



STATE OF NEW JERSEY

In the Matter of Chief Clerk
(C0937F), Passaic County

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

CSC Docket No. 2025-2831

Appointment Waiver

ISSUED: July 22, 2026 (AMRG)

Passaic County requests permission not to make an appointment from the August 5, 2024 certification for Chief Clerk (C0937F).

The record reveals that Passaic County provisionally appointed Carmen Nieves-Vicente, pending open competitive examination procedures, to the subject title, effective September 11, 2023. An examination was announced with a closing date of June 24, 2024, and resulted in a list of six eligibles that promulgated on August 1, 2024, and expires on July 31, 2026. A certification (OL240839) containing the names of five eligibles was issued on August 5, 2024.¹

The appointing authority returned the certification and requested a waiver of the appointment requirement, stating that the agency decided to defer the appointment for this position and would not be selecting a candidate from the certification. However, it noted that it anticipates filling the position at a later date pending internal planning. Additionally, a review of the record finds that Nieves-Vicente was separated from her provisional position effective June 3, 2025. Additionally, there are currently no employees serving provisionally pending open competitive examination procedures in the subject title with the appointing authority.

¹ Agency records indicate that Nieves-Vicente submitted a late application, and was subsequently added to the eligible list, tied with two other candidates as the fourth ranked eligible. However, since she did not timely submit an application, her name did not appear on the subject certification.

The appointing authority's request for an appointment waiver was acknowledged, and it was advised that if such request was granted, it could be assessed for the costs of the selection process in the amount of \$2,048. Despite the opportunity, the appointing authority did not provide any additional information for the Civil Service Commission (Commission) to review.

CONCLUSION

Initially, in examining the legislative history of *N.J.S.A. 11A:4-5*, in *Local 198 of I.A.F.F. v. Atlantic City*, Docket No. A-855-88T1F (App. Div. June 14, 1989), the court stated that this agency is required to issue a certification automatically where there is a provisional appointee or a vacancy. Moreover, the court concluded that *N.J.S.A. 11A:4-5* unambiguously stated that once the examination process has been initiated due to the appointment of a provisional employee, the appointing authority must make an appointment from the eligible list if there is a complete certification. Additionally, the court found that this agency was correct in interpreting *N.J.S.A. 11A:4-5* to find that it was a clear legislative response to pervasive violations of Title 11A, and that non-compliance with this statute is not a mere technical violation, but rather it undermined the purpose and intent of the constitutionally-based merit selection system. The court found that in circumstances such as these, it was appropriate to order the appointing authority to make an appointment. Thus, there is no doubt that the appointing authority must make an appointment from this list if there is a complete certification, that is, one containing the names of at least three interested and eligible candidates. Moreover, 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), Jersey City*, Docket No. A-4347-87T3 (App. Div. February 2, 1989).

Therefore, in accordance with *N.J.S.A. 11A:4-5*, once the examination process has been initiated due to the appointment of a provisional employee or due to an appointing authority's request to fill a vacancy, the appointing authority must make an appointment from the resulting eligible list if there are three or more interested and eligible candidates. The only exception to this mandate may be made for a valid reason such as fiscal constraints.

In the instant matter, the examination for the subject title was generated as a result of the provisional appointment of Nieves-Vicente. Upon receipt of the complete certification, the appointing authority returned the certification and requested an appointment waiver indicating that it was unable to make an appointment at the time but it anticipated filling the position at a later date. In addition, Nieves-Vicente was separated from her provisional appointment effective June 3, 2025. Thus, in

conjunction with the fact that there are no provisionals currently serving, there is sufficient justification for an appointment waiver.

Although an appointment waiver is granted in this matter, both *N.J.S.A.* 11A:4-5 and *N.J.A.C.* 4A:10-2.2(a)2 state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse for the costs of the selection process. While administering examinations and providing the names of eligible job candidates to the jurisdictions under the Civil Service system are two of the primary activities of this agency, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists to make appointments and candidates have needlessly expended their time, efforts and money to take these examinations in hopes of being considered for a permanent appointment. In this case, the Commission notes that the list in question will not expire until July 31, 2026, and the appointing authority noted that it anticipates filling the position at a later date pending internal planning. Accordingly, under the particular circumstances of this matter, it would not be appropriate to assess the appointing authority for the costs of the selection process at this time. Nevertheless, in the event it fails to utilize the subject eligible list by its expiration date of July 31, 2026, this matter can be reviewed to ascertain whether an assessment for the costs of the selection process should be made.

ORDER

Therefore, it is ordered that the request for the waiver of the appointment requirement be granted and no selection costs presently be assessed.

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 22ND DAY OF JULY, 2026



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