

In the Matter of Clerk 2 (M0342B), Elizabeth Public Library FINAL ADMINISTRATIVE
ACTION OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2022-1753

**Appointment Waiver** 

**ISSUED:** May 2, 2022 (AMR)

The Elizabeth Public Library requests permission not to make an appointment from the August 17, 2021 certification for Clerk 2 (M0342B).

The record reveals that the Elizabeth Public Library provisionally appointed Celeste Layton, pending open competitive examination procedures, to the subject title, effective November 25, 2019. An examination was announced with a closing date of March 6, 2020 that resulted in a list of 33 eligibles with an expiration date of August 11, 2024. It is noted that Layton's provisional appointment was terminated on November 5, 2021, and there are currently no employees serving provisionally pending open competitive examination procedures in the subject title with the appointing authority.<sup>1</sup>

In response to a Notice of Violation, the appointing authority returned the certification and requested a waiver of the appointment requirement. It stated that Layton's provisional position had been "discontinued" as of November 2021 and a permanent appointment would not be made. However, the appointing authority stated that it could not "discount the possibility that [it would] use the symbol before it expires, as [it is] continually facing staff changes." The appointing authority also asked that the Civil Service Commission (Commission) consider the difficulties that Covid-19 had imposed upon it in considering its request for an appointment waiver.

 $<sup>^{1}</sup>$  It is noted that agency records indicate that Elizabeth Public Library appointed Layton to the non-competitive title of Clerk 1, effective November 15, 2021.

The appointing authority's request for an appointment waiver was acknowledged, and it was advised that if its request were granted, it could be assessed for the costs of the selection process in the amount of \$2,048. In response, the appointing authority noted that payment would be forthcoming should costs be assessed.

## 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 a result of the provisional appointment of Layton. However, after a complete certification was issued, the appointing authority requested an appointment waiver, explaining that Layton's Clerk 2 position had been "discontinued." Thus, in conjunction with the fact that there are no provisionals currently serving, there is a 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 While administering examinations and providing the of the selection process. 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. In this case, the Commission notes that the list in question will not expire until August 11, 2024. Further, the appointing authority has indicated that it is continually experiencing staff changes and may use the subject eligible list before it expires. 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 it fails to utilize the subject eligible list by its expiration date of August 11, 2024, this matter can be reviewed to ascertain whether an assessment for the costs of the selection process should be made.

## **ORDER**

Therefore, it is ordered that the request for the waiver of the appointment requirement be granted and no selection costs presently be assessed.

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  $27^{\text{TH}}$  DAY OF APRIL 2022

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