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Appellant, *pro se*

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-000291-24

AAKASH DALAL,

Plaintiff-Appellant,

Vs.

JOHN L. MOLINELLI,

Defendant-Respondent.

Civil Action

On Appeal From a Judgment of  
Conviction in the Superior Court  
of New Jersey, Law Division,  
Bergen County

Docket No.: BER-L-5229-24

Sat Below: Hon. John D. O'Dwyer,  
P.J.Cv.

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BRIEF ON BEHALF OF APPELLANT AAKASH DALAL

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Aakash Dalal.  
Appellant, *pro se*

RECEIVED  
APPELLATE DIVISION

JAN 31 2025

SUPERIOR COURT  
OF NEW JERSEY

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**PRELIMINARY STATEMENT**

Plaintiff-Appellant Aakash Dalal ("Mr. Dalal" or "Plaintiff") brought an action for contempt of court pursuant to R. 1:10-2(a) against Defendant former Bergen County Prosecutor John L. Molinelli ("Molinelli" or "Defendant") after recent revelations that he unlawfully disclosed a search warrant application for Plaintiff's home to a political organization. The trial court erroneously denied Plaintiff a fee waiver based on its unfounded conclusion that the complaint failed to state a cognizable cause of action. The matter should be reversed and remanded.

**PROCEDURAL HISTORY<sup>1</sup>**

On September 5, 2024, Plaintiff filed the Verified Complaint and Order to Show Cause in the Superior Court of New Jersey, Law Division. Pa-15. Plaintiff submitted an application for a fee waiver as well. Pa-8.

In a September 12, 2024 Order, the Hon. John D. O'Dwyer, P.J.Cv. denied Plaintiff a fee waiver stating:

"Applicant's request to waive filing fees pursuant to Rule 1:13-2(a) is denied as complaint fails to state a cognizable cause of action."

Pa-1.

On September 20, 2024, Plaintiff filed a Notice of Appeal. Pa-1.

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<sup>1</sup>There are no transcripts as there were no hearings or oral opinions below.

**STATEMENT OF FACTS**

During and between 2002 and 2015, Molinelli served as the Bergen County Prosecutor and had his principal office in Hackensack, New Jersey. In his capacity as the Bergen County Prosecutor, Molinelli had access to confidential materials and documents designated as confidential under the New Jersey Rules of Court. Molinelli also had supervisory authority over all employees of the Bergen County Prosecutor's Office ("BCPO"). Molinelli retired in late 2015 amid reports that he had dismissed sexual assault cases under the influence of his close friend, convicted racketeer and former Bergen County Democratic Organization Chairman Joseph Ferriero, who had received hundreds of thousands of dollars from criminal defendants. Pa-16. On March 1, 2012, BCPO Detective James Costello submitted an affidavit in support of a search warrant to then Bergen County Criminal Presiding Judge Liliana DeAvila-Silebi<sup>2</sup> for the search of Plaintiff's New Brunswick, New Jersey apartment and home. Silebi subsequently issued a search warrant. The search warrant permits law enforcement to execute it within ten days after its issuance. It further permits law enforcement to conduct a forensic examination of electronic devices within a "reasonable period of time". Pa-16.

On March 2, 2012, the BCPO executed the search warrant and conducted a search of the Plaintiff's apartment and home. The BCPO

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<sup>2</sup> Silebi was removed from judicial office for misconduct, including fabricating evidence and lying under oath. In re DeAvila-Silebi, 235 N.J. 218 (2018).

seized various electronic devices and other items. Execution of the warrant in the form of a forensic examination of the electronic devices continued until November 30, 2012. Pa-16.

In a March 5, 2012 email, Molinelli disclosed the March 1, 2012 search warrant affidavit to Etzion Neuer ("Neuer"), who was then the Anti-Defamation League New Jersey's Regional Director. In the email, Molinelli stated, "Etzion, here are the chat and IM transcripts so far" and attached the search warrant application as "Dalal sw app.doc". Neuer was not a law enforcement officer, nor was Molinelli's disclosure of the search warrant affidavit to Neuer necessary to the execution of the search warrant. Pa-17. The search warrant affidavit disclosed by Molinelli to Neuer contained Plaintiff's unredacted social security number, date of birth, and address. The document further contained details of a law enforcement investigation, the names and locations of witnesses, and evidence in the matter. Pa-17.

On June 6, 2024, the Plaintiff received a copy of the March 5, 2012 email in response to an Open Public Records Act request sent to the BCPO on April 16, 2024. BCPO Executive Assistant Prosecutor Thomas McGuire disclosed the email. Pa-17. The email had never previously been disclosed to Plaintiff or his criminal defense counsel. Pa-17

**LEGAL ARGUMENT**

**POINT I:**

**THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING PLAINTIFF A FEE WAIVER (raised below, Pa-7)**

The trial court denied Plaintiff's request to waive filing fees because it determined the "complaint fails to state a cognizable cause of action." Pa-7. At the outset, this order plainly violated R. 1:7-4(a), which requires that trial courts make findings of fact and conclusions of law. More significantly, the order was substantively flawed. First, Plaintiff qualified for a fee waiver on financial grounds, as he is a prisoner with no source of income and under \$2,500 in assets. Second, Plaintiff's Complaint stated a claim, as it brought a claim for contempt of court as permitted by R. 1:10-2(a).

**A. Plaintiff qualified for a fee waiver based on his indigency.**

Plaintiff submitted a certification demonstrating he is a prisoner with less than \$2,500 in liquid assets and no source of income. Pa-8. He was therefore entitled to a fee waiver based on his indigency. Mims v. City of Gloucester, 479 N.J. Super. 1, 4-5 (App. Div. 2024); Admin. Off. Of the Cts. Directive #03-17, Fee Waivers Based on Indigency (rev. Apr. 20, 2017). The Appellate Division has effectively resolved this issue by granting Plaintiff a fee waiver for this appeal based on the exact same fee waiver

application. See November 8, 2024 Order in A-000291-24, M-000547-24.

**B. Plaintiff's Complaint states a cognizable cause of action.**

The trial court abused its discretion in holding that the complaint failed to state a cognizable cause of action. R. 1:10-2(a) provides:

Institution of Proceedings. Every summary proceeding to punish for contempt other than proceedings under R. 1:10-1 shall be on notice and instituted only by the court upon an order for arrest or an order to show cause specifying the acts or omissions alleged to have been contumacious. The proceedings shall be captioned "In the Matter of \_\_\_\_\_ Charged with Contempt of Court."

Contempt actions have been brought in this manner with approval by the courts. Warren County Community College v. Warren County Board of Chosen Freeholders, 350 N.J. Super. 489, 500 (App. Div. 2002). Plaintiff further notes that he attempted to file an action against Molinelli under the caption "In the Matter of John L. Molinelli Charged with Contempt of Court", but court staff refused to file the Verified Complaint unless it was captioned in the plaintiff v. defendant format. Pa-55. It is notable that the handwriting on both Judge O'Dwyer's Order and the court notice rejecting the filing appears to be the same.

Substantively, Molinelli's disclosure of the search warrant affidavit to Neuer constitutes a knowing and intentional violation of R. 3:5-4 and R. 3:5-6(c).

Rule 3:5-4 of the New Jersey Court Rules provides that:

A search warrant shall be issued with all practicable secrecy and the affidavit, certification, or testimony upon which it is based shall not be made public in any way prior to execution. The disclosure, prior to its execution, that a warrant has been applied for or issued, except as necessary for its execution, may constitute a contempt. After execution, a warrant and accompanying papers shall remain confidential except as provided in R. 3:5-6(c).

Rule 3:5-6(c) of the New Jersey Court Rules provides that:

All warrants that have been completely executed and the papers accompanying them, including the affidavits, certification, transcript or summary of any oral testimony, duplicate original search warrant, return and inventory, and any original recording, shall be confidential, except that the warrant and accompanying papers shall be provided to the defendant in discovery pursuant to R. 3:13-3 and available for inspection and copying by any person claiming to be aggrieved by an unlawful search and seizure on notice to the county prosecutor for good cause shown.

The County Prosecutors Association of New Jersey has explained the reasoning behind these court rules:

"The CPANJ argues that because warrant confidentiality is paramount, this Court's rules permit post-execution disclosure in only two scenarios: 1) post-indictment discovery; and 2) disclosure to any person claiming to be aggrieved by an unlawful search and seizure. Similarly, the CPANJ notes, this Court has made search warrants an exception to the general public availability of criminal case records."

State v. Dickerson, 232 N.J. 2, 16 (2018).

The Supreme Court of New Jersey has emphasized the importance of confidentiality of search warrant affidavits: "Together, Rules 3:5-4 and 3:5-6(c) establish strong confidentiality protections for warrants and their supporting materials." Dickerson, 232 N.J. at 21. Here, Molinelli plainly violated R. 3:5-4 and R. 3:5-6(c) by unlawfully disclosing a search warrant application and Plaintiff's

social security number to a political organization while the warrant was still being executed.

The Verified Complaint therefore stated a cause of action under R. 1:10-2(a) and was appropriately filed. In addition, there is no statute of limitations for contempt proceedings. In re Jibb, 121 N.J. Eq. 531, 534-535 (1937).

**POINT II:**

**THE TRIAL COURT SHOULD HAVE RECUSED ITSELF SUA SPONTE PURSUANT TO STATE V. DALAL, 221 N.J. 601 (2015) (not raised below).**

In State v. Dalal, the Supreme Court disqualified all Bergen County judges from presiding over Plaintiff's criminal proceedings due to an appearance of impropriety created by the Bergen County Prosecutor's Office's uncharged allegations that Plaintiff listed two judges in the vicinage as his enemies<sup>3</sup>. 221 N.J. 601, 608-610. Given that the instant matter is closely related to Plaintiff's criminal case, the trial court should have sua sponte recused itself and transferred the matter to a different vicinage.

In addition, Judge O'Dwyer is a personal friend of Molinelli and former Judge Liliana DeAvila-Silebi—one of the judges referenced in Dalal. Alternatively, the case should be reassigned to a different judge on remand because Judge O'Dwyer has already formed an opinion about the merits of the case.

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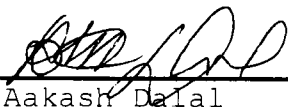
<sup>3</sup> Plaintiff's post-conviction relief proceedings are currently proceeding before a Hudson County Judge in accordance to a standing order issued pursuant to the Supreme Court decision. Pa-56.

The appearance of impropriety issue has grown worse with time. The Bergen Assignment Judge, Carol Novey-Catuogno was the BCPO's Executive Assistant Prosecutor under Molinelli when he unlawfully disclosed the search warrant application and charged Plaintiff with conspiring to murder an assistant prosecutor who was her colleague<sup>4</sup>. Two more colleagues of that assistant prosecutor, Nicholas Ostuni and David Calviello, are now Superior Court Judges in the Bergen Vicinage. Both testified in favor of Silebi at her judicial removal proceedings. Finally, co-defendant Anthony Craziano's defense counsel, Ian Silvera, is now also Superior Court Judge in the Vicinage.

CONCLUSION

For the foregoing reasons, the Order below should be reversed and the matter should be remanded.

Respectfully submitted:

  
Aakash Dalal  
Appellant, pro se

Dated: January 21, 2025

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<sup>4</sup> These charges were based on the allegations of a jailhouse informant and were ultimately dismissed. Dalal v. Molinelli, 2021 U.S. Dist. LEXIS 61503 \* 7 (D.N.J. Mar. 30, 2021).

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|-------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| AAKASH DALAL,<br><br>Plaintiff-Appellant,<br><br>vs.<br><br>JOHN L. MOLINELLI,<br><br>Defendant-Respondent. | SUPERIOR COURT OF NEW<br>JERSEY APPELLATE DIVISION<br>Docket No. A-000291-24<br>Motion No. M-001668-24<br><br><u>Civil Action</u><br><br>ON APPEAL FROM SUPERIOR<br>COURT OF NEW JERSEY LAW<br>DIVISION: BERGEN COUNTY<br>Docket No. BER-L-5229-24<br><br>Sat Below:<br><br>Hon. John D. O'Dwyer, P.J.Cv. |
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DEFENDANT-RESPONDENT'S BRIEF

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### **PRELIMINARY STATEMENT**

Plaintiff-Appellant, Aakash Dalal, (hereinafter, “Appellant”) brought a “summary proceeding pursuant to R. 1:10-2 and R. 4:67-1 for the purpose of holding a resident of New Jersey in contempt of court.” (Pa-15). The Honorable John D. O’Dwyer, P.J.Cv. denied Appellant’s fee waiver request because the complaint failed to state to state a cognizable cause of action. (Pa-7).

This Court should affirm the Order entered on September 12, 2024 because under R. 1:10-2, “every summary proceeding to punish for contempt other than proceedings under R. 1:10-1 shall be on notice and instituted only by the court upon an order for arrest or an order to show cause specifying the acts or omissions alleged to have been contumacious.”

### **PROCEDURAL HISTORY**

Appellant filed a verified complaint against Defendant-Respondent John L. Molinelli (hereinafter, “Respondent”) seeking to hold Respondent in contempt of court pursuant to R. 1:10-2 and R. 4:67-1. (Pa-15). Appellant’s basis for attempting to hold Respondent in contempt of court is that Respondent allegedly, “knowingly and intentionally violated R. 3:5-6(c) by allegedly disclosing a search warrant affidavit to an individual who was not a member of law enforcement and where the disclosure was not necessary to the execution of the search warrant”. (Pa-17).

The Honorable John D. O’Dwyer, P.J.Cv. dismissed Appellant’s complaint

*sua sponte* for failure to state cognizable cause of action. As the court is aware, with the summary contempt proceedings authorized under R. 1:10–1, a contempt under R. 1:10–2 is essentially criminal in nature and is instituted for the purpose of punishing a person who willfully fails to comply with a lawful court order. It can only be instituted by the court and the hearing may be conducted solely by the judge. Therefore, the dismissal was proper, and Appellant has no standing to bring the cause of action.

## **ARGUMENT**

### **I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION**

When considering whether to grant a fee waiver, courts will typically assess: 1) financial eligibility; and 2) merit of the claim. A trial court's decision to waive the payment of filing fees pursuant to a motion for indigency is within its sound discretion. R. 1:13-2(a). The court's decision is afforded “substantial deference and will not be overturned absent an abuse of discretion.” DiFiore v. Pezic, 254 N.J. 212, 228 (2023) (quoting State v. Stein, 225 N.J. 582, 593 (2016)). Appellate courts discern an abuse of discretion “when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.” Kornbleuth v. Westover, 241 N.J. 289, 302 (2020) (quoting Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015)).

Additionally, “[i]f the court determines that the complaint, application, motion, appeal, petition or other filing is frivolous or malicious or constitutes an abuse of process, the court may deny such waiver of court filing and copy fees in noncriminal matters, unless otherwise provided by law.” See generally Admin. Off. Of the Cts., Admin. Directive #03-17, Fee Waivers Based on Indigence (rev. Apr. 20, 2017).

In this instance, the cause of action sought by Appellant can only be instituted by the court upon an order for arrest or an order show cause pursuant to R. 1:10-2 (a). Therefore, Judge O’Dwyer’s denial of the fee waiver did not constitute an abuse of discretion because the complaint was frivolous and failed to state a cognizable cause of action. Even assuming, *arguendo*, that Appellant meets the criteria of financial eligibility, the complaint was improper under the court rules. The court properly denied the fee waiver and dismissed the complaint outright, ensuring judicial resources are not used for baseless claims.

## **II. THE TRIAL COURT DID NOT ERR IN ITS FAILURE TO ENTER A RECUSAL ORDER**

Although the issue of whether the Honorable John D. O’Dwyer, P.J.Cv. should have recused himself was not addressed at the trial level, Appellant argues it for the first time on appeal. “Relief under the plain error rule, R. 2:10-2, at least in civil cases, is discretionary and 'should be sparingly employed.'” Baker v. Nat’l State Bank, 161 N.J. 220, 226 (1999) (quoting Ford v. Reichert,

23 N.J. 429, 435 (1957)). As indicated by Plaintiff, in State v. Dalal, 221 N.J. 601, 603 (2015) the New Jersey Supreme Court reviewed Appellant's motion to recuse the Bergen County judiciary from presiding over two indictments against him. In that case, the State asserted that defendant threatened to kill or harm two Superior Court judges in the Bergen Vicinage. In light of that, Appellant claimed that reasonable questions could be raised about the appearance of impartiality if a Bergen County judge presided over the indictments. Chief Justice Rabner remanded the matter to the assignment judge to determine whether (1) to ask the Chief Justice to bring in a judge from another vicinage, see N.J. Const. art. VI, § 7, ¶ 2, or (2) to transfer the case to another vicinage.

State v. Dalal, 221 N.J. 601 did not recuse the Bergen County judiciary from presiding over any and all matters related to Appellant. The ruling was specific to the two criminal indictments. Subsequently, on May 10, 2022, then Assignment Judge Bonnie J. Mizdol, entered an order transferring jurisdiction to Hudson County "for the limited specific purpose of handling the Verified Petition for Post Conviction Relief and any further proceedings in State of New Jersey v. Aakash A. Dalal, Docket No. 12-000410-002, Indictment No. 13-03-374-I." (Pa-58). The impartiality regarding the prior criminal matter is separate and distinct from the civil action brought by Appellant in this matter. There is no factual or legal basis to support Appellant's argument that Judge O'Dwyer

was impartial. Therefore, this argument must be rejected in its entirety, and the dismissal of Appellant's complaint should be affirmed.

**CONCLUSION**

For the reasons set forth above, Respondent respectfully requests that this Court affirm the trial court's Order, filed September 12, 2024, dismissing Appellant's Complaint.

Dated: April 21, 2025

Respectfully submitted,

THOMAS J. DUCH, ESQ.  
BERGEN COUNTY COUNSEL

/s/ David Mateen

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