

OP. NO. 05-068

**COURTS NOT OF RECORD: JUVENILE AND DOMESTIC
RELATIONS COURTS – ORGANIZATION AND PERSONNEL.**

'List of eligible persons' for state-operated court services unit directors is individuals submitted by Director of Department of Juvenile Justice to judges; such list is only list from which judges may appoint director. Should list be unsatisfactory, judges may request, without limitation, that new lists be developed using process for initial list.

Mr. Barry R. Green
Director, Department of Juvenile Justice
October 19, 2005

Issues Presented

You pose two questions regarding the appointment of state-operated court services unit directors pursuant to § 16.1-236.1. You ask the meaning of the phrase "list of eligible persons" as used in that statute. You also ask what process should be used to develop a new list of additional eligible persons in the event the judges deem the first list unsatisfactory.

Response

It is my opinion that the "list of eligible persons," for state-operated court service unit directors provided to the judges, is those individuals submitted by the Director of the Department of Juvenile Justice pursuant to state personnel laws and regulations and Department policies and procedures. It is further my opinion that such list is the only list from which the judges may appoint a director. Finally, should the list be unsatisfactory to the judges, they may request, without limitation, new lists of additional eligible persons that shall be developed using the same process as the initial list.

Background

You relate that the hiring of a state-operated court services unit director is a unique and sometimes problematic blend of executive and judicial functions and authority. You note that the Department of Juvenile Justice develops a list of eligible persons consistent with state and Department policies and procedures. You state that the Director of the Department submits the list from which the judges may appoint the unit director. You further note that when the judges are not satisfied with the initial list of eligible persons submitted to them, they may request a new list from which to choose. On occasion, you relate that disagreements arise between the Department and the judges

regarding the determination of who is eligible, how many persons constitute a list, and how many new lists may be requested.

Applicable Law and Discussion

Section 16.1-236.1(A) provides that in state operated court services units:

The judge or judges of the juvenile and domestic relations district court shall, from a list of eligible persons submitted by the Director [of Department of Juvenile Justice] appoint one court services unit director for the state-operated court service unit serving that district court. The list of eligible persons shall be developed in accordance with state personnel laws and regulations, and Department [of Juvenile Justice] policies and procedures.

If any list of eligible persons submitted by the Director is unsatisfactory to the judge or judges, the judge or judges may request the Director to submit a new list containing the names of additional eligible persons. Upon such request by the judge or judges, the Director shall develop and submit a new list of eligible persons in accordance with state personnel laws and regulations, and Department policies and procedures.

The applicable personnel policy, as promulgated by the Department of Human Resource Management, is "Hiring" Policy No. 2.10.¹ You indicate that Department of Juvenile Justice policies and procedures are consistent with those of the Human Resource Department.² The Human Resource Department policy provides that agencies may interview all applicants for a position or reduce the pool by screening the applications or resumes.³ The initial screening process must be done by consistent application of job specific criteria.⁴ When a selection panel is used, the panel must meet certain criteria and develop a set of interview questions, which must be job-related, and the panel must document the applicant's responses to the questions.⁵ You indicate that pursuant to the policy of the Juvenile Justice Department, the panel selects the most qualified candidates to be submitted by the Director. The terms "eligible persons" and "eligible candidate" are not defined in the *Code*, Human Resource Department policy, or Juvenile Justice Department policy. Absent a statutory definition, words are given their ordinary meaning.⁶ Therefore, I conclude that the terms "eligible persons" or "eligible candidates"⁷ are equivalent to the list of the most qualified candidates determined by the selection panel for purposes of Policy 2.10 and submitted by the Director. As long as the Juvenile Justice Department follows such procedures, the judges have no part in the determination of the list of eligible persons for the position.

In the event the initial list⁸ of eligible persons is unsatisfactory to the judges, a new list following the same procedures and polices should be developed and submitted. I note that § 16.1-236.1 places no limit on the number of new lists that may be requested. Further, because the new list contains the names of "additional eligible persons," the judges may make their selection from those on the new list and any previously submitted list. Until such time as the judges appoint a director pursuant to this process, the unit may be managed by an acting director assigned by the Department of Human Resource Management.⁹

Conclusion

Accordingly, it is my opinion that the "list of eligible persons," for state-operated court services unit directors provided to the judges, is those individuals submitted by the Director of the Department of Juvenile Justice pursuant to state personnel laws and regulations and Department policies and procedures. It is further my opinion that such list is the only list from which the judges may appoint a director. Finally, should the list be unsatisfactory to the judges, they may request, without limitation, new lists of additional eligible persons that shall be developed using the same process as the initial list.

¹See *generally* Department of Human Resource Management, Policies and Procedure Manual, Hiring, Policy No. 2.10, *available* at http://www.dhrm.state.va.us/hrpolicy/policy/pol2_10Hiring.pdf [hereinafter "HRM Policy"].

²You do not provide a copy of the Department of Juvenile Justice policy for review. Therefore, I am unable to offer an opinion regarding the sufficiency of your Department's policies.

³See HRM Policy, *supra* note 1, at 9.

⁴*Id.* at 9.

⁵See *id.* at 9-10.

⁶See *McKeon v. Commonwealth*, 211 Va. 24, 27, 175 S.E.2d 282, 284 (1970); *Bd. of Supvrs. v. Boaz*, 176 Va. 126, 130, 10 S.E.2d 498, 499 (1940); 2004 Op. Va. Att'y Gen. 72, 77.

⁷The term "eligible" means "qualified to participate or be chosen" or "worthy of being chosen." Merriam Webster's Collegiate Dictionary 374 (10th ed. 1993). The term "candidate" means "one that aspires to be or is ... qualified for an office." *Id.* at 165.

⁸The term "list" is not defined in the *Code* or in Human Resource Management or Juvenile Justice Department policies. Absent a statutory definition, words are given their ordinary meaning. See

McKeon, 211 Va. at 27, 175 S.E.2d at 284; *Boaz*, 176 Va. at 130, 10 S.E.2d at 499; 2004 Op. Va. Att’y Gen., *supra* note 6, at 77. A "list" has been defined as "a simple series of words or numerals (as the names of persons or objects)." Merriam Webster’s Collegiate Dictionary, *supra* note 7, at 678. Therefore, I conclude that a list of eligible persons in the context of § 16.1-236.1 must consist of two or more names.

⁹While there is no explicit Human Resource Management policy regarding the temporary reassignment of an employee to an acting position, such is implicit in Policy 2.10. See HRM Policy, *supra* note 1, at 6-7 (providing that temporary assignments are exempt from recruiting announcement requirements); see also Department of Human Resource Management, Policies and Procedure Manual, Compensation, Policy No. 3.05, at 5 *available at* http://www.dhrm.state.va.us/hrpolicy/policy/pol3_05.pdf (providing temporary pay for employees serving in acting capacity in higher level position or for employee assigned to key duties on interim basis).

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