

**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.)	

**THIRD 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, Helen Burke, pursuant to Art. III.C. of the Supplemental Relief Order for the Cook County Recorder of Deeds, submits this Third Report as follows:

I. Introduction

On April 15, 2011, Cardelle B. Spangler, the Recorder Compliance Administrator (“RCA”)¹, filed her Second Report to the Court (“Second Report”). The Second Report included an update on the RCA’s Pre-SRO Claims investigations and a Strategic Plan for the Office of the Cook County Recorder of Deeds (“Recorder’s Office) to obtain substantial compliance with the Supplemental Relief Order (“SRO”). The RCA submits this Third Report to update the Court on

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

her Pre-SRO Claims investigation findings and on the RCA and Recorder's progress in achieving the goals established in the Strategic Plan.²

II. Pre-SRO Claims Findings

The RCA has the duty to adjudicate claims timely filed with her office by "[a]ny past or present employee or applicant for employment with the Recorder . . . who alleges that she or he suffered injury as a result of unlawful political discrimination in connection with any aspect of employment with the Recorder" from May 25, 2005 until, and including, September 13, 2010.³ SRO at Art. IV.

The RCA received 64 timely filed Pre-SRO Claim forms⁴ articulating 237 separate claims against the Recorder's Office.⁵ The RCA conducted interviews of every Pre-SRO Claimant who responded to her request for an interview.⁶ The RCA also reviewed thousands of pages of documents (some of which were produced by the Recorder's Office), conducted numerous interviews with the Recorder, Chief Deputy Recorder, other senior staff and

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

³ While the original deadline to file a Pre-SRO Claim was January 8, 2011, due to a notice issue, the deadline was extended until April 8, 2011. See Order Extending Claims Deadline and Opt-Out Date Until April 8, 2011 (Dec. 30, 2010). A few days before the July 7, 2011 Claims Adjudication Deadline, the RCA learned a group of former Recorder employees inadvertently had not been sent notice of the Pre-SRO Claims process. The parties and the RCA agreed that notice should be provided to these former employees. With the Court's approval, the RCA sent notice to these former employees and received four timely filed claims by the August 25, 2011 deadline. The RCA is investigating these claims and expects to issue claim determinations well before the November 23, 2011 deadline. The RCA will report these findings in her Fourth Report to this Court.

⁴ Prior to the July 7, 2011 Claims Adjudication Deadline, one Pre-SRO Claimant formally withdrew her Pre-SRO Claim.

⁵ Many Pre-SRO Claimants included multiple, separate claims for relief in their claim forms. A number of those claims were time-barred or lacked an articulated political nexus for the alleged discrimination.

⁶ Since the Second Report, the RCA made a staffing change when one of her Investigators left for other employment. The RCA temporarily engaged a replacement Investigator in order to complete the Pre-SRO Claims investigations.

employees, and reviewed responses provided by the State's Attorney's Office to the claims the RCA investigated (as permitted in Art. IV.D.3. of the SRO). The RCA issued her claims determinations on July 7, 2011 – the Claims Adjudication Deadline.

The RCA found that the Recorder himself, the Chief Deputy Recorder and/or other senior staff discriminated against 23 claimants on the basis of unlawful political reasons or factors (in connection with 28 of their claims). The RCA awarded those claimants \$631,191.77. The RCA 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 – namely, the Collective Bargaining Agreement between the Recorder's Office and Local 73 of the Service Employees International Union ("CBA", which applies to approximately 70% of the Recorder's employees) and the Recorder's Personnel Policy and Procedures Manual ("Policy Manual", which applies to all employees), to the benefit of applicants or employees with strong political connections to the Recorder or the Chief Deputy Recorder,⁷ and/or to the detriment of those without such political connections. The RCA found that unlawful political discrimination invaded promotion, hiring, cross-training, discipline, reclassification and/or other decisions that adversely affected these 23 claimants. The following is a summary of some of the findings in each of these categories that led to claim awards.

A. Promotions & Hiring

The Recorder's senior staff explained to the RCA in the fall of 2010 that they considered four criteria when considering a candidate for a posted position: seniority, discipline, abilities/qualifications, and whether the candidate's supervisor submitted a positive letter of recommendation. The Recorder's Office developed a scoring system for these criteria intended

⁷ Such applicants or employees are hereinafter referred to as "politically-connected" or "clouted".

to identify the most qualified employee for a given promotion.⁸ The RCA discovered numerous deviations from this scoring system that resulted in politically-connected employees receiving promotions over higher-scoring (but non-clouted) employees. In more than one instance, the Chief Deputy Recorder awarded the promotion to politically-connected employees who ranked last among all applicants. In other instances, the Recorder himself hand-selected employees for promotions who had both political and familial connections to him. The Recorder's Office failed to provide any plausible explanation for these deviations.

The RCA found that the Recorder's Office hired outside applicants with political connections for posted positions despite the job posting clearly stating "[t]hese positions will be offered to current employees before considering outside applicants." The Recorder himself selected politically-connected outside applicants over current employees who applied for the position and who otherwise met the Recorder's stated qualifications.⁹ In one instance, the Recorder himself hand-selected a politically-connected external candidate for a position before any candidates received interviews for that position. Even though the Recorder pre-determined this hiring decision, the Recorder's Office, nevertheless, conducted needless interviews of several candidates for the position.

B. Cross-Training

The RCA found that some politically-connected employees received promotions not through a transparent, competitive promotions process, but through "cross-training".¹⁰ In these

⁸ The RCA has discussed with the Recorder her concerns about the scoring criteria. These concerns will be addressed in the forthcoming Employment Plan.

⁹ In some instances, the outside applicants were not only politically-connected, but also related to either the Recorder or the Chief Deputy Recorder.

¹⁰ The CBA states that "[e]mployees may be cross-trained for a period not to exceed six (6) months. The cross training period may be extended for a period based upon the operational needs of the Employer, and the Union shall

instances, the Recorder or Chief Deputy Recorder hand-selected a clouted employee to move into a temporarily vacant position in a different department. After a short period of time, the Recorder or Chief Deputy Recorder then either: (1) awarded that employee with a promotion when the vacancy became permanent (with the justification that the employee now had the experience required for the position) or (2) requested that the Cook County Bureau of Human Resources reclassify the employee to a higher pay grade because of the “increased duties” in the new position. The politically-clouted individual received a higher salary and new job title without having to bid for the position through a competitive promotion process.

C. Discipline

The Pre-SRO Claims investigations revealed serious issues with the manner in which the Recorder’s Disciplinary Hearing Officers’ issued “progressive discipline.” In many instances, the Disciplinary Hearing Officers did not issue progressive discipline¹¹ to politically-connected employees who violated office policy, but issued such discipline to similarly-situated, non-clouted) employees. For example, the Recorder fired one employee for allegedly violating a particular policy, but issued only a suspension and a written reprimand for two politically-connected employees who repeatedly violated the same policy. The Recorder’s Office failed to provide a plausible explanation for these disparate disciplinary results.

be consulted about the instituting of any such training program which extends cross training period.” CBA § 13.5 (“Cross Training”).

¹¹ The Recorder’s Disciplinary Hearing Officer for union employees informed the RCA that she issues “progressive discipline” for minor infractions pursuant to the CBA (see CBA §14.8 (“Discipline”)). She explained that if an employee violates a policy, the CBA requires that she issue the employee a Verbal Reprimand. For subsequent violations of the same policy, she issues a Written Reprimand and suspensions of one, three, five, ten, fifteen, and twenty-nine days, respectively. However, she later said she had the right to exercise discretion and either keep an employee at the same disciplinary step received for the same infraction or advance that employee to the next step. An examination of some politically-connected employees’ disciplinary files showed evidence of keeping those employees at the same disciplinary step for like offenses whereas employees without such political connections were progressed to the next step.

The RCA found that some supervisors attempted to hold certain politically-connected employees accountable for policy violations, but the Disciplinary Hearing Officer repeatedly chose not to conduct disciplinary hearings for or otherwise issue discipline to these employees. Indeed, some supervisors labeled one employee with both political and familial ties to the Recorder himself “untouchable” as a result of their unsuccessful efforts to have him abide by the policies purportedly applicable to all other Recorder employees.

The RCA also found that alleged investigations into the wrongdoing of certain politically-connected employees were biased and incomplete. This, along with the pattern of issuing disparate discipline, raises serious concerns with the Recorder’s campaign Treasurer serving as the Disciplinary Hearing Officer for all union discipline. As Treasurer of the Recorder’s campaign, this employee has direct knowledge of which employees have and have not donated to the campaign, and likely knows which employees have and have not volunteered to work for the Recorder’s campaigns. The RCA believes such considerations impacted her disciplinary decisions through the Pre-SRO Claims period resulting in instances of unlawful political discrimination.

D. 2008 Union Reclassification

In or around 2006, the Recorder’s Office and Local 73 of the Service Employees International Union (“SEIU”) began negotiating, among other things, the reclassification of all salary Grade 9 union employees. The Recorder’s senior staff and SEIU representatives explained that the purpose of the reclassification was to: (1) eliminate the Grade 9 for all current and prospective union employees; (2) raise all then-current Grade 9 union employees to Grade 10; and (3) establish a new base level from which SEIU could negotiate future union employee salary increases. The Recorder’s senior staff and SEIU ultimately agreed to reclassify all Clerk

IV, Grade 9 positions to a Grade 10 and SEIU provided the Recorder's Office with a final list of the Grade 9 employees who were to be reclassified to a Grade 10. When the Recorder finalized the reclassifications in 2008, many politically-connected Grade 9 employees were reclassified to a Grade 11, while other Grade 9 employees were either reclassified to a Grade 10 or received no reclassification at all. The explanation provided by the Recorder's Office – that those employees who received Grade 11 reclassifications were sufficiently advanced in salary steps in Grade 9 to warrant advancement to Grade 11 – was not supported by the evidence.¹²

E. Other Significant Findings

The RCA also made many other findings that led to claim awards. The RCA found ample evidence of employees being asked to conduct, or actually conducting, political work on County time. The RCA learned that for several years, the circulation of petitions for political office, selling of political fundraiser tickets, and distribution of flyers for political fundraisers occurred unchecked inside the Recorder's Office. The RCA found that the Recorder himself informed certain employees either to sell tickets for his political fundraisers or otherwise volunteer for his campaign in order to benefit their employment with that Office. In at least one situation, the Recorder himself held out the possibility of employment with his Office as a possible reward for conducting such work. As the 2012 elections approach, the RCA will monitor this situation closely to see if the Recorder's Office makes any efforts to prevent these activities from continuing to occur in the workplace.

¹² All union employees are designated a salary Step (1-9) within their Grade based on their years of service at the Recorder's Office in that Grade. For the 2008 reclassifications, the majority of the Grade 9 employees who were reclassified to a Grade 10 were on Step 6 or above. The majority of the Grade 9 employees who were reclassified to a Grade 11 were actually less advanced (at Step 5 or under); including one politically-connected employee who had begun working at the Recorder's Office approximately one month before the 2008 reclassifications and was on Step 1.

The Recorder himself admitted that he hired a political figure to serve in a Non-Exempt¹³ position that the Recorder claimed, at the time of the employee's hire, was Exempt.¹⁴ During the four plus years the Recorder's Office employed this highly compensated employee, this employee was serially absent from the workplace. His erratic work schedule resulted in other Non-Exempt employees having to perform his duties, along with their own, without commensurate compensation. Senior staff at the Recorder's Office knew about this issue but did not act to remedy it.

F. Future Compliance with the SRO.

Without compromising the identity of any individual claimant, the RCA presented her general findings to the Recorder, Chief Deputy Recorder, and Recorder's *Shakman* Liaison with the State's Attorney's Office present. The RCA believes it is vital that the Recorder, Chief Deputy Recorder and senior staff understand the seriousness of the *Shakman* violations they committed in the past so that they may work to prevent them from occurring in the future. There must be sustained commitment and direction from the Recorder to end unlawful political discrimination in order for that Office to achieve the cultural change required to obtain substantial compliance. The RCA hopes lessons can be learned from the above findings and that meaningful change will begin to take place throughout the Recorder's Office even before the Court approves a new Employment Plan and a Compliance Officer is hired.

III. Strategic Plan for Substantial Compliance

In addition to investigating and adjudicating the Pre-SRO Claims, the RCA continues to

¹³ Non-Exempt" positions are those that may not be influenced by political reasons or factors. They comprise the vast majority of positions in the Recorder's Office.

¹⁴ "Exempt" positions are those that may be influenced by political reasons or factors and are found on the Exempt List attached to the Recorder's 1992 Consent Decree.

push forward with the other items on the Strategic Plan for Substantial Compliance discussed in the Second Report. Second Report at 2-4. While much remains to be done, some developments warrant discussion.

A. Monitoring Findings

While the RCA's Pre-SRO Claims investigations uncovered serious concerns with the Recorder's employment practices from May 25, 2005 until September 13, 2010, the RCA's monitoring observations show that many of these issues persist. The RCA noted in the Second Report that her role as an active monitor requires, "notification of, and an opportunity to be present for, each step in the life cycle of an Employment Action," from the initial brainstorming processes and communications of senior staff contemplating the action through the final outcome. Second Report at 4. While the RCA's monitoring findings over the past four months continue to be frustrated by notice issues (with 13 instances where the Recorder's Office provided deficient or no notice of Employment Actions since the Second Report), they also include other serious concerns with the Recorder's Office including: (1) inconsistent application of, and sometimes complete disregard for, written employment procedures and (2) abuse of discretion in applying most written employment procedures. Such fundamental issues increase the likelihood for acts of unlawful political discrimination. These issues will need to be remedied both in writing (through the Plan) and in practice before the Recorder can achieve substantial compliance.

1. Hiring & Promotions

The RCA recently monitored the hiring process (including the pre-screening process, interviews, and selection meeting) for one position. Despite no applicants meeting all of the minimum qualifications for the posted position, the Recorder's senior staff interviewed all

candidates and chose to hire one of those candidates. Only after the RCA pointed out the issue did the Chief Deputy Recorder refrain from awarding the hire and instead chose to repost the position. While the RCA appreciates that the Recorder's Office worked quickly and efficiently to correct the problem, she encourages them to focus more attention on avoiding such missteps. The RCA has no reason to believe the selected candidate for this position was politically clouted; however, nearly hiring an employee who does not meet the minimum qualifications is troubling and highlights the Recorder's continued problems with adhering to their own employment procedures.

The RCA previously reported that she asked the Recorder's Office to refrain from finalizing two external hires and two internal promotions pending review of documents related to those Employment Actions. *See, e.g.*, Second Report at 7-8. Recently, the Recorder's Office renewed its efforts to fill two of these positions. The Recorder's Office posted for the positions after drafting new job descriptions including minimum qualifications.¹⁵ The Recorder's Office also proposed a new scoring system to rank applicants for these positions. The RCA provided some feedback on the new system, including that it needed to reflect the relevant terms of the CBA. The RCA also encouraged those senior staff members who are charged with applying the CBA to review that document and become familiar with its terms.

The 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.

¹⁵ The RCA notes her appreciation of the Recorder's Office's new effort to revise job descriptions to accurately reflect the duties and responsibilities of employees.

2. *Disciplinary Hearings*

The RCA has had the opportunity to monitor the Recorder's disciplinary process more than any other Employment Action. Through this monitoring, the RCA discovered several systemic problems with the Recorder's process for disciplining employees including consistent violations of the CBA and Policy Manual's provisions on progressive discipline.

The CBA requires that "all discipline below suspension will be discarded after 18 months if there has not been a like discipline problem." *See* CBA § 14.8. Nevertheless, unbeknownst to most employees, the Recorder's Office requires employees to submit a written request to the Director of Human Resources to view their disciplinary files in order to expunge such discipline themselves. This policy not only directly conflicts with the CBA, but it also has led to several instances where Disciplinary Hearing Officers used stale discipline against those employees who had not removed it on their own.

As noted in the RCA's Second Report, the Policy Manual and CBA describe a process of progressive discipline for Recorder's employees. *See, e.g.* Second Report at 8. The RCA, however, 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. The RCA recently monitored a pre-disciplinary hearing where the hearing officer decided not to pursue discipline against a politically-connected supervisor despite that supervisor admitting that she had committed the underlying infraction. The following month, that same supervisor was the subject of another pre-disciplinary hearing for violating the same policy. Once again, the same hearing officer decided not to discipline the employee because of her "exemplary discipline record." When the RCA informed the Chief Deputy Recorder of the situation, the Chief Deputy Recorder immediately issued a memorandum to the Disciplinary

Hearing Officer emphasizing the importance of issuing discipline consistently to employees. While the RCA appreciates this memorandum, the RCA did not deem the violation remedied as the employee at issue never received discipline for either of these infractions.

3. *Transfers*

The CBA requires that “[t]ransfer opportunities shall be posted for employee bid.” CBA § 4.3. The Recorder, however, does not post transfers. Instead, supervisors request transfers of the Chief Deputy Recorder either directly or through the Director of Human Resources. The Chief Deputy Director then decides if a transfer will be processed and who will receive the transfer. Disregarding written procedures in favor of ad-hoc decision making only exposes the Recorder to claims of unlawful political discrimination.

4. *Cross-Training*

The CBA states that employees may be cross-trained for a period *not to exceed* six (6) months. *See* CBA § 13.5. The Recorder, however, equates cross-training and transfers despite their clear distinction in the CBA. A number of cross-trainings have lasted well past the six month time limit in the CBA without subsequent documentation from the Recorder to SEIU requesting an extension. It is noted in Section IIB the manner in which the Recorder has used cross-training to favor the politically-connected. The RCA encourages the Recorder to adhere to the CBA in an effort to avoid even the appearance of politically-motivated favoritism.

5. *Flexitime*

The RCA noted in her Second Report that the Recorder’s Office continues to grant flexitime requests to employees on a “case by case basis” even though it banned flexitime in 2007. Second Report at 8-9. Despite being made aware of the issue through the filing of the Second Report, until recently, the Recorder’s Office continued its practice of arbitrarily granting

flexitime. This week, after discussions with the RCA, the Chief Deputy Recorder initiated efforts to clarify the Recorder's flexitime procedure and promised to provide a draft procedure to the RCA for comment. The RCA looks forward to this draft and hopes this procedure will be both clearly articulated for all employees to reference and consistently applied by the Recorder's Office going forward.

B. Employment Plan

The RCA plans to distribute the first draft of the Employment Plan to all parties in the coming weeks. The RCA will schedule meetings with both parties in an effort to finalize the language of the Plan over the next few months. After an agreement is reached on the language, the Plan will be filed with this Court and the Recorder's Office will designate human resources or executive staff to train employees on the Plan (*see* SRO Art. II.B.1.). The Recorder's Office will also identify which supervisors will be trained by the RCA to fulfill the SRO's Train-the-Trainer requirement. *See* SRO Art. I.H. Finally, the RCA will monitor the Plan's implementation for at least one year. *See* SRO Art. III.D. & F.

C. Compliance Officer

As noted in the Second Report, the parties earlier agreed that "the retention of an independent Compliance Officer to monitor long-term implementation of the Employment Plan" was required for substantial compliance. Second Report at 10. Since the Second Report, the parties agreed that the Compliance Officer would be housed in the Office of the Independent Inspector General. The OIIG included this position in his 2012 preliminary budget submitted on August 16, 2011. The parties are currently finalizing the details of the Compliance Officer's job description. Pending budget approval, the Inspector General anticipates filling the position no later than January 2012.

D. Exempt, Senior Manager and Executive Assistant Lists

The SRO requires that the parties negotiate a new list of Exempt, Senior Manager and Executive Assistant Positions and file the same with the Court for approval. SRO Art. II.E-G. Recorder's counsel recently informed the RCA that she will soon circulate to Class Counsel and the RCA updated organizational charts, a proposed new Exempt list with corresponding job descriptions and lists and job descriptions of proposed Senior Manager and Executive Assistant positions. Once Recorder's Counsel distributes these documents, the RCA anticipates the parties will meet to discuss the proposed lists. The RCA does not anticipate the lists being lengthy and hopes the parties will negotiate final versions of the lists swiftly.

E. Automated Online Application Tracking System

The SRO also requires that the Recorder's Office institute an online application tracking system so job applicants may "determine their current status in the hiring process in order to enhance the availability of information about the hiring process." SRO Art. II.D. The Recorder has agreed to use the services of Taleo software to fulfill this requirement of the SRO. Due, in part, to issues with Cook County's contract with Taleo, no significant development has occurred with this requirement since the Second Report. Cook County's Bureau of Human Resources scheduled trainings for certain Recorder's employees on Taleo basics. The RCA hopes that by her next report, the Recorder's Office will be fully assimilated into Taleo and the RCA will have begun monitoring the Recorder's use of Taleo for internal and external employment procedures.

F. Political Contact Log and No Political Consideration Certification

The RCA believes that the required maintenance of a Political Contact Log and the use of No Political Consideration Certifications ("NPCC") on all Employment Action documents are important for the long-term prevention of unlawful political discrimination in the Recorder's

office. Recently, the parties, OIIG and RCA agreed to amended language for the Political Contact Log, No Political Consideration Certification, and corresponding training materials. The Inspector General recently scheduled training sessions with the Recorder's Office whereby he will train every Recorder's employee on the log and NPCC language. After these trainings, the Recorder's Office will amend its relevant employment documents to include the NPCC language. The RCA will continue to monitor implementation of the log and NPCC language and will report on the same in her next report.

G. Post-SRO Complaints

Pursuant to the SRO, the Office of the Independent Inspector General ("OIIG") is charged with investigating claims of unlawful political discrimination that occurred on or after September 14, 2010. SRO at Art. V. Since the RCA's Second Report to this Court, the OIIG has not received any additional Post-SRO complaints from Recorder's employees. The OIIG has complied with its reporting requirements as laid out in the SRO. *See* SRO Art. V.A.11. The RCA looks forward to the OIIG's findings on the sole Post-SRO claim filed and, to the extent practical, will report on the same in her next report.

IV. Conclusion

The RCA determined through the Pre-SRO Claims process that the Recorder, Chief Deputy Recorder and senior staff committed unlawful political discrimination to the detriment of applicants and employees. Their conduct tainted a variety of Employment Actions including, but not limited to, promotions, hiring, cross-training, discipline, and reclassification. And many of their actions were in direct contravention of either the CBA or the Recorder's policies and procedures. Unfortunately, the RCA's monitoring efforts that began on September 13, 2010 have revealed an almost stubborn resistance to change these practices. It cannot be said strongly

enough that this Office's persistent culture of disregarding established employment procedures in favor of one-off decision-making must end as too often those decisions advantage the politically-connected.

As the RCA wrote in her Second Report, "[t]he desire to change must be genuine and must originate with the Recorder himself and be shared throughout the Recorder's Office". Second Report at 18. While the RCA recognizes the Chief Deputy Recorder's efforts to assist with this investigation has increased since the Second Report, the Recorder himself has failed to show any signs of genuine interest in this process. Without active engagement by the Recorder, it will be difficult for this Office to achieve substantial compliance. The RCA thanks the Court for its continued oversight and counsel for their continued cooperation.

Respectfully submitted,

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