

B-28



STATE OF NEW JERSEY

In the Matter of Communications
Officer (C0466P), Essex County
Sheriff's Office

CSC Docket No. 2014-3090

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

Appointment Waiver

ISSUED: SEP 05 2014 (SLK)

The Essex County Sheriff's Office (Sheriff's Office) requests permission not to make an appointment from the April 2, 2013 certification for Communications Officer (C0466P).

By way of background, the Sheriff's Office provisionally appointed Anthony Melia pending open-competitive examination procedures, to the title of Communications Officer, effective January 3, 2012. The provisional appointment generated an examination announcement (C0466P) for the subject title with a closing date of June 25, 2012. Anthony Melia did not apply for the examination. The resulting list of 62 eligibles promulgated on March 28, 2013 and expires on March 27, 2016. A certification was issued on April 3, 2013 and consisted of twenty eligibles from the C0466P eligible list. However, the Sheriff's Office failed to return the certification as required. As a result, the Division of Classification and Personnel Management (CPM) referred the matter to the Civil Service Commission (Commission) for enforcement.

In the attached decision, *In the Matter of Communications Officer (CO466P), Essex County*, (CSC decided May 21, 2014), the Commission ordered the Sheriff's Office to properly dispose of the April 3, 2013 certification of the Communications Officer (CO466P) eligible list within 20 days from the issuance of the decision and remit \$1,000 in compliance costs¹ within 30 days from the issuance of the decision. The Commission also ordered that if the Sheriff's Office did not adhere to the timeframes for the proper certification disposition without an approved extension of time, it would be assessed fines of \$100 per day for each day of continued violation

¹ The Sheriff's Office has yet to remit the \$1,000 in compliance costs.

up to a maximum of \$10,000. Thereafter, on May 29, 2014 the Sheriff's Office returned the certification indicating that Melia had resigned from the Sheriff's Office and that this position had been eliminated² and that it was not replacing this position at this time.

The Sheriff's Office's request for an appointment waiver was acknowledged, and it was advised that if its request was granted, it could be assessed for the costs of the selection process in the amount of \$2,048. The Sheriff's Office was also advised that it could submit arguments as to why the costs of the selection process should not be assessed. No further arguments were received.

Personnel records reveal that there are currently no employees serving provisionally in the subject title with the Sheriff's Office.

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 examination for the title of Communications Officer was generated as a result of the provisional appointment of Melia. However, the Sheriff's Office failed to return the certification and therefore, the Commission ordered it to properly return the certification within 20 days of the issuance of the decision. In response, the Sheriff's Office returned the certification requesting a waiver of the appointment requirement and indicated that Melia was no longer serving in the title provisionally. Personnel records reveal that currently no employee is serving provisionally, pending open-competitive examination procedures, in the subject title with the Sheriff's Office. Accordingly, based on the foregoing, the Sheriff's Office has presented 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

² A letter from the appointing authority dated January 13, 2014 indicated that the Communications Officer position had been eliminated due to budget cuts.

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. Thus, although a waiver is granted, it is appropriate that the appointing authority be assessed \$2,048 for the costs of the selection process.

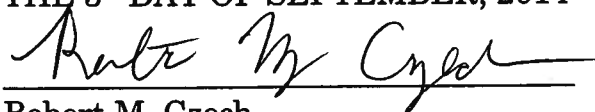
Moreover, the Commission reiterates that in *Communications Officer (CO466P), Essex County, supra*, the appointing authority was assessed compliance costs in the amount of \$1,000 pursuant to *N.J.S.A. 11A:10-3* and *N.J.A.C. 4A:10-3.2(a)5*. Although the Sheriff's Office promptly disposed of the outstanding certification after the Commission's order and requested an appointment waiver, it has not remitted the required compliance cost. In this regard, it is noted that disposing of the certification in compliance with the Commission's order does not waive the assessed compliance costs. Therefore, the appointing authority shall remit the assessed compliance cost of \$1,000 within 30 days of the issuance of this order. The Commission notes that it 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), Newark, Docket No. A-4347-87T3 (App. Div. February 2, 1989)*. If, at any time, the Sheriff's office does not adhere to the timeframe for remitting the assessed costs, it shall be assessed fines of \$100 per day for each day of continued violation up to a maximum of \$10,000.

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. Further, the Civil Service Commission reiterates its prior order that the costs incurred by this agency in the compliance process be assessed against the Sheriff's Office in the amount of \$1,000, pursuant to *N.J.S.A. 11A:10-3* and *N.J.A.C. 4A:10-3.2(a)5*.

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 3rd DAY OF SEPTEMBER, 2014



Robert M. Czech

Chairperson

Civil Service Commission

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and
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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Communications
Officer (C0466P), Essex County
Sheriff's Office

Request for Enforcement

CSC Docket No. 2014-2070

ISSUED: **MAY 21 2014** (SLK)

The Division of Classification and Personnel Management (CPM) requests that the Civil Service Commission (Commission) order the Essex County Sheriff's Office (Sheriff's Office) to return the April 3, 2013 certification of the eligible list for Communications Officer (C0466P) for proper disposition.

By way of background, the April 3, 2013 (OL130431) certification containing 20 names was issued to the Essex County Sheriff's Office. CPM notified the Sheriff's Office that the certification was overdue on August 5, 2013, September 9, 2013, and January 9, 2014. However, the Sheriff's Office failed to return the certification. Subsequently, CPM referred the matter to the Commission.

The Sheriff's Office was notified that the matter had been referred to the Commission for enforcement and it was advised that any failure on its part to return the certification could subject it to the assessment of costs, charges and fines pursuant to N.J.A.C. 4A:10-2.2(b).

Despite additional opportunities to do so, the Sheriff's Office has not returned the certification as requested nor has it submitted any additional information.

CONCLUSION

N.J.A.C. 4A:4-4.8(b) requires an appointing authority to notify CPM of the disposition of a certification by the disposition due date in the manner prescribed by this agency. Clearly, the Sheriff's Office has violated this vital regulation. 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), Newark, Docket No. A-4347-87T3 (App. Div. February 2, 1989).* Therefore, the Sheriff's Office is ordered to return the certification within 20 days of the issuance of this decision with the requested documentation. If, at any time, the Sheriff's Office does not adhere to the timeframes for the proper certification disposition without an approved extension of time, it shall be assessed fines of \$100 per day for each day of continued violation up to a maximum of \$10,000.

ORDER

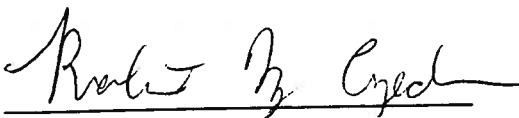
Therefore, it is ordered that Sheriff's Office properly dispose of the April 3, 2013 certification of the eligible list for Communications Officer (C0466P) within 20 days of the issuance of this decision.

Moreover, the Commission orders that the costs incurred by this agency in the compliance process be assessed against the Sheriff's Office in the amount of \$1,000, pursuant to *N.J.S.A. 11A:10-3* and *N.J.A.C. 4A:10-3.2(a)5*, to be remitted within 30 days of the issuance of this order.

If, at any time, the Sheriff's Office does not adhere to the timeframes for the proper certification disposition without an approved extension of time, it shall be assessed fines of \$100 per day for each day of continued violation up to a maximum of \$10,000.

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 21st DAY OF MAY, 2014



Robert M. Czech
Chairperson
Civil Service Commission

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