

**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.)	

**TWENTIETH 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 Twentieth Report as follows:

I. Introduction

On December 24, 2018, the RCA filed her Nineteenth Report to the Court (“Nineteenth Report”) (Dkt. 6148) in which she discussed the Cook County Recorder of Deeds² efforts to comply with the SRO. The Nineteenth Report provided a detailed overview of the efforts of former Recorder of Deeds, Karen A. Yarbrough, during her six-year tenure as Recorder and the initial efforts of the new Recorder, Edward M. Moody, to

¹ “RCA” hereinafter shall refer to the Recorder Compliance Administrator and/or her staff.
² Unless otherwise specified, the “Cook County Recorder of Deeds”, the “Recorder”, “ROD” and/or “Recorder’s Office” hereinafter shall refer to the Recorder, Edward Moody, and/or his staff.

achieve Substantial Compliance³ with the SRO. Since the Nineteenth Report, the ROD underwent a change in Human Resources Division (“HRD”) leadership, finalized updates to their Policies and Procedures Manual (the “2019 Manual”) for the first time since 2015, conducted extensive training on that updated Manual, finalized Job Descriptions updates, and continued implementing its all-employee Performance Evaluation policy for the first time. The DOC has played a primary role in all of the above accomplishments and is making progress on outstanding investigative reports. Recorder Moody also has had a positive impact thus far. He has expressed a commitment to achieving Substantial Compliance, has been engaged during meetings with the RCA and open to feedback on impediments to Substantial Compliance, stated early on that he would embrace the role and recommendations of the Office of the Independent Inspector General (“OIIG”), and has made good recommendations on how to resolve compliance issues. The ROD worked with the DOC and RCA proactively on the recent hiring of a new Exempt Chief of Human Resources.

Despite the above progress and positive leadership by Recorder Moody, issues remain. The instinct by the ROD toward an outcome-oriented approach to issues rather than a process-oriented approach continues. This was evident both in the ROD’s disparate scrutiny and attempt to discipline an employee for purported issues with the employee’s

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.

draft performance evaluation of a subordinate (*see below* at 16-18) and in the ROD's recent decision to permit employees to determine which questions they will and will not answer during an OIIG investigation. *See below* at 27-28. Further discussion on these two issues are included below as part of the overall discussion of ROD's progress toward meeting each of the five prongs of Substantial Compliance.

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. To demonstrate satisfaction of this prong requires an Employment Plan (covering hiring) and Policy Manual (covering non-hiring Employment Actions), a human resources division effectively implementing the Plan and Policy Manual and an independent Director of Compliance ensuring violations of the Plan and Manual are identified and reported. The ROD has work remaining to satisfy this prong.

The ROD finalized a Plan that covers its hiring practices in 2013, updated it in December 2017 (*see* Dkt. 5705) and updated it with further amendments.⁴ *See* Amended Employment Plan (Dkt. 6523-1) (filed October 3, 2019). The ROD amended its Manual effective August 2019. The ROD has not yet demonstrated consistent and effective adherence to both the Plan and Manual. Below are some of the areas where we have seen

⁴ The amendments included requiring HR Quarterly Reports be issued within 30 days of the end of the quarter and assigning the OIIG with the duty to investigate any complaints that the DOC violated the Plan or Manual.

progress since the Nineteenth Report (*e.g.* recent hiring processes, compliance with training requirements) as well as those areas where the ROD still needs to improve (*e.g.* adherence to its Time and Attendance policies, consistent enforcement of its disciplinary process and Performance Management policy, DOC working through a backlog of investigation reports). To date, the ROD's HRD has appeared overwhelmed with the responsibilities of implementing the myriad employment policies in the Plan and Manual. The DOC likewise has expressed a similar sentiment and requested additional staffing to assist her efforts. The RCA will continue to assist the ROD but ultimately is looking to see that HRD (and the DOC) is capable of ensuring the Office's adherence to its Plan and Manual without reliance on the RCA.

1. Policy Manual

The ROD finalized a Manual in 2015 that covers non-hiring Employment Actions. The ROD had repeated problems with effectively and consistently implementing the Manual's policies. *See, e.g.*, Twelfth Report at 8; Thirteenth Report at 10-12; Eighteenth Report at 24. As a result, the RCA suggested and the parties ultimately agreed to discuss significant updates to the Manual. Those discussions took place for over a year, but it was not until the Moody Administration made completion of the Manual a priority that the parties and RCA reached agreement on amendments in June 2019. Since then, the ROD trained its employees on the updated Manual – a vital step to ensure the ROD implements the amended Manual consistently and without regard to Political Reasons or Factors.

The updates to the 2015 Manual, in part, attempted to plug holes in previous policies and add processes to address issues of non-compliance previously identified by the DOC, HR and the RCA. For example, since her Nineteenth Report, the RCA continued

to observe inconsistent enforcement of the requirements surrounding meeting deadlines, inconsistent scoring and inconsistent application of disciplinary standards on Performance Evaluations; implementing time and attendance policies; and responding in a timely manner to RCA inquiries. Some of the primary amendments contained in the 2019 Manual included:

- new steps and time limits for the completion of the Performance Management process;
- increased clarity on Supervisor and HR roles and responsibilities for ensuring Time and Attendance policy compliance;
- changes to the selection criteria for Temporary Assignments;
- elimination of the Promotion and Transfer policies (all Positions are now filled through one of the hiring processes detailed in the Plan);
- extensive revisions to the Discipline policy, including the removal of the Courtesy policy and addition of Supervisor's ability to counsel an Employee for Minor Infractions at CCRD's discretion; and
- memorializing a process whereby the Recorder's Labor Counsel and the DOC review all draft Incident Reports prior to issuance.

The office made a concentrated effort to ensure it trained all employees on the Manual in a manner that far exceeded prior efforts to do the same. *See* Eleventh Report at 5; Twelfth Report at 7. As of this report, nearly all Employees have received this training.

The ROD trained employees over multiple sessions which allowed it the opportunity to communicate more effectively to employees both what changes have been made and what employees' responsibilities were for each policy. The RCA generally was pleased with the preparation for and deliverance of the training. The training slides were more informative than prior training presentations and the presenters mostly did a nice job

⁵ For example, as the DOC noted in her April 3, 2019 Semi-Annual Report, one Supervisor issued evaluations of her subordinates three months after the evaluation period had expired, despite the policy requiring issuance within 25 days. DOC Semi-Annual Report at 4.

of fielding employee questions. The RCA provided feedback to the ROD on the training sessions and will update in future reports on how that feedback was incorporated in future trainings.

Now that the ROD has updated its Manual and trained employees on it, the RCA hopes that she will begin to see that the procedures in the Manual are “followed rigorously” and “without exception” as the Court previously noted. Feb. 6, 2015 Tr. (Dkt. 4202) at 17:21-18:2. As of this Report, the ROD has not yet: ironed out issues with inconsistent enforcement of its Time and Attendance policies (particularly Compensatory Time); worked through a backlog of information requests by the RCA; demonstrated that HRD, Supervisors and Directors are capable of abiding by the Performance Management Policy; and demonstrated that it has resolved the long-time issue of inaccurate discipline recordkeeping. The RCA will report on further progress in her next report.

2. Human Resources

Since the Nineteenth Report, the Recorder hired a new Chief of HRD after his first one voluntarily resigned. HRD also worked closely with the DOC on updating almost all outstanding Job Descriptions and implementing the ROD’s Performance Management Policy – a process that had mixed success.

a. Staffing

Former Chief of HR, Patricia Fallon, voluntarily resigned her position on July 24, 2019. During her two-year tenure, Ms. Fallon and HRD: nearly completed updates of all ROD Job Descriptions, shepherded Supervisors through the ROD’s first all-office Performance Evaluation process and assisted with updating the Manual.

On September 3, 2019⁶, Letitia Dominici began as the Recorder's new Chief of HRD. She previously served as the Compliance Officer for Cook County Offices Under the President – a role that is Cook County's counterpart to the Recorder's DOC – where she oversaw the County's compliance with its Employment Plan and Supplemental Policies. During her first week, the RCA met with Ms. Dominici and shared her thoughts on the major roadblocks that have prevented the ROD from achieving Substantial Compliance. During this meeting, the RCA stressed the need for the ROD to follow both the letter and spirit of its written policies and procedures and to engage with the DOC, RCA and Plaintiffs before changing any of those policies and procedures – not after it has already done so. She discussed the need for employees – particularly HR, the DOC and senior staff – to work within their Job Descriptions and perform the roles assigned to them in the Recorder's Plan and Manual. Finally, she discussed the need for organization and accountability to start within HRD itself and the need for open communication and professionalism between HRD and the DOC. While her tenure has just begun, Ms. Dominici is working through the significant backlog of RCA document and information requests and is getting a handle on the challenges ahead.

b. Job Description Updates and Performance Evaluations

For many years, the RCA stressed the need for the ROD to have accurate Job Descriptions for all positions. *See, e.g.*, at 3-4 (Dkt. 3173) (filed on Dec. 17, 2012). Accurate Job Descriptions allow employees and supervisors alike to understand the work performance expectations placed upon them. Minimum Qualifications on Job Descriptions

⁶ In the weeks between Ms. Fallon's departure and Ms. Dominici's hire, certain HR duties fell to personnel outside HR with no clear direction or accountability. The RCA discussed this concern with Recorder Moody who committed his Office to being more proactive about succession planning for high-level positions.

allow Applicants to know what is required to be considered for a Position. Since the Nineteenth Report, HRD updated nearly all CCRD Job Descriptions. The project took over a year and, for the first time in the nearly nine years since the SRO was entered, the CCRD now has updated Job Descriptions for all but two of its 61 positions. The RCA appreciates the significant contributions of HRD (including former Chief Fallon) and particularly the DOC in seeing this project to its successful (near) completion.

After the ROD updated nearly all of its Job Descriptions, HRD trained its supervisory personnel on its Performance Management Policy and initiated its first ever all-office Performance Evaluations.⁷ This process began in October 2018 and is nearing completion. The process included significant compliance concerns that the RCA shared with the ROD such as: evaluations issued untimely (sometimes several months late), inconsistent scoring (*e.g.* disparate effects of discipline and time and attendance issues), and a lack of participation from Department Heads in required meetings. The second round of all-office evaluations recently began and have shown prior compliance concerns remain. The RCA provided CCRD feedback on these evaluations and encourages CCRD to course correct and soon.

3. Director of Compliance

Since the Nineteenth Report, the DOC has performed well in the face of an overload of work, a lack of additional resources, and a lack of sustained institutional support for her position. She has demonstrated a commitment to being present and engaged at as many Employment Actions as her office of one will permit. She performed effectively during the

⁷ The Plan requires such evaluations to be completed annually; however, in 2018, the ROD decided first to have Supervisors evaluate Employees over a 90-day rating period as a trial-run. HRD staggered these rating periods across departments so some department's evaluations issued in October 2018 while other departments' evaluations are still outstanding.

myriad employee training sessions and engaged employees' questions directly and tactfully. Her overall role in the rollout of the performance evaluation process undoubtedly benefited the office as she was often the most prepared ROD employee in the room for the meetings wherein Supervisors discussed draft evaluations with HRD and the DOC. She also issued her most recent DOC Semi-Annual Report which described the compliance efforts over the last six months of the Yarbrough Administration. A brief summary of that report is below.

The RCA also includes below certain concerns she shared with the DOC regarding (1) a tendency of the DOC to stray outside of compliance oversight and guidance and into providing active input into operational decision-making and (2) her referrals of investigations that were not in compliance with the Plan and Manual. Discussion on DOC Investigation Reports and Notices of Violations can be found in Section II.B.2 below. The RCA enjoys working with the DOC and will continue to serve as a resource, as needed.

a. Semi-Annual Report

On April 3, 2019, the DOC issued a semi-annual report covering the time period of June 16, 2018 – December 15, 2018. The DOC's report fairly represented the ROD's progress (*e.g.*, Job Description updates, compliance with the required all-employee Employment Plan training) as well some trouble spots during the reporting period (*e.g.* incomplete revisions to the Manual, problems with the Performance Evaluation process rollout, attempted Exempt hiring that did not comply with the Plan (a subject that was addressed at length in the RCA's Nineteenth Report at 7-10), and the ROD's need to conduct various trainings (Supervisor, Discipline, Time and Attendance, and corrective training on the Performance Management policy). The DOC's next semi-annual report is

outstanding and will cover the first six months of the Moody administration.

b. DOC's Role as Advisor and Non-Compliant Referrals of Investigations

The DOC's performance since the Nineteenth Report largely has been positive as described above; however, the RCA notes two concerns that she has shared with the DOC. The first concern is the DOC has been at times too closely involved with operational issues and the execution of Employment Actions. The DOC's primary role is to oversee CCRD compliance with the Plan and Manual. As detailed in her job description, the DOC will "consult with, advise and inform" individuals involved in Employment Actions regarding compliance matters. On occasion, the DOC has pushed past a consulting and advising role in favor of being an active participant in Employment Action decision-making. One consequence of this activity is that the DOC has a significant backlog of pending investigations. *See* Aug. 26, 2019 Tr. at 19:8 – 20:16. The DOC's time and resources are limited. The RCA recognizes that the DOC's efforts are rooted in a commitment to ensuring CCRD compliance and sometimes may feel necessary during changes in administration or HR leadership. She, however, encourages the DOC to concentrate her efforts on ensuring compliance with the Plan and Manual in relation to an Employment Action, as opposed to becoming a decisionmaker of the Employment Action.

The second concern involves the DOC's referral of investigatory conclusions and recommendations outside the process allowed in the Plan.⁸ Once the DOC initiates and completes an investigation, it is incumbent upon her to issue a DOC Investigative Report

⁸ Under the Plan, when the DOC learns of an alleged Manual violation, she may: (1) conduct an investigation and submit a DOC Investigative Report to the Recorder detailing her findings; (2) issue a brief memorandum notifying an Employee of a technical violation of the Manual (*i.e.* a DOC Notice of Violation); or (3) refer the alleged violation to a qualified, supervisory-level or above Employees who has received "CCRD-arranged training on how to conduct an investigation and write an investigation report."⁸ Plan § IV.M.4.

detailing her investigation as well as her findings and any recommendations for corrective action. Plan §IV.M.3. If the DOC Investigative Report contains a finding of non-compliance or includes a recommendation of corrective action, the Recorder must issue a Report that either confirms the recommendation was implemented or explains why the Recorder declined to do so and what alternative action will be taken. *Id.* § IV.M.5.

Since the Nineteenth Report, the DOC investigated several complaints where she referred the duties to reach conclusions and recommendations to supervisory-level Employees. These referrals did not comply with the Plan. The Plan requires the DOC to issue reports for her investigations; no Employees had received the Plan-required training. The referrals prevented the Recorder from receiving DOC Investigative Reports and being required to respond to the same.⁹ Instead, Supervisors attached the referral to their Incident Reports without providing further explanation about why they were seeking to discipline an employee. This muddied a process that requires transparency. The RCA discussed her concerns with the DOC who agreed to issue Investigative Reports for all previous referrals and discontinue further referrals until such Employees received the Plan-required investigation training. The DOC recently began issuing such Investigative Reports and trained select employees on how to conduct investigations. The RCA appreciates the DOC's openness to feedback on this issue and her actions taken since.

4. Hiring

Since the RCA's last report, the Recorder filled nine positions, several of which relied upon eligibility lists created through prior postings. The vacancies filled were: Chief

⁹ Complainants were also denied the opportunity to receive a redacted copy of the DOC Investigative Report, as required by Section IV.M.5 of the Plan.

of HRD (Exempt); Deputy Recorder of Communications (Exempt); Director of Security; Investigator II; Human Resources Generalist; Satellite Supervisor (internal hire); Supervisor of Declarations, Review and Verification (internal hire); and two Satellite Cashiers (internal hires). The RCA monitored the above hiring processes and had no material unresolved concerns with the Recorder's compliance with the Plan's hiring requirements. The RCA particularly appreciated the proactive manner in which the Chief Deputy Recorder approached her concerning the then-vacant Chief of HRD Position. Primarily due to that effort, the Exempt hire of Ms. Dominici was smooth and fully compliant with the Plan. The RCA commends the ROD's efforts in these hiring processes.

5. Do Not Hire List

Section IV.Q of the Plan requires HRD to maintain a list of individuals (the "Do Not Hire List") who were prior employees or Applicants for employment but are ineligible for employment with the ROD for five years if they were terminated, resigned or retired in lieu of termination as a result one of five findings by the OIIG or DOC.¹⁰ Since the Nineteenth Report, four employees were terminated, or were facing termination upon resignation, after the DOC or the OIIG found them either to have knowingly or willfully interfered in or not cooperated in an investigation or knowingly or willfully provided false information during an investigation. The ROD attempted¹¹ to put three of these Employees

¹⁰ These findings are: (1) A finding by the OIIG that the individual engaged in UPD or engaged in a prohibited Political Activity; (2) A finding by the OIIG or the DOC that the person intentionally provided materially false information during an investigation by the OIIG or DOC or otherwise obstructed or refused to cooperate with an investigation of the OIIG or DOC; (3) A finding by the OIIG or the DOC that the individual intentionally provided materially false information to the RCA, while acting; (4) A finding by the DOC that the individual intentionally provided materially false information to the DOC; or (5) A finding by the OIIG or the DOC that the individual falsified a Recorder document concerning any Recorder Employment Action.

¹¹ As permitted in the Plan, one Employee appealed the Recorder's decision for placement on the Do Not Hire List and her appeal was rejected. The RCA provided HRD and the DOC her concerns with the process HR followed for that appeal and hopes to be able to report a resolution in her next report. HR recently

on the Do Not Hire List.

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. Below are updates on recent non-compliance identified by the RCA, DOC and OIIG. As described below, while the Moody Administration more consistently responds to findings of violations in a timely fashion than his predecessors, Recorder Moody's commitment to ensure that no employee is above the Plan and Manual has not born out in ROD responses to identified violations. Further, the RCA is concerned that internal checks designed to ensure discipline is meted out consistently broke down and, but for the RCA's intervention, would have resulted in unjustified and non-compliant discipline issued to employees. Finally, the RCA is troubled by the Recorder's recent response to an OIIG Report wherein the Recorder authorized Recorder employees to determine which questions they will and will not answer during an OIIG investigation. This response damages Recorder Moody's stated commitment to embrace the OIIG's role and contributes significantly to the RCA's belief that the Recorder has not yet satisfied this prong of Substantial Compliance.

1. Discipline-Related Concerns Raised by RCA Since Nineteenth Report

For over a year, the parties and RCA negotiated revisions to the CCRD's Discipline Policy. One of the main goals was to address the RCA's historical concerns with the ROD's inconsistent investigation of alleged violations of the Manual. *See, e.g.*, Eleventh Report at 14-15; Thirteenth Report at 5; Eighteenth Report at 9-11. Another goal was to create greater

provided two other former Employees their Notices of placement on the List. Both will have 30 days to appeal. It is unclear whether the ROD will pursue placing the fourth former employee on the List.

transparency so employees knew the basis for any alleged infractions. The agreed amendments to the Discipline Policy included memorializing a process that had begun many months earlier, whereby the Recorder's Labor Counsel and the DOC review all draft Incident Reports prior to Supervisors issuing them to employees "to ensure compliance with this policy and consistency with past practice of like Discipline in the CCRD."

Since the Nineteenth Report, the ROD experienced issues at each stage of the disciplinary process including the failure to recognize the appropriate progressive step due to inaccurate record-keeping, improper drafting of Incident Reports, and procedural breakdowns including the consideration of inapplicable infractions at hearing. Additionally, there were several instances where time and attendance-related discipline was dismissed because Recorder staff failed to execute the discipline in a timely fashion. Compounding these issues were the improper referrals by the DOC discussed above. In addition, the ROD conducted two disciplinary proceedings since the Nineteenth Report to which the RCA strenuously objected:

a. Unsupported Major Cause Infraction

In mid-March 2019, a Deputy Recorder issued an Incident Report to a Director for both a Major and Minor Cause Infraction. During the issuance meeting, appropriately the DOC requested the Deputy Recorder to "parse out" which alleged comments by the Director supported which infraction and amend the Incident Report accordingly. In a subsequent meeting with Labor Counsel on pending discipline, the DOC informed Labor Counsel of this instruction to the Deputy Recorder. The Deputy Recorder did not amend the Incident Report; instead, the ROD scheduled a hearing despite the lack of clarity on which facts supported the alleged infractions. On the morning of the hearing, the RCA

emailed Labor Counsel a detailed explanation of her concerns (including the lack of clarity about what allegations supported the Major versus Minor Cause Infractions). The RCA asked Labor Counsel to provide his thoughts on the propriety of the infractions. Labor Counsel did not respond and the hearing proceeded. Further issues arose.

Toward the end of the hearing, the DOC reiterated her previous request that the Deputy Recorder provide clarity on which facts supported the two infractions. After discussion, the Hearing Officer asked whether the Deputy Recorder was charging both a Major and Minor Cause Infraction for the same conduct and, if not, said the Deputy Recorder would need to revise the Incident Report. In response, Labor Counsel said he did not agree with that assessment and did not think revisions were necessary.

The above disciplinary process was troubling for many reasons. First, two of the safeguards (Labor Counsel and the DOC) who are supposed to prevent deficient Incident Reports from being issued, did not do so. While appropriately the DOC attempted to facilitate a correction by recommending the Deputy Recorder revise his Incident Report, her recommendations were ignored by senior staff.¹² Subsequently, the RCA's concerns expressed several hours before the hearing were also ignored – this time by Labor Counsel. Finally, Labor Counsel's conduct during the hearing was alarming as it was dismissive of concerns raised both by the DOC and Hearing Officer.

The RCA subsequently met with the Recorder and Chief Deputy Recorder the day after the above hearing and explained her concerns. The Recorder assured her that he would address those concerns expeditiously. While the Recorder never responded directly, the

¹² The RCA reported previously on the pattern of disregard that senior staff (and former Recorder Yarbrough) extended the DOC. *See, e.g.*, Nineteenth Report at 7.

Hearing Officer dismissed the Major Cause Infraction against the Director with minimal explanation. The RCA appreciates the final outcome; however, the failure of the internal checks requires careful consideration by Recorder Moody. The RCA encourages the ROD to ensure Incident Reports clearly identify the factual basis for potential discipline. Such an effort puts the employee on fair notice of the conduct the ROD found problematic and ensures the ROD has a sound basis for issuing the Incident Report in the first instance.

b. Disparate Enforcement of Performance Evaluation Timelines

The second troubling disciplinary process involved a Director who received a suspension for failing to issue a performance evaluation in a timely fashion. The ROD's Performance Management Policy was amended in 2018 prior to the Recorder's attempts to implement its first ever all-office performance evaluation process. *See* Nineteenth Report at 4. The Performance Management Policy describes timelines within which Supervisors must draft the evaluation, meet with their Immediate Supervisor to discuss the draft, and ultimately issue the final evaluation to subordinate employees.¹³

On May 21, 2019, Chief Legal Counsel disciplined a Director for failing to issue timely the performance evaluation of his subordinate. On May 28, 2019, the RCA sent the ROD a letter detailing her numerous concerns with the ROD's decision to issue this discipline. Her first concern was the characterization that the Director was untimely in issuing the evaluation. The Director complied with the first two deadlines in the Policy but

¹³The policy provides different timeframes for each of these steps depending on whether it is (1) an annual performance evaluation or (2) a non-annual evaluation (new hire, Transfer, Cross-Training). For the former, timeframes are five days to draft the evaluation after the rating period concludes, five days to meet with the Immediate Supervisor to discuss the evaluation, and an additional 15 days to issue the evaluation to the employee (the "5-5-15 model"). For non-annual evaluations, Supervisors are given two days to draft, two days to meet with the Immediate Supervisor, and five days to issue the evaluation (the "2-2-5 model"). Despite the policy's more lenient timelines for annual evaluations, HR decided that for the ROD's first attempts at all-office evaluations, Supervisors would be required to follow the 2-2-5 model. Future annual evaluations will follow the 5-5-15 model.

his repeated attempts to comply with the third deadline (the issuance of the evaluation to the employee) were thwarted both by directives from senior staff to amend the evaluation and, after he made the directed amendments, by his Immediate Supervisor's silence. By disciplining this Director for "untimely" issuance of the evaluation, the ROD required Supervisors who receive considerable feedback on their draft evaluations to choose between disregarding that feedback so they can timely issue the evaluation (and thus risk being written up for failing to follow a directive) or make the required amendments and risk discipline for untimely issuing the evaluation. Requiring Supervisors to make such a choice is untenable. Moreover, the feedback provided by senior staff was mostly grammar-based and stylistic. Only one score was changed ("Punctuality" was reduced from a score of 5 (out of 5) to a 4) between the first draft of the evaluation to the final version approved weeks later. Another Director recently completed an evaluation that required substantial, substantive revisions to the both the content and evaluation scores. The RCA will monitor and report on how whether the ROD similarly disciplines this employee.

In addition, the RCA expressed concerns over the Recorder disciplining an employee for alleged conduct – untimely issuing a Performance Evaluation – that several other Supervisors and Directors committed without receiving any discipline. While the RCA has long supported the idea of holding senior staff accountable for Plan and Manual violations as their subordinates have been, she does not support selective enforcement of rules and disparate treatment of similarly-situated employees.¹⁴

¹⁴ The RCA's May 28, 2019 letter included three additional concerns: (1) the Deputy Recorder did not clearly explain in the Incident Report "a detailed description of the infraction" and did not attach "all relevant supporting documentation" to the same (both are required in the Discipline Policy); (2) the Hearing Officer did not clearly identify what provision of the Performance Management Policy that the Director violated and how he violated it; and (3) the DOC removed the RCA from certain correspondence between her, the Deputy Recorder and HR about the evaluation process (which constituted a Plan violation (see Plan § I)).

On June 14, 2019, the Recorder's Chief Legal Counsel issued a response to the RCA's letter wherein he disagreed with every concern raised by the RCA. Subsequently, the RCA met with the Recorder (and Chief Legal Counsel) and further explained her concerns with the above disciplinary process. Ultimately, the ROD dismissed the discipline against the Director.

2. DOC Updates Since RCA's Nineteenth Report

Since the Nineteenth Report, the DOC issued nine Investigative Reports and timely issued nine Notices of Violation ("NOV"). Details on some of those issuances as well as an update of the Recorder's Response to prior Reports and NOVs are below.

- a. Update to Recorder's Report in response to DOC Investigative Report 18-005 (Director violated the Plan by conducting an unsanctioned investigation and violated the Manual by intimidating a witness during the unsanctioned investigation.)

On November 7, 2018, the DOC issued Investigative Report 18-005, wherein she found that a former Director intimidated a CCRD employee while conducting an unsanctioned investigation. The DOC recommended the Director be disciplined. The DOC also recommended certain amendments for the Manual and Discipline policy and recommended training for supervisory-level and above employees on the same.

In the Recorder's timely issued response, the Recorder neither accepted nor rejected the DOC's recommendation to discipline the former Director, citing the Director was no longer a CCRD employee. Regarding the DOC's recommendations for policy amendments, Labor Counsel stated he had "identified and proposed changes to the Employment Plan and Policy and Procedures Manual" to achieve "a consistent and transparent process for investigations related to Discipline." Subsequently, the Recorder issued a supplemental response wherein he stated, "the Recorder's Office has represented,

and stands by its commitment, to neither condone nor allow management staff from engaging in unsanctioned investigative activity. Moreover, harassing or intimidating investigative actions will not be tolerated and employees engaging in that conduct will be subject to discipline.” The Recorder expressed his intent to amend the Manual “with an eye toward ensuring uniform application of the Discipline Policy and continued adherence to the Employment Plan and Manual.” The RCA will monitor closely to ensure that Recorder Moody follows through with his commitment to consistently apply the Discipline Policy.

- b. DOC Investigative Report 18-009 (Finding that an Exempt Employee violated the Courtesy Policy by loudly using profane language overheard by several CCRD employees)

On February 5, 2019, the DOC issued Investigative Report 18-009, wherein she found that an Exempt Employee loudly used profane language during a discussion with another Exempt Employee in his office. Several CCRD employees overheard the use of the profane language. The DOC recommended that (1) the Exempt Employee be disciplined, and (2) that *Shakman* Exempt employees be reminded that “while their conversations may be confidential in nature, workplace etiquette and maintaining a professional environment are required at all times.”

On March 7, 2019, the Recorder, via the Chief Deputy Recorder¹⁵, submitted a Response. The Recorder rejected the DOC’s findings that a Manual violation occurred and declined to discipline the Exempt Employee as recommended. The Recorder reasoned a violation did not occur because the Exempt Employee did not have any direct interaction with any of the Non-Exempt employees that overheard the profane comments. He stated

¹⁵ The Chief Deputy Recorder is the former Chief Legal Counsel referenced in the DOC’s Report. He was interviewed pursuant to the DOC’s investigation.

he would, “remind Exempt employees that they should act in a professional manner.”

In January 2019, a Non-Exempt employee received an Incident Report for a Courtesy violation for making references to Nazis and concentration camps. The comments were made in a departmental meeting but were not addressed directly to any individual; nevertheless, the Non-Exempt employee received Counseling. The Recorder committed to the RCA that he will not allow any employee – Exempt or Non-Exempt – to be above the Plan or Manual. His Response to 18-009 did not support that commitment.

- c. DOC Investigative Report 19-001 (finding that an employee’s interactions with customers violated the Manual’s prohibition against Harassment, that the same employee was not truthful during the investigation, and that Supervisors and employees failed to respond to potential incidents of harassment as required by the Manual)

On March 27, 2019, the DOC issued Investigative Report 19-001, wherein she found a Non-Exempt employee “engaged in a pattern and practice” of unwelcome behavior that created an uncomfortable environment for customers and employees. The DOC found the employee was untruthful when questioned if he ever faced similar allegations in the past. She found a Supervisor failed to act when observing customers who appeared to be made uncomfortable by the employee, and that a separate Supervisor did not disclose that the employee made one of his co-workers uncomfortable until questioned in the investigation. Finally, she found several other CCRD employees were aware of the employee’s conduct yet failed to act until prompted by her investigation.

The DOC made several recommendations, including that the employee receive separate discipline for violating the Manual’s Anti-Harassment policy and for providing false information during an investigation. She recommended a Supervisor receive discipline for failing to act in accordance with the Anti-Harassment policy. The DOC

recommended that all employees receive training on the Anti-Harassment Policy and all CCRD Management Staff receive the mandatory Supervisor Training as required by the Plan. *See* Plan § IV.E.

The Recorder issued a timely response wherein he accepted all of the DOC's recommendations. Since then, the Recorder conducted all of the recommended trainings, terminated the subject Employee and disciplined the Supervisor.

- d. DOC Investigative Report 19-002 (Finding that an employee's behavior towards co-workers amounted to harassment in violation of the Manual, and that the employee attempted to interfere with the DOC's investigation)

On July 15, 2019, the DOC issued Investigative Report 19-002, wherein she found a Non-Exempt Employee's confrontations with and disparaging remarks about co-workers in front of customers amounted to "harassing, intimidating and threatening conduct" that became "a disruption to CCRD operations." She further found that the Employee interfered with her investigation when the Employee instructed a witness (a CCRD customer) not to speak to the DOC. The DOC recommended that (1) the Employee be disciplined for violating the Manual's prohibition against Harassment and (2) receive discipline for "knowingly and willfully interfering in or not cooperating in...an investigation." The DOC also concluded that two separate CCRD Employees were improperly using their cell phones to communicate with customers regarding CCRD business, and recommended they receive counseling. Finally, the DOC repeated her recommendation that all CCRD Employees receive Harassment training.

The Recorder terminated the Employee and in an untimely Response¹⁶, accepted

¹⁶ The Recorder issued this Response 26 days past the 30-day response timeline in the Plan.

the DOC's recommendation to counsel the other two Employees, and confirmed that the three Employees who have not yet received Harassment training would receive it by the end of September 2019. They have since received the training.

- e. DOC Investigative Report 19-003 (Finding that a Non-Exempt Employee willfully provided false information)

On June 26, 2019, the DOC issued Investigative Report 19-003, wherein, among other things, she found a Non-Exempt Employee willfully provided false information when her claims about playing the lottery with a co-worker "repeatedly were altered" during an interview with the DOC. The DOC recommended, in part, that the Employee receive discipline for providing false information. The following day, the Employee retired. On July 23, 2019, the Recorder responded to the DOC's Report, acknowledging that the Employee had retired and could not be disciplined but that the ROD would begin the process of placing that former Employee's name on the Do No Rehire List. Since, the former Employee appealed the Do Not Rehire List decision but the Director of HRD upheld the decision.

- f. DOC Notices of Violation

Since the Nineteenth Report, the DOC issued the following NOV's:

- i. Failure to forward complaints to the DOC*

The Employment Plan states that "[i]f any Employee becomes aware of or receives a complaint that involves an allegation of a violation of this Employment Plan or the Manual in connection with an Employment Action which does not include an alleged Political Contact or UPD, the Employee shall refer the complaint to the DOC." Plan § IV.M. Since the Nineteenth Report, the DOC issued three separate NOV's finding that the

former Chief of HRD (twice) and Labor Counsel (once) failed to refer complaints to her.¹⁷

On March 29, 2019, the DOC cited the Chief of HRD with an additional Notice of Violation for failing to refer another complaint to the DOC. Instead of directing this complaint to the DOC, the former Chief of HRD forwarded the complaint to the Chief Deputy Recorder requesting he “review and move forward as appropriate” and merely copied the DOC. In her NOV, the DOC recommended the Chief of HRD refer information involving a possible violation of the Plan or Manual directly to the DOC in accordance with the Plan, and further recommended her NOV be provided to the Chief Deputy Recorder. The Recorder responded on May 17, 2019, disagreeing again that a violation of the Plan occurred and declining to take action against the Chief of HRD because the Chief “followed the letter of the Employment Plan.” The Recorder agreed to the recommendation that the Chief of HRD refer complaints directly to the DOC moving forward.

The RCA is troubled by the Recorder’s belief that the above complaints were not, in fact, complaints. The underlying complaint in the second NOV discussed above included several allegations against the DOC including the DOC had a “pattern and practice of issuing notices of violations” against the employee. The Recorder’s failure to acknowledge these complaints is further evidence that he has not followed through on his commitment to apply the Plan and Manual equally to all employees regardless of rank or title.¹⁸

ii. Additional Notices of Violation issued by the DOC

The DOC also issued the following NOV’s since the RCA’s Nineteenth Report:

¹⁷ For two of these NOV’s (one for each the former Chief of HRD and Labor Counsel), the DOC did not make any recommendations and the Recorder responded by disagreeing with the DOC’s characterization of the complaint, but noting that he and his senior staff are committed to following the Plan, “including the requirement that complaints get forwarded to the DOC.”

¹⁸ Subsequently, the parties agreed to amend the Plan to assign the OIIG with the duty to investigate complaints against the DOC. *See* Amended Plan § IV.N (Dkt. 6523-1) (filed October 3, 2019).

- February 15, 2019: Finding that a Director did not issue a 60-day evaluation in a timely fashion as required by the Manual. The DOC recommended the 60-day evaluation be issued immediately. On April 5, 2019, the Recorder responded to the NOV and accepted the DOC's findings and recommendations; the Director received an Incident Report.
- February 20, 2019: Finding that HRD violated the Manual by failing to provide written notification of the end date of Temporary Assignments for two employees. On April 5, 2019, the Recorder agreed the Chief of HRD "will be designated to track the applicable dates and be responsible for all required written notifications."
- February 22, 2019: Finding that HRD violated the Plan by failing to complete and post Quarterly Reports on the Recorder's website. On April 5, 2019, the Recorder accepted the findings and confirmed the Chief of HRD is responsible for tracking information for the Quarterly Reports. Subsequently, HRD posted Reports for the first two quarters of 2019.
- July 3, 2019: Findings that two Deputies Recorder violated the Plan by failing to report the changes to the duties and responsibilities of the two Positions to the Chief of HRD and by failing to provide the DOC and RCA with notice of the same. She recommended that the changes cease immediately and that the duties as memorialized in the applicable Job Description be performed as delineated. On July 23, 2019, the Recorder accepted the DOC's recommendations and has since issued written reprimands to both Deputies Recorder.
- October 21, 2019: Finding that an Exempt Employee violated the Manual by failing to issue the Notice of a Pre-Disciplinary Hearing within 30 days of the corresponding Incident Report. The DOC recommended that the Exempt Employee diligently track Incident Reports to ensure compliance with the Plan and Manual. As of the filing of this Report, the CCRD has not responded to this NOV.

The RCA recommends the ROD internalize these findings and prevent recurrence.

3. OIG Findings Since RCA's Nineteenth Report

Since the RCA's Nineteenth Report, the below has transpired regarding OIG findings and the Recorder's responses to the same.

- a. OIG 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 OIG issued IIG18-0361 which concerned a Non-Exempt Director's attempts to hire an Executive Assistant. The OIG concluded that the

Recorder attempted “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.” IIG18-0361 at 5. 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 her efforts constituted an unlawful political contact. *Id.* at 5. The OIIG recommended the Recorder suspend the Executive Assistant Hiring Process 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, former Recorder Yarbrough rejected the OIIG’s findings and recommendation. The RCA expressed concerns regarding the CCRD’s response. *See* Nineteenth Report at 14-16.

On January 14, 2019, Recorder Moody submitted an Amended Recorder’s Report in which he accepted the recommendation to suspend the Executive Assistant Hiring Process “for a period of 90 days from the issuance of your report on November 23, 2018.” In addition, the CCRD affirmed it is “committed to following the Inspector General Ordinance and embracing your role as the Inspector General.” The RCA welcomed this updated response by Recorder Moody and reiterates her recommendation that Recorder Moody heed the OIIG’s many findings regarding past abuses of the Executive Assistant Hiring Process. *See* Tenth Report at 10-20; Nineteenth Report at 14-16.

- b. OIIG Summary Report 18-0032 (finding a former Director utilized Cook County time and resources in furtherance of a private law and real estate practice, as well as using his position to influence the media in benefit of a personal client)

On January 4, 2019, the OIIG issued IIG18-0032 to both Recorder Moody and former Recorder and current Cook County Clerk Karen Yarbrough. The report concerned a former CCRD Director (and then-current Clerk employee). The OIIG found that this

former Director committed eight Manual violations while at the CCRD by utilizing County time and resources in furtherance of a private law and real estate practice.

The OIIG recommended the Cook County Clerk¹⁹ terminate the former Director's employment and the CCRD place him on its Do Not Hire List. Additionally, the OIIG recommended the former Director return the money the CCRD paid for the renewal of his law license, given that the former Director did not serve in a legal capacity for the CCRD. The OIIG recommended that HRD conduct additional management training and "institute controls to ensure CCRD employees are following the time and attendance policies as set forth in the [Manual] and ensure that employees are not paid for their time commuting to work." IIG 18-0032 at 13.

On January 9, 2019, the CCRD responded and: 1) agreed to place the former Director on the CCRD's Do Not Hire List; 2) agreed to send a demand letter to the former Director to repay the CCRD for the law license fee; and 3) pledged both to update their Time and Attendance and Outreach policies "to ensure that employees will not be paid for their time commuting to work and will require additional oversight by CCRD management" and to train employees on the same. Since then, the CCRD sent a Demand Letter to the former Director, referencing the OIIG findings and requesting repayment of the law license renewal fee and placed the Director on the CCRD's Do Not Hire List. The ROD has yet to update its Time and Attendance Policy to address the issue of commuting to work. Given the severity of the OIIG's findings, the RCA was encouraged by the content and speed of Recorder Moody's response and awaits the promised policy amendment.

¹⁹ The Clerk responded to the report, stating she agreed with the OIIG recommendations and that the former Director was "no longer employed with the Office."

- c. OIIG Summary Report IIG19-0245 (finding a Supervisor violated the Manual by improperly utilizing FMLA leave and willfully provided false information during the OIIG's investigation and another Supervisor willfully failed to cooperate in the investigation)

On August 1, 2019, the OIIG issued IIG19-0245, finding that a Supervisor (Supervisor 1) improperly used FMLA leave to take a vacation to Jamaica, in violation of the Manual. The OIIG also concluded that the Supervisor violated the OIIG Ordinance by providing false information during an investigation when he denied taking the trip to Jamaica in his interview. The Supervisor ultimately admitted to taking the trip, only after being confronted with airline records. The OIIG concluded another CCRD Supervisor (Supervisor 2) willfully failed to cooperate in the investigation when that Supervisor "refused to truthfully respond to a material question" asked by the OIIG. The OIIG recommended that (1) the Supervisor receive discipline consistent with CCRD treatment of acts similar to improper usage of FMLA and (2) the second Supervisor receive at least a 15-day suspension for refusing to cooperate in the investigation.

On August 20, 2019, the ROD responded timely to the OIIG Report and accepted the OIIG's recommendation to discipline Supervisor 1 for improperly using FMLA and committed to placing him on the Do Not Hire List. The Recorder also acknowledged that Supervisor 1 was "not truthful when asked about the alleged FMLA abuse." Finally, the Recorder disagreed with the OIIG's finding that Supervisor 2 failed to cooperate with the OIIG investigation. The Recorder reasoned that the OIIG did not need to interview Supervisor 2 for its investigation and that the OIIG Report did not clearly state "what material question" the OIIG asked Supervisor 2 that she refused to answer. The Recorder issued Supervisor 1 two Incident Reports in late August 2019, citing Major Cause Infractions for willfully providing false information during an OIIG investigation and

falsifying time records. Supervisor 1 resigned from the CCRD prior to his hearing.

The RCA is troubled with the Recorder's above response concerning Supervisor 2 as it indicates to ROD employees that they have the Recorder's support if they choose not to answer questions and cooperate with an OIIG investigation. This directly undercuts Recorder Moody's previous statement that he was "committed to following the Inspector General Ordinance and embracing your role as the Inspector General." *See above* at 2. Further, it is unclear how far this tolerance of non-cooperation extends – DOC investigations, RCA requests for information? The RCA considers this response by the Moody Administration to constitute a significant step backward.

After discussing her concerns with the Recorder, the Recorder's Counsel issued the OIIG a supplemental Response on October 11, 2019 where he wrote that the CCRD "reiterates and reinforces its commitment to the [OIIG] that all Employees are expected to cooperate in investigations." The supplemental Response also pledged the CCRD would issue an all-office memo reinforcing employees' requirement to cooperate with the OIIG. Finally, the Response indicated Supervisor 2 would receive counseling "related to cooperating in investigations and answering questions during an interview." The same day this Report was filed, the Recorder issued the all-office memo. The Recorder has not yet counseled Supervisor 2 on that Supervisor's conduct during the OIIG investigation.

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. While there have not been any findings of UPD by the OIIG in this reporting period, the RCA is not able to confirm the ROD does not have a policy, custom

or practice of basing Non-Exempt employment decisions on political factors. Too many gaps remain in the ROD's implementation and enforcement of its employment policies to be able to conclude that the ROD has satisfied this prong of Substantial Compliance.

D. Prong 4: *Is there an absence of material noncompliance which frustrates the Recorder's Consent Decrees and the SRO's essential purpose?*

The fourth prong of Substantial Compliance concerns whether the Recorder has materially not complied with the SRO. The RCA does not believe there is an absence of material noncompliance with the ROD's Consent Decree and SRO's essential purposes. In this reporting period, the OIIG, DOC and RCA found material violations of the Plan and Manual. While the ROD completed comprehensive training on the Manual and Supervisor duties recently, HRD and management have not demonstrated consistent adherence to and enforcement of the Manual. In the months since the amended Manual went into effect, the RCA has observed significant gaps in compliance with the Time and Attendance Policy, a lack of Supervisor compliance with memorialization and notice of Employee Counseling, and the significant issues with the content and timeliness of the first group of annual performance evaluations. The RCA hopes these early bumps do not persist.

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 reiterates her Nineteenth Report recommendation that "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 that does not happen.” Nineteenth Report at 20. With a revised Manual and training complete, the ROD is in prime position to show that ad hoc decision-making and spotty enforcement of office policies is a vestige of the past and not a present reality.

III. Conclusion

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

Respectfully Submitted,

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