



**STATE OF NEW JERSEY**

In the Matter of Advocate Victim  
Witness Program (C0527B), Mercer  
County

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

CSC Docket No. 2024-482

Appointment Waiver

**ISSUED: November 1, 2023 (AMR)**

Mercer County requests permission not to make an appointment from the October 13, 2021 certification for Advocate Victim Witness Program (C0527B), Mercer County.

The record reveals that Mercer County requested an examination for Advocate Victim Witness Program. An examination (C0527B) was announced with a closing date of July 21, 2020, that resulted in a list of 10 eligibles, promulgating on August 26, 2021 and expiring on August 25, 2024. It is noted that agency records indicate that this examination was originally announced due to the provisional appointment of Megan Larkin on March 4, 2020. In the interim, Larkin's provisional appointment was terminated with Mercer County on February 26, 2021, as she was subsequently provisionally appointed to Advocate Victim Witness Program on March 4, 2021 with Ocean County, before the subject examination took place. Hence, agency records also indicate that Larkin did not appear for the July 27, 2021 examination. Therefore, for this reason her name does not appear on the certification for Mercer County as the provisional appointee. However, on September 29, 2021, the appointing authority requested the October 13, 2021 certification from the subject eligible list, after the provisional had already been separated. It is noted that 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 due to a reduction in staffing positions in the department, the Prosecutor's Office will not be utilizing the list.

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, Mercer County requested an examination for Advocate Victim Witness Program. After a complete certification was issued, the appointing authority later requested an appointment waiver, explaining that due to a reduction in staffing positions in the department, the Prosecutor's Office will not be utilizing the list. 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 due to a reduction in staffing positions in the department, the Prosecutor's Office will not be utilizing the list. 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 1<sup>ST</sup> DAY OF NOVEMBER, 2023




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