

EXHIBIT A

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

MICHAEL L. SHAKMAN, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	
)	Case No. 69 C 2145
COOK COUNTY RECORDER OF DEEDS, <i>et al.</i>)	
)	Magistrate Judge Schenkier
Defendants.)	

**PLAINTIFFS’ MOTION FOR ISSUANCE OF A RULE TO SHOW CAUSE
WHY CERTAIN SENIOR STAFF IN THE COOK COUNTY
RECORDER OF DEEDS’ OFFICE SHOULD NOT BE HELD
IN CIVIL CONTEMPT AND FOR RELATED RELIEF**

In the Twelfth Report of the Shakman Compliance Administrator for the Cook County Recorder of Deeds (“Twelfth Report”), the Recorder Compliance Administrator (“RCA”) concluded that “there currently exists a policy and practice of making employment decisions based on political reasons” in the Recorder’s Office. [Dkt. 4603, at 21.]

The principal reason is the culture of non-compliance due to actions of the Recorder and her senior staff. As the RCA’s Twelfth Report states:

. . . there have now been three separate entities (the OIIG, DOC and RCA) who have all found that senior staff in the Recorder’s Office have either (1) provided false information in connection with an investigation or inquiry or (2) attempted to retaliate against employees for exercising their SRO and Plan-mandated duty of notifying the appropriate entity of a perceived violation of the SRO, Plan or Manual. The RCA is aware of other examples (confirmed by the DOC) of senior staff discouraging Non-Exempt employees from reporting issues to the RCA. This culture of making false statements and chilling employees from reporting Plan and Manual violations must change. Leadership from the Recorder herself is necessary to ensure that employees of all levels feel comfortable bringing complaints and concerns to the DOC, RCA and OIIG without fear of retaliation.

Twelfth Report at 25-26. Both the RCA and the OIIG act as authorized agents of the Court under the SRO and subsequent orders.

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The two senior staff members responsible for continuing the practice of unlawful political discrimination and attempting to cover up their violations of the Supplemental Relief Order (“SRO”) are Chief Deputy Recorder Cedric Giles and Labor Counsel Edmund Michalowski. They should be required to show cause, if they have any, why they should not be held in civil contempt for their actions, as described in the RCA’s reports and in the investigative reports issued by the Office of the Independent Inspector General (“OIIG”).

Plaintiffs seek the following relief:

A. That the Court issue a Rule to Show Cause to Chief Deputy Recorder Cedric Giles and Labor Counsel Edmund Michalowski directing that each explain why he should not be held in civil contempt for violations of the SRO and the Employment Plan as set forth below.

B. That the Court permit Plaintiffs to take discovery, including but not limited to the depositions of these individuals and other employees of the Recorder’s Office.

C. That the Court permit Plaintiffs to supplement this Motion by naming other individuals in the Recorders Office to whom rules to show cause should issue.

D. That the Court conduct a hearing or hearings and enter appropriate civil contempt relief.

I. Standard for Civil Contempt

“To support a federal civil contempt conviction, it must be proved: ‘(1) that the court entered a lawful order of reasonable specificity; (2) the order was violated.’” *Watson v. Potter*, 2007 U.S. Dist. LEXIS 36061, at *11-12 (N.D. Ill. May 15, 2007); also *United States v. Dowell*, 257 F.3d 694, 699 (7th Cir. 2001); *EEOC v. Dial Corp.*, 2001 U.S. Dist. LEXIS 24522, at *7 (N.D. Ill. Nov. 29, 2001). It does not require a finding of willfulness. *Stotler & Co. v. Able*, 870 F.2d 1158, 1163 (7th Cir. 1989). Thus, “[a court] may find a party in civil contempt if he has not been ‘reasonably diligent and energetic in attempting to accomplish what was ordered.’” *Id.*

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The Court has authority to hold the named defendant in contempt as well as the Recorder Office's officers, agents and employees. The SRO and the Recorder Consent Decree of May 22, 1992, which remains in effect under the SRO, ¶ 4, are injunction orders under Fed. Rul. Civil. Proc. 65. As such, they are binding upon the Recorder and her "officers, agents, servants, employees, and attorneys; and . . . other persons who are in active concert or participation" with such persons. Rule 65(d)(2). This includes the Senior Staff.

The SRO provides for continuing jurisdiction of the Court to enter orders necessary to enforce the SRO and the 1992 Consent Decree:

The Court retains jurisdiction for purposes of enforcement and ongoing monitoring of the Recorder's compliance with the Recorder's Consent Decree and the SRO, including monitoring by the RCA and the RCA's counsel and staff, until such time as the Recorder's Consent Decree and the SRO terminate.

SRO § III.B. at 10. This is consistent with the general rule of federal court equity jurisdiction under which efforts to nullify an outstanding court order may be enjoined. See, e.g. *Gilmore v. City of Montgomery*, 417 U.S. 556, 567-69 (1974) (supplemental injunctive relief warranted for City's violation of 11-year-old public park desegregation order after City made a new agreement for use of parks by segregated private schools).

The SRO recognizes the Plaintiffs' rights to monitor the Recorder's conduct and to present enforcement actions to the Court:

Monitoring by Plaintiffs. Plaintiffs shall monitor the Recorder's performance under the Recorder's Consent Decree, the SRO (including Pre-SRO Claims adjudication, Post-SRO Complaint Procedures and Arbitration), and the New Employment Plan through counsel of their choice, may present matters to the Court including enforcement actions, and may petition the Court for payment of costs and attorneys' fees incurred as part of their reasonable, appropriate, nonduplicative monitoring and enforcement and for carrying out any of their obligations under this SRO.

SRO § III.E at 10. Plaintiffs bring this motion pursuant to such authorization and by virtue of their rights as plaintiffs.

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The SRO includes clear direction that employees of the Recorders Office are required to cooperate with the RCA and the OIIG. Section I.E provides: “The Recorder shall cooperate with the RCA in connection with the RCA’s efforts . . . to oversee and ensure implementation of the remaining portions of the Recorder’s Consent Decree and this SRO.” [Dkt. 1831.] Section V.A.6 similarly provides: “The Recorder, its departments and their employees and agents shall fully cooperate with the Inspector General’s investigation of the Post-SRO Complaint.” Section III.E of the Employment Plan provides: “All employees of the Recorder are required to cooperate fully in any investigation of such matter conducted by the OIIG or the Director of Compliance.” [Dkt. 3512.]

Both the SRO and the Employment Plan¹ prohibit employees from retaliating against individuals who submit complaints under the SRO. Section VI of the SRO provides: “NO RETALIATION. No person shall take any unlawful retaliatory action against any individual who exercises any rights provide by, or who reports violations of, the Recorder’s Consent Decree or the SRO.” [Dkt. 1831.] Section III.I of the Employment Plan provides:

“No Retaliation. The Recorder shall continue to prohibit retaliation, punishment or penalty for . . . initiating a complaint related to any alleged . . . Unlawful Political Discrimination.” [Dkt. 3512.]

II. Mr. Michalowski Has Repeatedly Violated the SRO and Employment Plan

Mr. Michalowski was hired in 2014. He was given responsibility for overseeing the Recorder’s Human Resources Department. At that time, Felix Babatunde was the Director of Human Resources and reported directly to Mr. Michalowski. See Exhibit 1. Mr. Babatunde was a politically-connected employee, with ties to Illinois House Majority Leader Michael Madigan.

¹ Under the terms of the SRO, the Employment Plan is incorporated into the SRO and the Consent Decree. [Dkt. 1831, § I.C.] Therefore, a violation of the Employment Plan is a violation of the SRO.

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A. Mr. Michalowski Protected Politically-Connected Employees from Discipline

Mr. Michalowski was instrumental in protecting politically-connected employees on many occasions, including Mr. Babatunde.

The RCA has reported in prior filings many instances in which Mr. Babatunde performed poorly.² On many occasions, he failed to properly screen applicants for minimum qualifications. He showed a lack of knowledge about the provisions of the Employment Plan and provided incorrect information to employees during training. Mr. Michalowski admitted to the RCA that Mr. Babatunde had done a poor job explaining the Employment Plan and that the misinformation provided during training he provided would have to be corrected. (Eleventh Report of the RCA, Docket 4036, at 5.) Additional incidents of Mr. Babatunde's poor work performance were described in OIIG Report IIG14-0408 at pages 6-9. Nonetheless, Mr. Michalowski took no action against him, in stark contrast to how employees of the Recorder without political clout were treated.³

Mr. Michalowski protected Mr. Babatunde from charges that Mr. Babatunde provided false information to the OIIG and the RCA. For example, when the OIIG concluded that Mr. Babatunde had willfully provided false information in the investigation of the hiring of Proviso Township Trustee Don Sloan as his executive assistant, Mr. Michalowski conducted a "hearing" within 48 hours of the issuance of the OIIG Report. (*Id.* at 15.) He did not invite the OIIG to offer evidence or to rebut the testimony offered by the Director of Human Resources. The

² See, e.g., Ninth Report of the RCA, Docket 3616; Tenth Report of the RCA, Docket 3759; Eleventh Report of the RCA, Docket 4036; Twelfth Report.

³ For example, the following illustrates how employees without clout were treated: Six Recorder employees have been subject to disciplinary action for providing false information to the Recorder or the OIIG in the course of their employment. All except one have been terminated. Further, the sole employee that was not terminated was Mr. Babatunde's executive assistant and was implicated in the same incident for which Mr. Babatunde was implicated. (IIG14-0408 at 8.)

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hearing consisted of Mr. Michalowski asking Mr. Babatunde approximately 50 questions designed to elicit either blanket denials or exculpatory statements. (*Id.*, at 15.) Mr. Michalowski heard no other testimony. (*Id.*, at 15.)

The RCA monitor who attended the hearing noted that Mr. Michalowski signaled the correct answers to Mr. Babatunde. Mr. Michalowski would shake his head to indicate a “No” answer while awaiting an answer. (*Id.*, at 20 n.18.) Mr. Michalowski later issued “findings” concluding that Mr. Babatunde had not willfully offered false information to the OIIG but rather had offered “inconsistent” information as a result of being intimidated by OIIG Investigators. (OIIG Report 14-0408 at 15.) Mr. Michalowski relied on the Director’s coached denials in the face of documentary evidence that proved the Director had lied to the OIIG. Mr. Michalowski rejected the OIIG recommendation of termination of the Director and instead recommended a suspension. (*Id.*, at 15.)

Mr. Michalowski’s efforts to protect Mr. Babatunde continued until the employee’s retirement. (Twelfth Report, at 20-21.) The RCA informed the Recorder’s Counsel, James Gleffe, that Mr. Babatunde had provided false information to the RCA to cover up a violation of the Employment Plan. (Twelfth Report, at 20-21.) Mr. Gleffe forwarded the complaint to Mr. Michalowski. Mr. Michalowski sat on the complaint for 30 days before issuing an incident report. During that time, he failed to interview the one witness, Director of Public Information Mario Reed, who would have established the false statement. As a result of the delay, Mr. Babatunde was allowed to retire without facing discipline. (Twelfth Report, at 20-21.)

Mr. Michalowski has also acted to protect other politically connected employees. Mr. Michalowski conducted a similar sham hearing for Proviso Township Trustee Don Sloan in connection with his hire as the Director of Human Resources’ executive assistant. Mr.

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Michalowski accepted the Mr. Sloan's testimony as true without providing the OIIG an opportunity to present the evidence rebutting the Trustee's testimony. (IIG13-0292.)

In another instance, the OIIG found that employee, Ms. Linda Tyson, provided false information in connection with an investigation into whether Ms. Tyson was hired based on unlawful political considerations. (IIG13-0289, at 9-14.) When confronted with written evidence showing that Ms. Tyson had performed political work for the Recorder and her husband, Ms. Tyson continued to deny ever working for either campaign. The OIIG concluded that her testimony was not credible and that she had willfully provided false information to conceal her relationship with the Recorder during the investigation. (*Id.* at 27-29.) Once again, Mr. Michalowski quickly convened a disciplinary hearing during which he interviewed the employee and accepted her version of events without notifying the OIIG or permitting an OIIG representative to attend or be heard. (Recorder's Hearing Reports IIG13-0289; Dkt. 4036, at 12.) Mr. Michalowski concluded that Ms. Tyson was not credible, but elected to disregard the OIIG's recommendation and only suspended her for a short time. (Recorder's Hearing Reports IIG13-0289.)

B. Mr. Michalowski Retaliated Against An Employee Who Filed a Post-SRO Complaint

Mr. Michalowski has also violated the SRO and the Employment Plan by retaliating against an individual for filing a complaint with the DOC and interfering with a DOC investigation. *See* Dkt. 1831, § VI; Dkt. 3512, Ex. A, § III.I, § IV.J. As stated in the Twelfth Report at 24-25, in 2015, Mr. Michalowski's executive assistant reported to the RCA and the DOC that she was working outside of her job description. The DOC interviewed Mr. Michalowski in connection with the allegations and asked him to hold off pursuing any discipline against his assistant until the DOC completed his investigation. Mr. Michalowski

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agreed, but, less than 48 hours later issued an incident report accusing the employee of five major infractions. The DOC concluded that Mr. Michalowski had retaliated against his assistant for filing a complaint with the DOC and that Mr. Michalowski had knowingly provided false information to the DOC during the course of the investigation. (Incident Report 2015-009, at 9-10.) The Recorder, however, refused to discipline Mr. Michalowski. (Twelfth Report at 25.)

Based on the foregoing, Mr. Michalowski should be held in civil contempt for violating the 1992 Consent Decree, the SRO and the Employment Plans by (1) conditioning any aspect of governmental employment on the basis of unlawful political discrimination, (2) failing to cooperate with the RCA, DOC and the OIIG by providing false information during investigations (that he would take no action pending completion of the DOC's investigation, and his false allegations of misconduct against his assistant), and (3) retaliating against his assistant for exercising her right to submit a complaint to the RCA and the DOC.

III. Chief Deputy Recorder Giles Violated the SRO and the Employment Plan

In 2013, Mr. Giles sought to hire an executive assistant through the Executive Assistant appointment process. (IIG13-0403 at 16.) That process was intended to allow senior management to hire administrative assistants who the senior management knew had the necessary experience and skills. [Dkt. 3542-1, § IX.] The process required that the manager submit a Request to Hire form with "a description of the basis on which the [manager] has selected the individual (e.g., past knowledge of his or her employment history, past working relationship, etc.)." *Id.*, § IX.D(2).

Contrary to the requirements of the process, Mr. Giles selected a candidate about whom he had no personal knowledge. He left blank the section on the Request to Hire form about the basis for the selection. Upon being informed that he needed to complete the Request to Hire

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form and that the candidate's application was incomplete, Mr. Giles abruptly withdrew her from consideration. (*Id.*, at 17-18.)

A subsequent investigation by the OIIG revealed that Mr. Giles had collaborated with the Recorder to violate the Employment Plan and the SRO by hiring the first candidate. The candidate stated that she knew the Recorder socially and the Recorder was the one who called the candidate to offer her the position, not Mr. Giles. (*Id.*, at 18-19.) Mr. Giles told the OIIG that he knew the candidate because they both worked for the County. The candidate told the OIIG that she did not know Mr. Giles prior to the date he interviewed her for the position. Thus, it seems clear that Mr. Giles lied to the OIIG and was covering for the Recorder, who had made the decision to hire the candidate.

The second candidate submitted by Mr. Giles was hired. Mr. Giles' only connection to the second candidate consisted of two brief social interactions over a span of years. This candidate, like the first, was connected to the Recorder. The candidate had volunteered at the Recorder's campaign functions. (*Id.*, at 19.) Thus, this hiring appears to have been politically motivated, with the Recorder using Mr. Giles to implement her hiring decision.

The OIIG concluded that the Recorder and Mr. Giles worked together to abuse the Executive Assistant appointment process and that they provided false and misleading statements to the OIIG. The OIIG recommended Mr. Giles' termination. (*Id.*, at 26.) The Recorder refused to impose any discipline.

The OIIG has found that Mr. Giles participated in a pretextual firing of a non-exempt employee, who the Recorder believed had political ties to the prior Moore administration. (IIG13-0176, at 16-17.)

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Mr. Giles has also violated the SRO and the Employment Plan by instructing an employee not to inform the RCA of investigations so as to prevent the RCA from monitoring the activity. As the Recorder stated in her Ninth Report:

The Director of Security recently began conducting investigations into alleged Policy Manual infractions by Recorder employees. Upon learning of this development, the RCA reminded the Recorder's Office that it should provide her the opportunity to monitor these investigations because they are part of the process leading to decisions on whether to issue employee discipline. The Director of Security initially provided the RCA notice that he was going to conduct such an investigation; however, he ultimately disregarded the RCA's request to monitor the investigation and conducted it without RCA monitoring. 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. The RCA has informed the Recorder's Counsel that she views this obstructionist action by the Recorder – through Mr. Giles – as a direct and, most likely, continuing violation of the SRO.

[Dkt. 3616, at 27-28.]

Based on the foregoing, Mr. Giles should be held in civil contempt for violating the 1992 Consent Decree, the SRO and the Employment Plans by (1) conditioning any aspect of governmental employment on the basis of unlawful political discrimination and (2) failing to cooperate with the RCA and the OIIG by providing false information during investigations and directing an employee to not inform the RCA of his investigations to prevent the RCA from monitoring.

IV. Additional Employees Who May Have Violated the SRO and Employment Plan

The Court should direct the RCA, who has worked in an exemplary fashion to change the culture of the Recorder Office, to file with the Court within ten days, and to provide to Plaintiffs' counsel, details concerning other instances in which Recorder Office employees made false statements to the RCA or DOC or discouraged Non-Exempt employees from reporting issues to the RCA or DOC. After receipt of such information and such discovery by Plaintiffs as they

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may initiate, an opportunity should be provided Plaintiffs to amend this motion to add other persons to whom rules to show cause should issue.

V. An Evidentiary Hearing Should Be Set to Determine Whether Named Individuals Should Be Held in Civil Contempt

Pursuant to Local Rule 37.1(a), a Rule to Show Cause should issue to Mr. Michalowski and Mr. Giles directing that each respond under oath by addressing each of the allegations in this Motion, and by stating why each should not be held in civil contempt. Since each is an employee and agent of the Recorder, service on them is being made via the Recorder's counsel. Once they appear through their own counsel, an appropriate schedule should be set.

Plaintiffs should be afforded an opportunity to take such discovery and to take depositions as is reasonably related to these individuals' conduct, the incidents at issue, and the culture of the office of the Recorder referred to in the Twelfth Report. Thereafter, the Court should hold a hearing pursuant to Local Rule 37.1(b) and enter an appropriate order finding Mr. Michalowski, Mr. Giles and any others who may be the subject of rules to show cause issued pursuant to Section IV, above, in civil contempt and imposing appropriate civil contempt sanctions pursuant to Local Rule 37.1(c).

Civil contempt relief is important in this case and at this time because of the obstruction reported by the RCA and OIIG. Plaintiffs' objective is not punishment, but bringing the Recorder's Office into substantial compliance. Regrettably, however, civil contempt relief is needed in this instance to achieve that end, as certain officials need to understand that ignoring, defying or evading this Court's orders is both unacceptable and a setback toward achieving substantial compliance. Substantial compliance requires, among other things, that "the Recorder does not have a policy, custom or practice of making employment decisions based on political reasons or factors except for Exempt Positions." It also requires "the absence of material

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noncompliance which frustrates the Recorder's Consent Decree and the SRO's essential purpose." SRO ¶¶ 8(3) and (4).

It is clear from the Twelfth Report, and from prior RCA Reports, that voluntary efforts to advance that process are being frustrated by actions of Mr. Michalowski and Mr. Giles, and by the culture that persists in the Recorder's Office. Plaintiffs respectfully request that the Court enter the relief sought in this Motion and set a schedule for implementing the procedures for commencement and pursuit of a civil contempt proceeding.

Respectfully submitted

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