

**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.)	

**EIGHTEENTH 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 Eighteenth Report as follows:

I. Introduction

On February 6, 2018, the RCA filed her Seventeenth Report to the Court (“Seventeenth Report”) (Dkt. 5754) in which she discussed the Cook County Recorder of Deeds² Karen Yarbrough’s efforts to comply with the SRO. Since the Seventeenth Report, the Recorder’s Human Resources Division (“HRD”) and Director of Compliance (“DOC”) trained all Recorder Employees on the Employment Plan (the “Plan”). HRD,

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.

with the assistance of outside counsel, made additional progress on its project of updating all Job Descriptions in the ROD. The ROD made more limited progress on updating various policies in its Policies and Procedures Manual (the “Manual”). The Office of the Independent Inspector General (“OIIG”) sustained two findings of unlawful political discrimination and the DOC issued several reports of policy violations. Substantial work remains. 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 Seventeenth Report, the HRD, DOC, and OIIG performed Employment Plan training for nearly all Recorder Employees. The parties also continued negotiating amendments to certain policies contained in the Manual and HRD, the DOC and outside counsel continued to make significant progress in updating the ROD’s outdated and inaccurate Job Descriptions. The RCA, however,

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.

has significant concerns with the degree to which the ROD has not implemented certain of its written policies and procedures despite representations to the RCA and this Court that they had been so implemented.

1. Employment Plan Training

On December 21, 2017, the Court approved an amended Employment Plan.⁴ (Dkt. 5707.) The Plan requires HRD, in conjunction with the DOC, to conduct comprehensive training of all Recorder Employees on the Plan annually. Plan § IV.F. The Recorder's HRD last conducted this training in February 2015. During the week of May 21, 2018, HRD, the DOC and the OIIG conducted Employment Plan training for nearly all Recorder Employees, thus satisfying one of the long outstanding compliance requirements.⁵ The RCA was grateful for the opportunity to meet with the CCRD Employees involved with the training for a practice run in advance of the scheduled training presentations. The training was conducted in a much more professional and clear manner than previous trainings and the RCA commends the DOC, Chief of HRD and OIIG for their contributions to the same.

2. Policy Manual Amendments and Concerns with ROD's Failure to Follow Written Policies

The RCA provided a complete set of proposed comments and edits to the Policy Manual on May 15, 2017. The then-new Chief of HRD circulated responses to the comments and proposed edits to the sections of the Manual addressing Timekeeping/Attendance and Performance Management on November 28, 2017. The

⁴ The Plan included several material amendments from the original version (filed on August 7, 2013). *See* Seventeenth Report at 2-3.

⁵ Training of one active Employee remains outstanding.

RCA provided responsive comments to both on December 21, 2017 and met with the Chief of HRD and the Recorder's counsel to discuss the proposed edits to the Performance Management policy on or about January 24, 2018. The Performance Management policy, however, was not finalized until on or around August 9, 2018 and, although various drafts have been exchanged, the Timekeeping/Attendance and Discipline policies remain outstanding. The delay is, in part, due to a nearly two-month period where the RCA's proposed edits were pending with the ROD. But since the ROD provided its most recent edits to these two policies on July 19, 2018, a significant issue arose that caused the RCA to place a moratorium on further policy review by her office.

On July 27, 2018, the RCA learned that a Deputy Recorder attempted to discipline three of his subordinate Employees for violating a tardiness-related directive he created a month prior and applied just to those three Employees. While two of the three Employees had not violated the Recorder's written tardiness policy (memorialized in the Recorder's Manual and which all Employees were trained on), he attempted to discipline them for failing to follow his personal directive. The RCA informed the ROD that she views such actions as an attempt to create supplemental policies disguised as directives that can be drafted and enforced outside the robust vetting process specified in the Plan. *See* Plan § IV.A. This action and subsequent explanations for it also signaled to the RCA that the ROD is seeking to rationalize a return to ad-hoc decision making – always justified in the moment and frequently explained as an “operational” issue – that the Plan and Manual were designed to curtail for *Shakman* Non-Exempt Employees. Indeed, the Manual would lose all importance if Deputies Recorder could create individualized “directives” for each subordinate on matters already covered by the Manual – without

input or approval from HRD, the DOC or RCA – and discipline Employees who do not abide by those directives. In an office that has had chronic problems following its own written procedures, this is a recipe for widespread abuse. The RCA continues to engage with the Recorder’s counsel on her concerns and notified the ROD that she will cease working on additional policy edits until this issue is resolved in a manner that demonstrates that senior-level Recorder Employees will not override or supplement the very policies the RCA and the parties have spent months negotiating.

3. Job Description Updates

Since the Seventeenth Report, HRD has made substantial progress toward updating the ROD’s Job Descriptions. The goal of this project is to satisfy the Plan’s requirement that all CCRD Job Descriptions be accurate and up to date. Plan § IV.I. The RCA has pressed the ROD to undergo this Job Description review project for years and the delay has undoubtedly made the project more complicated over time. To be clear, the process is very time consuming and complex as many CCRD Employees have never worked with accurate Job Descriptions, and some have worked under inaccurate titles and questionable salary grades for years.

The process agreed to by the parties and RCA requires HRD to conduct desk audits and Job Description interviews regarding all budgeted Position titles at the CCRD. Where multiple Employees have the same budgeted title, typically HRD is only required to audit one Employee except when there is reason to believe same-titled Employees are not performing like duties. Since the Seventeenth Report, the DOC and RCA confirmed that the HR Employees conducting the audits exhibited competence and effectiveness in such performance therefore outside counsel has now been permitted to conduct audits in

an effort to expedite the process. This development is welcome news as having a HRD capable of conducting desk audits has long eluded the CCRD.

Once the audits and interviews are conducted, HRD, the DOC and outside counsel provide the RCA with proposed Job Descriptions and the RCA is provided an opportunity to comment on the same. Subsequently, the parties meet to discuss any disagreements or issues that require deliberation, and the ROD is responsible for making final edits. Finally, after the parties have agreed to the final description, HRD meets with the Employee to review the updated Job Description and ensure the Employee understands the duties and responsibilities contained therein. Each stage of the above Job Description updating process has set time frames within which the ROD and RCA are to complete tasks. As explained further below, the ROD has fallen several months behind agreed deadlines.

At the time of the Seventeenth Report, HRD was in the process of updating 16 Job Descriptions covering five sections. Since then, HRD, the DOC, and CCRD's outside counsel have: (1) finalized 42 Job Descriptions in those same five sections (41 of which HRD reviewed with the Employees in those Positions and the Employees signed the same); and conducted 53 desk audits and related Job Description meetings with Employees and Supervisors in 14 additional CCRD sections.

The RCA appreciates the efforts of HRD, the DOC and the ROD's outside counsel in the Job Description update project; however, she notes recent delays have stalled further progress. Currently outstanding with the ROD are the following:

- Providing the RCA with proposed redlines to nine Job Descriptions that the ROD audited between May 30 – July 12, 2018;

- Finalizing the eight Job Descriptions the RCA provided final comments to on August 7, 2018, and providing the same to Employees in those Job Descriptions; and
- Conducting Desk Audits or Job Description interviews for four Non-Exempt Positions and seven Exempt Positions.

The RCA encourages the ROD to regain its focus on this project so it can be completed as close as possible to the early August 2018 timeline to which the ROD originally committed.

4. Human Resources Division

The RCA has continued to work collaboratively and positively with the Recorder's Chief and Director of HRD. Further, the ROD hired recently an HR Generalist who has proven very adept at spotting time and attendance-related policy violations and raising the same with her superiors. As discussed above, the Director of HRD's abilities to conduct effective Desk Audits improved significantly over the past several months and the RCA notes the Director's openness to receiving and incorporating feedback from the RCA throughout that period. The Chief of HRD continues to remain committed to working toward Substantial Compliance but has required reminders to provide the RCA (and DOC) with the opportunity to monitor any and all aspects of all Employment Actions. Plan § IV.C.2 (*see* below at 22). While progress with the many requirements of *Shakman* compliance is key, the ability for the monitors – both internal and external – to ensure that the progress is being made in concert with the spirit and letter of the SRO, Plan and Manual is equally so. Further, as discussed further below, the Recorder's HRD has shown an unwillingness to alter a chartered course despite concerns

raised by the DOC (and RCA). *See* below at 22-23. This is not a positive development and is one the RCA hopes is not repeated.

5. Director of Compliance

The RCA remains encouraged by the DOC's performance – especially given her lack of additional personnel support. The DOC continues to spot compliance issues as they arise, work collaboratively with the RCA, HRD and OIIG, and conduct her office with the independence required of the same. On June 22, 2018, the DOC issued her most recent semi-annual report covering the period of December 15, 2017 through June 15, 2018. The report was a fair and accurate representation of the office's compliance efforts yet also demonstrated that much work remains to be done.

Finally, as noted previously, the RCA has encouraged the Recorder to provide the DOC with additional resources to conduct her duties more efficiently. *See, e.g.*, Seventeenth Report at 4. The RCA continues to support the DOC in many ways, however, this support should decrease over time as the office moves toward Substantial Compliance. Since the Seventeenth Report, the RCA's support has not subsided, largely because the DOC is unable to be in multiple places at the same time. Additional resources continue to be needed.

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 six months, the OIIG has sustained one Post-SRO complaint, issued a related finding of UPD, and did not sustain five Post-SRO complaints. The

OIIG does not have any pending Post-SRO complaints pending but has ongoing investigations into alleged UPD.

Concerning the DOC, in the past six months the Recorder issued additional corrective actions in response to two previously reported on DOC Incident Reports; the DOC issued two new DOC Incident Reports and issued three Notices of Violations of the Plan. The RCA continues to have serious concerns with the Recorder's timeliness in responding to DOC Incident Reports and other findings of violations as well as the timeliness of implementing corrective actions relating to the same.

1. OIIG Findings since RCA's Seventeenth Report

The OIIG has issued several reports concerning Post-SRO Complaints and allegations of Unlawful Political Discrimination in the past few months. Below is a summary of those findings. Where the OIIG did not sustain allegations of UPD but did make other findings or observations of Plan or Manual violations, the RCA notes the same below.

- a. OIIG Summary Report IIG17-0123 (finding former Chief of HRD committed UPD in dismissing discipline against Non-Exempt Employee)

On August 8, 2018, the OIIG issued a Summary Report wherein it found that the CCRD's former Chief of HRD permitted a current *Shakman* Non-Exempt Director to avoid attendance-related discipline⁶ due to the Director's political affiliation with the Recorder of Deeds. The OIIG's investigation revealed that from October 1, 2017 to April

⁶ The attendance-related policy at issue is the Recorder's "tardiness" policy. *See* Manual § 2(a)(iii). The policy, which applies to all *Shakman* Non-Exempt Employees, states that, "[a]n employee is considered tardy by swiping more than five minutes after his or her designated start time. Employees swiping in more than 30 minutes after their designated start time will receive a 'double late.' Excessive tardiness. . . . will not be allowed. Three or more instances of tardiness in a one calendar month period will be considered excessive and, therefore, will result in Disciplinary Action." (stress in original)

1, 2017, the Director was “tardy at least 99 times, 41 of which were beyond 30 minutes.” IIG17-0123 at 2. The OIIG found that when the former Director of HRD initiated discipline against the Director for violation of the tardiness policy, the former Chief of HRD dismissed the discipline.⁷ In so doing, the former Chief noted that the Director begins her days in remote locations. The OIIG noted that the Director’s Job Description explicitly requires the Director to travel to various satellite offices “on a daily basis”; therefore, “to excuse persistent tardiness on the grounds that the satellite offices *are in satellite locations* strains credulity.” *Id.* at 4 (stress in original).

Without the benefit of an interview with the former Chief of HRD⁸, the OIIG interviewed the Director at issue. The Director stated that she did not recall ever speaking with the former Chief of HRD to dispute the Incident Report but thought she may have explained to the former Director of HRD “the difficulties of starting her work day at different locations and taking calls from employees prior to 7:30 a.m.” *Id.* at 3. The Director also recalled that sometime after the write-up, the former Chief and Director of HRD “told her not to worry about the write-up and swiping in on time as long as she puts in eight hours per day.” *Id.* The Director also told the OIIG “she never asked for any special treatment for this situation because she knows that she swipes in late.” *Id.*

The OIIG ultimately concluded that the preponderance of the evidence supported the conclusion that political factors played a role in the former Chief of HRD’s decision

⁷ In another OIIG Summary Report (IIG17-0163), issued on the same day as IIG17-0123, the OIIG concluded that the former Director of HRD who initiated the discipline against the Director was terminated shortly after issuing such discipline on account of the Director’s political affiliation with Recorder Yarbrough. *See* below at 11-12.

⁸ The OIIG attempted to interview the former Chief of HRD to provide him an opportunity to explain his rationale for dismissing the discipline. The former Chief did not respond to the requests for interview.

to dismiss the disciplinary sequence against the Director. *Id.* at 3. The OIIG stated that the CCRD's policy on tardiness was clear and applied to all Employees and "[t]he fact that discipline was not imposed is itself suspicious and suggests a motivation to treat [the Director] favorably and apart from standard protocols." *Id.* at 4. The OIIG further stated that, "[i]n attempting to discern the motive of [the former Chief of HRD] in dismissing the discipline, this office is aware of [the Director's] political affiliation with the Yarbrough family."⁹ Because of the Director's "persistent violation of attendance policy, the illogical and pretextual rationale documented by [the former Chief of HRD] in dismissing the ensuing discipline, the unresponsiveness of [the former Chief of HRD] to OIIG inquiries, the past political affiliation documented between [the Director] and the Yarbrough political organizations," the OIIG concluded that political reasons or factors affected the former Chief of HRD's decision to dismiss attendance discipline against the Director. *Id.* at 4. The OIIG recommended that the former Chief of HRD be placed on the CCRD's Do Not Hire List for a period of five years, pursuant to Plan Section IV.Q.1. *Id.* Per Plan § IV.N.2, the Recorder's Report in response to IIG17-0123 is due on September 7, 2018.

- b. OIIG Post-SRO Complaint Summary Report IIG17-0163 (finding Recorder's former Chief of HR committed UPD in connection with termination of Non-Exempt Employee)

On August 8, 2018, the OIIG issued a Post-SRO Complaint Summary Report

⁹ The OIIG previously concluded that this Director's hiring was impacted by political reasons or factors. *See* IIG13-0289 (explaining that this Employee lied to the OIIG during an investigation in an attempt to cover up her prior work with the Recorder of Deeds, Karen A. Yarbrough, when Ms. Yarbrough was a Member of the Illinois State House of Representatives). The OIIG also noted in IIG17-0163 that the Director donated an additional \$1,250 to Citizens to Elect Karen Yarbrough, Friends of Henderson Yarbrough Sr. and the Maywood United Party since the OIIG issued IIG13-0289. IIG17-0163 at 4. The OIIG explained that the Maywood United Party "is chaired by Henderson Yarbrough Sr. and supports him as a candidate." *Id.* at 4, n. 2.

pertaining to allegations that a former *Shakman* Non-Exempt Director of HRD's termination from the CCRD was retaliatory and on the basis of political reasons or factors. The complainant alleged that her 30-day and 60-day performance evaluations were positive and that she was terminated shortly after receiving a critical and negative 90-day evaluation. The complainant alleged that just prior to the 90-day evaluation, she had submitted to the then-Chief of HRD draft Incident Reports noting that, among other Employees, a Non-Exempt Director (who was politically-affiliated with the Recorder) repeatedly had been in violation of the CCRD's timekeeping and attendance policy. *See* above discussion concerning IIG17-0123 at 9-11. The OIIG attempted to interview the former Chief of HRD; however, as with IIG17-0123, he did not submit to an interview. The OIIG concluded that the complainant "was retaliated against for taking disciplinary action against a political hire." IIG17-0163 at 3.

The RCA provides the following context for her concerns with the CCRD's actions with respect to the former Director of HRD: In her Fourteenth Report to the Court, the RCA discussed concerns with the former Chief of HRD's actions throughout the 2016 hiring process for the Director of HRD Position. Fourteenth Report at 4-6. Despite reservations about the hiring process, the RCA reported that she "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 found her to be more than capable. *See* Fifteenth Report (filed on April 21, 2017) at 6. When the Chief of HRD terminated the Director just over 140 days into her employment, the Chief justified the termination on account of the Employee being "at-will" and "in her probationary period." *Id.* As described above, the OIIG in IIG17-0163 concluded that

the Director's termination was, in part, in retaliation for her attempt to discipline a politically-connected Employee. The RCA believes it was also in retaliation for the Director's actions during the March 2017 DOC hiring process.

In her Sixteenth Report, the RCA explained the investigation she conducted into the CCRD's DOC hiring process. *See* Sixteenth Report at 3-5 (describing Interim DOC Report 17-004). In pertinent parts, the Interim DOC Report stated that:

- On March 21, 2017, approximately one hour before the first interview was to begin, the former Chief of HRD recused himself from the interviews for the DOC Position. Unbeknownst to the RCA, the Chief had communicated via text and social media with one of the Candidates scheduled to interview for the Position. The Chief did not disclose these contacts until on or around April 10, 2017.
- Despite recusing himself from the interviews, over the ensuing two days, the Chief consistently inquired with the Director of HRD about the progress of the interviews, interview scores and selection rankings.
- The Director of HRD kept the RCA apprised of the Chief's inappropriate inquiries.
- On March 23, 2017, the RCA informed the Director in an email that the RCA and State's Attorney's Office ("SAO") were jointly requesting that the Director exercise HR's authority under the Plan to halt the DOC hiring process while the RCA conducted an investigation into allegations that the Chief of HRD had not been truthful about his prior contacts with the Selected Candidate for the Position. The SAO was copied on the email.
- Also, on March 23, 2017, the Chief of HRD called the RCA. RCA Counsel informed the Chief that the RCA had asked the Director of HRD to suspend the DOC hiring process until the RCA was able to further look into some matters.
- On March 24, 2017, the Chief of HRD terminated the Director's employment.

Based on the above, the RCA believes that, in addition to the OIIG's findings, the former Director of HRD's termination *the day after* she was asked to halt the DOC hiring process was in retaliation for her role in that process and for assisting the RCA with the initial stages of her inquiry into the Chief's actions during that process. The Director's

actions throughout this hiring process were exactly what was required of her under the Plan. She was cooperative with the RCA and attempted to redirect the Chief to the RCA when he continued to inquire about the hiring process after his recusal. It is inexcusable that the former Director's employment ended, in part, because she chose to cooperate with the RCA and perform her duties as required by the Plan (a Court Order). It is also unfortunate that no senior-level Recorder Employee intervened in this improper termination decision. This would have been a perfect opportunity for the Recorder to show that she is meeting the second prong of the definition of Substantial Compliance by proactively identifying and curing non-compliance with the SRO.

- c. OIIG Post-SRO Complaint Summary Reports IIG17-0024 & IIG17-0025 (finding that political reasons or factors were not considered in layoffs of two Non-Exempt Employees)

On July 13, 2018, the OIIG issued two Post-SRO Complaint Summary Reports pertaining to allegations that the Recorder laid off two Non-Exempt Employees on the basis of political reasons or factors during a 2016 reduction in force. After investigation, the OIIG did not sustain either of the former Employee's complaints that political reasons or factors were involved with their layoffs. The OIIG did not make any other relevant findings.

- d. OIIG Post-SRO Complaint Summary Report IIG17-0302 (finding that political reasons or factors were not considered in termination of Recorder Employee)

On August 6, 2018, the OIIG issued a Post-SRO Complaint Summary Report concerning allegations that, after successfully bidding for a new Position through a posting, an Employee was terminated at the end of her probationary period by her

Director on account of political reasons or factors.¹⁰ The OIIG conducted an investigation that focused, in large part, on the performance evaluations the complainant received from her Director during her probationary period. The OIIG concluded that it did not find that political reasons or factors impacted the Employee's termination; however, the OIIG concluded that the Director "failed to properly train [the complainant] and had expectations of [the complainant] that fell outside of [the] job description." IIG17-0302 at 11.

In her Fifteenth Report to the Court, the RCA discussed at length the details of this Director's inappropriate evaluation process noted by the OIIG above. *See* Fifteenth Report (filed on April 21, 2017) at 9-11 (Dkt. 4985). The RCA explained that after providing the Employee with glowing reviews during the 30-day and 60-day evaluations, the Director "suddenly changed the evaluation criteria . . . without notice to the employee" and concluded she did not "understand the legal intricacies" that the Director believed were required for the job. The RCA noted that the Job Description required no such legal training or experience and concluded that the Director's actions violated Section IV.I of the Plan (which requires Job Descriptions to be accurate and updated). *Id.* at 10. The OIIG's summary of its interview with the Director only reinforces the RCA's conclusion that the Director violated the Plan by applying expectations beyond the Employee's Job Description and by knowingly completing inaccurate and uninformed performance evaluations.

First, the Director informed the OIIG that the Director was only in the office "a maximum of 8 times" during the first 60 days of the Employee's probationary period.

¹⁰ This Employee was subsequently rehired into the position she held before her promotion.

When the OIIG asked the Director why scores of 5 (out of 5) in the first several evaluations plummeted to 1s in the final evaluation, the Director said he relied on feedback from a subordinate during the first few evaluation periods and he “spent more time observing” the Employee “during the final evaluation period.” *Id.* at 9. If the Director did not have a basis to conduct the Employee’s first two (of three) evaluations, providing her evaluations (positive or negative) purportedly without knowledge of the Employee’s performance both does a disservice to the Employee who does not get honest and accurate job performance feedback and, at a minimum, violates the Manual’s requirement that performance evaluations be “accurate.” Manual § 4(a)(i).

Second, the Director stated that when the Employee “expressed difficulty in understanding the[] legal concepts,” the Director “referred her to Black’s Law Dictionary to look up terms she did not understand.” IIG17-0302 at 8. When asked by the OIIG if he knew that the Employee did not have any legal training, the Director said the Employee never told him that and he never asked. *Id.* The RCA notes that no legal training was required as a Minimum Qualification on the Job Description for the Investigator II Position.

Third, the Director informed the OIIG that he “began to realize” the Employee did not have the knowledge required for the Position “around 45 days” into her probationary; yet, the Director’s 60-day evaluation stated the Employee “continued to meet all expectations and [was] develop[ing] well in the role.” The Director’s explanation to the OIIG for this contradiction was it “hadn’t played out yet” and she still had room to improve. Again, the Director admitted to not having completed an accurate performance evaluation – a violation of Manual §4(a)(i).

The RCA is deeply troubled at the Director's half-hearted attempts at "training" the Employee. While the OIIG did not conclude the politics were at play, it is clear that the Director's actions violated the Manual and should have no place in an office attempting to reach Substantial Compliance.

2. DOC Updates since RCA's Seventeenth Report

- a. Update to 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 the Recorder's HRD had not been enforcing the CCRD's Sick Policy. In an audit of HRD records, the DOC found that during a 10-week period, 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 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. In her Seventeenth Report, the RCA noted that the two remaining recommendations had not been implemented.

Since the Seventeenth Report, HRD initially began enforcing the Proof Status policy by placing dozens of Employees on Proof Status. Shortly after providing such notice to Employees, the ROD informed the RCA that it had received several Employee complaints related to the same. Ultimately, the Recorder entered into a Memorandum of Understanding with the union whereby it agreed to cease enforcement of the Proof Status policy pending further bargaining. The ROD also informed the RCA and DOC of its intent to remove the Proof Status policy from the Timekeeping and Attendance portion of its Policy Manual (which applies to all Employees). While such removal may make moot the remaining recommendations in Incident Report 17-011, the general finding that the Recorder must implement and enforce its time and attendance policies in a manner required by the Manual remains. As explained further below, the RCA does not believe consistent implementation and enforcement is occurring. *See* below at 24-25.

b. 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 a Supervisor's retirement, the Director who oversaw that Supervisor permitted a non-supervisory Employee to fulfill the duties of the retired Supervisor for over eight months. The Interim DOC concluded that 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.

In her Seventeenth Report, the RCA reported that the Recorder's response to the Interim DOC Report was incomplete. Seventeenth Report at 7-8. While the Recorder's Chief Legal Counsel had issued a Recorder's Report on December 28, 2017, agreeing to implement the Interim DOC's three recommendations, none of the recommendations had actually been implemented when the Seventeenth Report was filed six weeks later. Since the Seventeenth Report, the Director was counseled for failing to work in accordance with CCRD Policy, the subject Employee was temporarily assigned as Supervisor of the satellite office as a result of a union grievance¹¹, and Chief Legal Counsel, after significant and unnecessary delay, finally met with the subject Employee on June 1, 2018 to discuss the Interim DOC's December 1, 2017 report and findings. At present, all Interim DOC recommendations have been implemented. The over five-month delay before meeting with the subject Employee to discuss the Interim DOC's findings is unacceptable. Employees must be able to trust that Plan and Manual-related issues not only will be investigated in an efficient manner, but that the ROD will respond to the same and implement any adopted recommendations in a timely fashion. The ROD must improve in this regard.

¹¹ This same Employee was later awarded the permanent role of Supervisor as a result of a General Hiring Process posting that the RCA monitored and did not have any *Shakman*-related concerns.

c. DOC Incident Report 18-002 (Candidate not forthcoming/providing false information)

On April 20, 2018, the DOC issued a report concerning a pending hiring process. The DOC found that a Candidate who interviewed for the Position did not fully disclose their prior contacts with CCRD Employees Grade 16 or above, as the Plan requires. *See* Plan §V.F. She also found that the Candidate provided “misleading, incomplete or incorrect information” about her work experience in her application or resume. The DOC recommended that HRD disqualify the Candidate from consideration for the Position and her name be placed on the Do Not Hire Without Further Consideration List. CCRD implemented both recommendations in a timely fashion. The RCA commends the DOC for conducting this investigation in an expeditious manner and HRD both for abiding by the DOC’s directive to halt the hiring process pending the investigation results and for implementing the DOC’s recommendations in a timely fashion. Had the DOC not been serving, the CCRD would have hired an Employee who falsified her application for hire. Such cooperation and responsiveness between the DOC and HRD is what is needed consistently for the CCRD to achieve Substantial Compliance.

d. DOC Incident Report 18-003 (Failure to provide notice/improper conducting of performance evaluation/improper assignment policy)

On May 2, 2018 the DOC issued a report finding that: (1) a Director administered Performance Evaluations without providing the DOC or RCA notice as required by the Plan; (2) the Performance Evaluations were conducted in a manner inconsistent with the Manual’s requirement that evaluations be accurate (for example, the Supervisor acknowledged she provided artificially low scores for the purpose of leaving “room for improvement”); and (3) the Director utilized an incorrect policy regarding the re-

assignment of an Employee. The DOC recommended the Director be disciplined and receive training on how to properly conduct Performance Evaluations. The DOC also found that a Deputy Recorder utilized the incorrect policy (Cross Training) to reassign an Employee's duties, when the correct policy was Temporary Assignment. The DOC recommended that the assignment be corrected.

On June 1, 2018, the Recorder issued the Recorder's Report and agreed to implement all three recommendations. The Director corrected the assignment to utilize the appropriate policy and re-issued the evaluation to be consistent with the Manual. More recently, the final recommendation was implemented on July 3, 2018, when the ROD issued the Director a counseling for failing to provide the DOC and RCA with notice of the original performance evaluation meeting. The RCA considers this DOC Incident Report thoroughly responded to and appreciates the ROD's speed in which it responded. The RCA shares the DOC's concerns (noted in her semi-annual report at 3-4) that HRD would be well-served to work closely and deliberatively with supervisors throughout the upcoming performance evaluations of all Non-Exempt Employees. The ROD's track record for performing effective evaluations is lacking, *see, e.g.*, above at 14-16; below at 23-24; RCA's Fifteenth Report (Dkt. 4985 at 11-12)), therefore robust training on the front end and hands-on assistance throughout the process are necessary so the ROD does not repeat mistakes of the past.

e. DOC Notices of Violation

When the Recorder amended the Plan on December 21, 2017, the parties added a new provision that permits the DOC, in lieu of an Investigative Report, the discretion to issue brief memoranda detailing minor or technical violations of the Plan or Manual.

Plan § IV.M.2. Since the RCA's Seventeenth Report, the DOC issued the following Notices of Violations:

i. *Failure to provide adequate notice.* On May 22, 2018, the DOC issued a Notice of Violation to HRD concerning the issuance of a Counseling. The DOC found that an HRD Employee violated Section IV.C.2 of the Plan by failing to provide notice to the DOC and RCA prior to delivering a Counseling to an Employee. The DOC recommended disciplinary action. On August 29, 2018, the Chief of HRD responded to the DOC's Notice of Violation. The Chief acknowledged the HRD Employee's violation of the Plan but declined to issue discipline. The Chief relayed that she had met with the HRD Employee to discuss the violation and the Plan requirement to provide the DOC and RCA with proper notice of all Employment Actions. Finally, the Chief noted the Employee's correction of the notice violation on the same day the violation occurred.

ii. *Two posting-related violations.* On June 11, 2018, the DOC issued a Notice of Violation to the Chief of HR concerning the posting of a Non-Exempt Position. The DOC found two Plan violations: (1) that the Position was posted on the CCRD's online posting portal (Taleo) without providing the DOC or RCA 48 hours' notice before the posting went live (as required by Plan § IV.C.2); and (2) the Position was posted without confirming the Job Description was current and accurate. The DOC also discussed how the Chief of HRD had recently met with the DOC and RCA wherein they informed the Chief of their concerns with the underlying Job Description, yet the Chief posted the Position anyway despite knowing these concerns had not been resolved. The DOC recommended that the posting be removed from Taleo immediately and the Job Description be updated.

On July 9, 2018, the Recorder's Chief Legal Counsel responded to the DOC's Notice of Violation. He stated that the Chief of HRD's actions both with respect to providing the DOC and RCA notice of the posting and ensuring the accuracy of the underlying Job Description complied with the Plan. The RCA disagrees with Chief Legal Counsel and believes that Section IV.C.2 clearly requires HRD to provide the DOC and RCA with 48 hours' notice "before [an] Employment Action is taken." In this instance, the Chief of HRD posted the Investigator II Position less than five hours after providing the DOC and RCA notice of her intent to do so. While HRD, the DOC and RCA had discussed the Position over the previous weeks, by posting the final version a few hours after providing the same to the DOC and RCA, the Chief clearly violated the Plan and prevented the DOC and RCA from providing feedback on the final posting and Job Description. The DOC's recommendation to remove the posting was not accepted, yet the Position remains unfilled.

iii. *Performance evaluation violation.* On June 13, 2018, the DOC issued a Notice of Violation to HRD concerning the timing of a new HRD Employee's training and issuance of a 30-day evaluation. The DOC found that a violation of the Plan occurred where a Director failed to deliver HRD Personnel Training within an HRD Employee's first 45 days of employment, and that the failure to provide a 30-Day Evaluation timely is in violation of the Manual. The DOC recommended disciplinary action for the Director. The Director ultimately issued the 30-day evaluation on the Employee's 52nd day of employment (and just 8 days before her 60-day evaluation period concluded). On August 29, 2018, the Chief of HRD responded to the DOC's

Notice of Violation. She acknowledged both violations cited by the DOC but declined to discipline the Director.

3. Other Ongoing Noncompliance with Plan and Manual

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

a. Manual Training Requirements

The ROD last conducted Manual training in February 2015; however, such training is required annually (Plan §§ IV.D-F). Revised policies must be finalized soon, with effective and clear training to follow. Since the Seventeenth Report, HRD and the DOC trained most supervisory personnel on the updated Performance Evaluation policy. The RCA expects the ROD to train the outstanding Supervisors on this policy shortly and, soon thereafter, to direct Supervisors in five Sections with updated Job Descriptions to conduct evaluations of those Employees.

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. Shortly before the RCA filed the Seventeenth Report, the ROD provided updated Compensatory Time records.

The Manual requires Compensatory Time either to be pre-approved or, if advance notice is not possible, memorialized by the Supervisor the following business day and provided to the Division Head, HRD, the DOC and RCA. Manual at 6-7. After

reviewing the Compensatory Time records provided by the ROD, it is clear that the ROD is not properly enforcing its Timekeeping and Attendance policies. For example, from January 1, 2018 through August 18, 2018, there have been 575 instances of Employees accruing Compensatory Time – only four of which satisfied the notice and documentation requirements in the policy. The RCA has discussed these concerns with HRD and understands that some of the unauthorized Compensatory Time can be attributable to issues purportedly beyond HRD’s control: Employees inaccurately coded in the timekeeping system and a shaky transition to the Cook County’s new central electronic timekeeping system (Cook County Time). The RCA also acknowledges that HRD has made some, albeit inconsistent, attempts at enforcing its Compensatory Time policy by: 1) notifying Supervisors when their Employees accrue Compensatory Time to ensure that the Employee was indeed working outside of their regular shift hours and had been authorized to do so (a practice that was abandoned months ago); and 2) recently notifying some FLSA Exempt Employees that any accrued Compensatory Time cannot be used as it was accrued in error. Despite these limited efforts, Employees and Supervisors continue to violate the Compensatory Time policy with no recourse in sight.

c. Outreach-related Concerns

On December 16, 2015, the Recorder filed a Motion to Amend the Exempt List in which, amongst other things, she proposed adding a new title: Special Assistant to the Recorder – Community Affairs. *See* Dkt. 4426. Over the next four months, in filings with this Court, the Recorder explained why she needed this new Exempt Position. *See, e.g.,* Recorder’s Reply Brief (Dkt. 4519) at 12 (wherein the Recorder explained that the Special Assistant “would be 100% dedicated to outreach work and would serve as the

face of the Recorder's Office in the community [and] would actually do outreach presentations and field questions from constituent groups"). The Recorder argued that the new Special Assistant would spare the Director of Public Information from having to continue conducting outreach presentations so he could instead focus on property fraud investigations. *Id.* at 13-14. Ultimately the parties agreed to the Recorder's Motion and the title of Special Assistant to the Recorder – Community Affairs was added to the Exempt List. *See* Dkt. 4551 (filed on April 7, 2016).

The Recorder's first hire in this new Exempt Position was short-lived and resulted in a UPD finding by the OIIG. The Special Assistant was hired in October 2016, yet was terminated in August 2017 shortly after the OIIG had issued a Summary Report wherein it found that the Special Assistant was not performing such essential job duties as presenting at community outreach events, offering policy proposals or implementing new programs. IIG17-0080 at 6. The OIIG found that many such essential duties were still being performed by the *Shakman* Non-Exempt Director of Public Information, who the Recorder specifically had said would be spared of such duties. The OIIG concluded that permitting the Non-Exempt Director to continue to perform the Exempt duties of the Special Assistant Position was "a form of unlawful political discrimination" and violated the Recorder's SRO. *Id.* The OIIG offered two simple recommendations: (1) reassess whether the Special Assistant Position was Exempt and remove it from the Exempt List or (2) "fully implement the role of the Special Assistant" including reassigning the outreach duties to the Special Assistant permanently. *Id.* The Recorder has done neither.

After terminating the first Special Assistant to the Recorder – Community Affairs in August 2017, the Director of Public Information continued to perform many of the

essential job duties of the Exempt Special Assistant Position. In early February 2018, HRD provided the DOC and RCA with notice of the Recorder's intent to shift a current Exempt Employee into the vacant Special Assistant – Community Affairs Position. By February 23, 2018, the Recorder's HRD and DOC, as well as the RCA, had certified the Employee met the Minimum Qualifications of the Community Affairs Position. Around this time, the DOC and RCA began engaging with the Recorder's HRD and Counsel on the need to ensure that the new Special Assistant would perform the duties of the Special Assistant Position and encouraged the CCRD to put a plan in place to transition the outreach duties from the Director of Public Information to the Special Assistant. The CCRD ignored such recommendations and the new Special Assistant began her work on April 16, 2018. Over the next two months, the Director of Public Information continued to perform most of the essential job duties of the Exempt Special Assistant Position. Only after the RCA and Plaintiffs' Counsel requested a meeting with the CCRD¹² has the CCRD shown any signs of attempting to fix the issues.

In this instance, the DOC and RCA attempted to assist the CCRD with getting ahead of this issue to ensure the violations found by the OIIG would not be repeated. Anticipating and raising compliance concerns in advance is exactly how the Recorder should want her DOC to perform, yet CCRD leadership ignored the warnings and advice. To outright ignore the DOC's (and RCA's) attempts to get ahead of an issue and then later claim in a meeting with the RCA and Plaintiffs' Counsel that they were not aware of the extent of those issues is deeply concerning.

¹² The meeting was also requested in order to discuss the more global issue of exactly which Positions were tasked with performing any duties concerning outreach events. Specifically, the RCA re-raised concerns about HRD's recent posting of the Investigator II Position on Taleo despite the DOC and RCA raising concerns with HRD about the accuracy of the outreach duties in the Job Description. *See* above at 22-23.

One way to measure how the ROD is doing in its efforts to achieve Substantial Compliance with the SRO is to ask what would happen to compliance if the RCA and Plaintiffs' Counsel were removed from the equation. Situations like the above show that were it not for the RCA and Plaintiffs' getting involved, the Recorder would have continued ignoring the DOC and the exact same UPD found by the OIIG with the first Special Assistant hire likely would have continued with the second hire. The Recorder remains reliant on such external actors. The RCA must see that the internal processes are working and the Recorder and her leadership are consistently following the compliance recommendations of their own DOC. Only then might external actors not be necessary to ensure the Recorder complies with the principles prohibiting unlawful political discrimination. The parties continue to meet on the issues surrounding the Special Assistant – Community Affairs Position and the RCA will update the Court on any resolution to the same in her next report.

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 notes that the OIIG's recent findings of UPD coupled with the ROD's failure to implement consistently its employment policies affecting Non-Exempt Employees does not support the contention that the ROD no longer has a policy, custom or practice of making employment decisions based on political factors for Non-Exempt Positions.

The RCA noted in her Seventeenth Report that her document requests related to outreach event-related matters had "lingered for months without sufficient attention."

Given the recent developments regarding the issues concerning the Recorder's use of personnel to conduct her outreach events, the CCRD would have been much better served providing the RCA with the requested documentation over a year ago when it was first requested. Such resistance to providing requested documentation – and failure to provide any sensible explanation for the delay – raises serious concerns with the RCA of the Recorder's commitment to transparency.

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 has found material violations of the Plan and Manual, the Recorder stills lacks accurate Job Descriptions for many Sections and an updated Policy Manual, is delinquent on the Manual training requirements, is ignoring her own DOC's efforts to help her Office comply with the Plan and Manual, and the OIIG recently sustained two allegations of UPD.

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. As detailed above, quite a bit of work remains in order to meet this prong. The RCA, however, is pleased that HRD and the DOC recently conducted all office Employment Plan training and looks forward to

continuing to work with the same on finalizing amendments to the Manual, training on the same, and implementing the Plan and Manual consistently.

III. Conclusion

In the next reporting period, the RCA encourages the Recorder to dedicate its *Shakman* compliance efforts to achieving the following:

1. Complete the remaining portions of its Job Description update project consistent with the timelines provided to the Court.
2. Implement office-wide performance evaluations for all *Shakman* Non-Exempt Employees and ensure all Supervisors tasked with completing the same are given every opportunity to do so effectively.
3. Complete updates to the Recorder's Policy Manual in the next two months so that all Employees can receive meaningful and effective trainings on the various policies over the following month.
4. Issue written responses to any DOC written recommendations within 30 days of receipt of the same (per Plan Section IV.M.5) and implement any adopted recommendations in a timely fashion.
5. Resolve issues concerning Employee involvement with outreach events consistent with the Recorder's representations to this Court, the Plan and Manual.
6. Consistently enforce its Timekeeping/Attendance and Discipline policies.

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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