

**SUPERIOR COURT OF NEW JERSEY**

**ATLANTIC COUNTY – LAW DIVISION – SPECIAL CIVIL PART**

NEW JERSEY TURNPIKE AUTHORITY,

**Plaintiff,**

v.

DEVON TYLER BARBER,

**Defendant.**

**Docket No.:** ATL-DC-007956-25

**Civil Action**

**DEFENDANT’S MOTION TO DISMISS COMPLAINT WITH  
PREJUDICE, OR IN THE ALTERNATIVE, FOR APPOINTMENT OF  
COUNSEL, AND FOR RECUSAL OF ASSIGNED JUDGE**

**TO:** Hon. Dean R. Marcolongo, J.S.C.

**AND TO:** Durkin & Durkin, LLC, Attorneys for Plaintiff

**PLEASE TAKE NOTICE** that on the return date assigned by the Court, Defendant, **Devon**

**Tyler Barber**, shall move before the Superior Court of New Jersey, Law Division – Special

Civil Part, Atlantic County, for an Order granting the following relief:

1. **Dismissal of Plaintiff’s Complaint with prejudice** under *R. 4:6-2(a), (e), N.J.S.A. 27:23-34.3*, and *N.J.A.C. 19:9-9.2*, on grounds that the administrative fees sought are unlawful and unconstitutional;
2. **Alternatively, appointment of counsel** to represent Defendant in the settlement conference, based on indigency and the complexity of statutory and constitutional issues;
3. **Additionally, recusal of Hon. Dean R. Marcolongo, J.S.C.**, under *R. 1:12-1(f)*, because prior exchanges create an appearance of bias or impropriety;
4. Such other relief as the Court deems just and proper.

In support of this Motion, Defendant relies upon the attached **Certification of Indigency**,

Exhibit A (Memorandum of Law), **legal argument**, and **proposed form of Order**.



## LEGAL ARGUMENT

### POINT I – PLAINTIFF’S CLAIM FOR ADMINISTRATIVE FEES IS ULTRA VIRES AND VOID

Plaintiff demands **\$4,905 in “administrative fees” on \$204.45 in alleged toll principal.**

Under **N.J.S.A. 27:23-34.3**, the New Jersey Turnpike Authority may collect only “reasonable” administrative fees tied to the costs of collection. **N.J.A.C. 19:9-9.2(b)** requires that any fees be limited to actual, proportionate expenses.

A 24:1 fee-to-toll ratio is neither reasonable nor proportionate. It is punitive, not remedial. The Turnpike Authority has exceeded its statutory authority. Such ultra vires acts are **void ab initio**. See *Redd v. Bowman*, 223 N.J. 87, 104 (2015) (agency actions beyond statutory authority are invalid).

Accordingly, the Complaint must be dismissed with prejudice.

### POINT II – THE CLAIM VIOLATES THE EXCESSIVE FINES CLAUSE AND FUNDAMENTAL FAIRNESS

The **Eighth Amendment** prohibits “grossly disproportionate” financial penalties. The U.S. Supreme Court has confirmed that the Excessive Fines Clause applies to the states. *Timbs v. Indiana*, 139 S.Ct. 682 (2019). Here, a \$4,905 penalty on a \$204 toll is grossly disproportionate. It serves no remedial purpose and functions as punishment. New Jersey courts likewise apply the **doctrine of fundamental fairness** to invalidate penalties that “shock the conscience” or undermine confidence in justice. *Doe v. Poritz*, 142 N.J. 1, 108 (1995). A 24:1 penalty ratio shocks the conscience and violates fundamental fairness.

Thus, the Complaint cannot stand.

### **POINT III – THE COMPLAINT FAILS TO STATE A LEGALLY VALID CLAIM**

A complaint seeking relief not authorized by statute or constitution is defective under **R. 4:6-2(e)**. Because Plaintiff's claim rests entirely on unlawful, excessive, and unconstitutional penalties, it fails to state a cause of action. Dismissal **with prejudice** is warranted to prevent repetitive litigation.

### **POINT IV – ALTERNATIVE RELIEF: APPOINTMENT OF COUNSEL**

Should the Court decline dismissal, Defendant respectfully requests appointment of counsel. Defendant is indigent and cannot afford private representation. The case involves complex statutory and constitutional issues. Appointment of counsel is necessary to ensure meaningful participation in the settlement conference and to uphold fundamental fairness.

New Jersey Court Rules provide for pro bono assignments when justice requires.

See **R. 1:21-12**.

### **POINT V – ALTERNATIVE RELIEF: RECUSAL OF ASSIGNED JUDGE**

Under **R. 1:12-1(f)**, a judge shall disqualify himself or herself where “there is any reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead the parties to believe so.”

In prior proceedings, regrettably, Defendant and the Court exchanged heated words. Defendant now reasonably fears that impartiality may be compromised, or at minimum, that there exists an **appearance of impropriety**.

To preserve the integrity of these proceedings, reassignment of the settlement conference to another judge is necessary.

### **WHEREFORE**

Defendant, **Devon Tyler Barber**, respectfully requests that this Court:

1. Dismiss Plaintiff's Complaint **with prejudice**; or, in the alternative,
2. Appoint counsel to represent Defendant for the settlement conference; and/or
3. Recuse Hon. Dean R. Marcolongo, J.S.C., and reassign this matter; and
4. Grant such other relief as the Court deems just and proper.

**Date:** September 6, 2025

Respectfully submitted,

BY: x(T)x

**/s/ Devon Tyler Barber**

325 East Jimmie Leeds Road, Suite 7-333,

Galloway, New Jersey USA 08205

(609) 665-9350



# PROPOSED ORDER

## SUPERIOR COURT OF NEW JERSEY

### ATLANTIC COUNTY – LAW DIVISION – SPECIAL CIVIL PART

NEW JERSEY TURNPIKE AUTHORITY,

**Plaintiff,**

v.

DEVON TYLER BARBER,

**Defendant.**

**Docket No.:** ATL-DC-007956-25

**Civil Action**

## **ORDER DISMISSING COMPLAINT WITH PREJUDICE, OR IN THE ALTERNATIVE, APPOINTING COUNSEL, OR REASSIGNING JUDGE**

This matter having been brought before the Court on Defendant's Motion, and good cause appearing,

IT IS on this \_\_\_\_ day of \_\_\_\_\_, 2025,

**ORDERED** that:

☐ Plaintiff's Complaint is dismissed with prejudice; **OR**

☐ Counsel is appointed to represent Defendant for the settlement conference; **OR**

☐ Hon. Dean R. Marcolongo, J.S.C., is recused and this matter reassigned;

and it is further

☐ ORDERED that such other relief as may be just and proper is granted.

Honorable **Dean R. Marcolongo**, J.S.C.





## **CERTIFICATION OF SERVICE (JEDS)**

I, **Devon Tyler Barber**, certify that on September 6, 2025, I filed the foregoing Motion, Certifications, Exhibit A, and Proposed Order through the New Jersey Judiciary Electronic Document Submission (JEDS) system, which automatically serves all counsel of record, including Plaintiff's attorney, Durkin & Durkin, LLC.

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

**Date:** September 6, 2025

Respectfully submitted,

BY: x(T)x

**/s/ Devon Tyler Barber**

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# EXHIBIT A – EXHIBIT A

## DEFENDANT’S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

### INTRODUCTION

Defendant, **Devon Tyler Barber**, submits this Memorandum of Law in support of his Motion to Dismiss the Complaint filed by the New Jersey Turnpike Authority (“NJTA”). Plaintiff’s demand for nearly **\$4,905 in administrative fees** on an alleged toll principal of **\$204.45** is unauthorized, unconstitutional, and void.

Plaintiff’s claims:

1. **Exceed statutory authority** under *N.J.S.A. 27:23-34.3* and *N.J.A.C. 19:9-9.2*;
2. **Violate the Excessive Fines Clause** of the Eighth Amendment and New Jersey’s doctrine of fundamental fairness; and
3. **Fail to state a claim** under *R. 4:6-2(e)*.

For these reasons, the Complaint must be dismissed with prejudice.

### I. PLAINTIFF’S ADMINISTRATIVE FEES CLAIM IS ULTRA VIRES

The NJTA is a statutory entity. Its powers are limited to those expressly authorized by the Legislature. *Redd v. Bowman*, 223 N.J. 87, 104 (2015) (“Agency actions beyond statutory authority are ultra vires and invalid.”).

*N.J.S.A. 27:23-34.3* permits only “reasonable” administrative fees related to collection. The implementing regulation, *N.J.A.C. 19:9-9.2(b)*, likewise requires that administrative charges be tied to actual costs.

Here, Plaintiff seeks nearly **24 times the underlying toll amount** in “administrative fees.” Such a demand is not “reasonable,” but rather punitive. It exceeds statutory authority and is void.

## II. PLAINTIFF’S CLAIM VIOLATES THE EXCESSIVE FINES CLAUSE

The Eighth Amendment, applied to the states through the Fourteenth Amendment, bars “grossly disproportionate” financial penalties. *United States v. Bajakajian*, 524 U.S. 321, 334 (1998).

In *Timbs v. Indiana*, 139 S.Ct. 682 (2019), the Supreme Court held that civil penalties are subject to the Excessive Fines Clause and struck down a forfeiture grossly exceeding the underlying offense.

Here, Plaintiff’s claim for \$4,905 in fees on \$204.45 in tolls is grossly disproportionate. The ratio (24:1) far exceeds any compensatory purpose and instead serves as a penalty. This violates the Excessive Fines Clause.

## III. NEW JERSEY’S DOCTRINE OF FUNDAMENTAL FAIRNESS ALSO BARS PLAINTIFF’S CLAIM

New Jersey law imposes an additional safeguard: the doctrine of **fundamental fairness**. This doctrine prohibits governmental actions that “shock the conscience” or undermine confidence in justice. *Doe v. Poritz*, 142 N.J. 1, 108 (1995).

Plaintiff’s pursuit of nearly \$5,000 in penalties for \$204 in tolls shocks the conscience. It undermines the fairness that New Jersey courts are bound to uphold.

## IV. THE COMPLAINT FAILS TO STATE A CLAIM UNDER RULE 4:6-2(e)

A pleading that seeks relief beyond statutory or constitutional authority fails to state a claim. *R. 4:6-2(e)*. Because Plaintiff’s claim rests entirely on unlawful and unconstitutional penalties, the Complaint is legally insufficient and must be dismissed with prejudice.

## CONCLUSION

Plaintiff’s demand for \$4,905 in administrative fees on \$204.45 in tolls:

- Exceeds statutory authority (*Redd*),
- Violates the Excessive Fines Clause (*Bajakajian*; *Timbs*), and
- Shocks the conscience under New Jersey's fairness doctrine (*Doe v. Poritz*).

Accordingly, Defendant respectfully requests that this Court **dismiss Plaintiff's Complaint with prejudice.**

**Date:** September 6, 2025

Respectfully submitted,

BY: x(T)x

**/s/ Devon Tyler Barber**

325 East Jimmie Leeds Road, Suite 7-333,

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authority to impose **reasonable administrative fees** for toll violations pursuant to *N.J.S.A. 27:23-34.3* and *N.J.A.C. 19:9-9.2*. However, that authority is expressly limited: such fees must be tied to actual costs of collection and must remain proportionate to the underlying tolls. Here, Plaintiff seeks nearly **\$4,905 in administrative fees** on **\$204.45 in toll principal**. This demand far exceeds any reasonable measure of collection costs and instead functions as a punitive sanction. Such an application of the statute is **ultra vires** and unconstitutional under the Excessive Fines Clause and New Jersey's doctrine of fundamental fairness.





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