

B-42



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of E.H.,
Department of Law and Public Safety

CSC Docket No. 2015-1291

Classification Appeal

ISSUED: JUL 17 2015 (DASV)

E.H.,¹ represented by Andrew L. Watson, Esq., appeals the attached decision of the Division of Classification and Personnel Management (CPM) that the proper classification of his position with the Division on Civil Rights (DCR), Department of Law and Public Safety (LPS), is Legal Specialist. The appellant seeks a Deputy Attorney General (DAG) 4 job classification.²

By way of background, the appellant filed a complaint with LPS' Equal Employment Opportunity (EEO) Office claiming that he had been discriminated and retaliated against based on his disability in violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy) since he had made numerous requests for reasonable accommodations. He also claimed that he was reassigned from the Division of Law to DCR as an Investigator in retaliation for, among other things, requesting an accommodation. The EEO Office determined that the appellant's allegations were unsubstantiated. On appeal to the Civil Service Commission (Commission), the appellant provided a certification from the former Director of DCR, stating that the appellant performed work similar to DAGs since his reassignment and opining that the appellant deserved to be promoted. In a prior decision, the Commission remanded the matter to the EEO Office and

¹ In a related determination, *In the Matter of E.H.*, Docket No. A-4859-11T1 (App. Div. April 10, 2014), the Superior Court of New Jersey, Appellate Division, utilized initials to preserve the confidentiality of the appellant and the parties. Thus, initials will also be used throughout this decision.

² It is noted that the DAG 4 and Legal Specialist titles are in the unclassified service. The appellant does not have any underlying permanent status.

ordered that the appellant's former supervisor and Director be interviewed in light of their certifications, as well as any other witnesses based on the interviews. Following the remand in which LPS' EEO Office found no violation of the State Policy, the Commission denied the appellant's appeal. In conjunction with that appeal, the Commission referred the matter of the classification of the appellant's position to the former Division of State and Local Operations (SLO)³ for review, noting that, while the appellant was still holding the title of DAG 4, it did not appear that he was functioning in that title in his new assignment. Specifically, the Commission stated, "it is clear that the appellant was placed on mobility assignment as an Investigator, not a DAG. The fact is further supported by the appellant's performance evaluations beginning in 2005, which reflect his title as Investigator and subsequently, DAG/Legal Specialist." *See In the Matter E.H.* (CSC, decided April 18, 2012). Thereafter, the appellant filed an appeal with the Superior Court of New Jersey, Appellate Division, including challenging the referral of his position classification to SLO. The Court denied the appellant's appeal, concluding with respect to the referral to SLO that the "Commission is charged with the responsibility for such oversight, and fulfilling that obligation, was entitled to direct a desk audit to be completed. Contrary to E.H.'s assertion, simply because neither side requested it, it does not mean the Commission cannot require one in fulfilling its statutory mandate." *See In the Matter of E.H.*, Docket No. A-4859-11T1 (App. Div. April 10, 2014),

As a result, CPM conducted a classification review, which included a review and analysis of the appellant's Position Classification Questionnaire (PCQ), supplemental attachments, and the organization chart. CPM compared the job definition and duties of a DAG 4 and Legal Specialist with the duties of the appellant's position and found that the main function of the position, notwithstanding the differing opinions of the time spent on each of the assigned tasks, was legal research, analysis, and writing. CPM noted that while these duties were also appropriate for a DAG 4, "the primary responsibility of a DAG 4 is to represent State departments or other entities prescribed by applicable statutes." The appellant's position is not assigned that function. Rather, the position is responsible for reviewing and drafting motions, drafting orders, conducting legal research, reviewing proposed findings of probable cause and no probable cause, drafting narrative decisions, handling inquiries from the public, and drafting legislative analysis for the Office of the Attorney General. CPM determined that these assigned duties and responsibilities were appropriate for a Legal Specialist. Therefore, it concluded that the proper classification of the appellant's position was Legal Specialist and set the effective date as November 1, 2014. The appointing authority thereafter effected the change in the appellant's position classification.

On appeal to the Commission, the appellant states that he possesses a Juris Doctor (J.D.) degree and is a member of the New Jersey State Bar. After

³ SLO became known as CPM, which is currently named the Division of Agency Services.

graduation, he completed a judicial clerkship and began his employment with LPS in 2003 as a DAG 5 in the Division of Law. He then became a DAG 4 effective August 30, 2008. Moreover, the appellant explains that he was assigned to DCR in 2004, and since that time, he has performed various legal functions, such as representing DCR by conducting public training seminars and workshops regarding statutes, including the Family Leave Act and the Law Against Discrimination. He also updates training materials for legal accuracy and reviews Superior Court pleadings to determine whether DCR should intervene. Moreover, the appellant states that he performs and assists with DCR investigations; offers legal counsel and advice during the course of those investigations; makes determinations with respect to findings of probable cause and presents them to the Director of DCR; and prepares orders for the Director of DCR to sign. Additionally, the appellant indicates that he represents DCR with respect to policy and legal inquiries from the public and has represented DCR on various statewide committees.

Furthermore, the appellant contends that the “desk audit initiated by the [Office of the Attorney General] and forced upon [him] confirms that [his] immediate supervisors agree with him that the duties and responsibilities he performs on a daily basis are those of a DAG 4.” In that regard, he states that his immediate supervisors have verified that the primary function of his position is to assist Investigators and the Director of DCR in investigations and to determine whether or not probable cause exists to prosecute a claim. Therefore, the appellant maintains in representing DCR in its application and enforcement of various statutes, he performs the duties of a DAG 4, as he is representing “State departments or other entities prescribed by applicable statutes.” In addition, the appellant claims that if the job definition of a DAG 4 means that an incumbent must attend court hearings and prosecute claims in a courtroom setting, many DAGs do not perform those functions. Moreover, the appellant notes that the newly appointed Assistant Director of DCR worked as a DAG in DCR prior to her appointment. She did not sign a legal brief or appear in court, but rather, she performed duties which were equivalent to the appellant’s duties. Furthermore, the appellant emphasizes that the former Director of DCR made clear that he believed that the appellant performed duties of a DAG. In support of his appeal, the appellant submits a certification from the former Director of DCR in the EEO matter noted above, his own certification, and the certification of a Legal Specialist who was “forced” to abandon her DAG title when she was reassigned to DCR. The Legal Specialist lists DAG positions that she asserts perform similar duties as the appellant and her. The Legal Specialist also states that she and the appellant are tasked with working with Investigators, providing them with legal advice, and rendering decisions regarding findings of probable cause for the Director’s signature. In addition, the appellant presents his performance evaluation, which notes his title as a DAG 4, for the period covering November 1, 2013 to October 31, 2014 and an e-mail from a DAG, who states that “there are a lot on non-litigating DAGs.” For instance, the DAG indicates that he will be transitioning to the

purchasing subsection where he will be negotiating contracts and providing legal advice and counsel to the Board of Pensions. Therefore, the appellant contends that the submitted documentation evidences that "a multitude of DAG positions [exist] which do not require court appearance in any form."

In addition, the appellant indicates that DAG positions require a law degree and bar admission, whereas the Legal Specialist position does not. He argues that the change in his position classification "completely negates" his J.D. degree and bar membership. It is noted that an applicant for a Legal Specialist position must possess either a J.D. or Bachelor of Laws (LL.B.) degree or a Bachelor's degree and three years of experience involving legal or legislative research, drafting of rules, regulations, legislation, amendments, and/or the interpretation of statutes. In addition, appointees currently matriculating in an accredited law school as an LL.B or J.D. candidate may substitute such enrollment for the three years of required experience on a year-for-year basis. Moreover, the appellant states that he performs the following duties as described in the Examples of Work for a DAG 4: "conducts or participates in the conduct of legal research and/or investigations," "conducts liaison activities with staff of various agencies and jurisdictions on legal and investigative matters," and "coordinates the work activities of legal, clerical and investigative staff." In contrast, the appellant contends that a Legal Specialist's duties "are fundamentally research in nature as evidenced by the Knowledge and Abilities section of the Job Specification." He certifies that he does very little research other than keeping abreast of the law which DCR must apply and enforce. Further, he submits that nowhere in the DAG 4 job specification, including the Knowledge and Abilities section, is there a reference to court representations. The appellant notes that the Director of DCR told him not to represent himself as an attorney or member of the bar, presumably because a Legal Specialist cannot provide legal advice, nor is he permitted to use the term Esquire at the end of his name even though he has done so in the past while employed as a DAG. Therefore, the appellant requests that his position be classified as a DAG 4. In the alternative, he requests a hearing in the matter if it is determined that a material dispute of fact exists in his case.

It is noted that a review of the appellant's PCQ indicates that the appellant's supervisors, who are the Assistant Directors of DCR, agreed "with the title proposed" by the appellant. However, they clarified the appellant's duties and changed the percentage of time assigned to each of the appellant's tasks. They also deleted certain language in the PCQ as drafted by the appellant. For example, the supervisors deleted the appellant being a "legal advisor" and changed the description to "attorney staff member" and instead of the appellant providing "legal support," he was providing "technical assistance." Moreover, the Director of DCR disagreed with the appellant's description of his duties, the percentage of time he indicated for each task, and his proposed title. The Director of DCR stated that he considered the appellant's duties to be commensurate with the duties of a Legal

Specialist. He also commented that the Legal Specialist title for the appellant's position was in accord with Executive Order No. 6 (Florio, March 14, 1990).

Executive Order No. 6 provides for consolidation of attorneys in LPS and prohibits any person employed by a State entity to "cause any person to believe he or she is acting as, an attorney, counsel, solicitor, legal assistant or other legal adviser to any State entity unless that person is an assistant or [DAG] or other attorney authorized to do so by the Attorney General; nor shall any such person, other than an assistant or [DAG] or other attorney authorized to do so by the Attorney General, utilize or be denominated by any title such as "attorney," "counsel," "solicitor," "legal assistant" or "legal adviser." Attorneys may be employed by State entities, but they may not perform any function assigned to the Attorney General by law or this Executive Order. Rather, the attorneys may do the following functions: provide guidance on the nature and substance of various statutes and regulations; participate in negotiations on behalf of the employing entity; appear for the employing entity in any proceeding in which an attorney is not required, or represent a State entity in the Office of Administrative Law as an attorney with prior written consent of the Attorney General; and draft proposed regulations, legislation, and amendments in accordance with policy objectives. Except for the one exception with the Office of Administrative Law, the attorneys may not perform these duties in a manner which would cause any other person to believe that they are acting as an attorney. The Executive Order does not apply to attorneys employed in the Legislative or Judicial branches of State government, the Office of the Governor, or State entities having specific statutory authority to employ separate legal advisers, to the extent permitted.

In response to Executive Order No. 6, the appellant indicates that given his duties, he is, at a minimum, an "other attorney authorized to do so by the Attorney General." He also maintains that the language in paragraph 6 of the Executive Order makes clear that he should remain appointed as a DAG 4. That provision states that "[a]t any time in the future, whenever the Attorney General determines that any person and/or position employed by any State entity is performing duties assigned to the Attorney General by law or by this Executive Order, the Attorney General shall take such action as is necessary to ensure compliance with this Executive Order."

CONCLUSION

Initially, the appellant requests a hearing in the matter. However, classification appeals are generally treated as reviews of the written record. See *N.J.S.A.* 11A:2-6(b). Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. See *N.J.A.C.* 4A:2-1.1(d). No material issue

of disputed fact has been presented which would require a hearing. See *Belleville v. Department of Civil Service*, 155 N.J. Super. 517 (App. Div. 1978).

With regard to the position audit, the Appellate Division upheld the Commission's authority to order the classification review of the appellant's position. In that regard, although the appellant states that the position classification review was "initiated by the [Office of the Attorney General] and forced upon [him]," it was the Commission which referred the matter for review. In its prior decision, the Commission found that while the appellant was holding the title of DAG 4, it did not appear that the appellant was functioning in that title in his new assignment. It is emphasized that N.J.S.A. 11A:3-1 and N.J.A.C. 4A:3-3.1(a) provide that each position in the career and unclassified services shall be assigned by this agency to a job title. Moreover, N.J.A.C. 4A:3-3.4 provides that no person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds, unless otherwise provided by law or these rules. Additionally, N.J.A.C. 4A:3-3.5(a) states in part that when the duties and responsibilities of a position change to the extent that they are no longer similar to the duties and responsibilities set forth in the specification and the title is no longer appropriate, this agency shall after review reclassify the position to a more appropriate title, establish a new title, or take other appropriate action. See e.g., *In the Matter of Sharlene Pisnoy* (CSC, decided April 15, 2009) (Appellant's argument that she did not initiate classification review of her position dismissed by Commission as it is charged with ensuring that all positions are assigned job titles that are consistent with its duties and responsibilities regardless of how a misclassified position comes to its attention). Thus, it was appropriate to review the appellant's position.

Furthermore, the appellant sets forth his credentials and argues that the change in his position classification "completely negates" his J.D. degree and bar membership. He indicates that DAG positions require a law degree and bar admission, whereas the Legal Specialist position does not. However, job requirements are not relevant to position classification reviews. Job requirements should reflect the minimum acceptable standard required for a position and any additional or non-related credentials are not necessary or relevant. It is emphasized that how well or efficiently an employee does his or her job, length of service, volume of work and *qualifications* have no effect on the classification of a position currently occupied, as *positions*, not employees are classified. See *In the Matter of Debra DiCello* (CSC, decided June 24, 2009).

In making classification determinations, emphasis is placed on the definition section of the job specification to distinguish one class of positions from another. The definition section is a brief statement of the kind and level of work being performed in a title series and is relied on to distinguish one class from another. On the other hand, the Examples of Work portion of a job description provides typical

work assignments which are descriptive and illustrative and are not meant to be restrictive or inclusive. *See In the Matter of Darlene M. O'Connell* (Commissioner of Personnel, decided April 10, 1992); *In the Matter of Bernadine Santucci* (Commissioner of Personnel, decided March 29, 2001) (Although an incumbent is not required to perform all the duties listed in a job specification, he or she must meet the criteria stated in the definition section). *See also In the Matter of Patricia Mazzeo* (Commissioner of Personnel, decided August 19, 2004) (Job specifications are not written to describe each and every duty assigned to a particular position and the fact that other incumbents in the title did not perform the same duties as appellant did not evidence that appellant's position was misclassified).

Accordingly, the definition section of the job specification for DAG 4 states:

Under direction of a [DAG] 1 or 2, or other supervisory official in Department of Law and Public Safety plans, represents State departments or other entities prescribed by applicable statutes; conducts work concerned with the detection and prosecution of criminal activities; interprets and enforces law, regulations; as the Attorney General's representative, participates in legal and related activities involving federal and local jurisdictions and other State entities; does other related work as required.

The definition section of the job specification for Legal Specialist states:

Under direction of the Chief Executive Officer or other supervisory official in a State department, institution, or autonomous agency, performs confidential legislative, legal, and policy influencing research related to department programs, in conformance with guidelines established by the State Attorney General; acts as liaison between a State department and the Office of the Attorney General in receiving, formulating, and transmitting requests for legal advice on behalf of a State agency; prepares reports and recommendations on the impact of proposed or existing legislation; does related work as required.

Upon a review of this matter, the Commission agrees with CPM that the appellant's position is properly classified as a Legal Specialist. The position clearly does not perform as an Attorney General representative. Moreover, while the appellant asserts that he performs legal functions, he does not represent DCR in a legal capacity. Rather, he is a staff member of DCR. For instance, he does not legally represent DCR when he conducts public training seminars and workshops, provides guidance to the public, sits in a committee, or updates training materials. He performs these functions as a staff member who is knowledgeable of the work of DCR. Moreover, his work does not pertain to the detection and prosecution of

criminal activities. However, while the appellant's duties involve the interpretation and enforcement of the law within the purview of DCR, which also includes providing advice to Investigators, these duties do not rise to the level of interpretation, enforcement, and legal advice with respect to the law as contemplated in the job description for a DAG 4. In that regard, the appellant makes determinations with respect to findings of probable cause, presents them to the Director of DCR, and prepares orders for the Director of DCR to sign. In contrast, the responsibility to prosecute or defend a claim is assigned to the DAGs of the Civil Rights Section of the Division of Law, which provides legal counsel and representation to DCR regarding the enforcement provisions of the law, such as the Law Against Discrimination.

Additionally, while the appellant is correct that the job specification for a DAG 4 does not specifically state that an incumbent must appear in "court," a DAG 4 must represent a State entity. Nevertheless, it is clear that the duties may encompass such a function, which the appellant's position does not perform. In the Examples of Work section, it states that an incumbent "prosecutes criminal and/or civil matters to produce results that are consistent with applicable law and with the Constitution of the United States" and "[d]efends civil matters and prepares required legal documents." A DAG 4 would also prepare "formal and informal opinions, pleadings, trial and appellate briefs, legislative and legal memoranda, proposed legislation and revisions to various administrative publications." The primary focus of the appellant's main written work is not comparable to the foregoing. Furthermore, the fact that some of an employee's assigned duties may compare favorably with some examples of work found in a given job specification is not determinative for classification purposes, since, by nature, examples of work are utilized for illustrative purposes only. Moreover, it is not uncommon for an employee to perform some duties which are above or below the level of work which is ordinarily performed. For purposes of determining the appropriate level within a given class, and for overall job specification purposes, as noted above, the definition portion of the job specification is appropriately utilized.

The job specification for Legal Specialist appropriately describes the function of the appellant's position. For example, along with the definition, the Examples of Work is consistent with the duties of the appellant, as his position "[p]rovides guidance as to the nature and substance of the various statutes and regulations covering the responsibilities of the employing State entity," "[p]rovides written interim and final agency orders, subject to the review of the Attorney General," "[p]repares clear, accurate, and informative reports on department legislative and regulatory matters containing findings, conclusions, and recommendations," "[a]nalyzes and performs research into State and/or federal legislation pertaining to department programs, functions and procedures, and prepares reports thereon," "[d]oes research into court decisions, and court cases which affect the work of the department," and "[r]eviews department rules, regulations, and procedures for

correctness and prepares digest thereof.” Specifically, CPM found that the appellant’s position is responsible for reviewing and drafting motions, drafting orders, conducting legal research, reviewing proposed findings of probable cause and no probable cause, drafting narrative decisions, handling inquiries from the public, and drafting legislative analysis for the Office of the Attorney General. These responsibilities have not been disputed by the appellant.

In addition, regarding Executive Order No. 6, it is clear that the appellant’s position cannot be classified as an attorney for DCR, since the position does not counsel or provide legal representation for that State entity. However, the Executive Order allows the appellant’s position to represent itself as a Legal Specialist. In that regard, the order provides that attorneys may be employed by State entities, but they may not perform any function assigned to the Attorney General by law or this Executive Order. Further, the functions of a non-DAG attorney as set forth in the order are consistent with the appellant’s duties, namely, that he provides guidance on the nature and substance of various statutes and regulations and appears for DCR in proceedings which an attorney is not required, *i.e.*, public training seminars and workshops. Therefore, the classification of the appellant’s position as a Legal Specialist complies with Executive Order No. 6.

Moreover, the appellant alleges that there are other individuals who have similar experience, workload, and job descriptions as the appellant and are classified as DAGs. He also notes that the newly appointed Assistant Director of DCR worked as a DAG in DCR prior to her appointment. However, a classification appeal cannot be based solely on a comparison to the duties of another position, *especially if that position is misclassified*. See *In the Matter of Dennis Stover*, Docket No. A-5011-96T1 (App. Div. October 3, 1998), *affirming In the Matter of Dennis Stover, Middletown Township* (Commissioner of Personnel, decided February 20, 1997). See also, *In the Matter of Carol Maita, Department of Labor* (Commissioner of Personnel, decided March 16, 1995); *In the Matter of Stephen Berezny* (CSC, decided July 27, 2011) (Remedy for misclassification of another position is not to perpetuate the misuse of the higher title by reclassifying the appellant’s position to that title, but rather, to review the position classifications of the positions encumbered by the named employees to ensure that they are properly classified). See also *In the Matter of Sharon Davis* (Commissioner of Personnel, decided June 14, 2005) (The fact that the job functions were previously performed by individuals in the title of Technical Assistant, Classification does not mean that these duties can only be performed by that level position). Nonetheless, the appellant does not submit sufficient evidence to find that these other current DAG positions are misclassified. Thus, based on the analysis of the appellant’s position, he has not presented persuasive arguments with regard to the classification of other positions to warrant classifying his position as a DAG 4.

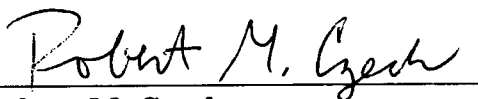
Accordingly, based on the foregoing, the record amply supports a Legal Specialist classification for the appellant's position.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review is to be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 15TH DAY OF JULY, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: E.H.
Andrew K. Watson, Esq.
Mirella Bednar
Linda Brennan
Kenneth Connolly
Joseph Gambino



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P.O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

September 30, 2014

Mirella Bednar, HR Director
Office of the Attorney General
Department of Law and Public Safety
P.O. Box 081
Trenton, NJ 08625-0081

Re: Classification Review – E██████ H██████, Deputy Attorney General 4, Division of Civil Rights

Dear Ms. Bednar:

This is to inform you of the results of our classification review for the position currently occupied by E██████ H██████ (position #645303). This determination is based upon a thorough review and analysis of all documentation submitted including the Position Classification Questionnaire (DPF-44S), supplemental attachments, and organization chart.

Issue:

In *In the Matter of E██████ H██████, Department of Law and Public Safety* (CSC, decided April 18, 2012), the Commission ordered the Division of [Classification and Personnel Management] to perform a classification review of Mr. H██████ position in order to determine the appropriate title for the work being performed. Mr. H██████ current title is Deputy Attorney General 4 (30472-ZR30); he has no underlying permanent status.

Organization:

The position is located in the Division of Civil Rights and reports directly to P██████ F██████, Assistant Division Director (M98) and E██████ B██████, Assistant Division Director (M98). You indicated that Mr. F██████ completes the PAR for Mr. H██████, and Ms. B██████ serves as the Deputy Director of the Division. Mr. H██████ does not have supervisory responsibility over any subordinate positions.

Findings of Fact:

Responsibilities of the position include but are not limited to the following:

- Drafts Disposition of Motions (a narrative decision applying applicable case law, statutes, and/or regulations, explaining the factual and/or legal basis for granting or denying a motion, subject to the review and signature of an Assistant Director).
- Drafts various types of Orders (approving settlement; dismissing a complaint based on bankruptcy of respondent; failure to appear; failure to prosecute or failure to comply with discovery, etc.), subject to the review and signature of an Assistant Director.
- Reviews Proposed Findings of Probable Cause and No Probable Cause. Conducts necessary legal research, and drafts a narrative written decision subject to the review of an Assistant Director.
- Handles policy inquiries from the public regarding Law Against Discrimination (LAD), Family Leave Act, multiple dwelling reporting rule, and Bona Fide Occupational Qualifications; informs Assistant Director about updated changes in the law and reporting requirements; makes presentations to public and private employers regarding rights and responsibilities under LAD; provides technical assistance to the Bureau and NJ Human Relations Council.
- Drafts legislative analysis for the Office of the Attorney General, subject to the review of the Assistant Director and Director.

Review and Analysis:

The position is currently classified by the title Deputy Attorney General (DAG) 4 (30472-ZR30). The definition section of the job specification for this title states:

“Under direction of a Deputy Attorney General 1 or 2, or other supervisory official in the Department of Law and Public Safety plans, represents State departments or other entities prescribed by applicable statutes; conducts work concerned with the detection and prosecution of criminal activities; interprets and enforces law, regulations; as the Attorney General's representative, participates in legal and related activities involving federal and local jurisdictions and other State entities; does other related work as required.”

A review of the job duties and responsibilities indicates that the main function of the position is legal research, analysis, and writing. While these duties are appropriate to be performed by a DAG 4, the primary responsibility of a DAG 4 is to represent State departments or other entities prescribed by applicable statutes. Based on the submitted documentation, the position is not assigned to function in this capacity. Therefore, the current title of DAG 4 is not an appropriate classification of the position.

The definition section of the job specification for the title Legal Specialist (37156-X98) states:

“Under direction of the Chief Executive Officer or other supervisory official in a state department, institution, or autonomous agency, performs confidential legislative, legal, and policy-influencing research related to department programs, in conformance with guidelines established by the State Attorney General; acts as liaison between a state department and the Office of the Attorney General in receiving, formulating, and transmitting requests for legal advice on behalf of a state agency; prepares reports and recommendations on the impact of proposed or existing legislation; does related work as required.”

For the majority of its time, the position is responsible for reviewing and drafting motions, drafting various types of orders, conducting necessary legal research, reviewing proposed findings of probable cause and no probable cause, drafting narrative decisions, handling policy inquiries from the public and drafting legislative analysis for the Office of the Attorney General. All drafted documentation is prepared for the review and signature of the Assistant Director and/or Director.

It is noted that there are differing opinions between Mr. H [REDACTED] and his supervisor with regard to the percentage of time spent on each task. Notwithstanding these differences, the preponderance of the assigned duties is appropriate to the title Legal Specialist (37156-X98).

Determination:

Based upon the assigned duties and responsibilities and that the position is not representing State Departments or other entities, it is my determination that the appropriate classification is Legal Specialist (37156-X98). The effective date of this action shall be November 1, 2014.

The job specification for Legal Specialist is descriptive of the general nature and scope of functions performed by an incumbent in this position. The examples of work are for illustrative purposes and are not intended to restrict or limit performance of related tasks not specifically listed.

The New Jersey Administrative Code 4A:3-3.5(c)1 states that “within 30 days of receipt of the reclassification determination, unless extended by the Chairperson or designee in a particular case for good cause, the appointing authority shall either effect the required change in the classification of an employee's position; assign duties and responsibilities commensurate with the employee's current title; or reassign the employee to the duties and responsibilities to which the employee has permanent rights. Any change in the classification of a permanent employee's position, whether promotional, demotional, or lateral, shall be effected in accordance with all applicable rules.

Please notify this division of the action to be taken within the timeframe noted above. Should you have any questions, feel free to contact me.

Mirella Bednar
September 30, 2014
Page 4 of 4

According to the New Jersey Administrative Code 4A:3-3.9, the incumbent may appeal this determination within 20 days of receipt of this notice. Appeals should be addressed to the Written Records Appeals Unit, Division of Appeals and Regulatory Affairs, Civil Service Commission, P.O. Box 312, Trenton, NJ 08625. The submission of an appeal must include a copy of this letter, statements as to which portions of the determination are being disputed, and the basis for appeal.

Sincerely,



Kelly Glenn, Assistant Director

LB

c: E [REDACTED] H [REDACTED]

PMIS Unit

Nick Kanellis, Imaging Unit