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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Municipal Court
Administrator (M0583S), Middletown
Township

CSC Docket No. 2015-3058

Appointment Waiver

ISSUED:  13 2015 (LDH)

Middletown Township requests permission not to make an appointment from the February 20, 2015 certification for Municipal Court Administrator (M0583S).

The record reveals that an examination for the subject title was announced with a closing date of July 21, 2014. The resulting eligible list of 20 names, promulgated on February 19, 2015 and expires on February 18, 2018. The appointing authority took no action to obviate the need for the examination at the time of the announcement or prior to the administration of the examination. On February 20, 2015, the names of 16 eligibles were certified from the subject eligible list. The appointing authority returned the certification noting that it made a mistake in the selection of the examination.

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 stated there was an error when it originally requested a list of candidates. Initially, the appointing authority requested an open-competitive examination but it was only after the list had been prepared by the Civil Service Commission that it became aware that it made an error. The appointing authority notes that because of the nature of the subject title, the preference should be for a promotional examination to be administered. Specifically, the subject title is not an entrance level title, the appointing authority already employs three Deputy Court

Administrators, there is only one vacancy, and a promotional exam list will not be exhausted before the one vacancy is filled. Thus, it maintains that its request for a waiver should be granted and a promotional examination announced. Finally, the appointing authority acknowledges that it may be responsible for any costs associated with its request.

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 for a list 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 subject examination was generated as a result of an error by the appointing authority. After issuance of the certified list, it became aware that the more appropriate path would be the announcement of a promotional examination. Moreover, Civil Service law and rules reflect a preference for promotional examinations to fill vacancies. See *N.J.S.A.* 11A:4-2; *In the Matter of Police Chief, South Orange Village*, 266 *N.J. Super.* 101 (App. Div. 1993). Accordingly, based on the foregoing, there is sufficient justification for an appointment waiver.

Although the appointment waiver is granted, 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 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. In this matter, the appointing authority acknowledges its responsibility for the costs of the selection process in this matter. Thus, although the request for a waiver is granted, it is appropriate that the appointing authority be assessed for the costs of the selection process.

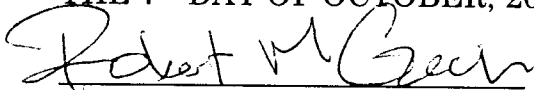
Finally, the appointing authority's request for a promotional examination to be announced for the subject title is referred to the Division of Agency Services.

ORDER

Therefore, it is ordered that the appointment waiver be granted. Additionally, the Civil Service 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 decision. It is also ordered that the request for a promotional examination for the title of Municipal Court Administrator be referred to the Division of Agency Services.

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 7th DAY OF OCTOBER, 2015



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