

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

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| MICHAEL L. SHAKMAN, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | Case Number: 69 C 2145 |
| v. |) | |
| |) | Magistrate Judge Schenkier |
| COOK COUNTY RECORDER OF |) | |
| DEEDS, et al., |) | |
| |) | |
| Defendants. |) | |

**NINTH REPORT OF THE SHAKMAN COMPLIANCE ADMINISTRATOR
FOR THE COOK COUNTY RECORDER OF DEEDS**

Cardelle B. Spangler, *Shakman* Compliance Administrator for the Cook County Recorder of Deeds (“RCA”)¹, by and through her attorney, Matthew D. Pryor, pursuant to Art. III.C of the Supplemental Relief Order for the Cook County Recorder of Deeds (“SRO”), submits this Ninth Report as follows:

I. Introduction

Since the RCA filed her Eighth Report to the Court (“Eighth Report”)² on February 22, 2013, the Cook County Recorder of Deeds³ has taken a few technical steps

¹ “RCA” hereinafter shall refer to the Recorder Compliance Administrator and/or her staff.

² The RCA delayed filing her Ninth Report until now to await, among other things, the resolution of the parties’ negotiations concerning the Director of Compliance Position and the Recorder’s Employment Plan. The RCA will resume more regular reporting by filing additional reports in January and March 2014.

³ The “Cook County Recorder of Deeds”, the “Recorder” and/or “Recorder’s Office” hereinafter shall refer to the Recorder, Karen Yarbrough, and/or her staff.

forward in her efforts to reach Substantial Compliance⁴ with the SRO, but made virtually no progress (and in some instances taken substantial steps backward) in complying with both the letter and spirit of the SRO and the Recorder's Employment Plan (the "Plan").⁵ On the technical side, the parties filed the Plan with this Court on August 7, 2013 and the Recorder (1) implemented the online applicant tracking and application system ("ATAS") for all Non-Exempt hiring, (2) posted for and interviewed Applicants⁶ for the Director of Compliance ("DOC") Position, and (3) circulated a draft of her revised Policies and Procedures Manual (the "Manual") to the RCA and Class Counsel.

The RCA, however, has grave concerns as to whether the Recorder is truly committed to eradicating unlawful political considerations from Employment Actions⁷ within her Office. For example, out of the eight *Shakman* Non-Exempt employees the Recorder hired since the Eighth Report, the RCA referred the hiring processes related to five of these employees to the Inspector General for investigation into potential Unlawful Political Discrimination⁸ ("UPD"). (A sixth is the subject of a Post-SRO Complaint). These referrals were, in part, the result of the RCA's monitoring efforts during which she

⁴ "Substantial Compliance" is defined in the SRO. *See* SRO § III.F.8.

⁵ Some current issues with the Recorder's Office will not be discussed in this Report as inclusion would be premature at this time. The RCA hopes to include details on the same in her next report to the Court.

⁶ The Plan defines "Applicant" as, "[a] person who has submitted an online application to the Division of Human Resources ("HRD") for a Position and whose name appears on the Preliminary Eligibility List."

⁷ The Plan defines "Employment Action" as, "[a]ny action (positive or negative) related to any aspect of employment, including, but not limited to, hiring, training, change in job assignment, cross-training, Promotion, Transfer, assignment of Overtime and Compensatory Time and other benefits of employment, Discipline and/or Termination."

⁸ The Plan defines "Unlawful Political Discrimination" as, "[a]ny positive or negative Employment Action involving an Applicant, Candidate or Recorder employee who is applying for, being considered for or holding a Position that is based on any Political Reasons or Factors."

observed a range of issues from the Recorder's consistently deficient hiring paperwork to suspicious interviews and Selection Meetings.⁹

The RCA's concerns were heightened further when, among other things, (1) the Recorder's Head of the Human Resources Division ("HRD"), who is to play a substantial role in ensuring the Recorder complies with the Plan, asked the RCA to ignore the fact that an Applicant for a *Shakman* Exempt Position failed to demonstrate on her application materials that she met one of the minimum qualifications, (2) the RCA obtained a document showing that the Recorder's new Chief Deputy Recorder and current *Shakman* Liaison attempted to change the pay grade and salary of a Non-Exempt employee, a fact about which Labor Counsel attempted to mislead the RCA and (3) the Recorder's new Chief Deputy Recorder and current *Shakman* Liaison instructed a Non-Exempt employee not to cooperate with the RCA. In addition, the Recorder's *Shakman* Exempt Labor Counsel continually attempts to perform the duties of the *Shakman* Non-Exempt Head of HRD – a role not included in her job description and certainly not permitted in the Plan.¹⁰

As set forth more fully below, the Recorder's actions have not demonstrated that she has a sincere intention to comply with the SRO and Plan. The RCA hopes the Recorder immediately commits herself to moving her Office toward Substantial Compliance.

⁹ The "Selection Meeting" is the meeting within which the interview panelists for a Position discuss their scores and thoughts on the Candidates before ultimately deciding on which, if any, Candidate to recommend to Recorder Yarbrough to hire for the Position. See Plan § V.Q.

¹⁰ Some current issues will not be discussed in this Report as inclusion would be premature at this time. The RCA hopes to include details on the same in her next report to the Court.

II. Technical Steps Toward Substantial Compliance

Substantial Compliance with the SRO requires that the Recorder complete certain technical steps. As set forth below, some of these steps include: the filing of a Plan that governs the Recorder’s non-political hiring practices, the implementation of ATAS, the hiring of a DOC to oversee the long-term commitment to the *Shakman* principles, and the implementation of the Manual that governs Employment Actions other than hiring – such as promotions, transfers and discipline. SRO §§ II.C-D & III.F.8.

A. *The New Employment Plan¹¹ Has Been Filed*

After many months of negotiation, the Court approved the Plan effective August 7, 2013 and the Recorder circulated it to all her employees on September 17, 2013. This is an important step toward the ultimate goal of reaching Substantial Compliance as the Plan is meant to “govern the Recorder’s employment practices, policies and procedures, including, but not limited to, nonpolitical hiring, promotion, transfer, assignment of overtime, discipline and discharge.”¹² SRO § II.C. The Plan contains objective and transparent hiring procedures designed to prevent unlawful Political Reasons or Factors¹³ from being considered for Non-Exempt Positions in the Recorder’s Office. It also contains specific commitments by the Recorder’s Office to, among other things: ensure that all employees receive regular training on the Plan; follow a specific hiring process

¹¹ Given that the majority of the Recorder’s employees are unionized, it is important to note that the Plan clearly states that if the Collective Bargaining Agreement (the “CBA”) is in conflict with the language in the Plan, the language in the CBA will govern provided it does not permit or involve the use of any Unlawful Political Contact or UPD. *See* Plan § III.K.

¹² While the SRO states that the Plan will cover hiring as well as non-hiring policies and procedures, through agreement of the parties, the Recorder’s non-hiring policies and procedures will be covered in a separate Manual attached as an exhibit to the Plan. *See* below at 10.

¹³ “Political Reasons or Factors” is defined in the Plan. *See* Plan at 5.

for Exempt, Non-Exempt, Executive Assistant, and Intern/Extern Positions; update all job descriptions so that they are accurate and contain relevant and clear minimum qualifications; and, use ATAS for all postings so that all applications, as well as all Human Resources determinations of any given Applicant's eligibility, are easily auditable by the RCA and the Office of the Independent Inspector General (the "OIIG") in real time. The RCA will actively monitor the Recorder's compliance with these specific commitments and all other aspects of the Plan until the SRO terminates. SRO § III.D.

1. The Recorder Has Yet to Demonstrate a Sincere Commitment to Following the Plan

Notwithstanding the fact that the parties filed and the Court approved the Plan on August 7, 2013, the Recorder has not yet demonstrated a commitment to doing the hard work and making the changes necessary to achieve Substantial Compliance. This is because the RCA (1) questions the Recorder's motive for attempting to follow portions of the draft Plan and (2) has serious concerns about many hiring processes since the Plan was filed.

a. *Agreeing to Follow Portions of an Early Draft of the Plan in February 2013 Did Not Set the Recorder on a Path to Substantial Compliance by February 2014.*

In or around February 2013, the Recorder asked the RCA to fill some vacancies by following the General and Executive Assistant Hiring Processes contained in the working draft version of the Plan that the RCA circulated to the Recorder and her counsel within the first week of the Recorder taking office in December 2012. *See* Seventh Report at 14. The RCA agreed with this request, even if it involved only a small portion of a draft Plan, viewing it as a positive sign of the Recorder's commitment to ensuring

the decisions made in her Office were free from UPD. However, discussions with certain of the Recorder's representatives toward the end of Plan negotiations led the RCA to believe that the Recorder's true motive for that request was an attempt to circumvent the SRO.

The SRO provides that “[n]o sooner than *one year* after the New Employment Plan is *implemented* or at any time that the Court shall order, the Recorder may file a Motion to Dissolve the Recorder's Consent Decree and this SRO.” SRO § III.F.1 (emphasis added). The Recorder has stated her intention to argue that because she began attempting to follow hiring sequences contained in a draft of the Plan in February 2013, she began “implementing” the Plan at that time for purposes of the SRO and her “one year clock” began to run. The RCA informed the Recorder's representatives – in no uncertain terms – that this was not the case for a number of reasons as set forth below.

i. Critical Provisions of the Plan Had Not Been Negotiated or Agreed Upon in February 2013

First, the SRO neither expressly nor implicitly permits attempts to follow pieces of a draft Plan to substitute for a complete, Court-approved¹⁴ Plan. SRO § II.C. Indeed, as of February 2013, the parties had not negotiated, much less agreed upon, critical provisions contained in the Plan. It took five more months to reach such agreement.

ii. The Recorder Did Not Follow Many of the Provisions of the Draft Plan

Second, the Recorder did not follow many of the provisions of the draft Plan as they related to hiring, which only underscores the fact that she did not implement the Plan

¹⁴ The SRO requires that “[t]he New Employment Plan shall be presented to the Court for approval.” SRO § II.C.

– in draft form or otherwise – in February. For example, many of the duties assigned to the Head of HRD (a *Shakman Non-Exempt* Position) under the draft Plan were performed by Labor Counsel (a *Shakman Exempt* Position) or her Executive Assistant such as: creating the Validated Eligibility and Interview Lists (Plan §§ V.J-K); scheduling interviews¹⁵ (*id.* § V.M.1); and participating in Selection Meetings when Labor Counsel was not an interviewer for the Position (*id.* § V.Q). This is of no small consequence given the filed Plan (and the February draft) prohibited the Head of HRD from sharing any information about any Applicant or Candidate¹⁶ who is not specifically authorized to receive such information. *Id.* § IV.H (emphasis added). In the Plan, Labor Counsel is not so authorized.

Two weeks before the Plan was filed, the Recorder realigned her Divisions so that, in part, *Shakman Exempt* Labor Counsel now oversees HRD even though such functions are outside the scope of her job description. Whatever the intent behind this realignment, the RCA has made it clear to the Recorder that a violation of the Plan occurs each time the Head of HRD permits any unauthorized employee (including Labor Counsel and/or her Executive Assistant) access to job applications, resumes, pre-employment test scores, and interview scores. It is further a violation of the Plan each time someone other than the Head of HRD or his *subordinate* designee *in HRD* performs his job functions. Plan at 2.

¹⁵ In fact, on August 27, 2013, Labor Counsel, with the Head of HRD present, called the RCA to confirm the interview schedule for two Non-Exempt Positions; a task that was then completed by Labor Counsel's Executive Assistant. Under the Plan, the Head of HRD or his or her designee in HRD is tasked with that duty, not Labor Counsel or her designee. See Plan § V.M.1.

¹⁶ The Plan defines "Candidate" as, "[a]n Applicant whose name is included on the Validated Eligibility List pursuant to Section V of this Employment Plan." Plan at 1.

iii. Recorder Employees Have Not Been Trained on the Plan

Third, one of the keys to effectuating a culture free from UPD is ensuring all employees are aware of office practices and prohibitions. A central component of *implementing* the Plan, therefore, is training all Recorder employees on it. This has not yet happened as the DOC – a Position that has not yet been filled – is largely responsible for such training. Plan § IV.F.

iv. Agreeing to a Plan, Without More, Will Not Lead to Substantial Compliance

Finally, while the SRO discusses a one-year timeframe after which the Recorder *may* file a Motion to Dissolve, *see* SRO § III.F.1, it is clear that the Recorder cannot achieve Substantial Compliance by merely checking off technical boxes without having the real commitment and doing the hard work necessary to eliminate unlawful political considerations from her Office. The RCA urges the Recorder to implement the Plan once the DOC is hired and work with the RCA and Class Counsel to address the issues noted in this and prior Reports to the Court.

b. The Executive Assistant Hiring Process, which the Recorder Was Eager to Use, Has Been Fraught with Issues

As set forth more fully in Sections III.A.1 & 4-5 below, the RCA has serious concerns about the Executive Assistant Hiring Process because (1) certain Recorder employees have not been forthright about the basis upon which they selected their Executive Assistants and (2) the RCA questions the ability of the Head of HRD, who is charged with validating the applications for these Positions, to perform this task properly.

B. An Automated Online Application Tracking System Is In Place

Since the Eighth Report, the Cook County Bureau of Human Resources has

worked with various Recorder employees on appropriate ATAS training. The Recorder's Office posted its first Position (the DOC) on ATAS in August and has since posted three additional Positions.

The RCA notes that the Recorder decided that the County's Director of Human Resources Information Systems, Barbara Pryor, would serve as the Recorder's Content Librarian.¹⁷ Additionally, the Recorder's Office confirmed that only HRD employees will have access to the online applications and resumes on ATAS. Limiting such access to only HRD employees is consistent with the Plan. Plan § IV.H.

C. The Director of Compliance Position Is Posted

The Plan establishes the Position of the DOC – the new *Shakman* covered Position in charge of overseeing the Recorder's short- and long-term compliance with the Plan. The employee in this Position will have continued oversight of the Recorder's adherence to the Plan after the Recorder achieves Substantial Compliance with the SRO. The DOC is a full-time Position focused on assisting the Recorder with the implementation of the Plan and the Manual, the latter of which the Recorder, RCA and Class Counsel are negotiating. The DOC is also charged with, among other things, assisting the Head of HRD with training all employees on the Plan and Manual and investigating claims of violations of both. Plan §§ IV.F & M.

The Notice of Job Opportunity for the DOC was officially posted on ATAS on July 31, 2013 after its job description and hiring process were agreed upon by the parties.

¹⁷ The RCA also notes that while Ms. Pryor will serve as the Content Librarian, she will only assist the Recorder's Office with preparing all Postings before they "go live" on ATAS. She will not be fulfilling other duties assigned the Content Librarian in the Plan – including, but not limited to, creating accurate job descriptions. Plan at 2. The RCA recognizes that the Plan will need to be amended to include the County's Bureau of Human Resources as an appropriate the Content Librarian.

The validation process for this Position, however, did not go smoothly as the Head of HRD improperly validated Applicants who did not meet the minimum qualifications for the position. After much discussion with the RCA and Class Counsel, a group of Applicants and/or Candidates – some of whom the RCA still did not believe met the minimum qualifications – were sent to the DOC Hiring Panel for interviews.

The DOC Hiring Panel, agreed to by the parties, consisted of JAMS Arbitrator, Hon. Wayne Andersen (ret.), former *Shakman* Compliance Administrator for the Cook County Forest Preserve District, Jan Carlson, and current Clark Hill Counsel/former President of the Chicago Bar Association, Aurora Abella-Austriaco. On October 18, 2013, this panel interviewed 14 Applicants and/or Candidates based on the hiring process approved by the parties and recommended to the Recorder the six highest-evaluated Applicants and/or Candidates. On October 24, 2013, the Recorder interviewed four Candidates.¹⁸ After the interviews, one Candidate was disqualified after it was discovered that he previously served as an officer for a partisan political organization - a role that was prohibited by the DOC job description and that he did not disclose. Additionally, one of the four interviewed Candidates was deemed ineligible for further consideration based on low interview scores. The Recorder decided not to hire either of the two remaining Candidates. She reposted the Position on November 6, 2013. The RCA will report on this second posting in her next report.

D. Policies and Procedures Manual Is Being Revised

On March 29, 2013, the Recorder issued a memorandum to all employees

¹⁸ The RCA and Recorder agreed that, based on information discovered during or after their interviews, two of the six did not meet the minimum qualifications for the Position. The Recorder disqualified them from further consideration for this Position.

informing them that it was in the process of revising all personnel policies and that during that drafting process the Recorder's Office would follow the provisions of the prior administration's Personnel Policy and Procedures Manual (last revised in 2003). The RCA appreciated the Recorder's Office clarifying this matter. On September 30, 2013, the Recorder provided an 88-page new proposed Manual, which the RCA and Plaintiffs' Counsel are in the process of reviewing. The RCA will report on any developments in her next report.

III. Observations of Significant Issues with the Recorder's Compliance with the Letter and Spirit of SRO and Plan

The RCA has significant concerns about the Recorder's compliance with the letter and spirit of the SRO and Plan as a result of her monitoring efforts. These concerns include, but are not limited to: (1) the integrity of the hiring processes for several *Shakman* Non-Exempt Positions, *see* Section III.A below; (2) the Head of HRD's ability to comply with and enforce the Plan, *see* Section III.B below; (3) Labor Counsel's attempt to mislead the RCA concerning an attempted reclassification of a *Shakman* Non-Exempt Position, *see* Section III.C below; and (4) the Chief Deputy Recorder directing an employee not to cooperate with the RCA in her attempts to monitor the Recorder's Office, *see* Section III.C below. The RCA also monitored several non-hiring Employment Actions which caused her some concern as well. *See* Sections III.D.1-5 below.

A. *Suspect Hiring for Certain Shakman Non-Exempt Positions*

The RCA has monitored some or all of the hiring processes for twelve full-time

Shakman Non-Exempt Positions.¹⁹ This has included monitoring the creation of job descriptions, publicizing of job postings, screening of applications, creation of eligibility lists, preparation of interview questions, interviewing of Candidates, and the final selection of the successful Candidate. As set forth below, the RCA has serious issues with eight of the twelve hiring processes. In addition, of the eight individuals hired from these processes, the RCA has referred five to the OIIG for investigation into potential UPD (a sixth is the subject of a Post-SRO Complaint).

1. Executive Assistant to the Chief Deputy Recorder (*Shakman* Non-Exempt)

The RCA previously reported that the Recorder planned to hire three Executive Assistants, at least one of which would be filled using the Executive Assistant Hiring Process in the draft Plan. Eighth Report at 7. The Executive Assistant Hiring Process permits senior management employees to choose an Executive Assistant without posting the Position as long as the person proposed for the Position meets the minimum qualifications and the selection is not based on Political Reasons or Factors.²⁰ Plan § IX. In order to ensure these two requirements are met, the hiring packet for the Position must include notification of (1) the identity of the selected individual; (2) a description of the basis on which the Executive Assistant Supervisor has selected the individual (e.g., past knowledge of his or her employment history, past working relationship, etc.); (3) copies of any licenses or certification required; and (4) a NPCC signed by the Executive

¹⁹ Eleven of these twelve hiring processes are discussed in this section while the twelfth, the DOC Position, is discussed above in Section II.C.

²⁰ The Plan provides for this exception to the General Hiring Process, “[i]n order to assist certain members of the Recorder’s senior management team in retaining direct-report administrative assistants who possess the experience, skills, and competence needed by them to perform their jobs effectively...” Plan § IX.

Assistant Supervisor...” Plan § IX.D.

The former Chief Deputy Recorder, William Velazquez, chose to use this process in selecting his Executive Assistant. The RCA, however, noted issues with the hiring paperwork approved by the Head of HRD including Mr. Velazquez’s failure to provide a description of the basis on which he had selected the individual. In addition, passing a typing test was a pre-requisite for qualification for the job. Yet Mr. Velazquez, without notifying the RCA or providing her with the opportunity to monitor his conversations, offered the individual the Position prior to her completing the test. Although Mr. Velazquez cured the technical deficiencies in the paperwork, the selected Candidate took and passed her typing test, and she was hired effective February 27, 2013, the RCA became concerned that Political Reasons or Factors may have influenced this hire and, pursuant to the SRO, referred the same to the OIIG.²¹

2. Director of Satellites (*Shakman* Non-Exempt)

The Recorder used the General Hiring Process²² to post for the Director of Satellites Position from March 7-21, 2013 and conducted interviews from April 11-15, 2013. The interview panel then held a Selection Meeting to discuss the Candidates

²¹ While the SRO provides the RCA with the ability to monitor all Employment Actions in the Recorder’s Office, the SRO authorizes the Inspector General “to investigate any allegations of unlawful political discrimination in connection with employment with the Recorder. . . .” SRO §V.F. Therefore, if the Recorder’s Office violates a step in a hiring process, the RCA will inform the Recorder’s Office of the violation and will work with the Recorder to resolve the issue. However, if at any point the RCA has reason at to believe that UPD is potentially affecting a hiring process, she will refer the matter to the OIIG for further investigation at the discretion and timing of the OIIG. Due to the sensitivity of the subject matter and in an effort not to compromise the integrity or effectiveness of the OIIG’s investigation, the RCA will not inform the Recorder that she has referred the matter to the OIIG. Additionally, because there may have been no proven violations of the steps in the hiring process, the RCA will not object to the Recorder proceeding with a hire despite having referred the matter to the OIIG for UPD concerns.

²² The “General Hiring Process” in the Plan discusses the process by which all Non-Exempt Positions (excluding Executive Assistants and Interns/Externs) can be hired. See Plan § V.

interviewed. The interview panel selected and ranked the top three Candidates in order of preference. The Recorder selected the Candidate ranked highest by the interview panel and this employee started on April 22, 2013. However, the Recorder terminated this employee's employment on May 6, 2013. *See* below at Section III.D.1.d. On June 17, 2013, the Recorder hired the second-ranked Candidate for this Position. The RCA later became aware of alleged UPD associated with this hire and, pursuant to the SRO, referred the same to the OIIG.

3. Director of Security (*Shakman* Non-Exempt)

The hiring process concerning the Director of Security deeply troubled the RCA. The Recorder used the General Hiring Process to post this Position from April 3-17, 2013 and received approximately 17 applications. After the Recorder completed the validations, five Applicants received interviews, which occurred on May 1 or May 2, 2013. The RCA reviewed the applications of the Candidates who received interviews and learned that one of the Candidates was the Police Chief of the Village of Maywood, a position to which he had been appointed on June 12, 2009 by then-Maywood Mayor Henderson Yarbrough, Sr., the Recorder's husband. The RCA monitored these interviews and was disturbed by the interview panel's seeming bias towards this particular Candidate, both in the way the interview questions were asked and scored. The Candidate's apparent political connection to the Recorder's husband and the interview panel's conduct concerned the RCA.²³ The RCA's Counsel met with the Recorder's Office on May 8, 2013 to discuss the RCA's concerns. The Recorder then agreed to

²³ The RCA believed the panelists were inconsistent with their questioning and scoring of the Candidates which appeared to favor this Candidate.

conduct a second round of interviews using a different panel. These interviews took place on May 28, 2013. The RCA monitored the interviews and the interview panel's final Selection Meeting.

The RCA once again was alarmed when Labor Counsel (who was not on the interview panel and should have had no role in this process) interrupted the second panel's Selection Meeting during the panel's deliberations to ask them to confirm that their interview scores, which had the former Maywood Police Chief first (albeit by a much narrower margin than the first panel), constituted the final ranking. The RCA viewed Labor Counsel's actions as potentially tainting the process in favor of a candidate with known political connections to the Recorder's husband.

The RCA later interviewed each of the panelists separately to determine if Labor Counsel's actions in any way influenced the Selection Meeting or their recommendation; all panelists stated her actions did not influence them. Although the RCA had no further basis (beyond the fact of the candidate's political connections)²⁴ upon which to object to the decision to hire the panel's highest ranked candidate for the Director of Security Position, she remains deeply concerned about how this selection process played out. Another Candidate for the Position filed with the OIIG a Post-SRO Complaint in connection with this hire.

²⁴ The RCA notes that while it may seem improper that a Candidate with political connections can get hired for a Non-Exempt Position, the *Shakman* case and its resulting Consent Decree, SRO and the Plan in this instance do not prevent such a result. The mere fact of political connections does not bar employment in county government as such a bar would constitute discrimination on the basis of a Candidate having political connections. One of the principle aims of the SRO and Plan is that Political Reasons or Factors are not taken into consideration – one way or another – for Non-Exempt Positions. Therefore, a person with political connections may be qualified for the job and may even be the best candidate for the job; however, if those political connections in any way influence the decision-making process, then it is a violation of the SRO and Plan.

4. Executive Assistant to the Head of HRD (Shakman Non-Exempt)

The Recorder's Office also chose to use the Executive Assistant Hiring Process to fill the Executive Assistant to the Head of HRD Position and provided the RCA with the hiring packet on August 23, 2013. The RCA had serious concerns with some of the documentation in the packet including, but not limited to, the explanation from the Head of HRD as to how he knew the Candidate. The Recorder hired the Candidate effective September 3, 2013. The RCA, however, was concerned that Political Reasons or Factors may have influenced this hire and referred the matter to the OIIG for investigation.

5. Executive Assistant to the Deputy Recorder (Shakman Non-Exempt)

The Executive Assistant to the Deputy Recorder Position was first posted on March 7, 2013 using the General Hiring Process set forth in the Plan. The interview panels for this Position decided not to recommend any of the interviewed Candidates for hire. On April 18, 2013 the Deputy Recorder informed the RCA that he intended to switch to the Executive Assistant Hiring Process to fill this Position, which is permitted under the Plan. He presented the RCA with a revised job description for the Position explaining that one of the minimum qualifications in the existing job description was too specific, which limited the pool of Applicants.²⁵ The RCA approved the revision.

The Head of HRD then forwarded to the RCA the hiring packet for the selected "Executive Assistant to the Deputy Recorder", which was deficient. Like the Chief

²⁵ The minimum qualification in that existing job description required "at least 3 years of previous computer training or experience related to the use of advanced word processing, spreadsheets and/or databases programs including functions of the Microsoft Suite, specifically Excel, Word, Power Point, Publisher and Outlook." The Deputy Recorder revised the requirement to: "must be proficient in Microsoft Excel, Word, and Outlook."

Deputy Recorder, the Deputy Recorder failed to include “a description of the basis on which [he] selected the individual (e.g. past knowledge of his or her employment history, past working relationship, etc.)”, as required in the Plan. Plan § IX.D.2. Additionally, the RCA noted that the selected Candidate did not complete several portions of her paper application. The RCA forwarded her concerns to the Head of HRD on May 6, 2013 and on May 8, 2013 the RCA was informed by the Recorder that the Deputy Recorder had selected another Candidate for this Position.

The Head of HRD provided the hiring packet for the newly selected Executive Assistant to the Deputy Recorder, but the RCA once again noted several deficiencies in the documentation provided. The Head of HRD’s inability to identify these and earlier deficiencies before approving the hiring packets further supports the RCA’s concern about the Head of HRD’s ability to effectively conduct the duties assigned him in the Plan. Here, the Deputy Recorder ultimately stepped in to address the deficiencies. The RCA approved the hiring packet and the Executive Assistant to the Deputy Recorder started on June 5, 2013. The RCA later became aware of alleged UPD associated with this hire and, pursuant to the SRO, referred the same to the OIIG.

6 & 7. REI I and Clerk V (*Shakman Non-Exempt*)

On June 14, 2013, the Recorder posted for one Clerk V, Grade 12 and two REI I, Grade 11 Positions. As set forth below, the RCA is deeply concerned with the interview processes for these Positions.

Of the fifteen Candidates who sat for the typing test, seven passed and were scheduled for interviews from September 5–9, 2013. Some of these seven Candidates applied for and received interviews for both the REI I and Clerk V Positions. The

Recorder scheduled those Candidates for separate, back-to-back interviews for the different Positions; however, several of the interview questions for the REI I and Clerk V Positions were nearly identical which provided an unfair advantage to Candidates interviewing for both Positions. This situation likely would not have occurred had the RCA been provided with a copy of the interview questions in advance of the actual interviews as has been the practice since the RCA's inception in 2010. The RCA specifically requested that the Head of HRD provide her with the interview questions before the interviews, but he did not respond to the request.

One of the Candidates for these Positions listed on her resume that she was the Campaign Manager for the Maywood United Party, of which Recorder Yarbrough's husband, then-Maywood Mayor Henderson Yarbrough, Sr., was a member. A few minutes before this Candidate's interview on September 5, 2013 (the third Candidate scheduled for that day), while the RCA Monitor waited alone in the interview room, John Mirkovic (Special Assistant to the Recorder – Civil Affairs) walked into the interview room and, upon seeing the RCA Monitor, abruptly left without saying anything. Moments later, Labor Counsel, with the Head of HRD present, informed the RCA Monitor that two of the three interview panel members believed they had a Conflict of Interest²⁶ because they recognized this Candidate as she waited in the lobby for her interview.

Labor Counsel told the RCA Monitor that she asked the Head of HRD to come to the interview room to advise Labor Counsel on how to proceed. The Head of HRD

²⁶ The Plan defines "Conflict of Interest" as "[a] situation in which impartiality and judgment may be compromised or may appear to be compromised because of an actual or potential clash between a person's self-interest and his or her professional or public-interest." Plan at 1.

paused and then said his suggestion would be to call in Mr. Mirkovic as well as the Non-Exempt Director of Operations to serve as substitute panelists. The RCA Monitor asked Labor Counsel to explain the nature of the Conflict of Interest. Labor Counsel stated that she did not know but that she would ask the panelists to come to the interview room so the RCA Monitor could ask them.

When the panelists returned, one of the panel members admitted that he met the Candidate at a political fundraiser for Recorder Yarbrough while the other panelist stated that she knew the Candidate “through a family friend.” When the RCA Monitor tried to clarify if the second panelist knew the Candidate personally, the panelist replied “no, just through an acquaintance” and walked away. Mr. Mirkovic then re-entered the room and served as a panelist for the above Candidate’s interview along with the Non-Exempt Director of Operations and Labor Counsel (who stated to the RCA that she did not know the Candidate).

Given the above circumstances, the RCA doubts that Labor Counsel’s purported invitation of the Head of HRD to the interview room to direct a resolution of the Conflict of Interest issue was genuine – especially given that one of the replacement panelists walked into the interview room before the Head of HRD “instructed” Labor Counsel who he believed should serve as replacement panelists. Such events demonstrate that the Head of HRD is not conducting the duties assigned him²⁷ in the Plan and calls into question the credibility of the Recorder’s Office itself.

²⁷ This usurping of the Head of HRD’s duties illustrates a point the RCA has made repeatedly to both the current and previous Recorder: it is imperative that the Recorder’s Office have a robust and effective HRD capable of implementing procedures that will effect long-term prevention of impermissible political factors in connection with Recorder employment.

On September 6, 2013, the Recorder informed Deputy Recorder Giles (in the RCA's presence) that she decided not to fill the REI I and Clerk V Positions. Her stated reason was the discovery of redundancies in the Recorder's work flow. She nevertheless chose to continue with the interview and selection processes.²⁸ The RCA will monitor closely any decision by the Recorder to fill this Position at a later date, bearing in mind the issues raised in the report.

8. Security Officer I (Shakman Non-Exempt)

The Recorder used the General Hiring Process to post a Security Officer I Position from April 3-17, 2013. Typing tests and interviews were administered in early May and a Selection Meeting was held on May 7, 2013. The RCA did not observe any issues with the hiring process at that time. The hiring packet was finalized and approved on May 14, 2013.²⁹

9. Executive Assistant to Labor Counsel (Shakman Non-Exempt)

The Recorder's filling of the Executive Assistant to Labor Counsel followed the same initial steps as that of the Executive Assistant to the Deputy Recorder in that it was first posted using the General Hiring Process but, after the interview panel chose not to recommend any Candidates for the Position, Labor Counsel opted to amend the Job Description and use the Executive Assistant Hiring Process to fill the vacancy. *See above*

²⁸ Under the Plan, the Interview Panel Ranking Form is valid and may be used to fill Vacancies for the posted Position for a period of twelve (12) months from the date it was created. *See* Plan § V.S.3. Should the Recorder choose to fill these Positions within the next 12 months, she would not be required under the Plan to re-post and repeat the interview process.

²⁹ On October 11, 2013, the Recorder's Office posted on ATAS two additional vacancies for Security Officer I Positions; however, the Positions have not yet been filled. The RCA will provide an update on the same in her next report.

at Section III.A.5. At the time of the monitoring, the RCA did not observe any issues with the hiring process for this Position. The Candidate selected for the Position started on May 20, 2013.

10 & 11. Director of Information Retrieval and Administrative Assistant V
(Shakman Non-Exempt)

On September 13, 2013, the Recorder posted for two Positions: Director of Information Retrieval and Administrative Assistant V (Property Fraud Unit). During the RCA's monitoring of HRD's validation of the Applicants for these Positions, the RCA noted that one Applicant was a former Recorder employee. The Plan discusses the need for the Head of HRD to "maintain a "Do Not Rehire Without Further Consideration List" (the "Do Not Rehire List") "...of individuals who are disqualified or ineligible for employment with the Recorder because of their dishonesty, deception, fraud, lack of cooperation or lack of candor, including, but not limited to, engaging in such disqualifying actions in connection with investigations into unlawful conduct or violation of court orders, written policies or applicable law." Plan § IV.Q.

On October 18, 2013, after the Head of HRD confirmed to the RCA that he had not yet created a Do Not Rehire List, the RCA notified the Head of HRD via email that she believed at least one Applicant for these two Non-Exempt Positions that were in the validation stage of the hiring process should be on the Do Not Rehire List. The RCA asked the Head of HRD to let her know how he planned to proceed. The Head of HRD never responded to the RCA; however, Recorder's Counsel has discussed concerns with the RCA and Class Counsel with how to implement the Do Not Rehire List but has not proposed any amendment to the Plan regarding the same. The RCA will report on any such developments with these postings and the Do Not Rehire List in her next Report.

B. *Process Issues with Hiring for Shakman Exempt Positions*

1. The Head of HRD Asks the RCA to Ignore Minimum Qualifications for the Special Assistant to the Recorder – Government Affairs Position (*Shakman Exempt*)

Richella Goeloe-Jackson, the Recorder’s first hire into the Special Assistant to the Recorder – Government Affairs Position, resigned in February 2013. *See* Eighth Report at 6. On March 1, 2013, the Head of HRD presented the RCA with the application materials for Ms. Robin Chandler-Staggers, the Recorder’s choice to replace Ms. Goeloe-Jackson. As this Position is *Shakman Exempt*, the Head of HRD need only have “review[ed] the application and confirm[ed] that the individual possess[ed] the Minimum Qualifications...” *See* November 29, 2012 Exempt Hiring Process approved by the Court; *see also* Plan § XI.A.3.

Although the Head of HRD represented to the RCA that Ms. Chandler-Staggers’ application materials demonstrated that she met the minimum qualifications, the RCA determined they did not. Specifically, nothing in the materials showed that she met the minimum qualification of “three years or more of experience in community outreach initiatives.” The RCA contacted the Head of HRD regarding the deficiency in the application materials and asked him to let her know what experience listed *on the Candidate’s application materials* led to his conclusion that she satisfied this minimum qualification.

Rather than provide the requested information, the Head of HRD asked the RCA to ignore the deficiency. He wrote in an e-mail:

...[r]egarding the remaining 18 months of her community outreach, will that specifically create an obstacle in hiring this individual? Even though this is an exempt position and the candidate has a plethora of experiences in different areas that will be suitable for the office. Could this concern be exempted from your office? or what other forms of her qualifications can we use to supplant this short fall?

The RCA is troubled that the Head of HRD, who is charged with, among other things, ensuring Exempt hires meet minimum qualifications, would propose circumventing Court-ordered policies and procedures concerning Exempt hiring. The RCA responded that she would not waive her objection until the Candidate's application materials clearly demonstrated that she met the minimum qualifications of the Position.

The Head of HRD later presented the RCA with an "extended resume" for the Candidate that listed additional experience (experience the RCA learned independent from the Recorder's Office that the Candidate possessed) that satisfied the community outreach minimum qualification for the Position. While the Recorder subsequently finalized the hire and the RCA trained Ms. Chandler-Staggers on *Shakman* issues, the RCA continues to have serious reservations about the effectiveness and integrity of the Recorder's Head of HRD.

2. The Head of HRD Fails to Properly Assess the Qualifications of the Chief Deputy Recorder (*Shakman* Exempt)

On October 7, 2013, Labor Counsel notified the RCA that former Chief Deputy Recorder was no longer with the Recorder's Office and that his last day of employment was October 4, 2013. *See* below at Section III.D.1.a. Shortly after Mr. Velazquez's departure, the Recorder sought to appoint Deputy Recorder Cedric Giles to Chief Deputy Recorder on an interim basis. The Head of HRD approved the hiring packet and submitted the same to the RCA for review. The RCA concluded that the application

materials submitted by Mr. Giles did not indicate that he met all of the Position's minimum qualifications.

Specifically, the RCA informed the Head of HRD that Mr. Giles' application materials did not demonstrate that he met the minimum qualification of "knowledge and ability to interpret State and Federal laws as applicable to the housing sector." She asked that the Head of HRD to identify what information *in the application materials* led to his conclusion that he satisfied this minimum qualification.

In response to the RCA's inquiry, the Head of HRD presented the RCA with an "extended resume" for the Candidate that listed additional experience that satisfied the knowledge and ability to interpret *state* laws as applicable to the housing sector but made no mention of federal laws. The RCA noted that (1) the extended resume was not attached to the Candidate's original application materials and, therefore, the Head of HRD could not have certified that Mr. Giles met the minimum qualifications of the Position as the Head of HRD originally reported to the RCA and (2) the extended resume still did not demonstrate satisfaction of the minimum qualification. After considerable discussion with the RCA and Plaintiffs' Counsel, the Recorder's Office proposed an amendment to the Chief Deputy Recorder job description that, among other things, changed the minimum qualification at issue to "prior experience interpreting, drafting or utilizing State or Federal laws involving the housing sector." The RCA did not object to the revised job description because it did not appear that the amended minimum qualification was necessary for the Position. Mr. Giles was promoted to Chief Deputy Recorder effective November 12, 2013.

C. *The RCA Has Serious Concerns with Shakman Liaison's Commitment to Cooperate with Her As Required by the SRO*

The SRO requires the Recorder to “designate an executive employee to act as a liaison to the RCA and Inspector General to ensure that they receive cooperation from all Recorder employees.” SRO § I.E. Former Recorder, Eugene Moore, designated Head of HRD, Felix Babatunde, as his *Shakman* Liaison. Second Report at 2. Effective March 15, 2013, the Yarbrough Administration designated then-Deputy Recorder, Cedric Giles, as the new *Shakman* Liaison.

While the SRO contemplates that the role of the Liaison is for the benefit of the RCA and OIIG, the Recorder recently argued that the RCA must go through the Recorder's Liaison with any document requests and/or any attempts to speak with Recorder employees in carrying out her duties under the SRO and the Plan. The RCA rejected this argument. Informing the Liaison (a *Shakman* Exempt employee) whenever the RCA wishes to communicate directly with any Recorder employee would not only deter such employees from speaking to the RCA freely and without fear of retaliation, but would prevent the RCA from determining if the Recorder no longer has a “policy, custom or practice of making employment decisions based on political factors”. SRO § III.F.8.

Rather than benefiting the RCA, the Recorder's Liaison (who is also the new Chief Deputy Recorder and second-in-command in that office) is obstructing the RCA by (1) attempting to reclassify an Non-Exempt employee without properly notifying the RCA of the same, *see* Section III.C.1 below, and (2) affirmatively instructing at least one employee not to cooperate with the RCA, *see* Section III.C.2 below.

1. The New Chief Deputy Recorder/Shakman Liaison Attempts to Reclassify a Non-Exempt Employee Without Properly Notifying the RCA and Labor Counsel Attempts to Mislead the RCA Concerning the Same

On June 28, 2013, the Recorder and RCA agreed to revisions to job descriptions for the Positions of Inventory Control Coordinator (Grade 10) and Storekeeper (Grade 17). The Recorder *did not* propose and the RCA *did not* approve any grade changes for these Positions.³⁰ On the morning of July 11, 2013, however, the RCA learned that the previous day, the Recorder requested that the Cook County Department of Budget and Management Services (“DBMS”) approve a four Grade increase for the Inventory Control Coordinator Position. In an email to DBMS, then-Deputy Recorder Giles wrote:

[i]n conjunction with creating/updating job descriptions with the Recorder’s Compliance Administrator (Shakman monitor), the Recorder would like to request the following: (1) New Title/Job Code[;] (2) Grade/Salary Change.

The Deputy Recorder continued by stating the Recorder wanted to move an employee from his Position of Clerk IV, Grade 10 to the Inventory Control Coordinator Position, *Grade 14* (not Grade 10 as approved by the RCA), with a corresponding \$5,283 salary increase. The Deputy Recorder provided the name of the current employee in the Clerk IV Position and wrote,

I understand that if approved, a PAF [Personnel Action Form] would have to be generated from our HR dept. If possible, we would like for this to take effect by pay period beginning July 14th or July 28th. Please advise.

The same morning the RCA learned of this request, the Recorder’s Office emailed the job descriptions to Class Counsel for their approval; the job description for the Inventory

³⁰ Indeed, the Recorder agreed that the pay grade for one of these Positions was significantly higher than its duties and responsibilities warranted and agreed that, if the Position became vacant, the grade for the Position would be lowered before being reposted.

Control Position listed it at Grade 10.

Concerned that she had not been notified by the Recorder of the Deputy Recorder's email request to DBMS, the RCA asked the Recorder's Office in an email "[h]ow was the decision made that [the Inventory Control Coordinator Position] would be reclassified to a Grade 14?" Labor Counsel replied that "[t]here were no changes to Inventory Control and we will not be making any classification changes to Inventory Control." When the RCA replied that it had come to her attention that the Recorder's Office, "did indeed attempt to reclassify the Inventory Control Coordinator Position from Grade 10 to Grade 14" and asked for an explanation, Labor Counsel remained adamant that, "[t]he Recorder's Office did not reclassify the Inventory Control position" Labor Counsel continued by characterizing the Deputy Recorder's exchange with "County HR and Budget" as an:

inquir[y] about the process and policy regarding revisions, notification, timing, etc., and [the Deputy Recorder] obtained information on how to do so should [he] need to utilize this process in the future

Whatever the Recorder's motive for attempting to reclassify the Inventory Control Coordinator Position without notifying the RCA or Class Counsel, there is no question that such an attempt was made. The Recorder's explanation that the attempt was merely an "inquir[y] about the process and policy regarding revisions" is wholly inconsistent with the actual facts ("we would like for this to take effect by pay period beginning July 14th or July 28th") and calls into question the credibility of that Office.

2. The *Shakman* Liaison/New Chief Deputy Recorder Instructs Employee Not to Cooperate with RCA

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.

D. Additional Monitoring Findings

The RCA continues to hold regular meetings with the Recorder's Exempt staff to discuss ongoing Employment Actions and the Recorder's efforts to comply with the SRO. Below are details concerning additional Employment Actions the RCA has monitored since her Eighth Report.

1. Terminations³¹

Since the RCA's Eighth Report, the Recorder has terminated several employees.

a. Chief Deputy Recorder (Shakman Exempt)

On October 7, 2013, the RCA received notice, without explanation, that the employment of then-Chief Deputy Recorder, William Velasquez, terminated on October 4, 2013. That same day, the RCA requested that the Recorder provide a reason for his

³¹ Since the RCA's Eighth Report, the RCA also monitored the terminations of two union employees who had violated their respective last chance agreements. The RCA did not observe any issues with those disciplinary processes and/or terminations.

departure so she may assess whether it has any SRO implications. On October 29, 2013, after a discussion with RCA Counsel, the Recorder stated that “the reason for Bill Velazquez’s departure has no SRO implications.” As information becomes available, the RCA will report on any further developments with respect to Mr. Velazquez’s departure if relevant to the SRO and/or Plan.

b. *Special Assistant to the Recorder - Government Affairs (Shakman Exempt)*

The RCA would like to issue a correction to the Eighth Report. In that Report (filed on February 22, 2013), the RCA noted that Richella Goeloe-Jackson, then-Special Assistant to the Recorder – Government Affairs, resigned but that “[n]o explanation was provided” by the Recorder. Eighth Report at 6. The same afternoon the RCA filed her Eighth Report, the former Chief Deputy Recorder issued a memorandum to all Recorder employees (copying the RCA) that explained that Ms. Goeloe-Jackson failed to disclose her criminal background in her application materials as required. The memorandum stated that when presented with these findings she chose to resign and the Recorder accepted her resignation. The RCA, however, did not receive the memorandum until after filing her Eighth Report.

c. *Union Employees (Shakman Non-Exempt)*

Since her Eighth Report, the RCA monitored two terminations of union employees. The first involved an employee who the OIIG investigated for distributing political flyers on Recorder property during the work day under the Moore Administration. See Eighth Report at 11-12 (noting the date of the alleged politicking as August 22, 2012). On February 6, 2013, the OIIG issued its findings that included a recommendation of a minimum suspension of 20 days because the employee made “false

statements” to the OIIG during its investigation. As previously reported, the Recorder’s CBA states that “providing false information” is a “Major” infraction which can result in immediate termination after notice and a disciplinary hearing. Eighth Report at 5. On March 14, 2013 a pre-disciplinary hearing was held for the employee for “providing false information” after which the Disciplinary Hearing Officer determined that termination was warranted and discharged the employee the following day.

The RCA also monitored the March 22, 2013 discharge of a non-union, non-supervisory employee for a major infraction – “Providing False Information” (falsification of a doctor’s note). The RCA did not observe any issues with the processes monitored for these two terminations and commends the Recorder for sending a strong message that making false statements to the OIIG will not be tolerated and will result in termination.

d. Director of Satellites (Shakman Non-Exempt)

On April 22, 2013 the Recorder hired an external Candidate as the new Director of Satellites. On May 6, 2013, the Recorder terminated this employee as a result of events that took place on May 2, 2013. The RCA was given the opportunity to monitor meetings concerning this termination and did not note any issues at that time.

2. Assignment or Change in Duties Without a Transfer Policy

On May 8, 2013, the RCA and Class Counsel approved the Recorder’s policy on Assignment or Change in Duties Not Involving a Transfer. The Recorder developed this policy after the RCA noted serious concerns with it having changed all job duties of an employee (who had performed the duties since 2004) to ones entirely unrelated to her prior job. Eighth Report at 11. Unfortunately, the Recorder’s first attempt to utilize this

new policy left the RCA with equally serious concerns, this time about the Recorder's desire to be forthright in this process.

The RCA is growing increasingly concerned about the Recorder's ability to implement and follow its own negotiated policies and procedures. Unlike the Transfer policy, which clearly outlines a 60-Day Probationary Period and evaluation process, the Assignment or Change in Duties Not Involving a Transfer policy does not. However, the Recorder's Office proceeded to conduct 30-day Performance Evaluations for the two employees affected by the Assignment or Change in Duties Not Involving a Transfer policy and a 60-day Performance Evaluation for one of them.

The RCA's concern is that the Recorder cannot conduct Performance Evaluations at her discretion. Such discretionary evaluations leave open the possibility that evaluations will be used to target and/or harass those without political connections. The RCA discussed her concerns with members of the Recorder's administration and the Recorder agreed that these evaluations were conducted in error and would be voided. While the RCA appreciates the Recorder's resolution of this error, she hopes that members of the administration will be more careful in implementing its policies and procedures and not wait for the RCA to identify mistakes before correcting the same.

3. Discipline

The RCA continues to monitor pre-disciplinary hearings for union and non-union employees, many of which result in the issuance of counseling, suspensions, or terminations.³² Since the Recorder's Office issued a memorandum informing employees

³² In her last report, the RCA noted that the Recorder's Office was in the process of developing a disciplinary policy. Eighth Report at 8-9. This policy is included in the draft Policy Manual that the RCA and Class Counsel are reviewing.

that the prior Administration's Policy Manual would be followed, *see above* at Section II.D, the Recorder's Office generally has been issuing progressive discipline according to the prior Administration's sequence.

4. Transfers

On May 8, 2013, the Recorder negotiated agreed language for a new policy concerning Transfers with the RCA and Class Counsel. This policy permits the Recorder to change an employee's assignment from one Division to another without changing the grade or salary of that employee if the operational goals and business needs of the Recorder's Office so require.

The RCA has voiced her concerns to the Recorder that supervisors have not received any training on this new policy yet have been expected to implement it. The RCA continues to stress the importance of proper implementation of new policies which includes detailed training for those employees expected to implement the same so all parties understand the Recorder's expectations. While the draft Policy Manual is being reviewed and negotiated, the Recorder should train supervisors and employees on the Transfer policy (as well as the policy discussed in the following section) to avoid further issues with their implementation.

5. Cross-Training & Temporary Assignment

The RCA has monitored 11 Cross-Trainings³³ and five Temporary Assignments³⁴ since her last report; the RCA had concerns with the Recorder's initial failure to follow

³³ The Plan defined "Cross-Training" as, "[t]eaching an employee assigned to perform the functions of one Position the skills required to perform a different Position." Plan at 2.

³⁴ A "Temporary Assignment" is the short-term (not to exceed 120 days) assignment of an employee into a new Division based on the operational and business needs of the Recorder's Office. *See* Plan § XII.B.

outlined procedures. The CBA permits the Recorder to Cross-Train employees for a period not to exceed six (6) months and also allows the Recorder to extend the Cross-Training for *a period* based upon the operational needs of the Recorder's Office. CBA § 13.5. Temporary Assignments are also based on the operational needs of the Recorder's Office and may last 120 days in a calendar year. Plan § XII.B.

Effective February 4, 2013 three employees – one of which was a supervisor – began their Cross-Trainings which were scheduled to end on August 5, 2013. Eighth Report at 10. On March 13, 2013, the RCA was contacted to monitor 30-Day Performance Evaluations for all three employees; an evaluation process that is not accounted for in Section 13.5 of the CBA or memorialized in the Manual.³⁵ Performance Evaluations at 60- and 90-days were also ultimately conducted. Again, the RCA must note the lack of written policies and procedures and the ensuing confusion among not only the employees but also their supervisors who were unaware of the need to perform the requested Performance Evaluations or their purpose. The Recorder has since noted her intent to include such evaluations in the revised Manual which the RCA welcomes.³⁶

Rather than end the Cross-Trainings on August 5, 2013 as scheduled, the Recorder's Office extended the Cross-Trainings for a period for all three employees until August 14, 2013. In accordance with the CBA, two of the three employees were then returned to their former assignments; however, the supervisor was not returned. Rather,

³⁵ In addition to new employees, the current Manual indicates that “[p]romotion or transfer to a higher job or increased responsibilities in a current job may warrant a performance and salary review”; however, it does not mention performance evaluations in conjunction with Cross-Training. Manual at 39.

³⁶ Recently the Recorder began conducting training sessions for supervisors charged with evaluating their employees.

on August 19, 2013, the Recorder informed the RCA that this supervisor was being Temporarily Assigned to a new Division from August 26, 2013 (later amended by the Recorder to September 3, 2013) until February 21, 2014. In a meeting with the Recorder's Office, the RCA pointed out that this employee's Cross-Training never officially concluded and that the Recorder had instead moved the employee to a new Position in a new Division. The RCA views this as problematic as, during the Pre-SRO Claims process, the RCA discovered that the Recorder's Office was rife with employees working in Positions and Divisions wholly different than those they were originally hired into – with little to no paperwork showing how they got there. The work experience that these, oftentimes politically-clouted, employees gained was then used as a justification by the Moore Administration to permanently promote and/or reclassify the employee to that Position outside of any competitive process.

With this in mind, the RCA encouraged the Yarbrough Administration to officially end this supervisor's Cross-Training in writing and then to execute the Temporary Assignment so that her employment history was clear; however, the Recorder has not amended the employee's paperwork to account for the three-week gap between the end of the employee's Cross-Training and the beginning of her Temporary Assignment.

6. Supervisor Unionization

The RCA has noted the confusion caused by unionized supervisors and their unionized subordinates sharing the same CBA. *See e.g.*, Eighth Report 12-13. The Recorder's Office has stated that it is attempting to resolve this issue with the Union through the negotiation of a new CBA. The RCA eagerly awaits their resolution and will

report on the same.

E. Political Activities

Since the filing of the Eighth Report, the OIIG has issued its findings on an investigation into: (1) Cook County Ethics Ordinance Violation (Employment of a Relative) and (2) UPD based on information received by the RCA and forwarded to the OIIG for investigation that Chloe Pedersen, Labor Counsel for the Recorder, is the Recorder's niece. The OIIG attempted to obtain Ms. Pedersen's personnel records and schedule interviews with Ms. Pedersen and the Recorder but was refused based on the Recorder's position that that OIIG's investigation was outside the SRO and that neither the OIIG Enabling nor County Ethics Ordinances apply to the Recorder's Office.

The OIIG's concluded that Ms. Pedersen was the Recorder's niece and that the Recorder violated the Cook County Ethics Ordinance when she hired her upon taking Office.³⁷ The OIIG recommended that to cure the violation Ms. Pedersen be separated from employment with the Recorder's Office. On May 31, 2013, the Recorder responded and reiterated her position that neither the OIIG Enabling nor County Ethics Ordinances apply to her separately elected Office. The IG disagreed with this position in his response on June 7, 2013. As of the filing of this report the Recorder has yet to respond and Ms. Pedersen remains employed by the Recorder's Office.

F. Political Contact Log and No Political Consideration Certification

The RCA has not received any additional Political Contact Logs from the Recorder's Office and, as she mentioned previously, *see* Eighth Report at 16, believes

³⁷ The OIIG's UPD investigation – that Recorder Yarbrough's decision to not enforce the Cook County Ethics Ordinance in order to allow her to hire her niece into an Exempt Position – was suspended indefinitely by the OIIG pending the outcome of the Recorder's jurisdictional dispute with the OIIG.

that additional training is required for all Recorder staff. The RCA recognizes that the Plan has a section devoted to Political Contact Log reporting and that the IG will cover this topic in his portion of the Plan training. The No Political Consideration Certification language has been added to all Plan-related forms and employees will be trained on the import of this certification during Plan training.

G. Post-SRO Complaints

As of the filing of this Report, the OIIG has received three Post-SRO Complaints concerning events under the Moore Administration; all three were not sustained by the OIIG. The OIIG has so far received three Post-SRO Complaints concerning events under the Yarbrough Administration. One of these Post-SRO Complaints was not sustained because the OIIG concluded that the Post-SRO Claimant held a *Shakman* Exempt Position; the other two complaints are pending.

IV. Conclusion

Recorder Yarbrough has been in Office for nearly one year and her efforts toward *Shakman* compliance have been precarious at best. While the filing of the Plan, implementation of ATAS, movement toward the hiring of a DOC and creation of a draft updated Manual are required by the SRO, the RCA has not yet seen clear and consistent leadership from the Recorder toward *Shakman* compliance. Rather, the RCA more often sees willful defiance from the Recorder.

The RCA implores Recorder Yarbrough and her staff to begin looking at the SRO and Plan as opportunities to address the policy and procedure deficiencies that have long plagued the Recorder's Office and allowed unlawful political considerations to affect Employment Actions. The hiring of a DOC may help the Recorder in terms of

implementation of the Plan and Manual; however, the message that strict compliance to the Plan, Manual and SRO must come directly – and consistently – from the Recorder herself if there is to be hope that the Recorder’s Office will reach Substantial Compliance. The RCA will continue to make herself available to offer whatever assistance the Recorder needs, but that RCA needs more from the Recorder and her staff. The Recorder must embrace the Plan – not try to find ways to circumvent it. Only then will true change in the culture of the Recorder’s Office occur.