B-12



### STATE OF NEW JERSEY

In the Matter of Juvenile Detention Officer (C0658R), Hudson County

CSC Docket No. 2016-1261

# FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

Appointment Waiver

**ISSUED:** 

DEC 1 7 2015

(SLK)

Hudson County requests permission not to make an appointment from the March 17, 2014 certification for Juvenile Detention Officer.

The record reveals that the appointing authority provisionally appointed Anthony Aviles, Evelyn Clarke, Nadira Duval, Raafat Fahim-Mikhail, Tyneshia Hicks, Willie Jones, Sunshine Leger, Eugene Thompson and Alisa Walker pending open competitive examination procedures, to the subject title. The examination was announced with a closing date of July 22, 2013. The examination resulted in an employment roster of 237 eligibles which promulgated on March 13, 2014 and expires on March 12, 2016. It is noted that Aviles was admitted but did not sit for the subject examination. On March 17, 2014, a certification was issued which contained the names of 95 eligibles including all of the provisionals<sup>2</sup> except for Aviles.

The appointing authority returned the certification on September 14, 2014, indicating that all provisionals were removed from the title and no permanent appointments were 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

<sup>&</sup>lt;sup>1</sup> Personnel records indicate that the provisional appointments were made on the following dates: Aviles on June 21, 2008, Clarke on December 2, 2002, Duval on March 1, 2008, Fahim-Mikhail on December 6, 2008, Hicks on March 31, 2006, Jones on March 1, 2008, Leger on July 24, 2004, Thompson on March 31, 2006, and Walker on April 14, 2007.

<sup>&</sup>lt;sup>2</sup> The provisionals were on certification OL140338 in positions as follows: Clarke was 95<sup>th</sup>, Duval was 41<sup>st</sup>, Fahim—Mikhail was 61<sup>st</sup>, Hicks was 83<sup>rd</sup>, Jones was 79<sup>th</sup>, Leger was 91<sup>st</sup>, Thompson was 65<sup>th</sup>, and Walker was 69<sup>th</sup>.

announcement or prior to its administration. See N.J.A.C. 4A:10-2.2(a)1. The appointing authority also requested an appointment waiver indicating that the position no longer existed due to the closing of the Juvenile Detention Facility. On September 29, 2015, the Division of Appeals and Regulatory Affairs acknowledged Hudson County's request for a waiver in the above matter. Moreover, the appointing authority was advised that if an appointment waiver was granted, it could be assessed for the costs of the selection process in the amount of \$2,048 and that it could submit within 20 days from the receipt of this notice reasons why costs of the selection process should not be assessed. The appointing authority, despite being provided the opportunity, did not respond.

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 with Hudson County.

### 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 nine provisional appointments to the subject title. However, after a complete certification was issued, the appointing authority returned the certification and indicated that all the provisionals were removed from the subject title due to the closing of the Juvenile Detention Facility. 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. In this regard, the removal of the provisionals is insufficient to support a waiver of the costs of the selection process. Thus, although a 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 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 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 16<sup>th</sup> DAY OF DECEMBER, 2015

Robert M. Czech

Chairperson

Civil Service Commission

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and

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