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

MICHAEL L. SHAKMAN, *et al.*	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 69 C 2145
	)	
COOK COUNTY RECORDER OF DEEDS, *et al,*	)	Magistrate Judge Schenkier
	)	
Defendants.	)	

PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR ISSUANCE OF RULE TO SHOW CAUSE DIRECTED TO TWO SENIOR STAFF MEMBERS OF THE COOK COUNTY RECORDER OF DEEDS

Respondents Giles and Michalowski's objections to issuance of the rule to show cause are wrong for the following reasons: (1) Plaintiffs had no meet-and-confer obligation, but Plaintiffs' counsel nonetheless conferred with Respondents' counsel before filing; (2) the 180-day filing period applicable to individual enforcement actions does not apply to the Plaintiffs' requests to enforce the Court's orders, as the Court has previously ruled; (3) Respondents can be held in contempt in their individual capacities; and (4) the factual arguments each makes belong in their Answers to the Rule to Show Cause, not in unsworn objections; they are, in any case, contrary to the facts as reported by the RCA, the DOC, and the OIIG.[1]

Respondents are wrong that Plaintiffs filed the Motion to harass or for other improper reasons. Instead Plaintiffs followed the procedures agreed to by the Recorder and ordered by the Court by allowing the Recorder and Respondents time to take corrective action. They failed to do so, as the RCA stated in her report of June 1, 2016: (i) Respondents provided false

[1] "RCA" refers to the Recorder Compliance Administrator. "OIIG" refers to Cook County's Office of Independent Inspector General, "DOC" refers to the Director of Compliance, an employee in the Recorder's Office. "Respondents" refer to Mr. Giles and Mr. Michalowski. "Motion" refers to Plaintiffs Motion for A Rule To Show Cause, Dkt. 4644.

information in connection with RCA and OIIG investigations, and attempted to retaliate against employees for exercising their Court-mandated rights; (ii) there is a "culture of making false statements and chilling employees from reporting Plan and Manual violations . . ." at the Recorder's Office; and (iii) "there currently exists a policy and practice of making employment decisions based on political reasons." Dkt. 4603, at 21, 25-26. Before filing the Motion Plaintiffs asked the RCA to confirm its factual accuracy, and she did.

I. Plaintiffs Fulfilled Any Meet and Confer Obligation.

On July 11, 2016, Brian Hays, Plaintiffs' counsel, sent a draft of the Motion to counsel for the Recorder's Office and asked that she forward it to Respondents. Dkt. 4720, Ex. A. On July 20, 2016, Mr. Hays emailed Mr. Giles and Mr. Michalowski to ask if they had retained counsel. Dkt. 4720, Ex. D. On July 27, 2016, he spoke separately with Respondents' counsel, Ms. Kurtz and Mr. Odelson, by telephone. Dkt. 4720, Ex. G. Both stated that they had not yet been appointed by the Circuit Court to represent Respondents and had not spoken with their clients about the substance of the Motion. *Ibid*. Mr. Hays explained that a minimum condition for any settlement would be an agreed order finding Respondents in civil contempt and some significant monetary sanction. Mr. Odelson described this as "absurd." *Id.*, Ex. H. Ms. Kurtz did not respond. Because they were not able to reach agreement, Plaintiffs filed the Motion. After the September 19, 2016 status hearing, Mr. Hays spoke in person with Ms. Kurtz and Michael Hayes, Mr. Odelson's co-counsel, about whether additional meetings would be productive. Mr. Hays reiterated that a finding of contempt was a requirement. Both stated that their clients would not agree to such a finding.

Before filing a motion this Court requires a "candid discussion *between the parties*." (italics added). The parties can satisfy this obligation in person or by telephone. LR 37.2. Because neither Mr. Michalowski nor Mr. Giles are parties to this case, the meet-and-confer

obligation does not apply. Rather, the Motion is akin to the filing of a new pleading, as to which there is no such obligation. Regardless, as described above, Plaintiffs' counsel spoke by telephone and exchanged emails with Respondents' counsel. When it became apparent that an agreement could not be reached, Plaintiffs filed the Motion. Local Rule 37.2 requires the parties to confer in "good faith." It does not require that the parties reach agreement. *Jones v. Ameriquest Mortg. Co.*, No. 05 C 432, 2008 WL 4686152, at *6 (N.D. Ill. May 19, 2008).

"Good faith" does not require a party to compromise. As the cases cited by the Respondents make clear, the purpose of Rule 37.2 is to "curtail undue delay and expense in the administration of justice." *Chamberlain Group v. Lear Corp.*, 2010 WL 2836975, at *1–2 (N.D.Ill. 2010) (quoting *Paulcheck v. Union PAC. R. Co.*, 2010 WL 1727856, at *1 (N.D.Ill. 2010)). Respondents would use Rule 37.2 to *increase* delay and expense by requiring the process to continue after reaching an impasse. Respondents have the right to refuse to agree to Plaintiffs' requested relief. But Plaintiffs then have a right to seek relief from the Court.

II. The Motion Is Timely.

In addition to arguing that Plaintiffs filed the Motion too soon, they argue that it was filed too late. The Motion was timely. Under the terms of the SRO, Plaintiffs' efforts to enforce the SRO and the Employment Plan are not subject to the 180-day limitations period applicable to individual claimants. Plaintiffs acted reasonably in waiting for the procedures provided in the SRO and the Employment Plan to occur, and for the RCA to file her Twelfth Report before filing the Motion. Moreover, Respondents have not shown any prejudice from any alleged delay.

A. Plaintiffs' Enforcement Actions Are Not Subject to a 180-Day Limitation Period.

The SRO contains two avenues for enforcement – one for Plaintiffs and one for individuals complaining of unlawful political discrimination in connection with employment

actions. Section III.E governs enforcement actions brought by Plaintiffs:

> Monitoring by Plaintiffs. Plaintiffs shall monitor the Recorder's performance under the Recorder's Consent Decree, the SRO (including Pre-SRO Claims adjudication, Post-SRO Complaint Procedures and Arbitration), and the New Employment Plan through counsel of their choice, [and] may present matters to the Court including enforcement actions.

Dkt. 1831. There is no time limit imposed for Plaintiffs to bring enforcement actions. Individuals who wish to use the Post-SRO Complaint Process must submit their complaint to the OIIG within 180 days of when they knew or should have known of the violation. *Id.*, § V.A.1. The 180-day limit was adopted from *Smith v. City of Chicago*, 769 F.2d 408, 410-13 (7th Cir. 1985).

As this Court ruled in 2014 (when the then-Governor made the same argument as Respondents and the Recorder now make), the factors supporting the 180-day limit for individuals to file damage claims do not apply when Plaintiffs seek to enforce court orders:

> Unlike the case in *Smith*, here we are not dealing with an individual employee arguing that he or she was the victim of a particular instance of discrimination based on political considerations. This instead is a motion brought by the *Shakman* plaintiffs alleging noncompliance with the 1972 decree and invoking the Court's jurisdiction to enforce its orders. I don't consider the Court's authority to enforce its own order as turning on whether request[] for the enforcement is made within 180 days of the alleged noncompliance.

Transcript of Proceedings on October 22, 2014, at 10, attached as Exhibit 1.

This Motion is nothing like the relief sought in *Smith,* a suit by an individual against Chicago alleging that he had been demoted in violation of the 1972 Consent Decree because he supported a rival candidate for Mayor. The demotion led to his termination and loss of salary. The Seventh Circuit noted that there is no fixed period for contempt motions. It also noted that the *Shakman* Decrees apply to thousands of government employees. *Smith*, 769 F.2d at 410-11. Time consuming litigation about *laches* in *Shakman* cases had become routine. *Id.*, at 411. In borrowing Title VII's 180-day period, the court reasoned that cases filed by individuals seeking

damages were "all of a kind" – "complaints about a particular kind of discrimination in the course of employment." *Id.*, at 412. The court justified adopting a uniform, short limitation period because of the need for prompt decisions about claims of illegal hiring, firing, and work assignment. Otherwise, an employer might have to pay twice for the same work, or a judgment reinstating an individual might result in discharging an employee hired to fill the position. *Ibid*.

None of these factors applies when Plaintiffs bring a motion to correct systemic violations of court orders via contempt. Plaintiffs seek coercive relief against Respondents to generate compliance, not damages for loss of a job or reinstatement. They seek sanctions against two individuals who have been found by the Court's agents to have violated the Court's Orders. They seek relief for the purpose of "bringing the Recorder's Office into substantial compliance" with this Court's Orders. Dkt. 4644, at 12.

Neither this Court nor the Seventh Circuit has applied *Smith* in the thirty years since it was decided to any enforcement proceeding brought by class counsel for the named Plaintiffs, including the post-Sorich proceedings against the City, the County and other agencies that concerned conduct dating back many years, or to bar relief as to the Governor based, in part, on actions occurring as long ago as the Blagojevich administration. That is hardly surprising, since *Smith* acknowledged, and later Seventh Circuit opinions affirmed, that enforcement of a consent decree is an equitable remedy, and *laches* is normally the only basis to object to the timeliness of a specific request for relief. *See Cook v. City of Chicago*, 192 F.3d 693, 694-95 (7th Cir. 1999) (district court properly applied *laches* to claim by city employee regarding violation of consent decree concerning rehiring of discharged employees).

The narrow reach of *Smith* is also confirmed by *Cook's* refusal to apply *Smith* to individual enforcement claims by non-parties outside of this case, and by opinions following

Cook and applying *laches* to proceedings to enforce consent decrees. *See Brennan v. Nassau Cty.*, 352 F.3d 60, 63 (2d Cir. 2003) ("[C]onsent decrees are subject to equitable defenses and not legal defenses such as the statute of limitations."); *Bergmann v. Mich. State Transp. Comm'n*, 665 F.3d 681, 684 (6th Cir. 2011) (applying *laches* to a claim regarding violation of consent decree). *Cf. Fla. Ass'n for Retarded Citizens, Inc. v. Bush*, 246 F.3d 1296, 1298 (11th Cir. 2001) (allowing motion to enforce seventeen-year-old consent decree because "a district court should enforce an injunction until either the injunction expires by its terms or the court determines that the injunction should be modified or dissolved"). Therefore, *laches* is the only timeliness defense available to Respondents and they have failed to show a basis to apply it here.

B. Plaintiffs Did Not Unreasonably Delay and Respondents Have Not Been Prejudiced.

Laches requires unreasonable delay and material prejudice to the other party. *Zelazny v. Lyng*, 853 F.2d 540, 541 (7th Cir. 1988). Plaintiffs did not unreasonably delay filing the Motion, and Respondents do not describe any specific prejudice. Plaintiffs waited while the procedures for addressing violations of court orders set out in the SRO occurred. That did not prejudice the Recorder or Respondents. It did the opposite. It gave them every opportunity to correct violations identified by the OIIG, the DOC, and the RCA. Plaintiffs filed the Motion within weeks after the RCA reported in June 2016 that correction had not occurred and (worse) a culture of obstruction of investigations coupled with political employment practices prevailed in the Recorder's office. As the following chronology shows, it took time for the events that led to the Motion to occur under the procedures agreed to by the Recorder and stated in Court orders:

With respect to Mr. Giles, the OIIG issued its findings in Report IIG13-0176 (re Christianson) on June 19, 2014. The Recorder responded on February 2, 2015, stating that because litigation was pending (Christianson had sued), she could not address the OIIG's report.

See Recorder's Report, OIIG13-0176. The Recorder did not respond to the OIIG's recommendations (by rejecting the meaningful discipline the OIIG had recommended) until October 21, 2015. Plaintiffs did not cause that delay of more than a year.

Similarly, Mr. Michalowski was involved in a series of violations continuing at least through April 4, 2016. Reports by the OIIG and RCA show that Mr. Michalowski protected politically connected individuals, Sloan and Babatunde. The OIIG reported on a series of prior investigations in his IIG14-0408 Report, issued on September 18, 2015. *See* pp. 9-15. The OIIG concluded that Mr. Michalowski covered-up misrepresentations and false statements by Mr. Sloan and Mr. Babatunde to the OIIG in connection with its investigations. Mr. Michalowski did so in his role as the Recorder's hearing officer charged with developing recommendations in response to the OIIG's reports. *Id.*, at 15.

The sham hearings conducted by Mr. Michalowski in response to the OIIG's report of February 26, 2014 with regard to Mr. Babatunde gave rise to another investigation by the OIIG culminating in another OIIG Report issued on September 18, 2015. The Recorder did not respond to the recommendations in that report until November 18, 2015 and submitted a supplemental Recorder's Report on January 22, 2016. *See* Recordre's Report in Response to IIG# 14-0408; January 22, 2016 Letter from K. Yarbrough. Mr. Michalowski's protection of Mr. Babatunde continued right up to Mr. Babatunde's retirement on April 4, 2016. *See* Dkt. 4603, at 8-11. Mr. Michalowski delayed issuing an incident report until the last moment prior to Mr. Babatunde's retirement, which allowed him to escape responsibility for his violations. The Recorder's response that refused to discipline Mr. Michalowski for his misconduct of retaliating against his assistant for submitting a complaint to the RCA and the DOC, was not issued until February 16, 2016. *See* Recorder's Report to DOC Incident Report #15-009.

The SRO correctly places primary responsibility on the RCA for day-to-day monitoring and reporting of violations. Prior to the RCA's Report of June 1, 2016 that prompted the Motion, the RCA's previous report was filed on February 15, 2015. Dkt.4092. The RCA informed Plaintiffs' counsel that the Court had requested the RCA to delay submitting the RCA Reports required under § III.C of the SRO while certain issues and actions were pending that might have reflected progress in the Recorder's Office. Rather than press ahead, Plaintiffs waited for the next RCA Report that was filed on June 1, 2016 [Dkt. 4603]. Plaintiffs filed this Motion less than two months later.

In arguing that the Motion is untimely, Respondents and the Recorder incorrectly focus on the dates of the OIIG's reports. They ignore the procedures in the SRO and the Employment Plan for the Recorder to respond to those reports. *See* Dkt. 4720, at 8-10; Dkt. 4722, at 11; Dkt. 4724, at 5. Under the SRO and the Employment Plan, the OIIG's reports are the beginning of a process, not the end. After the OIIG or DOC issues findings and recommendations, the Recorder must issue a Recorder's Report accepting or rejecting the recommendations.

A major goal of the SRO and Employment Plan is to encourage the Recorder's Office to achieve Substantial Compliance so that federal court oversight can come to an end. The SRO recognizes that there may be violations. Therefore, the SRO and Employment Plan include procedures for identifying and addressing violations in a way that will prevent reoccurrence. When the Recorder refuses to address violations of the SRO and Employment Plan and refuses to hold Exempt senior staff accountable, Plaintiffs have no choice but to ask the Court to take action. As seen above, Plaintiffs waited to allow the Recorder and her senior staff every opportunity responsibly to address the findings of the OIIG, the RCA and the DOC.

Doing so was not unreasonable. It was exactly what the SRO and Employment Plan

contemplate would occur. But, in any case, there is no resulting prejudice to Respondents. For *laches* to arise prejudice must be "substantial." *Coilcraft, Inc. v. Inductor Warehouse, Inc.*, No. 98 C 0140, 2007 WL 2071991, at *10 (N.D. Ill. July 18, 2007) (Cole, Mag. J.), *adopted by Coilcraft, Inc. v. Inductors, Inc.,* 2007 WL 2728754 (N.D. Ill Sept. 13, 2007). Mr. Giles asserts that he has been prejudiced by having to defend against the Motion. Dkt. 4722, at 13. But that would be true whenever it was filed. The Recorder states that the Office would be "substantially prejudice[d]," but provides no explanation of how or why. Dkt. 4720, at 11. Mr. Michalowski fails to state how he would be prejudiced. They have not shown "substantial" prejudice.

III. Mr. Michalowski And Mr. Giles Can Be Held in Contempt as Individuals.

Respondents and the Recorder incorrectly argue that Respondents cannot be individually liable for violating the Court's Orders. Dkt. 4720, at 12-23; Dkt. 4722, at 13-14; Dkt. 4724 at 6-8. Under the plain language of Fed. R. Civ. P. 65(d)(2), not only is the Recorder's Office bound by the SRO and the Employment Plan, so are its "officers, agents, servants, employees, and attorneys" and "other persons who are in active concert or participation" with the Recorder's Office. Employees with actual notice of a court order such as the SRO and the Employment Plan can be held individually liable for violations. *See Cent. States, Se. & Sw. Areas Pension Fund v. Transcon Lines*, No. 90 C 1853, 1993 WL 116752, at *5 (N.D. Ill. Apr. 15, 1993) (citing *Feliciano v. Colon*, 704 F. Supp. 16, 19 (D.P.R. 1988)). Individual government employees who violate an injunction can also be held in contempt. *See Shakman v. Democratic Org. of Cook County*, 533 F.2d 344, 351-52 (7th Cir. 1976) (affirming contempt for City employee); *McBride v. Coleman*, 955 F.2d 571, 576 (8th Cir. 1992) (affirming contempt against two federal agency officials).

A court may impose sanctions for civil contempt "to coerce obedience to a court order." *Connolly v. J.T. Ventures*, 851 F.2d 930, 932 (7th Cir. 1988) (citing *United States v. United Mine*

Workers of America, 330 U.S. 258, 303-04 (1947)). A district court has broad discretion in imposing those sanctions. *Id.* at 933. For example, when individual officers or employees violate a court order imposing obligations on a corporation, courts can sanction the employees, not just the corporation. The Supreme Court has held that individuals responsible for the affairs of a corporation can be found in contempt for disobeying a known injunctive order:

> A command to the corporation is in effect a command to those who are officially responsible for the conduct of its affairs. If they, apprised of the writ directed to the corporation, prevent compliance or fail to take appropriate action within their power for the performance of the corporate duty, they, no less than the corporation itself, are guilty of disobedience and may be punished for contempt.

United States v. Fleischman, 339 U.S. 349, 357–58 (1950) (emphasis omitted) (internal quotation marks omitted). The same reasons apply here.

The cases cited by Respondents are not to the contrary. All involved a plaintiff suing to recover money damages for injuries caused to him or her, not motions seeking sanctions to induce obedience to court orders. *Hernandez v. O'Malley*, 98 F.3d 293 (7th Cir. 1996) (damages for wrongful termination); *McDonough v. City of Chi.*, No. 06 C 2732, 2008 WL 2309709, at *2 (N.D.Ill. June 2, 2008) (damages for demotion and reduction in pay); *Plotkin v. Ryan*, No. 99 C 53, 1999 WL 965718, at *4 (N.D.Ill. Sept. 28, 1999) (seeking "compensatory and punitive damages"). By contrast, the Motion seeks to enforce the terms of the SRO and the Employment Plan. Plaintiffs do not seek damages. Rather, they ask to have the individuals held in contempt and sanctioned by the Court to bring home to senior staff (and the Recorder) that compliance with the Court's orders is not optional. When the purpose of a contempt motion is to compel specific individuals to obey court orders, holding the individuals responsible is essential, as Rule 65 recognizes.

Mr. Michalowski and Mr. Giles cannot (and do not) claim lack of knowledge of the SRO or the Employment Plan. They were bound by these court orders. They are subject to

appropriate sanctions and additional injunctive relief.

IV. Respondents' factual arguments belong in their Answers to the Rule to Show Cause, not in unsworn objections. They are, in any case, contrary to the facts as reported by the RCA, OIIG and DOC. They warrant opening discovery.

Respondents provide inaccurate, and sometimes clearly false, unsworn responses to the findings of the OIIG, the DOC and the RCA on which the Motion is based. They should be required to file Answers to the Rule to Show Cause that Plaintiffs seek. The following factual defenses and arguments by Respondents ignore (and are contrary to) the actual findings by the OIIG and RCA. They also show why discovery is needed to prepare for an evidentiary hearing.

Mr. Michalowski. The Motion alleges that Mr. Michalowski protected politically connected employees from discipline, referring to Mr. Babatunde, Mr. Sloan and Ms. Tyson. Dkt. 4644, at 5-7. It also alleges that he retaliated against another employee, his executive assistant, for filing a complaint with the DOC. *Id.*, at 8. His factual response is a sleight-of-hand: He states that Plaintiffs refer to OIIG Report 13-0292 "to suggest that Michalowski violated the *Shakman* decree. However, OIIG '13' does not refer to Michalowsksi. . . . Therefore, Plaintiffs' motion for issuance of a show cause [order] should be denied." Dkt. 4724 at 2. Mr. Michalowski fails to point out that Report 13-0292 was the OIIG's *initial* report on violations by Mr. Babtunde involving, among other things, his political hiring of Mr. Sloan. *See* Report 13-0292 at 3-9, 21-23 (concluding that Babtunde hired Sloan because of political reasons). Plaintiffs' Motion, at 5-6, accused Mr. Michalowski of what happened next, for which it cited a subsequent IIG140408 Report, not the earlier report. The Motion stated:

> Mr. Michalowski protected Mr. Babatunde from charges that Mr. Babtunde provided false information to the OIIG and the RCA. For example, when the OIIG concluded that Mr. Babatunde had willfully provided false information in the investigation of the hiring of Proviso Township Trustee Don Sloan as his executive assistant, Mr. Michalowski conducted a "hearing" within 48 hours of the issuance of the OIIG Report. (Id. at 15.) He did not invite the OIIG to offer evidence or to rebut the testimony offered by Mr. Babatunde. The

hearing consisted of Mr. Michalowski asking Mr. Babatunde approximately 50 questions designed to elicit either blanket denials or exculpatory statements. (Id., at 15.) Mr. Michalowski heard no other testimony. (*Id.*, at 15.)

This allegation is supported by following statement in the cited IIG14-0408 Report, at 15:

> The OIIG Summary Report described above [13-0292] was issued on Wednesday, February 26, 2014. On Thursday, February 27, 2014, the Recorder issued an Incident Report to Director Babatunde. On Friday, February 28, 2014, the Recorder Labor Counsel [who was Mr. Michalowski] conducted a hearing on the issue whether Director Babatunde had provided false information to the OIIG. *The OIIG was not invited to offer evidence at this hearing in support of its findings or to rebut the testimony offered. Rather, the hearing consisted of Recorder Labor Counsel asking Director Babatunde approximately 50 questions designed to elicit either blanket denials or exculpatory statements from Director Babatunde.[13] [fn 13: This information was derived from the contemporaneous notes taken by the RCA monitor.] No other testimony was taken at the hearing to support or refute the specific findings of the OIIG Summary Report that Director Babatunde provided false information regarding the hire of his Executive Assistant.* The Recorder Labor Counsel later issued findings concluding that Director Babatunde had not willfully offered false information to the OIIG but rather had offered "inconsistent" information as a result of being intimidated by OIIG Investigators.[14] [fn 14: The Recorder Labor Counsel also recommended Mr. Sloan be disciplined for failing to provide information consistent with that offered by Director Babatunde.] The Recorder Labor Counsel rejected the OIIG recommendation of termination for Director Babatunde and instead recommended a suspension. [Italics added.]

The same IIG14-0408 Report states, at 20, n.18: “The RCA monitor report of the hearing details observations involving the Recorder Labor Counsel's attempts to signal Director Babatunde (by shaking his head while awaiting answers to questions) and at times appearing frustrated with Director Babatunde's answers.”

Mr. Michalowski states the portion of the Motion accusing him of conducting the white-wash hearing is “completely frivolous” because it seeks to hold him “liable for the actions of prior Labor Counsel.” Dkt. 4724 at 7. Not so. It was Mr. Michalowski, not prior labor counsel, who ran the white-wash hearing. This is confirmed by the Recorder, who wrote the OIIG on March 20, 2014 rejecting his recommendation to fire Mr. Babatunde. She attached the “Findings

and Recommendations of the Hearing Officer" dated March 7, 2014 signed by "Edmund P. Michalowski, Hearing Officer."

In responding to the charge in the Motion concerning his treatment of his executive assistant, Dkt. 4724 at 11, Mr. Michalowski fails to mention or respond to the DOC's request that he not file any charges against the employee while the DOC completed an investigation of the employee's charge that she was required to work outside her job title. He also fails to respond to the DOC's finding that he had retaliated against the executive assistant for filing the report and had provided false information to the DOC in the ensuing investigation. Dkt. 4644, at 8. Those are significant matters on which he is silent.

With regard to Mr. Giles. The Motion alleges that he followed the Recorder's directions to hire as his executive assistant an individual who was politically connected, and lied to the OIIG when it investigated the matter. Dkt. 4644, at 8-9. It also alleges that he participated in a pretextual firing of a non-exempt employee. It separately alleges that he violated the SRO by instructing employees not to inform the RCA of investigations so as to prevent monitoring. Dkt. 4644, at 10.

Mr. Giles' response to the claim of political hiring at the Recorder's behest is that he personally knew the individual he proposed to hire (as required to use the executive assistant hiring procedure in lieu of the competitive hiring procedures). He states that he and the Recorder would "occasionally see and talk to this person near the Daley Center" where she was an employee of the Circuit Court Clerk. Dkt. 4722 at 6. When the OIIG interviewed the candidate, however, she reported that she did not know Mr. Giles and met him for the first time after Recorder Yarborough called her and offered her the job as Mr. Giles' executive assistant. OIIG Report 13-0403 at 18-19. Mr. Giles abandoned the effort to hire this individual when she failed

to fill out necessary paperwork. He then hired someone else who he had met only once or twice. The OIIG concluded, at 29:

> Mr. Giles' initial selection of Ms. Yarbrough's social acquaintance to fill the position and the provision of false and misleading information designed to cover-up this and his decision to hire Ms. Williamson reflects as poorly on Mr. Giles individually as it does to the state of the Office of the Recorder's commitment to the Supplemental Relief Order. This evidence, along with the evidence revealing Ms. Yarbrough's behind the scenes efforts to select the Circuit Court employee establish that the Office of the Recorder has not demonstrated a capacity to properly administer direct appointment hiring protocols in good faith.

Mr. Giles' defense to the portion of the Motion alleging his involvement in the pretextual firing of the non-exempt employee (Mr. Christianson) is that he had virtually nothing to do with the events giving rise to the firing and was not named as a defendant in Christianson's subsequent lawsuit. Dkt. 4722 at 5. He leaves out Christianson's allegation that because he was not politically connected Mr. Giles falsely prepared an incident report and negative evaluation of him at the request of Recorder Yarbrough. *Christianson v. Yarbrough,* No 14-cv-7363 Dkt 37, Amended Complt ¶¶ 23-27. The OIIG conducted an extensive investigation, interviewed Mr. Giles, asked about his evaluation of Mr. Christianson, as well as evaluations by others, and concluded that Christianson's "alleged performance issues were a pretext to disguise the political factors involved in the decisions relating to Mr. Christianson." IIG13-0176 Report, at 26.[2]

With regard to the allegations of the Motion concerning Mr. Giles instructing employees not to inform the RCA of investigations so as to prevent monitoring, he states that "he never directed the Director of Security not to notify the RCA or not to cooperate on matters . . ." Dkt.

[2]Most of the OIIG's findings focused on Recorder Yarbrough and her former campaign manager, Deputy Recorder William Velazquez. The OIIG concluded: "Recorder Yarbrough's pretextual termination of Mr. Christianson shortly after she took office was a continuation of the original *Shakman* violation where she, along with Mr. Velazquez, attempted to block his hire." Report 13-0176 at 26.

4722 at 9. The RCA stated exactly the opposite in her Ninth Report [Dkt. 3616, at 27-28]. She directly attributes the admission of obstruction to Mr. Giles: "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."

Conclusion

The foregoing reflects that the Recorder's senior staff, Mr. Giles and Mr. Michalowski, will not voluntarily comply with the SRO and this Court's other orders and have taken steps to impede compliance and investigation of violations. Unfortunately, coercive sanctions are needed to persuade them that court orders must be obeyed. The false and inaccurate statements in the Respondents' briefs, and their direct denials of the RCA's and OIIG's findings (such as Mr. Giles' denial of his admission to the RCA noted in the preceding paragraph), underscore the need to issue the Rule to Show Cause and to authorize the discovery so that a proper evidentiary record can be made at a hearing on the Rule.[3]

Dated: September 27, 2016

Respectfully submitted,

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[3] "A federal civil contempt proceeding is a civil proceeding governed by the rules of civil procedure. . . . Those rules entitle a party to an evidentiary hearing [] if there are genuine issues of material fact." *In re Grand Jury Proceedings Empanelled May 1988*, 894 F.2d 881, 882–83 (7th Cir. 1989). That principle applies both to Plaintiffs and Respondents.

Certificate of Service

I, Brian I. Hays, an attorney, state that on September 27, 2016, I caused a true and correct copy of the foregoing to be served via e-filing upon all counsel of record.

____/s/ Brian I. Hays___

EXHIBIT
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1 IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
2 EASTERN DIVISION

3 MICHAEL L. SHAKMAN, et al.,) Docket No. 69 C 2145
)
4 Plaintiffs,) Chicago, Illinois
) October 22, 2014
5 v.) 9:35 a.m.
)
6 COOK COUNTY ASSESSOR, et al.,)
)
7 Defendants.)

8
TRANSCRIPT OF PROCEEDINGS - Motion Hearing
9 BEFORE THE HONORABLE SIDNEY I. SCHENKIER

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1 (In open court.)
2 THE CLERK: 69 C 2145, Shakman, et al. vs. Cook County
3 Democratic, et al., status.
4 THE COURT: Good morning.
5 MR. FELDMAN: Good morning, Judge. Edward Feldman for
6 the plaintiffs with Mr. Shakman. Not Mr. Hayes, excuse me.
7 MR. STRATTON: Good morning, your Honor. Brent
8 Stratton from the Attorney General's Office for the defendants.
9 MR. MACDONALD: Neil MacDonald for the Attorney
10 General's Office on behalf of amicus OEIG.
11 THE COURT: Good morning, everyone. I didn't bring
12 out into the courtroom the various filings because the
13 wheelbarrow that we use for those voluminous filings was in use
14 in another courtroom. But I have gone through all those
15 materials.
16 Is there anything that anybody feels it's important to
17 add to what's in the record?
18 MR. STRATTON: Your Honor, I guess I would like to
19 point out a couple of things, since the surreply was kind of
20 the first that we heard from plaintiffs regarding the OEIG and
21 kind of what its role is and could be. And I think there are
22 some inaccuracies in there at least that I'd like to point out.
23 In broad strokes, I think plaintiffs kind of elevate
24 form over substance with respect to their criticisms of the
25 OEIG. They point out, well, the OEIG wouldn't, couldn't do

1 things, hasn't done things the way a monitor would do, but
2 reality -- in reality in substance, that's exactly what the
3 OEIG can do, could do, has done.
4 So I think if you go through our surresponse, if you
5 go through what the OEIG filed as an amicus, you will see that
6 that's exactly -- and it derives from their statutory
7 authority. And it's not just to do investigations of -- that
8 are prompted by a specific complaint, although they do those.
9 They have the ability to initiate reviews of all hiring, all
10 employment files for all agencies under the governor.
11 And so that is as broad of an authority as you could
12 have. And that then leads to some of the other things that
13 they could do, have done. They can counsel, contrary to what
14 plaintiffs say. They can make recommendations. They do
15 identify causes. They do identify and recommend long-term
16 solutions.
17 In this case, I think a very good example they made
18 more than a dozen recommendations. The governor's office
19 adopted all of them, implemented all of them, implemented more
20 than just those, have taken those recommendations beyond IDOT,
21 which was the primary focus of this particular investigation,
22 into an audit of all agencies' Rutan positions.
23 So, you know, and obviously you have a lawyer for the
24 OEIG here, and if you wanted to direct questions to them, they
25 certainly could answer them as well. But I think in broad

1 strokes, that's the role that the OEIG could play. It's an
2 option that frankly your Honor did not have when it was faced
3 with appointing a monitor for the city, the county, the sheriff
4 and the forest preserve.
5 Here we have a standalone, independent agency funded
6 by taxpayer money, so it's already being paid for, 75
7 employees. They're doing exactly this kind of work. So we
8 think at least that counsels against appointing a monitor at
9 this point with respect to the plaintiffs' motion.
10 MR. SHAKMAN: I don't think we want to rehash what
11 we've said. I don't think it will be productive to rehash what
12 we've said in our, as you pointed out, voluminous filings. We
13 have nothing against the Inspector General. As we said, the
14 Inspector General can play a role in cleaning up a problem in
15 state or local government, and that's great.
16 The only thing new that I heard from Mr. Stratton was
17 that we say the IG can't provide counsel, and he says the IG
18 can provide counsel. If that's true, that's also great. It
19 didn't happen in this instance. We point out in our brief that
20 the IDOT secretary at the time, Mr. Hannig, asked for meetings
21 with the OEIG, and they were declined. So in this instance,
22 years went by between that request and the OEIG's report.
23 But other than that, I think we've really canvassed
24 this issue. It would be unproductive to have an oral argument
25 on the merits or demerits of the OEIG. Our point is not that

1 the OEIG doesn't do a good job and can't do a good job.
2 It's that the problems presented by patronage really
3 require, under a Court order that the Court's enforcing, really
4 require somebody reporting to the Court who is an agent of the
5 Court. And you know as well as we do how effective that's been
6 in other circumstances. Our view is it would be equally
7 effective here.
8 THE COURT: All right. Anything else?
9 MR. MACDONALD: On behalf of the Inspector General, I
10 would say I agree with the parties. There are things about
11 that Mr. Stratton has said and also counsel for plaintiffs have
12 said.
13 It's true that there are limits, statutory limits on
14 the range of OEIG's conduct, but they're very broad and
15 they're, particularly in this context, in the Rutan context,
16 identified specifically.
17 As to the independence of the office -- and that is
18 the only thing I'll raise -- I don't -- they're statutorily
19 independent from the governor's office, and I think anybody
20 who's ever met the Inspector General would not reasonably
21 contest his independence.
22 THE COURT: And I have and I don't. I have and I
23 don't.
24 All right. Well, this particular round of briefing
25 commenced back in April of this year when the plaintiffs filed

1 an amended motion for entry of supplemental relief that seeks
2 relief based on the May 5th, 1972, consent judgment entered in
3 the case.
4 Now, that motion has been narrowed, I think, and
5 focused through the extensive briefing by the parties that I've
6 alluded to through the issuance of the report by the Office of
7 the Executive Inspector General. I think I'll just say
8 "Inspector General." It's less of a mouthful. Is that okay?
9 MR. MACDONALD: Absolutely.
10 THE COURT: Of its investigation into certain
11 employment practices of IDOT. The amicus briefs submitted by
12 the Inspector General -- and I joked about the length of the
13 briefing, but as I've said many times to parties, I don't
14 really mind long briefing.
15 What I mind is unproductive briefing, and I think here
16 the briefing was long, but productive. Because it did really,
17 I think, focus the issues that I have to address.
18 And so I really do thank the parties and amicus for
19 the real professional way in which you approached this, as
20 evidenced by the fact that you were sitting at the same table
21 when I came in.
22 MR. SHAKMAN: We get along, Judge.
23 THE COURT: So plaintiffs ask that I appoint an
24 officer to conduct an investigation in the wake of the evidence
25 that was related in the OEIG report, Inspector General report,

1 at IDOT regarding the use of staff assistant positions that
2 were labeled as exempt, meaning that partisan political
3 considerations could be used in determining who would receive
4 those positions. But that, in fact, the people who went into
5 the positions performed job duties that largely or exclusively
6 fell into the category of non-exempt positions, meaning that
7 the people who filled jobs of that character had to be selected
8 without regard to partisan political considerations.
9 As detailed in the Inspector General's report, some of
10 those people who obtained staff positions already were employed
11 at the Department of Transportation. Others were hired into
12 the positions from outside IDOT, and then later formally
13 obtained non-exempt positions through transfers or an
14 application process.
15 And according to the Inspector General report, some of
16 the people who were hired into the staff assistant positions
17 but who actually performed non-exempt work, had partisan
18 political connections.
19 Now, the plaintiffs, as they have repeated this
20 morning, say that this conduct violates the 1972 consent
21 decree. Under that decree, IDOT is prohibited from
22 conditioning, basing or knowingly prejudicing or affecting any
23 term or aspect of governmental employment with respect to one
24 who is at the time already a governmental employee, a part or
25 the cause of any political reason or factor.

1 Now, the Court retained jurisdiction under that 1972
2 decree to enforce that prohibition and to address violations of
3 it. The Court also retained jurisdiction to allow the parties
4 to litigate the question of which job positions properly are
5 exempt from that prohibition, meaning that political
6 considerations could be used in filling new positions.
7 Plaintiffs asked that a Court-appointed officer, a
8 special master investigate the scope of any violation of the
9 1972 decree, recommend appropriate remedial action and oversee
10 and assess any actions to assure that they are effective to
11 prevent future recurrence.
12 In addition to seeking the appointment of a special
13 master, plaintiffs asked the Court to authorize them to conduct
14 discovery to determine whether violations of the decree also
15 have occurred outside of IDOT.
16 Defendant opposes the appointment of a special master
17 and the request for discovery. Based on my review of the
18 material submitted and for the reasons that I'm going to
19 explain in a moment, I agree that a special master should be
20 appointed to address the issues in plaintiffs' motion
21 concerning IDOT. I disagree that the discovery plaintiffs seek
22 is warranted at this time.
23 I want to start with a couple jurisdiction or
24 procedural questions. One is whether the defendants' motion is
25 a timely one. That issue has been addressed in the briefing,

1 and I do find that the motion -- the amended motion is timely.
2 An argument has been raised that the motion is untimely based
3 on the proposition that borrowing from a requirement under
4 Title VII law, plaintiffs were required to raise their request
5 within 180 days of the alleged conduct, but here did not do so.
6 That argument is based on *Smith vs. City of Chicago*,
7 769 F.2d 408, a 7th Circuit decision from 1985, which applied a
8 180-day limitations period to a plaintiff by an individual
9 employee for relief for an alleged violation of the decree.
10 Unlike the case in *Smith*, here we are not dealing with
11 an individual employee arguing that he or she was the victim of
12 a particular instance of discrimination based on political
13 considerations. This instead is a motion brought by the
14 Shakman plaintiffs alleging noncompliance with the 1972 decree
15 and invoking the Court's jurisdiction to enforce its orders.
16 I don't consider the Court's authority to enforce its
17 own order as turning on whether requests for the enforcement is
18 made within 180 days of the alleged noncompliance. Now,
19 despite the absence of a strict requirement to bring the motion
20 within 180 days, I also consider the question of whether
21 plaintiffs' request is barred by the doctrine of laches, which
22 prohibits a plaintiff from unreasonably delaying in pursuing a
23 claim when that results in a defendant being prejudiced due to
24 the passage of time, such as by witnesses or other evidence no
25 longer being available or by a defendant engaging in a course

1 of conduct in reasonable reliance on the plaintiffs' inaction.
2 Here I find that the plaintiffs have not unreasonably
3 delayed in bringing the amended motion. I note that the
4 amended motion is a follow-on to a motion that was filed in
5 December of 2009, a motion that provided notice that the
6 plaintiffs were concerned that violations of the decree had
7 occurred.
8 Plaintiffs and the Court stayed their hand in acting
9 until further evidence of violations were cited in a UGA report
10 in August of 2013, which led ultimately to the amended motion
11 in April of 2014. And the recently filed Inspector General
12 report provided further information that was not previously
13 available to the plaintiffs.
14 So given that timeline of events, I don't believe that
15 there's been unreasonable delay here by the plaintiffs. I also
16 find that there's been no prejudice to the defendant to IDOT in
17 the timing of the motion.
18 As I said, the plaintiffs raised concerns by filing an
19 original motion in December of 2009. That, of course, was
20 sufficient to provide notice that plaintiffs believed that
21 there may be violations of the decree, and thus that IDOT could
22 not have reasonably relied on plaintiffs' subsequent
23 forbearance, which in fairness was at the request of the
24 defendant, as a basis to engage in conduct that could violate
25 the decree.

1 Indeed, even in the absence of action by the
2 plaintiffs, IDOT had an obligation to follow the terms of the
3 decree. So we see no prejudice to defendant in terms of lost
4 witnesses or other evidence. The Inspector General report
5 shows that there remains an ability to investigate fully what
6 occurred, the reasons for it and to shape appropriate remedial
7 action. So for those reasons, I conclude that the plaintiffs'
8 motion is not time-barred.
9 An issue also has been raised about the Court's
10 authority to address what's been raised in the motion under the
11 1972 consent decree because the 1972 consent decree does not
12 cover hire. And the plaintiffs agree that the 1972 decree does
13 not govern hiring practices, and they disclaim any attempt to
14 seek a remedy for hiring violations.
15 They say that their target is -- and I'm quoting from
16 their reply at page 4 -- "post hiring practices regarding
17 transfers, assignments, classifications and promotions," which
18 they say are clearly within the scope of the decree. And I
19 agree that those matters are within the scope of the decree.
20 The decree enjoins the conditioning, basing or
21 knowingly prejudicing or affecting any term or aspect of
22 governmental employment with respect to one who is at the time
23 already a governmental employee upon or because of any
24 political reason or factor.
25 The Inspector General report in this matter says that

1 there were at least 14 employees who were hired into staff
2 assistant positions that were labeled as exempt, and at a later
3 time transferred into non-exempt positions without the use of a
4 competitive process where others could have had a chance to get
5 those positions.
6 Three other employees who were performing non-exempt
7 job duties while staff assistants then competed for and
8 obtained non-exempt positions, which, of course, leads to the
9 possibility that their experience gained while nominally in an
10 exempt position gave them a leg up on others who were
11 unsuccessful in obtaining non-exempt positions.
12 At least 22 people who already held some position at
13 IDOT subsequently obtained a position as an exempt staff
14 assistant, but performed non-exempt work. And that leads to
15 the possibility that other existing employees were deprived of
16 a fair opportunity to obtain jobs that should have been labeled
17 as non-exempt.
18 The Inspector General report also -- and I quote here
19 from the amicus brief at page 10 -- "found evidence that some
20 of the staff assistants were hired based on political
21 affiliation." The report found that some 50 people who were
22 hired in the staff positions had known political affiliation
23 with elected officials, and that's recounted at pages 198 and
24 199 of the report.
25 The report rejected the IDOT explanation that it used

1 the staff assistant position to hire people to perform
2 non-exempt work due to a need for rapid hiring outside the
3 normal processes for hiring people into non-exempt positions.
4 The report concluded that the explanation was not a
5 viable one because IDOT had -- and I quote from the report at
6 page 203 -- "existing legitimate mechanisms at its disposal to
7 hire persons on an emergency or temporary basis."
8 That, of course, raises the question of why IDOT used
9 the nominally exempt staff position to hire many people and
10 many who had political affiliation to perform non-exempt work.
11 And that persuades me that there is jurisdiction under the
12 decree to determine the extent to which political
13 considerations may have improperly affected the terms and
14 conditions of existing employees. And if so, and if so, to
15 determine what remedial measures may be in order.
16 Now, under the decree, the Court also retained
17 jurisdiction to address disputes about whether particular job
18 positions are legitimately exempt. That is, whether political
19 considerations may be used in deciding who is to fill them.
20 We recognize that there are administrative orders that
21 were put into place long ago to govern the process of
22 determining which positions are exempt and that various
23 judicial decisions have relied on those processes, and the
24 response at page 18 recounts all of that.
25 But then when we look at the Inspector General report,

1 what it says is that that process, which we are not generally
2 calling into question, broke down at the Department of
3 Transportation. The report found that staff assistant job
4 descriptions -- and I'm quoting from the report at page 202 --
5 "are and have been systematically unreliable."
6 The staff assistant position was labeled as exempt,
7 and that allowed IDOT to operate outside the employment process
8 that normally would be used to fill a non-exempt position. And
9 that means that the positions were filled without the
10 safeguards in place to ensure that political considerations
11 would not be used.
12 The OIG report also makes clear that the people who
13 fill the staff assistant positions, in fact, did not generally
14 perform exempt duties, and largely and in some cases
15 exclusively performed non-exempt duties. In these
16 circumstances, I find that there is authority under the 1972
17 decree to address the plaintiffs' concerns about whether
18 positions in IDOT labeled as exempt truly were and are exempt.
19 Now, I want to turn, having addressed those matters,
20 to the appointment of a special master. Under Federal Rule of
21 Civil Procedure 53 and the Court's equitable powers, I have the
22 authority to appoint a special master, among other things to
23 assess compliance with the decree. And for that I cite *People*
24 *Who Care vs. Rockford Board of Education School District*
25 *No. 205*, 89 C 20168 1991 Westlaw 166960 at 1, a Northern

1 District of Illinois decision January 14th, 1991.
2 Given the information that I have summarized -- and
3 I've summarized from a much more voluminous record -- that has
4 been developed to date, I find that it is appropriate to
5 exercise that authority here. And in making that
6 determination, I want to emphasize that that is not intended as
7 and should not be interpreted as a criticism in any way of the
8 extensive investigative work conducted by the Inspector
9 General.
10 That work was extensive. It sheds important light
11 into events at IDOT and offers many recommendations that I
12 think are helpful. But the Inspector General's work in my
13 judgment does not eliminate the need for the Court to take
14 action to ascertain the extent of any violation of its order,
15 the 1972 decree, and what steps are necessary to ensure that
16 that decree will be followed in the future. And that function
17 is best carried out by an officer who is appointed by the Court
18 who is acting under the auspices of the Court.
19 In appointing a special master, I am also mindful of
20 the actions that have been taken that have been referred to
21 today by Mr. Stratton in response to the recommendations in the
22 Inspector General's report. My appointment of a special master
23 is not a criticism of those actions.
24 But given the history of what is in the Inspector
25 General's report, I again conclude that compliance with the

1 decree is best served by having a transparent process in which
2 an agent of the Court is involved in further investigating the
3 scope and reason for what occurred, recommending the measures
4 that may be necessary to prevent any recurrence and then in
5 assessing the implementation of those efforts to ensure that
6 they are effective.
7 A special master performing those very targeted
8 functions will not usurp the responsibilities of officials to
9 run the affairs of IDOT, but rather will help ensure that
10 IDOT's employment practices comply with the requirements of the
11 decree.
12 One of the issues that's been raised -- not so much
13 today, but in the pleadings, so I'll mention it briefly -- is
14 that a Court-appointed officer isn't necessary because any of
15 the issues that are raised by the plaintiffs' motion can be
16 addressed by the Court without assistance. And one of the
17 considerations in appointing a special master is whether the
18 Court basically needs the horsepower to get something done.
19 I think that when you look at the kind of work that
20 was done by the Inspector General, the length of that
21 investigation, the number of people it took to conduct the
22 investigation, the length of time it took, I think it's plain
23 that the Court is not, on its own, able to perform that kind of
24 function.
25 The Court, on its own, plainly is not in a position to

1 place boots on the ground to do an investigation of what may
2 have happened at IDOT or to determine on its own what actions
3 should be taken or to assess on its own the implementation and
4 effectiveness of actions that are taken.
5 In our system, judges are not the people who uncover
6 and assemble the evidence. We consider the evidence that is
7 presented to us. And that assembly and presentation of
8 evidence is generally done by attorneys as part of an
9 adversarial litigation process.
10 I don't consider that to be the best course in a
11 situation like this. My experience is that more progress is
12 made in achieving what we are all interested in, and that is
13 compliance with the decree. When the process is not an
14 adversarial one, but instead is one that is shepherded through
15 the efforts of a Court-appointed officer working through a
16 well-defined mandate that is developed with the input of the
17 parties.
18 So with that explanation, I'm granting the request for
19 a special master. I would like the parties to confer about an
20 order of appointment that sets forth the mandate for the
21 special master consistent with my ruling today.
22 I'm happy to work with the parties to do that. I'm
23 happy to review what the parties may submit jointly if they
24 have agreement or in respect to proposals if they disagree. So
25 I'm open to your suggestions about the best way to do that.

1 MR. SHAKMAN: Thank you.
2 THE COURT: So let me, before I get your comments on
3 that, say wait till the last piece where I won't be as
4 long-winded. And that is the plaintiffs' request for
5 discovery, which I'm going to deny at this time without
6 prejudice.
7 In looking at the discovery request, much of what the
8 plaintiffs seek in my judgment overlaps with the investigation
9 that I would expect would be performed by the special master.
10 And to the extent that it sweeps more broadly, I don't think
11 that there's a sufficient basis to embark on it at this time.
12 So I want to focus on the activity of the special master.
13 So with respect to an order of appointment, what would
14 you all think would be a good approach to doing that? Do you
15 want to submit something and then we can sit down and go
16 through it?
17 MR. SHAKMAN: I think that's a good suggestion, Judge,
18 and we'll draft something up and send it over to Mr. Stratton
19 and give him a reasonable time, as long as perhaps 12 hours or
20 so, to respond. And if he asks for an extension, I'm sure
21 we'll grant it. I have a question, though, and that is --
22 THE COURT: Yes.
23 MR. SHAKMAN: -- I'm not clear from your ruling
24 whether you want us to address as well whether we can agree on
25 a candidate to serve as special master or whether you wish to

1 retain that for your own discriminatory --
2 THE COURT: I have one in mind, which I would like to
3 discuss with the parties. But I'd kind of like to do that in
4 camera, and I'm happy to do that whenever you'd like.
5 MR. SHAKMAN: Well, I'd like to do it in the next 10
6 minutes.
7 THE COURT: All right.
8 MR. SHAKMAN: Because it will affect --
9 THE COURT: Your time frames are getting shorter as we
10 speak.
11 MR. SHAKMAN: Well, not to pull my punches, but it
12 affects how much detail --
13 THE COURT: I understand.
14 MR. SHAKMAN: -- one has to generate in a written
15 document if you know who you're dealing with.
16 THE COURT: That's fair. So why don't we do this:
17 Unless there's anything else that we need to discuss out here,
18 we can adjourn to chambers for a moment, and I can discuss with
19 you those matters. All right?
20 MR. FELDMAN: Thank you.
21 THE COURT: I don't think we need amicus for that
22 function, but I do want to thank you for your participation
23 which has been helpful to the Court.
24 MR. MACDONALD: Thank you, Judge.
25 THE COURT: I'm sorry, we have ...

1 MR. MACDONALD: Your Honor --
2 THE COURT: Yes.
3 MR. MACDONALD: Here's the issue. To the extent --
4 it's unknown at this point, but to the extent that discovery or
5 the special master's work involves requests or for information
6 that was generated by the Inspector General, we have statutory
7 confidentiality issues. And so to that extent, it may be
8 prudent for us to be involved, at least as a spectator in the
9 process, if not an active participant. That remains to be
10 seen. But as a matter of statutory obligations and duties, I
11 think we do have a dog in the fight, so to speak.
12 THE COURT: Okay. Well, I guess what I intend to do
13 in the next now five minutes --
14 MR. SHAKMAN: Judge, your time is our time.
15 THE COURT: -- probably doesn't get to that level of
16 detail. But I think that it's good that you've made that issue
17 known, so perhaps the parties would find it useful to consult
18 with you in terms of their vision of how the special master
19 would operate.
20 And then when I meet, I'm happy to have a meet -- to
21 attend that meeting, if nobody has objection.
22 MR. SHAKMAN: Plaintiffs don't object.
23 MR. STRATTON: No objection, Judge.
24 MR. MACDONALD: Thank you.
25 THE COURT: Thanks very much. We are adjourned.

1 (Concluded at 10:05 a.m.)

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3 C E R T I F I C A T E

4 I certify that the foregoing is a correct transcript of the

5 record of proceedings in the above-entitled matter.

6

7 */s/ LISA H. BREITER* *October 22, 2014*

LISA H. BREITER, CSR, RMR, CRR

8 Official Court Reporter

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