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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE  
ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Judiciary Clerk 4  
(S0089R), Vicinage 13, the Judiciary

Administrative Appeal

CSC Docket No. 2017-198

ISSUED: **DEC 22 2016** (SLK)

In *In the Matter of Judiciary Clerk 4 (S0089R), Vicinage 13, the Judiciary and Sharon Hackworth* (CSC, decided May 7, 2014), the Civil Service Commission (Commission) granted the appointing authority's request for an appointment waiver from the July 19, 2013 certification and ordered that no selection costs be assessed at that time since there was a possibility that the list could be utilized prior to its expiration. A copy of that decision is attached hereto and incorporated herein. However, the appointing authority did not utilize the subject eligible list and the matter of the assessment of costs is now before the Commission.

Agency records reveal that no further certifications were issued from the subject list. Therefore, the appointing authority was notified that since the eligible list was not utilized by its expiration date, the matter of the costs for the selection process in the amount of \$8,285 would be forwarded to the Commission for a determination.

The appointing authority explains, as indicated in its initial request for an appointing waiver on January 29, 2014, that its reason for filling this vacancy was due to an employee being diagnosed with a catastrophic illness and possibly not returning to employment. Once it could not select a replacement from existing Judiciary personnel, the Administrative Office of the Courts contacted the Division of Agency Services (Agency Services) to obtain authorization to make a non-competitive appointment since the Commission did not have an active eligible list for the subject title. It asserts that it requested to make a non-competitive

appointment since traditionally positions for the subject title are advanced internally and, as this was an isolated circumstance, it believed that it would be unlikely that it would need to appoint another individual to the subject title from a Statewide list prior to the list expiring. However, it presents that instead of authorizing a non-competitive appointment, Agency Services announced a Statewide open-competitive examination with a closing date on January 30, 2013. Thereafter, the appointing authority was provided a list of eligible candidates in Hunterdon County, it provisionally appointed Christine Ibrahim on May 3, 2013, and the test was administered on June 20, 2013. The appointing authority presents that from the time it began the recruitment process, more than a year passed before it received the responses from interested candidates in August 2013. However, the employee who it initially thought that it needed to replace informed it in July 2013 that she could return to work. It emphasizes that if it had received notice sooner, it would have requested that the examination be cancelled. The appointing authority reiterates that it did not request a Statewide examination and contends that it requested that Agency Services not follow through with administering the subject examination. It argues that it should not be held accountable for Agency Services' decision to administer a Statewide examination for the subject title.

### CONCLUSION

*N.J.S.A. 11A:4-5* and *N.J.A.C. 4A:10-2.2(a)2* state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse the costs of the selection process. While administering examinations and providing the names of eligible job candidates to the jurisdictions under the Civil Service system are two of the primary activities of this agency, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists to make appointments and candidates have needlessly expended their time, effort and money to take these examinations in hopes of being considered for a permanent appointment. The amount of \$8,285 has been determined to be the cost of the selection process for open-competitive examinations for State government positions.

A review of agency records indicates, that contrary to the appointing authority's assertion that it did not request that the subject examination be announced, the appointing authority requested to Agency Services that it announce an open-competitive examination for the subject title due to its difficulty filling the position by advancement and its indication that there were no interested eligibles in lower titles. Accordingly, Agency Services announced the subject examination with a January 30, 2013 closing date and administered the test on June 20, 2013. Thereafter, certification OS130504 was issued on July 19, 2013. In a letter dated January 14, 2014, Agency Services advised the appointing authority that its records indicated that the subject list was generated when the appointing authority requested a list for the subject title and subsequently appointed a provisional to serve in that title. Therefore, it indicated that the appointing authority either

needed to make a permanent appointment or request an appointing waiver. In a letter dated January 29, 2014, the appointing authority requested an appointment waiver since the employee who was on leave was returning and it also indicated that the provisional was being removed from her provisional title and being placed in a confidential title due to its needs. Further, in a letter dated March 6, 2014, the appointing authority additionally indicated that it expected that positions in the subject title would need to be filled and recruitment from the certified list would be warranted. Moreover, in the Commission's May 7, 2014 decision, the Commission noted that the appointing authority took no action to obviate the need for the examination at the time of the announcement or prior to its administration. Additionally, in this appeal, the appointing authority states that it would have requested that the examination be cancelled if it had received notice sooner than the end of July 2013 that its employee on leave would be returning. In other words, the appointing authority is acknowledging that it did not request that the examination be cancelled because it did not know until after the test was administered that its employee would be returning.

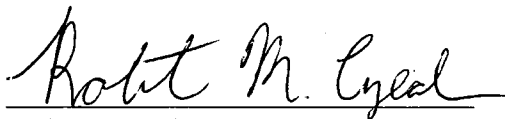
Therefore, in the instant situation, although the appointing authority had shown a valid reason for not making an appointment from the subject eligible list, it failed to provide a sufficient basis for not being charged for the costs of the selection process which produced the subject eligible list. Thus, it is appropriate that the appointing authority be assessed the costs of the selection process.

### ORDER

Therefore, it is ordered that the appointing authority be assessed the costs of the selection process in the amount of \$8,285 to be paid within 30 days of the issuance of this decision.

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 21<sup>st</sup> DAY OF DECEMBER, 2016



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Director  
Division of Appeals  
and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

Attachment

c: Rachel Morejon  
Kelly Glenn  
Beth Wood  
Records Center ✓



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Judiciary Clerk 4  
(S0089R), Vicinage 13, the Judiciary  
and Sharon Hackworth

CSC Docket Nos. 2014-1916 and  
2014-1949

Appointment Waiver

ISSUED: **MAY 08 2014** (SLK)

Vicinage 13, the Judiciary, requests permission not to make an appointment from the July 19, 2013 certification for Judiciary Clerk 4 (S0089R). Sharon Hackworth requests that she be appointed from the eligible list for Judiciary Clerk 4 (S0089R). These appeals have been consolidated due to common issues presented.

The record reveals that on May 6, 2013, the appointing authority provisionally appointed Christine Ibrahim, pending open competitive examination procedures, to the subject title. The examination was announced with a closing date of January 30, 2013. The examination resulted in an employment roster of 187 eligibles which promulgated on July 18, 2013 and expires on July 17, 2016. It is noted that Hackworth, a veteran eligible, was in the first position and Ibrahim was in the fifth position on the certification that was issued on July 19, 2013.

The appointing authority returned the certification on November 7, 2013, indicating that Ibrahim was no longer provisionally serving in the title and she was given an unclassified appointment as a Judiciary Clerk 4, Confidential.<sup>1</sup> Therefore, no permanent appointment was made from the certification. It is noted that the appointing authority took no action to obviate the need for this examination at the time of the announcement or prior to its administration. See *N.J.A.C. 4A:10-2.2(a)1*.

<sup>1</sup> The appointing authority presents that it was in need of appointing an employee to perform confidential work. It states that since it did not have any career service employees designated as confidential, and existing employees, if selected, would lose their career service status, it made the unclassified appointment.

On January 9, 2014, Hackworth contacted the Division of Classification and Personnel Management (CPM) and indicated that due to her veterans' status, she was ranked in the first position on the certification for the subject title and she immediately contacted the appointing authority to advise it of her interest in the position. Hackworth stated that she was advised by this agency that the appointing authority was required to dispose the subject certification on October 19, 2013. However, as of January 2014, she had not been contacted by the appointing authority regarding an appointment. Hackworth emphasizes that she has veterans' status and requested that CPM rectify the situation so she could follow through on an appointment to the subject title.

On January 29, 2014, the appointing authority requested an appointment waiver due to it no longer having a need for a provisional appointment. The appointing authority explained that it had requested the provisional appointment to fill a vacancy for a position for which the incumbent was on a medical leave and it was unsure if she would return. After filling the position on a provisional basis, the employee who was on medical leave was able to return to work. On February 11, 2014, the Division of Appeals and Regulatory Affairs (DARA) acknowledged Vicinage 13's request for a waiver of the appointment and the assessment of costs in the above matter. Moreover, it was advised that if an appointment waiver was granted, it could be assessed for the costs of the selection process in the amount of \$8,285 and that the appointing authority could submit within 20 days from the receipt of this notice reasons why costs of the selection process should not be assessed.

In reply, the appointing authority reiterates that it no longer has a need to fill a Judiciary Clerk 4 position because the employee who was on a medical leave returned to employment. Additionally, it explains that a confidential position needed to be filled and career service staff was unwilling to accept that position. Therefore, that unclassified position was filled by the provisional appointee to the position for whom the subject examination was announced. The appointing authority highlights that due to existing Judiciary Clerk 4 employees who have applied for retirement in 2014, it expects to utilize the subject list in the future.

Although provided the opportunity, Hackworth did not provide any additional information or arguments for the Commission to review.

A review of agency records indicates that there are no other employees recorded as serving provisionally pending open competitive examination procedures in the subject title in Vicinage 13.

## CONCLUSION

In accordance with *N.J.S.A.* 11A:4-5, once the examination process has been initiated due to the appointment of a provisional employee or due to an appointing

authority's request to fill a vacancy, the appointing authority must make an appointment from the resulting eligible list if there are three or more interested and eligible candidates. The only exception to this mandate may be made for a valid reason such as fiscal constraints.

In the instant matter, the examination for the subject title was generated as the result of the provisional appointment of Christine Ibrahim to the subject title. However, after a complete certification was issued, the appointing authority returned the certification and indicated that Ibrahim's provisional appointment was terminated due to the unexpected return of an employee from medical leave. Consequently, since there is no provisional serving in the title at issue, there is sufficient justification for an appointment waiver.

Although an appointment waiver is granted in this matter, both *N.J.S.A. 11A:4-5* and *N.J.A.C. 4A:10-2.2(a)2* state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse for the costs of the selection process. While administering examinations and providing the names of eligible job candidates to the jurisdictions under the civil service system are two of the primary activities of this agency, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists to make appointments and candidates have needlessly expended their time, efforts and money to take these examinations in hopes of being considered for a permanent appointment. However, the appointing authority indicates that there is a possibility that the list could be utilized prior to its expiration date of July 17, 2016. Accordingly, under the particular circumstances of this matter, it would not be appropriate to assess the appointing authority for the costs of the selection process at this time. Nevertheless, in the event the appointing authority fails to utilize the list by its expiration date of July 17, 2016, this matter can be reviewed to ascertain whether an assessment for the costs of the selection process should be made.

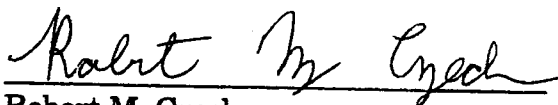
With respect to Hackworth's request for an appointment from the list, since there is no position currently to be filled from the subject list, there is no basis on which the appointing authority is required to appoint her at this time. However, in accordance with *N.J.S.A. 11A:5-6*, unless there is a basis to remove her name from the list for cause, if she expresses interest in a position from a future certification for the subject list, Hackworth should be appointed from the list.

### ORDER

Therefore, it is ordered that the request for the waiver of appointment requirement be granted and no selection costs presently be assessed. Further, it is ordered that Hackworth's request 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 7<sup>th</sup> DAY OF MAY, 2014**



**Robert M. Czech  
Chairperson  
Civil Service Commission**

**Inquiries  
and  
Correspondence**

**Henry Maurer  
Director  
Division of Appeals and  
Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312**

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**c: Hon. Yolanda Ciccone, A.J.S.C.  
Eugene Farkas  
Rachel Morejon  
Sharon Hackworth  
Kenneth Connolly  
Joseph Gambino**