsel for the NJLFCP (and is now the Director), filed a Civil Action on behalf of the Fund, against Kenneth Irek, on December 29, 1994, falsely stating Irek was the Szatmary’s attorney:

“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 ...”

Conclusion:

The NJLFCP had no authority to pay the Szatmary’s claim, no authority to file a civil action for reimbursement against Kenneth Irek, and no authority to continue collection activities for more than 26 years.

Suggested Revisions to Existing Procedure(s):

Revise the rules governing the NJLFCP to reinstate the earlier requirement that the claimant must first attempt to obtain payment for their loss from other available sources, before applying to the Fund.

### 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.