

another announcement from the Commission, resulting in it either going without staff for long periods or making provisional appointments. The AOC states the reallocating these titles to the non-competitive division will allow for a more flexible process for recruitment and selection.

In response, the Council of Affiliated Unions (JCAU), represented by Kevin P. McGovern, Esq., presents that the AOC has failed to make an adequate showing that any of the criteria set forth in *N.J.A.C. 4A:3-1.2(c)* have been satisfied that would warrant reallocation of these titles. In this regard, it states that fact that the titles in question do not have any minimum requirements, except for the two titles that require typing proficiency, is not a sufficient reason to justify reallocation. JCAU contends that reallocation based on the nature of the knowledge, skills and abilities associated with the job has generally been reserved for two distinct situations, where the title is in a highly specialized field in which a State-issued license or certification is required or where the title is found to be a trainee or apprentice position. JCAU also argues that the AOC has not demonstrated that existing certification procedures for appointments do not meet their needs. In this regard, it presents that the AOC fails to state which titles and counties tend to exhaust the list quickly and which counties do not. Additionally, it states that the Commission has reallocated titles due to failure of the certification process to meet the employer's needs when there is a broad and pervasive need to fill titles in an expedited fashion. Therefore, the JCAU contends that granting the request based on a claimed inconvenience of having to remove provisional appointees who are not reachable on a resulting eligible list is inconsistent with the Commission's mandate.

In reply, the AOC states that the Commission has reallocated titles such as Account Clerk, Cashier, Court Aide, Court Attendant, Payroll Clerk, Security Guard, Receptionist, Mail Clerk, and Planning Aide, all titles that do not require education or experience, to the non-competitive division. Further, it notes that as far back as the early 1980's, the Commission reallocated the Clerk Typist and Clerk Transcriber titles to the non-competitive division and these titles do not have any minimum education and experience requirements. Additionally, AOC underscores that data it has collected over the past years reflect that the Judiciary Clerk 2, base and bilingual and Judiciary Account Clerk 1, base and bilingual, titles have been high turnover positions, which has in fact have increased substantially over the last four years. For example, in 2013, the total number of vacancies created due to advancement or separations in these titles was 79. However, this number increased to 119 in 2014, 152 in 2015, and 173 in 2016. Moreover, similar to Judiciary Clerk Driver, other titles that have no education or experience requirement, but may require a government issued license, such as Clerk Driver, Delivery Worker, Library Clerk Driver, Truck Driver, Single Axle, have been reallocated by the Commission as the applicant's qualifications have already been established and verification of the license, certification, or specialization can be accomplished through a post audit.

With respect to certification procedures, the AOC maintains that the length of time to hire through certification procedures creates recruitment problems. Since 2012, AOC states that the Judiciary has submitted vacancy announcement requests for Judiciary Clerk 1, Judiciary Clerk 2, Judiciary Account Clerk, and Court Services Representative, and the average period from the request to promulgation of the list is 6.5 months and the list has a duration of three years. The AOC explains that this is too long and has found that as the lists become older, more applicants do respond to position notifications or advise that they are not interested in the position. This lack of response by applicants or applicants advising that they are no longer interested in positions from an older list becomes problematic; even if it appears that there are a sufficient number of eligibles, if there are multiple openings to fill. In this regard, the AOC underscores that the need to replenish lists has increased between 2012 and 2017. Specifically, it states it has requested announcements for the Judiciary Clerk 2 and Judiciary Account Clerk 1 on five occasions. Conversely, if the title titles were reallocated to the non-competitive division, AOC states that it would have a viable pool of eligibles in two or three months.

As part of a survey conducted by the AOC of all its appointing authorities by county, it found that in 2017, five counties (Cape May, Hunterdon, Ocean, Somerset and Warrant) exhausted their lists of available eligibles and 15 counties (Atlantic, Bergen, Burlington, Camden, Cumberland, Essex, Gloucester, Hudson, Mercer, Monmouth, Morris, Passaic, Salem, Sussex, and Union) are close to exhausting their Judiciary Clerk 2, bilingual title lists. In 2017, three counties, (Cape May, Hunterdon, and Warren) have less than 30 eligible applicants on the Judiciary Clerk 2 lists. In 2017, 13 counties (Atlantic, Burlington, Cumberland, Cape May, Gloucester, Hunterdon, Mercer, Monmouth, Morris, Salem Somerset, Sussex, and Warren) have or less eligible applicants and five counties (Bergen, Essex, Hudson, Passaic, and Union) have between 11 and 20 eligible applicants on the Judiciary Account Clerk 1, bilingual list. In 2017, three counties, (Hunterdon, Somerset and Warren) exhausted the Judiciary Account Clerk 1 lists. Further, in 2016, 15 counties exhausted and five counties had less than five eligibles on the Judiciary Clerk 2 bilingual lists. AOC also notes that in 2016, 8 counties had 10 or less eligibles and another eight counties had between 11 and 30 eligibles on the Judiciary Clerk 2 list.

Agency Services reviewed the request and noted that these are entry-level titles and do not have any minimum requirements for education and experience. In this regard, it found that the duties of the titles are basic and elementary requiring skills best assessed by direct observation during the working test period. Moreover, it notes that placement of these titles in the non-competitive division is consistent with treatment of similar Executive branch titles. See *In the Matter of Clerk Typist, Clerk Stenographer, Clerk Transcriber, Graduate Nurse, and Practical Nurse* (CSC, decided June 21, 1983) and *In the Matter of Library Assistant Titles* (MSB, decided

May 23, 2000). Agency Services also found that additional support is found to reallocate these titles because ranked eligible lists have not or are not likely to meet the needs of the appointing authority due to such factors as salary, geographic locations, recruitment problems, and working conditions. In this regard, it determined that despite almost annual open competitive announcements for some of the subject titles, the Judiciary continued to exhaust these lists, particularly in certain Vicinages. For example, the Judiciary Clerk 2, Bilingual in Spanish and English (S0110U) eligible list promulgated in May 2016 with 123 names for consideration. However, there are now only 14 names remaining on that list. Similarly, the Judiciary Clerk 2 (S0642Z) eligible list promulgated in August 2016 with 488 names for consideration. However, there are only 150 names remaining on this list and several certifications are currently outstanding. Therefore, it is likely that upon disposal of these certifications, the remaining candidate pool will be depleted further. Under these circumstances, recommends reallocating the subject titles to the non-competitive division.

CONCLUSION

N.J.A.C. 4A:3-1.2 provides, in part, that the Commission may reallocate titles from the competitive to the non-competitive division when competitive testing is not practicable due to the nature of the knowledge, skills, and abilities associated with the job or when certification procedures based on ranked eligible lists have not or are not likely to meet the needs of appointing authorities due to such factors as salary, geographic location, recruitment problems and working conditions.

N.J.A.C. 4A:3-1.2(c) provides that a job title may be placed in the noncompetitive division on an ongoing or interim basis when it is determined that it is appropriate to make permanent appointments to the title, and that one or more of the following criteria are met:

1. Competitive testing is not practicable due to the nature of the knowledge, skills and abilities associated with the job;
2. Certification procedures based on ranked eligible lists have not or are not likely to meet the needs of appointing authorities due to such factors as salary, geographic location, recruitment problems and working conditions; or
3. There is a need for immediate appointments arising from a new legislative program or major agency reorganization.

Based on all of the foregoing, there is not a sufficient basis on which to reallocate the proposed titles to the noncompetitive division on a permanent basis at this time. Although the duties of the titles are basic and elementary, this agency has been able to consistently test for the possession of these basic skills in competitive situations. Further, while the ranked eligible lists may have, on some occasions, been unable to meet the needs of the appointing authority due to such factors as salary, geographic locations, recruitment problems, and working conditions, the Commission is reluctant at this time to permanently reallocate these titles to the noncompetitive division without first attempting to administratively address these issues through other means to ensure that the State constitutional mandate to competitively test to fill positions in the public service have been exhausted. In this regard, the Commission notes that it is anticipated that an open competitive examination for Judiciary Clerk 2 is currently being processed and, after the examination, an eligible list is expected to be promulgated by September 2019.

However, in the interim, in order to meet the Judiciary's current critical staffing needs, certification procedures based on the existing ranked eligible list are not likely to meet the needs of the appointing authority. Under these circumstances, interim noncompetitive status for the subject titles is appropriate in this matter. Additionally, *N.J.A.C. 4A:3-1.2(g)* provides that, if a title is designated noncompetitive on an interim basis, at the end of the interim noncompetitive period, which shall be no greater than one year, the job title shall be redesignated as competitive. Individuals appointed during the interim noncompetitive period shall, upon successful completion of their working test periods, attain permanent status in the competitive division.

ORDER

Therefore, it is ordered that this request be granted, and interim noncompetitive designations for the subject titles be effected. This designation will be effective from May 25, 2019 to the date when new eligible lists are promulgated for these titles, but until no later than May 24, 2020. At the end of this period, the subject titles will be returned to the competitive division of the career service.

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 DAY OF MAY 22, 2019

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Keith Aversa
Kevin P. McGovern, Esq.
Kelly Glenn