BARBER, DEVON TYLER, **Plaintiff**, *Pro Se*
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DEVON TYLER BARBER, **Plaintiff**, v. JOHN W. TUMELTY and THE LAW OFFICE OF JOHN W. TUMELTY, **Defendants**.	**SUPERIOR COURT OF NEW JERSEY** **LAW DIVISION: ATLANTIC COUNTY** DOCKET NO.: ATL-L-002794-25 Civil Action **NOTICE OF FILING:** **SECOND AMENDED COMPLAINT**

TO: The **Honorable** Sarah B. Johnson, **J.S.C.**
Superior Court of New Jersey, Law Division
Atlantic County

PLEASE TAKE NOTICE that Plaintiff, **Devon Tyler Barber**, hereby files the attached **Second Amended Complaint** pursuant to Rule 4:9-1. This amendment is filed as of right prior to the entry of any responsive pleading and in further response to Defendants' pending ***Motion to Dismiss*** under Rule 4:6-2(e).

The **Second Amended Complaint** clarifies and amplifies Plaintiff's factual allegations, **separates conviction-dependent claims from independent claims**, and further demonstrates that **multiple tort, contract, and consumer-fraud causes of action** remain viable regardless of any *post-conviction proceedings*.

Plaintiff respectfully requests that the Court deem the pending ***Motion to Dismiss*** moot or, in the alternative, deny the *motion* for the reasons set forth in Plaintiff's concurrently filed **Brief in Opposition**.

Respectfully submitted,

s/ Devon Tyler Barber
DEVON TYLER BARBER
Plaintiff, Pro Se
Dated: 11/25/2025

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1. Plaintiff, **Devon Tyler Barber**, an individual who resides in Atlantic County, New Jersey, hereby files this **Second Amended Complaint** against Defendants **John W. Tumelty, Esq.** and the **Law Office of John W. Tumelty**, and alleges as follows:

PRELIMINARY STATEMENT

2. This civil action arises from *attorney* **misconduct**, **fee fraud**, **breach** of fiduciary **duty**, **abandonment**, and **actionable commercial misrepresentations** committed by Defendants after accepting a $5,000 retainer to represent Plaintiff in pretrial detention proceedings in matters **ATL-22-002292** and **ATL-22-002313**. Those proceedings originated from what was, in substance, **a civil wage and property dispute** between Plaintiff and his **former employers**. Plaintiff's **former employers** generated a misleading criminal narrative following Plaintiff's requests for unpaid wages and the return of his property. Defendants were retained specifically to expose the ***civil nature*** of

the dispute, challenge the inaccurate narrative, and **protect** Plaintiff's liberty interests. Defendants **failed** to do so, resulting in prolonged detention, increased pressure on Plaintiff's plea decision, and the injuries set forth herein.

3. Although a limited subset of malpractice allegations may intersect with issues bearing on the ultimate validity of Plaintiff's conviction, the **majority of claims asserted in this pleading arise from independent torts, contractual breaches, retainer-based misrepresentations, and consumer-fraud violations**. These claims concern Defendants' **pretrial conduct**, **commercial inducements**, **failures to act**, and **breaches of professional** *and* **fiduciary obligations**, and **do not require overturning or collaterally attacking any conviction** to proceed.
4. Pursuant to ***McKnight v. Office of the Public Defender***, 197 N.J. 180 (2008), and ***Rogers v. Cape May County Office of the Public Defender***, 208 N.J. 414 (2011), only those portions of a legal-malpractice claim that require undermining the validity of a criminal conviction are subject to the exoneration rule and may be stayed pending post-conviction review. All **independent tort, contract, fiduciary-duty, and consumer-fraud claims** proceed immediately and are not barred by the exoneration doctrine.

JURISDICTION AND VENUE

5. The Court has subject-matter jurisdiction over this action pursuant to **N.J. Const. art. VI, § 3, ¶ 2** and **N.J.S.A. 2A:3-1**, which vest the Superior Court, Law Division, with original jurisdiction over all civil actions.
6. Venue is proper in **Atlantic County** under **R. 4:3-2(a)** because the acts and omissions alleged in this Complaint occurred in this county, and Defendants **regularly transact** business here.

PARTIES

7. **Plaintiff Devon Tyler Barber** is a natural person residing in Atlantic County, New Jersey, who conducts lawful contracting and home-improvement work through duly formed business entities and/or beneficial legal arrangements. Plaintiff appears in this matter in his personal capacity as the party injured by Defendants' acts and omissions.
8. **Defendant John W. Tumelty, Esq.** is a natural person and attorney licensed to practice law in the State of New Jersey, who publicly advertises himself as a "**Certified Criminal Trial Attorney**" pursuant to **R. 1:39**.
9. **Defendant The Law Office of John W. Tumelty** is a New Jersey law practice and business entity located in Atlantic County, New Jersey, and conducts the commercial offering of legal services throughout the State.

FACTUAL ALLEGATIONS

A. The Underlying July 2022 Events

10. In July 2022, Plaintiff was performing authorized renovation and property-maintenance work at **1525 W. Aloe Street, Galloway Township**, pursuant to a labor-for-lodging and wage arrangement with the property owners and their business entities.
11. When Plaintiff sought payment for completed work, the property owners and associated individuals responded with escalating hostility. They unlawfully destroyed portions of Plaintiff's personal property, scattered his belongings, and forced him from the premises in retaliation for his unpaid-wage demands, as well as for Plaintiff's ongoing work with a licensed contractor who had entrusted him with a company work truck for both on-duty and authorized off-duty use.

12. The ensuing police response incorrectly treated the matter as a criminal incident, despite clear indicators that the underlying dispute involved **civil wage issues, a work-for-lodging arrangement, and a tenancy/occupancy conflict**, none of which were investigated or presented by defense counsel.

B. Detention Hearing Violations

13. At Plaintiff's initial detention hearing, Plaintiff was electronically **mute**, unable to meaningfully participate, and prevented from presenting evidence of his lawful residence, wage-based employment, work-for-lodging arrangement, and **tenancy status**.
14. Assigned counsel at that hearing **failed** to challenge the prosecution's mischaracterizations and presented no evidence regarding Plaintiff's employment history, community ties, or the ***civil nature*** of the underlying dispute.

C. Retainer and Representations by Defendant Tumelty

15. Shortly after the hearing, Plaintiff's family retained Defendant Tumelty and paid a **$5,000** flat fee in reliance on Defendant's advertisements, assurances, and express promises that he would:

    (a) **File** a **second detention-review motion**;
    (b) Present **evidence** of Plaintiff's residence, employment, and civil wage dispute;
    (c) **Investigate** the incident as a civil matter rather than a violent crime; and
    (d) Communicate regularly, act diligently, and **protect** Plaintiff's liberty interests.
16. Defendant Tumelty expressly held himself out as a "Certified Criminal Trial Attorney" and an "aggressive advocate," representing that he possessed the skill and experience necessary to secure Plaintiff's pretrial release.
17. These written and verbal representations induced Plaintiff and his family to retain him and pay the $5,000 retainer.

D. Defendants' Abandonment and Failures

18. Despite repeated assurances, Defendants never filed a detention-review motion, even though such filings could have been submitted electronically through JEDS.

19. Defendants never investigated or preserved the civil-nature evidence, never secured Plaintiff's phone records or wage documentation, and never obtained the corroborating materials that were readily accessible and essential to correcting the prosecution's narrative.

20. Defendants failed to communicate with Plaintiff, failed to challenge the State's mischaracterizations, and visited Plaintiff only once during his 108-day confinement.

21. As alleged herein, Plaintiff remained confined between July 11 and October 26, 2022 as a direct result of Defendants' inaction, neglect, and abandonment—not because of any legal determination challenged in this civil action.

E. Damages

22. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered:

    (a) loss of liberty for 108 days;

    (b) physical injury and unsafe confinement conditions;

    (c) psychological harm, including anxiety, trauma, and post-concussive symptoms;

    (d) business interference, lost wages, and disruption to contracting opportunities;

    (e) destruction of personal property;

    (f) reputational harm affecting employment, housing, and credit; and

    (g) loss of the unearned $5,000 retainer.

23. These injuries arise from Defendants' independent torts, contractual breaches, and fiduciary misconduct and **do not depend on overturning, challenging, or undermining the validity of any conviction**, and therefore fall outside the exoneration rule.

24. Plaintiff incorporates by reference his Certifications filed November 7–8, 2025 (including supporting exhibits), each of which is based on personal knowledge and submitted pursuant to R. 1:4-4.

CAUSES OF ACTION

COUNT I – BREACH OF CONTRACT (Retainer Agreement)

25. Plaintiff repeats and realleges the above paragraphs.
26. Plaintiff and Defendants entered into a **retainer agreement** for legal representation.
27. Defendants breached the agreement by:
    (a) Failing to file a detention-review motion;
    (b) Failing to communicate;
    (c) Failing to investigate;
    (d) Failing to perform services for which payment was made.
28. Plaintiff suffered ascertainable loss, including the **$5,000 fee** and consequential damages.

COUNT II – BREACH OF FIDUCIARY DUTY

29. Defendants owed Plaintiff fiduciary duties of **loyalty, diligence, candor, and communication**.
30. Defendants abandoned Plaintiff, withheld action, and failed to protect Plaintiff's liberty interests.
31. Under Baxt v. Liloia, 155 N.J. 190 (1998), Lash v. State, 169 N.J. 20 (2001), and Baldasarre v. Butler, 132 N.J. 278 (1993), an attorney's fiduciary obligations—including loyalty, diligence, candor, and communication—are independent of negligence principles, and breaches of those duties are fully actionable as stand-alone claims.
32. Plaintiff suffered emotional, economic, and liberty-based injury as a result.

COUNT III – FRAUD / FRAUDULENT INDUCEMENT

33. Defendants made material misrepresentations, including:

    (a) Claims of certification and aggressive representation,

    (b) Promises of immediate detention-review filings,

    (c) Assertions of strategic action that never occurred.

34. Plaintiff reasonably relied on these statements when paying $5,000.

35. Defendants knew or should have known these statements were false or misleading.

36. Plaintiff suffered damages as a result.

COUNT IV – CONSUMER FRAUD (N.J.S.A. 56:8-1 et seq.)

37. Plaintiff repeats and realleges the above paragraphs.

38. Defendants' advertising, marketing, and retainer-inducement statements constitute **unlawful commercial practices** under:

    - **Blatterfein v. Larken Assocs.**,
    - **Cox v. Sears**,
    - **Gennari v. Weichert**.

39. Defendants knowingly induced Plaintiff into a transaction using misrepresentations.

40. Plaintiff suffered **ascertainable loss** including the $5,000 retainer and consequential damages.

41. Plaintiff is entitled to **treble damages**, fees, and costs.

COUNT V – NEGLIGENCE / GROSS NEGLIGENCE (Independent of conviction validity**)**

42. Defendants owed Plaintiff a duty of reasonable care in representation.

43. Defendants breached this duty by failing to:

    (a) communicate;

(b) investigate;

(c) preserve evidence;

(d) file a detention review motion;

(e) protect Plaintiff from continued pretrial detention and worsening confinement conditions.

44. These failures were **pre-conviction** and independent of any plea.

45. Plaintiff suffered economic, psychological, and liberty-based injuries as a direct result.

COUNT VI – LEGAL MALPRACTICE (Conviction-Dependent Portion Only; To be stayed if Court deems appropriate)

46. To the extent any malpractice claim requires establishing innocence or reversal of conviction, Plaintiff pleads such counts in the alternative.

47. Plaintiff acknowledges that the conviction-dependent portion of this count may be stayed pending post-conviction proceedings consistent with **McKnight** and **Rogers**.

48. This does not affect his independent non-malpractice claims in **Counts I–V** and **VII**.

COUNT VII — UNJUST ENRICHMENT

49. Plaintiff repeats and realleges all preceding paragraphs as though fully set forth herein.

50. Plaintiff conferred a material benefit upon Defendants by paying a $5,000 retainer for legal services that Defendants promised, but failed, to perform.

51. Defendants knowingly accepted and retained that benefit while failing to act, failing to communicate, failing to investigate, and abandoning Plaintiff during critical pretrial detention proceedings.

52. Defendants' retention of the retainer fee, despite their nonperformance and misrepresentations, is unjust, inequitable, and contrary to principles of good conscience.

53. Plaintiff suffered ascertainable economic loss in the form of the $5,000 payment and consequential damages.

54. Equity demands the return of the $5,000 and such further relief as the Court deems just.

DEMAND FOR JUDGMENT

55. **WHEREFORE**, Plaintiff demands judgment as follows:

(a) Compensatory damages, including loss of liberty, emotional distress, lost wages, reputational harm, and property loss;

(b) Return of the **$5,000 retainer**;

(c) Treble damages under the CFA;

(d) Punitive damages as permitted by law;

(e) Attorney's fees and costs where allowed;

(f) Pre- and post-judgment interest;

(g) Declaratory and equitable relief;

(h) Any other relief this Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands trial by jury on all claims and all issues so triable as of right pursuant to **R. 4:35-1** and the Seventh Amendment to the United States Constitution, as incorporated through Article I, Paragraph 9 of the New Jersey Constitution.

CERTIFICATION (R. 1:4-4)

I certify that the foregoing statements made by me are true to the best of my knowledge, information, and belief. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Dated: November 25, 2025
Atlantic County, New Jersey

s/ Devon Tyler Barber
Devon Tyler Barber
Plaintiff, Pro Se