



STATE OF NEW JERSEY

In the Matter of Judiciary Clerk 3,
 Bilingual in Spanish/English
 (S0629P), Vicinage 9 (Monmouth
 County), Judiciary

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

CSC Docket No. 2020-1232

Administrative Appeal

ISSUED: May 1, 2020 (SLD)

The Division of Agency Services (Agency Services) requests that Vicinage 9 (Monmouth County) of the Judiciary be ordered to return the December 30, 2012 certification (OS120810) of the eligible list for Judiciary Clerk 3, Bilingual in Spanish/English (S0629P) for proper disposition.

By way of background, on December 30, 2012, a certification (OS120810) consisting of 48 names, all non-veterans, was issued to the appointing authority. The appointing authority returned the certification on April 5, 2013, indicating, in relevant part, the following:

Position	Rank	Name	Disposition Code
1	1	N.P.	N1
2	2	J.H.	I6
3	7	C.B.	I2
4	7	A.L.	I2
5	7	J.S.	I2
6	15	J.C.	I2
7	15	C.E.	I2
8	15	M.I.	I2
9	15	P.R.	I2
10	15	M.M.	M4
11	15	C.S.	M4
12	37	B.S.	I2
13	37	V.B.	M4

14	53	Y.P.	I2
15	70	I.M.	M4
16	70	C.V.	M4
17	90	I.A.	I2
18	90	N.G.	I2
19	90	M.H.	I2
20	90	Maritza Olivencia	A5
21	90	B.R.	I2
22	90	J.U.	M4
23	114	I.P.	I2
24	114	O.T.	M4

N1-Retain, not interested in County.

I6-Retain, late response to certification notice.

I2- Retain, interested, others appointed (reachable for appointment)

M4-Remove, no response to certification notice.

On June 19, 2013, Agency Services returned the certification to the appointing authority, indicating that the appointment of Olivencia was not allowable as it was outside of the “Rule of Three.” *See N.J.A.C. 4A:4-4.8(a)*. Thereafter, on July 26, 2013 and on March 27, 2014, Agency Services again requested that the appointing authority properly return the subject certification. However, the appointing authority failed to return the certification with the appropriate corrections. Subsequently, Agency Services referred the matter to the Civil Service Commission (Commission) for enforcement.

The appointing authority 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 an opportunity to do so, the appointing authority has not returned the certification as requested. It is noted that the appointing authority did contact Agency Services to ask what “remedy” was available as Olivencia was currently serving in an unclassified title. The appointing authority was informed that it must contact the Division of Appeals and Regulatory Affairs as the matter had been referred to the Commission for enforcement. However, no further response was received from the appointing authority.

Agency records indicate that in entering Olivencia into the Personnel Management Information System (PMIS), the appointing authority recorded her appointment as RAO (regular appointment from an open competitive eligible list), effective March 25, 2013, to the title of Judiciary Clerk 3 (no bilingual variant) and listed the symbol as “S12810.” It is further noted that it listed the certification date as December 20, 2012. Agency records indicate that there was no eligible list with the symbol of “S12810” and that Olivencia was not certified from a non-bilingual variant of the title Judiciary Clerk 3. Although Olivencia’s name did appear on the

Judiciary Clerk 3 (S0628P) eligible list, her name was never certified from this list. Thus, she was not able to be appointed from that eligible list. Finally, agency records reveal that Olivencia was appointed to the unclassified title of Judges Secretary 1, effective September 23, 2019.

CONCLUSION

N.J.A.C. 4A:4-4.8(b) requires an appointing authority to notify Agency Services of the disposition of a certification by the disposition due date in the manner prescribed by this agency. Clearly, the appointing authority has violated this vital regulation. In this regard, the appointing authority was notified in 2013 that it could not reach Olivencia for appointment. In this regard, *N.J.S.A.* 11A:4-8, *N.J.S.A.* 11A:5-7, and *N.J.A.C.* 4A:4-4.8(a)3ii, the “Rule of Three,” allow an appointing authority to select any of the top three interested eligibles on a promotional list, provided that no veteran heads the list. The Rule of Three allows an appointing authority to use discretion in making appointments. However, that discretion is limited to candidates who are within the top three interested eligibles. In this matter, Olivencia was not reachable, as her name was not one of the top three interested eligibles and Agency Services correctly returned the certification for proper disposition. Yet, the appointing authority failed to correct the certification and instead recorded Olivencia’s appointment to the title of Judiciary Clerk 3. It is noted that the symbol used by the appointing authority in recording the appointment did not exist and Olivencia’s name was never certified from any eligible list for Judiciary Clerk 3 (no bilingual variant). Therefore, Olivencia could not have received a regular appointment in 2013 to the title of Judiciary Clerk 3. Moreover, since she was not reachable on the instant certification, she also could not have received a regular appointment to the title of Judiciary Clerk 3, Bilingual in Spanish/English. Consequently, it is ordered that Olivencia’s record be corrected to reflect that she was serving provisionally in the title of Judiciary Clerk 3, since her original appointment.

Although Olivencia is no longer serving in the title of Judiciary Clerk 3, the subject certification still remains undisposed. However, since the certification was issued in 2012, and the eligible list has since expired, it is appropriate, under these particular circumstances, to record the certification as cancelled.

Finally, the appointing authority is cautioned that 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). In this case, given the length of time that has elapsed and the appointing authority’s non-compliance, it is subject to a \$1,000 fine.

Moreover, in the future, if the appointing authority 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 the December 30, 2012 certification (OS120810) of the eligible list for Judiciary Clerk 3, Bilingual in Spanish/English (S0629P) be cancelled. It is further ordered that Maritza Olivencia's record be corrected to reflect that she was provisionally appointed, effective March 25, 2013.

Moreover, the Commission orders that the costs incurred by this agency in the compliance process be assessed against the appointing authority 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.

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 29TH DAY OF APRIL , 2020



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