

*In the Matter of Eileen Costello, Regulatory Officer 3 (PS 8099K), Department of Human Services*

CSC Docket No. 2014-314

**(Civil Service Commission, decided October 2, 2013)**

Eileen Costello appeals the decision of the Division of Selection Services and Recruitment (DSSR) that she did not meet the experience requirements for the promotional examination for Regulatory Officer 3 (PS8099K), Department of Human Services.

The subject promotional examination announcement was issued with a closing date of May 21, 2013 and was open to employees in the competitive division who were serving in the title Regulatory Officer 4 and had an aggregate of one year of continuous permanent service as of the closing date **or** to employees in the competitive division who had an aggregate of one year of continuous permanent service as of the closing date in any competitive title and met the announced requirements. These requirements included graduation from an accredited law school with a Juris Doctor degree (J.D.) **and** two years of experience as an attorney, one of which shall have included experience in regulatory programs as a member of or associated with a public agency having jurisdiction over regulatory matters. Appointees must also have been eligible to practice as an Attorney-at-Law in the State of New Jersey, and must possess a current certificate of good standing issued by the New Jersey Board of Bar Examiners, or other license to practice law issued by any State. The appellant was found to be below the minimum requirements in experience. As the appellant was the sole candidate, the examination was canceled on August 17, 2013.

Ms. Costello indicated that she possessed a J.D. and a current certificate to practice law issued by the State of Pennsylvania. She listed four positions on her application: provisional Regulatory Officer 3; Family Development Consultant; State Legislative Liaison; and Program Development Specialist. She was credited with one year of experience in regulatory programs as a member of or associated with a public agency having jurisdiction over regulatory matters, but was found to be lacking two years of experience as an attorney.

On appeal, Ms. Costello states that her experience in the first three positions should be applicable, as she was working in a legal and regulatory capacity as a licensed attorney in those positions. She also states that she is permitted to practice as an Attorney-at-Law in New Jersey without violating Executive Order #6. She argues that all prior employees in the Office of Legal and Regulatory Liaison were licensed attorneys, and they regularly consult(ed) with the Attorney General's Office on legal and regulatory matters. The appellant states that she is an acknowledged historical expert in the legal and regulatory workings of public

assistance programs in New Jersey, and has participated in every major undertaking involving statutory, regulatory and litigation matters affecting public assistance programs within the Division of Family Development since 1988.

Executive Order #6 was signed on March 14, 1998 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, except for the one exception with the Office of Administrative Law, 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.

*N.J.A.C. 4A:4-2.6(a)2* states that applicants for promotional examinations must meet all requirements by the announced closing date.

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The appellant was credited with meeting the one year regulatory requirement, but was denied admittance to the subject examination since she lacked two years of experience as an attorney. However, Executive Order #6 prohibits persons who possess a J.D. and a license to practice law from causing any person to believe that they are acting as an attorney for State entities without working in the Attorney General's office or having prior permission of the Attorney General. Accordingly, it is not clear why the experience requirements for the subject title require experience "as an attorney."

In this regard, it is noted that the experience requirement for the next lower title Regulatory Officer 4 requires one year of experience as an Attorney, **or** one year of experience in the regulatory programs as a member of or associated with a public agency having jurisdiction over regulatory matters. Significantly, the next higher title in the series requires **both** types of experience. As an employee cannot gain experience as an attorney while serving in the title Regulatory Officer 4, no individual presumably could advance in this title series without prior-held experience as an attorney outside of State service or in the Attorney General's office, or with the Attorney General's permission. This anomaly is in need of

review. As such, the Division of Classification and Personnel Management (CPM) should review the experience requirements for all Regulatory Officer titles with an eye toward revising the requirements to permit either type of experience.<sup>1</sup>

Ms. Costello did not hold the title Regulatory Officer 4, which would be a demotion from her regularly-held title of Family Development Consultant. A review of the appellant's description of her experience as a Family Development Consultant, a title which she held for over 24 years, indicates that she reported to the Assistant Commissioner of Legal, Regulatory and Guardianship Services. She assisted in handling liaison services for litigation referrals, performed general oversight of ADA, ethics, and HIPAA issues, and provided general guidance on policy and regulatory matters. This description is consistent with the work described in the job specification for the title, and these duties are acceptable for eligibility purposes for the subject examination. Additionally, Ms. Costello meets the education and licensing requirements. Based on the particular circumstances presented, Ms. Costello should be admitted to the examination.

### **ORDER**

Therefore, it is ordered that this appeal be granted, the cancellation of the examination be rescinded, and the appellant's application be processed. It is further ordered that CPM review the experience requirements for all Regulatory Officer titles in accordance with this decision.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

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<sup>1</sup> Upon review of this matter, staff from the Division of Appeals and Regulatory Affairs contacted staff from CPM regarding the anomalous requirements. CPM staff indicated its agreement that the requirements for the entire title series were in need of review and revision.