

**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.	)	

**NINETEENTH 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”)<sup>1</sup>, 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 Nineteenth Report as follows:

**I. Introduction**

On August 31, 2018, the RCA filed her Eighteenth Report to the Court (“Eighteenth Report”) (Dkt. 5988) in which she discussed the Cook County Recorder of Deeds<sup>2</sup> Karen Yarbrough’s efforts to comply with the SRO. Since the Eighteenth Report, the Recorder, Karen Yarbrough, was elected to serve as the next Cook County Clerk and began that new

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

<sup>2</sup> 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.

role on December 3, 2018 – six years to the day after first becoming the Cook County Recorder of Deeds. The Cook County Board appointed former Cook County Commissioner Edward M. Moody to replace Yarbrough. His tenure began on December 4, 2018. This report is an overview of the efforts made by the Yarbrough Administration to achieve Substantial Compliance<sup>3</sup> 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 an Employment Plan (the “Plan”) and other procedures to ensure compliance with the principles of *Shakman* and identify instances of non-compliance. The ROD finalized a Plan in 2013 which was updated in December 2017. *See* Dkt. 5705. The ROD also has a Policies and Procedures Manual (the “Manual”) that was finalized in 2013 and is in the process of being updated.<sup>4</sup> The completion of both were significant and necessary steps toward the

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<sup>3</sup> 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.

<sup>4</sup> The RCA notes there have been significant delays in the ROD’s updating of its Manual. The parties and RCA had agreed that the Discipline and Time/Attendance policies would be finalized and Employees trained on the same by November 30, 2018. *See, e.g.* Oct. 12, 2018 Hr’g Tr. (Dkt. 6058) at 14:24-15:9, 31:9-17. Unfortunately, the ROD did not meet that deadline and policy

end goal of Substantial Compliance. But to ultimately achieve that end goal, the ROD must implement both consistently and without regard to political reasons or factors. This requires not only a firm commitment from the Recorder and her or his top officials, but a strong, professional Human Resources Division (“HRD”) and an independent and empowered Director of Compliance (“DOC”). Below we summarize the history of the Chief of Human Resources and DOC positions over the past six (6) years.

1. Human Resources

The ROD’s current Chief of HRD was hired in June 2017. During the 18 months she has been in the position, the Chief of HRD has overseen – and oftentimes has been a driving force behind – some of the most significant progress toward Substantial Compliance made during the Yarbrough Administration. While some missteps have occurred during the last few months, *see below* at 7-10, the RCA has observed the Chief of HRD to be hard working, capable and overall positive addition to the ROD. The RCA believes the Chief of HRD and her staff can help lead the ROD toward effective Plan and Manual implementation.

The current Chief of HRD has overseen the ROD’s overhaul of its Job Descriptions (a project that is nearly complete). This task has been immense and has required over a hundred desk audits and related interviews as well as myriad meetings with the DOC and RCA during the revision process. The RCA also recognizes the important contributions of Joe Gagliardo and his team at Laner Muchin in helping with this process. Mr. Gagliardo’s role has been helpful in keeping the doors of communication open between the RCA and

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revision completion and training remain outstanding. On December 19, 2018, the ROD forwarded proposed revisions to these policies to the RCA and Plaintiffs’ attorney. The RCA encourages the ROD to finalize these policies and train its employees by mid-January 2019.

ROD.

The Chief has begun implementing the Recorder's first annual performance evaluation process. While there have been concerns with Supervisors' compliance with the policy so far (e.g. untimely issuance of evaluations), the RCA recognizes the complexity of the project and is hopeful the issues will abate as more Supervisors conduct the required evaluations.

The previous Chief of HRD (April 19, 2016 – May 31, 2017) was terminated by the Recorder after 13 months in the Position. In May 2017, the RCA (serving in the capacity of Interim DOC) concluded that the Chief of HRD had “misled his own co-workers on the nature of his relationship” with a Candidate for the DOC position and had not been forthcoming or truthful with the RCA about various matters concerning the DOC hiring process.<sup>5</sup> See RCA's Sixteenth Report (Dkt. 5220) at 3-4 (filed on October 5, 2017). The Recorder concurred with the RCA's findings and terminated the Chief within days of receiving the RCA's report. She also placed him on her Do Not Rehire List. The RCA was appreciative of the Recorder's swift and decisive actions. During this Chief's brief time in that role, the ROD made minimal progress toward consistent implementation of its Plan and Manual.

The Recorder's first Head of HRD (a *Shakman* Non-Exempt Director of HRD) was

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<sup>5</sup> The RCA notes that this is the same former Chief of HRD who the OIIG concluded committed Unlawful Political Discrimination (“UPD”) by terminating the former Director of HRD because that Director attempted to discipline a *Shakman* Non-Exempt employee who had established political ties to then-Recorder Yarbrough. See Eighteenth Report at 11-14 (discussing OIIG Summary Report IIG17-0163). The RCA described her concern that the Director's termination also may have been because of her cooperation with the RCA in connection with the March 2017 Director of Compliance hiring process. See *id.*

more problematic from a *Shakman* compliance perspective; his employment ended only after an Office of the Independent Inspector General (“OIIG”) finding of UPD. For nearly all of her first term, Recorder Yarbrough employed this Director of Human Resources who the Recorder acknowledged to the RCA early on was “not an HR guy.” The Director of HRD nevertheless continued in his role while providing the RCA with inaccurate and, at times, false information about Employment Actions the RCA was monitoring. *See, e.g.*, RCA’s Twelfth Report (Dkt. 4603) at 22-23. In September 2015, the OIIG issued a Summary Report concluding that the Recorder and her staff had insulated the Director of HRD “from the consequences of (a) performance so poor it rises to the level of obstructing substantial compliance and (b) repeated acts of providing false statements to the OIIG during investigations conducted under the SRO.” OIIG Summary Report No. IIG14-0408 at 21. The OIIG’s report detailed the Director of HRD’s extensive political connections and contribution histories and concluded, in part, that the Recorder’s treatment of the Director of HRD was motivated by political reasons or factors. *Id.* The Recorder agreed to move the Director out of HRD and proposed putting him into a new *Shakman* Exempt Position. *See* Dkt. 4471 at 4-5. When Plaintiffs objected to this course of action, ultimately the Recorder agreed to terminate the Director’s employment, place him on the Do Not Rehire List and hire a new Chief of HRD. *See* Twelfth Report at 6-7.

The RCA believes HRD is in a markedly better place with its current Chief and looks forward to working with her to help move the Office toward more consistent implementation of the Plan and Manual.

2. Director of Compliance

The DOC is the Position responsible for overseeing the ROD's adherence to the Plan and Manual. The Yarbrough Administration had a problematic history with the DOC Position but has left Recorder Moody with a capable, strong and independent DOC who would benefit considerably from additional support and resources.

The current DOC was hired in May 2017. The current DOC has demonstrated the two most important attributes of a DOC: (1) the ability to spot compliance issues as they occur and (2) the ability to report on such compliance issues in an independent and objective manner. In so doing, the RCA believes she has earned the trust of many *Shakman* Non-Exempt Employees who seem comfortable bringing concerns to her.

Recorder Yarbrough's first DOC lasted only six weeks (August 11, 2014 – September 23, 2014) after being frozen out by her senior staff.<sup>6</sup> Recorder Yarbrough hired her second DOC in June 2015. At first, the RCA was buoyed by the former Recorder and her senior staff's efforts to assimilate the DOC into the ROD. Soon thereafter, this DOC began noting to the RCA "that his acceptance by the executive staff ha[d] come with a considerable degree of skepticism from the rank and file." Twelfth Report (Dkt. 4603) at 4. The RCA began counseling the second DOC on ways to earn the trust of *Shakman* Non-Exempt personnel and, when she learned he was consistently having lunch with certain Exempt staff, recommended he cease doing so. He chose not to follow the advice, but further entrenched himself with Exempt staff thereby alienating the majority of ROD

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<sup>6</sup> The RCA was deeply troubled by Recorder Yarbrough and her senior staff's treatment of the DOC. The RCA's observations were that the DOC was a serious-minded and skilled individual; however, she was isolated by senior staff almost immediately. *See* RCA's Eleventh Report at 6-7 (Dkt. 4036) (filed on Dec. 11, 2014).

employees. The OIIG ultimately found that this DOC and Recorder Yarbrough violated the SRO attending together a non-work event of a political nature identified by this DOC. *See below* at 11. The second DOC resigned his position in February 2017 for other opportunities.

The RCA has observed that some of the current DOC's efforts have been met with resistance from ROD senior staff. As discussed further below, this included often opposing the DOC's findings of compliance violations and/or her recommendations for corrective action. *See below* at 7-10. The RCA encourages the Recorder both to empower the DOC's performance of her duties and to ensure senior staff support the same.

**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 ROD 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.

1. Recent Exempt Hiring Process Non-Compliance

During the final week of the Yarbrough Administration, the Recorder's Chief of HRD informed the DOC and RCA that several *Shakman* Exempt Positions would be vacated by the end of the week. As set forth below, the RCA had concerns about the process followed by the ROD to fill those Exempt Positions after the DOC identified non-compliance with the Plan.

When the Recorder seeks to fill a vacant Exempt Position, the Plan requires the Chief of HRD or Designee to first confirm the accuracy of the underlying Job Description. Plan § XI.A.1. If the Job Description is inaccurate, there is a detailed process for how updates are made and how HRD must gain the DOC's and Plaintiffs' approval of the same.

*Id.* §§ XI.A-C. After receiving the necessary approvals, the Chief of HRD may certify that a Candidate meets the Minimum Qualifications for the Position and provide that Certification to the DOC and RCA for review. *Id.* § XI.A.3.

For the past year, the ROD has been updating its Job Descriptions. The Office originally indicated it would complete updates to Job Descriptions for all Positions (including *Shakman* Exempt Positions) by July 3, 2018, but ultimately was not able to do so. HRD conducted the interviews required to update Exempt Job Descriptions<sup>7</sup> during the week of October 29, 2018. Over the next few weeks, the Chief of HRD, DOC and RCA exchanged drafts of the Job Descriptions and met to discuss the same. That meeting concluded with several issues requiring follow-up.

On November 27, 2018, the Chief of HRD provided the DOC and RCA with Certifications to hire four new Exempt hires. The RCA and DOC already had signed off on the Certification packet for the fifth Exempt hire – Labor Counsel – not recognizing that the packet included an old Job Description. On November 28, the DOC recognized that the Chief had included the old Job Descriptions in the Certification packets and raised the issue in an email. The Chief responded by noting that the updated Job Descriptions were being reviewed internally at the ROD and because the hires were time sensitive, she included the old Job Descriptions. The DOC replied by noting the Plan’s requirement of including

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<sup>7</sup> Initially, the DOC, RCA and HRD agreed that, because they had been filled in 2018, the Job Descriptions of two of the Recorder’s eight Exempt Positions did not require updating under the all-office Job Description overhaul project. These Positions were the Special Assistant to the Recorder – Government Affairs and Special Assistant to the Recorder – Community Affairs. However, when an Exempt Position is vacated and the Recorder wishes to fill the same, the Plan requires the Head of HRD to ensure the Job Description is accurate regardless of how recently the Position had last been filled. Plan § XI.A.1.

“current and accurate” Job Descriptions and stated that, “regardless of the time sensitive nature of the pending appointments, the certification and validation should be done with respect to the JDs after they are finalized....” Rather than accept the DOC’s attempt to help the ROD comply with the Plan, the Recorder’s then-Chief Legal Counsel (now the new Chief Deputy Recorder) responded by, in part, stating that the DOC’s pledge not to review the Certifications until the Job Descriptions were updated was “particularly harmful to the operations of the office” and “illogical.”

On November 29, 2018, the RCA emailed her support of the DOC’s position that the Plan must be followed. Plaintiffs’ Counsel followed with an email also supporting the need for the Plan to be followed and encouraged the ROD to dedicate the resources necessary to complete their review of the Exempt Job Descriptions and circulate them to the parties. Less than an hour later, the Chief of HRD circulated proposed updates to the Exempt Job Descriptions. That same afternoon, the DOC raised several questions and concerns with the accuracy of one of the Job Descriptions (Special Assistant to the Recorder – Government Affairs). Plaintiffs’ Counsel proposed edits to all of the Job Descriptions and those were accepted by the ROD. The DOC’s concerns with the Special Assistant Position, however, had not been addressed by the ROD.

On November 30, 2018, the final day of the Yarbrough Administration, the Chief of HRD provided the DOC, RCA and Plaintiffs’ Counsel with Certification packets for five Exempt hires – including the Special Assistant. The DOC approved four of the five Certifications but reiterated her concerns with the accuracy of the Special Assistant Job Description. The Chief of HRD responded by characterizing the DOC’s concerns as trivial and stating “we are moving forward with this Exempt hire.” The DOC replied, in part, by

noting that if the Chief completed the hire, she would violate the Plan.

Ultimately, the ROD did not move forward with the hire at that time. But the RCA is concerned that the reason for that delay was because she voiced her opinion over the weekend that the hire would violate the Plan, and not because the ROD respected the DOC's position on that issue.<sup>8</sup> The RCA hopes the ROD will take away two lessons from this incident: (1) that it will plan sufficiently to avoid creating time sensitive situations that inevitably lead to a break down in processes – an issue the RCA repeatedly has raised with this Office over the years; and (2) that it will listen to and meaningfully engage the DOC when she raises compliance issues either in real-time or after the fact as that is her primary function in the Office.

## 2. OIIG Findings During the Yarbrough Administration

During the six years of the Yarbrough Administration, the OIIG issued 11 reports with 14 separate findings of SRO violations, Unlawful Political Discrimination, improper consideration of political factors in connection with Non-Exempt employment, and/or violation of the Ethics Ordinance. These reports were as follows:

- 2013: Finding that the Chief Deputy Recorder under the Moore Administration committed UPD in 2012 by allowing multiple Non-Exempt postings to be influenced by pressure from the incoming Recorder (Karen Yarbrough) and her campaign manager. *See* Interim Report (Dkt. 3108) at 2-8.
- 2013: Finding that Recorder Yarbrough violated the Ethics Ordinance by hiring her niece as her Labor Counsel. *See* Ninth Report (Dkt. 3616) at 35.
- 2014: Finding that in 2013 Recorder Yarbrough terminated the employment of a Non-Exempt Manager based on Political Reasons or Factors. OIIG also found that senior staff misled the RCA regarding the basis for that termination. *See* Eleventh Report (Dkt. 4036) at 7-10.

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<sup>8</sup> Ultimately, the ROD amended the Job Description to address all concerns raised by the DOC and RCA and then, after gaining the Plan required approvals, hired the selected Candidate.

- 2014: Finding that Recorder Yarbrough, the then-Director of HRD, a Non-Exempt Director, and an Executive Assistant violated the SRO by involving unlawful political factors in the 2013 hiring of Non-Exempt Executive Assistants and a Non-Exempt Director. The OIIG also found the Recorder, the then-Chief Deputy Recorder, then-Director of HRD, a Non-Exempt Director and multiple Executive Assistants provided false information to the OIIG during its investigations of the same. *See* Tenth Report (Dkt. 3759) at 10-20.
- 2015: Finding that Recorder Yarbrough's continued employment and disparate treatment of her then-Non-Exempt Director of HRD was based on the Director's significant political ties to Illinois House Speaker Michael Madigan's organization. The OIIG concluded that the Director of HRD's "performance [was] so poor it rises to the level of obstructing substantial compliance" and that the "tangible consequences of this employment scheme are to deprive the people of Cook County of faith in their government along with the significant monetary costs triggered by these circumstances." *See* Twelfth Report (Dkt. 4603) at 9-11.
- 2016: Finding that the then-DOC and Recorder Yarbrough violated the spirit of the SRO by jointly attending a "ribbon cutting ceremony" at a hospital. OIIG noted the then-DOC's stated intent for taking the Recorder to the event was to show the Recorder that the DOC had "substantial outside interests and connections" that might help the Recorder trust the DOC. *See* Fourteenth Report (Dkt. 4818) at 8-10.
- 2017: Finding that Political Reasons or Factors impacted Recorder Yarbrough's decision to hire a Non-Exempt Security Officer in 2015 who was politically active with the Recorder and her organization and was the nephew of a U.S. Congressman. OIIG also found that a *Shakman* Exempt Recorder employee had a practice of announcing Recorder employment opportunities to volunteers at the Proviso Township Democratic Organization. Finally, the OIIG found that Recorder Yarbrough herself failed to cooperate with the OIIG investigation. *See* Fifteenth Report (Dkt. 4985) at 13-15.
- 2017: Finding that Recorder Yarbrough's Special Assistant was not performing the duties of her Position from 2016-17 and the transfer of those duties to a Non-Exempt employee constituted UPD. *See* Sixteenth Report (Dkt. 5220) at 10-11.
- 2018: Finding that the former Chief of HRD committed UPD by permitting a Non-Exempt Director in 2017 to avoid attendance-related discipline due to the Director's political affiliation with the Recorder. *See* Eighteenth Report (Dkt. 5988) at 9-11 (discussing IIG17-0123).
- 2018: Finding that the former Chief of HRD committed UPD when he

terminated the Director of HRD in 2017 in retaliation for the Director taking disciplinary action against a political hire. *See* Eighteenth Report at 9-11 (discussing IIG17-0163).

- 2018: Finding that the Recorder violated the Plan and committed UPD in 2018 by involving Political Reasons or Factors in the anticipated hiring of an Executive Assistant. *See below* at 14-17 (discussing IIG18-0361).

Recorder Yarbrough did not agree with any of these findings of UPD, improper political considerations in Non-Exempt employment, SRO violations or the Ethics Ordinance violation and, with a single exception<sup>9</sup>, declined to implement any of the OIIG's recommendations for corrective action. As to the findings set forth in the last three bullet points above, the ROD issued its responses to those OIIG's reports after the RCA filed her Eighteenth Report. The responses are summarized below:

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

In her Eighteenth Report, the RCA discussed the OIIG's August 2018 Summary Report wherein it found that the CCRD's former Chief of HRD permitted a current *Shakman* Non-Exempt Director to avoid attendance-related discipline due to the Director's political affiliation with the Recorder of Deeds. 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.*

On November 2, 2018, the Recorder issued her response to the OIIG's Report. The Recorder wrote, among other things, that the OIIG did not prove how the former Chief of

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<sup>9</sup> The lone exception came in response to the OIIG's 2017 finding that Recorder Yarbrough's Special Assistant was not performing the duties of her position. In response, the Recorder informed the Special Assistant she had 30 days to improve her performance. When she failed to do so, Recorder Yarbrough terminated her employment.

HRD was aware of the Director's alleged political affiliation with former Recorder Yarbrough and the Recorder's husband. The Recorder also wrote that the OIIG did not analyze time and attendance records of other FLSA Exempt, Director-level employees to determine if the Director received favorable treatment. The Recorder rejected the OIIG's recommendation of placing the former Chief of HRD on the Do Not Hire List.<sup>10</sup> The Recorder noted that the ROD recently began requiring Directors to have set work hours and began enforcing the attendance policy for Directors. The Recorder noted that, consequently, the Director at issue had been issued Incident Reports recently for violating the policy.

- b. *Recorder's Response to 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)*

In her Eighteenth Report, the RCA discussed at length IIG17-0163 in which the OIIG concluded that a former Non-Exempt Director of HRD was terminated on the basis of Political Reasons or Factors after attempting to discipline another Non-Exempt employee who had established and considerable political ties to Recorder Yarbrough. *See* Eighteenth Report at 9-11. The RCA also described her belief that the former Director of HRD's termination was also in retaliation for her role in assisting the RCA with the early stages of an inquiry into irregularities with the DOC hiring process. *See id.*

On November 2, 2018, the Recorder issued her Recorder's Report in response to IIG17-0163. The Recorder disputed the OIIG's finding in part because, she argued, the OIIG did not demonstrate that the employee who terminated the former Director of HRD

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<sup>10</sup> The RCA notes that the former Chief of HRD's name is already on the Do Not Hire List for a separate finding that he had been untruthful with the RCA during an investigation into his involvement with the DOC hiring process. *See* Sixteenth Report (Dkt. 5220) at 3-5.

had any political motives in doing so.

- c. *OIIG Post-SRO Complaint Summary Report IIG18-0361 (finding former Recorder Yarbrough violated the Plan by involving political factors in the Executive Assistant hiring process)*

On November 23, 2018, the OIIG issued IIG18-0361 which concerned a Non-Exempt Director's attempts to hire an Executive Assistant. The OIIG report detailed that Recorder Yarbrough inquired with the Director about the status of the Director's hiring of an Executive Assistant. Executive Assistants hold Non-Exempt Positions and their hiring is not permitted to be impacted by Political Reasons or Factors. Recorder Yarbrough then informed the Director that "there is someone at the Sheriff's Office with compliance experience and 'she is looking to move.'" IIG18-0361 at 2. In Recorder Yarbrough's interview with the OIIG, she recalled mentioning to the Director that "she had overheard that someone at either Cook County or the Sheriff's Office had somebody who was leaving," but could not recall stating the person had "compliance experience." *Id.* Recorder Yarbrough informed the OIIG that she learned this information sometime during the summer of 2018 while riding the elevator at 118 N. Clark Street to the Office of the ROD on the second floor. The Recorder explained to the OIIG that she offered this information because she had heard the Director was concerned about finding Candidates, although the Recorder acknowledged the Director had not been the source of that information. The Recorder described the overheard elevator conversation as "tidbits in the wind." *Id.* at 3. The OIIG summarized its unsuccessful attempts to identify the Sheriff's employee to whom the Recorder was referring.

The OIIG concluded that the Recorder's stated motive for informing the Director of a possible Executive Assistant Candidate at the Sheriff's Office was an attempt "to

influence the DOC's effort to identify a potential candidate . . . despite the Recorder having no personal knowledge of that individual's skill or work experience." *Id.* at 5.<sup>11</sup> The OIIG noted that "the Executive Assistant Hiring Process does not contain any role for the Recorder in the identification and selection of a candidate" and therefore her efforts were not permitted under the Plan and constituted an unlawful political contact. *Id.* at 5. The OIIG closed by noting that "because of the history of documented concerns in the administration of Executive Assistant hiring, all senior officials within the office should be extremely sensitive to these issues at this juncture."<sup>12</sup> *Id.* The OIIG recommended that the Executive Assistant Hiring Process be suspended for 90 days during the upcoming transition between administrations "to allow the new administration to become fully apprised with all *Shakman* related policies and protocols." *Id.* at 6.

On November 23, 2018, the Recorder issued her response to IIG18-0361. In it, the Recorder rejected the OIIG's findings and recommendation. The Recorder stated that "[i]t is incomprehensible that the OIIG can find that an Unlawful Political Contact occurred when it admitted that there were no political considerations involved in the case." The Recorder's Report further stated that "[i]t seems that the OIIG believes that the Recorder's conversation with the Director [ ] may have amounted to a 'recommendation' for the hiring of an Applicant or potential Applicant by a Politically-Related Person that is not based on

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<sup>11</sup> The Plan permits recommendations by Political-Related Persons such as the Recorder, but only if they are: 1) in writing; 2) based upon the recommender's "personal knowledge of the individual's work, skill, experience or other job-related qualifications" and 3) not based on Political Reasons or Factors. Plan § III.D.2.

<sup>12</sup> Here, the OIIG was referring to three previous OIIG findings of Recorder employees' violations of the Plan and SRO in connection with the Executive Assistant Hiring Process. These findings (and the Recorder's responses to the same) were discussed at length in prior RCA Reports. *See* Tenth Report (Dkt. 3759) at 10-20; Eleventh Report (Dkt. 4036) at 10-15.

that person's knowledge of the potential Applicant's skills, work experience or other job-related characteristics. At best, this constitutes an incredibly unreasonable interpretation of the Plan considering that nobody (not the Recorder, DOC, OIIG or anyone at the Sheriff's Office) can actually identify the potential Applicant in this case. Indeed, it is illogical to contend that the Recorder attempted to use political influence to hire someone that nobody can even identify." The Report also rejected the OIIG's statement that the Recorder had no identifiable role in this Executive Assistant Hiring Process. Recorder's Counsel argued that since the Director reported directly to the Recorder, Recorder Yarbrough was simply providing a subordinate with general advice as part of her management duties.

The RCA has serious concerns over the ROD's response to the OIIG's report. Among other things, the premise of the response – that the Recorder was simply providing her subordinate with general advice about a hiring process – is contrary to the ROD's express agreement with the RCA that the Recorder would have *no* role in any hiring process. Further, former Recorder Yarbrough had an obligation – shared with every other employee in the office – to complete a Contact Form when discussing a current or prospective hiring process with someone involved with that a hiring process. Plan § V.F.3. She did not do so and therefore violated the Plan. The Recorder's response supports the RCA's belief that the Recorder has not acted in good faith on a consistent basis to remedy instances of non-compliance that have been identified.

3. DOC Findings Under the Yarbrough Administration and Recent Updates

Since the former Recorder hired her first DOC in August 2014, the three DOCs (and RCA, when appointed as Interim DOC) have issued 29 DOC Incident Reports and Notices of Violation ("NOV"). Out of those 29 Reports and NOVs, 23 of them concluded

that a Deputy Recorder, Chief or Director had violated the Plan or Manual. Some of the more serious reports of violations were as follows:

- 2015: Finding that then-Labor Counsel violated the Manual's prohibition against retaliation when he issued his Executive Assistant several Major Cause Infractions that were not based in fact after she filed a complaint with the DOC. DOC also found Labor Counsel knowingly interfered in the DOC's investigation. *See* Thirteenth Report (Dkt. 4603) at 9-10.
- 2015: Finding that a then-Deputy Recorder violated the Courtesy Policy for swearing at her Executive Assistant (*see* Thirteenth Report at 9). The DOC later issued a finding in 2017 that the same Deputy Recorder again violated the Courtesy Policy by making derogatory statements to subordinate staff. *See* Fifteenth Report (Dkt. 4985) at 20-22.
- 2016: Finding that the then-Chief of HRD violated the Plan's prohibitions against Political Reasons or Factors impacting Non-Exempt employment when he allowed an Exempt Employee to perform the duties of a Non-Exempt Position. *See* Fifteenth Report at 16-17.
- 2017: Finding of widespread abuse of the Recorder's Sick Time policy and that HRD and a then-Deputy Recorder failed in their duties to oversee and enforce the policy. *See* Sixteenth Report (Dkt. 5220) at 9; Seventeenth Report (Dkt. 5988) at 5-6.
- 2017: Finding that the then-Chief of HRD knowingly provided false information to the DOC during an investigation regarding the DOC hiring process. DOC also found that the Chief of HRD violated the principals and spirit of the Plan by attempting to conceal from the ROD, RCA and Interim DOC the extent of his relationship with a Candidate for the DOC Position. *See* Sixteenth Report at 3-5.
- 2017: Finding that a Director violated the Plan by allowing a non-Supervisor to perform the duties of a Supervisor outside of any process in the Plan or Manual. *See* Seventeenth Report (Dkt. 5754) at 6-8.
- 2018: Finding that a then-Director violated the Plan by conducting an unsanctioned investigation and violated the Manual by intimidating the subject of his (unsanctioned) investigation in the process (*see below* at 18-19 discussing DOC Incident Report 18-005).

Since the Eighteenth Report, the DOC has issued three Notices of Violation and two Incident Reports. The three Notices of Violation included (1) separate findings that a

Deputy Recorder and Director both violated the Performance Evaluation policy by not timely issuing Performance Evaluations of their subordinates and (2) a finding that a now former Director failed to ensure his subordinate staff maintained a certification that was a Minimum Qualification on their Job Descriptions. In each of the Notices of Violation concerning Non-Exempt Directors, the DOC recommended Discipline. The Recorder chose not to issue Discipline to either Director.

The two recent DOC Incident Reports issued were as follows:

*a. DOC Incident Report 18-004 (Employee violation of the Courtesy Policy)*

On October 3, 2018, the DOC issued a report finding that an Employee violated the Courtesy provisions in the Manual by frequently using improper statements in the workplace. The DOC recommended the Employee be disciplined and the Employee's entire Section receives comprehensive training about workplace etiquette. The Recorder has implemented both of the DOC's recommendations.

*b. DOC Incident Report 18-005 (Conducting an unsanctioned investigation/threatening an Employee)*

On November 7, 2018, the DOC issued a report finding that a now former Director conducted an unsanctioned investigation into an alleged Manual violation. The DOC found the Director (1) violated the Plan by not referring the matter to the DOC as required; and (2) violated the Manual's prohibition against "[i]ntimidating or coercing another Employee through physical or verbal threats," for telling the Employee they were "not excused" from an interview and threatening the Employee with disciplinary action for not cooperating with the (unsanctioned) investigation. The DOC recommended the Director be disciplined for the separate violations of the Plan and Manual. The DOC also recommended that the

Manual and Discipline policy be amended to include language regarding investigations that is consistent with the Plan. The Recorder's Report responding to these findings was due on December 7, 2018. The Recorder has been granted a 30-day extension to respond.

**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. Given the OIIG's recent finding of Political Reasons or Factors involving a Non-Exempt hire, the RCA cannot confirm the ROD does not have a policy, custom or practice of basing Non-Exempt employment decisions on political factors.

**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 OIIG and DOC continue to find material violations of the Plan and Manual, the Recorder stills lacks an updated Policy Manual and is delinquent on Manual training requirements, and some of the Recorder's senior staff seem to rebuff the DOC's efforts to help her Office comply with the Plan and Manual. Moreover, the former Recorder's compliance efforts often have been reactive to a given day's challenges despite the DOC and RCA's attempts to raise upcoming potential compliance issues. The RCA encourages the ROD generally to demonstrate more consistently the ability to proactively comply with the Plan and Manual.

**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, significant work remains. The RCA continues to be pleased with the DOC's efforts and is grateful for the hard work exhibited by the Chief of HRD and others on the nearly complete Job Description project. The RCA encourages the new Recorder and his senior staff to work closely with both the DOC and HRD to demonstrate not only that the Office can follow established policies consistently, but that there are consequences for all staff when that does not happen.

**III. Conclusion**

In the next four-month reporting period, the RCA encourages the new Recorder and his team to focus on the following:

1. Comply with the Plan's requirements for Plan and Manual training for the new Recorder and his newly hired staff.
2. Complete updates to the Manual and train Employees on the same.
3. Finalize the Job Description updates that are pending.
4. Complete the implementation of office-wide performance evaluations for all *Shakman* Non-Exempt employees.
5. Consistently enforce the Plan and Manual.

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

Respectfully Submitted,

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