

**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.)	

**SEVENTEENTH 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 Seventeenth Report as follows:

I. Introduction

On October 5, 2017, the RCA filed her Sixteenth Report to the Court (“Sixteenth Report”) (Dkt. 5220) in which she discussed the Cook County Recorder of Deeds² Karen Yarbrough’s efforts to comply with the SRO. Since the Sixteenth Report, the parties and RCA filed an amended Employment Plan (the “Plan”) with the Court, the Recorder’s Human Resources Division (“HRD”) continued updating various policies in its Policies

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.

and Procedures Manual (the “Manual”) and continued its project of overhauling all Job Descriptions in the ROD. 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 identify instances of non-compliance. Since the Sixteenth Report, the parties, RCA and Office of the Independent Inspector General (“OIIG”) reached agreement on various amendments to the Plan and filed the same with the Court. The parties also began negotiating amendments to certain policies contained in the Manual and the Chief of HRD continued to address a long-standing issue of noncompliance concerning the ROD’s outdated and inaccurate Job Descriptions.

1. Employment Plan Amendments

On December 21, 2017, the Court approved an amended Employment Plan. (Dkt. 5707.) Some amendments included:

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.

- the ability of the Director of Compliance (“DOC”) to assign certain allegations of Manual violations to appropriate staff for follow-up (at 14);
- new time limits for the completion of DOC investigations and the Recorder’s Reports responding to the same (at 14-15);
- the ability to add to the Do Not Hire List both Applicants and Candidates who provide false information to the DOC, RCA or OIIG in connection with applications for employment (at 19);
- prohibitions on Employees posting job opportunities or recruiting at Politically-Related Organizations (at 20-21);
- requirements for Employees involved with hiring processes to log certain internal and external contacts related to the hiring process (at 22-23);
- additional requirements related to the disclosure of potential Conflicts of Interest by anyone involved with the General Hiring Process (at 23);
- a new Veterans Preference process that automatically places minimally qualified Veteran Candidates on the Interview List for General Hiring Process Positions (at 24-25); and
- a commitment to discontinue the Executive Assistant Hiring Process should the OIIG find UPD in connection with such a hiring process (at 34).

The RCA anticipates that HRD will soon train Employees on the amended Plan.

2. Policy Manual Amendments

In the past three months, the Chief of HRD circulated proposed edits to two of the policies in the Manual: Timekeeping/Attendance and Performance Management. The RCA provided responsive comments to both and recently met with the Chief of HRD to discuss the proposed edits to the Performance Management policy. The Chief of HRD continues to work on proposed amendments to the Discipline policy which the RCA will review and provide comments upon completion.

3. Job Description Updates

Over the past few months, HRD has continued updating the ROD’s Job Descriptions. HRD conducted numerous meetings with Employees and Supervisors to review job duties and qualifications and, at present, 16 Job Descriptions are at various

stages of completion. The RCA and DOC have provided significant feedback on how the process can be improved upon and the Recorder recently retained an outside firm to assist HRD with this project. The RCA has met with the firm and has every reason to believe the firm's assistance will be a benefit to the process.

4. Human Resources Division

The RCA has continued to work collaboratively and positively with the Recorder's Chief and Director of HRD. The RCA believes the Recorder's HRD is committed to complying with the processes detailed in the Plan and Manual and the Chief is working at a furious pace to make progress toward compliance.

5. Director of Compliance

The RCA is extremely pleased with the DOC's compliance efforts, ability to spot potential issues, ability to conduct the duties of her office with the independence needed to earn the trust of Non-Exempt Employees, and efforts to collaborate with the Recorder and Exempt staff. As she has expressed to the Recorder in prior years with prior Directors of Compliance, the RCA has observed that the DOC's workload seems too much for any one individual to handle on a continuous basis. The RCA certainly will continue to assist the DOC in any way she is able and that is appropriate. She also, however, encourages the Recorder to consider other longer-term support mechanisms for the office of the DOC to ensure compliance with *Shakman* principles not only can be achieved, but also sustained.

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/or RCA. In the past four months, the OIIG has not made any findings regarding any Post-SRO complaints and has six pending investigations into alleged UPD.

Concerning the DOC, in the past four months the Recorder issued Recorder's Reports in response to three previous DOC Incident Reports.⁴ The RCA, as Interim DOC, issued an Interim DOC Report (17-013) finding Plan and Manual violations in connection with a Director permitting and directing a non-supervisory Employee to perform supervisory duties outside of her Job Description for over eight months. Below is a summary of the Recorder's response to one DOC Report and one Interim DOC Report and updates on other non-compliance issues. Historically, the Recorder's Office has not been timely both in issuing the Recorder's Report and in implementing recommendations accepted in those Reports. The RCA is pleased that the Recorder issued the Response for 17-013 (described below) on a timely basis; however, the lag in time to implement DOC recommendations continues to be a serious concern.

1. Recorder's Report in response to DOC Incident Report 17-011 (Systemic Abuse of Sick Time Policy)

On August 21st, 2017, the DOC issued Incident Report 17-011, wherein she found that 62 of the Recorder's 131 Employees were suspected to have abused the Sick Time Policy and, without justification for their violations, should be placed on Proof Status. The DOC recommended that an additional 31 Employees be put on notice that one more violation would result in their placement on Proof Status. Finally, the DOC recommended the Recorder inform all ROD Employees that the Sick Leave policies will

⁴ In one of these Reports, the Recorder accepted the DOC's findings in 17-010 of a Courtesy Policy violation; however, since the subject Employee had since retired, no action was taken against that Employee.

be enforced and to direct HRD to continually monitor the same. On December 15th, the Recorder issued her Recorder's Report wherein she pledged to accept all of the DOC's recommendations including: a) training all Employees on the Sick Leave policy and informing them of the ROD's intent to begin consistent enforcement of the same; b) issuing a memo to all Employees concerning the DOC's findings; and c) that the Director of HRD will be directed by the Recorder to begin enforcing the Proof Status provisions of the Sick Leave policy in January 2018 to allow HRD to establish a plan to successfully monitor and enforce the policies concerning Sick Leave. On February 1, 2018, the Chief Deputy Recorder issued an all Employee memo concerning the DOC's findings and informing Employees that HRD will place Employees on Proof Status when they abuse the Office's Sick Policy. The RCA notes that this memo came six weeks after the Recorder committed in her Report to issue the same (and over five months after the DOC issued her report on the matter); additionally, the two remaining recommendations have not been implemented.

2. Interim DOC Incident Report 17-013 and Recorder's Report in response to same (Supervisor duties performed by non-Supervisor)

On December 1, 2017, the RCA (as Interim DOC) issued a report concerning allegations that, upon the retirement of a Supervisor, the Director who oversaw that Supervisor permitted a non-supervisory Employee to fulfill the duties of the retired Supervisor. The Interim DOC found that the non-supervisory Employee had been performing the duties of the Supervisor since the Supervisor retired eight months prior and that the Director had failed to follow any of the options available to her in the Policy Manual to properly assign those supervisory duties to another Employee or take on the duties herself. In so doing, the Director violated Section IV.I of the Plan by directing and

permitting the subject non-supervisory Employee to perform the duties outside of her Job Description. Further, the Interim DOC found that the violation was ongoing as the subject Employee continued to perform supervisory duties outside of her Job Description. The Interim DOC recommended that: (1) the Director be disciplined for violating the Plan; (2) the ROD comply with the Plan and Manual by either: (a) temporarily assigning an Employee to the Supervisor Position while HRD attempts to permanently fill the Position or (b) permanently Transfer another Employee into the Position; and (3) the Recorder inform the subject non-supervisory Employee of the Interim DOC's findings and certain of her recommendations.

On December 28, 2017, the Recorder's Chief Legal Counsel issued a response to the Interim DOC's Report wherein the Recorder agreed to implement the Interim DOC's recommendations by: (1) issuing an Incident Report to the Director for the identified Manual violation; (2) temporarily assigning an Employee to fill the Supervisor role pending HRD's attempts to post and permanently fill the Position; and (3) informing the subject non-supervisory Employee of the Interim DOC's findings and recommendations concerning the Position. The Recorder's Counsel pledged to coordinate with the HRD to ensure the subject non-supervisory Employee was made aware of the findings and recommendations. Over a month has passed since the Recorder's Report in response to 17-013 and the subject Employee continues to perform the Supervisory duties outside of her Job Description and the RCA is unaware of anyone from the ROD's staff speaking with the Employee about the Interim DOC's findings or recommendations.⁵ The RCA notes that this week she received from the Chief Deputy Recorder a copy of his request to

⁵ Due to personnel issues explained by HRD to the RCA, the ROD has not issued yet an Incident Report to the Director.

HRD to temporarily assign an Employee into the Supervisor Position. The RCA encourages the Recorder's Office to implement DOC recommendations in a more timely manner.

3. Other Ongoing Noncompliance with Plan and Manual

The Recorder's Office continues to work toward compliance with other sections of the Plan and Manual some of which are included below.

a. *Plan and Manual Training Requirements*

The Recorder's Office last conducted Plan and Manual training in February 2015; however, both are required annually (Plan §§ IV.D-F). While some of this delay was with the RCA's and Plaintiffs' Counsel's agreement while the parties negotiated Plan amendments, the RCA anticipates HRD will soon train Employees on the recently amended Plan and that Manual training sessions will follow on a rolling basis as amended policies are finalized.

b. *Compensatory Time Tracking*

The Manual permits the Recorder to award Compensatory Time to employees in certain circumstances and charges HRD with responsibility for maintaining records related to such Compensatory Time grants and usage. Manual at 6-8. The RCA has attempted to get accurate Compensatory Time records from the ROD since March 2013. Thirteenth Report at 11-12. The Recorder recently provided the RCA with updated Compensatory Time records which the RCA is reviewing; however, similar to the DOC's findings in her Report on Sick Time/Proof Status, there appear to be serious deficiencies with the Recorder's implementation of this time-related policy.

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 RCA is not aware at this time that any employment decisions over the past four months were impacted by political reasons or factors. The RCA notes that HRD has continued to strive to respond to RCA document requests with greater speed; however, some requests (for example, one that concerns outreach event-related matters) assigned to personnel outside HRD have lingered for months without sufficient attention. The RCA hopes that all ROD Employees will provide HRD with the timely support it needs to move the Office toward Substantial Compliance.

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. The DOC and Interim DOC recently found material violations of the Plan and Manual, the Recorder stills lacks accurate Job Descriptions and is delinquent on the training requirements in the Plan, and the OIIG has six pending investigations into alleged UPD – all of which were filed after December 1, 2016.

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. The RCA is pleased that recently the parties reached agreement on a revised Plan and looks forward to continuing to work with the new Chief of HRD and DOC on finalizing amendments to the Manual, training on the same, and implementing them consistently.

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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