

Case Notes

Representatives of public defender had actual authority to promise promotion to assistant deputy public defender, who accepted lower position than position for which he was eligible based on expectation that he would be promoted after one year. *Walsh v. State*, 290 N.J.Super. 1, 674 A.2d 988 (A.D.1996).

4A:4-1.11 (Reserved)

New Rule, R.1990 d.48, effective January 16, 1990.
See: 21 N.J.R. 3337(a), 22 N.J.R. 166(b).
Repealed by R.1996 d.97, effective February 20, 1996.
See: 27 N.J.R. 4048(a), 28 N.J.R. 1201(a).
Section was "Vacancy Review Board: State service".

SUBCHAPTER 2. COMPETITIVE EXAMINATIONS

4A:4-2.1 Announcements and applications

(a) Notice of open competitive examinations shall be announced in a monthly job listing or by other appropriate means as approved by the Commissioner to secure sufficient qualified candidates. Copies of notices for all open competitive examinations shall be available in each regional office of the Department of Personnel.

(b) In order to notify all employees of promotional opportunities, notices of promotional examinations and applications shall be provided to eligible employees by the Department of Personnel or as directed by the Department of Personnel through the appointing authority. The appointing authority shall conspicuously post notices at all geographic locations within the unit scope to which the examination is open. Appointing authorities shall maintain a record of such posting.

(c) Examination announcements shall include at least the following information:

1. Title of the examination;
2. Salary information;
3. Minimum qualifications for admission to the examination;
4. Filing information; and
5. In open competitive examinations, a reference to duties and responsibilities.

(d) A promotional examination shall be reannounced if, within one year of the closing date, the examination has not been developed and scheduled.

(e) Unless otherwise provided for by the Commissioner, applications for open competitive and local service promotional examinations shall be filed with the Department of Personnel and applications for State service promotional examinations shall be filed with the appointing authority no

later than the announced filing date, as established by the Department of Personnel. When mailed, the postmark date will be considered the date on which the application is filed.

(f) Prior to the filing date, an applicant may amend a previously submitted application.

(g) The Department of Personnel may request clarifying information from an applicant.

(h) All examination applications shall remain confidential, except as the Commissioner may determine to be in the public interest.

(i) See N.J.A.C. 4A:4-2.17 for application processing fee procedures.

Petition for Rulemaking: Promotional examination process regarding announcement procedures.

See: 21 N.J.R. 1581(b), 21 N.J.R. 2675(a).
Amended by R.1989 d.570, effective November 6, 1989.
See: 21 N.J.R. 2429(a), 21 N.J.R. 3451(a).

Added new (d) and recodified old (d)-(g) as (e)-(h) with no change in text.

Amended by R.1993 d.270, effective June 7, 1993.
See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Added new (i).
Amended by R.1997 d.481, effective November 17, 1997.
See: 29 N.J.R. 3383(a), 29 N.J.R. 4864(a).

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Announcement of competitive examination was required to contain "minimum qualification requirements" for admission (citing former N.J.A.C. 4:1-8.3). In the Matter of Critchlow, 201 N.J.Super. 371, 493 A.2d 66 (App.Div.1985).

4A:4-2.2 Types of examinations

(a) The Commissioner of the Department of Personnel shall administer examinations for appointment in the competitive division of the career service which may include any one or more of the following:

1. Written tests;
2. Oral tests;
3. Performance tests;
4. Physical performance tests;
5. Evaluation of education, training or experience;
6. Assessment exercises; and
7. Other appropriate measures of knowledge, skills and abilities.

(b) The Department of Personnel may select special examiners to act as subject matter specialists or to provide other assistance. Employees of the State or local jurisdictions may be so engaged as part of their official duties during normal working hours with the approval of their appointing authority. Extra compensation may be provided by the Department of Personnel for such service outside normal working hours.

(c) See N.J.A.C. 4A:4-2.14 for rules regarding the accommodation and waiver of examinations for persons with disabilities.

Amended by R.1994 d.72, effective February 7, 1994.
See: 25 N.J.R. 4821(b), 26 N.J.R. 794(b).

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Authority of Commission to design and administer exams versus "real authority" of municipalities regarding hiring practices. *United States v. State of N.J.*, 473 F.Supp. 1199 (1979).

Elements of examination process discussed in relation to labor negotiations. *State v. State Supervisory Employee Association*, 78 N.J. 54, 393 A.2d 233 (1978).

Authority to inquire as to basis for appointments and promotions. *Hackensack v. Winner*, 162 N.J.Super. 1, 392 A.2d 187 (App.Div.1978) modified 82 N.J. 1, 410 A.2d 1146 (1980).

Validity of list established by inappropriate exam. *Flynn v. Megaro*, 112 N.J.Super. 148, 270 A.2d 638, (App.Div.1970) cert. denied 57 N.J. 594, 274 A.2d 49.

4A:4-2.3 Open competitive examinations

(a) Vacancies shall be filled by promotional examination unless the Commissioner determines that it is in the best interest of the career service to hold an open competitive examination. The determination to announce an open competitive examination shall be based on at least one of the following conditions:

1. The vacancy is in an entrance level title;
2. There are fewer than three qualified permanent employees in appropriate lower titles in the unit scope (See N.J.A.C. 4A:1-1.3 for definition of unit scope);
3. If more than one vacancy, the total number of qualified permanent employees in appropriate lower titles in the unit scope exceed by fewer than three the total number of vacancies;
4. A list resulting from a promotional examination will be exhausted before all present or anticipated vacancies are filled; or
5. The title requires special, technical or professional training or qualifications which are not required in lower titles.

(b) Unless otherwise specified, an applicant shall meet the following criteria by the announced closing date:

1. Be a resident of the State or specified local jurisdiction (see N.J.A.C. 4A:4-2.11), except when:
 - i. A different residency requirement is specified by law or provided by the Commissioner; or
 - ii. It appears that there is an inadequate number of qualified residents available for the title.
2. Meet all requirements specified in the examination announcement:

- i. Applicants for the titles of Municipal Firefighter and Municipal Police Officer must be under the age of 35 on the announced closing date for an open competitive examination to be eligible to take the examination. Former Municipal Police Officers 45 years of age or under who resigned in good standing may adjust their age by subtracting previous years of service from their actual age on the closing date. Former Municipal Police Officers who were involuntarily separated from service due to layoff, regardless of age, may adjust their age by subtracting previous years of service from their actual age on the closing date.

- ii. Veterans who are above a maximum age requirement, may recalculate their age for recording purposes pursuant to N.J.S.A. 38:23A-2; and

3. File an application with all supporting documents or proofs by the announced filing date.

(c) In announcing open competitive examinations, including, but not limited to, entry-level law enforcement examinations, the Department of Personnel may provide a single application for several announcements and/or title areas (such as police, sheriff, corrections and bilingual). The applicant's eligibility for particular announcements and/or title areas shall depend upon the applicant's residency as indicated on the application.

(d) When a promotional examination is announced, an open competitive examination may also be announced.

Amended by R.1989 d.569, effective November 6, 1989.

See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).

In (b)2i: added text, "Former Municipal Police Officers ... the closing date."

Amended by R.1997 d.482, effective November 17, 1997.

See: 29 N.J.R. 3385(a), 29 N.J.R. 4864(b).

Inserted new (c); and recodified (c) as (d).

Law Review and Journal Commentaries

Civil Service—Administrative Procedure—Counties—Municipalities.
Judith Nallin, 134 N.J.L.J. No. 17, 50 (1993).

Case Notes

Limiting open competitive examination to residents for position of police chief, violated the Civil Service Act, the Board's own regulations, and the rule-making provisions of the Administrative Procedure Act. *Matter of Police Chief (M2010P) South Orange Village*, 266 N.J.Super. 101, 628 A.2d 809 (A.D.1993).

Equitable estoppel: provisional employee worked 8-10 years before test was promulgated. *Omrod v. N.J. Department of Civil Service*, 151 N.J.Super. 54, 376 A.2d 554 (App.Div.1977) certification denied 75 N.J. 534, 384 A.2d 513.

Issue of examination as artificial barrier to employment. *DeLarmi v. Borough of Fort Lee*, 132 N.J.Super. 501, 334 A.2d 349 (App.Div.1975) certiorari denied 68 N.J. 135, 343 A.2d 423.

Requirement that employee serve specified time in lower classification before becoming eligible for promotion upheld (citing former N.J.A.C. 4:1-8.6). *Watson v. Farrell*, 116 N.J.Super. 434, 282 A.2d 756 (App.Div.1977)

4A:4-2.4 Promotional title scope: local service

(a) If a title which is the subject of a promotional examination is part of a title series, then the examination shall be open to one of the following:

1. The next lower or next two lower in-series titles; or
2. All applicants in the unit scope who meet the open competitive requirements and all applicants in the next lower or next two lower in-series titles.

(b) The title scope described in (a)2 above may be used when the appointing authority requests a wider title scope or provisionally promotes an employee who does not have permanent status in an in-series title.

(c) When the title which is the subject of the promotional examination is not part of a title series, the examination shall be open to all applicants having a total of one year permanent service who meet the open competitive requirements.

(d) When a promotion is to be made from the noncompetitive division of the career service to a related entry level title in the competitive division of the career service, the examination shall be open to all applicants who meet the

complete open competitive requirements and who are either:

1. Serving in the next lower or next two lower in-series noncompetitive titles or in any competitive title; or
2. Serving in all related noncompetitive titles or in any competitive title.

(e) In extraordinary circumstances, the Commissioner may set another appropriate title scope.

Amended by R.1990 d.554, effective November 19, 1990.

See: 22 N.J.R. 2628(a), 22 N.J.R. 3482(a).

Conforms the requirements for local with those in State service.

Amended by R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised (d)1 and 2.

Law Review and Journal Commentaries

Civil Service—Administrative Procedure—Counties—Municipalities.
Judith Nallin, 134 N.J.L.J., No. 17, 50 (1993).

Case Notes

Merit Systems Board's approval of open competitive examination was violation of Civil Service Act, the Board's own regulations, and the rule-making provisions of the Administrative Procedure Act. Matter of Police Chief (M2010P) South Orange Village, 266 N.J.Super. 101, 628 A.2d 809 (A.D.1993).