

PETITION FOR
CERTIFICATION TO THE
SUPREME COURT OF NEW JERSEY

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 15, 2022

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SUPREME COURT OF NEW JERSEY
DOCKET NO. 087153

KENNETH FRANK IREK,
Plaintiff-Appellant

v.

NEW JERSEY LAWYERS' FUND FOR
CLIENT PROTECTION
and
THE SUPREME COURT OF NEW JERSEY,
Defendants-Respondents.

A Petition for Certification
from the May 18, 2022 Decision
of the
SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION
DOCKET NO. A-001384-20

CIVIL ACTION

Sat Below:

Hon. Carmen H. Alvarez,
P.J.A.D.
Hon. Hany A. Mawla, J.A.D.

PETITION FOR CERTIFICATION AND APPENDIX OF PLAINTIFF-APPELLANT

KENNETH FRANK IREK,
APPELLANT-PETITIONER, Pro Se
8330 HASKELL AVENUE, APT 226
NORTH HILLS, CA 91343
(747)260-8998
kennyirek@gmail.com

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STATEMENT OF THE MATTER INVOLVED

A. Facts.

What began in the summer of 1990 as an ordinary sale of a small building lot owned by a New Jersey attorney, became a 30-year legal odyssey after the seller, Kenneth Frank Irek, breached the real estate contract and never closed. Starting in 1991 with the filing of an Attorney Grievance by the potential buyers, followed by a Statement of Claim to the NJLFCP for \$5,000, then an Order of permanent disbarment by Chief Justice Robert N. Wilentz on May 11, 1993; resulting in the payment of the \$5,000 claim by the NJLFCP Trustees: "... arising from the dishonest conduct of their attorney, Kenneth Irek, ..."; and the filing of a civil complaint against Irek for reimbursement of the \$5,000, with a default civil judgment being entered for the NJLFCP in March, 1995.

Then, for the next twenty-six (26) years, and still continuing, the Defendant NJLFCP, has attempted to recover from Irek, the \$5,000 claim they erroneously paid.

The underlying transaction began in May of 1990, when 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.

B. Procedural History.

On or about February 27, 1991, Zontan and Cathleen Szatmary (Claimants) filed an Attorney Grievance Form with the District IX Ethics Committee (Pa194)

On April 12, 1991, Claimants filed a written "Statement of Claim" with the NJLFCP, stating that they lost Five Thousand dollars (\$5,000) from Kenneth Irek (Plaintiff), based on a Fiduciary Relationship [escrow agent] (Pa196).

On July 29, 1992, Cathleen Szatmary testified before the District IX Ethics Committee (Pa205).

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, "for the knowing misappropriation of escrow funds" (Pa131).

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 (Pa133).

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, Docket No. L-5664-94, 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." (Pa153)

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. (Pa161)

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*. (Pa1)

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 (Pa319)

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. (Pa327)

On December 14, 2020, Plaintiff filed a Reply to Defendants' Cross-Motion, opposing dismissal of his Verified Complaint and Injunctive Relief (Pa362)

On December 15, 2020, Defendants filed a request for leave of court to file a sur-reply. (Pa368)

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. (Transcript at Pa415)

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. (Pa372)

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. (Transcript at Pa432)(2T 12/21/2020)

On January 7, 2021, Plaintiff filed a Notice of Appeal of Judge Hurd's Order, (Pa374)

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.

QUESTIONS PRESENTED

1) Questions regarding the meaning and implementation of N.J. Court Rule 1:28-3, New Jersey Lawyers' Fund for Client Protection:

- a) Must the requirements of N.J. Court Rule 1:28 -3 (a), Eligible Claims, be present before section 1:28 -3 (b), Consideration of Claims, authorizes the trustees in their sole discretion, to determine which eligible claims merit reimbursement?
- b) Does the N.J. Court Rule 1:28-3 (a), Eligible Claims, requirement that "the attorney was acting either as an attorney or fiduciary", expand the meaning of "fiduciary" beyond the universally held definition contained in almost all of the other 50 state Client Protection Funds of "a guardian, executor, trustee, or conservator", to include an attorney selling his own real property through his wholly-owned New Jersey corporation, when the buyer unilaterally described him as an "escrow agent", solely because the buyer voluntarily paid to the corporation a \$5,000 deposit that was deposited in the corporation's general business account?
- c) Pursuant to New Jersey law, can a seller of his own real estate, also be considered an "Escrow Agent", where the common definition is: "a neutral third party who holds an item of value, money, or documents for other parties, to be delivered upon the fulfillment of a condition"?
- d) In New Jersey, is an "Escrow Agreement" necessary in order for a person to become an "Escrow Agent"?

2) Questions regarding immunity pursuant to N.J. Court Rule 1:28-1(f):

"(f) Immunity. The Board of Trustees, Director and Counsel, Deputy Counsel, Secretary and all staff personnel shall be absolutely immune from suit, whether legal or equitable in nature, for any conduct in the performance of their official duties."

- a) Is it "conduct in the performance of their official duties", for a Deputy Counsel for NJLFCP to file a Civil Complaint in the Superior Court containing material false statements, under oath, in order to

show that the Court had subject matter jurisdiction, when it did not?

- b) Is it "conduct in the performance of their official duties", for a Deputy Counsel for NJLFCP to send a New Jersey Bench Warrant to the Sheriff of Los Angeles County, California, commanding them to arrest Kenneth F. Irek and keep him in their custody until he can be brought before a judge in Mercer County, New Jersey?
- 3) Questions regarding the use of the Comprehensive Enforcement Program by the NJLFCP, pursuant to N.J. Court Rule 1:28-5(b):
- a) Is the use of the CEP an impermissible expansion of the CEP Fund Act beyond its stated use for the enforcement of court orders, collection of court-ordered fines, assessments, surcharges and judgments?
 - b) Is it a violation of the New Jersey State Constitution's prohibition against imprisonment for debt, when used to collect a civil money judgment?

"No person shall be imprisoned for debt in any action, or on any judgment founded upon contract, unless in cases of fraud; nor shall any person be imprisoned for a militia fine in time of peace." *New Jersey State Constitution, Article I Rights and Privileges, Paragraph 13...*

4) Questions regarding the meaning and application of the Rules of Professional Conduct (RPC):

- a) Does RPC 1.15(b), Safekeeping Property:

"(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive."

- (1) apply to funds of a non-client voluntarily paid directly to a corporation, owned by a New

Jersey lawyer, as a down payment in a real estate sale?

- (2) require money received from normal business transactions, by a corporation wholly owned by a New Jersey lawyer, to be considered received in a "fiduciary capacity", and subject to the RPC?

b) Does RPC 8.4(c), Misconduct:

"(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; ..."

apply to:

- (1) a common real estate sale where the seller, a New Jersey lawyer, breached the Contract for Sale, by not closing, where the buyers were represented by their own New Jersey lawyer?
- (2) all personal business transactions of a New Jersey lawyer, even where he is not engaged in the practice of law?

ERRORS COMPLAINED OF

1. The Appellate Division erred by affirming the Law Division's decision that they lacked subject matter jurisdiction and failing to find the Default Judgment void ab initio.
2. The Appellate Division incorrectly concludes Petitioner violated RPC 1:15(b) and RPC 8.4(c), when the record contains no evidence he was acting as an attorney, fiduciary or escrow agent.
3. The Appellate Division erred in holding that the Fund enjoys immunity from suit, when this matter is a response to a civil suit previously brought by the Fund against Petitioner.

REASONS WHY CERTIFICATION SHOULD BE GRANTED

The trial court below, the Superior Court of Mercer County, and the reviewing Appellate Court, both agreed that the Supreme Court is the only Court with the authority to decide the claims in this matter:

"Defendants are correct that the Court lacks subject matter jurisdiction over the plaintiff's claim because the Constitution unequivocally provides the Supreme Court with exclusive authority over the State Bar, and under this authority the Supreme Court established the New Jersey Lawyers' Fund for Client Protection. The defendants properly rely upon the case of GE Capital versus New Jersey Title Insurance, 333 N.J. Super., Page 1, Appellate Division 2000." *Superior Court of Mercer County*

"As separate grounds for the dismissal, Irek's claims cannot be pursued in the Law Division. The Supreme Court has exclusive authority over the state bar and established the Fund pursuant to this authority. See G.E. Cap. Mortg. Servs., Inc. v. N.J. Title Ins. Co., 333 N.J. Super. 1, 5 (App. Div. 2000). In G.E., the late Judge King said that the Fund may not be sued in Superior Court because only the Supreme Court "determine[s] whether alternate procedures may be followed in order to pursue a claim against the Fund." Id. at 6. Furthermore, the Fund enjoys immunity from suit for direct claims. Ibid.; see also R. 1:28-1(f)." *Superior Court of New Jersey, Appellate Division*

The issues requiring review are related to Rule 1:28, the New Jersey Lawyers' Fund for Client Protection, and the New Jersey Rules of Professional Conduct, both relevant to New Jersey attorneys. The Fund impacts more than 98,000 registered New Jersey lawyers who must pay mandatory fees to the Fund, or risk becoming ineligible to practice law, and like petitioner in this Appeal, could be subject to arrest and incarceration, under

the Fund's use of R.1:28-5(b), the Comprehensive Enforcement Program.

Likewise, violations of the Rules of Professional Conduct can result in disciplinary actions, including disbarment, making a clear understanding of the scope of the Rules vitally important. This appeal presents an opportunity for the Court to clarify the extent the RPC applies to petitioner's solely-owned corporation and to his personal business transactions; to the unilateral designation of petitioner as an "escrow agent"; and the Appellate Division's seemingly unlimited statement that:

"Attorneys may be disbarred even for conduct unrelated to the practice of law." (PCa14)

Thus, the Supreme Court's exclusive regulatory authority over the State's lawyers and the practice of law, coupled with the general public importance of this Appeal's issues to active New Jersey lawyers, and the opinions of both the Superior Court and Appellate Division that only the Supreme Court has jurisdiction of the matters contained herein, demonstrate that the standard for certification under R. 2:12-4 has been satisfied.

COMMENTS WITH RESPECT TO APPELLATE DIVISION DECISION

1. The Appellate Division erred by affirming the Law Division's decision that they lacked subject matter jurisdiction and failing to find the Default Judgment void ab initio.

Both the trial court and the Appellate Division categorized the Petitioner as one disputing the Fund's discretion under R. 1:28-3(b), and relied upon G.E. Cap. Mortg. Servs., Inc. v. N.J. Title Ins. Co., 333 N.J. Super. 1 (App. Div. 2000), to deny subject matter jurisdiction. The Appellate Division incorrectly expanded the holding in G.E. from its original conclusion that "the Fund may not be sued in Superior Court by a disappointed claimant..." because the Superior Court lacks subject matter jurisdiction over the Fund's discretionary determinations under R. 1:28-3(b); to the premise that G.E. applies to all the Trustees' actions, including the required elements for "eligible claims" under R. 1:28-3(a). (PCa15) Once it is recognized that G.E. does not apply to this case, the Superior Court of Mercer County, the same Court that issued the Default Judgment in 1995, being a court of general jurisdiction, has subject matter jurisdiction to decide the validity of that Civil Action default judgment, and the application for injunctive relief.

Plaintiff's Complaint is based upon R. 1:28-3(a), Eligible Claims, not R. 1:28-3(b), Consideration of Claims. Using the guidelines of N.J. Stat. § 1:1-1, as the titles suggest, part (a) contains the necessary requirements for an "Eligible Claim, while part (b) contains factors the Trustees shall consider in determining which eligible claims merit reimbursement. The very first sentence of (a) states that the Trustees may consider for

payment all claims resulting from the dishonest conduct of a member of the bar of this state... if the attorney was acting either as an *attorney* or *fiduciary*, and ... the attorney has been suspended, disbarred or placed in disability inactive status. [emphasis added] It is a condition precedent to the following provisions of R. 1:28-3. The requirements of R. 1:28-3(a) must be met before the Trustees can consider, *in their sole discretion*, which eligible claims [emphasis added] merit reimbursement from the fund. Paragraph (a) can be considered the NJ Supreme Court's written acknowledgment of the limits of their Constitutional jurisdiction over its lawyers: The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted. (N.J. Const. art. VI, § II, ¶ 3.) Part (a) is not discretionary; the specific requirements for a claim to be an "Eligible Claim" that may be considered by the Trustees, are listed as "if" and "provided that". It erects the framework that the Trustees must work within. Part (b) Consideration of Claims, begins with: "The trustees in their sole discretion...", and lists the determinations they may make, including which eligible claims merit reimbursement from the Fund and the amount, time, manner, conditions and order of payment of reimbursement. It continues by listing factors that they shall consider, in making their determination. The statutory construction, Part (a) and Part (b)

clearly indicates the Supreme Court's articulate drafting of a mandatory Part (a) and a discretionary Part (b). The gravamen of the underlying complaint, succinctly stated, is that without meeting the requirements of Part (a), Part (b) does not arise, and the Trustees have no authority to pay the claim, and the subsequent default judgment, based upon that claim, is void ab initio.

2. The Appellate Division incorrectly concludes Petitioner violated RPC 1:15(b) and RPC 8.4(c), when the record contains no evidence he was acting as an attorney, fiduciary or escrow agent.

A. RPC 1:15(b) Safekeeping Property, states:

Rule 1.15(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive.

The record contains no evidence Petitioner received funds in which a client or third person has an interest because the Szatmarys were represented by another New Jersey lawyer and there was no attorney-client relationship with Petitioner, and he did not receive funds or other property, since the \$5,000 real estate deposit was voluntarily paid directly to Kirex, not Irek, and Irek acting as the President of Kirex, deposited the check into the corporation's business account, which is the normal business procedure.

B. RPC 8.4(c) Misconduct, states:

**Rule 8.4(c) It is professional misconduct for a lawyer to:
(c) engage in conduct involving dishonesty, fraud, deceit
or misrepresentation.**

The record contains no evidence of the required elements for Irek's conduct to be considered professional misconduct:

(1) Dishonesty. Plaintiff proceeded through the normal steps involved in a New Jersey real estate closing until he breached the contract and was unavailable to close. Breach of contract is not a crime or even a tort. Punitive damages are generally not an available remedy. (Restatement (Second) of Contracts)

(2) Fraud. The record does not contain evidence of the five elements necessary for fraud in New Jersey: material misrepresentation of an existing fact, knowledge by the defendant of its falsity, an intention that the other party rely on it, reasonable reliance by the other party, and resulting damages.

(3) Deceit. The New Jersey Model Civil Jury Charge 3.30E, Fraud - Deceit, explains that Plaintiff (in the instant case the "Claimant") sustained damages as a result of a misrepresentation made by the defendant (in the instant case, "Irek"). The evidence shows that Claimant never met Irek and only spoke to him once on the phone. Claimant's attorney, Dennis Poane was the person who instructed the claimants to write the deposit check

to Kirex, since Irek was an attorney. Plaintiff made no false representations to claimants. Additionally, there is no evidence that Irek made any misrepresentations to Claimant's attorney.

(Pa42)

(4) Misrepresentation. Plaintiff owned the property being sold, and the liens were less than the sale price. (Pa216) The Claimant's testimony lacks any evidence of misrepresentation.

The Appellate Division erroneously concluded that Irek was acting as an escrow agent for his corporation, citing from the Supreme Court's 1993 Disbarment Order, for the "knowing misappropriation of escrow funds in violation of RPC 1.15(b) and RPC 8.4(c)". Both Court's shared the same evidentiary record, where the Cathleen Szatmary's testimony stated her attorney instructed her to make the \$5,000 deposit check payable to "Kirex Dev. Co.", the seller, and not into escrow. There were no "escrow" funds, as defined by New Jersey law. The record does not contain an "Escrow Agreement", and Irek's corporation was the seller and not a neutral third party and could not serve as an escrow agent. The term "Escrow Agent" is not found in the record until the claimant, Cathleen Szatmary, added the hand-written words "Escrow Agent" in her Statement of Claim to the NJLFCP on question 4 and question 7, well after the real estate transaction was concluded. No other records in this matter contain any factual proof of the Plaintiff acting as an Escrow

Agent, save conclusory statements by the Defendants and other Supreme Court entities.

3. The Appellate Division erred in holding that the Fund enjoys immunity from suit, when this matter is a response to a civil suit previously brought by the Fund against Petitioner.

To hold that Rule 1:28-1(f) provides the Fund with immunity from all direct claims would eliminate the ability for any party to use the Superior Court to oppose the Fund's actions, such as in this action against the Fund to declare, void ab initio, a fraudulently obtained Default Judgment entered by the Superior Court in 1995. See, New Jersey Lawyers' Fund for Client Protection v. Pace, 374 N.J. Super. 57 (2005) (NJLFCP sued Pace in Superior Court, Mercer County)

Rule 1:28-1(f) is not absolute, and is available only "for any conduct in the performance of their official duties."

The Appellate Division also decided that the Tort Claims Act, N.J.S.A. 59:1-1 to 12-3, regulates suits against the Fund and Supreme Court, and falls outside the two-year statute of limitations of N.J.S.A. 59:8-8, while failing to consider the impact of section N.J.S.A. 59:3-14. Public employee immunity - exception:

a. Nothing in this act shall exonerate a public employee from liability if it is established that his conduct was outside the scope of his employment or constituted a crime, actual fraud, actual malice or willful misconduct.

b. Nothing in this act shall exonerate a public employee from the full measure of recovery applicable to a person in the private sector if it is established that his conduct was outside the scope of his employment or constituted a crime, actual fraud, actual malice or willful misconduct.

A. The conduct of Michael T. McCormick, Deputy Counsel for the NJLFCP, contained all of the elements for the crime of false swearing, which falls within those exceptions from immunity:

N.J.Stat. § 2C:28-2 False swearing

a. False swearing. A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, is guilty of a crime of the fourth degree.

On December 29, 1994, Michael T. McCormick, Deputy Counsel for the New Jersey Lawyers' Fund for Client Protection, filed a Complaint in the Superior Court of New Jersey, Law Division, Mercer County, stating, in part:

"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."

and signed a Certification at the end of the Complaint stating, in part, that:

"... I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

On March 22, 1995, Default Judgment (J 082161-95) was entered in favor of the (then) Plaintiff, New Jersey Lawyers' Fund for

Client Protection, and against the (then) Defendant, Kenneth Irek, in the sum of Five Thousand (\$5,000.00) Dollars, plus interest and costs of suit.

The NJLFCP had taken sworn statements from Zontan and Cathleen Szatmary that they were represented by their attorney, Michael Poane, Esq. Michael T. McCormick knew Kenneth Irek, was not representing Zontan and Cathleen Szatmary in that real estate transaction because Defendant, NJLFCP had access to the entire record of that matter. McCormick made material misrepresentations of existing facts, in his possession, which he ought to have known were false. Michael T. McCormick made material representations in the above-described Complaint with the intention that the Mercer County Superior Court would rely on them and accept jurisdiction of the matter. And the Mercer County Superior Court did rely on them and issued a Default Judgment against Kenneth Irek.

B. The conduct of Ruby D. Cochran, Deputy Counsel to the NJLFCP, was also exempt from immunity when she was acting outside the scope of her employment by sending without any legal authority, in 2006, a Comprehensive Enforcement Program Order suspending the Petitioner's New Jersey driving license, to the California Department of Motor Vehicles in Sacramento, California, requesting them to 'suspend or refuse to renew the driving license of Mr. Irek' based upon that Order; and sending

to "The Sheriff of Los Angeles County, CA: or any other Authorized Person", a Bench Warrant issued by the Deputy Clerk of the Superior Court, commanding them to arrest Kenneth F. Irek. Additionally, by finding immunity for the Defendants and denying Petitioner's Motion for Injunctive Relief, the Appellate Division is allowing the Defendants to continue to engage in coercive and unauthorized conduct to compel Petitioner to reimburse the NJLFCP for the \$5,000 claim they improperly paid, by intentionally threatening Petitioner's arrest in California and New Jersey and publishing false, disparaging, defamatory and malicious statements, including but not limited to, that Plaintiff engaged in dishonest conduct; misappropriated money; and embezzled, misapplied and converted to his own use the sum of \$5,000.00. New Jersey case law would find irreparable harm and grant injunctive relief, See, Crowe v. De Gioia, 90 N.J. 126, (1982); Citizens Coach Co. v. Camden H. R. Co., 29 N.J. Eq. 299 (1878); Subcarrier Communications, Inc. v. Day, 299 N.J. Super. 634 (1997).

CONCLUSION

Plaintiff therefore respectfully requests that this Court reverse the Appellate Court's decision because Petitioner was not acting as an attorney or fiduciary or escrow agent, and the New Jersey Supreme Court and its entities lacked subject matter

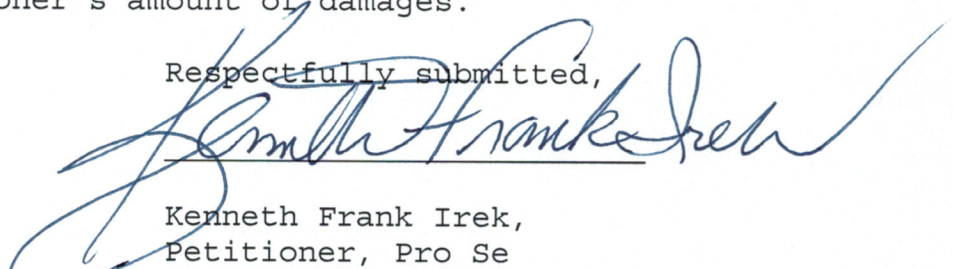
jurisdiction over an attorney while engaging in lawful personal business transactions;

Hold that the Civil Complaint Default Judgment was void *ab initio*;

Reinstate the law license of Kenneth Frank Irek, retroactive to May 11, 1993; and

Determine Petitioner's amount of damages.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Kenneth Frank Irek", is written over a horizontal line. The signature is fluid and cursive.

Kenneth Frank Irek,
Petitioner, Pro Se

Dated: June 15, 2022

Kenneth Frank Irek, Pro Se
8330 Haskell Ave, Unit 226
North Hills, CA 91343
Telephone No. 747-260-8998
Fax No. 818-533-6237
E-Mail: kennyirek@gmail.com

KENNETH FRANK IREK,

Plaintiff - Appellant,

v.

NEW JERSEY LAWYERS' FUND
FOR CLIENT PROTECTION,

and

THE SUPREME COURT OF NEW JERSEY,

Defendants - Respondents

SUPREME COURT OF NEW JERSEY
No. _____

APPELLATE DIVISION
DOCKET No.: A-001384-20

CIVIL ACTION

On Appeal of the Appellate
Division Decision Issued on May
18, 2022

**NOTICE OF PETITION
FOR CERTIFICATION**

To: Clerk of the Supreme Court of New Jersey
R.J. Hughes Justice Complex
PO Box 970
Trenton, NJ 08625-0970

Clerk Superior Court of New Jersey -
Appellate Division
R. J. Hughes Justice Complex
PO Box 006
Trenton, NJ 08625-0006

Michael T. Moran, Esq.
Deputy Attorney General
R. J. Hughes Justice Complex
25 Market Street, PO Box 116
Trenton, NJ 08625

PLEASE TAKE NOTICE that, pursuant to Rule 2:12-3(a), the undersigned, as Plaintiff-Appellant, pro se, shall seek review by the Supreme Court of New Jersey of the Decision of the Superior Court of New Jersey, Appellate Division, entered in this action in favor of Defendants-Respondents, on May 18, 2022.

PLEASE TAKE FURTHER NOTICE that plaintiff- appellant shall rely upon the Petition for Certification to be filed in accordance with Rule 2:12-7.

This Notice is timely filed.

I enclose herewith the filing fee of \$250.

Dated: May 26, 2022

By: _____/s/_____

KENNETH FRANK IREK, pro se

Kenneth Frank Irek, Pro Se
8330 Haskell Ave, Unit 226
North Hills, CA 91343
Telephone No. 747-260-8998
Fax No. 818-533-6237
E-Mail: kennyirek@gmail.com

KENNETH FRANK IREK,
Plaintiff - Appellant,

v.

NEW JERSEY LAWYERS' FUND
FOR CLIENT PROTECTION,

and

THE SUPREME COURT OF NEW JERSEY,
Defendants - Respondents

**NOTICE OF PETITION FOR
CERTIFICATION**

CERTIFICATE OF SERVICE

On May 26, 2022, I, Kenneth Frank Irek, sent the annexed Notice of Petition for Certification by:

 ✓ Delivering a true copy electronically to counsel for both Defendants:

MICHAEL T. MORAN, Esq.
Michael.Moran@law.njoag.gov

and mailing a true copy by U.S. Mail:

 ✓ Express Priority Mail to:

Clerk of the Supreme Court of New Jersey
R.J. Hughes Justice Complex
PO Box 970
Trenton, NJ 08625-0970

Clerk Superior Court of New Jersey -
Appellate Division

R.J. Hughes Justice Complex
PO Box 006
Trenton, NJ 08625-0006

Michael T. Moran, Esq.
Deputy Attorney General
R.J. Hughes Justice Complex
25 Market Street, PO Box 116
Trenton, NJ 08625

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

_____/s/_____
Kenneth Frank Irek,
Plaintiff-Appellant, pro se

Dated: May 26, 2022

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
MERCER COUNTY
DOCKET NO. MER-L-2022-20
APP. DIV. NO. A-001384-20-T4

<hr/>	
KENNETH FRANK IREK,	:
	:
Plaintiff,	:
	:
v.	:
	:
NEW JERSEY LAWYERS' FUND	:
FOR CLIENT PROTECTION and	:
THE SUPREME COURT OF NEW	:
JERSEY,	:
	:
Defendants.	:
<hr/>	

TRANSCRIPT

OF

DECISION

Place: Mercer County Civil Courthouse
(Heard Electronically)

Date: December 21, 2020

BEFORE:

HONORABLE DOUGLAS H. HURD, J.S.C.

TRANSCRIPT ORDERED BY:

KENNETH FRANK IREK
8330 Haskell Avenue, Apt. 226
North Hills, CA 91343

APPEARANCES:

NONE

Transcriber: Sandra Hicks, AOC 711

Agency: KLJ Transcription Service, LLC
P.O. Box 8627
Saddle Brook, NJ 07663
(201) 703-1670
www.kljtranscription.com
info@kljtranscription.com

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I N D E X

<u>THE COURT</u>	<u>Page</u>
Findings of Fact/Conclusions of Law	3
Decision	4

1 (Proceedings commenced at 11:22 a.m.)

2 THE COURT: Yes, this docket is Mercer County
3 Law Division, 2022-20. Today is December 21st, 2020,
4 and the Court is putting a decision on the record from
5 a motion that was returnable December 18th in oral
6 argument, occurred on December 18th.

7 Kenneth Frank Irek is the plaintiff in this
8 case, and he was a New Jersey attorney who was
9 disbarred in May 1993. He now lives in California. He
10 was disbarred for the knowing misappropriation of
11 escrow funds in violation of RPC 1.15(b) and 8.4 --
12 8.4(c), and that's from 132 New Jersey 203.

13 The record reflects that Irek did not appear
14 before the disciplinary review board or the New Jersey
15 Supreme Court for the proceedings. The disbarment was
16 based on a real estate transaction involving the
17 Szatmarys in which Irek acted as an escrow agent. The
18 spelling of Szatmarys is S-Z-A-T-M-A-R-Y-S.

19 On April 12, 1991, the Szatmarys completed a
20 statement of claim through the New Jersey Lawyers' Fund
21 for Client Protection providing that Irek
22 misappropriated the \$5,000 deposit as an escrow agent.

23 On November 26, 1993, the Fund agreed to pay
24 the Szatmarys in the amount of \$5,000. Then on
25 December 29, 1994, the Fund filed a complaint in the

1 Superior Court of New Jersey against Irek seeking the
2 \$5,000.

3 A default judgment was entered on March 22,
4 1995, and since that time the Fund has been trying to
5 collect. To date Irek owes \$2,500 on a default
6 judgment.

7 Irek has now filed a six-count complaint
8 contending, among other things, that the default
9 judgment was entered without subject matter and
10 personal jurisdiction and also contending that the
11 Szatmarys were represented by Mr. Poane, not Mr. Irek,
12 and a fiduciary and attorney-client relationship
13 between plaintiff and the Szatmarys was not
14 established. There are also claims for libel-
15 defamation, intentional infliction of mental distress,
16 and common-law fraud.

17 Plaintiff filed a motion for injunctive
18 relief seeking a preliminary injunction enjoining
19 defendants from collection of the balance of the
20 judgment and various other injunctive reliefs. The
21 defendants have cross-moved to dismiss the complaint
22 with prejudice.

23 After a thorough reading of all the motion
24 papers, it is clear that defendants' motion must be
25 granted and that the request for injunctive relief

1 therefore must be denied. Defendants are correct that
2 the Court lacks subject matter jurisdiction over the
3 plaintiff's claim because the Constitution
4 unequivocally provides the Supreme Court with exclusive
5 authority over the State Bar, and under this authority
6 the Supreme Court established the New Jersey Lawyers'
7 Fund for Client Protection. The defendants properly
8 rely upon the case of GE Capital versus New Jersey
9 Title Insurance, 333 N.J. Super., Page 1, Appellate
10 Division 2000.

11 In that case, the plaintiff wanted to use the
12 Court system to establish a viable and enforceable
13 claim against the Fund. Essentially, a collateral
14 approach. The Court held that it would directly
15 violate the procedure established by our Supreme Court
16 for the processing of such claims.

17 The Court also held, quote, "Because the Fund
18 is wholly a creation of the Supreme Court, the Court
19 should determine whether alternate proceedings may be
20 followed in order to pursue a claim against the Fund,"
21 closed quote.

22 In this case, Irek likewise attempts to
23 pursue a collateral approach that is prohibited under
24 the Constitution and court rules. This Court in the
25 Superior Court Law Division cannot encroach upon

1 matters vested in the Fund through the Supreme Court.
2 This Court has no jurisdictional power to review the
3 Fund's discretion in awarding the Szatmarys \$5,000 or
4 in the Fund's decision to seek and obtain default
5 judgment and then collect.

6 Likewise, the Court also lacks jurisdiction
7 over the claim that Irek seeks reinstatement of his law
8 license, that the Supreme Court governs exclusively the
9 regulation of the practice of law in New Jersey.

10 Defendants also made correct dispositive
11 arguments under the Tort Claims Act and statute of
12 limitations that requires dismissal of plaintiff's
13 claims for common-law fraud in Count 4, intentional
14 infliction of mental distress in Count 5, and libel-
15 defamation in Count 6.

16 Finally, defendants correctly argued that the
17 defendants are immune from suit in law and equity
18 because the immunity afforded to the trustees and
19 deputy counsel for conduct in the performance of their
20 official duties extends to the public entities they
21 represent. This is absolute immunity provided under
22 Rule 1:28-1(f) and allows for immunity to the public
23 entity under New Jersey statute 59:2-2b, so Irek's
24 claims for monetary injunctive relief must be denied
25 because the defendants are entitled to absolute

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immunity.
So for all those reasons, the Court will grant the cross-motion to dismiss the entirety of plaintiff's verified complaint with prejudice. Therefore, the plaintiff's application for injunctive relief is likewise denied with prejudice. So, the Court will upload the order on eCourts.
(Proceedings concluded at 11:28 a.m.)

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CERTIFICATION

I, SANDRA HICKS, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on CourtSmart, Index No. from 11:22:11 to 11:28:32, is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings, as recorded.

/s/ Sandra Hicks
Sandra Hicks

AOC 711
AOC Number

KLJ Transcription Service
Agency Name

2/22/21
Date

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1384-20**

KENNETH FRANK IREK,

Plaintiff-Appellant,

v.

**NEW JERSEY LAWYERS'
FUND FOR CLIENT
PROTECTION and THE
SUPREME COURT OF
NEW JERSEY,**

Defendants-Respondents.

Argued March 3, 2022 – Decided May 18, 2022

Before Judges Mawla and Alvarez.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-2022-20.

Kenneth Frank Irek, appellant, argued the cause pro se.

Michael T. Moran, Deputy Attorney General, argued the cause for respondents (Matthew J. Platkin, Acting Attorney General, attorney; Sookie Bae-Park, Assistant Attorney General, of counsel; Michael T. Moran, on the brief).

PER CURIAM

Plaintiff Kenneth Frank Irek, a former member of the New Jersey bar, owes a remaining balance of \$2,500 on a \$5,000 default judgment obtained in 1995 by the New Jersey Lawyers' Fund for Client Protection (previously named the Clients' Security Fund). The Fund has been attempting to collect on the judgment since. The judgment represents a security deposit held by Irek in 1993 for land his solely owned corporation had contracted to sell. As a result of Irek "bec[oming] unavailable"¹ at the date of closing and failing to refund the deposit, the Supreme Court of New Jersey disbarred him.

Irek's 2020 verified complaint, the within matter, names the Fund and the New Jersey Supreme Court as defendants. He seeks to vacate the judgment, reinstate his law license, and be awarded compensatory and punitive damages together with interest. On December 21, 2020, Judge Douglas H. Hurd dismissed the complaint in a cogent and thoughtful decision, which denied injunctive relief and did not compel defendants to file an answer. For the reasons he stated, we affirm that decision.

Irek's claims of error are as follows:

¹ The explanation of the underlying event is taken from Irek's 2020 verified complaint.

POINT I

THE TRIAL COURT ERRED IN NOT FINDING THE DEFAULT JUDGMENT VOID AB INITIO BECAUSE THE [FUND] ONLY HAD JURISDICTION OVER LAWYERS ACTING AS AN ATTORNEY OR FIDUCIARY.

A. The Trial Court committed plain error by not finding the Default Judgment void ab initio because the [Fund] did not have the elements required by Rule 1:28-3, to acquire subject matter jurisdiction over Plaintiff's personal business transactions, and Plaintiff's Verified Complaint should not have been dismissed.

POINT II

THE TRIAL COURT ERRED IN NOT DECLARING THE 1993 DISBARMENT ORDER RELIED ON BY THE [FUND] AS A REQUIREMENT FOR AN ELIGIBLE CLAIM, TO BE VOID AB INITIO FOR LACK OF SUBJECT MATTER JURISDICTION.

A. The Trial Court committed plain error by not finding the 1993 Disbarment Order of Plaintiff, void ab initio, because the undisputed record contains clear and convincing evidence that the Supreme Court lacked subject matter jurisdiction over Plaintiff engaged in a personal business transaction, and the decision should be reversed.

POINT III

THE TRIAL COURT ERRED IN GRANTING DEFENDANTS' CROSS-MOTION TO DISMISS PLAINTIFF'S VERIFIED COMPLAINT BECAUSE

THE PLEADINGS CONTAIN UNDISPUTED FACTS
SUPPORTING A CAUSE OF ACTION.

A. The Trial Court's dismissal of Plaintiff's Verified Complaint was plain error because it contained undisputed evidence supporting the claim that the underlying Default Judgment was void ab initio, which is a claim upon which relief can be granted at any time, and should be reversed.

POINT IV

THE TRIAL COURT ERRED IN DENYING IREK'S
MOTION FOR INJUNCTIVE RELIEF TO PREVENT
IRREPARABLE HARM BY ARREST AND
INCARCERATION.

A. The Trial Court's Decision denying Plaintiff's claim for monetary injunctive relief based upon absolute immunity, does not affect the non-monetary injunctive claims and the denial of all the injunctive claims is plain error, and should be reversed.

POINT V

THE TRIAL COURT ERRED IN NOT ALLOWING
THE DEFENDANTS' ANSWER TO BE FILED
BEFORE DISMISSAL OF THE COMPLAINT.

A. The Trial Court's Decision that it lacks subject matter jurisdiction over Plaintiff's claim is plain error.

We consider Irek's arguments so lacking in merit as to not warrant much discussion in a written decision. See R. 2:11-3(e)(1)(E).

The cornerstone of Irek's arguments is that since he was acting as an escrow agent for his corporation, and did not represent the buyers, he cannot be held accountable for his failure to return the deposit. The mistaken premise that neither the Court nor the Fund can sanction him because there was no attorney-client relationship colors his analysis of the law.

The Court's disbarment decision identified the "knowing misappropriation of escrow funds in violation of RPC 1.15(b) and RPC 8.4(c)" as Irek's wrong. It seems a self-evident proposition, and one supported by caselaw, that licensed attorneys must honor their oath, even if acting only as an escrow agent, regardless of any attorney-client relationship with the owner of the funds. See, e.g., Innes v. Marzano-Lesnevich, 435 N.J. Super. 198, 217 (App. Div. 2014) ("RPC 1.15(a) requires a lawyer to appropriately safeguard the property of clients or third parties in his or her possession."). Thus, Irek's flawed premise cannot sustain his causes of action. Attorneys may be disbarred even for conduct unrelated to the practice of law. See In re Witherspoon, 203 N.J. 343, 357 (2010).

As separate grounds for the dismissal, Irek's claims cannot be pursued in the Law Division. The Supreme Court has exclusive authority over the state bar and established the Fund pursuant to this authority. See G.E. Cap. Mortg. Servs.,

Inc. v. N.J. Title Ins. Co., 333 N.J. Super. 1, 5 (App. Div. 2000). In G.E., the late Judge King said that the Fund may not be sued in Superior Court because only the Supreme Court "determine[s] whether alternate procedures may be followed in order to pursue a claim against the Fund." Id. at 6. Furthermore, the Fund enjoys immunity from suit for direct claims. Ibid.; see also R. 1:28-1(f).

Finally, Irek's late filing also necessitated dismissal. The Tort Claims Act is a comprehensive statutory scheme regulating suits against entities such as the Fund and the Supreme Court. See N.J.S.A. 59:1-1 to 12-3. This action sought damages for events that occurred in 1994. It falls well outside the Act's two-year statute of limitations. See N.J.S.A. 59:8-8. In sum, no error is committed when a trial court dismisses an action filed more than twenty years out of time in a venue without authority to act and against entities immune from suit.

Affirmed.

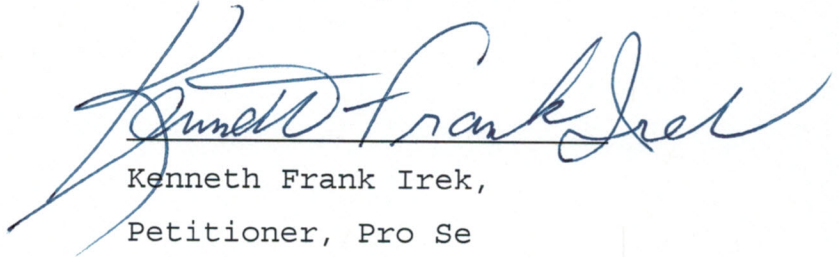
I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION

CERTIFICATION PURSUANT TO R.2:12-7(a)

This Petition for Certification presents a substantial question and is filed in good faith and not for the purpose of delay. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Kenneth Frank Irek,
Petitioner, Pro Se

Dated: June 15, 2022

Kenneth Frank Irek, Pro Se
8330 Haskell Ave, Unit 226
North Hills, CA 91343
Telephone No. 747-260-8998
Fax No. 818-533-6237
E-Mail: kennyirek@gmail.com

KENNETH FRANK IREK,
Plaintiff - Appellant,
v.
NEW JERSEY LAWYERS' FUND
FOR CLIENT PROTECTION,
and
THE SUPREME COURT OF NEW JERSEY,
Defendants - Respondents

**PETITION FOR CERTIFICATION
From the May 18, 2022 Decision
of the
SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION
Docket No. A-1384-20

SURREME COURT OF NEW JERSEY
Docket No. 087153

CERTIFICATE OF SERVICE**

On June 15, 2022, I, Kenneth Frank Irek, sent for filing by:

 ✓ Delivering by Messenger Service:

Four (4) True copies of the Petition for
Certification,
and;
Four (4) True copies of Appellate Division Briefs
with
Two (2) True copies of the Appendix (3 Volume
Appendix)

To:

Clerk of the Supreme Court of New Jersey
R.J. Hughes Justice Complex
25 W. Market Street
8th Floor
Trenton, NJ 08611

and sent for service by:

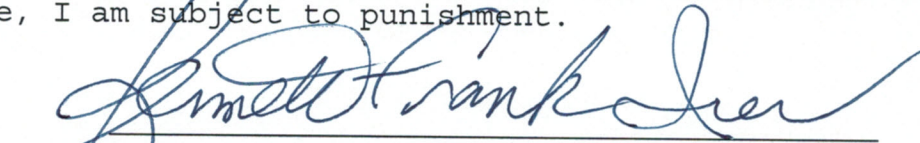
 ✓ Delivering by Messenger Service:

Four (4) True copies of the Petition for
Certification,
and;
Four (4) True copies of Appellate Division Briefs w/
Appendix

To:

Michael T. Moran, Esq.
Deputy Attorney General
R.J. Hughes Justice Complex
25 W. Market Street, PO Box 116
Trenton, NJ 08625

I certify that the foregoing statements made by me are true. I
am aware that if any of the foregoing statements made by me are
willfully false, I am subject to punishment.



Kenneth Frank Irek,
Petitioner, pro se

Dated: June 15, 2022