

Amended by R.1998 d.291, effective June 1, 1998.  
See: 30 N.J.R. 890(a), 30 N.J.R. 1975(a).

Rewrote (b)1.  
Petition for Rulemaking.  
See: 37 N.J.R. 675(a), 1540(a).  
Amended by R.2006 d.104, effective March 20, 2006.  
See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

In (a)2, substituted "Regular" for "Permanent"; in (g), deleted "law enforcement"; in (h), substituted "received a regular appointment" for "been permanently appointed."  
Amended by R.2012 d.032, effective February 6, 2012.  
See: 43 N.J.R. 2639(a), 44 N.J.R. 226(a).

In (a)3, substituted "An appropriate representative of the Civil Service Commission" for "The Department of Personnel"; in (a)4ii and (a)11, substituted "Chairperson of the Civil Service Commission or designee" for "Commissioner"; in (a)4ii, substituted ", juvenile detention officer, firefighter or judiciary" for "or firefighter"; in (a)8, substituted "an appropriate representative of the Civil Service Commission" for "the Department of Personnel"; in the introductory paragraph of (b), substituted "an appropriate representative of the Civil Service Commission" for "the Department"; in (b)1 and (b)2, substituted "appropriate Commission representative" for "Department"; in (c), substituted "An appropriate representative of the Civil Service Commission" for "The Department of Personnel"; in (e), substituted "Chairperson of the Civil Service Commission or designee" for "Department"; and in (g), substituted "Civil Service Commission" for "Department of Personnel".

#### Case Notes

Statements made in report of background check of police officer applicant. *Pollinger v. Loigman*, 256 N.J.Super. 257, 606 A.2d 1113 (A.D.1992).

Removal of applicant's name from open competitive list was improper; inability to communicate effectively in English. In the Matter of *Bangar*, 94 N.J.A.R.2d (CSV) 500.

Disqualification; lack of job requirements. *City of Trenton v. Porzilli*, 94 N.J.A.R.2d (CSV) 172.

Inability to speak English warranted removal of name from eligible list. *Patel v. Division of Youth and Family Services*, 93 N.J.A.R.2d (CSV) 147.

Removal from eligibility list for position at college was justified by inability to communicate in English. *Shah v. William Paterson College*, 93 N.J.A.R.2d (CSV) 97.

#### 4A:4-4.8 Disposition of a certification

(a) Upon receipt of a certification, an appointing authority shall take whichever of the following actions is appropriate when a permanent appointment is to be made:

1. Appoint the eligible whose name has been certified from the special reemployment list;
2. Appoint the eligible whose name has been certified from regular or police or fire reemployment lists; or
3. Appoint one of the top three interested eligibles (rule of three) from an open competitive or promotional list, provided that:
  - i. Disabled veterans and then veterans shall be appointed in their order of ranking from an open competitive list;
  - ii. If the eligible who ranks first on a promotional list is a veteran, then a non-veteran may not be appointed; and
  - iii. See N.J.A.C. 4A:4-2.15(i) for tie scores.

(b) The appointing authority shall notify the Civil Service Commission of the disposition of the certification by the disposition due date in the manner prescribed by the Chairperson of the Commission or the Chairperson's designee. The disposition due date may be extended beyond the expiration date of the eligible list to fill current vacancies. Under no circumstances shall a disposition due date be extended beyond the expiration date of the eligible list when vacancies do not exist. An anticipated vacancy shall not be considered the same as an existing vacancy. The report of disposition of the certification shall include:

1. Name of the eligibles to be permanently appointed;
2. The effective date of the requested permanent appointments;
3. In local service, the appointee's salary;
4. In situations where an appropriate list is used, the title and functions of the appointee's employment;
5. In the case of an appointment to the title of Municipal Court Administrator or Deputy Municipal Court Administrator, verification that the assignment judge of the vicinage has approved the appointment; and
6. Any other requested information.

(c) Failure to dispose by the due date may result in constructive appointment or other remedial action as set forth in N.J.A.C. 4A:10-2.

(d) If the certification will result in the displacement of a provisional employee who has permanent status, and it is necessary to institute layoff procedures, the Chairperson of the Commission or the Chairperson's designee may, upon written request from the appointing authority, extend the time for disposing of the certification for an additional 45 days. See N.J.A.C. 4A:8 for layoff procedures.

(e) See N.J.A.C. 4A:10-2.2 for penalties for failure to appoint from a complete certification.

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

Revised (a)3iii.  
Amended by R.1994 d.507, effective October 3, 1994.  
See: 26 N.J.R. 2697(b), 26 N.J.R. 3941(a).

Administrative correction.  
See: 31 N.J.R. 1186(a).  
Petition for Rulemaking.  
See: 37 N.J.R. 1540(b), 2703(a).  
Amended by R.2006 d.104, effective March 20, 2006.  
See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

In introductory paragraph (b), added language regarding extension of disposition due date.  
Amended by R.2012 d.087, effective May 7, 2012.  
See: 44 N.J.R. 137(a), 44 N.J.R. 1333(b).

In the introductory paragraph of (b) and in (d), substituted "Chairperson of the Commission or the Chairperson's designee" for "Department"; in the introductory paragraph of (b), substituted "Civil Service Commission" for "Department of Personnel"; deleted former (b)4; recodified former (b)5 and (b)6 as (b)4 and (b)5; and in (d), deleted "-1.1 et seq." following "4A:8".

Amended by R.2012 d.116, effective June 18, 2012.

See: 44 N.J.R. 542(a), 44 N.J.R. 1779(a).

In (b)4, deleted "and" at the end; added new (b)5; and recodified former (b)5 as (b)6.

#### Law Review and Journal Commentaries

Civil Service. Judith Nallin, 133 N.J.L.J. No. 14, 65 (1993).

#### Case Notes

The Civil Service Act and its accompanying regulations did not require that preliminary notices of disciplinary action be signed by both police director and IAD Commander because the Act and its regulations did not require two signatures for the filing of a complaint. *Grill v. City of Newark*, 709 A.2d 333, 311 N.J.Super. 149 (N.J.Super.L. 1997).

Stating reasons for administrative actions limits arbitrary determinations, enhances judicial review of agency decisions, and discloses correctable deficiencies to aid in guiding future conduct. *Local 518, New Jersey State Motor Vehicle Employees Union, S.E.I.U., AFL-CIO v. Division of Motor Vehicles*, 262 N.J.Super. 598, 621 A.2d 549 (A.D.1993).

Law Division had jurisdiction over declaratory judgment action seeking statement of reasons why employees were not selected for promotion under the Civil Service Act. *Local 518, New Jersey State Motor Vehicle Employees Union, S.E.I.U., AFL-CIO v. Division of Motor Vehicles*, 262 N.J.Super. 598, 621 A.2d 549 (A.D.1993).

Appointing administrative authority was not required by Civil Service Act or regulations to apprise unsuccessful qualified candidate of reasons for promoting lower-scoring eligible employee. *Local 518, New Jersey State Motor Vehicle Employees Union, S.E.I.U., AFL-CIO v. Division of Motor Vehicles*, 262 N.J.Super. 598, 621 A.2d 549 (A.D.1993).

Minimal requirements for making a valid appointment: when appointment is final. *Thomas v. McGrath*, 145 N.J.Super. 288, 367 A.2d 898 (App.Div.1976), reversed per curiam 75 N.J. 372, 382 A.2d 1121 (1978).

Initial Decision (2007 N.J. AGEN LEXIS 59) adopted, which concluded that a police officer did not meet his burden of showing that the rationale stated for not promoting him to sergeant on two separate occasions was pre-textual; it was not the appointing authority's burden to be more specific in identifying the information, namely the individuals promoted did not have serious or sustained disciplinary records worse than the officer, but it was the officer who had the burden of showing specific irregularities in the reason given for the bypasses that would have made them pre-textual. In re *Bradley*, OAL Dkt. No. CSV 5837-02, 2007 N.J. AGEN LEXIS 354, Final Decision (March 14, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 160) adopted, which concluded that the evidence demonstrated that a police officer was the least qualified of all three individuals for the two available Police Sergeant positions; his non-appointment to both positions was based upon his lack of appropriate qualification as compared to the other two candidates and the non-appointment had nothing to do with any actions by the appointing authority, which may have nonetheless acted under any basic misunderstanding relative to the interpretations of veterans' preferences. In re *Cresong*, OAL Dkt. No. CSV 8214-04, 2006 N.J. AGEN LEXIS 217, Final Decision (February 22, 2006).

Police captain fails to establish he was impermissibly bypassed for selection of police chief. *Shaffery v. Middletown Township*, 97 N.J.A.R.2d (CSV) 299.

Fire captains properly bypassed; exercise of discretion provided under the "rule of three" and not political discrimination. *Bulger v. Town of Harrison*, 93 N.J.A.R.2d (CSV) 509.

#### 4A:4-4.9 Date of appointment

(a) An eligible shall not be appointed and begin work after the expiration date of the eligible list except:

1. When the eligible is on military leave, or, in the case of promotional appointments, is on an approved leave of absence. Persons returning from military leave or an approved leave of absence may begin work upon their return to active service.
2. When there is limited revival or statutory extension of an employment list, except that no appointment shall be made beyond the statutory extension date; or
3. When the certification is made just prior to the expiration of the eligible list, in which case the date of appointment and the date the eligible begins work shall be no later than the disposition due date.

Amended by R.1996 d.98, effective February 20, 1996.

See: 27 N.J.R. 4049(a), 28 N.J.R. 1201(b).

In (a)3 substituted "be no later than" for "coincide with".

#### 4A:4-4.10 Certification of additional eligibles

If, after accepting employment, an eligible cannot begin work within three weeks or such other reasonable time as specified by the appointing authority, the appointing authority may consider the eligible unavailable and request that the Department certify additional names.

### SUBCHAPTER 5. WORKING TEST PERIOD

#### 4A:4-5.1 General provisions

(a) The working test period is part of the examination process designed to permit an appointing authority to determine whether an employee can satisfactorily perform the duties of the title.

(b) All regular appointments to a title in the career service shall be subject to a working test period, except:

1. Appointments from special, police and fire and regular reemployment lists;
2. Appointments to a comparable or lower related title in lieu of layoff; or
3. Appointments to titles previously held on a permanent basis within current permanent continuous service.
4. For lateral title changes, see N.J.A.C. 4A:4-7.6(b).

(c) During the working test period, an employee shall perform the duties of the title for which appointment was made.

**4A:4-5.4 Working test period appeals**

(a) An employee may be separated for unsatisfactory performance at the end of the working test period. See N.J.A.C. 4A:2-4 for procedures.

(b) An employee may be disciplined during the working test period. See N.J.A.C. 4A:2-2 and 3 for procedures.

**Case Notes**

In a proceeding to remove a police officer after his working test period, the appointing authority could not look to the officer's behavior during police academy training, but could only consider incidents that occurred during the officer's actual working test period. In re Kowalczyk, OAL Dkt. No. CSV 4443-05, 2006 N.J. AGEN LEXIS 866, Final Decision (September 6, 2006).

Disciplinary action during a working test period, especially relating to performance, may provide sufficient justification to release an employee after a working test period. In re Kowalczyk, OAL Dkt. No. CSV 4443-05, 2006 N.J. AGEN LEXIS 866, Final Decision (September 6, 2006).

Police officer was properly released at the end of his working test period because the disciplinary violations he committed during that period related to his job performance and clearly established the unsatisfactory nature of his performance; specifically, the officer was counseled regarding his leaving his post, yet he did so again on two separate emergencies that involved potential public safety hazards. In re Kowalczyk, OAL Dkt. No. CSV 4443-05, 2006 N.J. AGEN LEXIS 866, Final Decision (September 6, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 342) adopted, which upheld the dismissal of a civil engineer trainee at the end of her working test period. Fellow employees had documented her unsatisfactory performance and after levying a charge of rape against a fellow employee, the trainee had given unsubstantiated answers, which had not led to any discipline against the fellow employee. In re Scozzari, OAL Dkt. No. CSV 10613-04, 2006 N.J. AGEN LEXIS 528, Final Decision (May 24, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 39) adopted, which concluded that a licensed practical nurse was properly removed during her working test period after she prepared medication for a patient that was approximately 10 times in excess of the prescribed dosage and then, just two days later, administered medication to another patient that was approximately four times in excess of the prescribed dosage; the hospital was entitled to assume that the nurse possessed the appropriate competencies for her position and was not required to provide her with additional training during the working test period. In re Wrede, OAL Dkt. No. CSV 5372-05 (CSV 7936-04 On Remand), 2006 N.J. AGEN LEXIS 1117, Final Decision (March 22, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 311) adopted, which found that agency decision not to hire Public Safety Telecommunicator Trainee at the end of her working test period was appropriate prior to hiring her as incoming 9-1-1 operator, rejecting her contention that she should have been evaluated as a trainee and not as a test-period employee. The employee's supervisor and co-workers had observed her performance and testified that she was unable to effectively multi-task and had attitude problems, and therefore there was no bad faith in the decision not to hire her after her training. In re Daniels, OAL Dkt. No. CSV 10112-03, 2005 N.J. AGEN LEXIS 1174, Final Decision (September 7, 2005).

Improperly terminated public employee with some work deficiencies was entitled to new working test period instead of permanent appointment to position. Saleem v. Department of Citizen Services, 95 N.J.A.R.2d (CSV) 204.

**4A:4-5.5 Restoration to eligible list or former title**

(a) An employee who, either during or at the end of a working test period, resigns in good standing or is separated due to unsatisfactory performance may, upon request, be restored to an eligible list, if the Commissioner determines that the employee is suitable for appointment to another position.

1. The Commissioner may consider:

i. Whether the list can be certified to another appointing authority;

ii. The recommendation of the employee's former appointing authority; and

iii. Any other relevant factors.

2. Any employee who has been removed for disciplinary reasons shall not be restored to an eligible list.

3. Any employee who has filed an appeal pursuant to N.J.A.C. 4A:2-4 shall have his or her request for restoration held in abeyance pending the appeal.

(b) An employee who is laid off during the working test period shall be restored to the eligible list from which he or she was appointed.

(c) A permanent employee serving a working test period in another title shall continue to accrue seniority in his or her permanent title for the duration of the working test period. See N.J.A.C. 4A:4-1.9 for procedures on restoration to a former title.

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 (b) and relettered old (b) as new (c).

Amended by R.1990 d.553, effective November 19, 1990.

See: 22 N.J.R. 2629(a), 22 N.J.R. 3482(b).

Provision insures that permanent employee accrues seniority in permanent title during working test period in another title.

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**SUBCHAPTER 6. EXAMINATION AND SELECTION  
DISQUALIFICATION AND APPEALS**
**4A:4-6.1 Examination and selection disqualification**

(a) A person may be denied examination eligibility or appointment when he or she:

1. Lacks the job requirements;

2. Is ineligible, by law, for employment in the title;

3. Is physically or psychologically unfit to perform effectively the duties of the title. However, an injury incurred in the armed forces shall not be considered a disqualification unless the Commissioner considers the condition incapacitating;

4. Has failed to pass examination procedures;
5. Has been removed from the public service for disciplinary reasons after an opportunity for a hearing;
6. Has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process;
7. Has a prior employment history which relates adversely to the title; or
8. Has failed to pay the required application processing fee in a timely manner, or for open competitive examination, has failed to provide documentation of exemption from the application processing fee in a timely manner; or
9. Other sufficient reasons.

(b) Except where precluded by law, a person who is disqualified pursuant to (a)5 and 7 above may, for good cause, be admitted to an examination and, with the appointing authority's concurrence, certified for appointment.

(c) Any action specified in this section shall be effective upon receipt of written notice of disqualification.

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 (a)8; redesignated (a)8 to (a)9.

#### Law Review and Journal Commentaries

Arrests—Civil Service—Police. Judith Nallin, 133 N.J.L.J. No. 6, 57 (1993).

#### Case Notes

Arrest justifies removal of applicant's name from eligibility list where circumstances surrounding arrest adversely relate to the employment sought, and agency must state specifically its reasons for removal.

Tharpe v. City of Newark Police Dept., 261 N.J.Super. 401, 619 A.2d 228 (A.D.1992).

Remand was required where administrative record from Merit System Board did not disclose basis for Board's equation of police officer candidate's personality traits with finding that candidate was mentally unfit. Matter of Vey, 124 N.J. 534, 591 A.2d 1333 (1991).

Removal of provisional juvenile detention officer from eligible list because of prior employment history was improper without hearing by Merit System Board. Matter of Wiggins, 242 N.J.Super. 342, 576 A.2d 932 (A.D.1990).

Initial Decision (2008 N.J. AGEN LEXIS 318) adopted, which concluded that removal of applicant's name from the eligibility list for Human Service Specialist I was warranted because the applicant could not communicate in English sufficiently to perform the functions of the position. In re Sheth, OAL Dkt. No. CSV 5771-07, 2008 N.J. AGEN LEXIS 507, Final Decision (May 21, 2008).

Modification of removal to resignation in good standing was warranted where employee underwent successful rehabilitation after arrest on drug charges. Beachum v. Vineland City Board of Education, 96 N.J.A.R.2d (CSV) 312.

Fact that drug screening guidelines were not strictly followed during unannounced screening did not require removal of positive test result from state police recruit's record. In the Matter of the Appeal of Wayne Paterno, 96 N.J.A.R.2d (POL) 5.

Removal of dismissed provisional police officer's name from eligibility list was justified by poor past performance. Grafje v. Hudson County Sheriff, 95 N.J.A.R.2d (CSV) 476.

Advanced information about contents of promotional examination disqualified public employee on eligibility for promotion. Motiani v. State Department of Transportation, 95 N.J.A.R.2d (CSV) 121.

Removal of assistant engineer traffic's name from list for senior engineer traffic appropriate; employee attempted to get knowledge about examination. Motiani v. State Department of Transportation, 95 N.J.A.R.2d (CSV) 121.

Removal from eligibility list for fire lieutenant not warranted. Brown v. City of Gloucester, 93 N.J.A.R.2d (CSV) 464.