

LETTER ON BEHALF OF
DEFENDANTS-RESPONDENTS IN
OPPOSITION TO THE PETITION
FOR CERTIFICATION

Kenneth Frank Irek, *Plaintiff*

v.

New Jersey Lawyers' Fund
For Client Protection, *Defendant*

and

The Supreme Court of New Jersey, *Defendant*

From:

Superior Court of New Jersey, Appellate Division

Docket No. A-001384-20-T4

Supreme Court

Docket No. 087153

File Date: June 30, 2022

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June 30, 2022

VIA HAND DELIVERY

Heather Joy Baker, Clerk
Supreme Court of New Jersey
Richard J. Hughes Justice Complex
25 Market Street, P.O. Box 970
Trenton, New Jersey 08625

Re: Kenneth Frank Irek v. New Jersey Lawyers' Fund for
Client Protection and the Supreme Court of New
Jersey

Supreme Court Docket No.: 087153

Appellate Division Docket No.: A-1384-20T4

On Petition for Certification to the Supreme Court
of New Jersey from the Judgment of the Superior
Court of New Jersey, Appellate Division

Sat Below: Hon. Hany A. Mawla, J.A.D.
Hon. Carmen H. Alvarez, J.A.D.

Letter on Behalf of Defendants-Respondents, New
Jersey Lawyers' Fund for Client Protection and
Supreme Court of New Jersey, in Opposition to the
Petition for Certification

Dear Ms. Baker:

Please accept this letter on behalf of Respondents, New Jersey
Lawyers' Fund for Client Protection and Supreme Court of New
Jersey, in opposition to Kenneth Frank Irek's Petition for



Certification. Respondents rely primarily on their Appellate Division merits brief, four copies of which have been submitted with this letter, pursuant to Rule 2:12-8.

A petition for certification to this Court of a final decision of the Appellate Division will only be granted for special reasons. See R. 2:12-4. Certification will not be granted where the decision of the Appellate Division is essentially an application of settled principles to the facts of a case, does not present a conflict among judicial decisions requiring clarification or calling for supervision by the Supreme Court, or does not raise issues of general importance. Ibid.; see also Fox v. Woodbridge Twp. Bd. of Educ., 98 N.J. 513, 515-16 (1985) (O'Hern, J., concurring); In re Route 280 Contract, 89 N.J. 1, 2 (1982). Failure to meet the requirements of Rule 2:12-4 is appropriate grounds for denial of a petition for certification.

Irek satisfies none of the criteria set forth in the Rule.

The Appellate Division correctly affirmed the trial court's order dismissing Irek's claims with prejudice for failure to state a claim under Rule 4:6-2(e). The basis of his argument was and remains that he should never have been disbarred in 1993 for misappropriating escrow funds because he did not have an attorney-client relationship with the people whose funds he misappropriated. The Appellate Division correctly rejected that argument and aptly noted that Irek is attempting to relitigate "an

action filed more than twenty years out of time in a venue without authority to act and against entities immune from suit.” Irek v. N.J. Lawyers’ Fund for Client Prot., No. A-1384-20 (App. Div. May 18, 2022) (slip op. at 6). That finding was correct for a myriad of reasons.

To begin, the Appellate Division properly found that Irek failed to state a viable claim for relief against the Supreme Court and the Lawyers’ Fund because there is no legal for his “mistaken premise that neither the [Supreme] Court nor the Fund can sanction him” for non-attorney conduct. Irek, slip op. at 5. Next, the Appellate Division aptly recognized, in accordance with G.E. Capital Mortgage Services, Inc. v. New Jersey Title Insurance Co., 333 N.J. Super. 1 (App. Div. 2000), that Irek’s claims “cannot be pursued in the Law Division” because “[t]he Supreme Court has exclusive authority over the state bar,” including the Lawyers’ Fund, and “determine[s] whether alternate procedures may be followed in order to pursue a claim against the Fund.” Irek, slip op. at 5-6 (quoting G.E. Cap. Mortg. Servs., Inc., 333 N.J. Super. at 6). Finally, the Appellate Division rightly ruled that - in the alternative - Irek’s claims were unsustainable as a matter of law because the Supreme Court and Lawyers’ Fund are cloaked with absolute immunity, R. 1:28-1(f), and the Tort Claims Act’s two-year statute of limitations in this 2020 lawsuit foreclosed “damages for events that occurred in 1994.” Irek, slip op. at 6.

Rather than identifying a compelling reason that would warrant this Court's review, Irek reprises the same unavailing arguments advanced to the Appellate Division. Irek's mere dissatisfaction with the lower courts' rulings is an insufficient basis to seek review in this Court. Considering the unexceptional application of existing precedent to the facts of this case, and the lack of any other justifiable reason to support the grant of his petition, certification should be denied.

For these reasons, the Petition for Certification should be denied.

Respectfully submitted,

MATTHEW J. PLATKIN
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cc: Kenneth Frank Irek, pro se (via UPS Overnight & certified mail)