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June 21, 2012

David N. Grubb, Executive Director
Municipal Excess Liability Joint Insurance Fund
c/o PERMA Risk Management Services
250 Pehle Avenue, Suite 701
Saddle Brook, NJ 07663

**Re: Municipal Excess Liability Joint Insurance Fund
Proposed Police Promotional Ordinance or Policy**

Dear Mr. Grubb:

As per your request enclosed please find the Proposed Police Promotional Ordinance or Policy, along with an Addendum to the policy.

Thank you for the opportunity to assist the MELJIF in this matter.

As always, if you need further assistance please do not hesitate to contact me.

Very truly yours,


GUY P. RYAN
For the Firm

GPR/dab
Enclosure

Municipal Excess Liability Joint Insurance Fund

PROPOSED POLICE PROMOTIONAL ORDINANCE OR POLICY

Explanatory Note

The police promotional process in non-civil service municipalities has fostered much debate, controversy and challenge. The Municipal Excess Liability Joint Insurance Fund (MELJIF) is releasing and distributing this model Police Promotional Policy in an effort to provide some guidelines to its member municipalities. During the research and development of this Policy, the MELJIF recognized that the police promotional process in non-civil service municipalities varies greatly from one department to another and from one region of the State to another. Unfortunately, some municipalities have little or no formal promotional policies. Accordingly, this model policy is intended as an example for municipalities with no formal promotional policy, or for a municipality seeking to revise its policy.

While a purely objective multiple choice examination process scored by an outside agency might reduce the type of challenges which arise in the promotional process, the MELJIF recognizes that a written multiple choice examination alone does not measure a candidate's past performance as a police officer or leadership potential as a supervisor nor does it take into account a candidate's judgment, composure, maturity, interpersonal skills,

personnel management and ability to make decisions in tense, dangerous and rapidly evolving circumstances. Accordingly, any promotional process must, by necessity, also involve components which provide for the exercise of judgment and discretion by the appointing authority in promoting candidates to supervisory positions within the police department.

In contrast, civil service police departments have given up great degree of their autonomy in the selection and promotion process by delegating that authority to the Civil Service Commission. In recognition of that transfer of authority to the Civil Service Commission, civil service municipalities retain the discretion to exercise the “rule of three” set forth in N.J.A.C. 4A:4-4.8(b)(4).¹ A non-civil service municipality, unlike a civil service jurisdiction, retains discretion during the promotional process and therefore it is the position of the MELJIF that a non-civil service agency should seek specific legal advice on whether to include a “rule of three” or similar provision in its promotional process. If a non-civil service municipality utilizes a “rule of three”, that process should be clearly spelled out by ordinance. Note that the New Jersey Supreme Court recently had occasion to consider the “rule of three” in the Civil Service context in In re Foglio, 207 N.J. 38 (2011). There, the court held that a municipality’s required statement of reasons to the State Civil Service Commission, that merely stated that two lower-ranked candidates “best met” the needs of the

¹ Note, however, that even in a civil service jurisdiction, the rule of three is not applicable to disabled veterans and veterans. N.J.A.C. 4A:4-4.8(a)3(i)(ii).

department, was insufficient to explain why the higher-ranked candidate had been bypassed.

Id. at 49.

That said, it is clear that the boilerplate advanced by the City as an explanation for the bypass here was inadequate insofar as it failed to provide any real enlightenment whatsoever as to why the bypass occurred. That is not to suggest that the statement of reasons need be lengthy or multifaceted to pass muster. What is wrong with “best meets needs of Department” is not its brevity, but its failure to reveal anything about the bypass decision. The City might just as well have stated: “we liked them better”, an equally unrevealing explanation. [Ibid.]

This holding could apply, by analogy, to a non-civil service municipality. Accordingly, any decision to bypass a candidate on a promotional list would be more defensible if accompanied by a statement of reasons applicable to that particular bypass decision, such as recent discipline which adversely affects the candidate for promotional purposes.

The following paragraphs contain additional explanatory notes on the provisions of the proposed MELJIF model Police Promotional Policy.

1. **Eligibility.** A municipality and/or its police department should set forth minimum eligibility requirements to apply for each promotional position in a police department. In civil service municipalities, a candidate for the rank of sergeant must have completed three continuous years of service as a police officer prior to the “closing date” for application to the examination. A candidate for a promotion above the rank of sergeant, i.e., lieutenant and above, must have served one year in prior rank before the “closing date” for

application to the examination. The MELJIF recommends that at least three (3) years time in service be required for a candidate to apply for a promotion to the rank of sergeant and at least one (1) year of service at the rank of sergeant for promotion to higher ranks. Many non-civil service municipalities require greater than the three year/one year eligibility requirements, respectively, and the MELJIF encourages such greater periods time.

2. **Educational Requirements.** Non-civil service municipalities are permitted to require minimum levels of higher education, such as Associates Degrees or equivalent or Bachelors Degrees or equivalent, and even Masters Degrees, for initial hiring and promotions. The MELJIF recommends that non-civil service member municipalities include an educational requirement as a condition of promotion. In the event the department already includes a minimum college credit or degree requirement for initial hiring, the municipality has the discretion to either maintain that minimum requirement for promotion or require something greater for promotion. For instance, a municipality requiring an Associates Degree or a 64 credit equivalent for initial hiring may choose to require a Bachelors Degree or 128 credit equivalent for promotions to the rank of sergeant and above. Some member municipalities of the MEL already require a Masters Degree for promotions to the rank of lieutenant or above. In the event a non-civil service municipality has not yet imposed an educational requirement for either initial hiring or promotion, but wishes to do so, the MELJIF recommends that such requirement be phased in with adequate notice to personnel

so that those not meeting the educational requirements have time to do so. For instance, it would be appropriate to provide at least two years or more notice of the need for an Associates Degree and at least four years or more notice of the need to obtain a Bachelors Degree.

3. **Promotional Procedures and Accreditation.** Many New Jersey police departments are pursuing either national or State accreditation through the Commission on Accreditation for Law Enforcement Agencies (CALEA) and/or the New Jersey State Association of Chiefs of Police (NJASCOP). CALEA's standards on promotion are governed by Chapter 34 of the Standards for Law Enforcement Agencies, 5th Edition, published by CALEA (July 2006) and are set forth in Sections 34.1.1 through 34.1.7. Agencies pursuing accreditation should seek legal and professional advice regarding whether their promotional policies meet accreditation standards. A copy of chapter 34 is attached to this model Promotional Policy for the reader's review and reference. Note that most municipalities adopt, and the MEL encourages the adoption, of ordinances establishing the promotional process. Notwithstanding the fact that a municipal governing body enacts an ordinance on the promotional process, the police agency should still establish and promulgate a written directive, consistent with the promotional ordinance, and in compliance with the CALEA standards as agency personnel frequently look to department policy for guidance.

4. **Seniority.** Promotions in non-civil service municipalities are governed by

N.J.S.A. 40A:14-129 which provides, in its entirety:

In any municipality where Title 11 (Civil Service) of the Revised Statutes is not in effect, and except in cities of the first and second class, a promotion of any member or officer of the police department or force to a superior position shall be made from the membership of such department or force. Due consideration shall be given to the member or officer so proposed for the promotion, to the length and merit of his service and preference shall be given according to seniority in service.

No person shall be eligible for a promotion to be a superior officer unless he shall have previously served as a patrolman in such department or force.

The courts of New Jersey have noted that seniority is but one factor to be considered on the merits of the evaluation of the individuals for promotion and is not a mechanical rule which guarantees promotion to the senior employee. Gaskill v. Mayor and Commissioners of Borough of Avalon, 149 N.J. Super. 364 (App. Div. 1977). While seniority is not a guarantee of promotion, it is the position of the MELJIF that a municipality must give “due consideration” to seniority and therefore the model policy recommends assigning 5% to 10% weight to seniority based upon years of service. Various mathematical formulas are acceptable. This can be accomplished, for instance, by assigning 1 point for each year of service above the minimum eligibility requirements for a total of 10 points after ten years beyond the minimum eligibility requirements, or, in the alternative, seniority could be calculated by providing a mathematical formula for months of service from the candidate’s date of hire

through date of the examination, such as 0.055 points for every month of service up to a maximum of 10 points, or 10% of the total score, for seniority such that a candidate would receive the maximum score for seniority after 180 months or 15 years of service.

5. **Subjective Components.** Traditionally, many municipalities have included an oral interview, evaluation component or assessment center as part of the promotional process. The evaluation component typically involves one or more persons evaluating the candidate's prior work performance based upon the personal knowledge of the evaluator or evaluators and the candidate's periodic performance appraisals. The assessment center typically involves some type of oral and/or written presentation by a candidate which is graded based upon a series of benchmarks to determine if the candidate addressed those issues contemplated by the scenario expressed in the assessment center. These phases have sometimes been criticized as incorporating a subjective component or components into the promotional process. The New Jersey Supreme Court has made clear that a municipality may make an ". . . entirely proper choice to incorporate subjective components into its promotional procedure." Borough of Glassboro v. Fraternal Order of Police, Lodge No. 108, 197 N.J. 1, 5 (2008). The promotional process necessarily includes an assessment of a candidate's judgment, composure, leadership potential, interpersonal skills and other legitimate criteria which typically cannot be measured by a written multiple choice examination alone. See Burke v. Township of Franklin, 261 N.J. Super. 592, 599 (App. Div.

1993). Municipalities should not be discouraged from including subjective components into their promotional procedure, however, should be cognizant that any subjective component must be fairly and uniformly applied to all candidates. For instance, municipalities wishing to conduct oral interviews of candidates for promotion should have a structured format for the oral interview, maintain the same members of the panel for oral interviews for every candidate, provide each candidate with the same advance notice of the date of the interview, the same time frame to participate and answer questions during the interview and utilize a uniform scoring or grading procedure by each member of the oral interview which is maintained and preserved after the conclusion of the interview. This is sometimes referred to as a “one board format”. See Kelly v. Civil Service Comm’n, 37 N.J. 450, 459-460 (1962), approving of a one board format and compare Rox v. Dep’t of Civil Service, 141 N.J. Super. 463, 469 (App. Div. 1973), disapproving of the use of seven different interview boards to conduct oral interviews of sixty promotional candidates. In Kelly, the Supreme Court specifically recognized that the propriety of subjective elements in oral examinations. See 37 N.J. at 460 (Appellants attack the subjective elements of the exam, “[b]ut subjective elements would appear inherent in all oral examinations seeking supervisory and personality traits, and their presence may not reasonably be viewed as fatal.”)

Persons chosen to participate in the oral interview process should be advised that the same is to be conducted as a formal professional interview and that small talk and extraneous

issues should be strictly avoided. In the event there exists a close personal or family relationship between any candidate and any member of the interview panel, that member of the interview panel should disqualify himself or herself from the entire interview process for all candidates and an alternate person should be chosen. Law enforcement agencies with a relatively small number of candidates seeking promotion may find that oral interviews are more appropriate since they can be accomplished in relatively short order, preferably during the course of one day with limited opportunity for collusion. Law enforcement agencies with a relatively large number of officers available for promotion may find that oral interviews are impractical for a variety of reasons. For instance, conducting oral interviews over the course of several days for potentially dozens of candidates would likely provide those candidates who are interviewed later in the process to have some information or forewarning as to what the process entails. Agencies may wish to have candidates agree, in writing, to preserve the confidentiality and integrity of the interview process. Sample Confidentiality Forms are attached to this policy for both the promotional candidate and the interview panel member. Alternatively, police agencies may prefer to proceed with another component such as an assessment center or evaluation portion in lieu of an oral interview. In the event an oral interview is chosen, the questions or topics presented to each candidate for a response should be marked and preserved. The questions or topics chosen should be work-related and designed to elicit open-ended detailed responses by the candidate to evaluate the candidate's

decision making abilities, interpersonal skills, composure, maturity and potential in a supervisory or leadership position. Oral interview panels may choose to record oral interviews. If that is done, all such interviews shall be recorded in the same manner and shall be maintained and preserved. Some municipalities have utilized elected officials to participate in the oral interview process. The MELJIF discourages that involvement for sergeant, lieutenant and captain promotions. Elected officials may conduct interviews for the appointment of the Chief of Police.

Many non-civil service departments also include other discretionary components in the hiring process, such as a supervisory recommendation or an evaluation or oral interview by “outside police executives. It is not possible to address each of those differing components in one model policy. The proposed model policy contains a section entitled “other generally accepted discretionary component.” While municipalities have the ability to include such an additional component, it is the position of the MELJIF that, like other discretionary components, it should be uniformly and fairly applied.

6. **Scoring.** The MELJIF recommends that each component of the promotional process be scored separately and that each component be assigned a numerical weight in accordance with CALEA standards.

7. **Appeals Process.** Accreditation standards provide that the promotional policy contain procedures for review and appeal of results for each promotional element. See

CALEA standard 34.1.3 e. The commentary to that section provides:

The right of candidates to review and challenge all aspects of the promotion process is an integral part of the process itself. Candidates should be allowed to review and appeal all scores and evaluations related to their performance in the process to ensure fairness and impartiality. The administrative review and appeal process may be conducted by individuals from within and outside the agency. An impartial review and appeal process should reduce or eliminate litigations.

In the event multiple phases of the promotional process are open to all candidates, the appeal procedure can be reserved for the conclusion of the entire process. On the other hand, if only a certain portion of candidates, e.g., the top 50%, move on to a second or subsequent phase, then the appeal procedure should be afforded at any “cut-off” phase. While it is necessary to have an appeal procedure, candidates participating in the promotional process are also entitled to a prompt resolution of the issues and finality of the promotional process. Accordingly, the MELJIF recommends that municipalities provide a short window, i.e., between 10 and 30 days, for a candidate to file a written appeal setting forth the basis for the appeal and the reasons why the candidate believes the appeal should be granted. The appeal should be directed to the Chief of Police (or Chief Law Enforcement Executive [CLEE]) who should forward the same to whatever person or entity administered that portion of the promotional process being appealed. For instance, an appeal of questions on a written multiple choice examination should be sent to the Chief of Police (or CLEE) who shall forward the same to the agency or entity that developed, administered and graded the written

examination. The policy should require a written response to the appeal within a set number of days, i.e., between 10 and 30 days depending on the portion of the process being appealed, and the policy and practice should provide that all decisions on appeal are final.

SAMPLE

ORDINANCE OF THE [MUNICIPALITY OF _____], COUNTY OF _____, STATE OF NEW JERSEY ESTABLISHING A PROCEDURE FOR THE PROMOTION OF MEMBERS OF THE POLICE DEPARTMENT.

WHEREAS, the governing body wishes to enact a section of the municipal code setting forth the procedures for promotions within the police department.

NOW, THEREFORE, BE IT ORDAINED by the governing body of the [municipality of _____] as follows:

1. New Code Section _____, set forth below, entitled "Promotional Procedure for Police Department" be and hereby is enacted.

Promotional Procedure for Police Department

I. Purpose. The purpose of this Ordinance is to provide all eligible candidates for promotion with fair notice and equal access to the promotional process. Additionally, the goal of this Ordinance is to strive to identify the most qualified members of the police department for promotion to leadership positions within the department and to set forth the components of the promotional process that will be utilized in carrying out the process.

II. Promotion, defined. Promotion denotes vertical movement or advancement in the organization hierarchy from one rank to another, usually accompanied by increases in

salary. The promotional process begins with identifying employees who have the potential for assuming greater responsibility and who possess the skills, knowledge, maturity and abilities required to perform at the level being considered for promotion. It is the intent of the governing body to utilize a promotional process governed by State law as well as in compliance with applicable standards of the Commission on Accreditation of Law Enforcement Agencies, Inc.

III. Promotion to the rank of Sergeant.

Eligibility. No person shall be eligible for a promotion to the rank of sergeant unless that person shall have served as a police officer in the police department for at least _____ continuous years prior to the deadline for submission of a letter of intent to participate in the promotional process.

Educational Requirement. [Optional] No person shall be eligible to participate in the process for promotion to the rank of sergeant unless that person shall have obtained a [Associates Degree or 64 credit equivalent or Bachelors Degree or 128 credit equivalent] from a regionally accredited institution of higher education recognized by national or international accreditation agencies. Candidates for promotion shall be required to submit an official college transcript or diploma evidencing satisfaction of this requirement, unless the candidate has already submitted same and one is on file in connection with the candidate's initial appointment as a police officer.

Testing. Candidates for sergeant shall participate in the testing process set forth in

Article VI of this Ordinance.

IV. Promotion to the rank of Lieutenant.

Eligibility. No person shall be eligible for a promotion to the rank of lieutenant unless that person shall have served in the police department for at least _____ continuous years prior to the deadline for submission of a letter of intent to participate in the promotional process.

Educational Requirement. [Optional] No person shall be eligible to participate in the process for promotion to the rank of lieutenant unless that person shall have obtained a [Associates Degree or 64 credit equivalent or Bachelors Degree or 128 credit equivalent] from a regionally accredited institution of higher education recognized by national or international accreditation agencies. Candidates for promotion shall be required to submit an official college transcript or diploma evidencing satisfaction of this requirement, unless the candidate has already submitted same and one is on file in connection with the candidate's initial appointment as a police officer, or prior promotion.

Testing. Candidates for lieutenant shall participate in the testing process set forth in Article VI of this Ordinance.

V. Promotion to the rank of Captain.

Eligibility. No person shall be eligible for a promotion to the rank of captain unless that person shall have served in the rank of lieutenant in the police department for at least one

(1) year prior to the deadline for submission of a letter of intent to participate in the promotional process.

Educational Requirement. [Optional] No person shall be eligible to participate in the process for promotion to the rank of captain unless that person shall have obtained a [Associates Degree or 64 credit equivalent or Bachelors Degree or 128 credit equivalent] from a regionally accredited institution of higher education recognized by national or international accreditation agencies. Candidates for promotion shall be required to submit an official college transcript or diploma evidencing satisfaction of this requirement, unless the candidate has already submitted same and one is on file in connection with the candidate's initial appointment as a police officer, or prior promotion.

The examination for the position of captain will consist of an oral interview conducted by the Chief of Police, the business administrator and such third member of the oral interview board as the Chief and business administrator agree or so select (or other uniform process determined by ordinance). The interview board shall have access to the candidate's resume and personnel file, consisting of past evaluations, career experience, commendations and disciplinary actions. The interview board shall recommend candidates for captain in accordance with the standards set forth in

N.J.S.A. 40A:14-129.

As all candidates for the position of captain have already undergone testing for promotion to the rank of sergeant and lieutenant, the requirement for a written multiple

choice examination and other testing for the rank of captain are hereby dispensed with.

VI. Testing Process for Promotion to Sergeant and Lieutenant. The Chief of Police (or CLEE) ² shall obtain permission from the governing body (or business administrator or appropriate authority) to hold a promotional examination process. After having received such approval, the Chief of Police (or CLEE) or his designee shall provide a written announcement of the promotional process to all sworn personnel. The announcement shall include a recitation of the eligibility and educational requirements, if any, for the position. Candidates for promotion shall be required to submit a written request to the Chief of Police (or CLEE) or his designee prior to the closing date of the announcement to participate in the process. The announcement shall include a description of the promotional process and should indicate to candidates the format, length and duration of any examinations, together with a description of any other portions of the promotional process, any minimum cut-off scores to continue to advance and a numerical weight assigned to each element. No person shall be eligible to participate in the promotional process unless he or she has submitted a written request prior to the deadline set forth by the Chief of Police (or CLEE) or his designee.

A. Written Examination. At least _____ days before the written examination, the Chief of Police (or CLEE) or his designee shall announce the date, time and location of

² For agencies without a Chief of Police, the term Chief Law Enforcement Executive (CLEE) should be utilized.

the written examination. The Chief of Police (or CLEE) shall obtain authorization from the governing body and/or the business administrator (or appropriate authority) to enter into a contract with New Jersey State Association of Chiefs of Police, the International Association of Chiefs of Police or other comparable testing entity to develop, conduct and grade the written multiple choice examination. The written examination will consist of a series of multiple choice questions. The Chief of Police or his designee may submit or suggest any appropriate topic areas or questions to the outside testing entity to include in the examination. These questions will be based upon basic police practices and may include police and investigative procedures, supervisory and administrative principles, New Jersey criminal law, report writing, search and seizure issues, New Jersey Attorney General Guidelines and Directives and legal aspects and requirements of police work. The Chief of Police or his designee shall provide a written announcement of the reading list or syllabus of possible sources of materials utilized in developing the test in order for candidates to prepare for the written examination. Eligible candidates who are scheduled to work during the written examination will be excused from duty to take the examination. The written examination shall account for ____% of a candidate's promotional score.

B. Seniority. Due consideration and preference shall be given to seniority and length of service, in accordance with N.J.S.A. 40A:14-129. Candidates participating in the promotional process for the rank of sergeant or lieutenant shall be entitled to points for seniority. Seniority for sergeant's candidates shall be calculated by awarding each candidate

0.055 points per month of service, up to a maximum of 10 points. Seniority for lieutenant's candidates shall be calculated by awarding 2 points for each year of service as a sergeant beyond the minimum time in grade required to apply for promotion, up to a maximum of 10 points. Seniority shall count for _____% of the total score for promotion (from 5% to 10% is recommended).

C. Oral Interview [or Evaluation of Performance]. Candidates for the rank of sergeant shall be evaluated by [a panel for an oral interview or a panel of evaluators scoring the candidate in a variety of job related areas]. The [oral interview or evaluation] panel shall consist of _____ members [for an oral interview, each candidate shall be presented with the same questions or topics, designed to elicit open ended responses so that the oral interview panel can determine the candidate's promotional potential, maturity, composure and leadership abilities. Each member of the oral interview panel shall rate the candidate based upon a score of 1 to 100 in the oral interview. The scores will then be added and divided by the number of oral interviews to arrive at the candidate's score for the oral interview phase.] Candidates for promotion, as well as members of the oral interview panel, shall not discuss or disclose the contents or subject matter topics of the oral interview process until after all oral interviews are concluded. The Chief of Police (or CLEE) or his designee may require promotional candidates and oral interview panel members to sign a confidentiality and non-disclosure agreement to insure compliance with these requirements. In the event an evaluation portion is utilized, the Chief of Police or designee shall cause a list of the

categories to be evaluated to be distributed to all sworn personnel at the time the examination is announced. The oral interview [or evaluation portion] of the process shall be worth _____%.

D. [Other Generally Accepted Discretionary Component; Optional]

VII. Lateral Entry or Lateral Transfers. No lateral entry or lateral transfer is permitted from another agency to a promotional rank within the police department.

VIII. Security of Promotional Materials. The Chief of Police (or CLEE) or his designee shall be responsible for the security and custody of promotional materials. All promotional materials will remain in the secured promotional file located in the office of the Chief of Police (or CLEE) or such other secure area as designated by the Chief.

IX. Release of Results and Promulgation of Eligibility Lists. At the conclusion of the promotional process, the Chief of Police (or CLEE) or his designee will publish and disseminate to all sworn personnel the scores of each candidate in each phase of the promotional process together with the candidate's final score for the purposes of promotion. This publication and dissemination shall be applicable to each rank involved in the promotional process.

After the expiration of the time for filing of appeals set forth below, and the disposition of any such appeal, the Chief of Police (or CLEE) shall publish and disseminate a list of eligible candidates in the order of their final scores for promotion. Said eligibility list will be distributed to all sworn personnel and to the business administrator and governing

body. The eligibility list will remain in effect for a period of _____ years from the date of posting.

After the expiration of the eligibility list, candidates will be required to re-apply for and participate in anew in any subsequent promotional process.

X. Appeals of Promotional Process. Within ten (10) days of the publication and dissemination of final scores and rankings of candidates, a candidate may file a written appeal directed to the Chief of Police (or CLEE).³ Said written appeal must contain the reason(s) or justification for said appeal. The Chief of Police (or CLEE) will assess the request and make a determination as to how the request will be addressed, on a case by case basis. For instance, appeals from any written multiple choice examination shall be directed by the Chief of Police or his designee to the entity or testing agency which developed, administered and/or graded the multiple choice examination. As part of any appeal, any candidate may review his or her evaluation or any other internal document that was utilized in the promotional process. The Chief of Police, after referral of the appeal to any outside testing agency, if appropriate, shall decide the appeal within _____ days of filing. The Chief of Police shall make a written decision on the appeal together with a brief statement of the reasons therefor. All decisions by the Chief of Police on appeal shall be final.

2. If any section, subsection, sentence, clause, phrase or portion of this ordinance

³ If the promotional process contains a “cut-off” where only a certain percentage of candidates advance to subsequent phases, the appeal procedure should also be available at the cut-off phase.

is for any reason declared invalid or unconstitutional by any court or federal or State agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not effect the validity of the remaining portions hereof.

3. All ordinances or resolutions or parts of ordinances or resolutions inconsistent herewith are hereby repealed to the extent of such inconsistency.

4. This ordinance shall become effective upon publication as required by law [or such other time period depending upon the form of municipal government].

SAMPLE

CANDIDATE AGREEMENT OF CONFIDENTIALITY AND NON-DISCLOSURE

I, _____, hereby acknowledge that I am a candidate for the position of police sergeant and will be taking the oral board examination. I will be asked a series of questions regarding my knowledge, skills and abilities pertaining to the position of police sergeant. In addition to testing my knowledge, these questions are designed to assess my composure, maturity, interpersonal skills and potential for promotion. I am aware of the confidential nature of this interview and the importance of keeping the information confidential so the process is not compromised. Therefore I expressly acknowledge the following:

1. I will not discuss or disclose the process or contents of the questions, including my answers with any candidate until all of the interviews are completed on _____.
2. I will not discuss or disclose the process or contents of the questions, including my answers with any third party until all of the interviews are completed on _____.
3. I will not reveal what was not asked by the panel with any candidate or third party until all of the interviews are completed on _____.
4. If any candidate or third party attempts to question me regarding the process or contents of the questions I must immediately report this to the Chief of Police.
5. If any person does question me regarding the process or contents of the questions, I must advise them I am not permitted to discuss it until all candidates have completed the interview.
6. I will not electronically record any audio or video this process openly or in a clandestine manner.
7. On the day of my interview, I will be sequestered and will not be permitted to leave the building until authorized by a command officer.
8. I understand that if I do leave it will disqualify me from the promotional

process and it may cause the cancellation of all interviews.

9. I understand I may not make or receive phone calls or make or receive any electronic or digital communication during the sequestration period.
10. If I violate any of these terms, I may be subject to criminal charges and/or discipline which could lead to termination of my employment with the _____ Police Department.

Signature: _____

Date: _____

Witness: _____

Date: _____

SAMPLE

ORAL BOARD PANEL MEMBER AGREEMENT REGARDING CONFIDENTIALITY

I, _____, hereby acknowledge that I have been selected and assigned by the _____ Police Department as a member of the oral board interview panel. I will be assisting in conducting interviews for the position of police _____. As a panel member, I am aware of the confidential nature of my work and therefore expressly acknowledge the following:

1. I will have access to confidential information or material relating to the oral board examination process.
2. I will not discuss this material or process with any person going before the panel or any third party unless authorized by the Chief of Police.
3. If an applicant attempts to contact me regarding any aspect of the process prior to its completion, I will immediately contact the Chief of Police.
4. If any third party attempts to contact me about the oral board contents or process, I will immediately contact the Chief of Police. This notification to the Chief of Police will occur regardless if I believe the third party is attempting to obtain information to benefit a candidate.
5. I can be objective during the interview and will keep personal feelings and/or opinions out of the process.
6. I will only judge the candidates on their knowledge, skills, abilities and promotional potential.
7. If at any point during the process I believe there is a conflict of interest, I will immediately report it to the Chief of Police.

8. If I violate any of these terms, I may be subject to I may be subject to criminal charges and/or discipline which could lead to termination of my employment with the _____ Police Department.

Signature: _____ Date: _____

Witness: _____ Date: _____

Municipal Excess Liability Joint Insurance Fund

Addendum to:

PROPOSED POLICE PROMOTIONAL ORDINANCE OR POLICY

In the Explanatory Note to the MELJIF's Police Promotional Policy, reference was made to the requirements for a "statement of reasons" to be submitted by civil service agencies when exercising the "rule of three" and to the decision of the New Jersey Supreme Court in In re Foglio, 207 N.J. 38 (2011), interpreting that requirement.

On May 7, 2012, the New Jersey Civil Service Commission adopted amendments to the provisions of the New Jersey Administrative Code so as to delete the requirement for a statement of reasons, effectively overruling the Foglio decision by administrative rule amendment. See: <http://www.state.nj.us/csc/about/about/regulations/proposed.html>

Accordingly, the amended version of N.J.A.C. 4A:4-4.8 no longer contains a requirement for a statement of reasons. Once again, the MELJIF advises non-civil service municipalities to seek legal advice with respect to the inclusion of any "rule of three" or similar component into promotional process.