



STATE OF NEW JERSEY

In the Matter of Mark Storch, Police Sergeant (PM4518C), Brick	:	FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION
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CSC Docket No. 2025-2703	:	Bypass Appeal
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ISSUED: December 17, 2025 (HS)

Mark Storch, represented by Stuart J. Alterman, Esq., appeals the bypass of his name on the Police Sergeant (PM4518C), Brick eligible list.

The appellant appeared as the ninth ranked non-veteran eligible on the subject eligible list, which promulgated on October 20, 2022 and expires on October 19, 2026. A certification, consisting of the names of three eligibles, was issued on April 10, 2025 (PL250596) with the appellant listed in the first position. In disposing of the certification, the appointing authority, in pertinent part, bypassed the appellant and appointed, effective May 27, 2025, the second listed non-veteran eligible.

On appeal to the Civil Service Commission (Commission), the appellant seeks review of the appointing authority's decision to bypass him based on a *Brady-Giglio*¹ designation by the Ocean County Prosecutor's Officer (OCPO).

In response, the appointing authority, represented by Kyle J. Trent, Esq., maintains that it properly utilized its discretion to bypass the appellant. Specifically, the appellant had sustained discipline resulting in a written reprimand in January 2013. This discipline later led to the OCPO's October 12, 2023 determination to designate the appellant a *Brady-Giglio* officer:

¹ See *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972) (requiring prosecution to disclose exculpatory and impeachment evidence to defense).

[The appellant] shall be required to promptly notify [the OCPO] and the Municipal Prosecutor (if the matter is venued in Municipal Court) on any case where he writes/wrote a report, or is/was a witness or participant in an investigation. Moving forward, [the appellant] shall be permitted to participate in the investigations of crimes and offenses so long as: 1) he is not the primary officer; 2) any interview that he conducts must be witnessed by another officer and audio and video recorded; 3) he has a co-affiant on any warrant applications; and 4) he is restricted from collecting or transporting evidence. In the event that [the appellant] finds himself in a situation where it is apparent that he will be a witness to an incident, action or investigation, he shall immediately activate his Body Worn Camera, alert a supervisor and request the assistance of another officer.

The appointing authority argues that the appellant's past infraction seriously limits his effectiveness as a Police Officer, let alone the heightened responsibility of a superior law enforcement position such as Police Sergeant. Promoting him to a position vesting greater responsibility in him would compromise the police department and its investigatory function and be contrary to the public interest. It further avers that the OCPO's determination above does not reflect acceptable characteristics for a police superior, who should comport himself as a role model for his subordinate officers. The appointing authority highlights a number of examples of work from the Civil Service job specification for Police Sergeant that the appellant would be limited in his ability to fulfill: receiving complaints and making needed investigations; when necessary, apprehending, warning, or taking into custody violators of the law; and giving testimony in court. As such, it contends that he does not present an image of personal integrity and dependability in order to have the respect of the public as should be expected for a high ranking police supervisory position. By contrast, the appointee had an unblemished disciplinary history, exemplary service, and expected leadership ability. The appointing authority insists that the appellant cannot meet his high burden of demonstrating that its bypass decision was improper, unlawful, arbitrary, or capricious.

In reply, the appellant argues that the appointing authority had no legitimate reason to bypass him. His only discipline consists of the written reprimand for submitting an incomplete motor vehicle crash report. He asserts that the factual background shows that he was not even at fault and that he must be immediately appointed. As a first alternative, the appellant requests a hearing. As a second alternative, the appellant proffers that this matter could be held in abeyance, pending resolution of his forthcoming civil action. Specifically, the appellant states that he plans to contest his *Brady-Giglio* designation in Superior Court.

In reply, the appointing authority proffers that the appellant's response confirms the pertinent facts before this tribunal. Specifically, it is undisputed that

his employment background included sustained disciplinary action related to his untruthfulness and that the OCPO determined that the misconduct impinged his credibility to the extent that he was designated a *Brady-Giglio* officer. The OCPO limited the appellant's ability to participate in the investigation of crimes and offenses and designated him as a Police Officer who cannot be relied upon without compromising police function in 2023 without the appellant challenging that action, which was in effect at the time of this list bypass and remains in effect today. While the appellant argues at length about the facts underlying the sustained discipline against him, it is undisputed that he did not successfully pursue a challenge to that disciplinary action at the time. And here, he does not even raise any question about an improper, unlawful, arbitrary, or capricious motive by the appointing authority. The appointing further insists that the appellant has presented no basis to hold this matter in abeyance so that he can pursue potential litigation related to his 2023 *Brady-Giglio* designation. The issue before this tribunal is whether the appellant satisfied his high burden of demonstrating that the appointing authority's decision to bypass him pursuant to the Rule of Three in April 2025 was improper, unlawful, arbitrary, or capricious, and he has not done so.

CONCLUSION

Initially, bypass appeals are treated as reviews of the written record. *See N.J.S.A. 11A:2-6b*. Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists that can only be resolved through a hearing. *See N.J.A.C. 4A:2-1.1(d)*. For the reasons explained below, no material issue of disputed fact has been presented that would require a hearing. *See Belleville v. Department of Civil Service*, 155 N.J. Super. 517 (App. Div. 1978).

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* allow an appointing authority to select any of the top three interested eligibles on a promotional list, provided that no veteran heads the list. Moreover, it is noted that the appellant has the burden of proof in this matter. *See N.J.A.C. 4A:2-1.4(c)*.

Since the appellant, a non-veteran, was the first listed name on the certification, it was within the appointing authority's discretion to select any of the top three interested eligibles on the certification for the vacancy. An appointing authority has the discretion to dispose of a certification within the guidelines of Title 11A of the New Jersey Statutes Annotated and Title 4A of the New Jersey Administrative Code. This discretion includes utilizing each candidate's history and qualifications to determine the best candidate from a list of three eligibles, any of whom may be selected under *N.J.A.C. 4A:4-4.8(a)3*. It is also well established that disciplinary actions may be considered in bypassing an individual for appointment. *See In the Matter of Paul DeMarco* (MSB, decided April 6, 2005) (appellant's disciplinary action can be considered in determining whether he could be bypassed

on the eligible list). Thus, the appointing authority justifiably based its bypass decision on the appellant's discipline and resulting *Brady-Giglio* status. Clearly, such issues bear on the appellant's ability to fully discharge his duties as a Police Sergeant. As such, this impediment is certainly a sufficient reason for a bypass on an eligible list. There is no evidence in the record that the discipline was ever reversed, and the instant bypass appeal is not the appropriate forum to litigate the merits of such discipline.² There is also no basis to hold this matter in abeyance pending the appellant's contemplated civil action to overturn his *Brady-Giglio* status. The issue here is whether the appointing authority had a legitimate basis to bypass the appellant at the time he was considered for the position on certification PL250596, and it did for the reasons discussed.

Additionally, even assuming, *arguendo*, that the appellant is more qualified for the position at issue, the appointing authority still has selection discretion under the "Rule of Three" to appoint a lower-ranked eligible absent any *unlawful* motive. *See N.J.A.C. 4A:4-4.8(a)3; In the Matter of Nicholas R. Foglio, Fire Fighter (M2246D), Ocean City, 207 N.J. 38, 49 (2011). Compare, In re Crowley, 193 N.J. Super. 197 (App. Div. 1984)* (hearing granted for individual who alleged that bypass was due to anti-union animus); *Kiss v. Department of Community Affairs, 171 N.J. Super. 193 (App. Div. 1979)* (individual who alleged that bypass was due to sex discrimination afforded a hearing). Moreover, the appellant does not possess a vested property interest in the position. In this regard, the only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel, 244 N.J. Super. 494 (App. Div. 1990)*. The appellant has not presented any substantive evidence regarding his bypass that would lead the Commission to conclude that the bypass was improper or an abuse of the appointing authority's discretion under the "Rule of Three." Moreover, the appointing authority presented legitimate reasons for the appellant's bypass that have not been persuasively refuted. Accordingly, a review of the record indicates that the appointing authority's bypass of the appellant's name was proper, and the appellant has not met his burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal be denied.

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

² Even if the appellant had appealed the written reprimand to the Commission in 2013, such appeal would have been dismissed as the Commission has no jurisdiction to review minor disciplinary actions in local service. *See N.J.S.A. 11A:2-16 and N.J.A.C. 4A:2-3.1(d)*.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 17TH DAY OF DECEMBER, 2025

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

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