

**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.)	

**FIFTEENTH 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 Fifteenth Report as follows:

I. Introduction

On December 15, 2016, the RCA filed her Fourteenth Report to the Court (“Fourteenth Report”) (Dkt. 4818) in which she discussed the Cook County Recorder of Deeds² Karen Yarbrough’s efforts to comply with the SRO. Since the Fourteenth Report, any efforts by Recorder employees to comply with the SRO, Employment Plan (the “Plan”) or the Policies and Procedures Manual (the “Manual”) have been overshadowed

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.

by several negative developments including: a sustained finding of unlawful political discrimination (“UPD”) by the Office of the Independent Inspector General (“OIIG”) implicating the Recorder herself; the resignation of the Director of Compliance (“DOC”) which was followed up by a DOC hiring process stopped before completion by the Interim DOC/RCA due to transparency and conflict of interest concerns; the continued involvement by Labor Counsel into day-to-day human resource issues that should have subsided with the Chief of the Human Resources Division’s (“HRD”) hire a year ago; the termination of the Director of HRD who the RCA believed was bringing much-needed consistency to the application of the ROD’s policies and procedures; continued delays by HRD in providing the RCA with requested documents and information; and several other compliance-related issues. Below are updates on these and other issues concerning the Recorder’s progress toward Substantial Compliance³ with the SRO.

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

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.

identify instances of non-compliance. In her Fourteenth Report, the RCA encouraged the Recorder to focus on two issues concerning this prong of Substantial Compliance: “(1) ensuring that all Non-Exempt hiring processes are conducted in such a manner consistent with the Plan that forecloses any reasonable appearance of impropriety and (2) helping the DOC gain the trust of all employees by ensuring he maintain the necessary independence – both in appearance and actuality – in his dealings with the Recorder and her Exempt staff.” Fourteenth Report at 3. Unfortunately, as explained further below, members of the Recorder’s senior staff, including the Chief of HRD and former DOC, engaged in conduct that crippled the Recorder’s ability to achieve these and other goals.

1. Human Resources

A chronic problem that has hampered any serious ability for the ROD to achieve Substantial Compliance has been the lack of a strong, independent, professional human resources department that can effectively implement the Plan and Manual. *See, e.g.*, RCA’s Second Report at 17 (filed on April 15, 2011) (Dkt. 2179). The RCA was hopeful that this problem finally would abate with the hiring of the Chief of HRD in April 2016. At first blush, the Chief of HRD seemed to be a strong leader who recognized the problems he inherited and was focused on addressing them swiftly and effectively. Over the past several months, however, the Chief has not fulfilled those promises.

a. *Concerns with DOC Hiring Process*

On February 6, 2017, the Recorder posted the Director of Compliance position following the announced resignation of her then-current DOC. In light of the critical function the DOC must play in the Office, including identifying possible instances of UPD by all employees including Exempt staff, Candidates are asked to identify whether

and the extent to which they have affiliations with senior-level ROD employees if such affiliation gives the appearance of partiality. ROD employees slated to serve on interview panels for Candidates similarly must recuse themselves from the process for any Candidate with whom they have such an affiliation.

On February 17, the ROD assured the RCA that no member of either panels would participate in HRD's process of validating the qualifications of Applicants to move forward in the process. On February 24, the ROD proposed the Chief of HRD to be on the Interview Panel. Despite the earlier assurance, the Chief of HRD subsequently participated in the validation process in late February 2017. At no time during that process did he indicate that he knew one of the Applicants. In fact, the Chief did not disclose that fact until fifty minutes before he was scheduled to participate in Candidate interviews on March 21 (over three weeks after he likely would have seen the Applicant's name during validations) at which time he recused himself from part of the process.

The RCA was alarmed not only at the Chief's lack of transparency, but that not a single member of the Recorder's senior staff with knowledge of the issue took the initiative to require an investigation into the nature and extent of the Chief's affiliation with the Candidate. As the RCA is currently also serving in the capacity of Interim DOC, she asked the Recorder's Office to halt the completion of the hiring process so that she could look further into the matter. The RCA/Interim DOC's investigation is complete and she anticipates submitting her report to the Recorder shortly.

b. *Continued HRD leadership and independence concerns*

Labor Counsel, who has been found by the former DOC and OIIG to have violated the Plan (see Thirteenth Report at 9) and SRO (see *id.* at 14) and is the subject of

a pending Motion for Rule to Show Cause by Plaintiffs (see Dkt. 4644 (filed July 29, 2016)), continues to expand his influence in human resource matters. He essentially has taken over handling most Employment Actions related to union employees (the vast majority of employees in the Office) as well as several concerning non-union employees. Labor Counsel's deep level of operational (not legal) involvement in the day-to-day matters of human resources is contrary to representations made by the ROD regarding the strength and independence of HRD. The RCA sincerely hopes that the Chief will re-assert himself and reclaim matters that are vested with HRD to help ensure consistent application of policies in the Office.

c. Termination of the Director of HRD

In the Fourteenth Report, the RCA described having concerns with the Chief of HRD's actions during the hiring process for the Director of HRD. Fourteenth Report at 4-6. While the Chief of HRD had initially explained to the RCA and Plaintiffs the need for a Director of HRD to take over various high-level HR matters and policies, it was not until after the new Job Description was approved by the Plaintiffs and RCA, the Position was posted, and the Candidates were validated, interviewed and scored, that the Chief of HRD changed his perspective on the Position and instead explained that he was looking for a "worker bee". *Id.* Consequently, the Chief of HRD elevated the third-highest scoring Candidate to be ranked first and the Recorder approved of the hire without question. *Id.* at 6. The process that resulted in the Director of HRD's hire was concerning in light of the Chief of HRD's lack of transparency. Those same concerns only continued after the hire.

In the Director of HRD's four-and-a-half months at the ROD, she largely received

very positive written feedback from the Chief of HRD on her work performance. For example, two months into her employment, the Chief of HRD characterized the Director as having “exceptional work ethic”, being “well respected by both peers and superiors,” and lauded her for “rais[ing] important issues for the Administration to follow up on.” The RCA too saw the Director exhibiting these traits and found her to be confident in her abilities and intent on ensuring the employment policies in the Plan and Manual were implemented consistently. As described further below, the Director took the lead on fixing many of the issues with the performance evaluation process for employees who bumped into new positions last December. See below at 11-12. The Director also attempted to ensure Non-Exempt employees of all levels were equally subject to the office’s time and attendance policies. The RCA found the Director to be interested in addressing many of the issues the RCA had raised in prior reports – including inconsistent application of the ROD’s policies – and was open about her desire to assist with the updating of Job Descriptions. While the Chief of HRD may have decided during the Selection Meeting that he only wanted a “worker bee,” what he got was someone capable of both hard work and vision. Unfortunately, the Chief of HRD terminated the Director’s employment just over 140 days after it began, despite having given the Director good written performance evaluations. The Chief provided the Director very little explanation for her discharge other than explaining that she was at-will and still within her probationary period (under the Manual it runs for 180 days). The RCA/Interim DOC hopes to gain clarity on why the Director’s employment was terminated and will provide an update in her future report.

d. *Updating the Plan and Manual*

Updating of the Recorder's Plan and Manual are long overdue. The RCA and Plaintiffs provided the Recorder draft edits to the Plan on January 27, 2017 and received edits back from the Recorder's Office on April 20, 2017. The RCA provided draft updates for the first half of the Manual on March 3, 2017 and acknowledges that she has yet to provide comments on the remaining half of the Manual but kept the Recorder's Chief Legal Counsel apprised of her delays on this task. The RCA endeavors to provide those edits by mid-May 2017.

e. *Updating Job Descriptions*

Having updated and accurate Job Descriptions is required in the Plan (see Plan § IV.I) and for many years the RCA has remarked on the Recorder's need to update Job Descriptions utilized in her office. See, for example, Fourteenth Report at 6; Tenth Report (Dkt. 3759) at 8 (filed May 2, 2014). The former DOC and former Director of HRD prepared a report that analyzed which Job Descriptions needed updating. Further conversations with the former DOC revealed that he believed all Job Descriptions would benefit from detailed review. The RCA had hoped that such review via Desk Audits would have been completed by now as not having them updated is a technical violation of the Recorder's Plan. On April 21, 2017 as the RCA was preparing this report for filing, the Chief of HRD provided a draft Job Description update plan that the RCA will review and discuss with the ROD in the near future.

f. *Do Not Rehire Policy Implementation*

On August 19, 2016, this Court entered an Order amending the Plan's section concerning the "Do Not Rehire Without Further Consideration List" ("DNR Policy").

See Dkt. 4687. The amended DNR Policy articulated the ways in which a former employee will be placed on the List and explained the process by which someone may appeal their placement on the List. Just prior to the Fourteenth Report, the Recorder's Chief Legal Counsel provided notice to the four former employees who will be placed on the List barring any successful appeal as permitted in Plan § IV.Q. None of the employees requested an appeal.

2. Director of Compliance

For the third time in less than two years, the Recorder is searching for a new Director of Compliance. On February 24, 2017, the DOC, Thomas McMahon, resigned from the Recorder's Office. The RCA had a complicated relationship at times with the former DOC but appreciated his increasing willingness to collaborate with the RCA and help resolve problematic Employment Actions such as the recent performance evaluations for union employees.

For the past several reports, the RCA has written about how vital it is for the DOC to show employees that they can trust the DOC to be neutral and to effectively and thoroughly investigate any alleged violations of the Plan or Manual. See, for example, Fourteenth Report at 8. The RCA had significant concerns with the DOC's ability to earn this trust in part given his consistent socialization with Exempt employees as well as the OIIG's finding that the Recorder and DOC violated the SRO's requirement the DOC be free from any appearance of impropriety when they jointly attended a community event.⁴

⁴ In this Summary Report 16-0179, the OIIG concluded that while the Recorder's and DOC's joint attendance of ribbon cutting event at St. Bernard's Hospital did not rise to the level of a "political event" under the Manual, "such community events are also unquestionably political opportunities, at least in part, as evidenced by [the Recorder's] attendance, as opposed to [her] community outreach staff, and the other elected officials attending." IG16-0179 at 4. The OIIG concluded that the failure of the Recorder and

Id. at 8-10. The RCA provided the DOC considerable advice on the issue of neutrality and earning employee trust, yet the DOC continued to socialize with the Exempt staff well past the OIIG's above sustained finding and up until his last days at the Recorder's Office. The result of this open fraternization was that many Recorder employees repeatedly informed the RCA that they were not comfortable bringing issues to the DOC for fear he would not maintain the appropriate level of confidentiality. Even if those perceptions were inaccurate, they could have been mitigated if either the Recorder or her senior staff had insisted that these employees alter their conduct.

Effective the date the former DOC left employment with the Recorder, this Court appointed the RCA to serve as the Interim DOC pending hire of a replacement. See Dkt. 4900 (filed Feb. 17, 2017). Since this appointment took effect, the RCA as Interim DOC has received numerous complaints of alleged violations of the Plan and Manual. The RCA/Interim DOC has been working diligently to review and investigate these allegations and will include details of these in her next report.

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 ROD. Since the Fourteenth Report, the RCA has monitored several Employment Actions but will only report here on two not otherwise discussed in this report: the troubling performance evaluation process of a promoted employee that ultimately resulted in a Demotion and continued concerns related to the recent Layoffs.

a. *Demotion*

In her Fourteenth Report, the RCA reported that the Recorder had recently

DOC "to see this appearance of impropriety before attending the event was a mistake" that constituted a violation of the "spirit of the SRO." Id. at 4-5.

promoted an individual into a Property Fraud Investigator II Position and that the RCA was in the process of monitoring that employee's probationary period. See Fourteenth Report at 11. The RCA monitored and initially had no concerns with the employee's 30- and 60-day evaluations as her Supervisor scored and explained that she was doing a wonderful job in the Investigator II role and meeting all articulated and outlined expectations. However, the Supervisor suddenly changed the evaluation criteria for the Investigator II without notice to the employee, DOC or RCA and presented the employee with a six-page report on how she no longer met the expectations of the position by failing to understand certain legal intricacies (the employee had no legal training) at the end of her 90-day evaluation period. Through the active involvement of both the DOC and RCA, the employee's evaluation period was extended for 30 days. Unfortunately, the Supervisor continued to challenge the employee's knowledge of legal jargon and statutes without proper training or background and ultimately terminated the employee in January of 2017.

Requiring an employee to have expertise and perform duties outside her Job Description runs directly afoul of Section IV.I of the Plan which requires Job Descriptions to be accurate and updated. When a Supervisor continues to move the goal posts during an evaluation period, it allows for impermissible factors – such as politics – to be at issue. Additionally, the ROD failed to follow its own processes when HRD terminated the employee rather than implementing Section 2(h) of the Manual which allows for the demotion of the employee to his or her previously held Position when it is “determined that an Employee is unable, as opposed to unwilling or refusing, to perform the job duties of a Position to which he or she has recently been promoted.” The RCA

believes it unlikely that any of the above would have been identified or discussed were it not for the RCA's active involvement and the assistance of the DOC. Even with that involvement, the Recorder required the employee to file a grievance about the process. After additional discussion with the RCA and DOC, the Recorder ultimately re-hired the employee and returned her to the position she held before the promotion. The RCA hopes that in the coming months, the ROD can demonstrate that it can (1) adhere to its own policies and procedures and (2) recognize and remedy instances of non-compliance without the need for such heavy involvement by the RCA.

b. *Layoffs and Performance Evaluations*

In her Fourteenth Report, the RCA discussed at length her monitoring of the Recorder's Layoff process that resulted in the layoff of 13 union employees, two non-union employees, and the bumping of 24 employees. The RCA noted that employees who had bumped into new Positions were subject to a 45-day evaluation period during which they would be given weekly evaluations to ensure they could conduct the essential duties of their new Positions. Fourteenth Report at 12-13. The process did not go smoothly.

Despite several recommendations by the RCA (and the then-DOC), the Chief of HRD initially decided not to train the supervisory staff on how to conduct evaluations. This decision had disastrous effects. For the first week or two of the evaluation process, the RCA observed several serious problems including: inconsistent and unsupported justifications for scoring, inconsistent understanding of the scoring system by supervisors and HRD, incomplete evaluations, and two supervisors who plainly admitted during their evaluation meeting with an employee that they did not know what they were doing.

During the second week of the roughly 6-week evaluation process, HRD agreed to train the supervisors. The RCA attended the training but had many concerns with it. Over the next two weeks, the Chief and Director of HRD, the RCA and DOC discussed and amended the training presentation so that the scoring system was clearer and easier to implement consistently. Additionally, the Director of HRD and Director of Operations began meeting with supervisors before they conducted the evaluations to ensure the evaluations had been completed thoroughly and the supervisors' scores were justifiable.

While the last week or two of the evaluation process was significantly more improved in most instances⁵, the RCA believes the issues encountered could have been avoided entirely had HRD been more deliberate and mindful in its approach to the process. The Chief of HRD should have created a training presentation in advance of the bumping date, allowed the appropriate parties to review and comment on the same, and then conducted the training to make sure supervisors and employees understood what the process would be and what the expectations were. Instead, he (and Labor Counsel) pushed forward with the bumping without providing any training and then made a series of ad hoc decisions to try to course correct as issues arose. This proved to be yet another example of ad hoc decision making that continues to plague this office.

The RCA strongly encourages the Recorder to issue a strong mandate that her senior staff act with consistent adherence to written policies and procedures and, if necessary, raise requests for amendments to those policies and procedures *before* they implement an Employment Action.

⁵ The RCA is aware that three employees who were ultimately laid off for not achieving the necessary evaluation scores have filed grievances concerning the process.

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. While they may be self-reported, non-compliance has been identified primarily by the OIIG, DOC and RCA. In the past four months, the OIIG made a finding of UPD concerning a Non-Exempt hiring process and the DOC and Interim DOC initiated investigations into 14 alleged violations of the Plan or Manual. Prior to his resignation, the DOC issued reports for his final seven investigations that included four sustained findings of Plan or Manual violations. The Interim DOC currently has twelve pending investigations into alleged violations of the Plan and Manual. Below are (1) a description of the OIIG's recent findings; (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. OIIG Summary Report Concerning Finding of UPD for Non-Exempt Hiring Process

On March 2, 2017, the OIIG issued a Summary Report concluding that "political reasons or factors affected" the Recorder's October 2015 hire of a Candidate into a Non-Exempt Position. See OIIG Summary Report IIG15-0342 at 8. The OIIG concluded that the Non-Exempt employee, who is the nephew of a Congressman, had initially met the Recorder herself "while campaigning" for the Governor of Illinois and then began volunteering regularly at the headquarters of the Proviso Township Democratic Organization (PTDO) in an effort, the employee later admitted to the OIIG, to ultimately

secure employment at the Recorder's Office. *Id.* at 3. The Non-Exempt employee "traveled approximately 70 miles each Saturday for several months in order to volunteer for the PTDO" and, while volunteering at the PTDO, "he was introduced to other employees of the ROD who also volunteered, including high ranking employees of the ROD." *Id.* at 9. The OIIG also found that during this time, an Exempt employee from the Recorder's Office – with the support of the Recorder herself – would announce Recorder employment opportunities to PTDO volunteers. *Id.* The OIIG concluded that "[t]his laser-like focus of recruitment activity by [the] Exempt Employee [], unique in that his recruitment announcements have been limited to the PTDO, establishes an association or nexus between the Recorder of Deeds' political organization and ROD employment." *Id.*

The OIIG described an attempt by the OIIG to further develop evidence of a pattern of hiring Non-Exempt employees who had "a prior political or personal relationship to the Recorder of Deeds" but that information requests of the PTDO and the Recorder were not responded to by the PTDO or Recorder. The OIIG interviewed the Exempt employees who participated in the interview of the Non-Exempt employee – all of whom had volunteered at the PTDO during the time period the Non-Exempt employee was volunteering – and found "incredible" their denial of having any knowledge of the Non-Exempt employee prior to his interview. *Id.* at 9, n. 2.

The OIIG ultimately made three findings with corresponding recommendations:

OIIG Finding No. 1: That "political reasons or factors affected the hiring" of the Non-Exempt employee on account of: "[t]he strong circumstantial evidence establishing a nexus between the PTDO and senior staff of the ROD, including those making

employment decisions” along with the Recorder’s pattern of making non-Exempt employment decisions based on political reasons or factors and the negative inference that resulted from the Recorder’s and PTDO’s failure to respond to the OIIG’s document requests and subpoena. *Id.* at 10. *OIIG Recommendation No. 1:* that the Recorder of Deeds “suspend all external recruitment efforts as contemplated by Sections V.A.1-3 of the Employment Plan until such time when the ROD establishes a policy formulating a politically-neutral approach to recruitment activities.” *Id.* at 10.

OIIG Finding No. 2: The Recorder herself violated SRO Section V.A.6 by not cooperating with the OIIG during the investigation and that “taken as a whole, the Recorder of Deeds has demonstrated a near complete disregard to her obligations to cooperate in this case.” *Id.* at 11. *OIIG Recommendation No. 2:* that the Recorder comply with the OIIG’s numerous requests for records and present herself for an interview within 21 days.

OIIG Finding No. 3: Exempt Employee C violated Section V.A.2 of the Plan by announcing Recorder employment opportunities to PTDO volunteers without having been properly trained. *OIIG Recommendation No. 3:* that all Recorder employees “obtain the necessary training before engaging in future recruitment activities” that are subject to the Plan. *Id.* at 11.

The Recorder’s response to the OIIG’s findings and recommendations is due May 1, 2017. The RCA will provide the Court an update on any such response in her next report.

2. Final Reports by Former DOC

Since the RCA’s Fourteenth Report, the DOC issued seven Incident Reports and

sustained findings in four. The RCA discusses at length several of these reports below.⁶

DOC Incident Report 16-006 (Plan and Manual violations when HRD assigned Exempt employee duties of Non-Exempt Position)

On December 27, 2016, the DOC issued Incident Report 16-006 concerning the temporary movement of an Exempt employee into HRD to perform duties normally performed by a Non-Exempt employee who was on leave. One of these duties was to serve as the Content Librarian in charge of entering online notices of job postings. The DOC concluded that the Employment Action did not comply with the Plan or the Manual and that the Exempt employee “should have been excluded from filling a position of a non-exempt employee.” IR16-006 at 3. The DOC also concluded there was an internal inconsistency in the Plan concerning whether the duties of the Content Librarian were required to be performed by an HRD employee. The DOC found the former Director of HRD (who preceded the Chief of HRD) was in violation of the Plan’s prohibition against basing Employment Actions covering Non-Exempt Positions on Political Reasons or Factors but did not recommend any discipline as the Director had resigned by the time the report was issued. The DOC also found the Chief of HRD was in violation of the same Plan section and that he “continued to allow the exempt employee to remain in Human Resources after being told by the Recorder’s Compliance Administrator on a number of occasions that the continued presence of the exempt employee in Human Resources would be considered a violation.” Id. at 3. The DOC was silent on the issue of potential discipline for the Chief of HRD. The DOC made three recommendations: (1)

⁶ The DOC also issued two reports in which he did not sustain allegations which are not covered at length in this report. One report concerned alleged sexual harassment. The DOC made several recommendations in that report and earlier this week the Recorder issued her Recorder’s Report in response to those recommendations.

the Recorder take whatever action she deem necessary to ensure all Shakman Exempt Employees understand the provisions of the Manual and adhere to the same; (2) the Chief of HRD review the issues in the report and address the Plan conflict concerning the Content Librarian and (3) the Recorder to be aware that “Exempt Employees, hired outside the [general] hiring process, should not fill in for Non-Exempt employees”. *Id.* at 4.

On February 1, 2017, Recorder’s Counsel issued the Recorder’s Report in which the ROD agreed that the ROD “should have followed the respective provisions in the Policy Manual pertaining to Temporary Assignments, including the provisions involving notice to the DOC and RCA” but disagreed with the DOC’s finding that there was any violation of the Plan. Recorder’s Counsel stated that in the future if the Recorder assigned “duties to Exempt employees that are generally performed by non-Exempt Employees, the decision to assign such duties shall not be based on political reasons or factors.” Response at 3. Recorder’s Counsel said such assignment of duties would follow the relevant portion of the Manual and that within 10 days of issuing the Recorder’s Report, the Recorder would propose an amendment to the Manual clarifying that Exempt employees could be assigned duties generally performed by non-Exempt employees.⁷ On April 21, 2017, Recorder’s Counsel provided this proposed amendment. The RCA will review and respond to the proposal as well as the entirety of the Recorder’s Report after her review.

⁷ For the other two recommendations of the DOC, Recorder’s Counsel stated that (1) the first recommendation was “vague and non-descript [and] difficult to implement” but the implementation of the other proposals by the ROD would achieve the same effect and (2) the ROD had already proposed an amendment to the definition of “Content Librarian” in its Plan exchanges with Plaintiffs and RCA.

DOC Incident Report 16-007 (Former Director of HRD not given preferential treatment in discipline proceeding prior to retirement)

On December 27, 2016, the DOC issued Incident Report 16-007 that concerned whether the former Director of HRD (who preceded the Chief of HRD) received favorable treatment by two Exempt employees concerning pending discipline just prior to his retirement. The DOC recounted that the RCA had alleged that the Director of HRD had provided the RCA with false information concerning an Employment Action and had notified the ROD of this fact on February 5, 2016. Not until March 11, 2016 was the Director of HRD issued an Incident Report concerning the alleged Major Cause Infraction of “knowingly or willfully interfering in or not cooperating in an investigation or knowingly or willfully providing false information in an investigation”. The infraction was set for a hearing on April 6, 2016 at which point the Director presented written questions and the Hearing Officer continued the hearing to allow Recorder Counsel to respond to the questions. No responses were ever provided and no continued hearing date was ever set. The Director retired from his position on April 29, 2016.

The DOC did not sustain the allegations of preferential treatment. In support, the DOC referred to two prior Major Cause Infraction disciplinary proceedings when continuances were permitted. The DOC did not interview any of the Exempt employees involved with the Director of HRD’s disciplinary proceeding to determine why the written responses to the Director’s questions were never provided and why a continuance date for the hearing was never set. The DOC recommended that the ROD amend the Manual to create a set time frame for continuances in order “to minimize possible manipulation of the discipline policy” by employees and the ROD.

On January 27, 2017, Recorder’s Counsel issued the Recorder’s Report

concerning 16-006 and agreed with the recommendation to amend the Manual to establish when continuances would be appropriate and what time restrictions they should follow. The Report included proposed draft language that the RCA will consider with the remaining Manual edits.

DOC Incident Report 16-008 (Misuse of confidential or proprietary information by Non-Exempt employee)

On December 27, 2016, the DOC issued Incident Report 16-008 wherein he concluded that a Non-Exempt employee violated the Manual's prohibition on "misusing confidential or proprietary information, or any CCRD files, documents or data" when she, while being considered for another County position, sent an internal ROD email to an interview panelist from a different County office. The DOC concluded that because she sent the email without authorization, she violated the Manual. The DOC did not recommend discipline as the employee was no longer with the ROD when the Incident Report was issued. The DOC did recommend that HRD "issue a memo to all employees reminding them of the confidentiality of CCRD emails." On April 21, 2017, the Chief of HRD issued a memo to all employees concerning confidentiality of work emails. The RCA will review the memo and discuss any concerns with HRD.

DOC Incident Report 16-010 (Overtime/Compensatory Time Policy Violation by Exempt Employee)

On December 27, 2016, the DOC issued Incident Report 16-010 in which he concluded that an Exempt employee violated the Manual's provisions on Overtime and Compensatory Time (Section 2(b)(ix)) when she directed a Supervisor to offer Overtime to employees yet did not complete any of the required documentation and did not provide notice to HRD, the DOC or the RCA. The DOC also found that HRD had not yet created

a form for situations when Overtime is issued with advanced notice. The DOC made five recommendations: (1) the Recorder take whatever action she deem necessary to ensure all Shakman Exempt employees comply with the Manual; (2) the Chief of HRD create a form for Overtime with advanced notice; (3) the Chief of HRD review the Manual's section on Overtime with the Exempt employee to prevent further violations; (4) the Exempt employee file the proper Overtime report for retention purposes; and (5) the Chief of HRD issue a memo to all Supervisors identifying the proper procedure and forms to be used for Overtime authorization. The Recorder has not yet issued a Recorder's Report in response to 16-010 and the RCA is not aware of any corrective action on this matter.

DOC Incident Report 16-011 (Courtesy Policy violation by Exempt employee)

On February 24, 2017, the DOC issued Incident Report 16-011 stemming from allegations that during a meeting with Non-Exempt staff, an Exempt employee yelled at subordinates, called them "2 and 4 year old's", told the employees "[y]our kids don't respect authority; they'll respect it when they're in jail or in the cemetery[;] [y]ou can go to the DOC, HR, the Union – anybody you want[; and] you could be someplace else". DOC IR16-011 at 1. The employees alleged to the DOC that the Exempt employee then left the area but returned a short while later and alleged that two Non-Exempt employees were then mocking the Exempt employee. *Id.* at. 2. Later that same day, the Exempt employee issued Incident Reports⁸ to the two Non-Exempt employees alleging they committed a Major Cause Infraction⁹ when they allegedly mocked the Exempt

⁸ The completion and issuance of an Incident Report are the first steps of the ROD's disciplinary process.

⁹ Unlike Minor Cause Infractions that must follow progressive discipline starting with a Supervisor Counseling, Major Cause Infractions may result in Termination. Here, the Deputy Recorder cited the

employee.¹⁰ The employees ultimately received one-day suspensions for their alleged mocking and one of the employees was counseled for an unrelated alleged violation of the technology policy.

When asked by the DOC if she made the above statements to the employees, the Exempt employee responded that she could not recall. When the DOC asked the Exempt employee why she wrote the employees up for the Major Cause Infraction for allegedly mocking her after the meeting and why she recommended a one to three-day suspension for alleged infraction, the Exempt employee “related she did not wish to answer unless she had legal counsel”. *Id.* at 4.

The DOC ultimately concluded that the Exempt employee violated the Courtesy Policy by making the above “inappropriate and demeaning” statements to her subordinates. *Id.* at 4. The DOC noted that this same Exempt employee previously had been found¹¹ to have violated the Courtesy Policy and the Recorder’s corrective action clearly did not correct the misbehavior. The DOC made the following recommendations:

- “an appropriate level of discipline be applied [to the Exempt employee] to correct this conduct”;

employees with violating the section of the Manual that discusses “Conduct including dishonesty or that otherwise reflects negatively on CCRD staff”. The DOC noted that previously this section had been used in situations when an employee’s conduct brought outside attention to the office in a negative manner – such as being arrested, not this situation where the alleged conduct took place outside the public view.

¹⁰ The Exempt employee also later added an Incident Report against one of the two Non-Exempt employees for alleged violation of the Technology Policy. The DOC noted that when the employee received Counseling for this infraction, she “testified she had been given access to the computer screens in question by her immediate supervisor” and that this contention was later substantiated. *Id.* at 3.

¹¹ This same Exempt employee was previously found by the DOC to have violated the Courtesy Policy when she swore at her Executive Assistant. See Thirteenth Report at 9. In response to the DOC’s report on the same, the Recorder and Chief Legal Counsel met with the Deputy Recorder to discuss the findings. See Fourteenth Report at 16.

- the ROD rescind the Incident Report against the two Non-Exempt employees brought by the Exempt employee “and make the employees whole”;
- the technology policy violation also be rescinded with no penalty to the employee.

While the Recorder has not yet formally responded to the DOC’s findings and recommendations, at a third-step grievance hearing, the suspensions were rescinded. The RCA does not believe HRD has compensated the employees for the suspension day they served. While the RCA is troubled by the DOC’s findings as well as other details in the report, she will reserve further discussion until her next report in order to give the Recorder additional time to issue her response.

3. Update on Recorder’s Actions in Response to Prior Finding of Noncompliance by the Interim DOC

In the Twelfth Report, the RCA discussed Incident Report 15-001 (issued June 19, 2015), wherein the RCA (as Interim DOC) 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 “to ensure the employee’s Job Description is updated and accurate and that she works within that Job Description.” Id. Although it has been nearly two years since that recommendation, as of May 8, 2017, the Recorder’s Office has taken all the necessary steps to update the employee’s Job Description.

4. Other Ongoing Noncompliance with Plan and Manual

The RCA has notified the Recorder’s Office in meetings and through correspondence that it is not compliant with various sections of the Plan and Manual.

The Recorder's Office has yet to remedy these instances of noncompliance, therefore, the RCA includes details of some of these issues below.¹²

a. *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. In her Thirteenth Report, the RCA noted that "since March 1, 2013 [she had been attempting] to obtain from HRD an accurate accounting of Compensatory Time granted and used by Recorder employees." While the Recorder provided the RCA with a new Compensatory Time Report on November 30, 2016, the Report had multiple inconsistencies with prior reports and did not capture employees who the RCA knows accrued Compensatory Time in recent months. The RCA provided additional questions on December 9, 2016 and on April 21, 2017, Recorder's Counsel provided a response. The RCA will review the same and follow-up with the ROD as necessary.

b. *Performance Evaluations*

The Manual, which the ROD first implemented in March 2015, 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. In the two years since, the Recorder's Office has conducted performance evaluations for two groups of employees: (1) weekly evaluations for 45 days for employees who bumped into new positions during

¹² The ROD has not completed its annual Plan and Manual training (Plan § IV.D – F) because the parties and RCA had been exchanging draft amendments to the same. Given the amount of time it has taken to update the documents, the parties and RCA may have to re-evaluate the utility of any significant further training delay.

a layoff process at the end of 2016 and (2) a single evaluation in December 2016 for a group of Security Officers as part of a pilot program for annual evaluations. As described above, see 11-12, the Recorder's implementation of the job performance evaluations was highly problematic and the process needs significant improvements before being rolled out any further.

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

The third prong of Substantial Compliance concerns whether the Recorder has a policy, custom or practice of making Non-Exempt employment decisions based on political reasons or factors. The OIIG's recent finding that an October 2015 Non-Exempt hire by the current Recorder was affected by Political Reasons or Factors is the latest finding that the Recorder has a custom of making employment decisions based on impermissible political factors. Without sustained hiring and non-hiring Employment Actions that are apolitical and free from appearances of impropriety, the Recorder will continue to fall short with this prong of Substantial Compliance.

Additionally, in her Fourteenth Report, the RCA asked that the Recorder's Liaison to the RCA (currently the Chief Legal Counsel) "be more helpful in ensuring more prompt and timely responses are provided" by the Recorder's Office. The RCA reiterates this same request as the response rate to requested information has only become more delayed in recent months. The effectiveness of the RCA's monitoring is compromised when she is not provided information and documents in a timely fashion.

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. The RCA believes that there is not yet an absence of material noncompliance with the ROD's Consent Decree and SRO's essential purposes. Since the Fourteenth Report, the OIIG issued a report wherein it found the Recorder's Office committed UPD when it hired a Non-Exempt Security Officer. See above at 13-15. Additionally, the OIIG recently reported that it received four new Post-SRO Complaints since December 1, 2016 (see Dkt. 4975) and has informed the RCA that it has eight additional active investigations into alleged UPD – all of which have been filed since December 1, 2016. Finally, Plaintiffs' "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") remains pending before the Court.¹³ See Thirteenth Report at 14-15.

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. With the resignation of the DOC, termination of the Director of HRD, and continued inconsistent adherence to written employment policies and procedures, much work remains with this prong of Substantial Compliance.

¹³ The RCA notes that the Chief Deputy Recorder, Labor Counsel, and the Recorder filed separate Responses to Plaintiffs' Motion. See Dkts. 4722, 4724, and 4720, respectively. Plaintiffs then filed a Reply in Support of Motion for Rule to Show Cause. See Dkt. 4731.

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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