



STATE OF NEW JERSEY

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

In the Matter of Clerk 3 (M0712U),
Manasquan

CSC Docket No. 2017-2740

Appointment Waiver

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ISSUED: October 19, 2017 (CSM)

Manasquan requests permission not to make an appointment from the January 3, 2017 certification for Clerk 3 (M0712U).

The record reveals that Manasquan provisionally appointed Roberta Picarello-Berdel, pending open competitive examination procedures to the subject title, effective June 27, 2016. An examination was announced with a closing date of September 17, 2017 that resulted in a list of 8 eligibles with an expiration date of December 28, 2019.

The appointing authority returned the certification indicating that a permanent appointment would not be made from the subject list because the duties associated with and the qualifications for the title exceeded those necessary to perform the identified work. It also stated that pursuing a permanent appointment would result in the placement of an overqualified person in the position and that the higher salary would place an untenable strain on the municipal budget. It is noted that the appointing authority took no action to obviate the need for this examination at the time of the announcement or prior to its administration. *See N.J.A.C. 4A:10-2.2(a)1.*

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

A review of agency records indicates that there are currently no employees serving provisionally pending open competitive examination procedures in the subject title with the appointing authority.

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 the provisional appointment of Picarello-Berdel to the subject title. However, after a complete certification was issued, the appointing authority has presented that the duties of the title no longer warrant its needs and that that hiring a permanent employee who is overqualified at a higher salary would place an undue and untenable strain on the municipal budget. In conjunction with the fact that there are no Clerk 3s provisionally serving with the appointing authority, 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 regard, the subsequent determination that a particular classification no longer fits the needs of the department with no intent expressed to possibly use the list in the future 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 18TH DAY OF OCTOBER, 2017



**Robert M. Czedo, Chairperson
Civil Service Commission**

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