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APPOINTMENT PENDING RESOLUTION OF A PROTEST CASE

CSC MEMORANDUM CIRCULAR NO. 43, September 05, 1990

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It has come to the attention of the Commission that there have been occasions when new appointments to contested positions were issued despite the pendency of protest or appeal on the decision thereof, or the incumbent has not first been legally removed or his appointment not validly terminated.

This practice is contrary to the Rules on Protest, contained in CSC Memorandum Circular No. 46, s. 1989, which provides that "a protest shall not render an appointment ineffective, if the appointee assumes the duties of the position".

Moreover, the Supreme Court has consistently held that no person, no matter how qualified and eligible for a certain position, may be appointed to an office which is not yet vacant. The incumbent must first be legally removed or his appointment validly terminated. Appointment to a position that is not vacant is premature.

Henceforth, the Commission shall "return without action" subsequent appointments issued to contested positions abrogating earlier approved appointments issued to other parties pending final resolution of appeals by this Commission.

This Memorandum shall take effect immediately.

Adopted: 5 Sept. 1990

(SGD.) PATRICIA A. STO. TOMAS
Chairman

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