



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Mackenzie Reilly,  
Jersey City Police Department

CSC Docket Nos. 2025-570 and  
2025-786

Request for Reconsideration and Stay  
Request for Back Pay and  
Counsel Fees

ISSUED: May 20, 2026 (EG)

Jersey City (City), represented by Arthur R. Thibault, Esq., Kyle J. Trent, Esq., and Timothy J. Dunn, Esq., requests reconsideration and a stay of the decision of the Civil Service Commission (Commission) in *In the Matter of Mackenzie Reilly, Jersey City Police Department* (CSC, decided August 14, 2024). In addition, Mackenzie Reilly, represented by Michael P. Rubas, Esq., petitions the Commission for a determination with regard to back pay and counsel fees awarded in *Reilly, supra*.

As background, the record indicates Reilly, a Police Officer, was issued a Preliminary Notice of Disciplinary Action on March 8, 2023. Specifically, Reilly had tested positive for cannabinoids after a random drug test on February 2, 2023. Thereafter, Reilly received a departmental hearing, and a Final Notice of Disciplinary Action was issued on August 25, 2023, upholding the charges and the penalty of removal, effective August 25, 2023. Subsequently, Reilly appealed to the Commission and his appeal was transmitted to the Office of Administrative Law (OAL) for a hearing before an Administrative Law Judge (ALJ).

The ALJ in the matter determined that there were no material issues of fact in dispute. In this regard, the ALJ concluded that reversing the removal was proper under the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA). He further found that federal law did not preempt CREAMMA. The Commission adopted the ALJ's granting of summary decision reversing Reilly's removal. In that case, the Commission also agreed with the ALJ that federal law did not preempt CREAMMA; that Reilly could carry a

service weapon without violating federal law; and that the facts of that matter demonstrated that Reilly's removal violated CREAMMA. Accordingly, the Commission ordered reversal of the removal and that Reilly be immediately reinstated with mitigated back pay, benefits, seniority, and reasonable counsel fees.

In the instant matter, the City claims that the Commission made a clear and material error in reversing Reilly's removal and adopting the ALJ's conclusion that no conflict between CREAMMA and federal law exists. It reiterates its prior arguments that it raised during the hearing at OAL, and in its exceptions to the ALJ's initial decision. Additionally, the City reiterates that CREAMMA is preempted by federal law that prohibits cannabis users from carrying a firearm, thus rendering Reilly unable to perform the duties of his position. In this regard, it argues that this matter is similar to *Ortiz v. Department of Corrections*, 368 So. 3d 33 (Fla. Dist. Ct. App. 2023), in which a three judge appellate panel concluded that a correction officer who used prescription marijuana could not lawfully possess a firearm, which was an essential function of his job and that permitting him to remain employed in such function would not only require him to violate federal law, but also require his colleagues to violate federal law. The City argues that, similarly, Reilly is prohibited by federal law from carrying a firearm. It also asserts that the Commission erred in adopting the initial decision when the ALJ improperly relied upon the proposed rescheduling of marijuana from a Schedule 1 drug to a Schedule 3 drug. The City contends that marijuana was a Schedule 1 drug when Reilly tested positive for marijuana and that a proposed change is irrelevant to the review of the disciplinary charges in this matter.

Further, the City maintains that the Commission erred in finding that the initial decision addressed the insubordination charges. It argues that the initial decision did not consider the insubordination in willfully disobeying the orders of his superiors or the failure to alert that he had been approved for medical marijuana before his random drug test. The City states that its rules provide that if an officer receives orders from a superior officer that appear to be in conflict, the officer should bring the apparent conflict to the superior officer who issued the order. It states that Reilly failed to do this and took it upon himself to simply disregard the orders of his superiors not to use marijuana. Moreover, the City argues that Reilly had purchased and intended to use the marijuana for medical purposes but failed to disclose such information on the Drug Testing Medication Form at the time of testing. Finally, the City asserts that in the event the Commission denies its request for reconsideration, it should grant a stay pending a final decision and appeal in this matter. It contends that it is likely to succeed on the merits and asserts that Reilly will not suffer any irreparable harm due to a stay. However, the City claims it will suffer irreparable harm as its employees would be supplying Reilly with ammunition, violating federal law, and being subject to criminal liability, fines, and imprisonment.

In response, Reilly opposes the requests for reconsideration and stay and maintains that the Commission should issue an order of compliance and assess fines against the City for its refusal to comply with the Commission's reinstatement order. It is noted that Reilly later indicates that he was reinstated "to pay status on September 20, 2024." Further, Reilly contends that the City "regurgitates the nearly identical argument that the [Commission] rejected in the *Mansour* and *Polanco* matters," which was also rejected by the Superior Court of New Jersey, Appellate Division, in motions for stay in those matters. Thus, Reilly contends that "[a]ll of these losses firmly establish there is no legal merit to [the City's] argument." In a supplemental submission, Reilly presents the court's opinion in *In the Matter of Norhan Mansour and Omar Polanco*, Docket Nos. A-3876-23 and A-3886-23 (App. Div. May 1, 2026). In that regard, the Appellate Division affirmed the Commission's decision reversing the removal of two City Police Officers who tested positive for marijuana during a random drug test. The City argued that federal law preempted CREAMMA, which authorized the use of regulated cannabis, claiming that under federal law, the appellants could not carry a service weapon. However, the Appellate Division affirmed, stating that because federal law did not preempt CREAMMA, "we discern no error in the [the Commission's] decision that Mansour's and Polanco's use of regulated cannabis, off duty, could not sustain the [City's] removal decisions."

Reilly also petitions the Commission for a determination with regard to the back pay and counsel fees awarded in *Reilly, supra*. Reilly is requesting back pay from the time of his suspension on March 8, 2023 through his reinstatement to pay status on September 20, 2024 and for counsel fees. Reilly asserts that after he was terminated, he was limited in the type of employment he could seek. He contends that, as such, he worked through his local Teamsters union delivering furniture. Reilly states that starting in April 2023 through the end of 2023, he earned a total of \$37,115.60. The breakdown for 2023 was the following: \$26,413.19 with D&G Furniture Delivery Services; \$9,356.46 with Hudson River Moving and Storage; \$286.44 with Globe Storage and Moving Company; \$140 with Central Moving and Storage; and \$919.51 with Uber Eats. From the beginning of 2024 until his reinstatement in September 2024, he earned \$46,850.68. Reilly earned \$35,516.99 with D&G Furniture Delivery Services and \$11,333.09<sup>1</sup> with Hudson River Moving and Storage. His total earned from his suspension until his reinstatement was \$83,965.68. Further, Reilly submits copies of his income documents including W2s and paychecks.

Moreover, Reilly asserts that he entered into a fee agreement in which his attorney was being paid \$200 per hour. He contends that this fee amount complies with the rates set in *N.J.A.C. 4A:2-2.12(c)(3)*. His attorney provides highlights of his experience since he was admitted to practice law in New Jersey in 1999. Additionally,

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<sup>1</sup> Reilly indicated that he earned \$10,037.44 with Hudson River Storage, but a review of his earnings reveals that he earned an additional \$832.29 in overtime and \$463.36 in holiday pay. Therefore, he actually earned \$11,333.09 with Hudson River Storage in 2024.

Reilly's attorney indicates that he reviewed significant paper and electronic discovery, engaged in significant correspondence with the opposing counsel and the internal affairs unit, spoke to and met with Reilly and the Policemen's Benevolent Association (PBA) president on a regular basis over 18 months, attended hearings, and drafted pleading for the motion for summary decision that was ultimately granted. The appellant's attorney maintains that he spent 65.90 hours representing Reilly and states that he is owed \$13,180 for 65.90 hours x \$200 per hour plus \$20 for the appeal filing fee for a total of \$13,200. In support of his request, the appellant's attorney submits a detailed accounting of the time he spent representing Reilly.

In response, the City initially states that Reilly was earning \$76,500 as of January 1, 2023. His salary would have increased to \$81,600 on July 1, 2023, and to \$85,680 on January 1, 2024. Reilly had been suspended without pay on March 8, 2023, and later removed from employment effective August 25, 2023. Nevertheless, the City argues that Reilly is not entitled to any back pay as his mitigation efforts were deficient. In this regard, it contends that on the date Reilly was terminated, the City offered him positions as a Public Safety Telecommunicator, Parking Enforcement Officer, or Fire Prevention Specialist, each with a starting salary of \$42,000. Reilly declined these offers. It argues that Reilly failed to identify his job search efforts and instead indicated that he took temporary work assignments that had him earn less than the jobs the City offered him in 2023. Additionally, the City asserts that Reilly failed to show that he attempted to gain employment with any position that would have fully mitigated the amount he would have earned had he not been terminated. It claims that there were numerous higher paying positions that Reilly could have applied for such as Correctional Police Officer, security officer, United States Postal positions, Amazon and FedEx driver positions, sales positions, and a position with the United States Department of Agriculture. The City also contends that there were numerous job fairs that Reilly could have attended. In support of these contentions, the City submits copies of the openings and job fairs that it references. Further, it argues that had Reilly accepted its offers of employment, he would have more fully mitigated his damages than he did with the temporary work he did. Moreover, the City argues that Reilly's request for counsel fees should be reduced by 15.35 billable hours for the time his attorney spent talking to and meeting with the PBA president who was not a witness or a client with regard to Reilly's appeal. The City provides 16 specific dates which it asserts should not be eligible for counsel fees.

## CONCLUSION

*N.J.A.C.* 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred, or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding. Further, *N.J.A.C.* 4A:2-

1.2(c) provides the following factors for consideration in evaluating petitions for a stay:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

In the instant matter, the City reiterates its prior arguments that Reilly is prohibited by federal law from carrying a weapon and the Commission's adoption of the ALJ's initial decision was in error. It also claims that the Commission failed to give *Ortiz, supra*, proper consideration. The City has previously made these same arguments, including *Ortiz* in prior matters, and they were reviewed and rejected by the Commission. *Ortiz* is a Florida District Court appeal dealing with different laws than New Jersey. The Commission has also addressed the City's argument several times in this and other matters and has concluded that federal law does not preempt CREAMMA; that Reilly could carry a service weapon without violating federal law; and that Reilly's removal violated CREAMMA. Indeed, the recent court opinion in *In the Matter of Norhan Mansour and Omar Polanco, supra*, is dispositive of this issue.

Additionally, while the City argues that the ALJ's reliance on the proposed scheduled change for marijuana was improper, the Commission's review of the ALJ's decision was *de novo*, and it did not rely on the proposed change in making its decision and affirming its prior decisions regarding marijuana use and CREAMMA. Further, the ALJ and the Commission both clearly indicated that Reilly's purchase of marijuana was for recreational purposes, and as such, he was not required to list it on the medications sheet at the time of his testing. Moreover, the claim of insubordination for not following the order not to use marijuana is not persuasive in this matter. The order given by the Director of Public Safety was in direct contradiction to the guidance provided by the New Jersey Attorney General's Office. Accordingly, the City has not met its burden of proof and its request for reconsideration is denied.

As reconsideration is denied, the City's stay request is moot. The City has failed to present a clear likelihood of success on the merits of its appeal. As previously indicated, the City relies on the same exact arguments that the Commission has repeatedly rejected. Further, the Commission rejects the City's claim that it would suffer irreparable harm if a stay were not granted. There is no indication that its employees would indeed be charged with a violation of federal law by a federal official. In this regard, it is noted that in CREAMMA, the New Jersey Legislature expressly directs law enforcement agencies in New Jersey not to cooperate with or assist the federal government in enforcing federal laws in conflict with CREAMMA. Thus, it is in the public's best interest for the City to follow the Commission's order.

Moreover, pursuant to *N.J.A.C.* 4A:2-2.10(d), an award of back pay shall include unpaid salary, including regular wages, overlap shift time, increments and across-the-board adjustments. *N.J.A.C.* 4A:2-2.10(d)3 provides that an award of back pay shall be reduced by the amount of money that was actually earned during the period of separation, including any unemployment insurance benefits received, subject to any applicable limitations set forth in (d)4. Further, *N.J.A.C.* 4A:2-2.10(d)4 states that where a removal or a suspension for more than 30 working days has been reversed or modified and the employee has been unemployed or underemployed for all or a part of the period of separation, and the employee has failed to make reasonable efforts to find suitable employment during the period of separation, the employee shall not be eligible for back pay for any period during which the employee failed to make such reasonable efforts. "Reasonable efforts" may include, but not be limited to, reviewing classified advertisements in newspapers or trade publications; reviewing Internet or on-line job listings or services; applying for suitable positions; attending job fairs; visiting employment agencies; networking with other people; and distributing resumes. The determination as to whether the employee has made reasonable efforts to find suitable employment shall be based upon the totality of the circumstances, including, but not limited to, the nature of the disciplinary action taken against the employee; the nature of the employee's public employment; the employee's skills, education, and experience; the job market; the existence of advertised, suitable employment opportunities; the manner in which the type of employment involved is commonly sought; and any other circumstances deemed relevant based upon the particular facts of the matter. The burden of proof shall be on the employer to establish that the employee has not made reasonable efforts to find suitable employment. See *N.J.A.C.* 4A:2-2.10(d)4, *et seq.*

In the instant matter, the City has presented the rate of pay Reilly would have received from the time he was suspended on March 8, 2023 until his reinstatement to the payroll on September 20, 2024. Thus, given this salary, Reilly would have earned the following: from March 8, 2023 to July 1, 2023, \$76,500/260 working days in the year x 82 days for the period = \$24,126.92; from July 1, 2023 to January 1, 2024, \$81,600/2 half the year = \$40,800; and from January 1, 2024 to September 20, 2024, \$85,680/262 working days in the year x 189 days for the period = \$61,807.33. Therefore, for the period he was out of work from his position with the City, Reilly would have earned a total of \$126,734.25 (\$24,126.92 + \$40,800 + \$61,807.33). Additionally, Reilly indicates that he collected \$83,965.68 in earnings during that period. The City maintains that Reilly did not make a sufficient effort to mitigate the back pay obligation. It contends that there were many other higher paying jobs that Reilly made no effort to obtain. It also argues that it offered Reilly positions which would have earned \$42,000 per year. However, the Commission finds that Reilly did make sufficient effort to mitigate based upon his earnings and his specific situation. In this regard, the Commission finds it highly unlikely that Reilly could obtain a position with the Department of Corrections, as a security guard, or with the federal

government given that he was terminated from a law enforcement position for drug use. The fact that the City offered Reilly non-law enforcement positions confirms that it was unlikely he could secure law enforcement or security positions. Further, the Commission notes that Reilly earned more in the employment he found than he would have earned had he taken the positions offered by the City. Therefore, the Commission finds that Reilly is owed \$42,768.57 (\$126,734.25 - \$83,965.68) in gross back pay.

In addition, *N.J.S.A.* 11A:2-22 provides that the Commission may award reasonable counsel fees to an employee as provided by rule. *N.J.A.C.* 4A:2-2.12(a) provides that the Commission shall award partial or full reasonable counsel fees incurred in proceedings before it and incurred in major disciplinary proceedings at the departmental level where an employee has prevailed on all or substantially all of the primary issues before the Commission.

In the instant matter, Reilly has indicated that his counsel is owed \$13,180 for 65.90 hours x \$200 per hour plus a \$20 appeal filing fee. The City has not challenged the hourly rate, but it disputes 15.35 in billable hours for the time his attorney spent talking to and meeting with the PBA president who was not a witness or a client with regard to Reilly's appeal. In reviewing the billing statement and the 16 dates in question provided by the City, as Reilly has not disputed the City's assertion, the Commission finds seven of those dates consisted of communications with only the PBA president that should be excluded from a counsel fees award. The other dates included Reilly in the conversation or other work was also performed. Thus, \$1,310 (6.55 hours x \$200) should be deducted from the \$13,180 requested in counsel fees. Therefore, the total amount of counsel fees awarded is \$11,870. It is noted that the \$20 appeal fee is not reimbursable as this is a processing fee. *See N.J.A.C.* 4A:2-1.8(a).

Finally, as the request for reconsideration is denied, the Commission advises that any further delay in the remittance of the awarded back pay and counsel fees could result in the imposition of fines, up to \$10,000 pursuant to *N.J.A.C.* 4A:10-1.1(b) and *N.J.A.C.* 4A:10-2.1(a).

### **ORDER**

Therefore, it is ordered that the request for reconsideration be denied and the request for stay be dismissed as moot. It is further ordered that Mackenzie Reilly be awarded gross back pay in the amount of \$42,768.57, subject to the provisions of *N.J.A.C.* 4A:2-2.10(d)2, and \$11,870 in counsel fees. Jersey City shall remit payment within 30 days of issuance of this decision.

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 20<sup>TH</sup> DAY OF MAY, 2026



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