

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).

Applicant for employment as a correction department officer was properly removed from the recruit list after numerous photos surfaced in which he was in the company of persons who appeared to be gang members based on their display of "gang hand signs" and other indicia. Though there was some ambiguity as to whether the applicant actually was a gang member, in light of the department's zero-tolerance policy for employment of persons with such affiliations, evidence that he appeared to or actually associated with gang members and that he had misrepresented those affiliations on an employment-related questionnaire, the latter being conduct within the scope of N.J.A.C. 4A:4-6.1, established sufficient grounds within the meaning of N.J.A.C. 4A:4-4.7(a)1, for his removal from the recruit list. In re *Earp*, OAL Dkt. No. CSV 13383-12, 2013 N.J. AGEN LEXIS 35, Initial Decision (February 11, 2013).

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).

Police officer's claim that a township had abused its discretion under the "Rule of Three" in N.J.A.C. 4A:4-4.8(a) in bypassing him on the eligible list for a promotion was rejected by an ALJ. To the extent that the officer's claim rested on allegations that the township had discriminated against him for union activities and/or membership, the officer could not rely on that claim in arguing that the township's decision to promote someone else was actuated by anti-union animus given the finding of a federal court, in related proceedings, that there was insufficient evidence upon which a jury could find that the promotion decision was based on the officer's union involvement. In *Gilleece*, OAL Dkt. No. CSV 07839-08, 2013 N.J. AGEN LEXIS 1, Initial Decision (January 24, 2013).

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.