



STATE OF NEW JERSEY

In the Matter of Investigator 2
(C1222D), Bergen County

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

CSC Docket No. 2023-1517

Appointment Waiver

ISSUED: May 3, 2023 (AMR)

Bergen County requests permission not to make an appointment from the December 12, 2022 certification for Investigator 2 (C1222D), Bergen County.

The record reveals that Bergen County provisionally appointed Nicole Anthony, pending open competitive examination procedures, to the subject title, effective October 4, 2021. An examination was announced with a closing date of September 21, 2022, that resulted in a list of five eligibles, promulgating on December 8, 2022 and expiring on December 7, 2025. It is noted that Anthony has separated from her provisional position and has been provisionally appointed to the title of Investigator 2, Office of the Chief State Medical Examiner, effective February 19, 2023. Furthermore, there are currently no employees serving provisionally pending open competitive examination procedures in the subject title with the appointing authority.

The appointing authority returned the subject certification and requested a waiver of the appointment requirement, stating that Anthony was incorrectly appointed to the subject title as she is employed by the County Medical Examiner's Office and should have been placed into the Investigator 2, Office of the Chief State Medical Examiner title. Additionally, the appointing authority indicated that there is no vacancy or need for an Investigator 2.

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. Despite the opportunity,

the appointing authority did not provide any additional information for the Civil Service Commission (Commission) to review.

CONCLUSION

Initially, in examining the legislative history of *N.J.S.A. 11A:4-5*, in *Local 198 of I.A.F.F. v. Atlantic City*, Docket No. A-855-88T1F (App. Div. June 14, 1989), the court stated that this agency is required to issue a certification automatically where there is a provisional appointee or a vacancy. Moreover, the court concluded that *N.J.S.A. 11A:4-5* unambiguously stated that once the examination process has been initiated due to the appointment of a provisional employee, the appointing authority must make an appointment from the eligible list if there is a complete certification. Additionally, the court found that this agency was correct in interpreting *N.J.S.A. 11A:4-5* to find that it was a clear legislative response to pervasive violations of Title 11A, and that non-compliance with this statute is not a mere technical violation, but rather it undermined the purpose and intent of the constitutionally-based merit selection system. The court found that in circumstances such as these, it was appropriate to order the appointing authority to make an appointment. Thus, there is no doubt that the appointing authority must make an appointment from this list if there is a complete certification, that is, one containing the names of at least three interested and eligible candidates. Moreover, the Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. *N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2. See In the Matter of Fiscal Analyst (M1351H), Jersey City*, Docket No. A-4347-87T3 (App. Div. February 2, 1989).

Therefore, 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 Anthony. After a complete certification was issued, the appointing authority later requested an appointment waiver, explaining that Anthony was incorrectly appointed to the subject title, as she is employed by the County Medical Examiner's Office, and should have been placed into the Investigator 2, Office of the Chief State Medical Examiner title. Anthony has now been provisionally appointed to that title. Therefore, 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 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. In this case, the appointing authority maintains that it appointed Anthony to the subject title in error, and it does not have a vacancy or need for an Investigator 2. However, the appointing authority did not take any action to obviate the need for the examination at the time of the announcement or prior to its processing. Under these circumstances, there is not a basis on which to waive the selection costs. Therefore, although an appointment waiver is granted, it is appropriate that the appointing authority be assessed \$2,048 for the costs of the selection process.

ORDER

Therefore, it is ordered that a waiver of the appointment requirement be granted. Additionally, the Commission orders that the appointing authority be assessed for the costs of the selection process in the amount of \$2,048 to be paid within 30 days of the issuance of this order.

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 3RD DAY OF MAY, 2023



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