

Glenn A. Grant
Administrative Director of the Courts
Comments on the Report of the Special Committee on the Duration of Disbarment for Knowing
Misappropriation (Wade Committee)
Hughes Justice Complex
PO Box 037
Trenton, NJ 08625-0037
Comments.Mailbox@njcourts.gov

Comments from: Kenneth Frank Irek
kennyirek@gmail.com

Comments and Recommendations in Response to the
Report of the Supreme Court Special Committee on the
Duration of Disbarment for Knowing Misappropriation

I appreciate the opportunity granted by Chief Justice Rabner to offer my written input regarding:

“... the key interests at the heart of the *Wilson* rule: how best to protect the public and maintain confidence in the legal profession.” In re Wade

I INTRODUCTION

I am Kenneth Frank Irek, a permanently disbarred New Jersey attorney for over 30 years, since May 11, 1993, by an Order signed by then Chief Justice Robert N. Wilentz:

“... that Kenneth F. Irek, formerly of Colts Neck, be disbarred for the knowing misappropriation of escrow funds in violation of RPC 1.15(b) and RPC 8.4(c), and good cause appearing; ...”

(See Encl. 1)

II UNIQUE PERSPECTIVE OF COMMENTER

Prior to permanent disbarment, I had a normal life as a practicing attorney in private practice and as a Judge Advocate General (JAG) officer, Major, in the active US Army. A brief factual backstory:

- 1) Born in Passaic, New Jersey in 1949
- 2) Father was an immigrant from communist Yugoslavia
- 3) Enlisted in the US Marine Corps upon graduation from Clifton High School in 1967

- 4) Served as a Marine rifleman in Vietnam involved in several major firefights, and was awarded a Purple Heart and a Navy Achievement Medal with a Combat “V”
- 5) Earned a BA degree, under the GI Bill, from Chapman College, CA, in 1975
- 6) Graduated Campbell University School of Law, Buies Creek, North Carolina
- 7) Admitted to the New Jersey bar in 1981
- 8) Commissioned as an Army JAG officer in 1981; stationed at Ft. Monmouth and then Trenton, NJ
- 9) Earned an LL.M from New York University School of Law in 1985
- 10) Separated from the active Army JAG as a Major, in 1987
- 11) Permanently disbarred in New Jersey in 1993
- 12) New Jersey Lawyers’ Fund for Client Protection began collection activity for reimbursement of \$5,000 paid to claimants against Irek in the same matter that caused Irek’s disbarment
- 13) NJLFCP issued a Bench Warrant for the arrest and incarceration of Kenneth F. Irek, sent to the Sheriff of Los Angeles County, (where Irek was living) on March 23, 2015, to force collection of the reimbursement
- 14) Irek filed Verified Complaint against The NJLFCP and the Supreme Court of NJ on 11/18/2020, seeking, inter alia, the reinstatement of my law license retroactive to 1993
- 15) Irek filed Appeal from a Final Order with the NJ Appellate Division on 6/21/2021
- 16) Irek filed Petition for Certification with the Supreme Court of New Jersey on June 15, 2022
- 17) Certification denied on November 1, 2022 by Chief Justice Rabner.

III PERMANENT DISBARMENT: A CASE STUDY

My permanent New Jersey disbarment in 1993, pursuant to the Court’s misunderstanding of the undisputed facts and misinterpretation of New Jersey law, resulted in a nation-wide ban on my practicing law ever in my lifetime. Like an uncontrollable cancer, New Jersey’s permanent disbarment metastasized throughout every other state. Bar admission rules for other states require “good standing” in any state where an applicant was a licensed attorney, and a disbarred attorney does not qualify to apply for the bar. I live in California and cannot qualify for the CA bar until I am in good standing in New Jersey, which will never happen under the *Wilson* rule. Permanent disbarment carries over to areas unrelated to law. I cannot sit for the CA CPA exam, become an IRS Enrolled Agent, or even become a Bail Agent, and miss a myriad of additional

opportunities to earn a living, with the Federal government or other states. Simply put, New Jersey's refusal to eliminate, since 1979, permanent disbarment (maybe except for serious felonies and unconscionable violations of the Professional Rules), has allowed this judicially created anomaly to, quite literally, extend from coast to coast.

IV RESPONSE TO COMMITTEE'S "RECOMMENDATIONS"

The Committee's mandate did not include review of the equally important issues of the attorney's rights and protections regarding his law license as a Constitutionally protected important property right. Nevertheless, my comments to each of the Recommendations seems appropriate since my potential reinstatement to the New Jersey bar will be governed by any changes ultimately adopted by the Supreme Court.

1) "The opportunity for potential readmission should be extended to attorneys disbarred for any type of knowing misappropriation under Wilson, without categorical exclusion, subject to a case-by-case analysis."

Agree

2) "A disbarred attorney should be required to wait five years before applying for readmission. This timeframe aligns with the American Bar Association model rule and the practice in most other jurisdictions."

Agree

3) "Readmission following disbarment should follow the procedure for reinstatement after suspension, as set out in Court Rule 1:20-21, with the same clear and convincing standard of proof."

Utilizing the identical procedure for reinstatement as presently exists for suspensions, is no doubt expedient, but fails to review the practical application of this set of clearly onerous requirements. Granted that the rule language is similar to other states that utilize the ABA Model Rules as a guide, disbarred attorneys will have a "ghost benefit" unless articulable and objective standards are the basis for reinstatement, that can be reviewed for abuse of discretion by a disassociated party, such as the Superior Court. To go before the same volunteer board (DRB) that recommended disbarment and plead for reinstatement is not only futile, but fails to allow a meaningful second chance.

A review of the Committee's report at Appendix K, which contains ABA statewide reinstatement information, clearly indicates the majority of the states, with a few exceptions, Do Not actually grant reinstatement after disbarment. They all have the procedural mechanisms, but they are entirely subjective. Likewise, as a practical matter, as it is presently constructed, it is

unlikely that the NJ DRB, at their complete discretion, will forgive the prior transgressions of an attorney that sullies the image of their legal profession, as a whole.

4) “Any applicant for readmission should be required to demonstrate competency on the Model Professional Rules of Ethics examination. In contrast, the requirement to retake the bar exam could be imposed only if warranted by specific facts.”

Agree

5) “The Committee did not settle on a specific number of CLE credits required during the disbarment period, but agreed that the Court should consider imposing at least some makeup credits for readmission.”

During my active pre-disbarment law practice, I took dozens of required CLE courses and found very few that were of substantial educational value. Makeup CLE credits, if required, should be allowed to be earned after reinstatement and over a reasonable time. Adding another obstacle to the disbarred attorney’s path to full employment is unnecessary.

6) “Notice (possibly by posting on the Judiciary's website and publication of a notice to the bar) should be provided to the grievant whose complaint resulted in the disbarment, as well as any grievant(s) with docketed complaints that were dismissed with the disbarment and clients who were reimbursed by the Lawyers Fund for Client Protection.”

Notifying those clients whose complaint(s) resulted in the disbarment is fair and reasonable, provided that the grievant(s) are only noticed that the attorney HAS BEEN READMITTED, and have no authority to comment or otherwise address the issue.

7) “The repayment plan option should be eliminated in Wilson cases, meaning that readmission could proceed only if the applicant reimbursed the Fund in full.”

The Committee’s goal to “recommend standards” that might be adopted for reinstatement, if permanent disbarment is eliminated, must actually allow the attorney to again practice law. Paying any restitution or reimbursements in installments, over a reasonable time based upon his available resources and projected earnings as a licensed attorney, is the only way that a person who was effectively banned from working in most professional occupations, could afford to pay those items. Imagine if your current income was eliminated today and continued for 5 years with the stigma of disbarment. That perspective should be used when setting financial requirements.

8) “Reapplication should not be available after a second disbarment.”

Agree

9) “Consistent with the time frame for reinstatement after suspension, an applicant who is denied readmission upon first application should wait six months to file a renewed petition for readmission.”

Agree

V CONCLUSION AND RECOMMENDATIONS

In any discussion of ways to protect the public from dishonest attorneys and the image of the legal profession, the attorneys' property rights and due process guarantees cannot be ignored. Disbarment is technically the taking of a constitutionally protected important property right, and must adhere to the same standards used in other areas of the government taking of individual property rights.

Attorney discipline can be administered by a volunteer peer system, as we currently have, for most violations of the Disciplinary or Ethics rules where written admonitions, short-term suspensions and other limited sanctions are ordered. A "suspension" for a definite term of time and *not* requiring reinstatement procedures, would eliminate the need for additional reinstatement resources, and be in line with the judicial thinking in the field of criminal law, where a convicted defendant is sentenced to a specific period of time, after which they can automatically resume their prior life. Most criminal cases are finitely decided, meaning a sentence for a measurable term of time is ordered, and normally after serving that time, the defendant is automatically released and free to go. This system seems to work even with serious crimes that have multi-year sentences; they do the time and they get out.

Attorney discipline should be no different. Enforcing rules that discourage and deter the theft of a client's property are a proper and necessary function of the Court, as long as the rules are clearly defined and understood by those enforcing them. Volunteers serving under the disciplinary system must be trained as to the meaning and application of the Rules, and the rights of the attorney under review.

Disbarment must be reserved for serious "criminal" conduct, intentionally committed and undeniably wrong. But even this conduct should allow the possibility of readmission, save those few instances of grossly egregious conduct where permanent disbarment is clearly warranted.

For prolonged deprivation of the right to practice law, an automatic right to appeal to an Administrative Law Judge specialist or the New Jersey Superior Court, would insure a disinterested party reviews the record and applies the proper procedural and substantive rules and regulations. Other states have this avenue to their court system. Going directly from the Disciplinary Review Board to the Supreme Court, as presently construed, effectively keeps all

proceedings within Committees and entities directly appointed and/or controlled by the Supreme Court that are primarily focused on protecting the public, and not on the rights of the attorney, and making public transparency difficult. And, as in my case, where the Supreme Court did not have subject matter jurisdiction over my conduct when acting as an ordinary citizen engaged in his own private business transactions, a procedure should allow the aggrieved attorney a specific method of challenging the legal sufficiency of the Supreme Court's decision, unlimited in time and addressed to an entity, independent of the Supreme Court.

Finally, the Supreme Court's harsh and isolated mandate of In re Wilson, can be rectified, easily and quickly by using the time-honored common law procedure of overriding its outmoded precedent with a more current case. Case law created the mandate and case law should repeal it. An ideal vehicle for overturning In re Wilson, was presented to Chief Justice Rabner on November 1, 2022, when he denied certification in Kenneth Frank Irek v New Jersey Lawyers' Fund for Client Protection and the Supreme Court of New Jersey, 2022 N.J. Lexis 1019; (See Encl. 2); [see also: njdisbarred.com, a website I created with complete record, briefs, and analysis.]

This case specifically named In re Hollandonner, as the basis for permanent disbarment, being the only appropriate sanction for the knowing misuse of escrow funds. The Court can reconsider the certification request and grant certification and then utilize that case to implement any of the Committee's findings that it agrees with and its own conclusions. A simple and efficient solution to a 44-year old problem.

July 31, 2023

Respectfully Submitted,



Kenneth Frank Irek

Disbarred New Jersey Attorney

IN THE MATTER OF :
KENNETH F. IREK, :
AN ATTORNEY AT LAW :

O R D E R

FILED

MAY 19 1993

Stephen Wilentz
CLERK

The Disciplinary Review Board having filed a report with the Court recommending that KENNETH F. IREK, formerly of COLTS NECK, be disbarred for the knowing misappropriation of escrow funds in violation of RPC 1.15(b) and RPC 8.4(c), and good cause appearing;

It is ORDERED that KENNETH F. IREK, formerly of COLTS NECK, who was admitted to the bar of this State in 1981, be disbarred and that his name be stricken from the roll of attorneys of this State, effective immediately; and it is further

ORDERED that KENNETH F. IREK be and hereby is permanently restrained and enjoined from practicing law; and it is further

ORDERED that all funds, if any, currently existing in any New Jersey financial institution maintained by KENNETH F. IREK, pursuant to Rule 1:21-6, shall be restrained from disbursement except upon application to this Court, for good cause shown, and shall be transferred by the financial institution to the Clerk of the Superior Court, who is directed to deposit the funds in the Superior Court Trust Fund, pending further Order of this Court; and it is further

ORDERED that KENNETH F. IREK comply with Administrative Guideline No. 23 of the Office of Attorney Ethics dealing with disbarred attorneys; and it is further

ORDERED that KENNETH F. IREK reimburse the Ethics Financial Committee for appropriate administrative costs, and it is further

ORDERED that the Office of Attorney Ethics shall cause this Order to be published on two successive days in the Asbury Park Press.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at
hereby certify that the foregoing a true copy of the original on file
my office. 11th day of May, 1993.

Stephen Wilentz
CLERK OF THE SUPREME COURT

Stephen Wilentz
CLERK OF THE SUPREME COURT

SUPREME COURT OF NEW JERSEY
C-231 September Term 2022
087153

Kenneth Frank Irek,

Plaintiff-Petitioner,

v.

ORDER

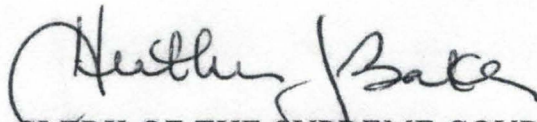
New Jersey Lawyers'
Fund for Client
Protection and the
Supreme Court of
New Jersey,

Defendants-Respondents.

A petition for certification of the judgment in A-001384-20
having been submitted to this Court, and the Court having considered the
same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this
1st day of November, 2022.


CLERK OF THE SUPREME COURT