

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

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

**FIFTH 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, 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, submits this Fifth Report as follows:

I. Introduction

On December 15, 2011, Cardelle B. Spangler, the Recorder Compliance Administrator (“RCA”)¹, filed her Fourth Report to the Court (“Fourth Report”). The Fourth Report included an update on the RCA’s final Pre-SRO Claims investigation findings and on the RCA and Recorder’s progress in achieving the goals established in the Strategic Plan for the Office of the Cook County Recorder of Deeds (“Recorder’s Office” or “Office”) to obtain Substantial Compliance with the Supplemental Relief

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

Order (“SRO”).² The RCA submits this Fifth Report to update the Court on developments concerning the Recorder’s recent progress toward Substantial Compliance with the SRO.

II. Progress on Strategic Plan for Substantial Compliance

In the months since the RCA filed her Fourth Report, the Recorder’s Office has made some progress in its efforts to substantially comply with the SRO. First, the Office posted openings for several vacant positions. The RCA monitored each step of the hiring processes related to those postings and was satisfied that the new employees were hired based upon their qualifications and experience, not political reasons or factors. Second, the RCA had several discussions with the Chief Deputy Recorder and other senior staff about continued attempts to make the office’s disciplinary processes more consistent and transparent. Those discussions have led to some progress, but the Recorder’s Office must require a more sincere and sustained effort from those staff members responsible for discipline in order to move toward substantial compliance. Third, the State’s Attorney’s Office circulated proposed Exempt, Senior Manager and Executive Assistant Lists (along with certain job descriptions and organizational charts). Each of these, and other issues affecting the progress in the Office obtaining substantial compliance, are set forth in greater detail below.

A. Monitoring Findings

As set forth below, the RCA’s monitoring efforts largely have been focused on the areas of hiring and discipline since her last Report.

² “Recorder” hereinafter shall refer to the Cook County Recorder of Deeds, Eugene Moore, and/or his staff.

1. Hiring & Promotions

As a result of promotions and retirements, the Recorder's Office recently filled two full-time positions in its Accounting and Security departments.³ The RCA carefully monitored the hiring process for these positions, including the creation of accurate job descriptions, publicizing of Job Postings, screening of applications, creation of eligibility lists, preparation of interview questions relating to each position, interviewing of candidates, and the final selection and verification of past employment. The hiring process progressed more smoothly as members of the Recorder's senior staff became comfortable with such aspects as reviewing applications, determining candidate eligibility, drafting interview questions, and conducting interviews. Although these processes were not error-free, the Recorder's Office has taken significant strides in developing and following a hiring protocol that guards against consideration of unlawful political reasons or factors.⁴ Moreover, when the RCA identified errors in the process, members of senior management acted quickly to address those issues in a satisfactory manner.

For example, when the RCA learned that some of the Job Postings were not posted at the Recorder's five satellite locations⁵, as required in Recorder employee's

³ The Recorder also filled one temporary Security Officer position and is nearly completed with the hiring process of a full-time Administrative Assistant V. The RCA anticipates conducting *Shakman* training for all the newly hired employees on, or around, April 24, 2012.

⁴ The Director of Personnel notified the RCA when he believed unlawful political considerations may have been inserted into the early hiring process for one of the open positions. The RCA immediately investigated the incident and ensured that no such considerations, in fact, entered into the process. The RCA appreciates the increased transparency shown by the Director of Personnel on this occasion.

⁵ In addition to its main office at 118 N. Clark in Chicago, the Cook County Recorder of Deeds has five satellite office locations in County Courthouses in Bridgeview, Markham, Maywood, Rolling Meadows, and Skokie.

Collective Bargaining Agreement (“CBA”) with SEIU Local 73, senior management quickly notified satellite employees and their union of the discrepancy, reposted the positions,⁶ verified that all Job Postings were in fact reposted, and extended the application period to allow for satellite office employees to apply. In an effort to ensure that going forward all Job Postings are posted for a minimum of 14 calendar days at locations as required by the CBA, including the satellite offices, the Deputy Recorder requested the Acting Supervisor of Satellite Offices to verify the same with all satellite supervisors every time the Director of Personnel circulates a Job Posting.

Another positive development concerning the Recorder’s Job Postings concerned the chosen forums for the Postings. In an effort to increase the size of applicant pools, the Recorder agreed to begin publicizing their Job Postings both on the websites for Cook County Government and the Illinois Department of Employment Security (IDES).⁷ The first time the Recorder used these venues for a posting, 88 applicants applied for the position with 14 of those applicants meeting or exceeding the minimum qualifications. Both the RCA and the Recorder’s Office were pleased with the results of the online posting and the Office’s implementation of posting procedures that will affect their long-term ability to reach qualified applicants. The RCA believes this expanded visibility will help demonstrate that jobs at the Recorder’s Office are not reserved for the insiders or politically-connected, but open to the general public.

⁶ The Administrative Assistant V, Accountant IV, and Security Officer I positions were reposted at the satellite locations for a period of one week from March 8 through March 15, 2012.

⁷ The Director of Personnel worked with the Recorder’s Office’s Information Technology Department to develop both a new “Job Postings” page on the Cook County Recorder of Deeds’ website. Current Job Postings for the Recorder’s Office may now be found at <http://www.ccrd.info/CCRD/il031/jobpostings.jsp>.

It bears mentioning that some current Recorder employees and one external applicant who were not selected for these positions reported to the RCA their belief that the hiring decisions were politically-motivated.⁸ The RCA assures the Court and the public that she saw no evidence of political reasons or factors influencing any step of these hiring processes. The Office's newly implemented hiring procedures, in connection with the pending Employment Plan, will assist in the long-term prevention of the use of impermissible political considerations in connection with employment with the Recorder, one of the five components of Substantial Compliance. SRO Art. III.F.8.

The RCA understands that changing the culture of the Recorder's Office and, relatedly, changing the perception of that culture, from one centered on politics to one focused on qualifications and merit does not happen overnight. It will take strong, consistent leadership and commitment from the elected official⁹ and the most senior managers and administrators to eradicate any and all forms of unlawful political discrimination from decisions affecting employment. It will take unwavering adherence to consistent and transparent policies and procedures. And it will take open and frequent communication with employees about the implementation of such policies and procedures as well as employees' rights in the event they are not followed.

Finally, the RCA previously reported that during the Pre-SRO claims period (May 25, 2005 – September 13, 2010) unlawful political reasons and factors were often

⁸ The RCA informed each of these individuals of his or her right to file a Post-SRO Complaint with the OIIG. As of the filing of this Report, the RCA is not aware that any such complaints have been filed.

⁹ The Recorder himself continues to be wholly absent from this matter – meeting with the RCA on only a few occasions in the last 19 months. The RCA is unclear what role, if any, the Recorder himself plays in the day-to-day operations of the Office and, unlike other senior-level staff, rarely sees him in the office.

considered in the Recorder's hiring and promotion processes. Third Report at 3. Since one of the fundamental roles of the Director of Personnel concerns hiring and promotion of employees, the RCA views his role as central to the achievement of Substantial Compliance. In the Fourth Report, the RCA commended the Director of Personnel's openness to her suggestions on improving the promotion and hiring process but also expressed a desire to see him and other senior staff take the lead in the review and development of such processes. Fourth Report at 7. The RCA reiterates this request as the desired initiative by the Personnel department has not materialized. The RCA hopes the pending hire of an Administrative Assistant V in the Personnel Department may provide the extra support the department needs.

2. Disciplinary Hearings

Previously, the RCA reported that she concluded that, throughout the Pre-SRO Claims period, the Recorder himself, the Chief Deputy Recorder and other senior staff routinely disregarded written policies and procedures, which led to unlawful political discrimination invading disciplinary decisions adversely affecting numerous Pre-SRO Claimants. Third Report at 3. The RCA specifically found that "Disciplinary Hearing Officers did not issue progressive discipline to politically-connected employees who violated office policy, but issued such discipline to similarly-situated, non-clouted employees." Third Report at 5. The RCA is currently actively monitoring Employment Actions¹⁰, and as a result of these findings regarding the issuance of progressive discipline, she closely monitors certain disciplinary hearings and related investigations.

¹⁰ As previously reported in the RCA's Second Report, the RCA, without objection from the Recorder, defined Employment Action in September 2010 to include, without limitation, any change (positive or negative) related to the terms or conditions of employment including discipline. Second Report at 4.

As noted in the RCA's three most recent Reports, the RCA continues to monitor pre-disciplinary hearings that do not result in the next progressive disciplinary step, or any discipline, despite a finding that the employee committed the infraction. *See e.g.*, Second Report at 8, Third Report at 11, and Fourth Report at 9. This issue persists in the Recorder's enforcement of the unauthorized leave/"Zero Days" policy and determination of what constitutes an excused absence.¹¹ As the RCA is still unclear on what constitutes an emergency, she requested that the Recorder's Office provide, in writing, the procedure used in making that determination so that the RCA may effectively monitor disciplinary hearings for absences without leave ("AWOL") violations. The RCA has never received such written procedure and has continued to observe ad hoc decisions involving AWOL violations that resulted in discipline for some employees and not for others.¹²

Although the RCA has not concluded that these decisions were politically motivated, she is concerned with the Office's continued failure to adhere to certain stated policies and procedures, particularly because such adherence can provide the Recorder's

¹¹ The policy states the "all employees who are absent, for any reason, without time to cover the absence, will be considered on unauthorized leave and subject to disciplinary action....[However,] if CCRD determines that an emergency situation has actually occurred, employees may avoid discipline, only if an emergency has been determined, and the employee has accumulated compensatory time, vacation time, sick or personal time to cover the absence."

¹² Currently, suspensions remain on an employee's record indefinitely. In an effort to be fair and just in disciplinary matters, the Chief Deputy Recorder stated that she took into consideration the length of time since the employees' last AWOL suspension when deciding whether to issue progressive discipline. While the RCA understands the policy underlying a decision not to issue progressive discipline to an employee whose last AWOL suspension was in 2006, the RCA was troubled by the Disciplinary Hearing Officer's decision not to issue progressive discipline to an employee with admitted political connections to the Recorder whose last AWOL suspension was less than eight months old.

Office protection from accusations of unlawful political discrimination. As she stated in her Third Report: “[t]he Recorder must make it a priority to convert its current culture of ad hoc decision-making, which leads to an environment ripe for unlawful political discrimination, into one of vigilant adherence to stated policies and procedures. This will be critical once the RCA and the parties finalize and implement the Employment Plan.” Third Report at 10.

The Chief Deputy Recorder recently removed herself from making any disciplinary decisions relating to the Zero Day policy. Those decisions now rest with one of two Disciplinary Hearing Officers: one for union and non-supervisory employees; the other for supervisors. When the RCA asked the Disciplinary Hearing Officer for union and non-supervisory employees how she plans to make excused absence determinations she stated that she will not accept any AWOL excuses but rather she will issue progressive discipline (thereby shifting the final decision to Labor Counsel during Third Step Grievances or to an arbitrator). However, two and a half weeks later, she chose to keep a union employee on the same step for their AWOL violation and issue the same discipline as before; an option not in the CBA. The RCA is still looking for clarification from the Recorder’s Office on its policy on unauthorized leave/“Zero Days” and will continue to carefully monitor disciplinary hearings for AWOL violations.

At the Chief Deputy Recorder’s request the RCA met with her and the State’s Attorney’s Office on February 29, 2012. During this meeting the RCA and the Chief Deputy Recorder discussed concerns regarding disciplinary decisions and deviations from the stated policies and procedures as outlined in the RCA’s Memorandum on the

Recorder's Procedures for Employee Discipline.¹³ At the Chief Deputy Recorder's request the RCA reissued a copy of this memorandum on March 6, 2012 and asked that she let the RCA know how the Recorder's current disciplinary procedures differ from those contained in the memorandum since she stated to the RCA that things have changed. As of the April 16, 2012, the RCA has yet to receive a response.

B. Employment Plan

The RCA will have a draft of the Employment Plan to the parties in the coming weeks.

C. Compliance Officer

In her Fourth Report, the RCA noted that the hiring of an independent Compliance Officer was temporarily on hold given a disagreement between the Office of the Independent Inspector General ("OIIG") and State's Attorney's Office over the jurisdictional authority of the OIIG. Fourth Report at 11. While the RCA has since discussed this issue further with both parties, no resolution has been reached. The State's Attorney's Office assured the RCA that it understands the importance of the role of the Compliance Officer in the Recorder's efforts to substantially comply with the SRO. The RCA encourages the parties to continue discussions on this issue in hopes of a resolution in the near future.

D. Exempt, Senior Manager and Executive Assistant Lists

The SRO requires that the Recorder provide lists of proposed Exempt, Senior

¹³ As reported in the RCA's Second Report, starting on February 18, 2011, the RCA began meeting with members of the Recorder's senior management to gain a more complete understanding of the employment procedures followed in the office. Second Report at 9. These meetings resulted in the creation of numerous memoranda by the RCA outlining the RCA's understanding of the Recorder's established policies and procedures in areas such as employee discipline.

Manager and Executive Assistant positions “to Class Counsel for comment and discussion in a good faith effort to reach agreement on the list.” SRO at II.E-G. While the RCA has no defined role in the SRO regarding the negotiation of these lists, the RCA informed both parties months ago she would be available in an advisory capacity to the parties to discuss job duties, responsibilities, and reporting structure. However the final exempt list will be a product of negotiations between the State’s Attorney’s Office and Class Counsel.

On March 13, 2012, the State’s Attorney’s Office circulated proposed Exempt, Senior Manager and Executive Assistant Lists to Class Counsel and the RCA. Also included were job descriptions and organizational charts for the positions on the various lists. As of April 16, 2012, Class Counsel had not yet responded to the State’s Attorney’s Office’s proposals. The RCA hopes these lists are successfully negotiated and entered with the Court soon.

Throughout the past several months, various members of the Recorder’s senior staff have approached the RCA to voice their concerns regarding the proposed Exempt list and whether their position will be included on the list. Learning from the experience of other Compliance Administrators before her, who have faced the challenges of a pending change in administration, the RCA is now carefully monitoring any change in employment classification of senior staff, especially those the RCA believes were originally hired on the basis of political reasons or factors, for the duration of this Recorder’s term. Successful negotiation of the Exempt List will provide clarity to the issue of whose employment lawfully may and may not be affected on the basis of political reasons or factors.

E. Online Applicant Tracking and Application System

While the RCA reported in December that several Recorder employees were recently trained on the County's online Applicant Tracking and Application System ("ATAS"), the additional training the RCA hoped for did not materialize. The County has yet to resolve its contractual issues with ATAS and, because of a staffing shortage, the County's Bureau of Human Resources has not been able to conduct additional training for Recorder employees.

Despite originally agreeing to adopt the County's ATAS, Second Report at 12, in two meetings with the RCA over the past year, the Chief Deputy Recorder expressed her frustration with the County's ATAS and about other potential options. On both occasions, the RCA told the Chief Deputy Recorder that, if the Recorder's Office did not want to use the County's ATAS, it was welcome to offer a detailed proposal for an alternative solution. The RCA has not seen such a proposal. Accordingly, the RCA will continue pursuing additional training and implementation of the County's ATAS and working with the Deputy Recorder on updating job descriptions so the Recorder's Office may be more easily assimilated into ATAS when feasible.

F. Political Contact Log and No Political Consideration Certification

In the Fourth Report, the RCA reported that a "disagreement between the OIIG and [State's Attorney's Office] on the scope of the OIIG's oversight of the Recorder's Office" led to an indefinite postponement of the OIIG's training and implementation of the Political Contact Log and No Political Consideration Certification. As mentioned above, this conflict remains and the RCA sincerely hopes the relevant parties work together to reach a resolution soon so the required training sessions and

implementation may proceed.

G. Post-SRO Complaints

The most recent OIIG quarterly report reflected that there have been no additional Post-SRO complaints filed since the RCA's Fourth Report. The sole Post-SRO complaint was filed on March 22, 2011; the OIIG recently indicated that a finding was imminent. The RCA will follow up on the same in her next report.

III. Conclusion

While there have been some examples of positive progress in the last four months, there is still a need for the leadership of the Office to make a sustained and committed effort to bring the Office into substantial compliance with the SRO.

Respectfully submitted,

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