

**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.)	

**THIRTEENTH 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 Thirteenth Report as follows:

I. Introduction

On June 1, 2016, the RCA filed her Twelfth Report to the Court (“Twelfth Report”) (Dkt. 4603) in which she discussed the Cook County Recorder of Deeds² Karen Yarbrough’s efforts to comply with the SRO. Since the Twelfth Report, the ROD has continued revamping her Human Resources Division (“HRD”) under the direction of her newly hired Chief of HRD. The Recorder now has all the technical pieces in place to

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

² The “Cook County Recorder of Deeds”, the “Recorder”, “ROD” and/or “Recorder’s Office” hereinafter shall refer to the Recorder, Karen Yarbrough, and/or her staff.

achieve Substantial Compliance: an Employment Plan (the “Plan”), a Policy Manual (the “Manual”), a Director of Compliance (“DOC”) and a Chief of HRD. This report focuses heavily on how those pieces are working together. This report also discusses a motion recently filed by the Plaintiffs based largely on the details in the RCA’s Twelfth Report. The RCA provides further updates on the Recorder’s progress toward Substantial Compliance³ with the SRO below.

II. The Five Prongs of Substantial Compliance

A. Prong 1: *Has the Recorder implemented the Employment Plan, including procedures to ensure compliance with the Plan and identify instances of noncompliance?*

The first prong of Substantial Compliance requires the Recorder to implement a Plan and other procedures to ensure compliance with the principles of *Shakman* and identify instances of non-compliance. To properly implement the Plan and Manual, an effective DOC overseeing such implementation and a robust HRD capable of administering the Plan and Manual are necessary. Since the Twelfth Report: (1) the DOC has continued acclimating to his role and (2) the Recorder’s new Chief of HRD has begun adjusting to his new position and has initiated the hiring process for a new Director of HRD. The Recorder’s Plan and Manual, however, remain in need of significant

³ The SRO states that “Substantial Compliance” means: (1) the Recorder has implemented the New Employment Plan, including procedures to ensure compliance with the New Employment Plan and identify instances of non-compliance; (2) the Recorder has acted in good faith to remedy instances of noncompliance that have been identified, and prevent a recurrence; (3) the Recorder does not have a policy, custom or practice of making employment decisions based on political reasons or factors except for Exempt Positions; (4) the absence of material noncompliance which frustrates the Recorder’s Consent Decree and the SRO’s essential purpose. The RCA and the Court may consider the number of post-SRO complaints that have been found to be valid. However, technical violations or isolated incidents of noncompliance shall not be a basis for a finding that the Recorder is not in substantial compliance; and (5) the Recorder has implemented procedures that will effect long-term prevention of the use of impermissible political considerations in connection with employment with the Recorder. SRO at 13.

updating.

1. Director of Compliance

The DOC is one of the most important roles in *Shakman* compliance. The DOC is tasked with not only monitoring Employment Actions, but is also charged with inserting himself when necessary to ensure Employment Actions adhere to the procedures laid out in the Plan and Manual. To accomplish this, it is vital that the DOC be able to spot when an Employment Action is not being conducted consistent with the Plan or Manual, act when noncompliance has been identified (whether the DOC or some other person identified the noncompliance) and issue reports detailing his investigations that support findings of noncompliance, when appropriate. Earning the trust of employees is also essential to successfully serve in this capacity.

The RCA meets consistently with the DOC and has encouraged him to be vocal during Employment Actions to make sure the Plan and Manual are being followed in real time and not just corrected after the fact. The RCA has seen some improvement in this area since the Recorder's new Chief of HRD was hired and hopes this positive trend continues. The RCA has also spoken with the DOC about ways in which he can foster the trust of employees for whom the Plan and Manual were designed to protect from unlawful political discrimination. As the DOC himself acknowledges, that trust has not yet been earned and the RCA encourages the DOC to make more strides to earn that trust.

2. Human Resources

The Recorder hired Erwin Acox, Jr. as her new Chief of HRD on April 19, 2016. The Chief is new to the Recorder's Office and new to the *Shakman* compliance model. The RCA understands that it will take some time for the new Chief to acclimate in a

manner that will hopefully move the Recorder's Office forward to Substantial Compliance.

Court oversight in general, and *Shakman* oversight in particular, are tough frameworks to work within and growing pains are expected. In recent weeks, the RCA has seen some progress. She was encouraged, for example, by the Chief of HRD's openness throughout the process of amending the Job Description for the recently posted Director of HRD position. The Chief of HRD engaged with both the RCA and Plaintiffs on ensuring the Minimum Qualifications for this Position were reflective of the main duties and responsibilities assigned to it.⁴ As the Chief of HRD gets more accustomed to this role, the RCA expects him to be more mindful of the parameters created in the Plan and Manual as well as the need to allow her to monitor every aspect of the Plan and Manual to ensure compliance.

3. Adherence to the Recorder's Plan and Manual

The RCA has continued monitoring all Employment Actions that she is provided notice of by the Recorder's Office. Since the Twelfth Report, among the Employment Actions the RCA monitored were: four hiring processes (two of which were completed), four Temporary Assignments (all of which have expired but proper paperwork terminating the Temporary Assignments was never provided to the RCA), and myriad Disciplinary Actions.

Concerning hiring, the RCA notes two developments: (1) the hiring of the Recorder's new Exempt Special Assistant to the Recorder – Community Affairs; and (2)

⁴ The Position was posted on ATAS in mid-July and the Recorder's Office is currently in the process of validating the submitted applications in accordance with the Plan. The RCA will provide updates on the conclusion of this hiring process in her next report.

the Chief of HRD's process of adjusting to the structures of the Plan generally and the DOC and RCA specifically. First, the Recorder hired Vittorio Gomez as her first Special Assistant to the Recorder – Community Affairs. The RCA has not yet met Mr. Gomez, but hopes she has that opportunity before her next report. Second, the RCA and DOC have worked closely with the new Chief of HRD on Plan and SRO compliance. The RCA has informed the Chief of HRD on several occasions of the need to provide notice to the RCA of all steps of all Employment Actions. The RCA has pointed to the Plan's introductory language that states that “[t]he Recorder Compliance Administrator, while acting, has the right to monitor any and all aspects of the Employment Plan, in order to assess the Recorder's progress toward substantial compliance with the SRO.” Plan at 1. The DOC has been helpful in reminding the Chief of HRD of the need to provide the RCA notice of every step of the hiring process and to allow the RCA an opportunity to provide timely feedback and raise concerns when she has them. The RCA will continue working with the Chief of HRD to ensure she is able to effectively assess the Recorder's progress toward Substantial Compliance.

On the issue of discipline, the RCA continues to have serious concerns with the Recorder's inconsistent application of discipline. Since her Twelfth Report, the RCA observed two particularly troubling disciplinary processes. In the first, an employee was originally charged with committing multiple Major Cause and multiple Minor Cause infractions; however, Labor Counsel ultimately dismissed the Major Cause infractions and noted that “timeliness” was one of his reasons for so doing. Labor Counsel proceeded with issuing the Minor Cause infractions despite them stemming from the same event that Labor Counsel had found was untimely for Major Cause infractions. The

employee ultimately received a 15-day suspension for the Minor Cause infractions.

In the second, Labor Counsel appeared to chill employees' ability to defend themselves during disciplinary processes by repeatedly reminding them as they attempted to speak that if they provided any false or inaccurate information during their pre-disciplinary hearings that they may be written up for a Major Cause infraction and be subject to additional discipline. The RCA views these warnings as particularly suspect given that Labor Counsel has charged employees with providing false or inaccurate information for simply being mistaken about a situation. Under this approach, employees' good faith, but ultimately unsubstantiated, complaints would subject them to disciplinary action, up to and including termination.

Finally, the RCA has previously detailed concerns with the Recorder's inconsistent adherence to various sections of the Plan and Manual and has commented on situations in which the Recorder has committed to amend the Plan and Manual in accordance with DOC and/or RCA recommendations. *See, e.g.*, Twelfth Report at 8 (discussing the Recorder's justification for denying an employee's Flextime request because the Recorder "was planning" on removing this policy from the Manual). As more than a year has passed since the Recorder's Office first promised to provide draft changes to these documents, the RCA is hopeful that the Office keeps its most recent assurance that the proposed edits will come shortly.

B. Prong 2: *Has the Recorder acted in good faith to remedy instances of non-compliance that have been identified?*

The second prong of Substantial Compliance concerns whether the Recorder has made good faith efforts to cure instances of non-compliance when identified. Below are (1) details on new findings of noncompliance by the DOC, (2) updates on the Recorder's

actions in response to earlier findings of non-compliance by the DOC and RCA and (3) details of other ongoing Plan and Manual violations by the Recorder's Office that have not been the subject of DOC Incident Reports.

1. DOC Incident Reports

In the past three months, the DOC: issued Incident Reports describing investigations into four alleged violations of the Plan and/or Manual (two of which were sustained), initiated investigations into three newly filed complaints of violations of the Plan and/or Manual, and issued his second semi-annual report (as required by the Plan). In his first 14 months, the DOC has received or self-initiated 16 complaints of alleged violations of the Plan and/or Manual and has sustained six of those complaints. In recent weeks, the RCA has observed the DOC become more comfortable with spotting instances when employees deviate from the Plan and Manual. In the coming months, the RCA hopes the DOC will implement whatever systems he deems appropriate to be able to spot issues of noncompliance more consistently on his own.

Below are updates on the DOC's recently sustained complaints. For additional details on his other investigations, please see the attached DOC Semi-Annual Report. *See* Exh. A (DOC Semi-Annual Report).

a. *DOC Incident Report 16-004 (Employee Transferred in Violation of Manual)*

The DOC investigated whether the Transfer of a Non-Exempt employee was done in compliance with the Manual. The DOC concluded that the former Director of HRD violated the Policy Manual by not completing the appropriate Transfer paperwork. The DOC made no recommendations for corrective action as the former Director of HRD had retired from the Recorder's Office at the time of the Incident Report.

b. *DOC Incident Report 16-005 (Employee Violated Manual's Prohibition on Sharing Email Accounts)*

On June 28, 2016, the DOC sustained an allegation that an Exempt employee used the email account of a Non-Exempt employee in violation of the Manual. The DOC concluded that the Non-Exempt employee gave his computer password to his Non-Exempt Supervisor. The DOC concluded that an Exempt employee then sent an email from the account of the Non-Exempt employee when that Non-Exempt employee was not at work. The DOC concluded that: (1) the Exempt employee violated the Manual by using another employee's email account; (2) the Non-Exempt employee violated the Manual by providing his password to his Supervisor; and (3) the Supervisor violated the Manual by requesting and obtaining his subordinate's password. The DOC recommended: (1) the Recorder "ensure that all Shakman Exempt Employees understand the provisions of the Policy Manual and adhere to these provisions"; (2) the Chief of HRD "review the pertinent section of the Policy Manual with [the Exempt employee] to prevent further violations of the Manual; and (3) an Incident Report be issued to the Non-Exempt employee for violating the Manual's section on Technological Security. The Recorder has not yet responded to the DOC's findings and recommendations.

2. Updates on Recorder's Actions in Response to Prior Findings of Noncompliance by DOC and RCA

Below are updates on the Recorder's responses to findings of noncompliance by the DOC and RCA that predated the RCA's Twelfth Report.

a. *DOC Incident Report 15-012 (Two Non-Exempt Employees Violated Various Office Policies During Workplace Altercation)*

On January 14, 2016, the DOC concluded an investigation with findings of violations of various Office policies (Courtesy Policy, Cell Phone Policy, and Loitering)

against two employees stemming from a workplace altercation between the employees. The DOC recommended that Incident Reports be prepared for these two employees on the basis of the DOC's findings. The Recorder has not yet issued a Response to this Incident Report.

- b. *DOC Incident Report 15-010 (Exempt employee Violated Office's Courtesy Policy by Swearing at her Executive Assistant)*

On January 14, 2016, the DOC concluded an investigation with a finding that an Exempt employee violated the Office's Courtesy Policy by swearing at her Executive Assistant. The DOC recommended the Recorder "take whatever action she deems necessary to ensure that all Shakman Exempt Employees found to have committed violations of the Manual in this Report understand those sections in the Manual discussed in this Report and that they abide by those sections in the future." The DOC also recommended that the "Recorder meet with the [Exempt employee] identified in this report and go over the details and findings of the report." The Recorder has not yet issued a Recorder's Response to this Report.

- c. *DOC Incident Report 15-009 (Executive Assistant retaliated against by Exempt Labor Counsel for filing complaint with DOC)*

The RCA discussed at length in her Twelfth Report the DOC's finding that the Recorder's Labor Counsel retaliated against his Non-Exempt Executive Assistant for filing a complaint with the DOC. Twelfth Report at 24-26. One of the DOC's recommendations in his Incident Report was that "training be made available to [the Executive Assistant to Labor Counsel] to give her the tools necessary to handle employee related issues". DOC Incident Report 15-009 at 8. The Recorder stated in her Response

on February 16, 2016 that, “[t]he Recorder’s office will provide the Executive Assistant with training on how to handle customer inquiries regarding the status of FMLA applications.” Recorder’s Response at 4. As of the date of this report, the RCA has not received notice that this training ever took place.

d. *Interim DOC/RCA Incident Report 15-001 (Employee working outside Job Description)*

In the Twelfth Report, the RCA discussed Incident Report 15-001 (issued June 19, 2015), wherein the RCA concluded that an employee had been working materially outside her job description. Twelfth Report at 14-15. One of the RCA’s recommendations was to “take whatever action consistent with the Plan, Manual and CBA that she deems appropriate to ensure the employee’s Job Description is updated and accurate and that she works within that Job Description”. Id. To date, the Recorder has still not updated the employee’s Job Description; a continuing violation of the Plan’s requirement that all Job Descriptions be updated and accurate (Plan at 4).

3. Other Ongoing Noncompliance with Plan and Manual

The RCA has notified the Recorder’s Office in meetings and through correspondence that the Recorder’s Office is not compliant with various sections of the Plan and Manual. The Recorder’s Office has yet to remedy its noncompliance therefore the RCA includes details of these issues below in hopes that it will encourage the Recorder’s Office to act more swiftly to come into compliance.

a. *Plan and Manual Training Requirements*

The Recorder’s Plan was filed on August 14, 2013; the Manual became effective on March 1, 2015. Recorder’s Counsel, the OIG and RCA trained employees on the Plan and Manual just prior to the Manual’s effective date. The Plan requires the

Recorder's HRD and DOC to conduct annual Plan and Manual training for all employees (Plan § IV.F) and specialized annual training for all HRD personnel (Plan § IV.D) and supervisors (Plan § IV.E). The last training conducted by the Recorder's Office was over 18 months ago (February 2015); therefore, the Recorder's Office is noncompliant with these sections of the Plan. The RCA encourages the Recorder to update the Plan and Manual soon and then conduct the necessary trainings so it is compliant with these sections of the Plan.

b. *Do Not Rehire Policy*

The Recorder's Plan requires the Head of HRD to maintain a "Do Not Rehire Without Further Consideration List" (the "List") comprised 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 the investigations into unlawful conduct or violation of court orders, written policies or applicable law." Plan § IV.Q. The Plan was filed in August 2013. The Recorder's Office, however, has yet to create the List.

Last week, the parties agreed on an amended Do Not Rehire policy that the RCA expects will be included as a Plan amendment shortly. The RCA anticipates receiving shortly from the Recorder, the names of former employees who should have been placed on the List from August 2013 until the date the policy is formally included as an amendment to the Plan.

c. *Compensatory Time Tracking*

The Manual permits the Recorder to award Compensatory Time to employees in

certain circumstances and charges HRD with responsibility for maintaining records related to such Compensatory Time grants and usage. Manual at 6-8. The RCA has attempted since March 1, 2013 to obtain from HRD an accurate accounting of Compensatory Time granted and used by Recorder employees. The RCA has still not received an accurate Compensatory Time tracking spreadsheet.

d. *Performance Evaluations*

The Manual states that “[a]n annual written Performance Evaluation must be conducted for each employee at times prescribed by the Chief Deputy Recorder”. Manual at 26. The Manual provides guidance on the process for conducting such evaluations. While the RCA has been told on several occasions that evaluations are imminent, the Recorder’s Office has not conducted any regular Performance Evaluations in the 17 months that the Manual has been in effect.

C. ***Prong 3: Is there a policy, custom or practice of making employment decisions based on political factors except for Exempt Positions?***

In her Twelfth Report, the RCA discussed the history of the Recorder’s noncompliance with the SRO and Plan as supporting her belief that a “policy and practice of making employment decisions based on political reasons for (at least some) Non-Exempt Positions in the ROD” existed. Twelfth Report at 21. While the RCA is hopeful that the hiring of a new Chief of HRD will prove beneficial for *Shakman* compliance in the long-run, she notes that one change made by the Recorder gave her serious pause about the Recorder’s commitment to *Shakman* compliance.

The SRO requires the Recorder to cooperate with the RCA in her efforts to ensure the SRO is implemented. SRO at I.E. The SRO also requires the Recorder to “designate an executive employee to act as a liaison with the RCA and the Inspector General to

ensure that they receive cooperation from all Recorder employees.” Id. The liaison has served as someone the RCA can turn to when she is not receiving cooperation from a Recorder employee. Shortly after the Twelfth Report was issued, the RCA received notice from the Chief Deputy Recorder that he and the Chief Legal Counsel were being replaced as liaisons. In their place, the Recorder inserted the new Chief of HRD as well as Labor Counsel.

The Recorder’s choice to replace the Chief Legal Counsel (Mr. James Gleffe) with the Recorder’s Labor Counsel is troubling given that her Labor Counsel was: 1) found by the DOC to have violated the Manual’s prohibitions on (a) retaliating against an employee for filing a complaint and (b) knowingly providing false information during an investigation (DOC Incident Report 2015-009 at 8-10); 2) found by the RCA: (a) to have conducted disciplinary hearings favorably for certain politically-connected Non-Exempt employees (Twelfth Report at 9, n. 7) and (b) to have chilled some employees from reporting employment-related concerns to the RCA (id. at 23-24); and 3) found by the OIIG to have materially contributed to the Recorder’s practice of treating her former Director of HRD more favorably than other Non-Exempt employees (OIIG Summary Report 14-0408). After Plaintiffs’ filed their Motion for Rule to Show Cause against the Chief Deputy Recorder and Labor Counsel (see below at 14-17), the Recorder once again named Chief Legal Counsel as one of the *Shakman* liaisons while removing Labor Counsel from the post. The RCA looks forward to resuming her positive working relationship with Mr. Gleffe.

D. Prong 4: *Is there an absence of material noncompliance which frustrates the Recorder's Consent Decrees and the SRO's essential purpose?*

The fourth prong of Substantial Compliance concerns whether the Recorder has materially not complied with the SRO. Since the Twelfth Report, Plaintiffs' filed a "Motion for Issuance of a Rule to Show Cause Why Certain Senior Staff in the Cook County Recorder of Deeds Should Not be Held in Civil Contempt and for Related Relief" ("Plaintiffs' Motion") in which Plaintiffs argue that the Chief Deputy Recorder and the Labor Counsel should be held in civil contempt for conduct that violated the SRO. A brief summary of Plaintiffs' Motion follows.

1. Plaintiffs' Motion for Rule to Show Cause

On July 29, 2016, Plaintiffs filed a Motion for Rule to Show Cause. Dkt. 4644. In that filing, Plaintiffs made the following arguments with respect to the named Recorder employees:

a. *Mr. Michalowski*

In their Motion for Rule to Show Cause, Plaintiffs ask the Court to hold Mr. Michalowski in civil contempt "for violating the 1992 Consent Decree, the SRO and the Employment Plans by (1) conditioning any aspect of governmental employment on the basis of unlawful political discrimination, (2) failing to cooperate with the RCA, DOC and the OIIG by providing false information during investigations (that he would take no action pending completion of the DOC's investigation, and his false allegations of misconduct against his assistant), and (3) retaliating against his assistant for exercising her right to submit a complaint to the RCA and the DOC." Dkt. 4644 at 8.

b. *Mr. Giles*

Plaintiffs also ask the Court to hold Mr. Giles in civil contempt for Motion describes the following reasons for finding Mr. Giles in civil contempt for “violating the 1992 Consent Decree, the SRO and the Employment Plans by (1) conditioning any aspect of governmental employment on the basis of unlawful political discrimination and (2) failing to cooperate with the RCA and the OIIG by providing false information during investigations and directing an employee to not inform the RCA of his investigations to prevent the RCA from monitoring.” Id. at 10-11.

c. *Relief Sought by Plaintiffs*

Plaintiffs list four requests for relief: (1) “[t]hat the Court issue a Rule to Show Cause to [Mr. Giles and Mr. Michalowski] directing that each explain why he should not be held in civil contempt” for violating the SRO and Plan; (2) “[t]hat the Court permit Plaintiffs to take discovery, including, but not limited to take depositions of each of these individuals and other employees of the Recorder’s Office”; (3) “[t]hat the Court permit Plaintiffs to supplement this Motion by naming other individuals in the Recorder’s Office to whom rules to show cause should issue”; and (4) “[t]hat the Court conduct a hearing or hearings and enter appropriate civil contempt relief.” Id. at 2.

The RCA notes that neither Mr. Michalowski nor Mr. Giles has had the opportunity to respond substantively to the Motion as the first hearing is scheduled for August 16, 2016. The RCA will provide updates in future reports regarding this Motion.

E. *Prong 5: Has the Recorder implemented procedures that will effect long-term prevention of the use of impermissible political considerations?*

The last component of Substantial Compliance requires the Recorder to have

implemented procedures to ensure that the principles that form the basis of the *Shakman* litigation will carry on long into the future. While the Recorder technically has the necessary pieces for long-term compliance (a Plan, a Manual, a DOC and Chief of HRD), the hard work ensuring that all the pieces work together effectively remains. The RCA encourages the Recorder to lead by example in sending a strong message to Exempt and Non-Exempt employees alike that *Shakman* compliance is a mandatory top priority in her Office. The RCA also encourages the ROD to make the necessary updates to the Plan and Manual, conduct the required annual Plan and Manual training, and respond to the various issued Incident Reports by the DOC (and RCA).

III. Conclusion

The RCA will continue to work closely with the Recorder's Office on resolving the issues noted above and will continue to be a resource for the Office in its efforts to reach Substantial Compliance.

Respectfully Submitted,

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