

THE CIVIL SERVICE GUIDE FOR PENNSYLVANIA MUNICIPALITIES

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I. Introduction

How to Use this Publication

This Publication, and the rules, model forms, and the explanatory notes which have been included, are intended to serve as a guide to municipalities in developing, implementing and administering their civil service processes. The civil service rules contained in this Publication are intended to apply primarily to police officers within boroughs and first class townships who have three or more officers, and therefore, must hire and promote through the civil service process. Thus, although it has some applicability to the hiring process for appointing firefighters, such application is limited. With respect to second class townships, those municipalities, as well as boroughs and first class townships with less than two officers, need not hire through civil service. Boroughs and first class townships with less than two officers, as well as all second class townships, are not required to hire or promote through the civil service process. Likewise, boroughs may hire part-time police officers outside of the civil service process.

This Publication itself cannot be adopted at a public meeting of either the governing body or the civil service commission of the municipality as the "official" civil service rules for the community. However, the rules contained herein can be utilized to create the governing civil service rules for the community. Prior to creating, implementing or amending your civil service rules, you should consult with you municipal solicitor or special labor counsel regarding the impact of such action, including any possible impact on labor issues.

The Publication is divided into two separate sections, one for first class townships and the other for boroughs. This distinction recognizes the fact that, on several key issues, such as the treatment of part-time officers, grounds for disciplining an officer, and the eligibility of certain individuals to serve as commissioners, the governing municipal codes differ in several respects.

In various areas in this Publication, you will see that options are presented to include or exclude certain information, criteria, or requirements in the rules. There may be compelling practical and policy reasons for exercising one option over the other for your municipality. Although this Publication is intended as a guide in adopting and revising civil service rules, it is not intended to serve as legal advice to your municipality, nor should it substitute for consultation with your solicitor and/or special labor counsel to determine the best course of action for your municipality.

II. Prefatory Remarks

Significant Changes in Civil Service from 2009 to 2012

For much of the start of the 21st century, the Pennsylvania General Assembly paid little attention to the civil service provisions of the First Class and Borough Codes. The most material change, which occurred in the period from 2000 to 2009, was Act 54 of 2002, which required alternate civil service commissioners and increased the number required for quorum from two to three. Aside from this action, the Pennsylvania General Assembly made little to no meaningful change to the civil service provisions of either the Borough or the First Class Township Code.

Beginning in 2010, however, civil service legislation began to undergo significant changes. The impetus for many of the recent changes in the civil service provisions of the Borough and First Class Township Codes was ostensibly the decision of the Pennsylvania Commonwealth Court in *Borough of Wilksburg v. Colella*, 961 A.2d 265 (Pa. Commw. Ct. 2008), *petition for allowance of appeal denied*, 601 Pa. 703, 973 A.2d 1007 (2009). That case involved the issue of whether a municipality was permitted to utilize the so-called “rule of three” under which a municipality may select from any of the top three candidates or whether it was obligated to select the top person on the eligibility list to receive the promotion.

Based upon the then-current language of Section 1188 of the Borough Code, 53 P.S. § 46188, the Commonwealth Court held that the language of Section 1188, which required promotional appointments to be made solely based upon merit, required a municipality to promote the applicant with the highest examination scores. Unlike Section 1184 of the Borough Code, 53 P.S. § 46184, which governs original appointments and contains language allowing the borough to select any of the three top candidates on the eligibility list, Section 1188 only referenced merit. The Pennsylvania Supreme Court subsequently declined to hear the borough’s appeal of the Commonwealth Court’s decision.

The *Colella* decision represented had a major impact on civil service in two respects. First, it threw into doubt what, at the time, was the conventional wisdom that the rule of three applied with equal effect to entry-level appointments, as well as promotions, at least in boroughs. In particular this ruling ran contrary to the manner in which virtually every municipality throughout the Commonwealth had administered civil service promotion for decades. Second, unlike a legislative change in the law, which may become effective within thirty days or longer, the apparent changes effectuated by the Commonwealth Court’s *Colella* decision had an immediate effect on the law. Thus, any municipality which was poised to promote someone at the time of *Colella* would have been required to review that decision, particularly if they were selecting a candidate other than the top candidate.

In October of 2010, then-governor Rendell signed Acts 75 and 91 into law. Act 75 made changes to the First Class Township Code, while Act 91 addressed the Borough Code. Although each act effectuated changes to the specific code which it addressed, the underlying theme of each piece of legislation was the legislative overruling of the *Colella* decision. Specifically, both Act 85 and Act 91 amended the same provisions of the respective codes to provide that the appointing authority was to receive three names (or less if less than three candidates were eligible for promotion), and the municipality could select any of the three candidates. In addition to the above change, each Act also made several other changes to the first class township and borough codes, including the following:

- Incorporation of the Americans With Disabilities Act standards regarding the timing of physical and psychological examinations, as well as inclusion of the interactive process where an individual receives a conditional offer of employment, but fails either the physical or psychological examinations;
- Clarified that an applicant for a position no longer needs to be addicted to a controlled substance in order to be removed from further consideration in the hiring process;
- Confirmed that eligibility lists were valid for one year, but could be extended for up to an additional twelve months;

- Confirmed that, if a probationary employee is not notified prior to the expiration of the probationary period that his/her performance was not satisfactory, the applicant is deemed to have successfully completed the probationary period;
- Required physical agility testing on a pass/fail basis as part of the hiring process for patrol officers.

Rather than allowing any lead time for the amendments to become effective, each Act provided that it took effect immediately, but had no application to any appointment made prior to its effective date.

At first blush, these amendments would have appeared to be welcome news to municipalities seeking a change to the *Colella* decision. However, based upon their effective date, as well as problematic aspects to their provisions, they proved to create as many problems as they sought to remedy. At the outset, the legislation was unclear as to whether or not physical agility tests applied with equal force to entry-level positions, as they did to the promotional testing process. If they apply to the promotional testing process, what physical agility test is appropriate to give to an individual who might be operating in a supervisory position, as opposed to a purely patrol capacity? The final problem was that, in light of the immediate effective date, the practical effect of these amendments was to call into question appointments made after the effective date of the legislation unless the municipality had already anticipated the above changes and had rules which included the above provisions.

In an effort to address these issues, in November of 2011, Governor Rendell signed Acts 100 and 104. These amendments were intended, in essence, to "fix" the legislative "fix" attempted in 2010 to restore the status quo prior to the *Colella* decision. In each of these amendments, the General Assembly clarified that physical agility testing was required for entry-level positions, but that a municipality "may" require a physical agility test for promotional testing. In addition, Acts 100 and 104 required background checks for all entry-level appointments. However, most likely due to the cost of this important aspect of the hiring process, each Act allows the municipality to defer the background check until an eligibility list is created and then, a background check may be limited to the three or more individuals certified to the appointing authority as eligible for appointment.

In May of 2012, the General Assembly again passed Act 43, which addresses civil service issues for boroughs within the context of restating the entire borough code. With respect to civil service, Act 43 makes the following changes which only apply to boroughs:

- defines the offices which are incompatible with that of a police officer;
- requires alternate civil service commissioners for boroughs and also increases the minimum for quorum from two to three;
- addresses the interplay between the civil service commission and the borough regarding the appointment of a solicitor;
- outlines the time during which an individual may request a hearing before the civil service commission;
- refines the analysis on open meetings by the commission;
- clarifies the sequence of furloughs;
- adds an additional ground for suspending, demoting or terminating a police officer.

The above amendments do not impact first class townships; it remains to be seen whether similar legislation will be passed to address some of the above issues for first class townships (aside from the alternate commissioners/quorum issue which is already contained in the First Class Township Code.

Background Investigation

The background investigation has historically included many items in the context of hiring a police officer. With concerns regarding negligent hiring claims in the public sector, the background check continues to have significance within the civil service process. As set forth in the rules applicable to both townships and boroughs, if a municipality is going to include items such as a polygraph examination in the hiring process, it should be done as part of the background investigation. In this respect, the Pennsylvania General Assembly has lightened the financial burden and delay ordinarily attendant to completing the background investigation phase by allowing municipalities to limit the background investigation to the individuals on the eligibility list.

Historically, public sector employers have often utilized and relied upon so-called "credit checks" as part of the background investigation process. The basis for doing so has been the theory that an applicant's ability to pay his/her obligations, and the act of doing so on time, demonstrates responsibility and trustworthiness that will translate into a reliable police officer. Conversely, it has been argued that an applicant who has negative experience on his or her credit report, or where the report shows indebtedness significant enough to raise concerns of financial desperation, is more susceptible to corrupt behavior and other misconduct. Although it is not improper or necessarily impermissible to consider an applicant's credit worthiness as part of consideration of his overall suitability to perform the duties of a police officer, utilizing credit worthiness as a factor or the sole factor to conclude that a prospective employee failed the background investigation presents numerous pitfalls of which public employers must be aware.

At the outset, if the municipality is going to obtain a credit report from an applicant, and the municipality is going to have an outside vendor provide such a report, the Federal Fair Credit Reporting Act (FCRA) places numerous restrictions, limitations, and procedural requirements on the prospective employer. These include obtaining written authorization to obtain a credit report, disclosing to the applicant in advance that the reason that the prospective employer is considering taking adverse action is based upon the contents of the credit report, and providing an opportunity for the applicant to obtain a free copy of his or her credit report. In addition, the FCRA requires other standard disclosures to be made during the reviewing process, some of which depend on the type of report requested.

For instance, if a municipality is conducting a credit report itself, it should not begin such a process until the issue has been discussed with the municipal solicitor or special labor counsel. Failure to take the proper steps in obtaining a credit report will void the ability to take adverse action against the applicant and may also result in liability on the part of the prospective employer.

If the municipality will be hiring an outside entity to conduct the credit review and to report the results, it avoids the need for the municipality to directly provide many, but not all, of the disclosures set forth in the above paragraph. Many of those responsibilities are thus directed to the entity actually obtaining the credit report. However, municipalities should be cognizant of the release and disclosures utilized by such third parties. Specifically, a municipality should review such release to ensure that it releases not only the entity requesting the credit report from liability, but also the municipality itself.

In addition to the restrictions associated with obtaining and utilizing credit information under the FCRA, other practical issues also arise when considering whether to reject an applicant based upon their credit history. For instance, under Section 525 of the Federal Bankruptcy Code, 11 U.S.C. § 525, a public employer is expressly prohibited from denying employment to an applicant who has sought bankruptcy protection or against an individual who is currently proceeding through bankruptcy, nor may the employer consider the debts which were discharged or are sought to be discharged in a bankruptcy proceeding. Section 525 contains a similar provision which prohibits an employer from taking adverse action against a current employee on the same basis. The above provision of the bankruptcy code presents an issue for public sector employers who utilize credit scores as part of the hiring process. Specifically, in light of the provisions of Section 525 of the Federal Bankruptcy Code, a clear question is raised as to whether an employer should consider creditworthiness **at all**. Obviously, pursuant to Section 525, an employer cannot refuse employment solely because an applicant is going through or went through

a bankruptcy. That being the case, one can reasonably question whether a public employer may or should reject an applicant whose credit history, though not containing a bankruptcy, is poor. It seems counterintuitive to reject an applicant who has bad credit or significant debt yet is solvent when the municipality would not be able to reject that same individual if he or she was actually declared bankrupt or applied for bankruptcy protection.

An additional consideration in the utilization of credit scores is, presuming that they are valid measure of trustworthiness, what score is considered to be an acceptable score for an applicant? Is it a score over a certain threshold, *i.e.*, 700? Is it a score sufficient to qualify for a conventional mortgage were the applicant seeking to purchase a home? If the municipality does not rely solely on a credit score, what number of derogatory entries on the credit score will be acceptable? Is having one entry, regardless of the extent of delay in paying the bill, *i.e.*, 120+ days delinquent on a bill acceptable, is it the number of derogatory entries in a certain period of time or the overall indebtedness of the applicant which will govern? Moreover, relying upon any of the above factors as evidence of an applicant's trustworthiness, responsibility or suitability for employment is also problematic for another reason. Unless the municipality is prepared to run periodic credit checks on all of its existing employees, the premise that stellar credit or a lack of derogatory entries on a credit report is a necessary prerequisite for obtaining employment as a police officer or is an overall indicia of responsibility by an officer may ring hollow. For instance, if an employer rejects an applicant for having a credit score of 650, but yet retains employees who have credit scores below that level, it suggests that the use of the credit score may not be valid or, at a minimum, may not be sufficient evidence of trustworthiness or reliability on the part of the employee. Within the past three years, the Equal Employment Opportunities Commission (EEOC) has scrutinized employers' reliance upon credit history and credit worthiness in making employment decisions. In 2009, the EEOC unsuccessfully sued an employer in Maryland asserting that its practice of relying upon credit history information and certain other background check information in making employment decisions had a disparate impact on African-American, Hispanic and male applicants.

Moreover, in the case of an applicant who is a member of a protected class (age, sex, race, religion or national origin), although rejecting an applicant who has a credit score at or above those of current employees does not establish a discriminatory motive, at a minimum, it certainly suggests that the reasons relied upon by the employer in rejecting the applicant are either not valid or are simply a pretext for discrimination if current employees have worse credit scores and/or histories than the rejected applicant. Few, if any, municipalities run these types of credit checks on current employees. Thus, the potential for a claim of discrimination exists if a municipality relies upon credit worthiness or credit history as a sole basis for rejecting an applicant as part of the background investigation. Before enacting a policy with respect to the usage of credit scores or before rejecting an applicant based upon information contained in a credit report, the municipality should consult with its solicitor or special labor counsel.

The Increasing Role of Consortium Testing in the Civil Service Process

Within the last five to ten years, many municipalities have turned to so-called "consortium" or "pooled" testing as a way to alleviate the costs associated with administering aspects of the civil service process, most typically the written examination. Simply stated, this type of testing occurs when one or more municipalities get together and offer a single written examination with the results being sent to all participating municipalities and the results being treated as if that particular municipality offered a written examination and the applicant sat for the test. As noted above, pooled testing is also sometimes available on a county-wide basis.

Although consortium testing offers potential savings for municipalities, it does present some drafting and other considerations for municipalities that use this type of testing, particularly for the written examination. For example, in an effort to reduce the time and expense of other aspects of the background examination, many municipalities not only assign a percentage-based passing score for the written examination, *i.e.*, 70%, but also require that the applicant obtain one of the top scores on the examination, *i.e.*, the top 20 scores. The rationale for limiting the number of passing scores on the written examination has typically been to limit the number of background investigations which the municipality must conduct later.

Municipalities which elect to participate in a consortium should recognize and consider that, when setting a cut-off for the minimum number of passing scores on the written examination, applicants will also generally be applying to other departments as well. Thus, if the municipality sets the minimum number of passing scores too low, the municipality may end up with only five interested applicants/potential appointees if applicants elect to pursue opportunities from other municipalities. Depending upon the size of the consortium testing pool, it may be reasonable to limit the number of passing scores on the written examination to the top 30 to 40 passing scores. In light of the General Assembly's recent actions in permitting municipalities to limit background examinations to only those the individuals who appear on the eligibility list (or the certified list, in the case of boroughs), the issue of the cost of conducting a multitude of background examinations appears to have been alleviated.

In addition, the issue of the timing of challenges to written examination scores also becomes complicated when utilizing consortium testing. For instance, in cases where a municipality does not utilize a consortium, but rather tests on an individual basis, if a written score or a specific test question is challenged, the appeal process for that challenge is relatively straightforward. The applicant receives notice that his or her score was insufficient to meet the threshold for passing the written examination, and the applicant further receives instructions as to how to appeal that determination to the municipal civil service commission which administered the examination. Thus, an appeal occurs very soon after the administration and scoring of the test. However, in cases of some consortium testing, municipalities draft their rules to permit the usage of consortium tests which were administered in the months preceding the hiring advertisement. In such cases, factual events and recollections may not be fresh or precise. In addition, it is possible that an applicant has taken an appeal to another municipality's civil service commission. This raises the question of whether or not the municipality may be bound by a different commission's determination as to the validity of a particular written examination or the score produced therefrom.

The Role of Civil Service in Hiring Full-time Chiefs of Police

One of the only positions within a police department which is not always covered by civil service is the position of chief of police. In this respect, the position of chief of police is one of the few full-time ranks within a police department which may be an at-will position. The reason for this is that, in order to overcome the presumption of at-will employment in Pennsylvania, an employee must have a legally protected property interest in ongoing employment. In Pennsylvania, that can come from one of two different sources: inclusion in a collective bargaining unit which is covered by a contract with a so-called "just provision" or statutory job protection, either through Pennsylvania's Police Tenure Act or through a valid appointment pursuant to a bona fide civil service process.

Unlike the competitive testing process used to fill other full-time positions within a municipal police department, civil service status is typically conveyed upon a chief of police through non-competitive testing. See 53 P.S. § 55638; 53 P.S. § 46184(d) (providing that, in the case of a vacancy in the position of chief of police, the appointing authority **may** nominate a person to the commission for non-competitive testing). Once civil service status is afforded to a chief of police, that individual may not be suspended, demoted or terminated, except for one of the statutory reasons set forth in the applicable municipal code. See 53 P.S. § 55644; 53 P.S. § 46190. In the absence of such a referral, the employee remains an at-will employee, as to the position of chief of police.

The one notable exception to the above analysis came with the Commonwealth Court's recent decision in *Braun v. Borough of Millersburg*, 2012 Pa. LEXIS 2501 (Pa. Oct. 24, 2012). Pa. Commw. Ct. That case involved a challenge by a chief of police to the borough's action of furloughing him for economic reasons. In response, Braun filed a complaint alleging that he had statutory job protection, which protected him from furlough or discharge, except for the reasons outlined in Section 1190 of the Borough Code, 53 P.S. § 46190. The borough filed preliminary objections, asserting that Braun was an at-will employee. Specifically, the borough alleged that, because Braun was not hired through the civil service process, he did not have an employment agreement and was not included as part of the unionized workforce, he had no property right in continuing employment. Moreover, the borough further argued that, under the express language of Section 1190, chiefs of police were exempted from the furloughing sequence, *i.e.*, chiefs could be furloughed first, regardless of whether or not they were hired last. The court of common pleas agreed with the borough and sustained the borough's preliminary objections.

On appeal, the Commonwealth Court, reversed the lower court's decision. In so doing, the Court concluded that, regardless of whether or not Braun had civil service status bestowed on him, as the chief of police, he enjoyed the statutory protections of the civil service provisions of the Borough Code. Specifically, the Court held:

[53 P.S. § 46184(d)] provides that once Braun was appointed as Chief of Police, the only way he could be removed from that position was pursuant to 53 P.S. § 46190 which provides that "no person employed in any police ... force of any borough shall be ... removed except" and then it lists six reasons that the employee can be removed for cause. The only other way that a person employed by the police department can be terminated is under the second paragraph of this section which provides for reductions in force for economic reasons and provides that method by which the employees are selected for layoff. The Borough discharged Braun for budgetary reasons.

Braun, 2012 Pa. LEXIS 2501 (Pa. Oct. 24, 2012). A majority of the Commonwealth Court apparently construed Section 1184(d) of the Borough Code to provide that civil service protection applied by virtue of Braun being appointed as the chief of police, as opposed to him being referred for and successfully completing non-competitive testing before the civil service commission. At the time of publication, the borough was seeking review of this decision before the Pennsylvania Supreme Court. As a result, the Authors of this Publication suggest consulting with your solicitor or special labor counsel before taking any steps to furlough a chief of police.

Whether or not the municipality chooses to bestow civil service status on the holder of the chief of police position is largely up to the municipality. As with many decisions, there may be advantages and disadvantages to each approach. One of the main drivers of whether or not to provide civil service protection is typically compensation. Specifically, it is very common for a municipality to offer a candidate a lower compensation package with the promise that the candidate will receive civil service protections upon commencing employment. Conversely, employers may offer a candidate a more generous compensation package in exchange for accepting the inherent risk that the candidate could be terminated/removed from the position of chief of police for any or no reason at any time.

Unlike original and other promotional appointments, which must, at their outset, be done in strict compliance with the civil service provisions of the applicable municipal codes, as a general rule, a municipality's decision to bestow civil service status on an existing chief of police can be done at almost any time during the employee's employment. One notable exception to this rule was set forth in *Borough of Pitcairn v. Westwood*, 848 A.2d 158 (Pa. Commw. Ct. 2004). In that case, the Commonwealth Court concluded that an outgoing, "lame duck" borough council could not bestow civil service protection on its chief of police, thereby binding a subsequent board.

Another unique procedural issue arises in the case of the candidate for the position of chief of police who comes up through the ranks of the police department, but who does not receive civil service status for the position of chief of police. In such cases, by virtue of their appointment and subsequent promotion, the applicant retains civil service protections as to his/her last promotional ranks. However, the question invariably arises, if the employer is unhappy with the individual's performance as the chief of police and seeks to remove the person, what civil service rights are implicated by such action? In such cases, the individual is viewed as an at-will employee as to the position of chief of police. In other words, the individual has no property interest in remaining in the position of chief of police from one day to the next and can be removed from that position for any reason or no reason at all, so long as the offered reason is not discriminatory. However, if the municipality seeks to demote the employee below his/her last validly held civil service rank or remove the employee from the department completely, that action cannot be taken without satisfying one of the statutory reasons for such action under the applicable municipal code. In addition, upon taking such action, the employee so demoted or terminated may request a hearing before the civil service commission.

Veterans' Preference and Civil Service

One of the critical aspects of the civil service process is understanding the interplay between military service and civil service. Put simply, military service can impact both the initial hiring process, as well as the promotional process, in different ways.

The most obvious and prevalent way in which military service impacts the civil process is through the application of veterans' preference. Under the Pennsylvania Veterans' Preference Act, 51 Pa. C.S. § 7101-7109, applicants who have satisfied their military requirements of both training and service and meet the overall eligibility requirements for the civil service position, are entitled to both a mark-up on their final examination results, as well as preference over qualified non-veterans on the eligibility list, i.e., the employer must select the veteran over any non-veteran on the certified list of three applicants eligible for appointment.

Who is eligible for veterans' preference?

The starting point of the analysis of veterans' preference is who is entitled to preference? The short answer to that question is that "soldiers," are eligible for this benefit. Pursuant to Section 51 Pa. C.S. § 7101, a soldier is defined as follows:

a person who served or hereafter serves in the armed forces of the United States, or in any women's organization officially connected therewith, during any war or armed conflict in which the United States engaged and who was released from active duty under honorable conditions, other than from periods of active duty for training, or with an honorable discharge from such service, or a person who so served or hereafter serves in the armed forces of the United States, or in any women's organization officially connected therewith, since July 27, 1953, including service in Vietnam, and who has an honorable discharge from such service.

51 Pa. C.S. § 7101. Pursuant to Section to 51 Pa. C.S. § 7108, spouses of deceased or disabled soldiers may also claim veterans' preference, though the constitutionality and enforceability of this provision has never been analyzed by a Court.

"Military service" for veterans' preference purposes can be understood to contain two distinct periods: (1) a training period, i.e., basic training; and (2) a service period (active service is typically two years in duration and reserve service is typically six years in duration). However, as the above definition suggests, engaging in active military service or reserve service is only one aspect to veterans' preference, and an applicant is not required to have fought in active combat in order to claim veterans' preference. See *Sicuro v. City of Pittsburgh*, 684 A.2d 232 (Pa. Commw. Ct. 1996) (holding that National Card Service is sufficient to qualify as a soldier). Evidence of the completion of both of these requirements is satisfied by producing the form issued by the Department of Defense, documenting a separation from military service or completion of the training portion thereof. This form is referred to as a Department of Defense Form 214 or "DD-214" for short.

The nature and timing of an applicant's separation from duty can have an impact on the applicant's eligibility for veterans' preference. The Commonwealth Court has examined this issue on two occasions and it has reached somewhat varying conclusions on the issue. In *Sicuro*, a challenge was filed to the City of Pittsburgh's practice of awarding veterans' preference to individuals who had completed only the training component of their military service. The Court ultimately held that, in order to obtain veterans' preference, a candidate must establish that he/she completed both the training portion of the military commitment and either the active or reserve component before applying for the position. Accordingly, in light of the fact that the candidates at issue in the case had only completed their training and not their initial service commitment, they were not yet eligible to obtain veterans' preference. See *Herskovitz v. State Civil Service Commission*, 534 A.2d 160 (Pa. Commw. Ct. 1987).

More recently, however, in *Soberick v. Salisbury Township*, 874 A.2d 155 (Pa. Commw. Ct. 2005), the Commonwealth Court revisited this issue. In that case, Soberick was the top person on the eligibility list for appointment as a patrol officer. However, another person within the top three was awarded veterans' preference and received the appointment. The appointee had completed his full training component of his military service and nearly a year of active service before being honorably discharged from active service. On appeal, the Commonwealth Court held that the appointee was entitled to veterans' preference because he completed his training component, entered into active service and received an honorable discharge from that active service, notwithstanding the fact that the appointee did not complete his full initial service commitment. In reaching this conclusion, the Court noted that, nowhere in the definition of "soldier" under the Pennsylvania Veterans' Preference Act, does the statute provide that an applicant must have completed the full term of service, only that the applicant had received an honorable discharge from the service component, regardless of whether that component was active or reserve service. Applying the rules of statutory construction, the Court concluded that, had the General Assembly intended an applicant seeking civil service to complete the full initial service commitment before obtaining an honorable discharge, it could have done so. Although acknowledging statements to the contrary in *Sicuro*, the Court concluded that such statements were merely dicta.

A close reading of *Soberick* suggests that the Commonwealth Court would permit an individual who did not complete the full term of service, active or reserve, but who nonetheless received an honorable discharge, to receive veterans' preference. Before making any decisions regarding veterans' preference eligibility, the Authors suggest consulting your solicitor or special labor counsel.

In addition to satisfying the requisite training and service components, a veteran must have received an "honorable discharge" pursuant to the statute. However, discerning whether or not a separation was an honorable discharge can often be challenging given how the armed services often characterize individuals separation from the military. At one time, separations from the military were routinely characterized as either an honorable discharge or a dishonorable discharge. However, the more recent trend has been to parse out those categories using phrases such as "general discharge," "general discharge under honorable circumstances," and "general discharge under less than honorable circumstances," to name just a few. These characterizations often make it difficult for municipal officials to determine who is eligible for veterans' preference and who is not.

Aside from satisfying the military service requirements, a veteran must be qualified for the position. Specifically, the veteran must meet all of the minimum requirements necessary for appointment. Within the context of civil service, this means that the individual must pass all of the examinations required for appointment *i.e.*, written and oral examinations, physical agility test, background test, as well as appearing within the top three on the eligibility list. Lastly, a veteran, like all other applicants, must successfully pass the medical and psychological examinations that are performed within the context of the issuing of a conditional offer of employment. The failure of a veteran to meet all of the eligibility requirements means that, like any applicant, the veteran is removed from further consideration in the hiring process.

What Do Qualified Veterans' Receive Via Veterans' Preference?

As a general rule, veterans' preference encompasses two distinct benefits to those who qualify for it: (1) ten-points on the applicant's aggregated written and oral examination scores; and (2) preference over qualified non-veterans. As noted above, the veterans' preference points are added after the completion of all testing, at the point when the eligibility list is compiled. Thus, the points cannot be used to pass either the written or oral examination when the candidate fails to achieve the minimum passing score on either examination, which would otherwise create a lower passing score for veterans.

In What Circumstances Does Veterans' Preference Apply?

The full veterans' preference benefit (ten points + preference) is applicable to the civil service testing process only. *Sicuro; Housing Authority of Chester the County of Chester v. State Civil Service Commission*, 556 Pa. 621, 730 A.2d 935 (1999). Within the context of civil service, for entry-level appointments, veterans' receive the ten-point mark-up plus preference over non veterans. For entry non-entry-level appointments, whether or not veterans' preference applies depends upon the scope of the pool of applicants. If the applicants are all internal, then veterans' preference does not apply. See *Hoffman v. Township of Whitehall*, 544 Pa. 499, 677 A.2d 1200 (1996). If the pool of applicants are all external, then a veteran receives a ten-point markup plus preference over qualified non-veterans. *Housing Authority of Chester County*. It should be noted that, if more than one veteran finishes among the top three candidates certified to the appointing authority, then the appointing authority has the ability to select any of the veterans certified to it. No court has addressed the issue of the applicability of veterans' preference when the applicant pool is mixed, *i.e.*, both internal and external applicants.

Although outside of the scope of this publication, in the non-civil service context, veterans' preference applies, no ten-point mark-up is permissible even where an attempt is made to mirror a civil service testing process. *Brickhouse v. Spring-Ford Area School District*, 540 Pa. 176, 656 A.2d 483 (1995); *Zablow v. Board of Education of Pittsburgh School District*, 729 A.2d 124 (Pa. Commw. Ct. 1999). However, in the case of entry-level appointments and appointments from an all external applicant pool, qualified veterans receive preference over non-veterans. *Brickhouse; Zablow*. As in the civil service context, a veteran in an all-internal applicant pool receives no preference. *Bell Vernon Area School District v. Teamsters Local 782*, 670 A.2d 1201 (Pa. Commw. Ct. 1996). In a more recent case, the Pennsylvania Supreme Court reaffirmed that a veteran who is qualified for appointment in a non-civil service context is eligible for preference over similarly qualified non-veterans. See *Merrell v. Chartiers Valley School District*, 579 Pa. 97, 855 A.2d 713 (2004).

III. Model Civil Service Rules for First Class Townships in Pennsylvania

Sample Article 1. Definitions of Terms Used in these Rules

As used in both the "Definition" Section, as well as the body of these rules, the use of the pronouns "he," "his," "him" and the term "men" when used in these Rules include both the masculine and feminine genders.

Unless otherwise expressly stated, the following words and phrases, wherever used in these Rules, shall be construed to have the meaning indicated below:

Applicant: Any individual who applies, in writing and on the form prescribed by the Civil Service Commission, in response to a legally advertised notice of vacancy and/or examination for any position in the police department.

Alternate Commissioner: An individual appointed by the Township's Board of Commissioners to serve as an "Alternate Civil Service Commissioner." When seated, properly appointed alternate commissioners shall exercise the same powers, and shall fulfill the same duties, as properly appointed Civil Service Commissioners as set forth in the First Class Township Code.

Appointing Authority: This term is synonymous and interchangeable with the Board of Commissioners, [COUNTY], Pennsylvania, which is the duly elected governing body of the Township and possesses the legal authority to exercise executive control over the appointment, suspension, promotion and discipline of an employee covered by these Rules.

Explanatory Notes: Of course, any First Class Township that has obtained home rule status and renamed its governing authority (i.e. "Township Council") will need to eliminate and revise any references to "Board of Commissioners" throughout these Rules.

Certification: The Civil Service Commission's formal act of providing to the appointing authority the top three names from the eligibility list developed by the Civil Service Commission at the request of the appointing authority.

Chairperson: The Chairperson of the Civil Service Commission of [TOWNSHIP] Township, Pennsylvania.

Civil Service Rank (or "Rank): Any position of employment within the [TOWNSHIP] Police Department that has been obtained in strict compliance with the procedures set forth in these Rules and with respect to which there exists civil service protection.

Commission: The Civil Service Commission of [TOWNSHIP], Township, Pennsylvania.

Commissioner: An individual duly appointed by the Board of Commissioners of [TOWNSHIP] Township, Pennsylvania to serve as a member of the Civil Service Commission.

Eligibility List: The list of names of persons who have satisfied the minimum requirements for a position in the police department covered by these Rules and who have passed the written, oral and physical agility examinations.

Examination: Any test or investigation administered by the Commission or its designee as part of the process for assessing the merit and fitness of an applicant for an initial or promotional appointment covered by these Rules.

Furlough List: The list containing the names of persons separated from employment with the police department because of a reduction in the number of officers in the Department.

Medical Examination: Any examination, procedure, inquiry or test designed to obtain information about medical history or a physical condition which might disqualify an applicant if it would prevent the applicant from performing, with or without a reasonable accommodation, all of the essential functions of the position.

Paid Administrative Leave: A period of time where a police officer is directed by the Township not to perform his regular duties or regularly report for work, with continuing regular base pay and benefits, for any reason.

Patrol Officer: As utilized in these Rules, an entry-level, sworn full-time or part-time position in the police department. The appointing authority shall retain full discretion in determining which part-time patrol officer receives an offer of full-time employment. The number of hours worked on a daily, weekly, monthly or annual basis shall have no impact on an officer's civil service classification as a full or part-time police officer.

Physician: Any individual satisfying the definition contained in 1 Pa.C.S. § 1991 (relating to definitions).

Police Officer: Any uniformed police officer employed by the **[TOWNSHIP]** Police Department who has been appointed or promoted under these Rules regardless of rank.

Police Department: The **[TOWNSHIP]** Police Department.

Probationary Period: The period of time prescribed under these Rules during which the Township assesses whether a police officer's conduct and fitness in a civil service position has been satisfactory and during which time the appointment or promotion remains temporary and not protected by these Rules.

Psychological Examination: Any examination, procedure, inquiry or test designed to obtain information about medical history or psychological condition which might disqualify an applicant if it would prevent the applicant from performing, with or without a reasonable accommodation, all of the essential functions of the position from a mental or psychological perspective.

Qualified Medical Professional: An individual, in collaboration with or under the supervision or direction of a physician, as may be required by law, who is licensed: (1) as a physician assistant pursuant to the Act of December 20, 1985, known as the "Medical Practice Act of 1985," or the Act of October 5, 1978, known as the "Osteopathic Medical Practice Act"; or (2) as a certified registered nurse practitioner pursuant to the Act of May 22, 1951, known as "The Professional Nursing Law."

Reduction in Rank: A change from one civil service rank to a lower civil service rank covered by these Rules, where the police officer fulfilled all of the requirements for both civil service ranks. However, a decrease in salary without a change to a different position or rank shall not necessarily constitute a reduction in rank, nor does this term include discontinuance of a duty assignment or temporary assignment of rank made outside the scope of these Rules.

Removal: The permanent removal of a police officer hired in strict compliance with these Rules from the Police Department pursuant to Section 644 of the First Class Township Code, 53 P.S. § 55644.

Rules: The Civil Service Rules and Regulations of **[TOWNSHIP]**.

Secretary: The Secretary of the Civil Service Commission of **[TOWNSHIP]** Township, Pennsylvania.

Suspension: The temporary, unpaid removal of a police officer hired in strict compliance with these Rules from the Police Department pursuant to Section 644 of the First Class Township Code, 53 P.S. § 55644.

Sample Article 2. Commission Members and Operation

2.1 The Civil Service Commission

- (a) The Commission shall consist of three (3) commissioners who shall be qualified electors of the Township and shall be appointed by the appointing authority initially to serve for the terms of two, four and six years, and as terms thereafter expire shall be appointed for terms of six years.

Any vacancy occurring in the Commission for any reason whatsoever shall be filled by the Appointing Authority for the unexpired term within the period of thirty (30) days after such vacancy occurs.

Each member of the commission, before entering upon the discharge of the duties of their office, shall take an oath or affirmation to support the Constitution of the United States and of the Commonwealth of Pennsylvania and to perform their official duties with fidelity. No civil service commissioner shall receive compensation.

- (b) Alternate Commissioners. The appointing authority Commissioners may appoint no more than three qualified electors of the Township to serve as alternate members of the commission. The term of office shall be six years. When seated, an alternate commissioner shall be entitled to participate in all proceedings and discussions of the Commission to the same and full extent as provided by law for Commission members, including specifically the right to cast a vote as a voting member during the proceedings, and shall have all the powers and duties set forth in the First Class Township Code and as otherwise provided by law. Alternates shall hold no other office in the township. Any alternate may participate in any proceeding or discussion of the commission, but shall not be entitled to vote as a member of the Commission unless designated as a voting alternate member pursuant to Section 628 of the First Class Township Code.

EXPLANATORY NOTES

Section 626 of the First Class Township Code, 53 P.S. § 55626, was amended in 2002 to create the affirmative obligation to have alternate civil service commission members available in the case of absence/unavailability of the original commission members. This amendment was coupled with an amendment to Section 628 of the First Class Township Code, 53 P.S. § 55628, which increased the required number of commissioners for quorum from two to three. It is unclear as to why the General Assembly introduced these new requirements in 2002. The General Assembly did not include similar language in the Borough Code until May of 2012, when it was inserted into Act 43 of 2012. However, the new amendments did not simply incorporate the language of the First Class Township Code into the Borough Code, but rather, the General Assembly built on it somewhat, setting out not only the requirement of appointing alternate commissioners, but also defining how alternates, once appointed, are selected for use in cases. See Explanatory Comment to Article 2.1 of the civil service rules for boroughs.

Regardless of the motivation for doing so, the requirement of a quorum of three commissioners and the vote of a majority of two commissioners in order for action to be taken has at least one practical advantage. Under the prior version of Section 628, a commission could take action or consider an issue while having at least two of its three members. This led to the issue of 1-1 tie votes. The amendments eliminated that scenario.

2.2 Offices Incompatible with Civil Service Commissioner

No commissioner shall at the same time hold an elective or appointed office under the United States government, the Commonwealth of Pennsylvania or any political subdivision of the Commonwealth, except that one member of the Commission may be a member of the Board of Commissioners.

EXPLANATORY NOTES

Pennsylvania Appellate Courts have not considered in depth in the issue of who holds an "appointed office" in the civil service context. Obviously, establishing whether a commissioner or potential commissioner holds an elected office is more of a straightforward analysis. If the individual is subject to selection by the electorate on a state, county or local level, then the person holds an elective position. With respect to the issue of a commissioner holding an appointed office, the analysis is more complex.

The stated goal of this section has been to avoid the holding of dual offices by public officers, as opposed to public employees. See Commonwealth ex. rel. Foreman v. Hampson, 143 A.2d 369 (1958). Several different analysis have been utilized to distinguish between an appointed official and an employee, as the line can sometimes be blurred. For instance, in Alworth v. County of Lackawanna, 85 Pa. Super. 349 (1925), the Court noted that, if an employee is appointed to an office, established by law, for a definite term and whose duties are of significant public importance, and the individual is paid from the public treasury, then the employee is an appointed employee. Likewise, in Commonwealth v. Bionaz, 36 D. & C. 2d. 39 (1964), the Court noted that a critical distinction between an employee and appointed official is the vestige of sovereign authority in the individual, as well as the ability to exercise that authority independently.

2.3 Organization of Commission; Quorum

- (a) The Commission shall meet and organize on the first Monday of January of each even numbered year. Three members of the Commission shall constitute a quorum and no action of the Commission shall be valid unless it shall have the concurrence of at least two members. The Commission shall elect one of its members as the chairperson, one as the vice-chairperson and one as the secretary.
- (b) If, by reason of absence or disqualification of a member, a quorum is not reached, the chairperson shall designate as many alternate commissioners to sit on the Commission as may be needed to provide a quorum. Any alternate commissioner shall continue to serve on the Commission in all proceedings involving the matter or case for which the alternate was initially designated until the Commission has made a final determination of the matter or case at which time the alternate commissioner's appointment shall terminate. Designation of an alternate shall be made on a case-by-case basis in rotation according to declining seniority among all alternates. In the event that an alternate commissioner declines the appointment or is subject to disqualification, the next alternate commissioner in the rotation may be appointed. No action of the Commission shall be valid unless it shall have the concurrence of at least two members.
- (c) For purposes of hiring and promoting police officers under these Rules, each step of the hiring or promotional process requiring official action by the Commission shall be considered a separate "matter or case" under Subsection (b), above, and each step of the hiring or promotional process need not be voted upon or approved by the same composition of commissioners or alternate commissioners, as the case may be, provided that the quorum requirement has been satisfied.

EXPLANATORY NOTES:

The commission is required to reorganize each even-numbered year. To the extent that a commission fails to conduct such reorganization meeting, that inaction, by itself, does not render any subsequent action moot or a nullity. Rather, in light of the ministerial nature of the reorganization, the remedy for a commission's failure to properly and timely reorganize is to satisfy its statutory obligation and hold a reorganization meeting. A civil service commissioner who continues to serve beyond his or her initial term of office continues to serve as a de facto civil service commissioner unless and until replace or reappointed by the governing authority.

As noted in the Explanatory Notes to Article 2.2, concurrently with the 2002 amendments of the Civil Service Provisions of the First Class Township Code to include the use of alternates, the General Assembly also increased the number of commissioners required to achieve quorum from two to three. Thus, although only a majority of voting members, i.e., two of three, is necessary to take formal action, a quorum of three is necessary for a valid meeting. While there is no requirement that a township appoint alternate commissioners, such appointments enable a township to be more readily satisfy these heightened quorum requirements in the event a regular commission member is unavailable, declines participation or subject to recusal due to a conflict of interest or the inability to be impartial..

The First Class Township Code is silent on the manner in which alternates must be obtained or whether a township may maintain a list of individuals eligible for appointment as an alternate commissioner. As a practical matter, a township should create and maintain a list or database of individuals who are both eligible and willing to serve as alternate civil service commissioners in the event that alternates are needed in a particular case or proceeding.

2.4 Duties of the Chairperson

The chairperson, or in his absence, the vice chairperson, shall preside at all meetings and hearings of the Commission, decide all points of order or procedure and perform any duties required by law or these Rules.

2.5 Duties of Secretary

The secretary shall carry on at the direction of the Commission all official correspondence of the commission, send out all notices required by law and these Rules, keep a record of each examination or other official action of the commission, and perform all other duties required by law or these Rules. In addition, the secretary shall have charge of, and be responsible for, the safekeeping of the books, papers, and other property of the Commission.

2.6 Meetings

Except for the biennial organization meeting, all meetings shall be held either at the call of the chairperson or at the call of two members of the commission. The Commission shall have the discretion to determine whether meetings shall be open to the public when not specifically regulated by law or these Rules. The secretary of the Commission shall give each commissioner twenty-four (24) hours notice in writing of each and every meeting of the commission.

EXPLANATORY NOTES:

A civil service commission is considered to be an agency for purposes of Pennsylvania's Open Meeting Law or so-called "Sunshine Act." 65 Pa. C.S. §§ 701-716. Accordingly, unless the commission is conducting an executive session which is not open to the public, the commission must advertise any public meeting in accordance with Section 9 of the Sunshine Act, 65 Pa. C.S. § 709. In the case of an executive session, the commission may hold an executive session during a current, properly advertised meeting, or must either advertise or announce that they are holding an executive session on future date or announce at the next meeting the dates on which executive sessions were held following the previous meeting. See 65 Pa. C.S. § 708.

*This is a section of the civil service provisions of the First Class Township Code where it differs from the new provisions of the Borough Code. Specifically, the applicable section of the civil service provisions of the Borough Code expressly provide that hearings on disciplinary matters are expressly within the nature of an executive session and, therefore, are not open to the public. That change in the Borough Code was no doubt the result of the decision of the Commonwealth Court in *Day v. Civil Service Commission of Carlisle Borough*, 887 A.2d 793 (Pa. Commw. Ct. 2005), rev'd, 593 Pa. 448, 931 A.2d 1129 (2007), in which the Court held that, in the event that an employee requests that a hearing before a civil service commission remain open to the public, the commission lacks the discretion to deny such a request.*

2.7 Solicitor

The Commission's solicitor, if any, shall be as designated, and under the terms and conditions as may be approved, by the Board of Commissioners.

EXPLANATORY NOTES:

*Under Pennsylvania law, the commission has the authority to employ its own solicitor. See *Zoning Hearing Board of City of Uniontown v. City Council of Uniontown*, 720 A.2d 166 (Pa. Commw. Ct. 1998). In addition, practitioners should be aware that a solicitor who represents the appointing authority, i.e., the Board of Commissioners regarding an investigation or disciplinary action, cannot advise the civil service commission on that same issue if the disciplinary action is appealed to the civil service commission.)*

2.8 Clerks and Supplies

The Board of Commissioners shall furnish the Commission with such supplies and clerical assistance as may be necessary for the Commission to fulfill its duties. In addition, the Commission may retain counsel, and any other consultants or experts, including physicians and psychiatrists, as are necessary. The elected and appointed officials of the Township shall assist the Commission with all reasonable and appropriate efforts including compensation for any counsel or experts retained by the commission.

2.9 Amendment of Rules

The Commission may amend, revise, void or replace these Rules for any reason by action of a majority of the Commission at any properly convened meeting of the commission. Before any changes to these Rules become effective, those changes must be approved by the Board of Commissioners. These Rules, and any amendments thereto, shall be made available to the public for distribution or inspection.

EXPLANATORY NOTES:

Typically, an amendment to the commission's rules will be initiated at the commission level. Accordingly, to commence an amendment, the commission would adopt a resolution at a properly advertised public meeting. Once approved, this resolution would be forwarded to the Board of Commissioners for approval. Pursuant to the rules, the amendment becomes valid and effective only after approval by the Board of Commissioners. In addition, practitioners should recognize the non-existence of a "retroactive" amendment to civil service rules. Amendments only become effective prospectively and only apply to subsequent, as opposed to current hiring and/or promotional processes.

2.10 Minutes and Records

The Commission shall keep minutes of its proceedings and records of examinations and other official action. All records of the Commission shall be preserved and disposed of according to the Retention and Disposition Schedule for Records of Pennsylvania Municipalities issued by the Local Government Records Committee under the authority of the Municipal Records Act, 53 Pa. C.S.A. § 1381 et seq. Notwithstanding the above, all recommendations of applicants for appointment received by the commission shall be kept and preserved for a period of five (5) years.

With the exception of documents identified in Article 6.4(b) of these rules (relating to the sealing of the record where Commission does not uphold disciplinary charges against an officer), any and all records related to any disciplinary action filed with the Commission shall be open to public inspection subject to reasonable regulation. The secretary shall keep minutes of the Commission's proceedings showing the vote of each member upon each question. If the member is absent or fails to vote, the secretary shall indicate that fact in the minutes.

EXPLANATORY NOTES:

As referenced in the rules, the civil service provisions of the First Class Township Code generally provide that the commission's records regarding discipline and other matters involving the commission are open to public inspection. However, Section 645 of the First Class Township Code, 53 P.S. § 55645, provides that, in the event that a civil service employee contests a suspension, demotion or termination, and the commission fails to uphold the charges against the employee, then the record is to be sealed and not subject to inspection.

2.11 Investigations

The Commission shall have the power to make investigations concerning all matters relating to the administration and enforcement of these Rules. The chairperson of the Commission is authorized to administer oaths and affirmations for witnesses testifying in connection with such investigations.

2.12 Subpoenas

The Commission shall have the power to issue subpoenas over the signature of the chairperson, or designee, to require the attendance of witnesses and the production of records and papers pertaining to any investigation or inquiry, including any background investigation conducted pursuant to Article 4.9 of these Rules. The fees of such witnesses for attendance and travel shall be the same as for witnesses appearing in the courts and shall be paid from appropriations for the incidental expense of the commission.

All officers in public service and employees of the Township shall attend and testify when required to do so by the commission.

If any person shall refuse or neglect to obey any subpoena issued by the commission, upon conviction of such refusal or neglect in a summary proceeding, that person shall be sentenced to pay a fine not to exceed one hundred dollars (\$100), and in default of the payment of such fine and cost shall be imprisoned not to exceed thirty (30) days.

If any person shall refuse or neglect to obey any subpoena, the Commission may apply by petition to the Court of Common Pleas of [INSET NAME OF COUNTY] County for its subpoena, requiring the attendance of such persons before the Commission or the court to testify and to produce any records and papers necessary, and in default thereof shall be held in contempt of court.

2.13 Annual Report

The Commission shall make an annual report to the Board of Commissioners containing a brief summary of its work during the year and a full accounting for any expenditure of public monies. The annual report shall be available for public inspection.

EXPLANATORY NOTES:

The First Class Township Code requires the commission to make an annual report to the Board of Commissioners. This is required in order to justify the monies allocated to the commission each year for the operation of the commission. Obviously, many years, the commission will have little or nothing to report, based upon a lack of disciplinary hearings, hiring cycles and/or any other matters coming before the commission. Even if the commission has nothing to report, it should still file a report each year.

Sample Article 3. Procedures for Appointment and Promotion

3.1 Application for Examination

In order to be eligible for participation in any examination for any position with the police department, every applicant must submit a completed application form to the Commission before the deadline stated by the Commission for that specific examination. The applicant must make an oath or affirmation that the application is completed truthfully, and the applicant is subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

EXPLANATORY NOTES:

A recent trend in the last five to ten years has been the use of so-called "testing consortiums" to administer the written examinations for civil service communities. These consortiums represent the pooling of municipal resources in that an applicant may take one written examination and have the results sent to as many or as few members of the consortium as he wishes to have sent. By doing so, the individual municipalities reduce the expense of conducting individualized written examinations. Some potential drafting considerations in civil service communities which choose to utilize testing consortiums are discussed in the Introduction to this publication, as well as in the Explanatory Notes to Article 4.1.

Townships choosing to participate in testing consortiums should ensure that their civil service rules reflect the fact that applications can be either returned to the individual township or the testing consortium. See also Prefatory Comments Regarding Consortium Testing.

3.2 Non-Discrimination in Employment Decisions

The Township is an equal opportunity employer. It is the policy of the Township, Department and Commission to grant equal employment opportunities to qualified persons without regard to race, religion, color, national origin, gender, sexual orientation, age, veteran status, marital status or non-job related physical or mental handicap or disability. The Township, Department and Commission will provide equal opportunities in employment and promotion.

3.3 Availability of Applications

Application forms shall be available to all interested persons in the office of the Township police department, and from such other offices and officers that the commission, from time to time, may choose to designate. Application forms may be mailed upon written or telephone request. However, the Commission assumes no responsibility for missed filing deadlines due to a delay in the mail.

EXPLANATORY NOTES:

Municipalities which utilize testing consortiums to administer the written examination should ensure that this information is set forth in their rules and that the contact information for either obtaining or returning applications from the consortium.

3.4 Minimum Age For Application

All applicants must have reached their eighteenth (18th) birthday before the deadline for submitting completed applications.

EXPLANATORY NOTES:

The age of an applicant is an area where the township has a certain amount of discretion in establishing minimum qualifications for an applicant. As a general matter, most, if not all, civil service rules provide a minimum hiring age between 18 and 21. The theory of having a higher minimum age for appointment, i.e., 21, is that the township may get a more mature and focused applicant pool. However, townships should be aware that having a maximum age for application over age 40 would violate both Pennsylvania and federal law.

3.5 General Qualifications For All Applicants

Every applicant for any position in the police department shall possess a diploma from an accredited high school or a graduate equivalency diploma. In addition, every applicant must be a United States citizen, be physically and mentally fit to perform the full duties of a police officer, and, prior to appointment, possess a valid motor vehicle operator's license issued by the Commonwealth of Pennsylvania.

[OPTIONAL LANGUAGE INSERT # 1]: Applicants must also have completed and passed the police officers' training course approved by the Municipal Police Officers' Education and Training Commission (MPOETC) as set forth in 53 Pa. C.S. § 2161 et seq. at the time of examination.

[OPTIONAL LANGUAGE INSERT # 2]: Applicants must possess a minimum of 30 college credits (or Bachelor's Degree).

EXPLANATORY NOTES:

As with the minimum age requirement for application, establishing the general requirements for an entry-level patrol position are largely within the discretion of the township. The pivotal issue for many townships is whether or not to require that an applicant possess or, at a minimum, have successfully completed the course of training pursuant to Act 120. Successful completion of this course is a requirement in order to be lawfully employed as a police officer in Pennsylvania. The decision as to whether or not to require Act 120 training as a minimum qualification to apply for an entry level position has many ramifications and philosophies. Many elected officials believe that requiring Act 120 will provide a smaller applicant pool, but one which is nonetheless more experienced

and will require less training. In addition, some individuals point to the fact that, particularly in communities where the need for a police officer is immediate, then requiring Act 120 is desirable (the Act 120 certification courses include approximately 752 hours of training). In cases where the need for an officer on the street is immediate, it is likely that requiring Act 120 as a prerequisite of hiring is not practical as the candidate, once appointed, spends the next six to eight months attending the Act 120 classes before he can begin performing police duties.

Alternatively, if the need for additional officers is not imminent or can be managed in a different manner, not requiring Act 120 tends to provide a larger applicant pool from which municipalities can select. Proponents of not requiring Act 120 as a minimum requirement point to the fact that they get officers who are more trainable.

In addition to requiring or not requiring Act 120, many municipalities are now requiring some additional education over and above high school (or equivalent experience). This trend is a product of the current economic climate where many municipalities are experiencing larger responses to hiring announcements and, as a result, can afford to be more selective in their hiring decisions. As a result, these municipalities can also be more stringent in the requirements which they have to gain entry level employment in the police department. In addition, a practical aspect to the increase in educational requirements in the minimum hiring criteria is the view that a more educated officer will also be a more effective officer in the municipality.

Regardless of whether or not the municipality requires Act 120 certification or additional education as a minimum qualification, it must maintain those requirements through the then-current hiring process. For instance, if a municipality decides not to require Act 120 certification as a minimum requirement and ultimately ends up with an eligibility list on which two applicants have Act 120 and one applicant, who also happens to possess veterans' preference, does not have Act 120, the municipality cannot refuse to hire the veteran on the grounds that, unlike the other two applicants, the veteran does not possess Act 120. If this issue is not made a minimum requirement, it cannot be used later to defeat an otherwise lawful claim to the appointment through veterans' preference. For a more detailed discussion of veterans' preference, see the Explanatory Notes to Article 4.6.

After a hiring process is complete and before a new process begins, a municipality is free to change its minimum requirements for appointments. Also note that an additional set of minimum requirements exists for promotional appointments. See Article 3.6 and Explanatory Notes accompanying it.

3.6 General Qualifications For Promotional Appointments

- (a) In addition to satisfying the requirements for entry level appointment contained in 3.5, all applicants for a promotional position, except the position of chief of police, shall have not been suspended without pay for more than **[INSERT NUMBER OF DAYS]** days in the **[INSERT NUMBER OF YEARS]** years prior to the deadline for submitting applications. Any suspension to which the applicant has timely appealed pursuant to a contractual grievance procedure or these Rules shall be disregarded unless the appeal is resolved prior to the creation of the eligibility list.
- (b) All applicants shall have continuous prior service with the police department as follows:
 - (1) an applicant for the position of Corporal shall have a minimum of **[INSERT NUMBER OF YEARS]** years of service with the police department;
 - (2) an applicant for the position of Sergeant shall have a minimum of **[INSERT NUMBER OF YEARS]** years of service with the police department, including a minimum of **[INSERT NUMBER OF YEARS]** year as a Corporal within the police department; and
 - (3) an applicant for the position of Lieutenant shall have a minimum of **[INSERT NUMBER OF YEARS]** years of service with the police department, including a minimum of **[INSERT NUMBER OF YEARS]** years of experience as a Sergeant within the police department.

EXPLANATORY NOTES:

Before appointing an individual to a promotional rank within the police department, the township should ensure that the rank to be filled has already been created. If the rank does not exist, it must be created before any candidate may be appointed to fill such a position. Creating the position requires the commission to amend its rules to create the position, and the Board of Commissioners must subsequently vote to approve the amendment creating the position. See Explanatory Notes to Article 2.8. Municipalities should keep in mind that creating a position is a managerial right which does not trigger a bargaining obligation within any labor union. However, issues related to the creation of such a position, such as job responsibilities and compensation and other benefits provided to the holder of the position are bargain able issues which must be negotiated in a unionized workforce.

The minimum qualifications required to seek a promotional opportunity within the police department are a managerial right which is not subject to bargaining in a unionized workforce. See Fraternal Order of Police, Rose of Sharon Lodge No. 3, v. Pennsylvania Labor Relations Board, 729 A.2d 1278 (Pa. Commw. Ct.), petition for allowance of appeal denied, 560 Pa. 712, 743 A.2d 923 (1999). Accordingly, the length or type of experience required to apply for a promotional opportunity is up to the township. The language in this section reflects several areas where the township has discretion. The minimum experience required for each rank reflects the scenario where the municipality will promote from within, rather than seeking applicants from outside the department or using an applicant pool of both. In the case of utilizing a mixed or outside-only applicant pool, the municipality may require a certain minimum number of years of police service and/or experience in a police supervisory capacity.

The requirement that an applicant have a record which contains no more than a minimum number of days of suspension is designed to take into account an applicant's performance within the police department. Specifically, many townships have attempted over the years to provide applicants with "chief's points" or similar additional points on their examinations for receiving quality employee evaluations in the past. Although a township may insert provisions in their civil service rules that applicants for promotion receive a minimum evaluation score in the past evaluation period, the municipality cannot provide additional points on the civil service examination for such. The only instance where points are permitted to be added to an applicant's score is through veteran's preference. For a discussion of veteran's preference, see the Explanatory Notes to Article 4.6.

3.7 Rejection and/or Removal of Applicant

The commission may refuse to examine or, if examined, may refuse to certify as eligible after examination, any applicant who is found to lack any of the minimum qualifications for examination prescribed in these Rules for the position or employment for which he has applied, or who is physically unfit for the performance of the duties of the position to which he seeks employment, or who is illegally using a controlled substance, as defined in section 102 of the Controlled Substances Act (Public Law 91-513, 21 U.S.C. § 802), or who has been guilty of any crime involving moral turpitude or of infamous or notoriously disgraceful conduct, or who has been dismissed from public service for delinquency or misconduct in office, or who is affiliated with any group whose policies or activities are subversive to the forms of government set forth in the constitutions and laws of the United States and Pennsylvania.

(b) If, a recommendation is made to the commission that any applicant is to be rejected for the reasons set forth in subsection (a), then the commission shall, upon the request of the applicant, within ten (10) days appoint a time and place for a public hearing, with or without counsel, at which time the commission shall take testimony and review its refusal to provide examination or certification. Such hearing may be continued at the request of either the municipality or the applicant or by the commission, upon its own motion. The decision of the commission to remove from further consideration in the hiring process any applicant shall be final.

EXPLANATORY NOTES:

This Article incorporates several key aspects of the language changes made in the amendments to the civil service provisions of the First Class Township Code pursuant to Act 75 of 2010. Specifically, prior the passage of Act 75, as to the issue of drug usage, a municipality could only permissibly reject an applicant who was determined to be "addicted" to the use of drugs or alcohol. Although Act 75 attempted to clarify the standard on this issue, townships should be aware that, under the Americans With Disabilities Act, an employer may take action based upon "present"

drug use, but may not do so based upon previous drug use or the fact that an employee or applicant entered rehabilitation for drugs or alcohol. The problem, which typically arises in the background investigation stage is to determine what legally constitutes "present" drug or alcohol use as opposed to "previous" drug and alcohol use. In this regard, prior to rejecting any applicant for drug or alcohol use, a municipality should consult with its labor and employment counsel.

Typically, a rejection under this section can occur in one of several instances. First, an applicant submits an application which, on its face, evidences that the applicant does not possess the minimum qualifications for appointment. Second, an applicant who makes it through the required written and oral examinations is rejected based upon information which is discovered during the background investigation. Third, an issue can arise as to fitness for duty in the context of a conditional offer of employment. At this juncture, the municipality should be aware that, based upon the provisions of At 75 of 2010, the municipality is obligated to engage in the interactive process required under the Americans With Disabilities Act.

Subsection (b) of this Article also reflects a slight change from the statutory language regarding rejection of an applicant. Pursuant to Section 637 of the First Class Township Code, 53 P.S. § 55637, the Commission can refuse to examine and/or disqualify an applicant from further consideration in the hiring process. However, following that procedure results in the commission making the initial decision to recommend removal/rejection and, upon request of an aggrieved applicant, passing on the propriety of its initial decision. Such a scenario has the potential for challenge as a deprivation of the applicant's right to due process. Accordingly, this Section sets up a procedure whereby a recommendation is made to the commission of removal and, only after receiving evidence during a hearing, if requested, does the commission make a determination. This procedure avoids the constitutional issue raised in Copeland while still adhering to the procedures set forth in the First Class Township Code.

3.8 Recording and Filing Applications

Applications for positions in the police department shall be received at the Township Building [**OPTIONAL: "or at the offices of the municipal testing consortium"**] only after a hiring or promotional test has been properly advertised and before the deadline for receiving applications which must be set forth in the public advertisement. Applications will be received by the municipal officer designated in the public advertisement or that officer's designee. That person shall record the receipt of all applications and provide each applicant with notice of the time and place for the first portion of the testing procedure, the written examination. Any application containing material errors or omissions may, at the discretion of the commission, be returned to the applicant for correction prior to the deadline for filing applications, after which no new applications or amended applications will be accepted.

EXPLANATORY NOTES:

As with Article 3.1, if a municipality utilizes the services of a testing consortium, it should so indicate in its rules that applicants may file a copy of their application with the appropriate consortium.

3.9 Hearing for Disqualified Applicants

Any applicants or other persons who believe that they are aggrieved by a refusal to examine, a recommendation to remove the applicants or persons from further consideration or to certify him as eligible after examination, may request a hearing before the Commission within ten (10) days of receipt of such notice. Within ten (10) days after such request, the Commission shall designate a time and place for the hearing, which shall be conducted pursuant to the procedures set forth in the Local Agency Law, 2 Pa. C.S. § 101 et seq. The applicant or aggrieved party must make his request for a hearing in writing within ten (10) calendar days of the date when the party knew or should have known of the commission's challenged action. The Commission may continue this hearing at the request of the parties or upon its own motion.

[OPTIONAL: In the event that the Township utilizes the services of a consortium to administer its written examination, the time for filing a challenge to the score which the applicant receives on a written examination begins when the applicant receives the written score test result or notice of the results of the testing are posted by the consortium, regardless of whether or not the person or applicant has an application for employment pending with the Township. In the event that such an applicant or person requests a hearing regarding his written examination score, any previous decision of another municipal civil service commission addressing the propriety of the same written examination shall be persuasive, but not binding on the Township's civil service commission.]

EXPLANATORY NOTES:

See Explanatory Notes to Article 3.7. As with the prior Article, this Article sets for the appropriate hearing procedure for a rejected applicant. At such hearing, the municipality has the burden of proving that the applicant's rejection/removal was warranted. Although this Article references a ten-day time period in which to request a timely hearing, the first class township code does not yet contain such a requirement, unlike the Borough Code. See Explanatory Notes: to Article 3.9 in the section applicable to Boroughs. This ten-day limit was inserted by the General Assembly in Act 43 of 2012.

In addition, this Section also addresses the impact of consortium testing on the appeal process. Specifically, in some areas, an applicant may utilize the results of a written examination that was administered prior to the municipality announcing that it will be hearing. This practice presents two practical issues which are addressed in the above rule. The first one is, in such a situation, when must the applicant or person aggrieved file a request for a hearing. The model rule requires such a request to be made within ten days of the date on which the individual receives his test results or ten days from the date on which the consortium posts and such results. To have the hearing deadline flow from when the municipality actually begins the hiring process may result in the scenario under which months, even years, may elapse between the date on which the applicant receives his scores and the time in which the hiring cycle commences. During such time evidence may be lost and witnesses may begin to lose a precise recollection of the events, all of which puts all of potential litigants, particularly the township, at a disadvantage.

Likewise, this model rule also addresses the other practical issue which might arise in consortium testing when an applicant applies to more than one municipality. Specifically, in such a situation, the applicant who challenges his written examination test score before another municipality or may choose to do so with the belief that the civil service commission in the other municipality may be more sympathetic to his arguments. This raises the legal issue of whether or not the applicant can argue collateral estoppel or some other argument to assert that any favorable determination by another municipality regarding the propriety of the written examination is binding on the municipality. The model rule provides that any such decision by another municipal civil service commission is persuasive, but not binding on the township's civil service commission.

3.10 Public Notice

The Commission shall conspicuously post in the Township Building an announcement of the hiring or promotional testing and set forth the time and place of every examination, together with the information as to the type of position to be filled, the requirements for that position, where applications may be obtained, and the deadline for filing those applications. In addition, at least two weeks prior to the close of the application period, publication of the notice shall occur in at least one newspaper of general circulation or a newspaper circulating generally in the Township.

Sample Article 4. Examination Procedure and Scoring

4.1 General Examination Requirements for the Position of Patrol Officer

The examination for patrol officer will consist of a written and an oral examination which will be graded on a one hundred (100) point scale with the written examination representing sixty percent (60%) of the final score and the oral examination representing forty percent (40%) of the final score. In addition, each applicant shall undergo a physical agility examination and a background investigation (including a polygraph examination), which shall be graded on a pass/fail basis for every applicant. After an applicant has been extended a conditional offer of employment, final appointment shall be contingent upon the applicant passing a medical and psychological examination.

The Commission or its designee shall have the sole discretion to select all examinations to be used, provided that such examinations are practical in character and relate to such matters and include such inquiries as will fairly test the merit and fitness of the persons examined to discharge the duties of patrol officer.

The sequence for the above exams/investigation shall be as follows: (1) written examination; (2) physical agility test; (3) oral examination; (4) polygraph examination; and (5) background examination, included in which is a polygraph examination. Prior to the start of a new hiring process which will culminate in a new eligibility list, the Commission may change the sequence for the exams by resolution with the approval of a majority of Borough Council.

EXPLANATORY NOTES:

A township has the sole authority and discretion to determine the passing scores and weight assigned to the written and oral examinations. The authors suggest a weighting of the oral and written examination on a 60/40 basis. Obviously, examining each of these two aspects of the testing process, the written examination is almost entirely objective, while the oral examination is largely subjective. However, owing to the subjective nature of the oral examination, it also has the potential to reveal intangibles about an applicant which would include, but not be limited to, their presentation as an officer, their personality and ability to function within a group setting, their analytical skills and how they respond to a stressful situation. All of the above are relevant and important factors. They do not, however, warrant increasing the weight of the oral examination above 60%. Increasing the oral examination score above the 60% threshold can create perceived problems that are largely a function of the subjectivity of the oral examination. For instance, in such cases, it could create the perception that patronage or favoritism are driving the hiring process, motivations which the civil service process itself seeks to eliminate.

In addition, township officials and civil service commissioners should be aware that there are no set written or oral examinations required by the Township Code. The only requirements placed on the examinations is that they effectively and fairly measure the requirements for the position.

4.2 General Examination Requirements for Promotions

The examination for the positions of Corporal, Sergeant and Lieutenant shall include a written and an oral examination which will be graded on a one hundred (100) point scale with the written examination representing sixty percent (60%) of the final score and the oral examination representing forty percent (40%) of the final score. In addition, each applicant will undergo a physical agility test which will be graded on a pass/fail basis for every applicant. The Commission or its designee shall have the sole discretion to select all examinations to be used, provided that such examinations are practical in character and shall relate to such matters and include such inquiries as will fairly test the merit and fitness of the persons examined to discharge the duties of the promotional position sought by them.

EXPLANATORY NOTES:

The authors suggest a weighting of the oral and written examination on a 60/40 basis. Like the weighting of the examinations for original appointments, the authors suggest that neither the written or oral examination be weighted more than 60% nor less than 40%.

Note that the language regarding the requirement of a physical agility test and medical and psychological examinations are optional for promotional testing in this Section. Under Act 78 of 2010, the General Assembly permitted, but did not require, physical agility testing and medical and psychological testing as a prerequisite to a promotional appointment. With respect to physical fitness/agility, the only limitation from the General Assembly is that such testing be job related and consistent with business necessity.

Whether or not a borough views it as advantageous to require these components is largely a policy determination. If the applicant pool for promotional testing includes candidates from outside the police department, inclusion of these aspects of the promotional process make sense. Clearly, if the municipality has no history of the individual and no sense of the mental and physical fitness of the candidate, it is prudent to require these steps. However, in the case of internal candidates only, adding a physical agility and/or mental or physical examination may be of limited value. Moreover, it presents the practical issue of what to do with an officer who has been found mentally or physically incapable of performing a supervisory position. In most departments, supervisory roles tend to be less physically demanding than the role of the patrol officer.

4.3 Appointment of Examiners

The Commission shall appoint a written examination administrator, an oral examination administrator, a physical agility examiner, a medical examiner and a psychological examiner to conduct the appropriate examination required by these Rules.

4.4 Written Examination

The written examination shall be graded on a 100 point scale, and an applicant must score seventy percent (70%) or higher and receive one of the top 30 scores in order to continue in the application process. Applicants scoring less than seventy percent (70%) or not receiving one of the top 30 scores, including ties, shall be rejected. Within thirty (30) days after the administration of the written examination, all applicants shall be given written notice of their test results, and each passing applicant shall be informed of the next step in the examination process.

4.5 Oral Examination

Every applicant who scored seventy percent (70%) or higher on the written examination and who receives one of the top 30 scores, including ties, shall be given an oral examination that will be graded on a 100 point scale with a score of seventy percent (70%) or higher necessary for passing. The oral examination shall involve questioning applicants on how they would handle situations relevant to police work. Within thirty (30) days after the applicants' oral examination, they shall be informed of their oral examination and total overall scores, and each passing applicant shall be informed of the next step in the examination process.

4.6 Veterans' Preference Points

Pursuant to the Veterans' Preference Act, any applicant for the position of patrol officer who qualifies as a "soldier" under that Act, shall receive an additional ten (10) points on top of the combined, weighted written and oral examinations scores provided, however, that the applicant received the minimum scores necessary for passing the written and oral examinations as prescribed under Articles 4.1, 4.4 and 4.5. The ten (10) additional veterans' preference points may not be used under any circumstances to achieve a passing score on the written or oral examination. Any applicant claiming veterans' preference is responsible for providing any and all relevant documents to the Commission, which shall, at a minimum, include a form DD-214, no later than two business days immediately prior to the date of the written examination.

EXPLANATORY NOTES:

For a detailed discussion of who is eligible to receive veterans' preference points, see the Prefatory Comments to this Publication. As set forth in this Section, the applicant has the burden of establishing eligibility for veterans' preference. This will include producing a valid Department of Defense Form DD-214 which evidences completion of the required military service, as well as the required separation conditions. Also consult the Explanatory Notes to Article 5.1 regarding the timing of allocating veterans' preference points, as well as the reasons therefore.

4.7 Physical Agility Testing

An applicant for the position of police officer must successfully complete a physical agility test which is approved by the commission utilizing, inter alia, any recommendation of the Borough's Chief of Police. Such test shall be job-related, consistent with business necessity and designed to test physical agility components applicable to performing the essential duties of a Borough Police Officer.

EXPLANATORY NOTES:

The physical agility test is one of the more vexing aspects of the civil service hiring process. Specifically, finding a physical agility test which is both legally permissible and also a true measure of the requirements for a position is often challenging and has been made more so by the General Assembly's requirement in 2010 that all municipal police civil service testing processes include a physical agility test. However, absent from that requirement was any guidance as to what the physical agility test should be or how it should be administered.

As an example the Municipal Police Officers' Education and Training Commission (MPOETC) has promulgated a physical fitness program which requires running 300 meters, completing a bench press of weight prescribed by the applicant's weight, doing a prescribed number of sit ups in one minute and performing a 1.5 mile run. MPOETC's physical fitness protocol is factored by the age and sex of the individual performing the test. Obviously, the benefit of utilizing the MPOETC protocol would be that it is the standard utilized by the licensing agency for Pennsylvania police officers. However, questions still exist as to whether the MPOETC protocol would satisfy the requirements of testing the applicant's ability to perform the essential duties of a police officer.

In addition, many local police training centers and other testing agencies offer physical agility testing. In making the determination as to what specific type of test is utilized, boroughs may wish to receive input from their chief of police and should absolutely consult with their solicitor or labor counsel before making a decision.

4.8 Background Investigation

Any individual whose name appears on the Eligibility List and who successfully passes the polygraph examination shall thereafter be required to pass a background examination. The Commission shall request that the Chief of Police or the Chief's designee to conduct a background investigation. At the Commission's discretion, background investigations may be restricted to those candidates on the Eligibility List or those to be certified to Borough Council for appointment.

The background investigation shall include a polygraph graph examination, interviews with the individual's family, acquaintances, current and former employers, current and former neighbors, references, current and former teachers, and school officials. At a minimum, personal interviews shall be conducted with at least three (3) people that have personal knowledge of the individual but who are not related to the applicant [and with the individual's employer(s) for the past five (5) years]. The background investigation shall also include a criminal history check, including the submission of fingerprints to the Central Repository for the Commonwealth of Pennsylvania and the Federal Bureau of Investigation. The individual's credit history and record of criminal convictions shall also be investigated, as well as the individual's driving record for verification that he possesses a valid driver's license which has been free from suspension for the ten years preceding the date on which the individual applied for employment with the Borough. The individual may be interviewed directly when the information collected during the background investigation requires clarification or explanation.

If necessary to complete a thorough background investigation on any individual, the commission may, upon the request of the Chief of Police or his designee, subpoena the personnel records maintained by any other police department(s) by which the individual was previously employed.

After the background investigation is completed, the Chief of Police, or designee, shall make a written recommendation to the commission on whether the individual is appropriate for consideration for appointment as a police officer.

Appropriateness of the applicant shall be based on the criteria set forth in Article 3.5 and 3.7 of these Rules. This recommendation shall be in writing and, if the recommendation is to disqualify, then a written explanation of the reasons for disqualification must be included. The commission shall make the final determination on whether the information collected during the background investigation warrants rejection of the individual. Within thirty (30) days after the commission considers the recommendation of the Chief of Police or designee, each individual will be informed of whether he has passed the background investigation.

4.9 Polygraph Examination

- (a) The Polygraph exam shall be administered as part of the Background examination immediately prior to the Eligibility List being created and prior to the Commission certifying to the Board of Commissioners the names of the individuals eligible for appointment. Thus, when an entry level vacancy occurs, the top three individuals appearing on the Eligibility List for the position shall fill out a Personal Data Questionnaire and undergo a polygraph examination. The commission shall furnish each polygraph examiner with forms upon which the examiner shall state whether any of the relevant applicant's responses to questions from the applicant's Personal Data Questionnaire are deceptive. The report on each examination shall be submitted to the commission within five (5) days after the date of the examination.
- (b) The examiner shall ask questions based on the information contained in the Personal Data Questionnaire. Before administering the test, the examiner shall ask each relevant applicant whether there is any more information related to the Personal Data Questionnaire which the relevant applicant would like to provide. There shall also be a post-test review, during which the examiner shall again ask the relevant applicant, if deception is indicated, whether there is any information which the relevant applicant is withholding.
- (c) If the examiner shall deem any of the relevant applicant's responses to be deceptive, the examiner must tell the relevant applicant immediately and give the relevant applicant an opportunity to explain, deny or admit the deception. If the relevant applicant denies being deceptive or if the explanation is found unsatisfactory by the examiner, the relevant applicant will be given the opportunity to retake the test with a second examiner. Notice of the opportunity to retest shall be given in writing to the relevant applicant. The second examiner will not have access to the results of the first test prior to re-administering the polygraph. If the second examiner finds no deception, the relevant applicant will be considered as having passed the polygraph. If the second examiner also finds the relevant applicant deceptive, the applicant will be considered as having failed the examination.
- (d) An applicant who has failed both tests may appeal to the civil service commission for a third examination, and the decision to give the applicant an opportunity to take a third test resides solely within the discretion of the commission. If the applicant is awarded an opportunity to take a third test and passes, then the applicant will be considered as having passed the polygraph test. If the applicant is found deceptive on a third test, the applicant will be rejected.
- (e) Notwithstanding any other provision in this Section, an applicant who successfully passes the polygraph exam provided under this Section shall not be required to subsequently submit to a second polygraph examination at any point during the life of the same Eligibility List. Upon the expiration or voiding of the Eligibility List, if the applicant appears on a subsequent Eligibility List, the applicant will be required to again pass the polygraph examination herein provided.

Sample Article 5. Certification of the Eligibility List and Appointment

5.1 Creation of Eligibility List

At the completion of the examination requirements set forth in Sample Article 4, written examination, oral examination, and physical agility test, the commission shall rank all passing applicants on a list with the applicant receiving the highest score at the top of the list and the applicant receiving the lowest passing score at the bottom of the list. Applicants for patrol officer who qualify for veterans' preference points shall have those points added to their passing score prior to being ranked on the eligibility list.

For promotional positions, fulfilling the performance requirement set forth in Sample Article 3.6 is also required. In the case of tied scores, the tie will be broken by giving preference to the applicant who submitted a final completed application first. If both tied applicants submitted their complete applications on the same day, then the applicants shall be ranked in alphabetical order by surname.

The eligibility list will be valid for one year from the date the Commission ranks all passing applicants, assigns veterans' preference points and formally adopts the eligibility list. The Commission may, at its sole discretion, before the original expiration date, by a vote of the majority of the Commission at a duly authorized Commission meeting, extend the list for up to an additional twelve (12) months. The Commission may, at its sole discretion, void an eligibility list at any time for any reason.

5.2 Appointment of Previously Employed Officers in Certain Cases

In the event that no furlough list exists or a furlough list exists and the individuals on that list decline the opportunity for recall, the Board of Commissioners may, in its sole discretion, fill any vacancy in an existing position in the police department that occurs as a result of expansion of the police force, retirement, resignation, disability or death by the reappointment or reinstatement of a former employee of the police department who had been previously been appointed as a police officer in compliance with civil service procedures and who later separated in good standing with the Department. Except for medical and psychological examinations, no other testing shall be required for a furloughed, rehired, or reappointed employee, subject to any recertification requirements prescribed by the Municipal Police Officers' Education and Training Commission.

EXPLANATORY NOTES:

This Section represents a seldom-used tool available to boroughs who require an experienced police officer added to its police department or where its staffing needs are too immediate to commence a civil service hiring process from scratch. It should be noted, however, that this is a purely discretionary process enabling a municipality to swiftly hire a new police officer in lieu of a full-blown civil service process. Likewise, this provision may not be invoked if previously furloughed individuals still have a right of recall. Those former employees would have a right of first refusal before any non-furloughed, former officer could be reappointed.

In addition, a former employee who previously underwent the civil service hiring process at the same municipality does not have an automatic entitlement to a vacancy that may arise after being separated in good standing. The borough would still have the option of filling any such vacancy through the regular process established for initial civil service appointments.

Finally, it should be noted that in the context of hiring a former employee, questions often arise, such as seniority, starting salary, vacation, etc., that must first be negotiated with the incumbent police union. For example, will the officer receive credit for all prior service for salary and benefit purposes? Will the officer be treated as a new hire for pension purposes and, if not, what steps must be taken for the employee to purchase back their pension time? Will this create any type of precedent of past practice with respect to the union? Prior to utilizing this step in a unionized environment, a borough should ensure that these issues are addressed with its regular civil service appointment.

5.3 Original Appointments From A Valid Eligibility List

- (a) If the municipality cannot or does not fill any vacancy pursuant to Article 5.2, and no furlough list exists or if positions remain to be filled after all of the officers on the furlough list were offered reemployment, every position, except that of chief of police, shall be filled only in the following manner:
 - (1) The appointing authority of the Township shall notify the Commission of any vacancy which is to be filled and shall request the certification of three (3) names from the eligibility list;
 - (2) If three (3) names are not available, then the Commission shall certify the name(s) remaining on the list;
 - (3) The Board of Commissioners may make an appointment only from one of the three names certified with reference to the merits and fitness of the candidates. However, for initial appointment to patrol officer, when one of the three applicants on the certified list is a veteran, that applicant shall be selected.
- (b) The Board of Commissioners may object to one or more of the persons certified for the reasons set forth in Section 3.7 of these Rules. If the candidate to whom the Board of Commissioners objects fails to timely exercise the rights of appeal under Article 3.9, or if the Commission declines to uphold the appeal, the Commission shall strike the name of that candidate from the eligibility list and certify the next highest name for inclusion on the list of three candidates for each name stricken off.
- (c) Whenever the name of an eligible is certified to the appointing authority, he shall be notified at the address provided on the application for employment of such certification. The notice shall state that, unless the eligible, within five (5) days after receipt of such notice, notifies the secretary of the Commission that he is available for appointment, he shall be considered as having withdrawn himself from consideration for appointment to the vacant position. In the event that a person shall fail to notify the secretary of the Commission that he is available for appointment within five (5) days after receipt of such notice, and shall fail to give satisfactory reasons for his failure to report, his name shall be removed from the eligibility list.

5.3 Promotional Appointments

In the case of appointments to promotional positions, the Board of Commissioners may make an appointment from any one of the top three candidates, or less, if less than three names appear on the eligibility list. Candidates for promotional appointment shall not be subject to the physical agility, or medical and psychological examinations.

5.4 Appointment of Chief of Police

In the case of a vacancy in the office of chief of police, the appointing authority has full discretion in selecting the individual to fill the position of chief of police. If the appointing authority requests the Commission to subject that person to a noncompetitive examination, and if that person successfully passes the noncompetitive examination, then the Commission shall notify the appointing authority of the results of the examination. If, after receiving notice from the Commission that the candidate for chief is qualified, the appointing authority votes to bestow civil service status on that person, he may only be removed from the position of chief of police for the reasons set forth in Article 6.1.

5.5 Medical and Psychological Examinations

- (a) After the appointing authority selects a candidate from the certified list of three for appointment to the vacant position and makes a conditional offer of employment, that candidate shall submit to a medical examination and a psychological examination by the appropriate medical experts. If the candidate successfully passes the medical and psychological examinations, then that individual shall be appointed to the vacant position in the police department for which the application was submitted. The appointment shall be contingent upon successfully passing both the medical and psychological examinations.

- (b) In the event that the results of either the medical or psychological examination reveal that the candidate cannot perform the essential duties of the position, then the municipality shall engage in an interactive process pursuant to the Americans With Disabilities Act ("ADA") commission to determine if the candidate can identify an accommodation which would enable the applicant to perform the essential duties of a municipal police officer. The applicant shall have fourteen (14) days to identify in writing any such accommodations, which may be extended for good cause. In the event that the candidate either fails or refuses to identify such an accommodation, the municipality shall consider the candidate as having withdrawn from further consideration in the hiring process. If the candidate responds within the time allotted under this Article and identifies an accommodation, the Township shall consider whether or not such requested accommodation is reasonable as that term is utilized by the Americans With Disabilities Act.

In making such determination, the Township may require the candidate to undergo a further medical and/or psychological examination to determine the existence of a need for accommodation, the appropriateness of the accommodation requested, as well as the existence of any alternative accommodations which would permit the candidate to perform the essential duties of a police officer. If the Township determines that any requested accommodation is unreasonable, such determination shall be treated as a recommendation to the Commission that the applicant be removed from further consideration in the hiring process in accordance with these procedures. If it is ultimately determined that, through reasonable accommodation, the candidate can perform the essential duties of a police officer, then candidate shall receive the appointment.

In the event that the candidate's requested accommodation is determined to not be reasonable, then the municipality shall withdraw the conditional offer of employment, and shall proceed in accordance with subsection (c) of this Article.

- (c) In such an event, if an additional name exists at the top of the eligibility list the Commission shall, after the additional candidate successfully completes the background including any polygraph examination set forth in Article [INSERT NUMBER], include the additional name to again have a list of three names for the Board of Commissioners to consider. and consider the remaining names on the list. The Board of Commissioners shall proceed to offer a conditional offer of employment to an individual on the list certified by the Commission and proceed in accordance with this Article until a candidate who receives a conditional offer of employment is determined to be capable of performing the essential duties of a police officer, with or without a reasonable accommodation.

5.6 Probationary Period

Every successful applicant to the position of patrol officer or to a promotional position with the police department shall serve a **[INSERT TIME PERIOD NO LESS THAN SIX MONTHS AND NO LONGER THAN ONE YEAR]** probationary period. During the probationary period, a newly hired officer shall be considered to be an at-will employee and shall not have the protections of civil service status nor a right of appeal under these rules in the event of suspension or termination during the probationary period. A promoted officer, during probation, shall not have the protections of the civil service status of his new rank during the probationary period and may be returned to a prior rank at any time during the probationary period, for any reason or no **reason at all. However, at the end of the [INSERT TIME PERIOD NO LESS THAN SIX MONTHS AND NO LONGER THAN ONE YEAR]** year probationary period, if the conduct of the probationer has not been satisfactory to the Board of Commissioners, the probationer shall be notified in writing that the appointment will not be permanent. At that time, a newly hired officer's employment shall end, and a promoted officer shall return to his previous rank. Any officer who is not informed in writing that his performance has been unsatisfactory prior to the end of the probationary period shall receive a permanent appointment to the new position. Any probationer who is notified in writing that his appointment will not be made permanent has no right of appeal under these Rules.

EXPLANATORY NOTES:

Pursuant to the civil service provisions of the First Class Township Code, a township has the authority to set a probationary period of no less than six months and no more than one year during which to evaluate the performance of a newly appointed or newly promoted officer. However, prior to setting the probationary period for a promotion or a new appointment, the municipality should review any applicable collective bargaining agreement to determine if the parties have agreed upon a length of the probationary period.

In the event that the applicable collective bargaining agreement does not contain a probationary period, and the municipality is selecting one, it should be cognizant of whether or not it may be appointing candidates without Act 120 training, and the impact of such training on the probationary period. Specifically, the Act 120 course of training can last upwards of eight months. Accordingly, in the case of a probationary period of twelve months in duration, the first eight months would be exhausted by the applicant attending Act 120 courses. To address this issue, municipalities may choose to insert language in their civil service rules that has the probationary period begin at the later of: (1) the date on which the employee is appointed by the township as a police officer; or (2) the date on which the applicant successfully completes Act 120 training.

The language in this Article also reflects the revisions of this section of the First Class Township Code through Act 75 of 2010 which expressly provides that, in the event that a probationary employee is not told that his probationary employment is ended prior to the expiration of the probationary period, then the employee is deemed to have successfully completed the probationary period and, therefore, he becomes tenured under the civil service rules.

*During the probationary period, an employee is considered to be an at-will employee, subject to termination without the right to demand a civil service hearing or a hearing pursuant to the Local Agency Law, 2 Pa. C.S. § 551 et seq. This principle was confirmed in the Commonwealth Court's decision in *Olson v. Borough of Avalon*, 811 A.2d 66 (Pa. Commw. Ct. 2002). In that case, the Commonwealth Court held that, although Section 1186 provided some minimum restrictions on the reasons which a probationary employee's employment could be terminated, i.e., use of alcohol, illegal drugs or for open or notoriously disgraceful conduct, such limitations were not so strict as to convey any meaningful expectation of ongoing employment, either during or at the end of the probationary period. Thus, if a probationary employee is terminated, he enjoys no right to a hearing under the civil service provisions of the First Class Township Code or under the Local Agency Law.*

*As to the standard for removing/rejecting a probationary employee, much confusion exists as to what constitutes "open and notoriously disgraceful conduct." Many municipal officials mistakenly believe that this phrase connotes a lofty standard for rejecting a probationary police officer. In *Scott v. Winschel Township*, 692 A.2d 637 (Pa. Commw. Ct. 1997), the Commonwealth Court examined this issue. In holding that a municipality need not establish or allege that a probationary police officer was **convicted** of a crime involving open and notoriously disgraceful conduct, the Court held that the officer's conduct, including reading a newspaper while on duty, failing to properly investigate a crime scene and abusing sick leave all satisfied the statutory standard for rejection of the probationary officer.*

5.7 Provisional Appointments

Whenever there are urgent reasons for the filling of a vacancy in any position in the police department and there are no names on the eligibility list for such appointment, the Board of Commissioners may nominate a person to the Commission for noncompetitive examination. Such nominee may be certified by the Commission as qualified after such noncompetitive examination and may be appointed provisionally to fill such vacancy. It shall thereupon become the duty of the Commission within three weeks to hold a competitive examination and certify an eligibility list and a regular appointment shall then be made from the name or names submitted by the Commission — provided, however, that nothing within this section shall prevent the appointment, without examination, of persons temporarily as police officers in cases of riot or other emergency.

Sample Article 6. Suspensions, Removals and Reductions in Rank

6.1 Grounds for Disciplinary Action

- (a) No person appointed to a position in the police department pursuant to these Rules may be suspended without pay, removed or demoted from a rank governed by these Rules except for the following reasons:
 - (1) physical or mental disability affecting the officer's ability to continue in service, in which case the officer shall receive an honorable discharge from service;
 - (2) neglect or violation of any official duty;
 - (3) violation of any law of this Commonwealth which provides that such violation constitutes a misdemeanor or felony;
 - (4) inefficiency, neglect, intemperance, disobedience of orders or conduct unbecoming an officer;
 - (5) intoxication while on duty; or
 - (6) engaging or participating in or conducting of any political or election campaign other than the officer's exercise of the right of suffrage.
- (b) No officer shall be removed for religious, racial or political reasons.
- (c) A statement of any charges made against any officer so employed shall be furnished to the officer within five (5) days after those charges have been adopted by the Board of Commissioners.

6.2 Furloughs

- (a) If for reasons of economy or other reasons, it shall be deemed necessary by the Township to reduce the number of full time police officers in the department, then the Township shall apply the following procedure: (1) if there are any employees eligible for retirement under the terms of any retirement or pension law, then such reductions in numbers shall be made by retirement of such employees starting with the oldest employee and following in order of age respectively; (2) if the number of full time police officers eligible for retirement is insufficient to effect the necessary reductions in numbers, or if there are no persons eligible for retirement, or if no retirement or pension fund exists, then the reductions shall be effected by furloughing the person or persons including probationers, last appointed to the force.
- (b) Such removal shall be accomplished by furloughing in numerical order commencing with the person last appointed until such reduction has been accomplished. In the event that the appointing authority decides to increase the size of the police department, the furloughed officers shall be reinstated in order of their seniority in the department if the furloughed officer accepts reinstatement in writing within thirty (30) days of receiving notice of the opening. These reduction in force provisions are not applicable to the chief of police.

EXPLANATORY NOTES:

This is an example where following the municipal code results in engaging in conduct prohibited by federal and state law. Specifically, targeting employees for furlough by virtue of their age would violate both the Age Discrimination in Employment Act (ADEA), as well as the Pennsylvania Human Relations Act (PHRC). Although the General Assembly addressed this issue in the 2012 restatement of the Borough Code, no such amendment has been passed with respect to the First Class Township Code.

*The only statutory restriction placed upon a municipality's authority to furlough officers is that such action be taken in good faith. See *Daugherty v. Lillie*, 426 A.2d 1232 (Pa. Commw. Ct. 1981). Thus, a municipality need not be financially distressed for it to have good faith "reasons of economy or other good reasons." However, for a reduction in force to be considered to be in good faith, it must nonetheless result in a reduction of force. This does not foreclose the possibility of utilizing part-time officers after a reduction in full-time officers may be utilized so long as the total number of hours of police protection provided actually decreases through a reduction in force. See *Forty Foot Borough v. Kozich*, 669 A.2d 469 (Pa. Commw. Ct. 1995).*

Before implementing a furlough, a municipality should also consult any applicable collective bargaining agreement to determine if any prohibitions or restrictions exist on furloughs in general or, alternatively, whether the collective bargaining agreement dictates the manner in which furloughs must occur. Although they are not advisable, some labor contracts have “no-layoff” or so-called “minimum manning requirements which obligate the municipality to maintain a minimum number of officers. In such cases, questions exist as to whether or not a municipality could effectuate a furlough as, although it would not violate the civil service provisions, it would violate the applicable collective bargaining agreement. Typically, under such contracts, furloughs are effected in order of reverse seniority with the last individual hired as a patrol officer being the first person subject to furlough.

Also note that the civil service provisions of the municipal codes do not provide for the right of a civil service hearing for a furloughed police officer. As noted above, practitioners should be aware of any provisions in a collective bargaining agreement which might provide grounds to challenge a furlough. In addition, a furloughed officer or the officer’s police union may challenge a furlough by filing an unfair labor practice charge with the Pennsylvania Labor Relations Board asserting that the furlough was the result of anti-union animus.

6.3 Notice of Suspensions, Removals or Reductions in Rank

Whenever a police officer is suspended without pay, removed or reduced in rank, the specific charges warranting such actions shall be stated in writing by the Board of Commissioners. The charges shall be stated clearly and in sufficient detail to enable the officer to understand the charges and to allow the officer an opportunity to respond to those charges. The charges shall specify the subsection of Article 6.1 which provides the basis for the disciplinary action as well as an explanation of the factual circumstances upon which the appointing authority relied in finding a violation of Article 6.1.

Within five days after the Board of Commissioners has voted to impose the disciplinary action, a written statement of the charges shall be delivered to the officer either by personal service or by certified and registered mail. In addition, the charges shall notify the officer of the right to appeal under Article 6.4 of these Rules. A copy of the statement of charges shall also be served upon the members of the Civil Service Commission.

EXPLANATORY NOTES:

*A common mistake made by municipalities is including incomplete or insufficient information in the disciplinary notices which it issues. This is particularly the case in police departments where, in addition to civil service rules and regulations, the department is also regulated by its own Standard Operating Procedures (SOPs) or other code of conduct. Although citation to an internal code or manual which regulates conduct and proscribes different aspects of misconduct is permissible, the critical information contained in a notice of suspension, demotion or termination must include an explanation of the factual circumstances giving rise to discipline and a citation to one of the six reasons set forth in the civil service provisions of the first class township and borough codes for disciplining a police officer. See *Aston Township v. Morey*, 503 A.2d 114 (Pa. Commw. Ct. 1986); *Danner v. Bristol Township Civil Service Commission*, 440 A.2d 702 (Pa. Commw. Ct. 1982).*

6.4 Hearings on Suspensions, Removals and Reductions in Rank

- (a) The officer who has been suspended, removed or reduced in rank may appeal the decision of the appointing authority by written notice to the secretary of the Commission at **[INSERT ADDRESS]** requesting a hearing. This request shall be received by the Commission within ten days after the officer received notice of the discipline. The officer may make written answers to any charges filed not later than the date fixed for the hearing. Failure of the officer to provide written answers to any of the charges shall not be deemed an admission by the officer.
- (b) The Commission shall schedule a hearing within ten days of the officer’s written request for a hearing, unless continued by the Commission for cause at the request of the commission, the Board of Commissioners or the officer. At any such hearing, the officer against whom the charges have been made may be present and represented by counsel, may call witnesses and present testimony and documentation in his defense. The Township may also be represented by counsel, call witnesses and present evidence as is necessary to support the charges. A stenographic record of all testimony shall be taken at every hearing and preserved by the commission. In the event the charges are dismissed, the record shall be sealed and not be available for public inspection.

- (c) In conducting the hearing, the commission's standard of review shall be to determine whether sufficient evidence has been presented to support the statutory reason for the disciplinary action. If the Commission finds that sufficient evidence has been introduced to support the charge, the Commission shall not modify the penalty imposed by the Board of Commissioners unless it finds that the penalty imposed was arbitrary, discriminatory or an abuse of the Board's discretion. In considering the appropriateness of the discipline, the Commission shall not substitute its judgment for that of the Board of Commissioners. The Commission may request post-hearing briefs, and shall issue a written decision containing specific findings of fact and conclusions of law within sixty (60) days of receipt of the hearing transcript.

6.5 Hearing Procedure

- (a) All testimony shall be given under oath administered by the chairperson, or in absence of the chair, the vice chairperson. The Commission shall have the power to issue subpoenas as set forth in Article 2.11. The hearing shall be open to the public unless, prior to the commencement of the hearing, a written or oral request to close the hearing is agreed to by the charging officer at his request or at the request of the Township, and the Commission decides to honor that request.
- (b) If the Commission sustains the charges, the officer who was suspended, removed or reduced in rank may file an appeal with the Court of Common Pleas within thirty (30) days from the date of entry by the Commission of its final order. No order of suspension without pay shall be made by the Commission for a period longer than one year. In the event that the Commission fails to uphold the charges, then the person sought to be suspended, removed or demoted shall be reinstated with full pay for the period of the suspension without pay, removal or demotion, and no charges related to the suspension, removal or reduction in rank shall be officially recorded in the officer's record.

EXPLANATORY NOTES:

For the purposes of appellate review of the commission's decision and in compliance with the Local Agency Law, the commission's decision should include findings of facts, conclusions of law, as well as a discussion of any legal issues addressed by the commission. In addition, although the commission may meet to discuss the issues implicated by its decision in executive session outside of the public, the decision to issue any decision must occur at a properly advertised public meeting, and the vote by commission members to approve and to issue the decision must likewise be public.

*One of the issues that confronts a civil service commission is whether or not to allow a civil service hearing to be open to the public. Obviously, depending on the nature of the allegations made against an officer, either the officer or the municipality may wish to have the proceedings closed to the public. However, commission members and solicitors should be aware of the decision of the Pennsylvania Commonwealth Court in *Day v. Civil Service Commission of Borough of Carlisle*, 887 A.2d 793 (Pa. Commw. Ct. 2006), rev'd, 593 Pa. 448, 931 A.2d 646 (2007). In that case, the Commonwealth Court reversed a lower court order and set aside a decision of the lower court upholding the termination of a police officer because the civil service commission failed to honor the officer's request for an open hearing. In doing so, the Commonwealth Court held that the commission's decision to deny the request for an open hearing violated the officer's due process rights and also constituted a violation of Section 704 of Pennsylvania's Sunshine Law 65 Pa. C.S. § 704. Although the Supreme Court ultimately reversed the portion of the Commonwealth Court's decision regarding the Sunshine Act because it concluded that the complaint regarding the Sunshine Act violation was untimely, the Supreme Court did not address the Commonwealth Court's remaining analysis that an employee is entitled to request an open proceeding at any point in time in which his employment is discussed by a public body. Although the General Assembly has amended the provisions of the Borough Code to provide that hearings are in the nature of an executive session, no such amendment has been made to the First Class Township Code. In an abundance of caution, a township civil service commissions may wish to pursue a practice under which hearings are presumed open to the public unless the officer expressly agrees to have the proceeding closed.*

*In addition, practitioners should be aware that, although the civil service provisions of the borough and first class township codes still contain a sixty (60) day appeal period for appeals taken from a civil service commission, as the result of the Judiciary Act Repealer Act (JARA), 42 Pa. C.S. §§ 20001-20004, the appeal period was reduced to thirty (30) days. Accordingly, a thirty-day appeal period is the appropriate standard. See *In Re Foraker*, 503 A.2d 1024 (Pa. Commw. Ct. 1986).*

Sample Article 7. Resolution for Adoption of Rules

The foregoing Civil Service Rules, which are in accordance with powers granted by the civil service provisions of the First Class Township Code, enacted by the General Assembly of the Commonwealth of Pennsylvania and in accordance with the authority granted by the municipal governing body of **[INSERT NAME]** Township, Pennsylvania, are hereby adopted by the Civil Service Commission of **[INSERT NAME]** Township, Pennsylvania on **[INSERT DATE]**.

Chairperson

Vice-Chairperson

Secretary

Approved by the Board of Commissioners of **[INSERT NAME]** Township, **[NAME OF COUNTY]**, Pennsylvania on **[INSERT DATE]**.

ATTEST:

SIGNED:

Municipal Secretary

President, Board of Commissioners

IV. Model Civil Service Rules for Pennsylvania Boroughs

Sample Article 1. Definitions of Terms Used in These Rules

As used in both the "Definition" Section, as well as the body of these rules, the use of the pronouns "he," "his," "him" and the term "men" when used in these Rules include both the masculine and feminine genders.

Unless otherwise expressly stated, the following words and phrases, wherever used in these Rules, shall be construed to have the meaning indicated below:

Applicant: Any individual who applies in writing and on a form prescribed the Civil service Commission in response to a legally advertised notice of vacancy and/or examination for any position in the police department.

Alternate Commissioner: An individual appointed by the Borough Council to serve as an "Alternate Civil Service Commissioner." When seated, properly appointed alternate commissioners shall exercise the same powers, and shall fulfill the same duties, as properly appointed Civil Service Commissioners as set forth in the Borough Code.

Appointing Authority: This term is synonymous and interchangeable with the [INSERT NAME OF BOROUGH] Borough, [COUNTY], Pennsylvania, which is the duly elected governing body of the Borough and possesses the legal authority to exercise executive control over the appointment, suspension, promotion and discipline of an employee covered by these Rules.

Certification: The Civil Service Commission's act of providing to the appointing authority the top three names taken from the eligibility list developed by the Civil Service Commission at the request of the Appointing Authority.

Chair: The Chair of the Civil Service Commission of [INSERT NAME OF BOROUGH] Borough, Pennsylvania.

Civil Service Rank (or "Rank): Any position of employment within the [BOROUGH] Police Department that has been obtained in strict compliance with the procedures set forth in these Rules and with respect to which there exists civil service protection

Commission: The Civil Service Commission of [INSERT NAME OF BOROUGH], Borough, Pennsylvania.

Commissioner: An individual duly appointed by the Borough Council of [INSERT NAME OF BOROUGH], Pennsylvania to serve as a member of the Civil Service Commission.

Eligibility List: The list of names of persons who have satisfied the minimum requirements for a particular position in the police department covered by these Rules and who have passed the written, oral and physical agility examinations.

Examination: Any test or investigation administered by the Commission or its designee as part of the process for assessing the merit and fitness of an applicant for an initial or promotional appointment covered by these Rules.

Furlough List: The list containing the names of persons separated from employment with the police department because of a reduction in the number of officers in the Department.

Medical Examination: Any examination, procedure, inquiry or test designed to obtain information about medical history or a physical condition which might disqualify an applicant if it would prevent the applicant from performing, with or without a reasonable accommodation, all of the essential functions of the position.

Paid Administrative Leave: A period of time where a police officer is directed by the Township not to perform his regular duties or regularly report for work, with continuing regular base pay and benefits, for any reason.

Patrol Officer: As utilized in these Rules, an entry-level, sworn full-time or part-time position in the police department. The appointing authority shall retain full discretion in determining which part-time patrol officer receives an offer of full-time employment. The number of hours worked on a daily, weekly, monthly or annual basis shall have no impact on an officer's civil service classification as a full or part-time police officer.

Physician: Any individual satisfying the definition contained in 1 Pa.C.S. § 1991 (relating to definitions).

Police Officer: Any uniformed police officer employed by the [TOWNSHIP] Police Department who has been appointed or promoted under these Rules regardless of rank.

Police Department: The [INSERT NAME OF BOROUGH] Borough Police Department.

Probationary Period: The period of time prescribed under these Rules during which the Borough assesses whether a police officer's conduct and fitness in a civil service position has been satisfactory and during which time the appointment or promotion remains temporary and not protected by these Rules.

Psychological Examination: Any examination, procedure, inquiry or test designed to obtain information about medical history or psychological condition which might disqualify an applicant if it would prevent the applicant from performing, with or without a reasonable accommodation, all of the essential functions of the position from a mental or psychological perspective.

Qualified Medical Professional: An individual, in collaboration with or under the supervision or direction of a physician, as may be required by law, who is licensed: (1) as a physician assistant pursuant to the Act of December 20, 1985, known as the "Medical Practice Act of 1985," or the Act of October 5, 1978, known as the "Osteopathic Medical Practice Act"; or (2) as a certified registered nurse practitioner pursuant to the Act of May 22, 1951, known as "The Professional Nursing Law."

Reduction in Rank: A change from one civil service rank to a lower civil service rank covered by these Rules, where the police officer fulfilled all of the requirements for both service ranks. However, a decrease in salary without a change to a different position or rank shall not necessarily constitute a reduction in rank, nor does this term include discontinuance of a duty assignment or temporary assignment of rank made outside the scope of these Rules.

Removal: The permanent removal of a police officer hired in strict compliance with these Rules from the Police Department pursuant to Section 1190 of the Borough Code, 53 P.S. § 46190.

Secretary: The Secretary of the Civil Service Commission of [INSERT NAME OF BOROUGH], Pennsylvania.

Suspension: The temporary, unpaid removal of a police officer hired in strict compliance with these Rules from the Police Department pursuant to Section 1190 of the Borough Code, 53 P.S. § 46190.

Sample Article 2. Commission Members & Operation

2.1 The Civil Service Commission

- (a) The Commission shall consist of three (3) commissioners who shall be qualified electors of the Borough and shall be appointed by the appointing authority initially to serve for the terms of two, four and six years, and as terms thereafter expire shall be appointed for terms of six years.

Any vacancy occurring in the Commission for any reason whatsoever shall be filled by the Appointing Authority for the unexpired term within the period of thirty (30) days after such vacancy occurs.

Each member of the commission, before entering upon the discharge of the duties of their office, shall take an oath or affirmation to support the Constitution of the United States and of the Commonwealth of Pennsylvania and to perform their official duties with fidelity. No civil service commissioner shall receive compensation.

- (b) **Alternate Commissioners.** The Appointing Authority may appoint no more than three qualified electors of the Township to serve as alternate members of the commission. The term of office shall be six years. Designation of an alternate member pursuant to this section shall be made on a case-by-case basis in rotation according to declining seniority among the alternates.

When seated, an alternate commissioner shall be entitled to participate in all proceedings and discussions of the Commission to the same and full extent as provided by law for Commission members, including specifically the right to cast a vote as a voting member during the proceedings, and shall have all the powers and duties set forth in the Borough Code and as otherwise provided by law. Alternates shall hold no other office in the borough. Any alternate may participate in any proceeding or discussion of the commission, but shall not be entitled to vote as a member of the Commission unless designated as a voting alternate member pursuant to Section 1174 of the Borough Code.

EXPLANATORY NOTES

Subsection "b" of this Section was the product of the Act 43 of 2012, which, within the larger context of the restating the Borough Code, also brought several of the civil service provisions of the Borough Code in line with the applicable sections of the First Class Township Code. However, although Act 43 provided for alternate civil service commission members in a borough, it did address an issue which was not expressly addressed by the General Assembly in the 2002 amendment to the First Class Township Code. Specifically, Act 43 sets forth the manner in which a Commission must select among the available alternates, i.e., in declining order of seniority among the alternates in a rotating fashion. Thus, once the most senior alternate is utilized (or is unavailable due to absence, recusal or some other issue), then the next senior alternate is used. Once an alternate is used in a case, when a new issue arises for which an alternate is required, the next senior alternate on the list is utilized.

2.2 Offices Incompatible with Civil Service Commissioner

No commissioner shall at the same time hold an elective or appointed office under the United States government, the Commonwealth of Pennsylvania or any political subdivision of the commonwealth, except that one member of the Commission may be a member of the borough council and one may be a member of the teaching profession.

EXPLANATORY NOTES

Pennsylvania Appellate Courts have not considered in depth in the issue of who holds an "appointed office" in the civil service context. Obviously, establishing whether a commissioner or potential commissioner holds an elected office is more of a straightforward analysis. If the individual is subject to selection by the electorate on a state, county or local level, then the person holds an elective position. With respect to the issue of a commissioner holding an appointed office, the analysis is more complex

The stated goal of this section has been to avoid the holding of dual offices by public officers, as opposed to public employees. See Commonwealth ex. rel. Foreman v. Hampson, 143 A.2d 369(1958). Several different analysis have been utilized to distinguish between an appointed official and an employee, as the line can sometimes be blurred.

For instance, in *Alworth v. County of Lackawanna*, 85 Pa. Super. 349 (1925), the Court noted that, if an employee is appointed to an office, established by law, for a definite term and whose duties are of significant public importance, and the individual is paid from the public treasury, then the employee is an appointed employee. Likewise, in *Commonwealth v. Bionaz*, 36 D. & C. 2d. 39 (1964), the Court noted that a critical distinction between an employee and appointed official is the vestige of sovereign authority in the individual, as well as the ability to exercise that authority independently.

With respect to the provision that one of the members of the commission may be a member of borough council, council members should be aware of the potential issues that could arise with such dual membership and the legal issues related thereto in the context of disciplinary hearings. Specifically, if an individual sits on both borough council and the commission, the individual cannot sit in both capacities regarding a disciplinary matter. In such cases, the individual must make a decision to either sit as a member of council, fully discuss the issues and facts surrounding any potential disciplinary action and participate in the discussion and vote on the appropriate level of discipline and subsequently recuse himself as a civil service commissioner or take the alternative approach (recuse himself as a member of council and participate as a civil service commissioner). To sit in both capacities would constitute a due process violation and could serve as a basis to void the decision of the commission in its entirety.

2.3 Organization of Commission; Quorum

- (a) The Commission shall meet and organize on the first Monday of January of each even numbered year. Each Commissioner shall be notified in writing of each and every Commission meeting. Three members of the Commission shall constitute a quorum and no action of the Commission shall be valid unless it has the concurrence of at least two members.
- (b) If, by reason of absence or disqualification of a member a quorum is not reached, the chair shall designate as many alternate members of the commission to sit on the commission as may be needed to provide a quorum. An alternate member of the commission shall continue to serve on the commission in all proceedings involving the matter or case for which the alternate was initially designated until the commission has made a final determination of the matter or case. No action of the commission may be valid unless it has the concurrence of at least two members.
- (c) For purposes of hiring and promoting police officers under these Rules, each step of the hiring or promotional process requiring official action by the Commission shall be considered a separate "matter or case" under Subsection (b), above, and each step of the hiring or promotional process need not be voted upon or approved by the same composition of commissioners or alternate commissioners, as the case may be, provided that the quorum requirement has been satisfied.

EXPLANATORY NOTES:

The commission is required to reorganize each even-numbered year. To the extent that a commission fails to conduct such reorganization meeting, that inaction, by itself, does not render any subsequent action moot or a nullity. Rather, in light of the ministerial nature of the reorganization, the remedy for a commission's failure to properly and timely reorganize is to satisfy its statutory obligation and hold a reorganization meeting.

Through Act 43 of 2012, the General Assembly made several changes to Section 1174 of the Borough Code to bring it more in line with Section 628 of the First Class Township Code. Thus, quorum for the Commission under the Borough Code has been increased from two to three and alternate commissioners have been required in order to meet these heightened quorum requirements.

2.4 Duties of the Chair

The chair, or in his absence, the vice chair, shall preside at all meetings and hearings of the commission, decide all points of order or procedure and perform any duties required by law or these Rules.

2.5 Duties of Secretary

The secretary shall carry on at the direction of the Commission all official correspondence of the commission, send out all notices required by law and these Rules, keep a record of each examination or other official action of the commission, and perform all other duties required by law or these Rules. In addition, the secretary shall have charge of and be responsible for the safekeeping of the books, papers, and other property of the Commission.

2.6 Meetings

Except for the biennial organization meeting, all meetings shall be held either at the call of the chair or at the call of two members of the commission. The Commission shall have the discretion to determine whether meetings shall be open to the public when not specifically regulated by law or these Rules. The secretary of the Commission shall give each commissioner twenty-four (24) hours notice in writing of each and every meeting of the commission.

EXPLANATORY NOTES:

A civil service commission is considered to be an agency for purposes of Pennsylvania's Open Meeting Law or so-called "Sunshine Act." 65 Pa. C.S. §§ 701-716. Accordingly, unless the commission is conducting an executive session which is not open to the public, the commission must advertise any public meeting in accordance with Section 9 of the Sunshine Act, 65 Pa. C.S. § 709. In the case of an executive session, the commission may hold an executive session during a current, properly advertised meeting, or must either advertise or announce that they are holding an executive session on future date or announce at the next meeting the dates on which executive sessions were held following the previous meeting. See 65 Pa. C.S. § 708.

2.7 Clerks and Supplies

The Borough Council shall furnish the Commission with such supplies and clerical assistance as may be necessary for the Commission to fulfill its duties. In addition, the Commission may retain counsel, and any other consultants or experts, including physicians and psychiatrists, as are necessary. The elected and appointed officials of the Borough shall assist the Commission with all reasonable and appropriate efforts including compensation for any counsel or experts retained by the commission.

The borough shall also provide the services of a solicitor for the commission to be appointed by the commission and paid by the borough. The borough shall have the authority to place a reasonable limit on the amount allowed each year for the services of the commission solicitor.

EXPLANATORY NOTES:

In Act 43 of 2012, the General Assembly expressly set forth the requirement that the commission may appoint its own solicitor to address legal issues which may arise before the commission. This is largely in line with Pennsylvania law in this area which holds that an administrative body generally possess that authority. See Zoning Hearing Board of City of Uniontown v. City Council of Uniontown, 720 A.2d 166 (Pa. Commw. Ct. 1998). In addition, practitioners should be aware that a solicitor who represents the appointing authority, i.e., the Board of Commissioners regarding an investigation or disciplinary action, cannot advise the civil service commission on that same issue if the disciplinary action is appealed to the civil service commission..

In addition, unlike the civil service provisions of the First Class Township Code, Borough Council does have the ability to set a limit on a "reasonable" amount for which the commission may spend on legal fees each year. Obviously, reasonableness will be a function of the number and complexity of issues which arise before the commission on a yearly basis.

2.8 Amendment of Rules

The Commission may amend, revise, void or replace these Rules for any reason by action of a majority of the Commission at any properly convened meeting of the commission. Before any changes to these Rules become effective, those changes must be approved by the Borough Council. These Rules, and any amendments thereto, shall be made available to the public for distribution or inspection.

EXPLANATORY NOTES:

Typically, an amendment to the commission's rules will be initiated at the commission level. Accordingly, to commence an amendment, the commission would adopt a resolution at a properly advertised public meeting. Once approved, this resolution would be forwarded to the Borough Council for approval. Pursuant to the rules, the amendment becomes valid and effective only after approval by Borough Council. In addition, practitioners should recognize the non-existence of a "retroactive" amendment to civil service rules. Amendments only become effective prospectively and only apply to subsequent, as opposed to current hiring and/or promotional processes.

2.9 Minutes and Records

The Commission shall keep minutes of its proceedings and records of examinations and other official action. All records of the Commission shall be preserved and disposed of according to the Retention and Disposition Schedule for Records of Pennsylvania Municipalities issued by the Local Government Records Committee under the authority of the Municipal Records Act, 53 Pa. C.S.A. § 1381 et seq. Notwithstanding the above, all recommendations of applicants for appointment received by the commission shall be kept and preserved for a period of five (5) years.

With the exception of documents identified in Article 6:4(b) of these rules (relating to the sealing of the record where Commission does not uphold disciplinary charges against an officer), any and all records related to any disciplinary action filed with the Commission shall be open to public inspection subject to reasonable regulation. The secretary shall keep minutes of the Commission's proceedings showing the vote of each member upon each question. If the member is absent or fails to vote, the secretary shall indicate that fact in the minutes.

EXPLANATORY NOTES:

As referenced in the rules, the civil service provisions of the Borough Code generally provide that the commission's records regarding discipline are open to public inspection. The specific section of the Borough Code, Section 1177, 53 P.S. § 46177, provides that the commission must maintain any recommendations which it receives for applicants for five years and that such records must be made available for public inspection. As for disciplinary charges, Section 1177 contains no "cut off" for when those records may no longer be maintained or subject to inspection. However, 1191 of the Borough Code, 53 P.S. § 46191, provides that, in the event that a civil service employee contests a suspension, demotion or termination, and the commission fails to uphold the charges against the employee, then the record is to be sealed and not subject to inspection.

2.10 Investigations

The Commission shall have the power to make investigations concerning all matters relating to the administration and enforcement of these Rules. The chair of the Commission is authorized to administer oaths and affirmations for witnesses testifying in connection with such investigations.

2.11 Subpoenas

The Commission shall have the power to issue subpoenas over the signature of the chair, or designee, to acquire the attendance of witnesses and the production of records and papers pertaining to any investigation or inquiry, including any background investigation conducted pursuant to Article 4.9 of these Rules. The fees of such witnesses for attendance and travel shall be the same as for witnesses appearing in the courts and shall be paid from appropriations for the incidental expense of the commission.

All officers in public service and employees of the Borough shall attend and testify when required to do so by the commission.

If any person shall refuse or neglect to obey any subpoena issued by the commission, upon conviction of such refusal or neglect in a summary proceeding, that person shall be sentenced to pay a fine not to exceed one hundred dollars (\$100), and in default of the payment of such fine and cost shall be imprisoned not to exceed thirty (30) days.

If any person shall refuse or neglect to obey any subpoena, the Commission may apply by petition to the Court of Common Pleas of **[INSERT NAME OF COUNTY]** County for its subpoena, requiring the attendance of such persons before the Commission or the court to testify and to produce any records and papers necessary, and in default thereof shall be held in contempt of court.

2.12 Annual Report

The Commission shall make an annual report to Borough Council containing a brief summary of its work during the year and a full accounting for any expenditures of public monies. The annual report shall be available for public inspection.

EXPLANATORY NOTES

The Borough Code requires the commission to make an annual report to the Borough Council. This is required in order to justify the monies allocated to the commission each year for the operation of the commission. Obviously, many years, the commission will have little or nothing to report, based upon a lack of disciplinary hearings, hiring cycles and/or any other matters coming before the commission. Even if the commission has nothing to report, it should still file a report each year.

Sample Article 3. Procedures for Appointment and Promotion

3.1 Application for Examination

In order to be eligible for participation in any examination for any position with the police department, every applicant must submit a completed application form to the Commission before the deadline stated by the Commission for that specific examination. The applicant must make an oath or affirmation that the application is completed truthfully, and the applicant is subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities. In addition, the application shall require, at a minimum, the following information: (1) the applicant's full name and residence or post office address, (2) the applicant's citizenship, place and date of birth, and (3) the applicant's business or employment and his residence for the past five years.

EXPLANATORY NOTES:

A recent trend in the last five to ten years has been the use of so-called "testing consortiums" to administer the written examinations for civil service communities. These consortiums represent the pooling of municipal resources in that an applicant may take one written examination and have the results sent to as many or as few members of the consortium as he wishes to have sent. By doing so, the individual municipalities reduce the expense of conducting individualized written examinations. Some potential drafting considerations in civil service communities which choose to utilize testing consortiums are discussed in the Explanatory Notes to Article 4:1, as well as in the introduction to this publication.

Municipalities choosing to participate in testing consortiums should ensure that their civil service rules reflect the fact that applications can be either returned to the individual municipality or the testing consortium.

Note that, under a strict reading of Section 1182 of the Borough Code, the commission would be required to obtain a "statement of the applicant's health and fitness for public service." We would suggest omitting this requirement on the application for two reasons. First, the information could lead to problems under the Americans With Disabilities Act (ADA). Second, the information will typically be obtained during the physical agility test and the post-conditional offer of employment medical and psychological examinations.

3.2 Non-Discrimination in Employment Decisions

The Borough is an equal opportunity employer. It is the policy of both the Borough and the Commission to grant equal employment opportunities to qualified persons without regard to race, religion, color, national origin, gender, sexual orientation, age, veteran status, marital status or non-job related physical or mental handicap or disability. The Borough and the Commission will provide equal opportunities in employment and promotion.

3.3 Availability of Applications

Application forms shall be available to all interested persons in the office of the Borough police department, and from such other offices and officers that the commission, from time to time, may choose to designate. Application forms may be mailed upon written or telephone request. However, the Commission assumes no responsibility for missed filing deadlines due to a delay in the mail.

EXPLANATORY NOTES:

Boroughs which utilize testing consortiums to administer the written examination should ensure that this information is set forth in their rules and that the contact information for either obtaining or returning applications from the consortium.

3.4 Minimum Age For Application

All applicants must have reached their eighteenth (18th) birthday before the deadline for submitting completed applications.

EXPLANATORY NOTES:

The age of an applicant is an area where the borough has a certain amount of discretion in establishing minimum qualifications for an applicant. As a general matter, most, if not all, civil service rules provide a minimum hiring age between 18 and 21. The theory of having a higher minimum age for appointment, i.e., 21, is that the borough may get a more mature and focused applicant pool. However, boroughs should be aware that having a maximum age for application over age 40 would violate both Pennsylvania and federal law.

3.5 General Qualifications For All Applicants

Every applicant for any position in the police department shall possess a diploma from an accredited high school or a graduate equivalency diploma. In addition, every applicant must be a United States citizen, be physically and mentally fit to perform the full duties of a police officer, and, prior to appointment, possess a valid motor vehicle operator's license issued by the Commonwealth of Pennsylvania.

[OPTIONAL LANGUAGE INSERT # 1]: Applicants must also have completed and passed the police officers' training course approved by the Municipal Police Officers' Education and Training Commission (MPOETC) as set forth in 53 Pa. C.S. § 2161 et seq. at the time of examination.

[OPTIONAL LANGUAGE INSERT # 2]: Applicants must possess a minimum of 30 college credits (or Bachelor's Degree).

EXPLANATORY NOTES:

As with the minimum age requirement for application, establishing the general requirements for an entry-level patrol position are largely within the discretion of the municipality. The pivotal issue for many municipalities is whether or not to require that an applicant possess or, at a minimum, have successfully completed the course of training pursuant to Act 120. Successful completion of this course is a requirement in order to be lawfully employed as a police officer in Pennsylvania. The decision as to whether or not to require Act 120 training as a minimum qualification to apply for an entry level position has many ramifications and philosophies. Many elected officials believe that requiring Act 120 will provide a smaller applicant pool, but one which is nonetheless more experienced and will require less training. In addition, some individuals point to the fact that, particularly in communities where the need for a police officer is immediate, then requiring Act 120 is desirable (the Act 120

certification courses include approximately 752 hours of training). In cases where the need for an officer on the street is immediate, it is likely that requiring Act 120 as a prerequisite of hiring is not practical as the candidate, once appointed, spends the next six to eight months attending the Act 120 classes before he can begin performing police duties.

Alternatively, if the need for additional officers is not imminent or can be managed in a different manner, not requiring Act 120 tends to provide a larger applicant pool from which municipalities can select. Proponents of not requiring Act 120 as a minimum requirement point to the fact that they get officers who are more trainable.

In addition to requiring or not requiring Act 120, many municipalities are now requiring some additional education over and above high school (or equivalent experience). This trend is a product of the current economic climate where many municipalities are experiencing larger responses to hiring announcements and, as a result, can afford to be more selective in their hiring decisions. As a result, these municipalities can also be more stringent in the requirements which they have to gain entry level employment in the police department. In addition, a practical aspect to the increase in educational requirements in the minimum hiring criteria is the view that a more educated officer will also be a more effective officer in the municipality.

Regardless of whether or not the municipality requires Act 120 certification or additional education as a minimum qualification, it must maintain those requirements through the then-current hiring process. For instance, if a municipality decides not to require Act 120 certification as a minimum requirement and ultimately ends up with an eligibility list on which two applicants have Act 120 and one applicant, who also happens to possess veterans' preference, does not have Act 120, the municipality cannot refuse to hire the veteran on the grounds that, unlike the other two applicants, the veteran does not possess Act 120. If this issue is not made a minimum requirement, it cannot be used later to defeat an otherwise lawful claim to the appointment through veterans' preference. For a more detailed discussion of veterans' preference, see the Explanatory Notes to Article 4:6 and the prefatory comments to this Publication.

After a hiring process is complete and before a new process begins, a municipality is free to change its minimum requirements for appointments. Also note that an additional set of minimum requirements exists for promotional appointments. See Article 3:7 and Explanatory Notes accompanying it.

3.6 Offices Incompatible With Police Officer

A Police Officer may not hold an elected office of the Borough that employs the Police Officer. A Police Officer who is employed by a regional department, council of government or other cooperative venture may not hold an elected office of any municipality that participates in the regional department, council of government or other cooperative venture. Applicants who hold elected office which is incompatible with an office identified in this Section shall be deemed to not possess the minimum requirements for appointment set forth in these rules.

EXPLANATORY NOTES:

This is another provision created by the General Assembly through Act 43 of 2012. It somewhat addresses the troubling overlap between holding certain elected offices and holding civil service employment. As has been discussed in other sections of this publication, at its core, the civil service process was designed to eliminate or diminish the effects of politics and political considerations on the hiring process.

3.7 General Qualifications For Promotional Appointments

- (a) In addition to satisfying the requirements for entry level appointment contained in 3.5, all applicants for a promotional position, except the position of chief of police, shall have not been suspended without pay for more than **[INSERT NUMBER OF DAYS]** days in the **[INSERT NUMBER OF YEARS]** years prior to the deadline for submitting applications. Any suspension to which the applicant has timely appealed pursuant to a contractual grievance procedure or these Rules shall be disregarded unless the appeal is resolved prior to the creation of the eligibility list.
- (b) All applicants shall have continuous prior service with the police department as follows:
 - (1) An applicant for the position of Corporal shall have a minimum of **[INSERT NUMBER OF YEARS]** years of service with the police department;
 - (2) An applicant for the position of Sergeant shall have a minimum of **[INSERT NUMBER OF YEARS]** years of service with the police department, including a minimum of **[INSERT NUMBER OF YEARS]** year as a Corporal within the police department; and
 - (3) An applicant for the position of Lieutenant shall have a minimum of **[INSERT NUMBER OF YEARS]** years of service with the police department, including a minimum of **[INSERT NUMBER OF YEARS]** years of experience as a Sergeant within the police department.

EXPLANATORY NOTES:

Before appointing an individual to a promotional rank within the police department, the borough should ensure that the rank to be filled has already been created. If the rank does not exist, it must be created before any candidate may be appointed to fill such a position. Creating the position requires the commission to amend its rules to create the position, and the Borough Council must subsequently vote to approve the amendment creating the position. See Explanatory Notes to Article 2.8. Boroughs should keep in mind that creating a position is a managerial right which does not trigger a bargaining obligation within any labor union. However, issues related to the creation of such a position, such as job responsibilities and compensation and other benefits provided to the holder of the position may be bargainable issues which must be negotiated in a unionized workforce.

The minimum qualifications required to seek a promotional opportunity within the police department are a managerial right which is not subject to bargaining in a unionized workforce. See Fraternal Order of Police, Rose of Sharon Lodge No. 3, v. Pennsylvania Labor Relations Board, 729 A.2d 1278 (Pa. Commw. Ct.), petition for allowance of appeal denied, 560 Pa. 712, 743 A.2d 923 (1999). Accordingly, the length or type of experience required to apply for a promotional opportunity is up to the municipality. The language in this section reflects several areas where the municipality has discretion. The minimum experience required for each rank reflects the scenario where the municipality will promote from within, rather than seeking applicants from outside the department or using an applicant pool of both. In the case of utilizing a mixed or outside-only applicant pool, the municipality may require a certain minimum number of years of police service and/or experience in a police supervisory capacity.

The requirement that an applicant have a record which contains no more than a minimum number of days of suspension is designed to take into account an applicant's performance within the police department. Specifically, many municipalities have attempted over the years to provide applicants with "chief's points" or similar additional points on their examinations for receiving quality employee evaluations in the past. Although a municipality may insert provisions in their civil service rules that applicants for promotion receive a minimum evaluation score in the past evaluation period, the municipality cannot provide additional points on the civil service examination for such. The only instance where points are permitted to be added to an applicant's score is through veteran's preference. For a discussion of veteran's preference, see the Explanatory Notes to Article 4.6.

3.8 Rejection and/or Removal of Applicant

The Commission may refuse to examine or, if examined, may refuse to certify after examination as eligible, any applicant who is found to lack any of the minimum qualifications for examination prescribed in the rules and regulations adopted for the position or employment for which he has applied, or who is physically unfit for the performance of the duties of the position to which he seeks employment, or who is illegally using a controlled substance, as defined in section 102 of the Controlled Substances Act (Public Law 91-513, 21 U.S.C. § 802), or who has been guilty of any crime involving moral turpitude or of infamous or notoriously disgraceful conduct, or who has been dismissed from public service for delinquency or misconduct in office, or who is affiliated with any group whose policies or activities are subversive to the forms of government set forth in the constitution and laws of the United States and Pennsylvania.

(b) If, a recommendation is made to the Commission that any applicant is to be rejected for the reasons set forth in subsection (a), then the Commission will, upon the request of the applicant, within ten (10) days hold a hearing pursuant to Article 3.10 of these Rules. The decision of the Commission to remove from further consideration in the hiring process any applicant shall be final.

Optional: In the event that the borough utilizes the services of a consortium to administer its written examination, the time for filing a challenge to the score which the applicant receives on a written examination begins when the applicant receives the written score test result or notice of the results of the testing are posted by the consortium, regardless of whether or not the person or applicant has an application for employment pending with the borough. IN the event that such an applicant or person requests a hearing regarding his written examination score, any previous decision of another municipal civil service commission addressing the propriety of the same written examination shall be persuasive, but not binding on the borough's civil service commission.

EXPLANATORY NOTES:

This Section incorporates several key aspects of the language changes made in the amendments to the civil service provisions of the Borough Code pursuant to Act 78 of 2010. Specifically, prior the passage of Act 78, as to the issue of drug usage, a municipality could only permissibly reject an applicant who was determined to be "addicted" to the use of drugs or alcohol. Although Act 78 attempted to clarify the standard on this issue, municipalities should be aware that, under the Americans With Disabilities Act, a borough employer may take action based upon "present" drug use, but may not do so based upon previous drug use or the fact that an employee or applicant entered rehabilitation for drugs or alcohol. The problem, which typically arises in the background investigation stage is to determine what legally constitutes "present" drug or alcohol use as opposed to "previous" drug and alcohol use. In this regard, prior to rejecting any applicant for drug or alcohol use, a municipality should consult with its labor and employment counsel.

Typically, a rejection under this section can occur in one of several instances. First, an applicant submits an application which, on its face, evidences that the applicant does not possess the minimum qualifications for appointment. Second, an applicant who makes it through the required written and oral examinations is rejected based upon information which is discovered during the background investigation. Third, an issue can arise as to fitness for duty in the context of a conditional offer of employment. At this juncture, the municipality should be aware that, based upon the provisions of At 78 of 2010, the borough is obligated to engage in the interactive process required under the Americans With Disabilities Act.

Subsection (b) of this Section also reflects a slight change from the statutory language regarding rejection of an applicant. Pursuant to Section 1183 of the Borough Code, 53 P.S. § 46183, the Commission can refuse to examine and/or disqualify an applicant from further consideration in the hiring process. However, following that procedure results in the commission making the initial decision to recommend removal/rejection and, upon request of an aggrieved applicant, passing on the propriety of its initial decision. Such a scenario has the potential for challenge as a deprivation of the applicant's right to due process. Accordingly, this Section sets up a procedure whereby a recommendation is made to the commission of removal and, only after receiving evidence during a hearing, if requested, does the commission make a determination. This procedure avoids the constitutional issue raised in Copeland while still adhering to the procedures set forth in the Borough Code.

Finally, this Section also addresses the impact of consortium testing on the appeal process. Specifically, in some boroughs, an applicant may utilize the results of a written examination that was administered prior to the borough announcing that it will be hiring. This practice presents two practical issues which are addressed in the above rule. The first one is, in such a situation, when must the applicant or person aggrieved file a request for a hearing? The optional language of this Section requires such a request to be made within ten days of the date on which the individual receives his test results or ten days from the date on which the consortium posts such results. To have the hearing deadline flow from when the borough actually begins the hiring process may result in a scenario under which months, even years, may elapse between the date on which the applicant receives his scores and the time in which the hiring cycle commences. During such time evidence may be lost and witnesses may begin to lose a precise recollection of the events, all of which puts all of potential litigants, particularly the township, at a disadvantage.

Likewise, the optional language also addresses the other practical issue which might arise in consortium testing when an applicant applies to more than one municipality. Specifically, in such a situation, the applicant who challenges his written examination test score before another municipality may choose to do so with the belief that the civil service commission in the other municipality may be more sympathetic to his arguments. This raises the legal issue of whether or not the applicant can argue collateral estoppel or some other argument to assert that any favorable determination by another municipality regarding the propriety of the written examination is binding on the municipality. The optional language provides that any such decision by another municipal civil service commission is persuasive, but not binding on the borough's civil service commission.

3.9 Recording and Filing Applications

Applications for positions in the police department shall be received at the Township Building [OPTIONAL: "or at the offices of the municipal training consortium"] only after a hiring or promotional test has been properly advertised and before the deadline for receiving applications which must be set forth in the public advertisement. Applications will be received by the municipal officer designated in the public advertisement or that officer's designee. That person shall record the receipt of all applications and provide each applicant with notice of the time and place for the first portion of the testing procedure, the written examination. Any application containing material errors or omissions may, at the discretion of the commission, be returned to the applicant for correction prior to the deadline for filing applications, after which no new applications or amended applications will be accepted.

EXPLANATORY NOTES:

As with Article 3.1, if a municipality utilizes the services of a testing consortium, it should so indicate in its rules that applicants may file a copy of their application with the appropriate consortium.

3.10 Hearing for Disqualified Applicants

Any applicants or other persons who believe that they are aggrieved by a refusal to examine or to certify them as eligible after examination, may request a hearing before the commission. Within ten days after such request, the Commission shall designate a time and place for the public hearing which shall be conducted pursuant to the procedures set forth in the Local Agency Law, 2 Pa. C.S. § 101 et seq. Both the rejected applicant and the Borough may be represented by counsel of their choosing, testimony will come from witnesses under oath or affirmation and the proceedings shall be stenographically transcribed. The deliberations of the Commission, including interim rulings on evidentiary or procedural issues, may be held in the nature of a closed executive session. The Commission's disposition of the matter shall constitute official action which shall occur at a public meeting held pursuant to 65 PA. C.S. ch. 7 (relating to open meetings). The Commission's decision to sustain the rejection of the applicant or to overturn it shall be final.

EXPLANATORY NOTES:

See Explanatory Notes to Article 3.8. At the hearing held under this Section, the borough has the burden of proving that the applicant's rejection/removal was taken for one of the reasons set forth in Article 3.8.

This Section also incorporates the ten-day requirement for requesting a hearing established in Act 43 of 2012. Likewise, Act 43 also provides that the failure of the commission to hold a hearing within ten days shall not operate to reinstate the rejected applicant. In addition, this Section reinforces the principle from Act 43 that the deliberations and interim rulings of the commission shall be in the nature of an executive session.

In addition, this Section also addresses the impact of consortium testing on the appeal process. Specifically, in some areas, an applicant may utilize the results of a written examination that was administered prior to the municipality announcing that it will be hearing. This practice presents two practical issues which are addressed in the above rule. The first one is, in such a situation, when must the applicant or person aggrieved file a request for a hearing. The model rule requires such a request to be made within ten days of the date on which the individual receives his test results or ten days from the date on which the consortium posts and such results. To have the hearing deadline flow from when the municipality actually begins the hiring process may result in the scenario under which months, even years, may elapse between the date on which the applicant receives his scores and the time in which the hiring cycle commences. During such time evidence may be lost and witnesses may begin to lose a precise recollection of the events, all of which puts all of potential litigants, particularly the township, at a disadvantage.

Likewise, this model rule also addresses the other practical issue which might arise in consortium testing when an applicant applies to more than municipality. Specifically, in such a situation, the applicant who challenges his written examination test score before another municipality or may choose to do so with the belief that the civil service commission in the other municipality may be more sympathetic to his arguments. This raises the legal issue of whether or not the applicant can argue collateral estoppel or some other argument to assert that any favorable determination by another municipality regarding the propriety of the written examination is binding on the municipality. The model rule provides that any such decision by another municipal civil service commission is persuasive, but not binding on the township's civil service commission.

3.11 Public Notice

The Commission shall conspicuously post in the Borough Building an announcement of the hiring or promotional testing and set forth the time and place of every examination, together with the information as to the type of position to be filled, the requirements for that position, where applications may be obtained, and the deadline for filing those applications. In addition, at least two weeks prior to the close of the application period, publication of the notice shall occur in at least one newspaper of general circulation or a newspaper circulating generally in the Borough.

Sample Article 4. Examination Procedure & Scoring

4.1 General Examination Requirements for the Position of Patrol Officer

The examination for patrol officer will consist of a written and an oral examination which will be graded on a one hundred (100) point scale with the written examination representing sixty percent (60%) of the final score and the oral examination representing forty percent (40%) of the final score. In addition, each applicant shall undergo a physical agility examination and a background investigation (including a polygraph examination which shall be graded on a pass/fail basis for every applicant. After an applicant has been extended a conditional offer of employment, final appointment shall be contingent upon the applicant passing a medical and psychological examination.

The Commission or its designee shall have the sole discretion to select all examinations to be used, provided that such examinations are practical in character and relate to such matters and include such inquiries as will fairly test the merit and fitness of the persons examined to discharge the duties of patrol officer.

The sequence for the above exams/investigation shall be as follows: (1) written examination; (2) physical agility test; (3) oral examination; (4) polygraph examination; and (5) background examination. Prior to the start of a new hiring process which will culminate in a new eligibility list, the Commission may change the sequence for the exams by resolution with the approval of a majority of Borough Council.

EXPLANATORY NOTES:

A borough has the sole authority and discretion to determine the passing scores and weight assigned to the written and oral examinations. The authors suggest a weighting of the oral and written examination on a 60/40 basis. Obviously, examining each of these two aspects of the testing process, the written examination is almost entirely objective, while the oral examination is largely subjective. However, owing to the subjective nature of the oral examination, it also has the potential to reveal intangibles about an applicant which would include, but not be limited to, their presentation as an officer, their personality and ability to function within a group setting, their analytical skills and how they respond to a stressful situation. All of the above are relevant and important factors. They do not, however, warrant increasing the weight of the oral examination above 60%. Increasing the oral examination score above the 60% threshold can create perceived problems that are largely a function of the subjectivity of the oral examination. For instance, in such cases, it could create the perception that patronage or favoritism are driving the hiring process, motivations which the civil service process itself seeks to eliminate.

In addition, borough officials and civil service commissioners should be aware that there are no set written or oral examinations required by the Borough Code. The only requirements placed on the examinations is that they effectively and fairly measure the requirements for the position.

4.2 General Examination Requirements for Promotions

The examination for the positions of Corporal, Sergeant and Lieutenant shall include a written and an oral examination which will be graded on a one hundred (100) point scale with the written examination representing sixty (60%) of the final score and the oral examination representing forty percent (40%) of the final score. [OPTIONAL: In addition, each applicant will undergo a physical agility test which will be graded on a pass/fail basis for every applicant. In addition, following receipt of a conditional offer of promotion, the applicant shall be required to successfully pass a medical and psychological examination to determine whether or not the applicant can perform the essential duties of the promotional position.]

EXPLANATORY NOTES:

The authors suggest a weighing of the oral and written examination on a 60/40 basis. Like the weighting of the examinations for original appointments, the authors suggest that neither the written or oral examination be weighted more than 60% nor less than 40%.

Note that the language regarding the requirement of a physical agility test and medical and psychological examinations are optional for promotional testing in this Section. Under Act 78 of 2010, the General Assembly permitted, but did not require, physical agility testing and medical and psychological testing as a prerequisite to a promotional appointment. With respect to physical fitness/agility, the only limitation from the General Assembly is that such testing be job related and consistent with business necessity.

Whether or not a borough views it as advantageous to require these components is largely a policy determination. If the applicant pool for promotional testing includes candidates from outside the police department, inclusion of these aspects of the promotional process make sense. Clearly, if the municipality has no history of the individual and no sense of the mental and physical fitness of the candidate, it is prudent to require these steps. However, in the case of internal candidates only, adding a physical agility and/or mental or physical examination may be of limited value. Moreover, it presents the practical issue of what to do with an officer who has been found mentally or physically incapable of performing a supervisory position. In most departments, supervisory roles tend to be less physically demanding than the role of the patrol officer.

4.3 Appointment of Examiners

The Commission shall appoint a written examination administrator, an oral examination administrator, a physical agility examiner, a medical examiner and a psychological examiner to conduct the appropriate examination required by these Rules.

4.4 Written Examination

The written examination shall be graded on a 100 point scale, and an applicant must score seventy percent (70%) or higher and receive one of the top 30 scores in order to continue in the application process. Applicants scoring less than seventy percent (70%) or not receiving one of the top 30 scores, including ties, shall be rejected. Within thirty (30) days after the administration of the written examination, all applicants shall be given written notice of their test results, and each passing applicant shall be informed of the next step in the examination process.

EXPLANATORY NOTES:

A borough has complete discretion to establish both the minimum passing score for the oral examination, as well as the weight afforded to oral examination. For purposes of this Section, the authors have selected 70% as reflective of the generally accepted lowest passing score. However, some municipalities do deviate downward or upward from this mark, but typically no more than 10%. In addition, this Section contains a provision that an applicant achieve one of the thirty highest written scores, including ties, in order to have passed the written examination and proceed on in the hiring process. Achieving a top score is not required by the Borough Code, nor does any legal requirement exist to select thirty as the maximum number of passing scores. However, this additional requirement is especially relevant in communities which have large applicant pools. In light of the economic downturn, interest in police positions has increased and, as a result, so have the applicant pools, particularly for entry-level appointments. Thus, many municipalities view placing a cap on the number of passing scores as ensuring a manageable applicant pool moving forward. Boroughs utilizing consortium tests for administration of the written examination should be aware of the perils of setting the maximum number of passing scores too low. For a more detailed discussion of this issue, see the Prefatory Comments to this Publication.

4.5 Oral Examination

Every applicant who scored seventy percent (70%) or higher on the written examination and who receives one of the top 30 scores, including ties, shall be given an oral examination which will be graded on a 100 point scale with a score of seventy percent (70%) or higher necessary for passing. The oral examination shall involve questioning applicants on how they would handle situations relevant to police work. Within thirty (30) days after the applicants' oral examination, they shall be informed of their oral examination and total overall scores, and each passing applicant shall be informed of the next step in the examination process.

EXPLANATORY NOTES:

Like the written examination, the borough has complete discretion to establish both the minimum passing score for the oral examination, as well as the weight afforded to oral examination. For purposes of this Section, the authors have selected 70% as reflective of the generally accepted lowest passing score. However, some municipalities do deviate downward or upward from this mark, but typically no more than 10%.

In administering the oral examination, several factors are important to keep in mind. As stated earlier in this Publication, the oral examination is more subjective as to its scoring and also affords the municipality with a unique perspective of each applicant in terms of how they react, conduct themselves in an interactive setting and analyze problems and issues. Thus, the oral examination should not simply be dismissed as an arbitrary exercise. In terms of staffing the oral examination panel, there are many varieties of individuals from which a borough may choose. These include a small contingent of the borough's department, as applicable, relevant and permissible, chiefs or managerial level employees from neighboring or nearby departments or representatives of statewide police-related agencies such as the Pennsylvania Chiefs of Police Association. Several groups of people should be excluded. First and foremost, members of the civil service commission should not participate on the oral examination board. It is the commission's responsibility to administer this aspect of the process, not to participate in it.

Moreover, as a practical matter, in the event of a request for a hearing by an applicant who does not pass the oral examination, those matters would be adjudicated by the civil service commission, thereby creating a potential due process violation. Likewise, members of borough council should not serve as members of the oral examination board. Although not presenting the due process concerns implicated by a commission member serving on the oral examination panel, having a member of borough council on the oral examination board creates the false impression of politics being inserted into the process, the avoidance of which is at the core of the civil service process.

4.6 Veterans' Preference Points

Pursuant to the Veterans' Preference Act, any applicant for the position of patrol officer who qualifies as a "soldier" under that Act, shall receive an additional ten (10) points on top of the combined, weighted written and oral examinations scores provided, however, that the applicant received minimum scores necessary for passing the written and oral examinations as prescribed under these Rules. The ten (10) additional veterans' preference points may not be used under any circumstances to achieve a passing score on the written or oral examination. Any applicant claiming veterans' preference is responsible for providing any and all relevant documents to the Commission, which shall, at a minimum, include a form DD-214, no later than two business days immediately prior to the date of the written examination.

EXPLANATORY NOTES:

For a detailed discussion of who is eligible to receive veterans' preference points, see the Prefatory Comments to this Publication. As set forth in this Section, the applicant has the burden of establishing eligibility for veterans' preference. This will include producing a valid Department of Defense Form DD-214 which evidences completion of the required military service, as well as the required separation conditions. Also consult the Explanatory Notes to Article 5.1 regarding the timing of allocating veterans' preference points.

4.7 Physical Agility Testing

An applicant for the position of patrol officer must successfully complete a physical agility test which is approved by the Commission utilizing, inter alia, any recommendation of the Borough's Chief of Police. Such test shall be job-related, consistent with business necessity and designed to test physical agility components applicable to performing the essential duties of a Borough Police Officer.

EXPLANATORY NOTES:

The physical agility test is one of the more vexing aspects of the civil service hiring process. Specifically, finding a physical agility test which is both legally permissible and also a true measure of the requirements for a position is often challenging and has been made more so by the General Assembly's requirement in 2010 that all municipal police civil service testing processes include a physical agility test. However, absent from that requirement was any guidance as to what the physical agility test should be or how it should be administered.

As an example the Municipal Police Officers' Education and Training Commission (MPOETC) has promulgated a physical fitness program which requires running 300 meters, completing a bench press of weight prescribed by the applicant's weight, doing a prescribed number of sit ups in one minute and performing a 1.5 mile run. MPOETC's physical fitness protocol is factored by the age and sex of the individual performing the test. Obviously, the benefit of utilizing the MPOETC protocol would be that it is the standard utilized by the licensing agency for Pennsylvania police officers. However, questions still exist as to whether the MPOETC protocol would satisfy the requirements of testing the applicant's ability to perform the essential duties of a police officer.

In addition, many local police training centers and other testing agencies offer physical agility testing. In making the determination as to what specific type of test is utilized, boroughs may wish to receive input from their chief of police and should absolutely consult with their solicitor or labor counsel before making a decision.

4.8 Background Investigation

Any individual whose name appears on the Eligibility List and who successfully passes the polygraph examination shall thereafter be required to pass a background examination. The Commission shall request that the Chief of Police or the Chief's designee to conduct a background investigation. At the Commission's discretion, background investigations may be restricted to those candidates on the Eligibility List or those to be certified to Borough Council for appointment.

The background investigation shall include a polygraph graph examination, interviews with the individual's family, acquaintances, current and former employers, current and former neighbors, references, current and former teachers, and school officials. At a minimum, personal interviews shall be conducted with at least three (3) people that have personal knowledge of the individual but who are not related to the applicant and also with the individual's employer(s) for the past five (5) years. The background investigation shall also include a criminal history check, including the submission of fingerprints to the Central Repository for the Commonwealth of Pennsylvania and the Federal Bureau of Investigation. The individual's credit history and record of criminal convictions shall also be investigated, as well as the individual's driving record for verification that he possesses a valid driver's license which has been free from suspension for the ten years preceding the date on which the individual applied for employment with the Borough. The individual may be interviewed directly when the information collected during the background investigation requires clarification or explanation.

If necessary to complete a thorough background investigation on any individual, the commission may, upon the request of the Chief of Police or his designee, subpoena the personnel records maintained by any other police department(s) by which the individual was previously employed.

After the background investigation is completed, the Chief of Police, or designee, shall make a written recommendation to the commission on whether the individual is appropriate for consideration for appointment as a police officer.

Appropriateness of the applicant shall be based on the criteria set forth in Article 3.5 and 3.7 of these Rules. This recommendation shall be in writing and, if the recommendation is to disqualify, then a written explanation of the reasons for disqualification must be included. The commission shall make the final determination on whether the information collected during the background investigation warrants rejection of the individual. Within thirty (30) days after the commission considers the recommendation of the Chief of Police or designee, each individual will be informed of whether he has passed the background investigation.

EXPLANATORY NOTES:

In Act 78 of 2010, the General Assembly made some sweeping changes to the background investigation portion of the hiring process for original appointments. Previously, most communities scheduled the background examination somewhere after the written and oral examinations and before the compilation of the eligibility list. This tended to be very costly and time consuming for municipalities who typically faced the prospect of completing between 20 and 50 background checks. To address this, the General Assembly now permits the background investigation portion of the process to be delayed until near the end of the hiring process and to be limited to only the names on the eligibility list.

4.9 Polygraph Examination

- (a) The Polygraph exam shall be administered as part of the Background examination, prior to the creation of Eligibility List and prior to the Commission certifying to the Board of Commissioners the names of the individuals eligible for appointment. Thus, when an entry level vacancy occurs, the top three individuals appearing on the Eligibility List for the position shall fill out a Personal Data Questionnaire and undergo a polygraph examination. The commission shall furnish each polygraph examiner with forms upon which the examiner shall state whether any of the relevant applicant's responses to questions from the applicant's Personal Data Questionnaire are deceptive. The report on each examination shall be submitted to the commission within five (5) days after the date of the examination.

- (b) The examiner shall ask questions based on the information contained in the Personal Data Questionnaire. Before administering the test, the examiner shall ask each relevant applicant whether there is any more information related to the Personal Data Questionnaire which the relevant applicant would like to provide. There shall also be a post-test review, during which the examiner shall again ask the relevant applicant, if deception is indicated, whether there is any information which the relevant applicant is withholding.
- (c) If the examiner shall deem any of the relevant applicant's responses to be deceptive, the examiner must tell the relevant applicant immediately and give the relevant applicant an opportunity to explain, deny or admit the deception. If the relevant applicant denies being deceptive or if the explanation is found unsatisfactory by the examiner, the relevant applicant will be given the opportunity to retake the test with a second examiner. Notice of the opportunity to retest shall be given in writing to the relevant applicant. The second examiner will not have access to the results of the first test prior to re-administering the polygraph. If the second examiner finds no deception, the relevant applicant will be considered as having passed the polygraph. If the second examiner also finds the relevant applicant deceptive, the applicant will be considered as having failed the examination.
- (d) An applicant who has failed both tests may appeal to the civil service commission for a third examination, and the decision to give the applicant an opportunity to take a third test resides solely within the discretion of the commission. If the applicant is awarded an opportunity to take a third test and passes, then the applicant will be considered as having passed the polygraph test. If the applicant is found deceptive on a third test, the applicant will be rejected.
- (e) Notwithstanding any other provision in this Article, an applicant who successfully passes the polygraph exam provided under this Section shall not be required to subsequently submit to a second polygraph examination at any point during the life of the same Eligibility List. Upon the expiration or voiding of the Eligibility List, if the applicant appears on a subsequent Eligibility List, the applicant will be required to again pass the polygraph examination herein provided.

Sample Article 5. Certification of the List of Candidates Eligible for Appointment

5.1 Creation of The Eligibility List

At the completion of the examination requirements set forth in Article 4, written examination, oral examination, and physical agility test, the Commission shall rank all passing applicants on a list with the applicant receiving the highest score at the top of the list and the applicant receiving the lowest passing score at the bottom of the list. Applicants for patrol officer who qualify for veterans' preference points shall have those points added to their passing score prior to being ranked on the eligibility list.

For promotional positions, fulfilling the performance requirement set forth in Article 3.6 is also required. In the case of tied scores, the tie will be broken by giving preference to the applicant who submitted a final completed application first. If both tied applicants submitted their complete applications on the same day, then the applicants shall be ranked in alphabetical order by surname.

The eligibility list will be valid for one year from the date the Commission ranks all passing applicants, assigns veterans' preference points and formally adopts the eligibility list. The Commission may, at its sole discretion, before the original expiration date, by a vote of the majority of the Commission at a duly authorized Commission meeting, extend the list for up to an additional twelve (12) months. The Commission may, at its sole discretion, void an eligibility list at any time for any reason.

EXPLANATORY NOTES:

This Section implements the provisions of the 2010 amendments to the Borough Code through Act 78 of 2010. Specifically, the express time limits for the eligibility list, as well as the extensions thereof. A difference of opinion exists between practitioners as to whether or not the 2010 amendments extinguished the ability of a borough to void an eligibility list at any time for any reason, given the affirmative time periods including in Act 78. Nonetheless, from the authors' standpoint, a municipality still maintains the ability to void a list and either cease the hiring process or begin the process anew. Obviously doing so comes at the cost of time and expense to the borough, but compelling circumstances may justify voiding the list.

5.2 Appointment of Previously Employed Officers in Certain Cases

In the event that no furlough list exists or a furlough list exists and the individuals on that list decline the opportunity for recall, the appointing authority of the Borough Council, may, in its sole discretion, fill any vacancy in an existing position in the police department that occurs as a result of expansion of the police force, retirement, resignation, disability or death by the reappointment or reinstatement of a former employee of the police department who had been previously been appointed in compliance with the existing civil service procedures as a police officer with the Borough and, thereafter, separated in good standing and who previously complied with the provisions of the civil service requirements. Except for medical and psychological examinations, no other testing shall be required for a furloughed, rehired, or reappointed employee, subject to any recertification requirements prescribed by the Municipal Police Officers' Education and Training Commission.

EXPLANATORY NOTES:

This Section represents a seldom-used tool available to boroughs who require an experienced police officer added to its police department or where its staffing needs are too immediate to commence a civil service hiring process from scratch. It should be noted, however, that this is a purely discretionary process enabling a municipality to swiftly hire a new police officer in lieu of a full-blown civil service process. Likewise, this provision may not be invoked if previously furloughed individuals still have a right of recall. Those former employees would have a right of first refusal before any non-furloughed, former officer could be reappointed.

In addition, a former employee who previously underwent the civil service hiring process at the same municipality does not have an automatic entitlement to a vacancy that may arise after being separated in good standing. The borough would still have the option of filling any such vacancy through the regular process established for initial civil service appointments.

Finally, it should be noted that in the context of hiring a former employee, questions often arise, such as seniority, starting salary, vacation, etc., that must first be negotiated with the incumbent police union. For example, will the officer receive credit for all prior service for salary and benefit purposes? Will the officer be treated as a new hire for pension purposes and, if not, what steps must be taken for the employee to purchase back their pension time? Will this create any type of precedent of past practice with respect to the union? Prior to utilizing this step in a unionized environment, a borough should ensure that these issues are addressed with its regular civil service appointment.

5.3 Original Appointments From A Valid Eligibility List

- (a) If no furlough list exists or if positions remain to be filled after all of the officers on the furlough list were offered reemployment and the Borough does not choose to fill any existing eligible vacancy pursuant to Article 5.2 of these Rules, then the open position, except in the case of the position of chief of police, shall be filled only in the following manner:
 - (1) The appointing authority of the Borough shall notify the Commission of any vacancy which is to be filled and shall request the certification of three (3) names from the eligibility list;
 - (2) If three (3) names are not available, then the Commission shall certify the name(s) remaining on the list;
 - (3) The Borough Council may make an appointment only from one of the three names certified with reference to the merits and fitness of the candidates. However, for initial appointment to patrol officer, when one of the three applicants on the certified list is a veteran, that applicant shall be selected.

- (b) The Borough Council may object to one or more of the persons certified for the reasons set forth in Article 3.7 of these Rules. If the candidate to whom the Borough Council objects fails to timely exercise the rights of appeal under Article 3.9, or if the Commission declines to uphold the appeal, the Commission shall strike the name of that candidate from the eligibility list and certify the next highest name for inclusion on the list of three candidates for each name stricken off.
- (c) Whenever the name of an eligible is certified to the appointing authority, he shall be notified at the address provided on the application for employment of such certification. The notice shall state that, unless the eligible, within five (5) days after receipt of such notice, notifies the secretary of the Commission that he is available for appointment, he shall be considered as having withdrawn himself from consideration for appointment to the vacant position. In the event that a person shall fail to notify the secretary of the Commission that he is available for appointment within five (5) days after receipt of such notice, and shall fail to give satisfactory reasons for his failure to report, his name shall be removed from the eligibility list.

5.4 Promotional Appointments

In the case of appointments to promotional positions, Borough Council may make an appointment only from any one of the top three candidates, or less, if less than three names appear on the eligibility list.

EXPLANATORY NOTES:

For a detailed discussion of the evolution of the promotional selection process, both before and following the decision in Borough of Wilksburg v. Colella, see the Prefatory Comments to this Publication.

5.5 Appointment of Chief of Police

In the case of a vacancy in the office of chief of police, the appointing authority has full discretion in selecting the individual to fill the position of chief of police. If the appointing authority requests the Commission to subject that person to a noncompetitive examination, and if that person successfully passes the noncompetitive examination, then the Commission shall notify the appointing authority of the results of the examination. If, after receiving notice from the Commission that the candidate for chief is qualified, the appointing authority votes to bestow civil service status on that person, he may only be removed from the position of chief of police for the reasons set forth in Article 6.1 of these Rules.

EXPLANATORY NOTES:

For a detailed discussion of the role of civil service in the appointment of a chief of police, see the Prefatory Comments to this Publication.

5.6 Medical and Psychological Examinations

- (a) After the appointing authority selects a candidate from the certified list for appointment to a vacant position, the candidate shall receive a written conditional offer of employment. The offer of employment shall be conditioned upon the candidate successfully completing both a medical and psychological examination administered by medical experts to determine whether or not the candidate is capable of performing all the essential functions of the position. The physical medical examinations shall be under the direction of a physician or other qualified medical professional. Psychological medical examinations shall be under the direction of a psychiatrist or psychologist. All medical experts who provide services under this Section shall be appointed by Borough Council.

The medical experts so appointed shall render an opinion as to whether or not the candidate has a physical or mental condition which calls into question the candidate's ability to perform all of the essential functions of the position for which the person was conditionally appointed.

- (b) If, in the opinion of the medical experts appointed pursuant to this Section, the candidate has no physical or mental condition which calls into question the candidate's ability to perform all the essential duties of the position, then the candidate shall have successfully passed the medical and psychological examinations, and no other conditions shall exist which shall bar the candidate from accepting the offer of employment.
- (c) If, in the opinion of the medical experts appointed pursuant to this Section, the candidate has a physical or mental condition which calls into question the candidate's ability to perform all the essential duties of the position, then the candidate shall not have satisfied the conditions for appointment. In such case, a representative of the Borough shall contact the candidate in writing at the address on file with the commission to determine if the candidate can identify an accommodation which would enable the applicant to perform the essential duties of a police officer. The applicant shall have fourteen (14) days from date on which the notice requesting the candidate to identify an accommodation is sent to the candidate in which to reply in writing identifying any such accommodations. In the event that the candidate either fails or refuses to identify such an accommodation, the Borough shall consider the candidate as having withdrawn from further consideration in the hiring process. If the candidate responds within the time allotted under this Section and identifies an accommodation, the Borough shall consider whether or not such requested accommodation is reasonable as the term is utilized by the Americans With Disabilities Act.

In making such a determination, the Borough may require the candidate to undergo a further medical and/or psychological examination to determine the existence of a need for accommodation, the appropriateness of the accommodation requested, as well as the existence of any alternative accommodations which would permit the candidate to perform the essential duties of a police officer. If, at the conclusion of the interactive process set forth in the Section, the Borough Council determines that the conditional appointee is not qualified, council shall give written notice to the conditional appointee and the commission. The written notice from Borough Council shall be treated as a rejection of the conditional appointee pursuant to Article 3.8.

In the event that the candidate's requested accommodation is determined to not be reasonable, then the municipality shall withdraw the conditional offer of employment, and shall proceed in accordance with subsection (d) of this Section.

- (d) In such an event, if an additional name exists at the top of the eligibility list the Commission shall, after the additional candidate successfully completes the background and polygraph examination set forth in Article 5.3, include the additional name to the list of top three names for Borough Council to consider. Borough Council shall proceed to offer a conditional offer of employment to an individual on the list certified by the Commission and proceed in accordance with this Section until a candidate who receives a conditional offer of employment is determined to be capable of performing the essential duties of a police officer, with or without a reasonable accommodation.

EXPLANATORY NOTES:

This Section recognizes the amendments to the Borough Code set forth in Act 78 of 2010. Specifically, under those amendments, the General Assembly clarified that medical and psychological examinations, as distinguished from the physical agility test, could only be required in conjunction with a conditional offer of employment, as set forth in the Americans With Disabilities Act. Likewise, these examinations are to be narrowly tailored to only consider and examine whether or not the employee can perform the essential duties of the position with or without a reasonable accommodation. In accordance with the so-called "interactive process" contained in the Americans With Disabilities Act, this Section also provides that, in the event that a candidate who receives a conditional offer of employment is found not to be able to perform the essential duties of the position, this Section obligates the borough to write to the candidate and provide an opportunity to identify any accommodation which would permit the employee to perform the essential duties of the position. If such an accommodation is identified by the candidate, then the burden shifts to the borough to determine if the requested accommodation.

In the event that no accommodation is identified or the requested accommodation is not reasonable, the candidate's conditional offer of employment is withdrawn, and process continues forward to select another

candidate. However, in light of the fact that the failure to pass the medical and psychological examinations, whether because no accommodation is requested or because the borough concludes that a requested accommodation is unreasonable, constitutes a rejection of the candidate, the candidate may have the remedy of requesting a hearing before the civil service commission on the issue of whether the candidate was properly rejected, i.e., whether the candidate's requested accommodation was reasonable. Prior to taking any action to reject a proposed accommodation, a borough should discuss the issue with its solicitor or labor attorney.

Of critical importance when evaluating whether or not a candidate can perform the "essential" duties of a given position is the job description. Accordingly, boroughs should ensure that they have accurate, up to date, job descriptions for positions within the police department.

5.7 Probationary Period

Every successful applicant to the position of patrol officer or to a promotional position with the police department shall serve a **[INSERT TIME PERIOD NO LESS THAN SIX MONTHS AND NO LONGER THAN ONE YEAR]** probationary period. During the probationary period, a newly hired officer shall be considered to be an at-will employee and shall not have the protections of civil service status nor a right of appeal under these rules in the event of suspension or termination during the probationary period. A promoted officer, during probation, shall not have the protections of the civil service status of his new rank during the probationary period and may be returned to a prior rank at any time during the probationary period, for any reason or no reason at all. However, at the end of the **[INSERT TIME PERIOD NO LESS THAN SIX MONTHS AND NO LONGER THAN ONE YEAR]** year probationary period, if the conduct of the probationer has not been satisfactory to Borough Council, the probationer shall be notified in writing that the appointment will not be permanent. At that time, a newly hired officer's employment shall end, and a promoted officer shall return to his previous rank. Any officer who is not informed in writing that his performance has been unsatisfactory prior to the end of the probationary period shall receive a permanent appointment to the new position. The decision of a borough to suspend or discharge a probationer shall be final and shall not be subject to the hearing provisions contained in Article 6 of these Rules.

EXPLANATORY NOTES:

Pursuant to the civil service provisions of the Borough Code, a borough has the authority to set a probationary period of no less than six months and no more than one year during which to evaluate the performance of a newly appointed or newly promoted officer. However, prior to setting the probationary period for a promotion or a new appointment, the borough should review any applicable collective bargaining agreement to determine if the parties have agreed upon a length of the probationary period.

In the event that the applicable collective bargaining agreement does not contain a probationary period, and the municipality is selecting one, it should be cognizant of whether or not it may be appointing candidates without Act 120 training, and the impact of such training on the probationary period. Specifically, the Act 120 course of training can last upwards of eight months. Accordingly, in the case of a probationary period of twelve months in duration, the first eight months would be exhausted by the applicant attending Act 120 courses. To address this issue, municipalities may choose to insert language in their civil service rules that has the probationary period begin at the later of: (1) the date on which the employee is appointed by the township as a police officer; or (2) the date on which the applicant successfully completes Act 120 training.

The language in this Section also reflects the revisions of this section of the Borough Code through Act 78 of 2010 which expressly provides that, in the event that a probationary employee is not told that his probationary employment is ended prior to the expiration of the probationary period, then the employee is deemed to have successfully completed the probationary period and, therefore, he becomes tenured under the civil service rules.

*During the probationary period, an employee is considered to be an at-will employee, subject to termination without the right to demand a civil service hearing or a hearing pursuant to the Local Agency Law, 2 Pa. C.S. § 551 et seq. This principle was confirmed in the Commonwealth Court's decision in *Olson v. Borough of Avalon*, 811*

A.2d 66 (Pa. Commw. Ct. 2002). In that case, the Commonwealth Court held that, although Section 1186 provided some minimum restrictions on the reasons which a probationary employee's employment could be terminated, i.e., use of alcohol, illegal drugs or for open or notoriously disgraceful conduct, such limitations were not so strict as to convey any meaningful expectation of ongoing employment, either during or at the end of the probationary period. Thus, if a probationary employee is terminated, he enjoys no right to a hearing under the civil service provisions of the First Class Township Code or under the Local Agency Law.

As to the standard for removing/rejecting a probationary employee, much confusion exists as to what constitutes "open and notoriously disgraceful conduct." Many municipal officials mistakenly believe that this phrase connotes a lofty standard for rejecting a probationary police officer. In Scott v. Winschel Township, 692 A.2d 637 (Pa. Commw. Ct. 1997), the Commonwealth Court examined this issue. In holding that a municipality need not establish or allege that a probationary police officer was convicted of a crime involving open and notoriously disgraceful conduct, the Court held that the officer's conduct, including reading a newspaper while on duty, failing to properly investigate a crime scene and abusing sick leave all satisfied the statutory standard for rejection of the probationary officer.

5.8 Provisional Appointments

Whenever there are urgent reasons for the filling of a vacancy in any position in the police department and there are no names on the eligibility list for such appointment, the Borough Council may nominate a person to the Commission for noncompetitive examination. If such nominee is certified by the Commission as qualified after such noncompetitive examination, the Borough Council may appoint the nominee provisionally to fill such vacancy. Within three weeks of the provisional appointment, the Commission shall hold a competitive examination and certify an eligibility list and a regular appointment shall then be made from the name or names submitted by the Commission. Nothing within this section shall prevent the appointment, without examination, of persons temporarily as police officers in cases of riot or other emergency.

Sample Article 6. Suspensions, Removals and Reductions in Rank

6.1 Grounds for Disciplinary Action

- (a) No person appointed to a position in the police department pursuant to these Rules may be suspended without pay or removed or demoted from a rank governed by these Rules except for the following reasons:
 - (1) physical or mental disability affecting the officer's ability to continue in service, in which case the officer shall receive an honorable discharge from service;
 - (2) neglect or violation of any official duty;
 - (3) violation of any law of this commonwealth which provides that such violation constitutes a misdemeanor or felony;
 - (4) inefficiency, neglect, intemperance, disobedience of orders or conduct unbecoming an officer;
 - (5) intoxication while on duty;
 - (6) engaging or participating in or conducting of any political or election campaign while on duty or while in uniform or while using Borough property, other than to exercise of the person's own right of suffrage; or
 - (7) engaging or participating in the conduct of a political or election campaign for an incompatible office as provided in Article 3.6 of these rules.
- (b) No officer shall be removed for religious, racial or political reasons. A statement of any charges made against any officer so employed shall be furnished to the officer within five (5) days after those charges have been adopted by Borough Council.

EXPLANATORY NOTES:

This Section incorporates several key changes in Act 43 of 2012. First, the sixth statutory reason for suspending, removing or reducing a police officer in rank was modified to only restrict political activity engaged in by an officer either: (1) on duty; (2) in uniform; or (3) using borough property. This marks a significant difference from the original version of this subsection where all political activity, with the exception of actually voting oneself, was prohibited and grounds for disciplinary action. Under the current language in this Section, an officer could, for instance, circulate a nominating petition or campaign materials, so long as the officer was not in uniform, not on duty and not using borough property. In addition, an officer is also precluded from taking any steps to campaign for the officer's election to an incompatible office as identified in the Borough Code, regardless of whether such activities are done on or off duty.

Although this Section only precludes an officer from engaging in a political campaign for himself for an incompatible office, practitioners should be aware that, depending upon the level of federal funding received by a particular municipality or its police department, all municipal employees, including police officers, may be prohibited from participating in a political campaign as the result of application of the federal Hatch Act., 5 U.S.C. §§7321-7326.

6.2 Furloughs

If for reasons of economy or other reasons, it shall be deemed necessary by the Borough to reduce the number of full time police officers in the department, then the Borough shall furlough the person or persons including probationers, last appointed to the force until the appropriate reduction is accomplished. In the event that the appointing authority decides to increase the size of the police department, the furloughed officers shall be reinstated in order of their seniority in the department if the furloughed officer accepts reinstatement in writing within thirty (30) days of receiving notice of the opening. These reduction in force provisions are not applicable to the chief of police.

EXPLANATORY NOTES:

This Section reflects the provisions of Act 43 of 2012 which eliminated the prior requirement for first furloughing retirement-eligible police officers. This was an example where following the municipal code resulted in engaging in conduct prohibited by federal and state law. Specifically, targeting employees for furlough by virtue of their age would violate both the Age Discrimination in Employment Act (ADEA), as well as the Pennsylvania Human Relations Act (PHRC). Presently, for boroughs, the sequence of furloughing is "first in/first out," with the notable exception of the position of chief of police.

The only statutory restriction placed upon a municipality's authority to furlough officers is that such action be taken in good faith. See Daugherty v. Lillie, 426 A.2d 1232 (Pa. Commw. Ct. 1981). Thus, a municipality need not be financially distressed for it to have good faith "reasons of economy or other good reasons." However, in evaluating whether or not a municipality has acted in good faith, Pennsylvania Courts have examined whether or not an actual "reduction" in the police force has occurred. Specifically, Pennsylvania Courts, utilizing the good-faith standard, have examined whether the furlough actually reduced the number of police officers in the department. See Forty Foot Borough v. Kozich, 669 A.2d 469 (Pa. Commw. Ct. 1995); Strathern v. Borough of Etna, 631 A.2d 754 (Pa. Commw. Ct. 1993), petition for allowance of appeal denied, 537 Pa. 644, 644 A.2d 166 (1994). This analysis not only includes consideration of whether the actual number of officers has been reduced, but also, whether the actual number of hours of police service rendered has been reduced. Accordingly, in a case where a borough furloughs officers under the guise of a good faith reduction in force, but utilizes part-time officers to provide the same or greater number of cumulative officer hours, a reviewing court would most likely find that not to be a "reduction" in the force. Conversely, when the cumulative hours are reduced, even if the number of officers is increased by virtue of utilization of part-time officers, a court will typically conclude that a reduction has occurred and, in the absence of other evidence, that such reduction was made in good faith from a civil service perspective.

Before implementing a furlough, a borough should also consult any applicable collective bargaining agreement to determine if any prohibitions or restrictions exist on furloughs in general or, alternatively, whether the collective bargaining agreement dictates the manner in which furloughs must occur. Although they are not advisable, some

labor contracts have "no-layoff" or so-called "minimum manning requirements which obligate the municipality to maintain a minimum number of officers. In such cases, questions exist as to whether or not a borough could effectuate a furlough as, although it would not violate the civil service provisions, it would violate the applicable collective bargaining agreement. Typically, under such contracts, furloughs are effected in order of reverse seniority with the last individual hired as a patrol officer being the first person subject to furlough.

Also note that the civil service provisions of the municipal codes do not provide for the right of a civil service hearing for a furloughed police officer. As noted above, practitioners should be aware of any provisions in a collective bargaining agreement which might provide grounds to challenge a furlough. In addition, a furloughed officer or the officer's police union may challenge a furlough by filing an unfair labor practice charge with the Pennsylvania Labor Relations Board asserting that the furlough was the result of anti-union animus.

6.3 Notice of Suspensions, Removals or Reductions in Rank

Whenever a police officer is suspended without pay, removed or reduced in rank, the specific charges warranting such actions shall be stated in writing by Borough Council. The charges shall be stated clearly and in sufficient detail to enable the officer to understand the charges and to allow the officer an opportunity to respond to those charges. The charges shall specify the subsection of Article 6.1 which provides the basis for the disciplinary action as well as an explanation of the factual circumstances upon which the appointing authority relied in finding a violation of Article 6.1.

Within five days after Borough Council has voted to impose the disciplinary action, a written statement of the charges shall be delivered to the officer either by personal service or by certified and registered mail. In addition, the charges shall notify the officer of the right to appeal under Article 6.4 of these Rules. A copy of the statement of charges shall also be served upon the members of the Civil Service Commission.

EXPLANATORY NOTES:

A common mistake made by boroughs is including incomplete or insufficient information in the disciplinary notices which it issues. This is particularly the case in police departments where, in addition to civil service rules and regulations, the department is also regulated by its own Standard Operating Procedures (SOPs) or other code of conduct. Although citation to an internal code or manual which regulates conduct and proscribes different aspects of misconduct is permissible, the information contained in a notice of suspension, demotion or termination is citation to one of the six reasons set forth in the civil service provisions of the first class township and borough codes for disciplining a police officer. [In addition, as many officers who are represented by a labor union also enjoy the right to elect a remedy between grievance arbitration under a collective bargaining agreement and the statutory remedy of a hearing before the civil service commission, in drafting a notice which imposes a suspension, reduction in rank or removal from the department, practitioners should also review the applicable collective bargaining agreement and the civil service provisions to determine if additional information is required.]

In addition, notwithstanding the rise in technology and the prevalent use of electronic mail, i.e., e-mail, the General Assembly has not yet authorized the transmission of a disciplinary notice by means other than personal service and certified mail.

6.4 Request for hearing on Suspensions, Removals and Reductions in Rank

- (a) The officer who has been suspended, removed or reduced in rank may appeal the decision of the appointing authority by written notice to the Secretary of the Commission at [ADDRESS] requesting a hearing. Such written notice shall be made by personal service, certified mail or facsimile to the Commission, and such request shall be received by the Commission within ten (10) days after the officer received notice of the discipline. The officer may make written answers to any charges filed not later than the date fixed for the hearing. Failure of the officer to provide written answers to any of the charges shall not be deemed an admission by the officer.

- (b) The Commission will schedule a hearing within ten days of the officer's written request for a hearing, unless continued by the Commission for cause at the request of the commission, the Board of Commissioners or the officer. The failure of the Commission to hold a hearing within ten-days from the date on which the charges are filed against the officer shall not result in the dismissal or modification of the charges and/or penalty filed against or imposed upon the officer. At any such hearing, the officer against whom the charges have been made may be present and represented by counsel, may call witnesses and present testimony and documentation in his defense. The Borough may also be represented by counsel, call witnesses and present evidence as is necessary to support the charges. A stenographic record of all testimony shall be taken at every hearing and preserved by the commission. In the event the charges are dismissed, the record shall be sealed and not be available for public inspection.
- (c) In conducting the hearing, the commission's standard of review shall be to determine whether sufficient evidence has been presented to support the statutory reason for the disciplinary action. If the Commission finds that sufficient evidence has been introduced to support the charge, the Commission shall not modify the penalty imposed by the Borough Council unless it finds that the penalty imposed was arbitrary, discriminatory or an abuse of the Council's discretion. In considering the appropriateness of the discipline, the Commission shall not substitute its judgment for that of Borough Council. The Commission may request post-hearing briefs, and shall issue a written decision containing specific findings of fact and conclusions of law within sixty (60) days of receipt of the hearing transcript.

EXPLANATORY NOTES:

*This Section recognizes amendments to the Borough Code which were enacted through Act 43 of 2012 and also addresses legal issues which have been analyzed by Pennsylvania appellate courts regarding the scope and nature of a civil service commission's authority to modify a penalty imposed by the appointing authority. Several cases exist on this issue. Specifically, in *York Township Board of Commissioners v. Batty*, 694 A.2d 395, 397 (Pa. Commw. Ct.), petition for allowance of appeal denied, 550 Pa. 695, 704 A.2d 1384 (1997), the Court held that, if a civil service commission concludes that an individual engaged in the conduct for which he was disciplined and that the penalty imposed by the appointing authority was not arbitrary, capricious or discriminatory in regard to the conduct established, the commission may not modify the penalty. This holding would preclude, as it did in *Batty*, consideration of any mitigating factors. In reaching this conclusion, courts have held that, to the extent that mitigating factors are present, it is presumed that the appointing authority gave such factors due consideration in reaching its decision. See *Borough of Jenkintown v. Civil Service Commission of Jenkintown*, 478 A.2d 941 (Pa. Commw. Ct. 1984).*

*The more complex issues arise where multiple charges are filed against an individual and only some of the charges are filed. On this point, appellate courts have been split based upon the specific facts of each case. For instance, in *In re Appeal of Zimmet*, 367 A.2d 382 (Pa. Commw. Ct. 1977), the Commonwealth Court held that a civil service commission commits reversible error if it modifies a penalty because only part of the charges were sustained where it presumes that, if the appointing authority considered only the charges sustained, it would have selected a different penalty. Such analysis, by the Commission the Court held, was an impermissible substitution of its judgment for that of the appointing authority.*

*In contrast, in *Borough of Bristol v. Downs*, 409 A.2d 467 (Pa. Commw. Ct. 1979) the Commonwealth Court affirmed the decision of the civil service commission to modify a demotion to a suspension. The commission's rationale for doing so was that, although some of the charges against the officer were sustained, the most serious ones were not and the remaining ones were found to be "technical" violations. See also *Borough of Baldwin v. Schmidt*, 477 A.2d 576 (Pa. Commw. Ct. 1984) (affirming commission's modification of penalty from dismissal to one-year suspension because most serious charges are not sustained).*

The common thread of these decisions requires the commission to examine which factual charges have been sustained and which have not. Obviously, this will require consideration of the relative seriousness of the underlying factual misconduct. If the most serious charges have been sustained, and the penalty is not arbitrary, capricious or discriminatory for the offenses sustained, then the commission lacks the authority to modify the penalty. Alternatively, if the most serious factual charges are not sustained, then it is possible that the commission may be able to modify the penalty selected.

6.5 Hearing Procedure

- (a) All testimony shall be given under oath administered by the chairperson, or in absence of the chair, the vice chair. The Commission shall have the power to issue subpoenas as set forth in Article 2.11. Unless the Council or the person sought to be suspended, removed or reduced in rank requests that the proceedings before the Commission be open to the public, the proceedings before the Commission pursuant to this Section shall be held in the nature of a closed executive session that shall not be open to the public. Any such request shall be presented to the Commission before the civil service hearing commences. The deliberations of the Commission, including interim rulings on evidentiary rulings or procedural issues may be held in private and shall not be subject to a request to be open to the public by the council, the person sought to be suspended, removed or reduced in rank or any other party. The Commission's disposition of the disciplinary action shall constitute official action which shall be held at a public meeting unless, prior to the commencement of the hearing, a written or oral request to close the hearing is agreed to by the charging officer at his request or at the request of the Borough, and the Commission decides to honor that request.
- (b) If the Commission sustains the charges, the officer who was suspended, removed or reduced in rank may file an appeal with the Court of Common Pleas within thirty (30) days from the date of entry by the Commission of its final order. No order of suspension without pay shall be made by the Commission for a period longer than one year. In the event that the Commission fails to uphold the charges, then the person sought to be suspended, removed or demoted shall be reinstated with full pay for the period of the suspension without pay, removal or demotion, and no charges related to the suspension, removal or reduction in rank shall be officially recorded in the officer's record.

EXPLANATORY NOTES:

For the purposes of appellate review of the commission's decision and in compliance with the Local Agency Law, the commission's decision should include findings of fact, conclusions of law, as well as a discussion of any legal issues addressed by the commission. In addition, although the commission may meet to discuss the issues implicated by its decision in executive session outside of the public, the decision to issue any decision must occur at a properly advertised public meeting, and the vote by commission members to approve and to issue the decision must likewise be public.

*One of the issues that typically confronted a civil service commission was whether or not to allow a civil service hearing to be open to the public. The conventional wisdom in this area was that, because the commission was the body holding the hearing, it had the ability to determine, even over the objection of one or both of the parties, that the hearing would be open or closed to the public. Depending on the nature of the allegations made against an officer, either the officer or the municipality may wish to have the proceedings closed to the public. However, the Pennsylvania Commonwealth Court's decision in *Day v. Civil Service Commission of Borough of Carlisle*, 887 A.2d 793 (Pa. Commw. Ct. 2006), rev'd, 593 Pa. 448, 931 A.2d 646 (2007), called into question the authority of the commission to unilaterally direct that proceedings before it would be either open or closed to the public. In *Day*, the Commonwealth Court reversed a lower court order and set aside a decision of the lower court upholding the termination of a police officer because the civil service commission failed to honor the officer's request for an open hearing. In doing so, the Commonwealth Court held that the commission's decision to deny the request for an open hearing violated the officer's due process rights and also constituted a violation of Section 704 of Pennsylvania's Sunshine Law 65 Pa. C.S. 701. Although the Supreme Court ultimately vacated the portion of the Commonwealth Court's decision regarding the Sunshine Act because it concluded that the complaint regarding the Sunshine Act violation was untimely, the Supreme Court did not address the Commonwealth Court's remaining analysis that an employee is entitled to request an open proceeding at any point in time in which his employment is discussed by a public body. However, in the 2012 restatement of the Borough Code, the General Assembly provided that hearings were to be closed to the public and treated in the nature of an executive session, unless one of the parties requested that the hearings be public. Although this certainly sets the default for the hearing as closed, it begs the question of what discretion the commission possesses to deny a request by one of the parties to open the hearing. In an abundance of caution, civil service commissions may wish to pursue a course under which the request of either party to open the hearing is granted and, in the absence of any such request, the hearings are closed.*

The 2012 restatement of the Borough Code also cures a pitfall for practitioners which existed previously regarding the time for taking an appeal to the court of common pleas from a decision of a civil service commission. Specifically, prior to the restatement of the Borough Code, the language in Section 1191 provided that an appeal may be taken to the court of common pleas within sixty (60) days of the date of the decision of the civil service commission. However, as the result of the Judiciary Act Repealer Act (JARA), 42 Pa. C.S. §§ 20001-20004, the appeal period was reduced to thirty (30) days, though the first class township and borough codes at the time still provided for a 60-day appeal period. See *In Re Foraker*, 503 A.2d 1024 (Pa. Commw. Ct. 1986). Although the General Assembly has addressed this issue for boroughs, the language in the First Class Township Code remains.

Sample Article 7. Resolution for Adoption of Rules

The foregoing Civil Service Rules, which are in accordance with powers granted by the civil service provisions of the Borough Code, enacted by the General Assembly of the Commonwealth of Pennsylvania and in accordance with the authority granted by the Borough Council of **[INSERT NAME OF BOROUGH]** Borough, Pennsylvania, are hereby adopted by the Civil Service Commission of **[INSERT NAME OF BOROUGH]** Borough, Pennsylvania on **[INSERT DATE]**.

Chair

Vice-Chair

Secretary

Approved by the BOROUGH COUNCIL of **[NAME OF BOROUGH]**, **[NAME OF COUNTY]**, Pennsylvania on **[INSERT DATE]**.

ATTEST:

SIGNED:

Borough Secretary

President, Borough Council

Sample Civil Service Forms & Letters*

** Unless otherwise noted, all forms and sample letters
should be dated with the date on which the correspondence is sent.*

**SAMPLE NOTICE
APPOINTING ALTERNATE CIVIL SERVICE COMMISSIONERS**

[ON BOROUGH/TOWNSHIP LETTERHEAD]

[DATE]

[NAME OF ALTERNATE COMMISSIONER]
[ADDRESS]

Re: **Appointment as Alternate Civil Service Commissioner**

Dear [INSERT LAST NAME]:

On behalf of the [BOROUGH/TOWNSHIP], I am writing to advise you that you have been appointed as an alternate member of the [BOROUGH/TOWNSHIP] civil service commission. In the event that your services are needed, you will be contacted by the Chair of the civil service commission.

In the interim, please recognize that although you may attend meetings of the [BOROUGH/TOWNSHIP] civil service commission, you are not able to vote as a full member unless or until you are appointed as such by the Chair due to an absence or unavailability of a full commission member. In the case of such appointment, you will continue to serve as a full commission member until the matter before the Commission has ended, as defined by the [BOROUGH/TOWNSHIP]'s civil service rules and regulations.

Thank you for your service to the [BOROUGH/TOWNSHIP].

Sincerely,

[INSERT NAME], President
[BOROUGH COUNCIL/BOARD OF COMMISSIONERS]

cc: [INSERT NAME], Chair, Civil Service Commission

**SAMPLE CONTACT INFORMATION RELEASE
TO BE COMPLETED BY APPLICANT**

TO: **[NAME OF TOWNSHIP/BOROUGH]** Civil Service Commission

FROM:

DATE:

I have submitted an application for employment as a Police Officer in **[INSERT NAME OF BOROUGH/TOWNSHIP]**. I recognize that, throughout the civil service process, it will be necessary to contact me to request additional information and to convey results of the various examinations which I may be eligible to take. For that purpose, I am providing the following contact information via U.S. Mail:

I recognize that the **[BOROUGH/TOWNSHIP]** will contact me using the above-provided information. I also acknowledge that I am responsible for keeping the **[BOROUGH/TOWNSHIP]** informed of any change in this information. I release the **[BOROUGH/TOWNSHIP]** from any and all liability flowing from me not receiving and/or responding to any correspondence which is sent to the above address. I also understand that, if the **[BOROUGH/TOWNSHIP]** is unable to contact me at the above address, I will be eliminated from further processing and consideration.

Date

Signature

**SAMPLE NOTICE
ACKNOWLEDGING APPLICATION**

[NAME & ADDRESS OF APPLICANT]

Re: **Acknowledgment of Application**

Dear [NAME OF APPLICANT]:

This letter will acknowledge receipt of your application for the [INSERT NAME OF POSITION] position within the [INSERT NAME OF MUNICIPALITY] Police Department. In addition, please be advised that the written examination portion of the appointment process for the [INSERT NAME OF POSITION] position will take place on [DATE] at [TIME] at [LOCATION].*

After the administration and scoring of the written examination, the candidates will be ranked according to their scores. However, only applicants who receive a score of [INSERT MINIMUM PASSING SCORE AS WELL AS ANY REQUIREMENT TO ACHIEVE ONE OF THE TOP "X" SCORES IN THE PROCESS] will continue further in the appointment process.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

** If your Municipality is utilizing consortium testing, be sure to advise the applicant of this and to include the information in this correspondence.*

SAMPLE PUBLIC ANNOUNCEMENT OF EXAMINATION AND NEWSPAPER ADVERTISEMENT

*For Publication and Posting**

Notice of Written Examination Notice [Borough/Township]

[NAME OF MUNICIPALITY] announces that it is beginning the process for hiring [INSERT NAME OF POSITION]. Application and other forms required to be completed in order to apply for the position of [POSITION] are available at the [BOROUGH/TOWNSHIP] Building [IF UTILIZING CONSORTIUM TESTING, INCLUDE CONTACT INFORMATION FOR CONSORTIUM], [MAILING ADDRESS]. The [BOROUGH/TOWNSHIP] building is open 24 hours a day, 7 days a week. Call [PHONE NUMBER] if you have any questions.

COMPLETED APPLICATIONS MUST BE TURNED IN TO THE [BOROUGH/TOWNSHIP] MANAGER'S OFFICE DURING NORMAL BUSINESS HOURS BY [DATE].

A written examination will be held on [DATE] at [TIME] at [LOCATION].* Other mandatory components of the process are an oral examination, and a physical agility test. In addition, candidates who are one of the top three names certified will be subject to a background check, including a polygraph examination, a fitness test, a medical examination, psychological examination, and a polygraph examination. A complete copy of the [BOROUGH/TOWNSHIP]'s hiring policy, as set forth in its Civil Service Rules, is available for inspection during regular business hours at [ADDRESS].

** This notice can also be placed on the municipality's website.*

***If utilizing consortium testing, please ensure that the consortium information is included.*

**SAMPLE NOTICE TO SUCCESSFUL
CANDIDATE REGARDING WRITTEN EXAMINATION**

[NAME & ADDRESS OF APPLICANT]

Re: **Notice of Passing of Written Examination**

Dear [NAME OF APPLICANT]:

This letter is to notify you that you received a score of [SCORE]% on the written examination portion of the Civil Service Examination. **[INSERT IF YOUR RULES CONTAIN A REQUIREMENT THAT A CANDIDATE OBTAIN ONE OF THE TOP "X" SCORES IN ORDER TO PASS: YOU ALSO OBTAINED ONE OF THE TOP [INSERT NUMBER REQUIRED BY RULES] SCORES.]** As a result, you have passed the written examination portion, and you are eligible to proceed to the next step in the hiring process. Congratulations on this achievement.

Under separate cover, you will receive written notification of the time, date and place of the next step in the hiring process.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

**SAMPLE NOTICE TO UNSUCCESSFUL
CANDIDATE FOLLOWING WRITTEN EXAMINATION**

[NAME & ADDRESS OF APPLICANT]

Re: **Notice of Results of Written Examination**

Dear **[NAME OF APPLICANT]**:

This letter is to advise you that **[NAME OF AGENCY CONDUCTING WRITTEN EXAMINATION]** has reported to the Commission that you achieved a score of **[SCORE]%** on the written portion of the Civil Service Examination **[INSERT IF YOUR RULES CONTAIN A REQUIREMENT THAT A CANDIDATE OBTAIN ONE OF THE TOP "X" SCORES IN ORDER TO PASS: THIS SCORE WAS NOT ONE OF THE TOP [INSERT NUMBER REQUIRED BY RULES] SCORES.]** Based upon the results reported, you did not pass the written exam based upon the criteria set forth in the Commission's Rules.

If you believe that you have a basis to appeal the result reported by **[NAME OF AGENCY CONDUCTING WRITTEN EXAMINATION]** you must request a hearing before the **[BOROUGH/TOWNSHIP]** Civil Service Commission in writing within ten (10) days from your receipt of this notice. In the absence of a timely request for a hearing as set forth above, or if you request a hearing in a timely manner and your appeal is denied, you will be ineligible to proceed further in the examination process, and your name will be removed from further consideration in the appointment process.

Thank you for your participation.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

**SAMPLE NOTICE TO SUCCESSFUL
CANDIDATE REGARDING ORAL EXAMINATION**

[NAME & ADDRESS OF APPLICANT]

Re: **Notice of Passing of Oral Examination**

Dear [NAME OF APPLICANT]:

This letter is to notify you that you received a score of [SCORE]% on the oral examination portion of the Civil Service Examination for the position of [POSITION]. Based upon the criteria set forth in the [BOROUGH/TOWNSHIP]'s civil service rules, you have passed the oral examination and therefore, you are eligible to proceed further in the examination process.

Congratulations on your performance. In the near future, you will be informed, in writing, of the next step in the process.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

**SAMPLE NOTICE TO UNSUCCESSFUL
CANDIDATE FOLLOWING ORAL EXAMINATION**

[NAME & ADDRESS OF APPLICANT]

Dear **[NAME OF APPLICANT]**:

This letter is to advise you that the Board of Oral Examiners has reported to the Commission that you achieved a score of **[SCORE]**% on the oral portion of the Civil Service Examination for the position of **[POSITION]**. Based upon the results reported, you did not obtain a passing score as that term is defined in the Commission's Rules. Consequently, unless you submit a timely request for a hearing as set forth below and are successful in your appeal, you will be ineligible to proceed further in the examination process.

If you believe that you have a basis to appeal the oral examination score reported to the Commission by the Oral Examination Board, you must request, in writing, a hearing before the **[BOROUGH/TOWNSHIP]** Civil Service Commission within ten (10) days from your receipt of this notice. In the absence of a timely request for a hearing as set forth above, or if you request a hearing in a timely manner and your appeal is denied, you will be ineligible to proceed further in the examination process, and your name will be removed from further consideration in the appointment process.

Thank you for your participation.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

**SAMPLE NOTICE OF PASSING
PHYSICAL AGILITY EXAMINATION**

[NAME & ADDRESS OF APPLICANT]

Re: **Results of Physical Agility Examination**

Dear **[NAME OF APPLICANT]**:

This is to notify you that you passed the physical agility examination you took on **[DATE]**. You therefore remain eligible to participate further in the Civil Service Examination for the position of **[POSITION]**.

In the near future, you will be informed, in writing, of the next step in the process.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

SAMPLE NOTICE OF FAILING PHYSICAL AGILITY EXAMINATION

[NAME & ADDRESS OF APPLICANT]

Re: **Results of Physical Agility Examination**

Dear [NAME OF APPLICANT]:

This letter is to advise you that examiners for the physical agility test have reported to the Commission that you did not pass this portion of the Civil Service Examination for the position of [POSITION]. Based upon the results reported to the Commission, you did not pass the physical agility test as set forth in the Commission's Rules. Consequently, unless you submit a timely request for a hearing as set forth below and are successful in your appeal, you will be ineligible to proceed further in the examination process.

If you believe that you have a basis to appeal the results reported by the physical agility examiners, you must request, in writing, a hearing before the [BOROUGH/TOWNSHIP] Civil Service Commission within ten (10) days of your receipt of this notice.

Thank you for your participation.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

**SAMPLE NOTICE ADVISING CANDIDATE OF
TOP THREE RANK FOR APPOINTMENT**

[NAME & ADDRESS OF APPLICANT]

Re: **Ranking on Eligibility List Examination**

Dear **[NAME OF APPLICANT]**:

This letter is to advise you that, following the completion of the written and oral examinations and physical agility test, and the conditional addition of any veterans' preference points to which any applicants were entitled, you rank within the top three on the eligibility list. The **[BOROUGH COUNCIL/BOARD OF COMMISSIONERS]** will select a

Pursuant to the Commission's Rules, before certifying any candidate as eligible for appointment, the candidate must pass a background investigation, included in which is a polygraph examination. Accordingly, the Commission has scheduled a polygraph examination with **[INSERT NAME]** on **[INSERT DATE, TIME AND LOCATION]**. Separately, the Commission has delegated to **[INSERT NAME AND TITLE OF PERSON]** the task of conducting the remainder of the background investigation, with the exception of the polygraph examination. You will receive separate correspondence regarding the results of your polygraph examination and your overall background examination.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

**SAMPLE NOTICE ADVISING OF
PASSING OF POLYGRAPH EXAMINATION**

[NAME & ADDRESS OF APPLICANT]

Re: **Results of Polygraph Examination**

Dear **[NAME OF APPLICANT]**:

This is to notify you that you passed the polygraph examination, which was administered on **[DATE]** as part of the background investigation portion of the civil service process. You therefore remain eligible to participate further in the Civil Service Examination for the position of **[POSITION]**, subject to the results of the remaining portion of the background investigation. When the entire background investigation portion is completed, you will be advised of the results.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

SAMPLE NOTICE OF FAILURE OF FIRST POLYGRAPH EXAMINATION AND NOTICE OF SECOND EXAMINATION

[NAME & ADDRESS OF APPLICANT]

Re: **Results of Polygraph Examination**

Dear [NAME OF APPLICANT]:

As you know, you participated in a polygraph examination as part of the background investigation portion of the civil service process. The results of this examination indicated that you displayed deception with regard to one or more material questions asked during the polygraph examination. Accordingly, you failed this portion of the background check. However, under the [BOROUGH/TOWNSHIP]'s Civil Service Rules, applicants who fail their initial polygraph examination, are eligible for a second test. You have, therefore, been scheduled for a second polygraph examination on [DATE] at [TIME AND LOCATION]. The examination will be conducted by [NAME]. If you pass this examination, you will be considered as having passed the polygraph examination and, subject to your passage of the other components of the background examination, you will remain eligible in the appointment process.

Please advise me immediately if you do not intend to take this second polygraph examination. If you are unable to attend on the designated date and time, please call [NAME] directly at [PHONE NUMBER] to reschedule. If you do not appear at the second polygraph examination, you will be removed immediately from further consideration in the hiring process. The examination must be completed by [DATE].

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

**SAMPLE NOTICE OF PASSING
SECOND POLYGRAPH EXAMINATION**

[NAME & ADDRESS OF APPLICANT]

Re: **Results of Second Polygraph Examination**

Dear **[NAME OF APPLICANT]**:

This is to notify you that you passed the second polygraph examination that was administered to you on **[DATE]**. You, therefore, remain eligible to participate further in the Civil Service Examination for the position of **[POSITION]**, subject to the results of the remaining portion of the background investigation. When the entire background investigation portion is completed, you will be advised of the results.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

**SAMPLE NOTICE OF FAILURE OF SECOND POLYGRAPH EXAMINATION
AND RIGHT TO APPEAL FOR THIRD AND FINAL EXAMINATION**

[NAME & ADDRESS OF APPLICANT]

Re: **Results of Second Polygraph Examination**

Dear **[NAME OF APPLICANT]**:

This letter is to advise you that the second polygraph examiner appointed by the Civil Service Commission has reported to the Commission that you displayed deception in your responses to one or more material questions during the examination. Based upon this report from the polygraph examiner, you did not pass the exam pursuant to the Commission's Rules.

The Commission's Rules permit an applicant who has failed the first two polygraph examinations to appeal to the Commission in order to request a third and final examination. If you believe that you have a basis to obtain a third polygraph examination, you must request a hearing, in writing, before the **[BOROUGH/TOWNSHIP]** Civil Service Commission within ten (10) days from the receipt of this notice. At such a hearing, you may present any and all information as to why you believe you should be permitted to participate in a third and final polygraph examination. Based upon any information which you choose to present at this hearing, the Commission, in its sole discretion, may afford you a final opportunity to pass the polygraph examination.

In the absence of a timely appeal, or, if you have appeal to the Commission and the Commission determines that you should not receive a third polygraph examination, you will be removed from further consideration in the examination process.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

**SAMPLE ACKNOWLEDGEMENT OF REQUEST
FOR THIRD POLYGRAPH EXAMINATION**

[NAME & ADDRESS OF APPLICANT]

Re: **Acknowledgement of Appeal For Third Polygraph Examination**

Dear **[NAME OF APPLICANT]**:

This letter acknowledges your **[INSERT DATE]** appeal to the Commission in which you request an opportunity to take a third polygraph examination. Based upon your timely request, the Commission has scheduled a hearing for **[INSERT TIME, DATE AND LOCATION]** to hear your appeal. You should appear with any and all information which you would like the Commission to consider in support of your request.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

cc: Civil Service Commissioners

**SAMPLE NOTICE DENYING REQUEST FOR
THIRD POLYGRAPH EXAMINATION**

[NAME & ADDRESS OF APPLICANT]

Re: **Request For Third Polygraph Examination**

Dear **[NAME OF APPLICANT]**:

As you know, you participated in a hearing on **[INSERT TIME AND DATE OF HEARING]** regarding your request to take a third polygraph examination as part of the **[BOROUGH/TOWNSHIP]**'s civil service process. After giving the matter due consideration, and taking into account the information which you offered at the Commission's hearing, the Commission voted to deny your request. As a result, you are ineligible to participate further in the appointment process.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

cc: Civil Service Commissioners

SAMPLE NOTICE GRANTING REQUEST FOR THIRD POLYGRAPH EXAMINATION

[NAME & ADDRESS OF APPLICANT]

Re: **Request For Third Polygraph Examination**

Dear [NAME OF APPLICANT]:

As you know, you participated in a hearing on [INSERT TIME AND DATE OF HEARING] regarding your request to take a third polygraph examination as part of the [BOROUGH/TOWNSHIP]'s civil service process. After giving the matter due consideration, and taking into account the information which you offered at the Commission's hearing, the Commission voted to grant your request.

Under separate cover, you will receive notice identifying the time, date and location of the third polygraph examination. If you cannot attend the polygraph examination on the date scheduled, you should contact [NAME] directly at [PHONE NUMBER] to reschedule. If rescheduled, the final polygraph examination must be completed by [INSERT DATE]. In the event that you do not appear at the final polygraph examination or you are found to be evasive during this third and final polygraph examination, you will be removed immediately from further consideration in the hiring process.

If you pass this final polygraph examination, you will be considered as having passed the polygraph examination and, you will remain eligible in the appointment process.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

cc: Civil Service Commissioners

**SAMPLE NOTICE OF PASSING
THIRD POLYGRAPH EXAMINATION**

[NAME & ADDRESS OF APPLICANT]

Re: **Results of Third Polygraph Examination**

Dear **[NAME OF APPLICANT]**:

This letter is to inform you that the Commission has received the results of the third and final polygraph examination which was conducted by **[INSERT NAME]** on **[INSERT DATE]** which the Commission allowed you to take based upon your request to do so. Based upon the results submitted by **[INSERT NAME]**, you passed the polygraph examination. Accordingly, you will now proceed to the next phase in the process, which the is background examination.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

cc: Civil Service Commissioners

SAMPLE NOTICE OF FAILING THIRD POLYGRAPH EXAMINATION

[NAME & ADDRESS OF APPLICANT]

Re: **Results of Third Polygraph Examination**

Dear **[NAME OF APPLICANT]**:

This letter is to inform you that the Commission has received the results of the third and final polygraph examination which was conducted by **[INSERT NAME]** on **[INSERT DATE]** which the Commission allowed you to take based upon your request to do so. Based upon the results submitted by **[INSERT NAME]**, you failed the third polygraph examination. As a result, you will be removed from further consideration in the appointment process.

If you believe that you have a basis to appeal this result, you must request, in writing, a hearing before the **[BOROUGH/TOWNSHIP]** Civil Service Commission within ten (10) days of your receipt of this notice.

Thank you for your participation.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

SAMPLE NOTICE OF PASSING BACKGROUND INVESTIGATION

[NAME & ADDRESS OF APPLICANT]

Re: **Results of Background Investigation**

Dear **[NAME OF APPLICANT]**:

This letter is to notify you that you passed the background investigation conducted by the **[BOROUGH/TOWNSHIP]**. Accordingly, your name will be one of the three **[OR LESS IF LESS THAN THREE NAMES REMAIN ON THE ELIGIBILITY LIST]** names submitted the **[BOROUGH COUNCIL/BOARD OF COMMISSIONERS]** for consideration for appointment. In the event that you are selected for appointment, your appointment would be conditioned upon you passing medical and psychological examinations.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

SAMPLE RECOMMENDATION OF REMOVAL FOR FAILURE OF BACKGROUND INVESTIGATION

[ON LETTERHEAD OF ENTITY CONDUCTING BACKGROUND INVESTIGATION]

[NAME AND ADDRESS OF APPLICANT]

Re: **Notification of Results of Background Investigation and Recommendation of Removal From Further Consideration For Appointment**

[NAME OF APPLICANT]:

This letter is to notify you of the results of your background investigation. Based upon the information which you provided during the background investigation, it is my conclusion that you are not an appropriate candidate for appointment as a [BOROUGH/TOWNSHIP] Police Officer, and I am recommending to the [BOROUGH/TOWNSHIP] Civil Service Commission that it remove you from further consideration for appointment as a [BOROUGH/TOWNSHIP].

The underlying factual basis which has resulted in my decision to recommend to that you be removed from further consideration for appointment includes [INSERT DESCRIPTION OF INFORMATION WHICH FORMS BASIS FOR RECOMMENDATION].

By copy of this letter to the Chairman of the [BOROUGH/TOWNSHIP] Civil Service Commission, I request that the Commission remove you from further consideration for appointment as a [BOROUGH/TOWNSHIP] Police Officer on the agenda of the Commission's next regularly scheduled meeting which will be held on [DATE].

If you disagree with my recommendation, you will have the ability to request a hearing before the [BOROUGH/TOWNSHIP] Civil Service Commission. This hearing will be governed by Pennsylvania's Local Agency Law. At this hearing, you may be represented by counsel of your choice, you will be able to examine and cross-examine witnesses who will testify under oath, and you may present any and all documentary evidence as you see fit. In addition, the proceedings will be transcribed by a court reporter.

Very truly yours,

[NAME & TITLE OF PERSON CONDUCTING BACKGROUND INVESTIGATION]

cc: [NAME], Secretary, [BOROUGH/TOWNSHIP] Civil Service Commission

SAMPLE NOTICE OF FAILING BACKGROUND INVESTIGATION

[NAME & ADDRESS OF APPLICANT]

Re: **Results of Background Investigation**

Dear **[NAME OF APPLICANT]**:

This letter is to advise you that **[NAME OF INDIVIDUAL APPOINTED TO CONDUCT BACKGROUND INVESTIGATION]**, the individual who the Commission delegated the task of conducting the background investigation, has recommended to the Commission that you should be removed from further consideration in the hiring process based upon the results of the background investigation. Although this notice was sent to you with a copy to the Commission, I am providing another copy of it to you.

If you disagree with **[NAME OF INDIVIDUAL APPOINTED TO CONDUCT BACKGROUND INVESTIGATION]**'s recommendation, you must submit a timely request for a hearing to the Commission within ten (10) calendar days of the date of this notice. This hearing will be governed by Pennsylvania's Local Agency Law. At this hearing, you may be represented by counsel of your choice, you will be able to examine and cross-examine witnesses who will testify under oath, and you may present any and all documentary evidence as you see fit. In addition, the proceedings will be transcribed by a court reporter.

In the absence of a timely request for a hearing, or, if a timely request for a hearing is received and your challenge to the recommendation is denied, you will be ineligible to proceed further in the examination process.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

cc: Civil Service Commission Members

**SAMPLE ACKNOWLEDGEMENT OF REQUEST
FOR HEARING REGARDING RECOMMENDATION OF REMOVAL**

[NAME & ADDRESS OF APPLICANT]

Re: **Acknowledgement of Request For Hearing on Recommendation of Removal**

Dear **[NAME OF APPLICANT]**:

This letter acknowledges your **[INSERT DATE]** appeal to the Commission of the **[INSERT DATE]** recommendation of **[INSERT NAME OF PERSON CONDUCTING BACKGROUND INVESTIGATION]** in which **[INSERT NAME]** recommended that you be removed from further consideration in the hiring process.

Based upon your timely request, the Commission has scheduled a hearing for **[INSERT TIME, DATE AND LOCATION]** to hear your appeal. The **[BOROUGH/TOWNSHIP]** will have the burden of proof in this case, and each party shall have the right to be represented by counsel of their choosing.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

cc: Civil Service Commissioners

SAMPLE NOTICE OF MEDICAL AND PSYCHOLOGICAL EXAMINATIONS

[NAME & ADDRESS OF APPLICANT]

Re: **Conditional Offer of Employment**

Dear [NAME OF APPLICANT]:

Congratulations. You have been selected for the appointment to the position of [POSITION]. However, your appointment is contingent upon passing both your medical and psychological examination. You have been scheduled for the medical examination portion of the Civil Service Examination for the position of [POSITION] on [DATE] at [TIME] with Dr. [NAME] at [LOCATION]. The medical examination is a mandatory part of the examination; only those candidates who pass the medical examination will be hired. The results of this examination, which will be limited solely to consideration of your ability to perform the essential duties of the [POSITION] will be transmitted directly to the [TOWNSHIP/BOROUGH].

If you cannot attend the scheduled examination, please call Dr. [NAME] directly at [PHONE NUMBER] and arrange an alternative time. Please be advised that the examination must be completed by [DATE]. Failure to do so will result in the revocation of your conditional offer of employment.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

**SAMPLE NOTICE OF PASSING MEDICAL EXAMINATION
AND NOTICE OF PSYCHOLOGICAL EXAMINATION**

[NAME & ADDRESS OF APPLICANT]

Re: **Results of Medical Examination**

Dear **[NAME OF APPLICANT]**:

This letter is to notify you that you that the Commission has been informed that you have passed the medical examination given you on **[DATE]** by Dr. **[NAME]**. You are scheduled for a psychological examination on **[DATE]** with Dr. **[NAME]** at **[TIME AND LOCATION]**. Like the medical examination, the psychological examination is a mandatory part of the hiring process.

If you cannot attend the scheduled examination, please contact Dr. **[NAME]** directly at **[PHONE NUMBER]** and arrange an alternative time. Please be advised that the examination must be completed by **[DATE]**. Failure to do so will result in the revocation of your conditional offer of employment.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

SAMPLE NOTICE OF FAILING MEDICAL EXAMINATION

[NAME & ADDRESS OF APPLICANT]

Re: **Results of Medical Examination**

Dear **[NAME OF APPLICANT]**:

This letter is to advise you that Dr. **[NAME]** has reported to the **[BOROUGH/TOWNSHIP]** that you have a physical injury or condition which calls into question your ability to perform the essential functions for the position of **[POSITION]**. For your convenience, attached is a copy of Dr. **[NAME]**'s report which he submitted to the **[BOROUGH/TOWNSHIP]**.

In light of Dr. **[NAME]**'s conclusion, the **[BOROUGH/TOWNSHIP]** is contacting you in order to determine whether or not you believe that receipt of an accommodation might enable you to perform the essential duties of the **[INSERT NAME OF POSITION]** position. Accordingly, I am scheduling a meeting with you on **[INSERT TIME, DATE AND LOCATION OF MEETING]** to discuss whether any accommodation exists which would allow you to perform all of the essential duties of the **[INSERT NAME OF POSITION]** position.

In preparation for this meeting, you should bring with you any information regarding any accommodation which you believe would permit you to perform the essential duties of the **[INSERT NAME OF POSITION]** position. Although you may bring whatever information which you wish, the information which might be the most relevant is medical information or documentation which establishes that any request accommodation will enable you to perform the essential duties of the **[INSERT NAME OF POSITION]** position.

I will receive any information which you provide and discuss it with **[BOROUGH COUNCIL/BOARD OF COMMISSIONERS]**. As part of this process, the **[BOROUGH/TOWNSHIP]** may request that you be examined by a **[DOCTOR]** of its choosing for examining whether and/or how any requested accommodation would permit you to perform the essential duties of the **[INSERT NAME OF POSITION]** position. At the end of the interactive process **[BOROUGH COUNCIL/BOARD OF SUPERVISORS]** will advise you of its determination regarding this matter. Please be advised that, if you do not respond to this letter and attend the meeting or you do not identify any reasonable accommodation, **[BOROUGH COUNCIL/BOARD OF SUPERVISORS]** will presume that you are withdrawing your name from further consideration in the appointment process and remove your name from the eligibility list.

Very truly yours,

[NAME OF CONTACT PERSON FOR BOROUGH/TOWNSHIP]

**SAMPLE NOTICE OF
PASSING PSYCHOLOGICAL EXAMINATION**

[NAME & ADDRESS OF APPLICANT]

Re: **Notice of Passing Psychological Examination**

Dear **[NAME OF APPLICANT]**:

Congratulations. This is to notify you that you passed the psychological examination that you took on **[DATE]**. Please contact Chief **[NAME]** to discuss your starting date.

Very truly yours,

[CONTACT PERSON FOR BOROUGH/TOWNSHIP]

cc: **[BOROUGH COUNCIL/TOWNSHIP BOARD OF COMMISSIONERS]**
[INSERT NAME], Chief of Police

SAMPLE NOTICE OF FAILING PSYCHOLOGICAL EXAMINATION

[NAME & ADDRESS OF APPLICANT]

Re: **Notice of Failure of Psychological Examination**

Dear [NAME OF APPLICANT]:

As you know, you were given an offer of employment conditioned upon you passing both a medical and psychological examination to determine whether you could perform the essential duties of the [INSERT NAME OF POSITION] position. This letter is to advise you that Dr. [NAME] has reported to the [BOROUGH/TOWNSHIP] that you are unfit to perform the essential functions for the position of [INSERT NAME OF POSITION] position.

In light of Dr. [NAME]'s conclusion, the [BOROUGH/TOWNSHIP] is contacting you in order to determine whether or not you believe that receipt of an accommodation might enable you to perform the essential duties of the [INSERT NAME OF POSITION] position. Accordingly, I am contacting you to request that, within the next fourteen (14) days you submit any information which you would like the [BOROUGH/TOWNSHIP] to consider regarding your ability to perform the essential duties of the [INSERT NAME OF POSITION] position.

Although you are free to submit whatever information which you wish, the information which might be the most relevant is medical information or documentation which establishes that any requested accommodation will enable you to perform the essential duties of the [INSERT NAME OF POSITION] position.

I will receive any information which you provide and discuss it with [BOROUGH COUNCIL/BOARD OF COMMISSIONERS]. As part of this process, the [BOROUGH/TOWNSHIP] may request that you be examined by a [PSYCHIATRIST/PSYCHOLOGIST] of its choosing for examining whether and/or how any requested accommodation would permit you to perform the essential duties of the [INSERT NAME OF POSITION] position.

At the end of the interactive process [BOROUGH COUNCIL/BOARD OF SUPERVISORS] will advise you of its determination regarding this matter. Please be advised that, if you do not respond to this letter and attend the meeting or you do not identify any reasonable accommodation, [BOROUGH COUNCIL/BOARD OF SUPERVISORS] will presume that you are withdrawing your name from further consideration in the appointment process and remove your name from the eligibility list.

Very truly yours,

[NAME OF CONTACT PERSON FOR BOROUGH/TOWNSHIP]

SAMPLE NOTICE GRANTING REQUESTED ACCOMMODATION

[NAME & ADDRESS OF APPLICANT]

Re: **Requested Accommodation**

Dear **[NAME OF APPLICANT]**:

As you know, I previously requested that you submit any information regarding your ability to perform the essential duties of the **[INSERT NAME OF POSITION]** position. **[BOROUGH COUNCIL/BOARD OF COMMISSIONERS]** reviewed the information which you provided regarding your requested accommodation of **[INSERT DESCRIPTION OF ACCOMMODATION REQUESTED]**. After careful consideration, **[BOROUGH COUNCIL/BOARD OF COMMISSIONERS]** has determined that your requested accommodation is reasonable and that it will enable you to perform the essential duties of the **[INSERT NAME OF POSITION]** position. Accordingly, **[BOROUGH COUNCIL/BOARD OF COMMISSIONERS]** can accommodate your request.

If you wish to accept the **[BOROUGH/TOWNSHIP]**'s accommodation, please provide me with written notice accepting the accommodation within ten (10) days. In the event that you respond and accept the accommodation, this action will constitute an acceptance of the **[BOROUGH/TOWNSHIP]**'s offer of employment. To the extent that you reject this offer of accommodation or fail to respond to this letter within ten (10) days, then the **[BOROUGH/TOWNSHIP]** will treat this as a voluntary removal by you of further consideration in the hiring process, and your name will also be removed from the eligibility list.

Very truly yours,

[NAME OF CONTACT PERSON FOR BOROUGH/TOWNSHIP]

**SAMPLE NOTICE REJECTING
APPLICANT AND/OR REQUESTED ACCOMMODATION**

[NAME & ADDRESS OF APPLICANT]

Re: **Conditional Offer of Employment**

Dear **[NAME OF APPLICANT]**:

As you know, you previously received an offer of employment which was conditioned upon you passing both medical and psychological examinations which were to confirm whether or not you could perform the essential duties of the **[INSERT NAME OF POSITION]** position. By letter dated **[INSERT DATE]**, I wrote to you and notified you that you had failed the **[INSERT MEDICAL AND/OR PSYCHOLOGICAL EXAMINATION(S)]**. In that letter, I also offered you the ability to submit any information regarding any accommodation which you believed would enable you to perform the essential duties of the **[INSERT NAME OF POSITION]** position.

INSERT EITHER:

After careful consideration, **[BOROUGH COUNCIL/BOARD OF COMMISSIONERS]** has determined that your requested accommodation **[INSERT EITHER: IS NOT REASONABLE or WILL NOT ENABLE YOU TO PERFORM THE ESSENTIAL DUTIES OF THE [INSERT NAME OF POSITION] POSITION]. [DESCRIBE BASIS FOR BOROUGH/TOWNSHIP'S CONCLUSION].**

OR:

You failed to respond to my letter or failed to identify any accommodation during which would enable you to perform the essential duties of the **[INSERT NAME OF POSITION]** position.

As a result, it is the **[BOROUGH COUNCIL/BOARD OF COMMISSIONERS]**'s determination that you are not qualified for the **[INSERT NAME OF POSITION]** position because you cannot perform the essential duties of this position.

If you disagree with **[BOROUGH COUNCIL/BOARD OF COMMISSIONERS]**'s determination, you may submit a timely request for a hearing to the Commission within ten (10) calendar days of the date of this notice. This hearing will be governed by Pennsylvania's Local Agency Law. At this hearing, you may be represented by counsel of your choice, you will be able to examine and cross-examine witnesses who will testify under oath, and you may present any and all documentary evidence as you see fit. In addition, the proceedings will be transcribed by a court reporter.

In the absence of a timely request for a hearing, or, if a timely request for a hearing is received and your challenge to the **[BOROUGH COUNCIL/BOARD OF COMMISSIONERS]**'s determination is denied, you will be ineligible to proceed further in the examination process, and your name will be removed from the eligibility list.

Very truly yours,

[NAME OF CONTACT PERSON FOR BOROUGH/TOWNSHIP]

Sample Notices Regarding Physical Agility, Background, Polygraph, Medical, and Psychological Testing

**SAMPLE NOTICE OF APPOINTMENT
POLYGRAPH EXAMINER**

[NAME AND ADDRESS OF POLYGRAPH EXAMINER]

Re: **Appointment as Polygraph Examiner & Evaluation of Candidates**

Dear [POLYGRAPH EXAMINER]:

This confirms your appointment to perform polygraph examinations as part of the [BOROUGH/TOWNSHIP] police Civil Service Examination for the [POSITION] position. Enclosed is a copy of the relevant portion of the [BOROUGH/TOWNSHIP]'s Civil Service Rules regarding the polygraph examination. In addition, enclosed is a copy of the form on which you should submit your results regarding each candidate. As noted on the form, in the event that you conclude that any applicant was deceptive in his/her response to any issue(s)/question(s), please identify the specific issue(s)/question(s) on which you believe that the candidate was deceptive. Please note that the report of each examination must be submitted to the Commission within five (5) days of each examination. Also please note that, pursuant to the enclosed rules, the polygraph examiner is to limit his/her questions to the information contained in the personal data questionnaire which each candidate completed.

Please send your future report to me in a sealed envelope at the above address.

Please call me at [PHONE NUMBER] if you have any questions concerning the polygraph examination or your duties.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

**SAMPLE REPORT
OF POLYGRAPH EXAMINER**

MEMORANDUM

TO: **[POLYGRAPH EXAMINER]**

FROM: Secretary, **[BOROUGH/TOWNSHIP]**
Civil Service Commission

RE: Report Form For Candidates for **[POSITION]** Position

DATE: **[DATE]**

Please fill out this form completely for each candidate and return it to me within five (5) days of the date of each examination for each candidate. Use an additional sheet(s) of paper if necessary.

Candidate's Name: _____

Date of Examination: _____

Please provide the information requested below. If you concluded that none of the candidate's responses to questions based upon the Personal Data Questionnaire were deceptive, please check "Candidate passes." If you concluded that any of the candidate's responses to questions based upon the Personal Data Questionnaire were deceptive, please check the "Candidate fails." In the event that you select conclude that the candidate failed, please identify the issue(s)/question(s) regarding which you believe that the candidate was deceptive.

Check One:

- Candidate passes
- Candidate fails; it is my conclusion that the above Candidate was deceptive regarding:

Signed_____ Dated_____

**SAMPLE FORM OF NOTICE OF APPOINTMENT
PHYSICAL AGILITY EXAMINATION ADMINISTRATOR**

[NAME AND ADDRESS OF PHYSICAL AGILITY ADMINISTRATOR]

Re: Appointment as Physical Agility Administrator & Evaluation of Candidates

Dear **[PHYSICAL AGILITY EXAMINATION ADMINISTRATOR]**:

This confirms your appointment to conduct the physical agility examination section of the **[BOROUGH/TOWNSHIP]** police Civil Service Examination for the **[POSITION]** position. I have enclosed a copy of the relevant portion of the **[BOROUGH/TOWNSHIP]** Civil Service Rules regarding the scope and requirements of the physical agility test. The physical agility examination will take place on **[DATE]** at **[LOCATION]**.

For your convenience, I have included a form which can be utilized to report the results of each candidate participating in the **[BOROUGH/TOWNSHIP]**'s physical agility test which you are administering. Please send your future report to me in a sealed envelope at the above address.

Please call me at **[PHONE NUMBER]** if you have any questions concerning the physical agility examination or duties.

Very truly yours,

Secretary
[BOROUGH/TOWNSHIP]
Civil Service Commission

SAMPLE REPORT OF PHYSICAL AGILITY EXAMINER

MEMORANDUM

TO: [PHYSICAL AGILITY EXAMINER]
FROM: Secretary, [BOROUGH/TOWNSHIP]
Civil Service Commission
RE: Report Form for Candidates for Position of [POSITION]
DATE: [DATE]

Please fill out this form completely for each candidate and return it to me within fifteen (15) days of the date of the examination for each candidate. Use an additional sheet(s) of paper if necessary.

Candidate's Name: _____

Date of Examination: _____

Tests Conducted: _____

Results of each Test: _____

Check One:

- Candidate successfully completed all of the requirements set forth in the Rules provided to me.
- Candidate did not successfully complete all of the requirements set forth in the Rules provided to me.

If candidate did not successfully complete all of the requirements, please identify which requirement(s) were not completed and why:

Signed _____ Dated _____

**SAMPLE NOTICE OF
APPOINTMENT OF MEDICAL EXAMINER**

[NAME AND ADDRESS OF MEDICAL EXAMINER]

Re: **Appointment as Medical Examiner & Evaluation of Candidates**

Dear **[MEDICAL EXAMINER]**:

This confirms your appointment to perform medical examinations as part of the **[BOROUGH/TOWNSHIP]** police appointment process for the position of **[POSITION]**.

Enclosed are a copy of the **[BOROUGH/TOWNSHIP]** Civil Service Rules relevant to the medical examination. Also, enclosed is a document outlining the essential duties of the position for **[POSITION]**.

Please note the Rules require that you submit a report on each candidate within fifteen (15) days of the date of each examination. For your convenience, I have included a form on which you may report your results for each candidate. Also note that if you deem a candidate unfit for performance of the duties of **[POSITION]** because of any medical condition, you must give a statement of your reasons on the form.

Please send your future report to me in a sealed envelope at the above address.

Please call me at **[PHONE NUMBER]** if you have any questions.

Very truly yours,

[NAME AND TITLE OF BOROUGH/TOWNSHIP CONTACT PERSON]

**SAMPLE REPORT
OF MEDICAL EXAMINER**

MEMORANDUM

TO: **[MEDICAL EXAMINER]**
FROM: **[NAME OF BOROUGH/TOWNSHIP CONTACT PERSON]**
RE: Report Form for Candidates for Position of **[POSITION]**
DATE: **[DATE]**

Please fill out this form completely for each candidate and return it to me within fifteen (15) days of the date of the examination for each candidate. Use an additional sheet(s) of paper if necessary.

Candidate's Name: _____

Date of Examination: _____

Tests Conducted: _____

Results of each Test: _____

Check One:

- Candidate can perform the essential duties of the position based upon included job description.
- Candidate CANNOT perform the essential duties of the position based upon included job description

If you believe that the candidate CANNOT perform the essential duties of the position, please state the reasons for this conclusion and also identify the specific essential duty or duties which you believe that the candidate is incapable of performing:

Signed _____ Dated _____

**SAMPLE NOTICE OF APPOINTMENT
PSYCHOLOGICAL EXAMINER**

[NAME AND ADDRESS OF MEDICAL EXAMINER]

Re: **Appointment as Psychological Examiner & Evaluation of Candidates**

Dear **[PSYCHOLOGICAL EXAMINER]**:

This confirms your appointment to perform psychological examinations as part of the **[BOROUGH/TOWNSHIP]** police Civil Service Examination for the position of **[POSITION]**. Enclosed is a copy of the **[BOROUGH/TOWNSHIP]**'s Civil Service Rules relevant to that part of the examination, the Commission's psychological evaluation form and a document setting forth the essential duties of the position.

Please note that the Rules require that you submit a report on each candidate within fifteen (15) days of the date of each examination. For your convenience, I have included a form on which you may report your results. Please also note that if you conclude that a candidate cannot perform the essential duties of the **[POSITION]** position from a psychological standpoint, you must give a statement of your reasons on the form provided and also identify the specific duties which you believe that the candidate is unable to perform.

The results of your examination of each candidate should be delivered directly to me in a sealed envelope at the above address.

Please call me at **[PHONE NUMBER]** if you have any questions.

Very truly yours,

[NAME AND TITLE OF BOROUGH/TOWNSHIP CONTACT PERSON]

**SAMPLE REPORT
OF PSYCHOLOGICAL EXAMINER**

MEMORANDUM

TO: **[PSYCHOLOGICAL EXAMINER]**
FROM: **[NAME OF BOROUGH/TOWNSHIP CONTACT PERSON]**
RE: Report Form for Candidates for Position of **[POSITION]**
DATE: **[DATE]**

In conjunction with your evaluation of **[INSERT NAME OF CANDIDATE]**, please fill out this form completely for this candidate and return it directly to **[NAME OF ADDRESS OF BOROUGH/TOWNSHIP CONTACT PERSON—NOT THE COMMISSION]** within fifteen (15) days of the date of the examination for each candidate. Use an additional sheet(s) of paper if necessary.

Candidate's Name: _____

Date of Examination: _____

Tests Conducted: _____

Results of each Test: _____

Check One:

- Candidate can perform the essential duties of the position based upon job description provided.
- Candidate CANNOT perform the essential duties of the position based upon job description provided.

If you believe that the candidate CANNOT perform the essential duties of the position, please state the reasons for this conclusion and also identify the specific essential duty or duties which you believe that the candidate is incapable of performing:

Signed _____ Dated _____

**Pennsylvania Department of Community & Economic Development
Governor's Center for Local Government Services**

Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

USPS 100
APPROVED POLY