

Barber, Devon Tyler.  
Pro se, in proper person.  
Atlantic County, New Jersey.  
(609) 665-9350 |  
DTB33@ProtonMail.com

**SUPERIOR COURT OF NEW JERSEY**

LAW DIVISION – CIVIL PART, ATLANTIC COUNTY

**DEVON TYLER BARBER,**

Plaintiff,

vs.

**JOHN W. TUMELTY, ESQ.,** DEFENDANT,  
(PARTY NO. 2); AND  
**THE LAW OFFICE OF JOHN W. TUMELTY,**  
DEFENDANT (PARTY NO. 3).

Docket No.: ATL-L-002794-25

**RE:**

Indictment No. **22-09-01413-I** (Dkt. ATL-22-002292)

Indictment No. **22-10-01440-I** (Dkt. ATL-22-002313)

Team 102, Assigned Judge:

**Hon. Sarah B. Johnson, J.S.C.**

**SUPPLEMENTAL MEMORANDUM AND  
CERTIFICATION**

**In Further Support of Track 3 Assignment and  
Judicial Coordination with NJ DOL Wage Collection  
Proceeding**

**A. Procedural Posture**

Plaintiff **Devon Tyler Barber**, appearing *pro se*, commenced this civil-malpractice and wage-related action on **October 3, 2025**. Since filing, Plaintiff has obtained (i) certified **IRS Wage and Income Transcripts (2019–2022)** and (ii) written confirmation that **NJDOL Wage Complaint No. 369572**, filed **October 12, 2025**, has been **accepted and transferred to the Wage Collection Section** pursuant to **N.J.S.A. 34:11-58(b)–(c)**. The administrative proceeding arises from the same underlying facts alleged here—**non-payment of earned wages and employee misclassification by Joe’s Painting & Renovations 11 LLC (Hardemon)** in connection with the rehabilitation of the **Aloe Street property** in Galloway Township, New Jersey.

18 In **July 2022**, after repeated demands for payment were ignored, Plaintiff terminated his work  
19 with Hardemon and immediately began new employment with **NAC/Nicholas**, as reflected by  
20 the **2022 IRS Wage and Income Transcript showing \$432 in reported wages** (Exh. D). That  
21 record corroborates that Plaintiff **mitigated his losses promptly** and that the Hardemon  
22 engagement ended solely due to non-payment. Within weeks of that departure, Plaintiff was  
23 **arrested while operating a newly assigned NAC work truck**. Plaintiff asserts—and will  
24 substantiate through discovery, including the timeline declaration and authenticated ESI/photo  
25 exhibits (Exh. G)—that the **timing and circumstances of that arrest indicate retaliatory**  
26 **intent directly linked to the unresolved wage dispute**.

27 In addition, following the July 2022 dispute and Plaintiff's departure from the Aloe Street  
28 property, **Defendant Joseph Hardemon unlawfully removed Plaintiff's personal property**  
29 **and animals from the premises without notice or legal process**, resulting in the death of  
30 **companion pets, destruction of personal effects, and loss of a family silver collection**  
31 **belonging to Plaintiff's late grandmother**. These acts occurred outside any landlord–tenant  
32 proceeding and constitute **unlawful eviction, conversion, and property damage**, compounding  
33 the underlying wage dispute. Plaintiff reserves all rights to pursue recovery of the associated  
34 losses and emotional distress damages in this and related proceedings.

### 35 **A(1). Statement of Facts and Notice Regarding Prosecutorial Omission**

36 Subsequent investigation and public-record verification confirm that the **original complainant**  
37 whose allegations prompted Plaintiff's 2022 arrest warrant was **Joseph Hardemon Sr., a Tier II**  
38 **registered sex offender** convicted in **Atlantic County** under **N.J.S.A. 2C:24-4a** for sexual

conduct with a child under thirteen. (*See New Jersey State Police Offender Watch Record, Reg. No. 2317198, attached in the PCR record and incorporated herein by reference.*) Neither the **Atlantic County Prosecutor's Office** nor prior defense counsel, **John W. Tumelty, Esq.**, performed the due-diligence review or disclosure required by **Rule 3:13-3(b)(1)(A)** and the constitutional obligations set forth in **Brady v. Maryland**, 373 U.S. 83 (1963), **Napue v. Illinois**, 360 U.S. 264 (1959), and **State v. A.R.**, 234 N.J. 82 (2018).

Had this information been investigated or disclosed, the defense could have demonstrated **bias, motive to fabricate, and credibility impairment** of the complainant—material facts that would have substantially changed both plea discussions and trial posture. The omission constitutes **ineffective assistance of counsel** under **Strickland v. Washington**, 466 U.S. 668 (1984), and **State v. Fritz**, 105 N.J. 42 (1987), as well as a **Brady/Napue violation** warranting equitable relief under **State v. Preciose**, 129 N.J. 451 (1992).

Plaintiff further notes that his **Petition for Post-Conviction Relief**, filed **May 4, 2025**, remains **unanswered by the State** despite the requirement of **Rule 3:22-9** that an answer be filed within 20 days. The State's silence for over five months constitutes **procedural default and denial of due process** under **Art. I, ¶¶ 1 & 10 of the N.J. Constitution** and the **Fifth and Fourteenth Amendments** to the **U.S. Constitution**. Good cause for filing and equitable tolling were demonstrated through documented homelessness, new evidence, and the State's withholding of material facts.

Collectively, these failures—non-disclosure of the complainant's record, lack of adversarial testing by counsel, and prosecutorial inaction—show a **systemic breakdown of due process** that directly intersects with the civil malpractice and wage-related claims now before this Court.

61 **B. Material New Evidence**

62 × **IRS Transcripts (2019–2022) — Exhs. A–D.**

63 The **2019** Form W-2 shows wages of **\$5,686** from “Joe’s Painting and Renovations,” EIN  
64 \*\*\*\*9559; **2020** shows **\$232** from the same EIN; **2022** shows **no Hardemon wages** but  
65 reflects **\$432** from **NAC/Nicholas** (Exh. D). This pattern corroborates Plaintiff’s  
66 departure from Hardemon and transition to NAC in July 2022 because agreed pay was  
67 not honored.

68 × **Digital Messages / ESI — Exh. E.**

69 Screenshots of text messages between Plaintiff and **Joseph Hardemon** corroborate both  
70 a **lodging agreement** and an **employment relationship** connected to the Aloe Street  
71 rehabilitation project. In one exchange dated mid-2022, Hardemon states, “*This house*  
72 *bruh is killing us man ... it’s been 3 years ... still not done.*” Plaintiff responded by  
73 offering to help and asked:

74 “Can Kelly and I stay there while working on it? And when I mean stay, I mean park the car and  
75 maybe live outside.”

76 Hardemon replied, in capital letters:

77 **“YES YOU CAN!!!”**

78 This exchange directly evidences (1) **permission to reside on the property**, (2) **an**  
79 **understanding that Plaintiff would perform labor in exchange for housing and**

80 **compensation, and (3) Hardemon’s own acknowledgment of urgency and dependence on**  
81 **the completion of the project** (“this house is killing us man”).

82 Following this message, Hardemon **invited Plaintiff to live on-site under a work-for-lodging**  
83 **and pay agreement**, later stating that “*the crib is yours*” and emphasizing that the job “needed  
84 to get done.” These statements, paired with contemporaneous communications regarding day-  
85 rate or per-job payments and repeated requests for payment, demonstrate **direction and control**  
86 **of labor** — the hallmark of an employment relationship under *Hargrove v. Sleepy’s LLC*, 220  
87 N.J. 289 (2015).

88 Such **electronically stored information (ESI)** constitutes highly probative evidence under **R.**  
89 **4:10-2 (scope of discovery includes ESI)** and **R. 4:18-1 (requests for production)**. As  
90 reaffirmed in **Endus v. N.J. Transit**, 460 N.J. Super. 517 (App. Div. 2019), ESI of this nature  
91 must be preserved and produced in discovery when it documents the factual basis for wage,  
92 employment, or contractual claims.

93 × **NJ DOL Wage Collection Proceeding**

94 The **New Jersey Department of Labor and Workforce Development (NJDOL)**  
95 formally accepted **Wage Complaint No. 369572** and transferred it to the **Wage**  
96 **Collection Section** for adjudication pursuant to **N.J.S.A. 34:11-58(b)–(c)**, part of the  
97 **New Jersey Wage Theft Act**. In that forum, the **Commissioner of Labor and**  
98 **Workforce Development** is authorized to issue binding determinations, **award unpaid**  
99 **wages with interest**, impose **liquidated damages up to 200 percent of the wages due**,  
100 and **assess additional penalties for retaliation or record-keeping violations**. See also

**N.J.A.C. 12:56-1.1 et seq.** (administrative enforcement procedures). The Commissioner may certify any award as a **judgment of the Superior Court** and, where warranted, **suspend or revoke the employer's licenses or registrations** for continued non-compliance. The pendency of this DOL action confirms the same factual nucleus underlying this civil matter—**unpaid wages, misclassification, and retaliatory conduct** by Joe's Painting & Renovations 11 LLC.

× **Transition & Arrest Timeline — Exh. G.**

A sworn timeline plus photo(s) of the **NAC work truck**, with corresponding message timestamps, support the sequence: unpaid wages under Hardemon → departure to NAC/Nicholas in July 2022 → arrest **shortly after** while operating the NAC vehicle. Plaintiff **asserts** the arrest was **retaliatory** and part of a civil wage dispute recast as criminal conduct.

**C. Argument**

× **Track 3 Is Required for Comprehensive Discovery.**

**R. 4:5A-2** provides for Track 3 where substantial discovery, multiple experts, and complex issues are anticipated. Here, discovery will involve **IRS and bank subpoenas, ESI forensics and authentication, expert opinions on standard of care and economic loss, and integration of NJDOL findings**. Tracks 1–2 are inadequate. See **Tadeusz Jatzyszyn v. Marcal Paper Mills, Inc., 418 N.J. Super. 505, 512 (App. Div. 2011); Pressler & Verniero, Current N.J. Court Rules**, cmt. 2 on R. 4:5A-2 (Gann 2025).

× **Coordination with NJDOL Promotes Judicial Economy and Consistency.**

The active Wage Collection case concerns the **same nucleus of fact** (non-payment,

misclassification, retaliation). Coordinated scheduling will avoid duplication and inconsistency. Courts may **relax procedures to prevent injustice and coordinate with parallel proceedings**. See **State v. Rue, 175 N.J. 1 (2002)** (R. 1:1-2); **In re Petition of Adamar of N.J., 222 N.J. 134 (2015)** (recognizing the value of agency records/findings). See also **R. 1:6-2(a)** (motion practice) and **R. 4:10-2; R. 4:18-1** (ESI scope and production).

× **Fairness to a Pro Se Litigant Requires Adequate Time and Tools.**

Undue restriction on discovery would impair Plaintiff's due-process rights under **N.J. Const. art. I, ¶ 1**. Parties must have a **reasonable opportunity to present evidence** before dispositive motions. See **Celotex Corp. v. Catrett, 477 U.S. 317, 322–24 (1986)**. The record here spans malpractice issues, ESI, agency findings, and economic damages; Track 3 is the proper vehicle to uphold fairness and accuracy.

**D. Prayer for Relief**

**WHEREFORE**, having set forth the record of fact, law, and conscience, and having come before this Honorable Court in truth and without counsel, **Plaintiff, Devon Tyler Barber**, prays that equity and justice be done according to the rule of law and the spirit of righteousness. Guided by the principle that "*judgment and mercy meet together, righteousness and peace kiss each other*" (Psalms 85:10, Geneva 1599), Plaintiff respectfully requests that the Court exercise its inherent power under **Article VI, § 3, ¶ 4 of the New Jersey Constitution** and **Rule 1:1-2** to secure a just determination, prevent manifest injustice, and ensure that the rights of a working man not be lost through deceit, silence, or neglect.

**Plaintiff therefore prays that the Court enter an Order granting the following relief:**

× **Track 3 Reclassification.**

That this matter be reclassified to **Track 3** pursuant to **R. 4:5A-2**, recognizing the complexity of issues involving professional negligence, wage misclassification, and electronic evidence requiring extended discovery.

× **Judicial Coordination.**

That the Court acknowledge and, where appropriate, coordinate the record of this civil proceeding with the parallel **New Jersey Department of Labor Wage Collection case (Complaint No. 369572)** to promote consistency and judicial economy.

× **Evidentiary Preservation and Subpoena Authorization.**

That the Court, upon Track 3 assignment, authorize issuance of preservation notices and subpoenas under **R. 4:10-2**, **R. 4:18-1**, and **R. 1:9-2** for the collection and safeguarding of relevant electronically stored information (ESI), including Apple iCloud communications and mobile-carrier records associated with Plaintiff's number ending in *312* during **June–August 2022**, to ensure that truth may be established through lawful discovery.

× **Equitable Relief and Good-Faith Protection.**

That the Court recognize Plaintiff's diligent pursuit of redress, his good-faith reliance upon Rule 1:1-2, and the necessity of equitable relaxation of procedures where strict form would defeat substantial justice.

× **Further Relief as Just and Proper.**

That this Honorable Court grant such other and further relief, legal or equitable, as conscience and law may warrant, that truth be brought to light and right prevail over wrong.

<sup>8</sup> *He hath showed thee, O man, what is good, and what the Lord requireth of thee: <sup>[a]</sup>surely to do justly, and to love mercy, and to humble thyself, to walk with thy God.*"

— **Micah 6:8 (Geneva Bible, 1599)**



Respectfully submitted,  
this **16th day of October, 2025**, in good faith and in reliance upon both law and conscience.

**E. Certification (R. 1:4-4(b))**

I, **Devon Tyler Barber**, certify as follows:

- × The New Jersey Department of Labor acknowledged my **Wage Complaint No. 369572** on October 12, 2025 and transferred it to the **Wage Collection Section** (Exh. F).
- × IRS Wage & Income Transcripts (2019–2022) confirm: **2019** wages of \$5,686 from Joe’s Painting & Renovations (EIN \*\*\*\*9559); **2020** wages of \$232 from the same EIN; and **2022 no Hardemon wages** but **\$432** from **NAC/Nicholas** (Exh. D).
- × Hardemon directed my labor on the Aloe Street job, promised day or job-based pay, and offered lodging; I repeatedly requested payment (Exh. E).
- × After leaving to work for **NAC/Nicholas in July 2022**, I was **arrested shortly thereafter** while operating an NAC work truck. I **assert** that the timing and surrounding circumstances indicate **retaliation** relating to the unpaid-wage dispute (Exh. G).
- × Good cause exists for **Track 3 reclassification** to allow expert discovery, ESI forensics, and coordination with NJDOL.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: **October 16, 2025**

*BY: X(+)X, dTb, Devon Tyler of the Barber family, in Good Faith.*

**Devon Tyler Barber** (Pro Se)

c/o 325 E. Jimmie Leeds Rd., Suite 7-333

Galloway, NJ 08205 • (609) 665-9350 • [DTB33@ProtonMail.com](mailto:DTB33@ProtonMail.com)

**SUPERIOR COURT OF NEW JERSEY**

LAW DIVISION – CIVIL PART, ATLANTIC COUNTY

**DEVON TYLER BARBER,**

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**RE:**

Indictment No. **22-09-01413-I** (Dkt. **ATL-22-002292**)

Indictment No. **22-10-01440-I** (Dkt. **ATL-22-002313**)

Team 102, Assigned Judge:

**Hon. Sarah B. Johnson, J.S.C.**

**ORDER GRANTING RECLASSIFICATION TO  
TRACK 3 AND RELATED RELIEF**

This matter having been opened to the Court by **Plaintiff, Devon Tyler Barber (pro se)**, upon submission of a **Supplemental Memorandum and Certification dated October 16, 2025**, and the Court having considered the application, supporting exhibits, and good cause appearing, **IT IS on this 16th day of October, 2025, ORDERED as follows:**

× **Track 3 Assignment.**

This matter is **reclassified to Track 3** pursuant to **Rule 4:5A-2**, in light of the complexity of the issues, anticipated expert discovery, and related administrative proceedings.

× **B. Case-Management Conference.**

Within **20 days** of this Order, the parties shall meet and confer and submit an **Amended Case-Management Plan** addressing (1) expert discovery; (2) electronically stored information (ESI) protocols; and (3) coordination with the pending **New Jersey Department of Labor Wage Collection proceeding (Complaint No. 369572)**.

211 × **C. ESI Preservation.**

212 Upon Track 3 reclassification, **Plaintiff is authorized to serve preservation notices and,**  
213 thereafter, to seek subpoenas under **R. 4:10-2, R. 4:18-1, and R. 1:9-2** for relevant  
214 electronically stored information (ESI), including Apple iCloud communications and  
215 mobile-carrier data associated with Plaintiff's number ending in 312 for the period **May**  
216 **25, 2022 – July 12, 2022.**

217  
218 × **D. Further Relief.**

219 The Court shall retain jurisdiction and may grant such other and further relief, legal or  
220 equitable, as is just and proper to secure a fair and efficient determination of the issues  
221 herein.

222 **Hon. Sarah B. Johnson, J.S.C.**

**SUPERIOR COURT OF NEW JERSEY**

LAW DIVISION – CIVIL PART, ATLANTIC COUNTY

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Team 102, Assigned Judge:

**Hon. Sarah B. Johnson, J.S.C.**

**CERTIFICATION OF FILING AND SERVICE**

I, **Devon Tyler Barber**, certify as follows:

**Filing via JEDS.** On **October 16, 2025**, I submitted through the Judiciary Electronic Document Submission System (JEDS) the document titled “**Supplemental Memorandum and Certification in Support of Track 3 Assignment and Coordination with NJ DOL Wage Collection Proceeding (Complaint No. 369572)**” together with the **Proposed Form of Order and Exhibits A–G** for filing in **Barber v. Tumelty, et al., Docket No. ATL-L-002794-25 (Team 102)**, Law Division, Civil Part, Atlantic County. **Service on Defendants (Electronic Mail).** On **October 16, 2025**, I served true copies of the foregoing filing, including the Proposed Order and Exhibits A–G, upon the following defendants, by **electronic mail** addressed as follows: **John W. Tumelty, Esq.** and **The Law Office of John W. Tumelty**, 539 Route US 9 South, Marmora, New Jersey 08223 **Service on the Court.** Filing via **JEDS** constitutes delivery to the Court. A copy of the JEDS confirmation will be maintained with my records. I certify that the foregoing statements made by me are true.

I am aware that if any statement is willfully false, I am subject to punishment.

Dated: **October 16, 2025**

*By X of Ty Devon Tyler of the Barber family, in Good Faith.*  
s/ ~~Barber, Devon Tyler~~  
Pro se, in proper person.  
Atlantic County, New Jersey.  
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