

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

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| MICHAEL L. SHAKMAN and PAUL M. LURIE,) et al.,) Plaintiffs,) v.) |) | |
| |) | Case No. 69 C 2145 |
| COOK COUNTY RECORDER OF DEEDS, et) al.,) |) | Hon. Sydney I. Schenkier |
| |) | Magistrate Judge |
| Defendants.) |) | |

**PLAINTIFFS’ RESPONSE TO COOK COUNTY RECORDER OF DEEDS’
MOTION TO AMEND EXEMPT LIST**

Plaintiffs, MICHAEL L. SHAKMAN, et al. (“Plaintiffs”), by their attorneys, respectfully ask the Court to deny the Recorder of Deeds’ (“Recorder”) Motion to Amend the Exempt List (Dkt. 4426) without prejudice and direct the Recorder, pursuant to Section XI.C.2 of the Recorder’s Employment Plan (Dkt. 3512), to submit the dispute over the proposed amendment to the Exempt List to the Recorder Compliance Administrator (“RCA”) for a recommendation to the Court. As discussed below, the proposed amendment is an improper attempt to create an unneeded exempt position in order to shield and reward a long-time political employee who has been found by the RCA to have violated the Employment Plan and the Personnel Manual without repercussion. Before any decision is made, the terms of the Employment Plan, which require RCA review and recommendation, should be followed.

BACKGROUND

The process for amending the Recorder’s Exempt List is set forth in Section XI.C of the Employment Plan. The Recorder or her designee is to send written notice of the proposed change along with the supporting documentation including the Job Code and Position

Identification Number, a copy of the Job Description, and a description of the basis on which the change is proposed to the Director of Compliance (“DOC”) with a copy to Plaintiffs’ Counsel and the RCA. (Dkt. 3512, § XI.C.1.) If the DOC approves the change, the Recorder is to send confirmation of the DOC’s approval to Plaintiff’s Counsel. If Plaintiffs’ Counsel sends a written objection to the proposed change, the matter is to be referred to the RCA for a recommendation and then to the Court. (*Id.*, § XI.C.2.)

On September 15, 2015, the Recorder proposed adding the new position of Special Assistant to the Recorder – Community Affairs (“Special Assistant”) to the Exempt List. The Recorder had not submitted the position to the DOC at that time. That same day, Plaintiffs provided the Recorder with a list of information Plaintiffs would need in order to evaluate whether the Special Assistant position met the *Branti* standard for exemptions. The parties met on September 16, 2015 to discuss the new position and a number of other topics. Plaintiffs raised their objections and concerns about whether the Special Assistant position qualified under *Branti*. The parties then engaged in a series of meetings and emails attempting to reach agreement on how the Special Assistant position should be treated under the Employment Plan but have been unable to reach agreement. The dispute has not been submitted to the RCA for a recommendation.

At some time between November 24, 2015 and December 1, 2015, someone acting on behalf of the Recorder submitted the Special Assistant position to the DOC for review. Plaintiffs’ Counsel was not copied on that communication as required under the Employment Plan.¹ On December 1, 2015, the DOC provided written notice that he approved adding the Special Assistant position to the Exempt List.

¹ On November 30, 2015, counsel for the Recorder sent the DOC a copy of the proposed Agreed Motion to Amend the Exempt List, the proposed Agreed Order, and a copy of the proposed amended Exempt List. The November

On December 16, 2015, the Recorder filed the present motion. Prior to filing the Motion, the Recorder did not meet and confer with Plaintiffs.

ARGUMENT

The Motion should be denied without prejudice. The Recorder provided Plaintiffs with notice of the proposed change to the Exempt List to add the Special Assistant position. Plaintiffs have objected to the addition. The parties have met in good faith but have been unable to reach agreement on how the Special Assistant position should be treated. Under the terms of the Employment Plan, the dispute should be submitted to the RCA for a recommendation. If the parties are still not able to reach agreement after receiving the RCA's recommendation, the matter will then be ripe for presentation to the Court.

The Recorder has taken the position that Plaintiffs somehow waived their prior objections to the proposed change because Plaintiffs did not renew those objections within 10 business days of the DOC's December 1, 2015 approval of the change. The Court should reject the Recorder's selective technical reading of the Employment Plan and read the Employment Plan as a whole to achieve the purpose negotiated by the parties.² The process for amending the Exempt List is designed to give Plaintiffs timely notice of any change to the Exempt List and an opportunity to object. The 10 day limit for raising objections is to ensure the Recorder receives a timely response from Plaintiffs.

30th email did not include the supporting documentation required under the Employment Plan, including the Job Code and Position Identification Number, a copy of the Job Description, and a description of the basis on which the change is proposed. (*See* Dkt. 3512, § XI.C.1.)

² As noted above, § XI.C.1 of the Employment Plan requires the Recorder to provide Plaintiffs' Counsel and the RCA with a copy of the notice sent to the DOC. Plaintiffs' Counsel and the RCA were never provided with a copy of the required notice and supporting documentation sent to the DOC. If the Recorder argues that the November 30, 2015 email from counsel for the Recorder to the DOC is the purported notice, then the Recorder never sent the required notice because the November 30th email does not contain a copy of the Job Description or any of the other supporting materials required in § XI.C.1. A strict reading of the Employment Plan would require the Recorder to resubmit the proposed change to the DOC for review with the required documentation and provide a copy to Plaintiffs' counsel and the RCA. Plaintiffs do not advocate a hyper-technical reading of § XI.C when adequate notice of the proposed change and Plaintiffs' objections have been provided.

In the present case, the Recorder elected to provide Plaintiffs with notice of the proposed change before she provided notice to the DOC. Plaintiffs timely objected to the change. Nothing in the Employment Plan requires Plaintiffs to renew those same objections because the DOC later approved the change (even though the DOC does not appear to have received the required notice and documentation supporting the proposed change). The purpose of timely notice of Plaintiffs' objections has been met. The fact that Plaintiffs objected to the change before the DOC approved the change makes no difference. The next step in the process is to submit the proposed change to the Exempt List to the RCA for a recommendation. (Dkt. 3512, § XI.C.2.)

Plaintiffs still have significant concerns about the Special Assistant position and object to adding the position to the Exempt List. This position appears to have started as a non-exempt position. In June of 2014, the Recorder proposed creating a new Public Outreach Coordinator position. That position was to be responsible for the Recorder's public outreach programs.

At the September 1, 2015 status hearing, the Court stressed the importance of the Recorder addressing the problems in HR and specifically, the problem posed by one particular employee. *See* Transcript of Proceedings, Sept. 1, 2015 at 9-10. After that hearing, the Recorder proposed creating a new Special Assistant position and dropping the proposed non-exempt Public Outreach Coordinator position. The Special Assistant job description was created for a specific individual to address the concerns raised by the Court on September 1 and the political discrimination concerns that have been raised by Plaintiffs and the RCA for years.

One of the objections raised by Plaintiffs is that there is not enough work to justify a new full-time community outreach position. Community outreach and education are already being performed by other Recorder employees. For example, the Deputy Recorder – Communications

is responsible for community outreach and informing the various interest groups about programs offered by the Recorder. The Director of Public Information assists in the organization of outreach events and represents the Recorder at community events. The Special Assistant – Government Affairs is involved in community outreach initiatives to promote a better understanding of the Recorder’s duties and functions. That position also provides direct assistance to groups by means of lecture/education and question/answer sessions. Plaintiffs have requested information from the Recorder supporting the claim that another full-time community outreach position is necessary. For example, Plaintiffs have asked the Recorder to provide them with information about the number of community outreach/education programs the Recorder held in 2015, what topics were covered, who developed the programs, and which employees attended the events. Plaintiffs have also requested information about how many requests for these kinds of programs the Recorder received and from what organizations.

The Special Assistant position was not developed in the ordinary course of business. The position was created to protect the employment of a current, non-exempt employee who has strong political ties to the Democratic Party. This individual has performed political work on nights and weekends for six months every year for the last 20 years, volunteering for Chicago Aldermen, State Representatives (including Speaker Michael Madigan), and other local officials. This individual has been found to have provided false information to the Inspector General. The individual also has been the subject of numerous RCA Reports noting that the individual is unable to perform his current position yet is consistently protected from discipline or even being written up for poor performance. A recent example is the Interim DOC Report issued on June 19, 2015 by the RCA. The RCA found that this person violated the Employment Plan and the Personnel Manual and recommended he be disciplined. More than six months later, the

Recorder has still not taken any action.

The Recorder asks this Court to ignore the history of unlawful political discrimination that has shielded this individual for years and to bless creating a new position for him, a position for which there does not appear to be sufficient work to keep a full-time employee busy. Plaintiffs respectfully submit that the Court should not reward the Recorder for years of unlawful political discrimination. Rather, the question of whether a new exempt position should be created should be submitted to the RCA for additional fact finding and a recommendation.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully ask this Court to enter an order denying the Recorder's Motion to Amend the Exempt List (Dkt. 4426) without prejudice and directing the Recorder, pursuant to Section XI.C.2 of the Recorder's Employment Plan (Dkt. 3512), to submit the dispute over the proposed amendment to the Exempt List to the RCA for a recommendation.

Dated: January 5, 2016

Respectfully submitted,

Michael L. Shakman, et al.

By: /s/ Brian I. Hays
One of Their Attorneys

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Certificate of Service

I, Brian I. Hays, an attorney, state that on January 5, 2016, I caused a true and correct copy of the foregoing to be served via e-filing upon:

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/s/ Brian I. Hays