



**STATE OF NEW JERSEY**

In the Matter of Joseph Crimmins,  
Police Officer (S9999A),  
Brick Township

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC Docket No. 2022-68

List Removal Appeal

**ISSUED: MARCH 4, 2022 (JET)**

Joseph Crimmins, represented by Catherine M. Elston, Esq., appeals the removal of his name from the Police Officer (S9999A), Brick Township, eligible list on the basis of an unsatisfactory background report.

The appellant took the open competitive examination for Police Officer (S9999A),<sup>1</sup> achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on February 3, 2021 (OL210075). In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of an unsatisfactory background report. Specifically, the appointing authority asserted that in December 2016, the appellant was charged with Driving Under the Influence (DUI) in Pennsylvania, for which he agreed to enter into an "Accelerated Rehabilitative Disposition Program" (ARDP), which is a pre-indictment probation program or a probation without verdict that is similar to a pre-trial intervention (PTI) program. In accordance with the terms of the ARDP, the appellant paid fines, completed alcohol safety school and community service, and his driver's license was suspended. If the appellant violated the terms of the ARDP agreement, the charges against him would be prosecuted. Additionally, the appointing authority submitted its background investigation report, which indicated that the appellant's motor vehicle history reflects that he had been "Involved in an Accident – Police Report" on October 24, 2012, February 21, 2015, and May 8, 2017 and cited for Failure to Wear a Seat Belt on December 14, 2017.

<sup>1</sup> The S9999A examination had a closing date of August 31, 2019.

On appeal, the appellant presents that he completed police training by way of the alternate route program in Atlantic County. He states that he ranked 13th on the subject certification, and the appointing authority offered him a conditional offer of employment.<sup>2</sup> The appellant explains that the appointing authority instructed him to submit an employment application, which he submitted in February 2021. The appellant asserts that, at that time he submitted the employment application, he explained to the appointing authority's background investigator that the 2016 charges against him had been expunged. The appellant adds that, in March 2021, he was notified that based on the results of the background investigation and the 2016 charges, the appointing authority notified him that he would be removed from the subject eligible list. The appellant states that he had informed the background investigator that he had no plans to withdraw the employment application, as he had previously explained during his interview that the charges were expunged. The appellant indicates that, although the psychological examination was scheduled on April 9, 2021, the background investigator contacted him on April 7, 2021, and notified him that the psychological examination had been cancelled. The appellant also asserts that the appointing authority and the Division of Agency Services (Agency Services) were conducting *ex parte* communications regarding how to remove the appellant from the subject eligible list. The appellant asserts that the *ex parte* communications occurred prior to when the appointing authority returned the certification to this agency for disposition.<sup>3</sup> The appellant further claims that the appointing authority contacted the Ocean's County Prosecutor's Office and requested a "*Brady*" letter for the purposes of removing the appellant from the subject eligible list.<sup>4</sup> He contends that the Ocean County Prosecutor's Office complied and issued a March 30, 2021, letter indicating that the appellant could not be appointed as a Police Officer due to the "*Brady-Giglio*" guidelines. The appellant adds that, on April 13, 2021, the background investigators appeared at his home and gave him a letter from the appointing authority, which indicated that the conditional offer of employment had been revoked based on information it received from the Ocean County Prosecutor's Office.

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<sup>2</sup> The appellant asserts that, on March 31, 2021, the appointing authority extended a conditional offer of employment to him, which was contingent upon him passing a drug screening and a psychological examination. The appellant states that, although he submitted to a drug screening, he did not receive any paperwork pertaining to the conditional offer of employment.

<sup>3</sup> The appellant states that the appointing authority sent e-mails to Agency Services related to the 2016 charges and the letter from the Ocean County Prosecutor's Office.

<sup>4</sup> Such information is in reference to the Attorney General's Law Enforcement Directive No. 2019-6 pertaining to *Brady v. Maryland* and *Giglio v. United States*. The *Brady-Giglio* policy is based on decisions issued in *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972). The *Brady-Giglio* policies were issued to provide a more efficient means for the criminal courts to obtain and analyze exculpatory evidence in cases. In essence, the prosecutor indicated that the appellant's character, if required to testify in court as a Police Officer, would potentially be called into question as he would be required to disclose to the court and defense counsel information pertaining to the charges that were issued against him. It is noted that the policy does not specifically apply to Civil Service law and rules.

Additionally, the appellant asserts that the removal of his name was not driven by consideration of his qualifications and merit and fitness for appointment, but rather, it was predicated on the Chief of Police's desire not to appoint him. As noted above, the appellant argues that a series of emails and events demonstrate that Agency Services advised and assisted the appointing authority in removing him from the subject eligible list via *ex parte* opinions and communications before the certification was disposed. The appellant states that this occurred even after he was extended a conditional offer of employment. Further, he claims that Agency Services ultimately acted arbitrarily and capriciously in reversing its decisions that neither the DUI nor the *Brady-Giglio* letter constituted a basis to remove his name from the list and ignored its own rehabilitation statute.

Moreover, the appellant contends that the appointing authority and this agency refused to turn over "communications" and documents to him that were provided in support of the appointing authority's request to remove his name, even though this is required by *N.J.A.C.* 4A:4-4.7(b)(1). In that regard, he maintains that the evidence corroborates that Agency Services worked with the appointing authority "in devising a basis to remove [him] IN ADVANCE" of the return of the certification. The appellant also claims that this agency developed a separate basis for removal after he had filed his appeal. Specifically stating that in an email dated September 20, 2021, a staff member of the Division of Appeals and Regulatory Affairs (DARA) requested documents that his counsel received from the appointing authority claiming that all were not forwarded to him by the appointing authority. However, "the next day," the staff member denied his appeal for reasons never presented to him and in contradiction to those reasons provided to him by the appointing authority. In other words, the appellant argues that this agency "conjured up" a separate basis to remove him only after he filed his appeal.

Additionally, he claims that this agency failed to consider its own statute and regulations regarding rehabilitation, contrary to own earlier "admissions" that removal was not proper. In his case, the appellant states that he was removed from the subject eligible list based on an isolated DUI charge in Pennsylvania, which is a motor vehicle offense in New Jersey, in 2016, five years prior to his name being certified. He also presents that he has maintained employment, paid his way through the Alternate Route Program at the Atlantic County Police Academy, and that he has had no financial or personal issues. In other words, without the DUI, his background is impeccable. As such, the appellant maintains that he has demonstrated rehabilitation. In support, the appellant cites *In the Matter of David Arce* (MSB, decided November 17, 2004) and *In the Matter of Angelo Magarelli* (CSC, decided January 13, 2010) in which the appellants in those matters were restored to their eligible lists.

The appellant also argues that when Agency Services advised the appointing authority that “it could not remove [him] based on the out-of-State DUI,” the appointing authority turned to the Ocean County Prosecutor’s Office for assistance. While it “initially rejected” the prosecutor’s letter as a basis to remove his name, Agency Services “reversed itself” for reasons that remain unknown. Further, the correspondence from DARA “denying his appeal” is not predicated on the prosecutor’s letter, but on accidents in which he was hit by other vehicles, a four year old ticket, and a DUI that Agency Services “previously advised [the appointing authority]” was not a basis for removal. As such, he argues that the prosecutor’s third party *ex parte* designation of a civilian as a “Brady” violate the rehabilitation statute, but the issuance of such a letter is contrary to the Civil Service Commission’s ruling in *In the Matter of Victor Vazquez, et al.* (CSC, decided July 21, 2021).<sup>5</sup> Moreover, the appellant maintains that, since he was extended a conditional offer of employment, his name should be restored to the subject list.<sup>6</sup>

In response, the appointing authority, represented by Armando Riccio, Esq., asserts that the appellant was properly removed from the subject eligible list due to the 2016 charges against him. The appointing authority adds that, although the expungement may be considered as evidence of rehabilitation, such information does not prevent the appointing authority from considering the arrest and DUI, as the public expects law enforcement officers to exhibit excellent judgment. The appointing authority asserts that, although the charges were dismissed and expunged, it has the ability to review such information during the appointment process to determine the suitability of the candidates, and in this matter, it determined that as a result of 2016 charges, the appellant was not suitable for an appointment as a Police Officer. The

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<sup>5</sup> In *Vasquez, supra*, the matter was a disciplinary case brought against Police Officers, and it was determined that nothing issued by the Bergen County Prosecutor’s Office in that matter was sufficient to warrant the removal of those Officers under the “*Brady-Giglio*” guidelines. Rather, the Bergen County Prosecutor’s Office indicated that any future impediment to their functioning as Police Officers would be done on a case-by-case basis. It was also determined that the designation does not affect a Police Officer’s job functions or job duties. *Vasquez, supra*, is distinguishable from this matter, as it does not involve a list removal appeal, but rather, it involved how the guidelines apply to the functions of those already serving as a Police Officer. In this matter, the appellant is not a Police Officer, but rather, is merely a candidate for that position. Therefore, such guidelines are applied in the context of a list removal appeal in this matter, which will be addressed more fully.

<sup>6</sup> The appellant also states that, by letter dated April 1, 2021, the appointing authority expressed its concerns to the Ocean County Prosecutor pertaining to this agency. The April 1, 2021 letter indicated that “we can continue to be at odds with the [Commission] who refuses to accept the *Brady-Giglio* decision as a valid reason to disqualify an applicant from employment with a police department. We were informed that it was their belief that this applicant was rehabilitated and therefore passing for cause would most likely not be upheld. In addition, we consulted with an attorney who specializes in Civil Service process who rendered the opinion that we had a very slim chance of winning an appeal. As a result [the appellant] will be moving forward in the hiring process. It would appear that the [Commission] has become very liberal in their interpretation as to what constitutes an acceptable police applicant and until they are forced to change that opinion we will continue to have this argument. I believe that [Commission] needs to be educated on the ramifications of hiring an applicant with past credibility issues ...”

appointing authority explains that the 2016 infraction occurred less than three years prior to closing date of the examination and only 15 months after he completed probation and had the charges dismissed. It also states that the appellant was 26 years old at the time he was arrested by the Pennsylvania State Police and it appears that he was less than cooperative when brought to the police station for processing because he refused to provide a breath sample. The appointing authority argues that the completion of the ARDP is not sufficient to restore his name to the subject eligible list. In addition, the appointing authority explains that the Ocean County Prosecutor's Office indicated that, if the appellant was appointed as a Police Officer and required to testify, the appellant's credibility could potentially be impeached in court based on the 2016 charges, and such information would be required to be disclosed based on the Attorney General's Guidelines. Moreover, the appointing authority asserts that it does not maintain a special relationship and did not engage in collusion with Agency Services. The appointing authority states that Agency Services provided guidance with respect to the removal, and its determination was not final and could be appealed to the Commission. Moreover, the appointing authority asserts that Agency Services did not remove the appellant based on the *Brady-Giglio* guidelines.

In reply, the appellant argues that the appointing authority did not provide pertinent information, including videotapes of the appellant's interview, and a copy of the conditional offer of employment.<sup>7</sup> He also states that the appointing authority did not contest the fact that he set forth in his certification that he was advised by the Brick Police Department's command staff that his DUI was no longer an issue,, that he was questioned about the DUI, that he received a conditional offer of employment, and that he in fact passed his medical examination and was scheduled to attend a psychological examination. Moreover, the appellant maintains that he would not have been removed from the subject eligible list absent the letter the appointing authority received from the Ocean County Prosecutor's Office.

## CONCLUSION

*N.J.S.A. 11A:4-11*, in conjunction with *N.J.A.C. 4A:4-4.7(a)4*, provides that an eligible's name may be removed from an employment list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. In addition, when the eligible is a candidate for a public safety title, an arrest unsupported by a conviction may disqualify the candidate from obtaining the employment sought. See *Tharpe, v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). In this regard, the Commission must look to the criteria established in *N.J.S.A. 11A:4-11* and *N.J.A.C. 4A:4-4.7(a)4* to determine

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<sup>7</sup> It appears that such information was made through an OPRA request to the appointing authority, which is not under this agency's purview. As such, that information will not be addressed. Moreover, even if it was provided, it would not change the outcome of the case.

whether the appellant's criminal history adversely relate to the position of Police Officer. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, **except for** law enforcement, firefighter or correction officer and other titles as determined by the Commission. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer employment list to consider whether the candidate's arrest adversely related to the employment sought based on the criteria enumerated in *N.J.S.A. 11A:4-11*. See *Tharpe v. City of Newark Police Department*, *supra*.

The appellant's participation in the ARDP, like participation in the PTI Program, is neither a conviction nor an acquittal. See *N.J.S.A. 2C:43-13(d)*. See also *Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001); *In the Matter of Christopher J. Ritoch* (MSB, decided July 27, 1993). *N.J.S.A. 2C:43-13(d)* provides that upon completion of supervisory treatment, and with the consent of the prosecutor, the complaint, indictment or accusation against the participant may be dismissed with prejudice. In *Grill, supra*, the Appellate Division indicated that the PTI program provides a channel to resolve a criminal charge without the risk of conviction; however, it has not been construed to constitute a favorable termination. Similarly, the Commission finds that completion of the ARDP is not to be construed as a favorable termination. Furthermore, while an arrest is not an admission of guilt, it may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. Thus, an appellant's arrest and entry into PTI could still be properly considered in removing his or her name from an eligible list. Compare, *In the Matter of Harold Cohrs* (MSB, decided May 5, 2004) (Removal of an eligible's name reversed due to length of time that had elapsed since his completion of his PTI).

Additionally, *N.J.A.C. 4A:4-4.7(a)1*, in conjunction with *N.J.A.C. 4A:4-6.1(a)9*, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for an appointment. Additionally, the Commission, in its discretion, has the authority to remove candidates from lists for law enforcement titles based on their driving records since

certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. *See In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998); *In the Matter of Yolanda Colson, Correction Officer Recruit (S9999A), Department of Corrections*, Docket No. A-5590-00T3 (App. Div. June 6, 2002).

*N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

In this matter, the appellant was 26 years old when he was arrested in 2016 and charged with DUI and with Failure to Provide a Breathalyzer, for which he completed the ARDP, paid fines, completed alcohol safety school and community service, and his driver's license was suspended. Although the appellant argues that the 2016 charges were expunged, as noted above, the presentation of an expungement will not preclude an applicant for Police Officer from being rejected from employment. One of the arguments the appellant posits is that even if a DUI were considered a criminal offense in New Jersey as it is in Pennsylvania, *Arce* and *Magarelli*, *supra*, demonstrate similar fact patterns involving isolated arrests, length of time from when the incident occurred to appointment consideration, and rehabilitation that should be applied in his case. However, a significant factor in determining if an appellant's criminal history is the age of the individual when the crime was committed. In *Arce*, the appellant was 19 years old at the time of the incident and in *Magarelli*, the appellant was 22 years old at the time of the incident. In contrast, the appellant was 26 years old at the time of his arrest and would be expected to demonstrate better judgment. Additionally, not enough time has elapsed from the time the 2016 charges occurred and the time the appellant applied for and was certified on the eligible list. In this regard, less than three years had passed between the time of the 2016 charges and the time he applied for the subject examination, and a little more than four years had passed since his involvement in the 2016 infractions and the time his name was certified on the eligible list. Although the foundation for an expungement is the equivalent of evidence of rehabilitation, the fact that the appellant was gainfully employed and completed the alternative route training program is not sufficient evidence of rehabilitation at this time from the time of the incident to the time of his application, the expungement of his arrest cannot outweigh those factors. *See N.J.S.A. 2C:52-3 and N.J.S.A. 2C:52-8; See also, In the Matter of J.B.*, 386 *N.J. Super.* 512 (App. Div. 2006). In this regard, the nature of the arrest clearly adversely relates to the title of Police Officer, particularly since he refused to submit to testing at the time of his arrest. It is recognized that Municipal Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence

and trust. See *Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). See also, *In re Phillips*, 117 N.J. 567 (1990). The public expects municipal Police Officers to present a personal background that exhibits respect for the law and rules.

With respect to the appellant's arguments that the appointing authority did not remove him based on his driving infractions, such information can be considered by the Commission when reviewing list removal appeals. Regarding the appellant's driving record, his ability to drive a vehicle in a safe manner is not the main issue in determining whether or not he should remain eligible to be a Police Officer. Such violations, which included being Involved in an Accident – Police Report on October 24, 2012, February 21, 2015, and May 8, 2017, being issued a Failure to Wear a Seatbelt violation on December 14, 2017, and most importantly, being issued his DUI infraction,<sup>8</sup> evidence disregard for the motor vehicle laws and the exercise of poor judgment. In this matter, it is clear that the appellant's driving record shows a pattern of disregard for the law and questionable judgment. Such qualities are unacceptable for an individual seeking a position as a Police Officer. The appellant does not provide any substantive evidence on appeal to dispute this information, and the most recent incident occurred in 2017, which is a little less than two years prior to applying for the subject examination. The recent driving infractions, the seriousness of the infractions including involvement in a DUI and refusal to submit to testing, are unacceptable for a candidate applying for a law enforcement position.

With respect to the appellant's objection to the letter from Division of Appeal and Regulatory Affairs staff, the appellant correctly states that the letter should not have been issued, as his attorney had requested an extension. Although the appellant's attorney did, in fact, request an extension, which was granted, it is noted that extension requests are not regulated by this agency, and therefore, such requests are not required to be granted to the parties. Rather, extensions are granted by Division of Appeals and Regulatory Affairs as a courtesy to the parties on an as needed basis, in an effort to have the parties provide additional information to complete the record, so the Commission may issue a final determination. With respect to the extension in this matter, while it may have been overlooked, it neither constitutes a procedural error, nor an administrative error, that would somehow show that the appellant's appeal in this matter was not properly reviewed. In this regard, the appellant's attorney, upon receipt of the September 26, 2021 letter, promptly indicated that she wanted the record to remain open so that she could submit additional arguments and information. As such, based on the appellant's attorney's prompt response to the September 26, 2021 letter, and the fact that this matter is properly before the Commission for a final decision, the Commission is satisfied that

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<sup>8</sup> The Commission notes that even if the DUI was not a criminal infraction, but just a motor-vehicle infraction, it, along with the other motor-vehicle infractions in the appellant's record, would support his removal from the subject eligible list on that basis alone. See *N.J.A.C. 4A:4-4.7(a)1*, in conjunction with *N.J.A.C. 4A:4-6.1(a)9* and *Rosado, supra*; *Colson, supra*; and *Joy, supra*.



the appellant has had a full opportunity to present his appeal and have his arguments addressed by the Commission. Further, the September 26, 2021 letter was not considered “final” for judicial purposes.<sup>9</sup>

Regarding the appellant’s claims regarding a conditional offer of employment, the record reflects that the appellant did not complete a psychological examination, and he acknowledges that the appointing authority cancelled the psychological examination. Although the appellant states that he passed a drug screening, conditional offers of employment are contingent upon completing and passing both medical and psychological examinations. In this regard, a drug screening is not considered part of the medical examination which triggers a valid conditional offer of employment under the Americans with Disabilities Act (ADA). Regardless, even if the appellant completed a medical examination, and received a conditional offer of employment under the ADA, that offer was invalidated by the other valid reasons that were presented by the appointing authority for the appellant’s removal from the subject eligible list.<sup>10</sup> Although the appellant objects that he did not receive paperwork pertaining to the conditional offer of employment, even if he did not, in fact, receive such information, it does not establish that a procedural error occurred that would somehow warrant his restoration to the subject eligible list. Moreover, as will be discussed more fully below, although the letter from the Ocean County Prosecutor’s Office pertaining to the *Brady-Giglio* guidelines may have provided guidance to the appointing authority pertaining to the appellant, he was ultimately removed by on the basis of an unsatisfactory background report.

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<sup>9</sup> It is noted that such letters are not regulatory in nature and do not constitute a decision, but merely constitute regular correspondence as issued by the Division of Appeals and Regulatory Affairs. The appellant’s attorney has previously challenged such letters and the Appellate Division, Superior Court did not indicate that the letters were improperly issued. Rather, the Appellate Division found that the parties had the full opportunity to present arguments, had the benefit of counsel, and the Commission properly issued a decision based on the record before it. *See In the Matter of Isaiah Mateo, Police Officer (S9999U), Hoboken*, Docket No. A-0048-19T4 (App. Div. December 18, 2020).

<sup>10</sup> Pursuant to U.S.C.A. sec. 12112(d)(3), no medical or psychological examination may be conducted prior to rendering a conditional offer of employment. *See also, N.J.A.C. 4A:4-6.5(b)* (An appointing authority may only require a medical and/or psychological examination after an offer of employment has been made and prior to appointment). An appointing authority is barred from reevaluating any information that was known prior to extending the conditional offer of employment. *See Equal Employment Opportunity Commission’s ADA Enforcement Guidelines: Preemployment Disability Related Questions and Medical Examinations* (October 10, 1995). Those guidelines state, in pertinent part, that in order for a conditional offer of employment to be “real,” the employer is presumed to have evaluated all information that is known or should have reasonably been known prior to rendering the conditional offer of employment. This requirement is intended to ensure that the candidate’s possible hidden disability or prior history of disability is not considered before the employer examines all of the relevant non-medical information. Regardless, even if there was a technical violation of the ADA, the reasons presented provide a sufficient reason to remove the appellant. In this regard, if the appointing authority actually sent the appellant for the full medical examination, prior to completing its full evaluation into the appellant’s background, it is cautioned to, in the future, ensure that it fully complete any background investigation prior to subjecting a candidate to medical and psychological evaluations.

With respect to the appellant's objections to the *Brady-Giglio* guidelines, the Commission finds that, although the *Brady-Giglio* guidelines provide pertinent information to law enforcement agencies from the Attorney General's Office regarding exculpatory evidence, the Commission is not bound by such guidelines. The Commission is not a law enforcement agency and, as such, its authority is not based on policies implemented by the Attorney General's Office. Rather, the Commission's authority to implement Civil Service law and rules is provided by Title 4A of the New Jersey Administrative Code and Title 11A of the New Jersey Statutes. Although the *Brady-Giglio* guidelines are relevant to law enforcement agencies, Civil Service law and rules are not specifically applicable to exculpatory evidence as provided by the guidelines, nor applicable to testimony provided by Police Officers in criminal and municipal court proceedings. Rather, list removal appeals are decided by the Commission on a case-by-case basis on the basis of the record presented. *See In the Matter of Debra Dygon* (MSB, decided May 23, 2000). As such, the Commission finds it appropriate to consider list removal appeals on a case-by-case basis when the *Brady-Giglio* guidelines are invoked. *See In the Matter of Evan Androcy, Police Officer, Regular Reemployment List, Lacey Township* (CSC, decided August 4, 2021). Additionally, the appointing authority did not initially remove the appellant from the subject eligible list based on the *Brady-Giglio* guidelines or based on information it received from the Ocean County Prosecutor's Office, but rather, it removed him based on the 2016 charges that were issued against him. Agency Services accepted the appointing authority's basis for removing the appellant based on his background.

With respect to the appellant's claims that improper *ex parte* communications occurred between Agency Services and the appointing authority, in order to justify additional reasons for removing names from the subject eligible list based on the *Brady-Giglio* guidelines, the Commission has previously addressed similar arguments and it determined that this agency did not engage in collusion. *See In the Matter of Jeffrey DeSimone, Police Officer (S9999A), Lakewood Township* (CSC, decided January 19, 2022). As in the prior matter, the Commission is not persuaded in this matter that there is any evidence of improper collusion and finds that such arguments are without merit. Moreover, there was clearly no determination ever made by Agency Services that the appellant should not be removed from the subject eligible list or that this decision was changed after colluding with the appointing authority to uphold his removal. Although the appellant submits several emails between Agency Services and the appointing authority, which provided information pertaining to what is and is not considered by this agency as acceptable/sufficient documentation to justify a list removal, Agency Services properly allowed the appointing authority to submit such information for review. Moreover, the appellant claims that this agency engaged in multiple *ex parte* communications with the appointing authority and, as such, improperly assisted the appointing authority with removing his name from the subject eligible list. The Commission finds that the appellant's arguments in that regard are misplaced. Agency Services' role in the

certification disposition process does not constitute the appeal process for the eligibles on the list. In this regard, the certification disposition review process requires Agency Services to ensure that sufficient information is provided by the appointing authority in order to support its request to remove an eligible's name from a certification. Part of that process necessitates communication from this agency, which can and does include requests for specific information from the appointing authority with respect to the removals. Examples of acceptable information, what constitutes deficiencies in the provided information, and what additional information may cure such deficiencies is addressed in Title 4A of the New Jersey Administrative Code. *See, e.g., N.J.A.C. 4A:1-2.1 and N.J.A.C. 4A:4-4.8(b)6.* Significantly, the appropriate representative of this agency must determine, based on the information provided by the appointing authority, if sufficient grounds were provided for the removal. If Agency Services provides the appointing authority with the opportunity to cure any deficiencies with respect the information provided, and the appointing authority in turn fails to provide sufficient information in response, this agency will not remove the individual's name from the list. However, if the appropriate Agency Services representative determines that there are sufficient grounds for removal, the agency is required to notify both the appointing authority and the eligible of its decision, and to advise the eligible of his or her appeal rights. *See N.J.A.C. 4A:4-4.7(c).* In other words, the certification disposition process only involves this agency and the appointing authority. Moreover, the certification disposition process does not constitute a final decision, and if a candidate disagrees with the certification disposition process, an appeal may be filed for a final determination by the Commission.

Finally, the Commission is concerned about the appellant's attorney's continued campaign regarding collusion, as this is not the first matter where she has alleged that claim. *See DeSimone, supra.* It is emphasized that the core function of the Commission is implementing the personnel functions for the jurisdictions under its purview, in accordance with Title 4A of the Administrative Code and Title 11A of the New Jersey Statutes. Such functions include communicating with appointing authorities pertaining to the reasons for removing candidates from eligible lists, which includes discussing whether or not an appointing authority may remove an eligible from a list for various reasons. In this matter, Agency Services properly explained what information was required to warrant a removal, and as such, the communication was not in any way an act of collusion, nor did it constitute an *ex parte* communication. As such, any arguments the appellant's attorney makes in future matters pertaining to similar claims of collusion will not be addressed absent actual evidence of improper collusion.

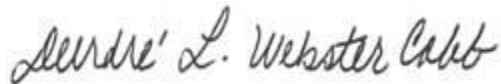
Accordingly, based on the totality of the issues presented above regarding the appellant's background, the appointing authority has presented sufficient cause to remove the appellant's name from the eligible list for Police Officer (S9999A), Brick Township.

**ORDER**

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 2<sup>ND</sup> DAY OF MARCH, 2022



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Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

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