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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of John Wolff,  
Juvenile Justice Commission

CSC Docket No. 2016-4474

Classification Appeal

(Corrected)

ISSUED: **DEC 13 2016** (RE)

John Wolff appeals the attached decision of the Division of Agency Services (DAS) which found that his position in the Juvenile Justice Commission (JJC) is properly classified as Legal Specialist.<sup>1</sup> He seeks a Regulatory Officer 3 job classification in this proceeding.

Mr. Wolff was regularly appointed to Legal Specialist on September 20, 2003. This position is located in the Juvenile Justice Commission and reports directly to the Deputy Executive Director, Operations. The position does not have supervisory responsibility. Upon his request, a classification review of his Position Classification Questionnaire (PCQ) and related documentation was performed.

As described in the attached determination, DAS found that based on the primary duties of Mr. Wolff's position, his title is properly classified as Legal Specialist. On appeal, the appellant explains that he leads agency efforts to plan, draft, and then train senior custody officers in complex and difficult regulatory changes needed to conform to rapidly changing judicial and legislative environments. He researched and led the drafting of complex constitutional arguments defending Commission regulatory proposals, and both Deputy Attorney Generals and Assistant Attorney Generals frequently confer with him directly, asking his opinions on how to make operational adjustments in light of case law and active litigation. He states that he was hired to bring JJC into compliance with the Administrative Procedure Act (APA). As a result, he developed the Commission's

<sup>1</sup> It is noted that Legal Specialist is an unclassified title.

regulatory plan, established and chaired the necessary substantive area drafting committees, and did all the drafting himself. He states that the matters were complicated by the comprehensiveness of their scope, by collective negotiations environments, and by the interests of other governmental stakeholders, such as the Judiciary and the New Jersey State Parole Board.

Next, the appellant argues that DAS' determination indicated that his position was not responsible for representing JJC in litigation or for rendering legal opinions or advice. He states that these duties would be improper, given Executive Order #6. Executive Order #6 was signed on March 14, 1990 by former Governor James Florio, and prohibits the practice of law in State government departments except by the Attorney General's Office, or those authorized to do so by the Attorney General. This Executive Order states that attorneys may be employed by State entities to: 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. However, aside from the Office of Administrative Law exception, they 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.

The appellant explains that, since March 2012, JJC has been in near constant litigation focused almost exclusively on the constitutionality of rules promulgated in response to Appellate Division rulings, in which he has been involved by drafting immediate responses to litigation claims, developing related long-term operational initiatives, drafting rules and justifications for rules in response to court mandates, and by being a member of the legal team managing ongoing litigation. In support, Randy Miller, DAG, states that he relies on the appellant for input and information, both procedurally and legally, on the litigations that arise, as well as legislative and policy matters, and on his litigation involvement. Additionally, on August 10, 2015, Governor Christie signed S-2003 into law amending the law governing waiver of juveniles to adult criminal court, providing that a waived juvenile will serve his or her sentence in a JJC facility, rather than a Department of Corrections facility, generally until the juvenile reaches the age of 21; and prohibiting any form of disciplinary isolation. As a result, the appellant explains that he has been assigned to bring JJC into S-2003 compliance, including training and familiarizing civilian and custody leadership with various new protocols to be implemented and enforced, after formulating and presenting those protocols to DAGs. Lastly, the appointing authority provides a

letter in support of the appeal. It maintains that the appellant has established and developed JJC's regulatory affairs function, which he leads and manages, and acts as in-house counsel. It states that he researches and drafts constitutional arguments in defense of regulatory proposals, is the subject matter expert in regulatory law regarding juvenile corrections, and is a JJC representative in litigation and is consulted by DAGs.

In reply, DAS responded that Executive Order #6, as well as examples of work on appeal, were not included in his original documentation and could not be considered. DAS states that DAG Miller's statement could not be considered as he was not the appellant's supervisor. It indicated that it considered the appellant's duties regarding S-2003 in its determination.

### CONCLUSION

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.

The definition section of the job specification for Regulatory Officer 3 states:

Under direction of a supervisory official in a state department, institution, or agency, assists with respect to complex regulatory matters, formal and informal, both legislative and quasi-judicial in nature, including matters related directly to administrative procedure and policy matters considered by the department's or agency's regulatory duties; does related work as required.

The definition section of the job specification for Regulatory Officer 4 states:

Under direction of a supervisory official in a state department, institution, or agency, assists with respect to regulatory matters, formal and informal, both legislative and quasi-judicial in nature, including matters related directly to administrative procedure and policy matters considered by the department's or agency's regulatory duties; does related work as required.

On his Position Classification Questionnaire (PCQ), the appellant indicated that for 45% of the time he is senior policy adviser to the Deputy Executive Director, Operations, took a leadership role in planning, designing, and implementing major correctional reforms mandated by S-2003, co-chairs committees, is a JJC representative, drafts briefing papers which critique policies and practices, suggests changes to current procedures, drafts proposed regulatory amendments and policy directives, reviews information to assess appropriate management response, and devises strategies and management tools for affecting policy objectives within the limitations posed by governing legal authorities. For 20% of his time, the appellant manages regulatory affairs such as coordinating and directing all rule promulgations, drafting rules, negotiating regulatory amendments, maintaining rule and rule expiration calendars, forming and leading rule-making committees, preparing and circulating rule drafts, reviewing drafts with senior managers, providing advice on legal and operational implications of suggested provisions, ensuring consistency with statutory and regulatory authorities, reorganizing management policies, preparing and updating binders of rules and statutory provisions for management. For another 20% of the time, the appellant drafts responses to complex regulatory comments and other challenges, and prepares legal briefs in defense of the JJC's position on existing rules and rule proposals. For 10% of the time he performs duties as a member of various committees, and for the final 5% of the time, he coordinates activities with the Office of the Attorney General. The majority of these duties pertain to assisting with regulatory matters rather than legal research. The appellant works on administrative policy and procedural matters and performs other regulatory duties required by the JJC. Clearly, Mr. Wolff's position is correctly classified in the Regulatory Officer title series.

For purposes of determining the appropriate level within a given class, and for overall job specification purposes, the definition portion of the job specification is appropriately utilized. It is long-standing policy that upon review of a request for position classification, when it is found that the majority of an incumbent's duties and responsibilities are related to the examples of work found in a particular job specification, that title is deemed the appropriate title for the position. The job definition for Regulatory Officer 3 indicates that individuals in this title perform regulatory work of a complex nature. The appellant's supervisor did not describe the appellant's work as being of a complex nature, and without further information specific to the substantive complexity of the appellant's duties, he is not properly classified as a Regulatory Officer 3. In this regard, the large majority of the appellant's duties can be performed by an incumbent at any level of the Regulatory Officer title series. As such, the record establishes that the proper classification for this position is in the non-competitive title Regulatory Officer 4, effective February 20, 2016.

Because the Regulatory Officer 4 title is non-competitive, the appellant should be provided a permanent appointment upon the completion of his working test period.<sup>2</sup> While it does not appear that the Regulatory Officer 3 title is warranted, should he be assigned more complex duties, the appointing authority can provide a promotional opportunity as appropriate.

Accordingly, a thorough review of the entire record fails to establish that Mr. Wolff's position warrants a Regulatory Officer 3 classification.

### ORDER

Therefore, the position of John Wolff is properly classified as a Regulatory Officer 4, effective February 20, 2016.

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  
THE 10<sup>th</sup> DAY OF NOVEMBER, 2016



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Enclosure

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<sup>2</sup> Pursuant to *N.J.A.C.* 4A:3-4.12, this would be considered a "movement of employee from no-range or single rate titles to a title having a salary range: State service" as both titles are in Occupational Group 11 and the appellant has served in the title Legal Specialist title for at least 4 months. His new salary would place him at step 4.

c: **John Wolff**  
**Josephine Piccolella**  
**Kelly Glenn**  
**Records Center**