

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHAEL L. SHAKMAN and PAUL M. LURIE, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 69 C 2145
)	
COOK COUNTY RECORDER OF DEEDS, <i>et al.</i> ,)	Hon. Sidney Schenkier
)	
Defendants.)	

**CEDRIC GILES' RESPONSE TO PLAINTIFFS' MOTION FOR
ISSUANCE OF A RULE TO SHOW CAUSE**

Now comes Chief Deputy Recorder Cedric Giles, by and through its attorneys (Burton Odelson and Michael Hayes, Jr. of Odelson & Sterk, Ltd.,) and for his response and affirmative defenses to plaintiffs' Motion for Issuance of Rule to Show Cause against him submits the following:

I. INTRODUCTION

If plaintiffs wanted to pursue Cedric Giles, a non-party here, for civil contempt, they were required to file a motion or other pleading against him within 180 days of the purported violations. They failed to do so. As demonstrated below and in the various RCA reports and other materials cited by plaintiffs, it is clear all of the alleged misconduct they attribute to Giles occurred in 2013 or 2012. Accordingly, whether by the applicable limitations period or by the doctrine of laches, they are time-barred from seeking this remedy now three to four years after the alleged occurrences. Important to these proceedings, as noted above, Giles is a non-party to this lawsuit as well as the applicable consent decrees and SRO involving the Cook County Recorder of Deeds. Respectfully,

this Court does not have jurisdiction over Giles for purpose of holding him in contempt even if the request were timely. For these reasons, among the other affirmative legal and factual defenses noted below, plaintiffs' motion must be struck or denied.

Cedric Giles Background

Cedric Giles is the Chief Deputy Recorder of Deeds. He has held that position since November 2013. He was hired by the Recorder's Office in December 2012 as the Deputy Recorder over Finance. In that position, he was essentially the chief financial officer for the Office. This fit his background and qualifications. He possesses a Bachelor's Degree in accounting, and he had worked as an accounting officer for Cook County at Cook County Hospital for a number of years. He also served as Deputy Controller for Cook County. After Karen Yarbrough won election to Recorder of Deeds, she recruited him to join her in the Recorder's Office as her chief financial officer.

Giles' reputation, qualifications, and background are extremely important to him. He takes his job seriously, and he performs it with integrity. Plaintiffs' allegations against him and this effort to now single him out for punishment are attacks on his character and reputation. He is accused of lying to court monitors and attempting to evade or violate court orders. Because of the serious nature of the charges against him, in addition to raising herein the legal defenses that bar plaintiffs' motion, Giles also is compelled to provide at least some context that is sorely missing from plaintiffs' motion.

Since Giles has been a part of the Office, he and the other executive officers have had "bi-weekly" meetings with the RCA and her representatives (in practice these meetings probably occur about once a month or every six weeks). Giles has participated in these meetings, in good faith, in efforts to assist the Recorder's Office in reaching the goal of "compliance." Positive steps have been

taken as reported by the RCA. This should be the focus. As demonstrated by the facts and defenses raised below, litigating the allegations against Giles (especially now almost four years since the incidents allegedly occurred) will not accomplish anything constructive because the incidents themselves do not support a contempt finding and the effort will serve merely as a distraction and a significant drain on time and other resources.

II. RELEVANT BACKGROUND FACTS

Because plaintiffs request for civil contempt against Giles is styled as a “motion” and Giles is compelled to respond prior to plaintiffs chance for a “reply,” it is appropriate to offer at least some factual context to answer plaintiffs allegations (if deemed timely) and to support the affirmative defenses defeating this motion, especially as it relates to the “timeliness” issue. It is not presently clear whether additional briefing will be allowed or required on this matter. Giles shared all of this information with the RCA and/or OIIG contemporaneously with their respective investigations or reports on the occurrences now raised by plaintiffs.

A. Alleged Pretextual Firing of Moore-Administration Employee

The first incident raised by plaintiffs involves the Office’s decision not to retain probationary employee Phillip Christianson. This was an Office decision in which Giles played no part. In fact, Giles exposure to Christianson was extremely limited, temporary, and occurred months before the Office made the decision not to keep him after his probationary period ended. Although plaintiffs do not reveal it in their motion, and as further discussed below, Christianson filed his own federal lawsuit challenging his termination from the Office naming the Recorder of Deeds and two other Office employees as defendants, in their individual capacities (14 cv 7363). Giles was not named a defendant in either the original complaint or the amended complaint. The lawsuit has been

dismissed for almost a year.

Christianson was initially hired by the Office approximately two months before Karen Yarbrough took her position as the Recorder of Deeds in December 2012. Giles also joined the Office in December 2012. He joined the Office as Deputy Recorder over Finance (he would become Chief Deputy in November 2013). Christianson was a probationary employee hired as the Director of Information Retrieval. In that position he was generally responsible for the operation of the “concourse” level of the Office where the public accessed tract books and other materials. Under the Office’s hierarchy structure, Christianson would have reported to the Deputy Recorder of Operations. However, at the time Giles joined the Office, the Recorder’s choice for Deputy Recorder of Operations could not start in his position because of some initial concerns raised by the RCA about his appointment. Because the Operations Deputy position was accordingly vacant, Giles, as Deputy of Finance, temporarily served as Christianson’s supervisor. During Giles first two or so weeks in the Office, it was reported to him that Christianson had violated a written policy prohibiting the misuse of Office equipment and space. A written incident report was created. Shortly thereafter, Christianson was due to be given one of his pre-set performance evaluations. He was required to be evaluated at 30, 60, and 90 days into his employment. Because he was still Christianson’s supervisor, Giles conducted an evaluation of him relative to the days or weeks during which he was serving as Christianson’s supervisor, and he noted in the evaluation the prior written incident report.

Thereafter, William Drobtsch was allowed to take the position of Deputy of Operations, and Giles had no other contact with Christianson. Giles later learned that when Christianson’s probationary period ended, the Office made a decision not to retain him. Giles was not consulted about that issue, and he played no role in that decision. Giles was not Deputy Chief when the

decision was made. Neither then, nor now, does Giles have any knowledge of Christianson's political activities or related connections.

Plaintiffs should have this information since, following his termination and as allowed in the SRO, Christianson filed a post-SRO claim related to the Office's decision not to retain him. Giles was interviewed about the incident by the IIG as part of the post-SRO claim investigation, but that was the limit of his involvement. Upon request, he gave the IIG a copy of the written Office policy that was the subject of the incident report Christianson received in December 2012. Christianson also filed a personal lawsuit addressing his termination (complaint filed in this Court on September 9, 2014). The lawsuit did not name Giles as a party. Although the lawsuit settled, Giles was not represented nor was he a participant in the litigation or settlement decision.

Now, more than three years after the incident, two years since a lawsuit was filed, and one year since it was settled, plaintiffs make allegations against Giles that the alleged grievant did not make, and now could not make, on his own behalf. In other words, regardless of the extent of Giles personal involvement, or more accurately lack thereof, the IIG and Christianson pursued claims available to them under the SRO to investigate and resolve this issue. That is why those procedures were presumably placed in the SRO, as negotiated by plaintiffs' counsel. Plaintiffs' now take a third swing at this issue which is burdensome on Giles and the Recorder's Office, a waste of taxpayer dollars, counterproductive to the goal of "compliance," and not in any party's best interests. Plaintiffs want discovery on this issue. Giles does not, and while defending himself, cites the legal and factual reasons further proceedings on this issue are barred and a waste of time and money. Plaintiffs as parties to the SRO are bound by what has occurred.

B. Hiring of Executive Assistant

In Spring 2013, still as Deputy of Finance with the Office, Giles planned to fill his “executive assistant” position. He and the Office were planning on proceeding through the General Hiring Process, including posting the position, collecting applications, and interviewing qualified candidates. The Office made the RCA aware of this. The RCA informed Giles and the Office that this position did not need to be competitively posted and filled because there was a separate executive assistant hiring process available in the Recorder’s Hiring Plan. Giles elected to continue through the more competitive/general hiring process. The RCA was involved in monitoring the process including attending interviews of candidates by Giles and the Office’s labor counsel. Human Resources assisted in sorting through the applications for qualified applicants. Ultimately, Giles was not satisfied with the candidates deemed qualified and interviewed. At least two people were interviewed and maybe as many as four or five people.

Because of these results, Giles informed the RCA that he was planning to fill the position through the executive assistant process. Giles offered the opportunity to complete a required application to a person who, at that time, was working for the Clerk of the Cook County Circuit Court. Giles was generally familiar with this person from prior county or public official events. Prior to her becoming a candidate for the position, Giles and the Recorder would occasionally see and talk to this person near the Daley Center. Giles knew the candidate was a supervisor over cashiers for the Clerk and he was interested in someone with some financial and supervisory background. The candidate had also reported to him and the Recorder that she was unhappy in her present position. Giles asked her to apply for the position.

When the candidate came to the Recorder’s Office to complete the application, Giles stressed

the importance of filling it out completely. The candidate appeared very distracted and annoyed that she was having to take time to complete the application. Giles introduced her to the Human Resources Director and left her to complete the application. He did not see the completed application, but Giles believes it was forwarded to the RCA the same day. By the following day, a human resources official told Giles the RCA returned the application because portions were incomplete. Upset that the candidate failed to listen to his instructions and did not complete the form, Giles decided the same day not to proceed with hiring the candidate.

Giles offered the position to a second candidate. He asked her to complete the application for the executive assistant position, and she did complete it. She was hired in or about June 2013.

Giles discussed his reasoning for the hire with the RCA, but the RCA apparently, immediately referred the matter to the OIIG and an investigation started focusing on the person hired. Giles gave an interview explaining his knowledge of, and history with the second candidate. When asked if he had attempted to hire any other persons for the position, Giles gave the IIG evidence including an email that he had sent out to certain contacts soliciting names of interested persons for the executive assistant position. Giles also reported that he had informally interviewed a few of the people who responded. He gave those names to the IIG. Giles heard that the IIG did follow-up with some people he interviewed. None of those efforts had led to a qualified person, and he offered the position to the second candidate a little over two days after ending the process with the first candidate. Giles was interviewed by the RCA's attorney, Matthew Pryor. This occurred approximately in October 2013. A month later, Giles became the Chief Deputy and the executive assistant no longer worked directly for him.

It was not until over three months later, in February 2014, when Giles next was contacted

about this investigation. He was told there were a few follow-up questions. He was interviewed again by telephone, and for the first time was asked about the process for the potential hire of the first candidate (whose hiring was never completed). About two days after the initial mention of this first candidate, the OIIG issued a written report finding no evidence of political considerations in the hiring of the second candidate but determining Giles and the Recorder conspired to hire the first candidate (who was never hired) allegedly in violation of the SRO.

Accordingly, plaintiffs now seek a civil contempt order against Giles related to a person who was never hired by the Recorder's Office, well over three years later. Beyond the mere passage of significant time, to the extent plaintiffs are basing their request for a contempt order on the OIIG investigation, the findings of wrongdoing on Giles' part were disputed by the Recorder in a written response to the IIG.

After months of investigation into the actual hire, the OIIG concluded there was no evidence the hire was politically motivated. Yet just two days after he was first asked about the initial candidate for the position, the OIIG concluded - and published - its finding that the application process for the non-hire was politically motivated. Additionally, the OIIG report also contains inaccuracies. It reported that Giles contacted the second candidate about the open position only about 30 minutes after receiving notice from the RCA that the first candidate failed to complete the application. Giles did not contact the second candidate until two days later. This error among other concerns were raised to the IIG in a written response to the report from the Recorder, copying plaintiffs' counsel, dated March 20, 2014. The Recorder affirmed in her "confidential" written response that she had interviewed Giles and discussed the report findings with him; that she reviewed evidence that Giles presented to her on the issues; and that she found Giles' account credible and verified. Regardless of

the merits of the findings, this was the process set-up by the SRO. Giles and the Recorder disputed the results, but that was 30 months ago!

C. Alleged Direction to Director of Security Not to Notify RCA of Investigations

Finally, the third and last incident purportedly supporting a “contempt” finding against Giles is his alleged direction to the Office Director of Security not to cooperate with the RCA. In support of their claim, plaintiffs quote the RCA’s Ninth Report as follows, “The RCA later learned from Shakman Liaison Cedric Giles that he instructed the Director of Security not to provide the RCA with the opportunity to monitor his investigations.” Plaintiffs’ Motion, p. 10.

The RCA’s statement is not true. During one of the 2013 “bi-weekly” meetings with the RCA and executive staff from the Office, including himself, Giles learned during the discussion on various issues that the Director of Security was conducting, or planning to conduct, an investigation into a recent employee or customer complaint on some matter. Mathew Pryor, counsel for the RCA, stated that he needed notice of all such complaints. During the meeting, Giles offered his belief that at the point complaints are first taken, it would be premature and burdensome to immediately let the RCA know about them, and then await further action. Giles explained that, prior to RCA notice, it made sense that, after a complaint is received, the Director of Security should be allowed an initial inquiry to obtain some information and determine whether a potential employee discipline issue has been created. He never directed the Director of Security not to notify the RCA or not to cooperate on matters (at the meeting or thereafter) and nothing was changed or altered as a result. Following the meeting, the issue was not raised again until Giles read it in the RCA’s Ninth Report. To Giles knowledge, there was never an investigation into this issue. The characterization of it in the report, and in plaintiffs’ motion, is a gross misstatement of what was discussed between Giles and the

RCA's counsel.

This issue was only raised in the context of a legitimate discussion during a regular meeting with the RCA. If the RCA or plaintiffs' counsel had concerns about Giles' point as expressed in the meeting, there were methods to contemporaneously further address that issue with Giles and/or the Office. It could have been brought to the Court's attention. Nothing more came of it until a couple of sentences in the RCA's Ninth Report which has now been repeated in plaintiffs' motion.

III. AFFIRMATIVE DEFENSES AND LEGAL ARGUMENT

A. Plaintiff's Claim Is Time-Barred

As to Giles, plaintiffs' motion is time-barred because they filed it well beyond the 180-day limitations period applied by the Seventh Circuit to "Shakman" contempt proceedings. To hold a party in civil contempt a court must find that the party has not been reasonably diligent and energetic in attempting to accomplish what was previously ordered. American Fletcher Mortgage Co. v. Bass, 688 F.2d 513, 517 (7th Cir. 1982). However, in this very case, the Seventh Circuit has held that a 180-day period of limitations applies to "contempt proceedings" under the Shakman decree. Smith v. City of Chicago, 769 F.2d 408, 413 (7th Cir. 1985). On appeal of the District Court's dismissal, based on laches, of a late-filed civil contempt petition against the City of Chicago, the Seventh Circuit Court of Appeals addressed the growing problem of repeated and increasing "laches" challenges under the decree. Id. at 410. In the particular instance at issue, the contempt request was 21 months after the complained-of incident. The court of appeals recognized, among other stated concerns, that "laches" was a question of degree presenting challenging questions for all parties, it diverted time and energy from the central issue of the Shakman litigation, and it was a "costly, enervating sideshow" that was becoming routine under Shakman in the District Court. Id.

Accordingly, the court of appeals recognized that the litigants and the legal system possessed a common interest in easily stated and easily applied rules of procedure governing such claims. Id. at 411. Analogizing employment-related claims under Shakman to claims raised under Title VII, the court adopted the 180-day limitations period created by Title VII and applied it to contempt proceedings under the Shakman decree. Id. at 413. Accordingly, the court affirmed the dismissal because the claim was too late. Id. at 414.

Plaintiffs' request for a contempt order is too late because each of the three incidents of alleged misconduct they raise in their motion against Giles occurred at least three years before the filing of their motion. The RCA reports, and other matters of record cited by plaintiffs demonstrate, that all misconduct attributed to Giles occurred in 2013 or 2012. In fact, plaintiffs' motion would still be untimely applying an even more generous two-year limitations period akin to the limitations periods based on Illinois personal injury and property damage claims. See McGuffin v. Springfield Housing Authority, 662 F.Supp. 1546, 1550 (C.D. Ill. 1987) (applying a two-year period in a non-Shakman contempt enforcement action by equating the contempt request with tort principles).

Even assuming that plaintiffs will argue in their reply that the three alleged incidents are a continuing and ongoing practice of Giles violating the Shakman decrees (which they are not), the claim is still barred by the limitations period because not one of the incidents occurred within 180 days (or even within two years) of the filing of the motion. Under Title VII statutory and case law (as adopted in the Shakman litigation by the Seventh Circuit in Smith), a similar failure to have at least one timely occurrence within the limitations period would bar a "continuing" violation claim. National Passenger R.R. Corp. v. Morgan, 536 U.S. 101, 122, 122 S.Ct. 2065, 2077, 153 L.Ed.2d 106 (2002).

Nothing here would justify a tolling of the limitations period. As noted in plaintiffs' own motion, although they universally ignored dates and time frames in their allegations, the RCA and/or OIIG have investigated and reported on all of the alleged misconduct raised in the motion. Again, regardless of the merits of the reports and findings, the reports have been filed. They have been discussed by the parties (*i.e.* the Recorder's Office and RCA and respective counsel). There is no reasonable claim of ignorance here. One claim, in fact, involved a private law suit that was settled. The limitations period created in Smith was specifically intended to eliminate the late, costly, distraction plaintiffs seek to create here. As to Giles, no incidents alleged to involve him have occurred in over three years; positive changes have been taken (including the hire of an internal Director of Compliance). There has been few, if any, new post-SRO complaints filed recently, among other developments. Targeting and pressuring Giles under these circumstances serves no useful purpose and is a waste of money and time which could be better used bringing the Office into compliance.

Finally, even if the Court were to find that no specific limitations period is applicable to plaintiffs' request, the doctrine of laches bars this action based on the extreme time lapses noted above. Consent decrees are subject to equitable defenses. Cook v. City of Chicago, 192 F.3rd 693, 695 (7th Cir. 1999). "Laches" is an equitable principle barring recovery where a delay in seeking a remedy prejudices the other party. Citation Cycle Co. v. Yorke, 693 F.2d 691, 695 (7th Cir. 1982). Application of a laches defense is left to the sound discretion of the court. Even if a specific limitations period is not applied here, the doctrine of laches bars plaintiffs claim for civil contempt. See Smith v. City of Chicago (recognizing the long history of applying laches to contempt-actions

prior to creation of the limitations period); and EEOC v. CW Transport, Inc., 658 F.Supp. 1278, 1287 (W.D.Wis. 1987) (applying laches in an enforcement action the court found analogous to a “continuing” violation or “pattern and practice” suit under Title VII as opposed to an individual action). Plaintiffs offer no reasonable excuse for the delay, and Giles is prejudiced in having to defend himself now. Plaintiffs wish to create a potential conflict between Giles and the Office even though Giles has been representing the Office with the RCA, OIIG, and plaintiffs’ counsel for over three years since these incidents. Among other issues, Giles is also subject to costs and sanctions for matters occurring nearly four years ago – some of which were already litigated and resolved by other parties because he was not named a defendant and he had no input on the resolution of those same matters for which he is now accused.

B. Plaintiffs’ Motion Improperly Seeks Relief Against Giles, A Non-Party, In His Individual Capacity

Plaintiffs are proceeding against a non-party, seeking to hold a public officer in contempt in his individual capacity. Respectfully Giles suggests that the court lacks any jurisdiction to hold him in civil contempt. Giles is not named in the Shakman litigation and he is not a party to any of the consent decrees or the SRO that plaintiffs allege he violated. The allegations in the motion reference violations of the Recorder’s Consent Decree and SRO. Plaintiffs’ Motion, pp. 3-4. The SRO and Recorder’s Consent Decree are injunctions pursuant to Federal Rule of Civil Procedure 65. Id., p. 3; See also Recorder’s Consent Decree, May 22, 1992. FRCP 65(d), which allows injunctive relief against successors in office, does not create personal (as opposed to official) liability. Hernandez v. O’Malley, 98 F.3d 293, 294 (7th Cir. 1996). Courts have repeatedly refused to hold individual defendants (much less non-parties, as here) liable in their personal capacities for alleged violations of

the Shakman Decree. See Id., 98 F.3d at 294; Plotkin v. Ryan, 1999 U.S. Dist. LEXIS 16214 at 23-24 (N.D. Ill. 1999); McDonough v. City of Chicago, 2008 U.S. Dist. LEXIS 44706 at 17 (N.D. Ill. 2008). Recorder Yarbrough was not in office at the time that the Consent Decree and SRO were entered. The Seventh Circuit has stated that it “cannot fathom why a person suing to enforce the Shakman decree might want to pursue the officeholders in their personal capacities, except for the purposes of harassment, which is hardly a reason the court should approve.” Hernandez, 98 F.3d at 295. These same concerns preclude holding Giles in contempt here, regardless of the merits of the allegations. Placing Giles individually and plaintiffs in a litigious posture will not serve the best interests of plaintiffs, Giles, or the Recorder’s Office. Giles is responsible for meeting with the RCA and OIIG, as well as plaintiffs’ counsel, as needed, in an effort to guide the Office towards compliance. Litigating the issues raised by plaintiffs’ motion will likely disrupt or halt that process as Giles and other employees find it necessary to defend or protect themselves from future allegations where there might be legitimate differences of opinion, *etc.* Making Giles and plaintiffs adversaries is not necessary under the circumstances.

C. Plaintiffs Failed To Satisfy Their “Meet And Confer” Obligations

Prior to filing their motion, plaintiffs’ counsel failed to “meet and confer” with counsel for Giles. This violated the Court’s own declaration, as stated in Local Rule 37.2, that a motion will not be heard unless there is a consultation between the parties and a good faith attempt to resolve differences. U.S. Dist. Ct., N.D.Ill., R. 37.2. The Response Brief filed by the Office of the Recorder of Deeds contains exhibits detailing the correspondences between counsel for the Recorder and plaintiffs’ counsel addressing this requirement. These communications mostly preceded the appearance of Giles’ personal counsel in this matter, and Giles adopts those exhibits here by

reference. See Recorder's Exhibits B-G. It is clear plaintiffs' counsel did not intend to "meet and confer" on these issues, and they did not feel obligated to satisfy Local Rule 37.2.

Similarly, when counsel for Giles contacted plaintiffs' counsel to discuss resolution of these matters short of formal motions and discovery, plaintiffs' counsel would only entertain an "agreed" order finding Giles in civil contempt. Giles' counsel was given little more than an hour to consider this "offer." Plaintiffs' counsel then filed their motion anyway that day. See email chain dated July 29, 2016, attached hereto as Exhibit 1. Plaintiffs' ultimatum was not a good faith demand or effort to meet and confer on the issue. It is clear from the follow-up email shown in Exhibit 1, that plaintiffs' counsel believed that Giles as an admitted "non-party" was not entitled to the benefit of Rule 37.2. This alone justifies denying or striking plaintiffs' motion.

IV. CONCLUSION

Plaintiffs' motion must be denied. It is time-barred regardless of the limitations period applied. Furthermore, Giles is a non-party over which there is no jurisdiction to hold him in contempt. Finally, plaintiffs' counsel failed to meet their obligations to meet and confer with Giles' counsel prior to seeking this drastic relief against him. The parties energies are better served directed elsewhere based on the facts and law at issue here.

WHEREFORE, based on the foregoing Cedric Giles asks this Court to deny Plaintiffs' Motion for Rule to Show Cause and to grant any other relief it deems proper.

Respectfully submitted,
Cedric Giles

s/ Michael J. Hayes Jr.

By: One of his attorneys

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