

**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.)	

**TWENTY-FIRST 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 Twenty-First Report as follows:

I. Introduction

On November 13, 2019, the RCA filed her Twentieth Report to the Court (“Twentieth Report”) (Dkt. 6590) in which she discussed the Cook County Recorder of Deeds² efforts to comply with the SRO. The Twentieth Report discussed the progress made and challenges encountered by the Office of the 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 Twentieth Report, the Recorder's Office has made progress on some issues. ROD's Human Resources Division ("HRD") provided responses to many of the outstanding RCA information requests and finalized one of the remaining two Job Descriptions. The DOC made commendable progress in working through her significant backlog of pending investigations into Recorder Employees' compliance with the Employment Plan (the "Plan") and Policies and Procedures Manual (the "Manual"). The Chief of HRD and DOC continued to work diligently on helping the CCRD move toward Substantial Compliance with the SRO.

Despite some positives, widespread non-compliance with the Plan and Manual and other significant issues were noted during this reporting period. The Director of HRD resigned and the CCRD's plans for handling her duties are uncertain. Most Supervisors, Directors, and Deputies Recorder continued to struggle with following the Performance Management Policy. Senior staff did not hold any of these Employees accountable for the non-compliance. During the Performance Evaluation process, Supervisors identified certain Employees who were unable to perform many of their assigned duties; yet, Supervisors implemented no corrective measures in the months that followed. Widespread non-compliance continued with certain time and attendance policies like Compensatory Time accrual and swiping. Finally, the Recorder issued a supplemental response to a prior

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.

OIG Report where he spared a Non-Exempt Employee from Discipline for failing to cooperate with an investigation – something for which the CCRD suspended or terminated several other Employees over the years. Further details on these compliance issues are below.

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 and other procedures to ensure compliance with the principles of *Shakman* and identify instances of non-compliance. The RCA included HR and DOC-related updates in her Twentieth Report. For HR, the RCA discussed matters such as the Recorder's hiring of a new Chief of HRD, the many pending responses to RCA document requests, and ongoing concerns with the CCRD's implementation of its policies concerning (1) Performance Management; (2) Time and Attendance, and (3) Discipline. For the DOC, the RCA noted the DOC's significant backlog of investigations requiring completion. Twentieth Report at 6-11.

Since that Report, HR made significant progress responding to many of the RCA's document requests; however, other HR issues were not resolved and new ones arose. The Director of HRD resigned in December 2019 with minimal notice, leaving a gap in job responsibilities that has not been filled. There was also no demonstration of improvement on any of the policy implementation issues noted previously. The DOC, for her part, completed several investigations and issued reports on the same. Below are updates on the Recorder's recent compliance both with its Plan and Manual.

1. Human Resources

The Plan assigns HRD the responsibilities of “initiating, directing, coordinating and overseeing the human resources processes, policies and procedures of the Recorder relating to all Employment Actions.” Plan § IV. Since the Twentieth Report, HRD, among other things, has worked diligently to respond to backlogged RCA requests for information and made some progress on finalizing the remaining Job Descriptions. The RCA appreciates particularly the efforts of the Chief of HRD, Letitia Dominici during this time.

a. *Responses to RCA Document and Information Requests*

As permitted by the SRO, the RCA regularly requests information and documents from HRD in order to carry out the duties assigned to her. *See* SRO § I.E. Prior to the new Chief of HRD’s arrival, it became customary for that Division to take months to respond to RCA requests, if it responded at all. After the RCA shared her concerns about this trend with Ms. Dominici, she made it a priority to ensure that all outstanding requests were responded to and that future requests would be timely processed. Recently, the RCA received responses to many long-standing requests. Where there are remaining questions, the RCA is engaging with HRD. The RCA appreciates the Chief of HRD’s commitment on this issue and looks forward to receiving the remaining outstanding requests soon.

b. *HRD Staff Changes*

On December 26, 2019, the Director of HRD resigned her Position with the CCRD. The RCA understands that finding a permanent replacement might be difficult given the upcoming merger of the CCRD and Cook County Clerk’s Office; however, she hopes that the CCRD quickly will implement a plan for handling the former Director’s duties as, without such a plan, the CCRD’s ability to run the human resource operations and oversee

implementation of the Plan and Manual will be severely compromised.

c. *Job Description Updates and Enforcement*

For many years, the RCA stressed the need for the ROD to have accurate Job Descriptions for all Positions. *See, e.g.*, RCA's Seventh Report 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 in Job Descriptions allow Applicants to know what is required to be considered for a Position. Since the Twentieth Report, there has been progress on completing the final two outstanding Job Descriptions. There was also a troubling development that highlighted the need not just to have updated Job Descriptions, but to ensure Employees work within them.

i. *Job Description Updates*

Since the Twentieth Report, HRD completed its Job Description for the one outstanding Director Position, which leaves one incomplete Supervisor Job Description. At the October 4, 2019 status, the CCRD represented that it would have a draft of this Job Description within two weeks of the status. *See* Oct. 4, 2019 Tr. (Dkt. 6535) at 4:21-6:2. While the RCA understands that the Job Description at issue was, in part, the subject of a union grievance, she notes that the underlying union grievance was resolved months ago and she has not received a draft of the Job Description for the outstanding Supervisor Position. At the January 10, 2020 status, the CCRD committed to providing the outstanding Supervisor Job Description (as well as a few proposed edits to other Job Descriptions impacted by the union settlement) by January 17, 2020. It has not yet done so.

ii. Supervisors Ensuring Employees Work Within Job Descriptions

The RCA commends the ROD for nearly completing its Job Description updates, but notes with concern that Employees and Supervisors acknowledged in recent Performance Evaluation and operational meetings that, despite having completed Job Descriptions, several ROD Employees did not know how to perform many of their essential job duties. For example, a Supervisor acknowledged that one Employee stuffed envelopes and when there were no more envelopes to stuff, the Employee did nothing.⁴ Upon further review, this same Employee and one other in the department required training on every duty in their Job Description; every other Employee in the department needed training on at least one of their essential job duties.⁵

The Manual assigns Supervisors with the duty to assess training needs within their department (Manual at 33) and Supervisor Job Descriptions all require Supervisors to: "[e]nsure[] Employees are adequately trained to perform their essential job duties and to provide customer service." Further, the Manual states that, "[e]ach Division Head in conjunction with the Deputy Recorder shall have the responsibility to identify training needs and obtain assistance from HRD to prepare and conduct training programs that will effectively meet those needs, which are unique to the operations of the Division or Section concerned." Manual at 33. Given recent revelations, it appears that at least some CCRD Supervisors and Division Heads are falling short of these requirements.

⁴ The Employee's Job Description includes several "Essential Job Duties" that the Employee was not conducting, such as: reviewing Quit Claim Deeds for accuracy, verifying documents mailed to the CCRD for completeness and viability for recording, and providing instruction to customers regarding corrective action when errors are discovered.

⁵ To the RCA's knowledge, the training for this Employee was never completed prior to her retirement and the training for the other Employees in this department has not begun.

In the above referenced examples, the Supervisors had been directly supervising the Employees in need of training for years, yet the inability to perform essential duties was not flagged or acknowledged until the Employees were being evaluated nearly a year after receiving their Job Descriptions. Requiring certain Employees to fully perform the duties in their Job Description while allowing others to perform as little as one duty opens the doors for Unlawful Political Discrimination (“UPD”) to impact Recorder employment, although it is important to note that there has been no finding of UPD in connection with this issue. The RCA encourages the Recorder to address these issues soon.

d. *Performance Management Policy Implementation*

In her Twentieth Report, the RCA noted several concerns with the CCRD’s attempts at implementing its Performance Management Policy. *See* Twentieth Report at 8 (noting untimely issuance of evaluations, inconsistent scoring and Department Head participation deficiencies). These issues have not improved.

i. *General Updates Since Twentieth Report*

The Manual requires Supervisors to conduct Performance Evaluations of their subordinates on an annual basis and to do so within certain timeframes after the Employee’s annual review period ends.⁶ *See* Manual at 31-32. Instead of conducting all Employee evaluations at the same time, the CCRD opted to stagger them throughout the year. Accordingly, the evaluation periods for the first few Divisions concluded between

⁶ The Performance Management Policy has three built-in deadlines by which a Supervisor must draft the evaluation, meet with her Immediate Supervisor to discuss the draft, and ultimately issue the final evaluation to her subordinate Employee once the Employee’s reporting period concludes. For annual evaluations, the timeframes are as follows: five business days to draft the evaluation after the rating period concludes, five business days to meet with the Immediate Supervisor to discuss the evaluation, and an additional 15 calendar days to issue the evaluation to the Employee (the “5-5-15 model”).

August and October 2019. Had Supervisors adhered to the timelines in the Policy, 49 Employees across 10 Departments would have received their final evaluations by the day of this Report's filing. However, currently only eight Employees across four Departments have received their final evaluations. The most egregious example of untimeliness is a Supervisor who is responsible for completing Performance Evaluations for 15 subordinates, but who has not submitted a single draft evaluation despite the drafts being due on October 31, 2019. Neither this Supervisor – nor any others who have not submitted timely drafts of evaluations – have been counseled or Disciplined for violating the Manual since the Twentieth Report.

The problems with the evaluations that were drafted were numerous and included the following (all of which did not comply with the Policy, form, or training content):

- Supervisors missing deadlines for one or more of the three steps in the evaluation process (*see above* at 7, n.6);
- Supervisors providing inadequate (or no) written support for scores on the Performance Evaluation Form;
- Supervisors providing inaccurate or inconsistent scoring;
- Supervisors performing incomplete or inaccurate review of Employees' attendance records;
- Supervisors failing to reference relevant Incident Reports or Discipline, as is required by the Policy;
- Supervisors failing to complete required portions of the Performance Evaluation Form;
- Immediate Supervisors or Supervisors coming unprepared to discuss the draft evaluation at the Supervisor Meeting;
- Lack of substantive review of revisions by Immediate Supervisor;
- Immediate Supervisors providing untimely feedback on draft evaluations resulting in issuance delays outside of the Supervisor's control;
- Supervisors not incorporating draft Performance Evaluation deficiencies identified by the Immediate Supervisor, HR and DOC;

- Lack of enforcement of the Manual's requirements surrounding multiple Supervisors overseeing an Employee during an evaluation rating period and that Deputies Recorder, Division Heads and Directors conduct the Performance Evaluation on behalf of their direct reports if they retire or are otherwise unable to fulfill his or her duties (e.g. sickness, leave of absence, etc.)⁷; and
- Failure of Deputies Recorder and Directors to ensure that every step of the evaluation process is completed accurately and on a timely basis.

The above issues seen in many Performance Evaluations to date demonstrate that the CCRD has much more work ahead to properly implement its Performance Management Policy. One recent Performance Evaluation warrants specific mention.

ii. Performance Evaluation by Former Director of HRD

In the Twentieth Report the RCA reported that a Director recently completed an evaluation that required substantial, substantive revisions to both the content and evaluation scores. Twentieth Report at 17. This was an evaluation conducted by the former Director of HRD. Since the Twentieth Report, the former Director issued the evaluation, but not without considerable concerns.

The former Director of HRD's original draft was problematic in that it omitted scores on three required criteria and the scores and justifications that were provided did not comply with the Policy and training materials. The justifications that were provided were non-descriptive and did not support the scores awarded. Given these issues, after encouragement from the DOC and RCA, the Chief of HRD held a second Supervisor Meeting with the Director to discuss revisions to the evaluation. After the second Supervisor Meeting, the RCA flagged further concerns regarding the amended scores and

⁷ The RCA circulated her concerns with the CCRD's implementation of these sections of the Performance Management Policy to the Chief Deputy Recorder, Chief of Human Resources, Labor Counsel and the DOC on November 6, 2019, and followed up on December 3, 2019, yet did not receive a response.

justifications. Subsequently, the Chief of HRD raised additional concerns. All in all, the Director of HRD circulated six evaluation drafts with weeks passing in between some drafts. The final draft was issued to the Employee on December 26, 2019 – 7 weeks late.

The most troubling aspect of this evaluation sequence was that the former Director of HRD exhibited very little understanding of the Performance Management Policy despite having been the CCRD's principal trainer on the same. The former Director of HRD struggled to apply the plain language of the Policy, evaluation form, and training materials. Both the DOC and RCA expressed their concern to the Chief of HRD about the Director of HRD's struggles to implement core elements of the Performance Management Policy and ability to guide Supervisors through this important and detailed process. The Chief of HRD agreed with the concerns.

iii. Moving Forward

After multiple conversations among the RCA, HRD and the DOC on how to course correct current issues in the performance evaluation process, all parties worked together and reached agreement on supplemental training materials to address the identified compliance issues. The RCA welcomed the Chief of HRD's commitment to making the supplemental training more interactive than prior sessions. On January 9, 2020, however, prior to scheduling this training, the CCRD notified the RCA and DOC of significant proposed edits to the Performance Management Policy. While the RCA will review the proposed edits and provide feedback on the same, the RCA is concerned with CCRD's apparent attempt to wipe away widespread non-compliance and start over as though the non-compliance never occurred. Some Employees were able to comply with the Policy; however, others have been allowed to ignore deadlines altogether with no repercussion.

Although the CCRD is permitted to propose edits to policies at any time it deems necessary, until those edits are approved and implemented, the current Policy remains in effect and must be enforced. Regardless of the scope of the edits to the Performance Management Policy, the Recorder must shore up significant issues before the CCRD can demonstrate it is capable of consistently implementing and enforcing this Policy. Without the Recorder holding staff of all levels accountable, compliance seems unlikely.

2. Director of Compliance

Since the Twentieth Report, the DOC has issued several new Notices of Violation (“NOV”) (*see below* at 20), begun working through her backlog of investigations, and has continued to provide guidance to the CCRD on Plan and Manual compliance issues. The RCA is pleased with her overall efforts and appreciates her responsiveness when the RCA raises questions and concerns. The RCA notes, however, that the Plan requires the DOC to issue semi-annual reports detailing Plan and Manual compliance over the preceding six months. Plan § IV.C.1. On April 3, 2019, the DOC issued her most recent semi-annual report covering the time of June 16, 2018 – December 15, 2018. The DOC’s subsequent two semi-annual reports (covering December 16, 2018 – June 15, 2019 and June 16, 2019 – December 15, 2019) remain outstanding. The RCA understands the DOC has a lot on her plate and has been very active in her compliance oversight (*see below* at 16-20), however, given the semi-annual reports are the only publicly posted DOC reports, she encourages the DOC to address these reports soon.

3. Hiring

Since the RCA's last report, the Recorder has not filled any Positions. At the January 10, 2020 Status Hearing, the CCRD announced anticipated hiring of several union Positions. The RCA will update on any such efforts in her next report.

4. 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.⁸ In her Twentieth Report, the RCA discussed having shared her concerns with HR and the DOC about the process HRD followed when placing one former Employee on the Do Not Hire List and processing her appeal. *See* Twentieth Report at 12, n.11. Since then, the DOC raised similar concerns with HR and senior HR leadership, first in an email and then in a NOV. *See below* at 20. As the Recorder's deadline for a response to the NOV has not yet passed, the RCA reserves further comment at this time.

5. Time and Attendance Compliance

On July 15, 2019, the ROD implemented the Time and Attendance and Discipline portions of the new Manual after officewide training. While the ROD demonstrated improved effort to consistently enforce its Tardiness Policy, issues and inconsistencies

⁸ 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.

remain pertaining to Compensatory Time, missed swipes and record keeping.

a. *Compensatory Time*

In her Eighteenth Report to the Court, the RCA noted that the ROD was not properly enforcing its Timekeeping and Attendance Policies but acknowledged that HRD had made some, “albeit inconsistent, attempts at enforcing its Compensatory Time Policy.” Eighteenth Report (Dkt. 5988) at 25 (filed on August 31, 2018). Upon further review of Compensatory and Overtime practices and accrual in the ROD’s timekeeping system, the RCA notes that while the ROD has made some improvements in complying with its Compensatory Time Policy, much work remains. The CCRD has reduced the amount of Compensatory Time accrued, but has made minimal improvement in ensuring Compensatory Time Forms are completed accurately, thoroughly and in a timely manner.

The Manual permits the Recorder to award Compensatory Time to Employees in certain circumstances and requires Supervisors to complete a form within five days of when the Overtime is worked. Manual at 16-18.⁹ The Discipline Policy classifies unauthorized accrual of Compensatory Time its own infraction. *Id.* at 46.

Since implementation of the new Manual on July 15, 2019, through January 9, 2020, there have been at least 226 instances of Compensatory Time accrual for which the RCA received 122 forms, 45 of which were compliant.¹⁰ During this same period, Employees have been counseled eight times for unauthorized accrual of Compensatory

⁹ Furthermore, the Manual requires Supervisors to track Compensatory Time to ensure it is distributed equitably amongst eligible Employees. Manual at 18. The RCA does not believe Supervisors are tracking such accruals.

¹⁰ Forms are generally not properly completed or completed at all and are often submitted late. Oftentimes, the RCA receives the forms only after repeated requests.

Time. Given that only 122 of the 226 instances of Compensatory Time accrual included the required form (and only 45 of those were compliant in content and timing), the RCA would expect to have seen more Employees counseled or Disciplined for unauthorized accrual of Compensatory Time or their Supervisors counseled or Disciplined for not completing the required form consistent with the Policy. The RCA notes that compliance has improved in recent weeks and is hopeful that trend will continue.

b. *Swiping Policy Non-Compliance*

The Manual requires all Employees to swipe in and out at the beginning and end of their workday. Manual at 13. Failure to swipe two or more times within a 30-day period is a Minor Cause Infraction. *Id.* at 45. Since the updates to the Manual went into effect in July 2019, the Recorder's Office has not enforced its swiping policy consistently.

HRD has not consistently counseled or Disciplined Employees who violate the swiping policy. At first, HRD allowed Employees to avoid counseling and Discipline if they could demonstrate through a time-stamped work product that they were indeed working despite not having properly swiped in. HRD did not amend the Policy to reflect this exception nor did they communicate this process to all Employees. HRD subsequently began allowing some Employees to avoid swiping violations if a Supervisor could verify that the Employee was at her workstation on time. Again, HRD did not amend the Policy to reflect this exception nor did they communicate the same to all Employees. More recently, HRD began permitting some Employees to vouch for their own whereabouts.¹¹

¹¹ The disparate implementation of these shifting standards was unsurprising. For example, one Employee recently missed a swipe and was permitted to submit a written statement to verify her arrival time at work. Another Employee was not allowed the same opportunity when she arrived before her start time but, because she had to assist a subordinate Employee with a customer, ended up swiping in 11 minutes late. This Employee was written up for tardiness and was counseled.

None of these three standards is included in the Manual and Employees have not been trained on any of them. As such, they should not be permitted.

While some instances of missed swipes have resulted in counseling, many others have not been addressed. Since August 2019, HRD has sent at least 20 emails asking Supervisors to address instances of missing swipes for their subordinates. As far as the RCA is aware, nearly all of these emails have gone unanswered. It is clear much work remains on consistent compliance with the CCRD's swiping policy both on the part of HRD who has permitted ad hoc deviations from the policy and from Supervisors who are not consistently enforcing the policy. On December 10, 2019, the DOC issued DOC Investigative Report 19-013 which detailed the CCRD's non-compliance with its swiping policy. The RCA looks forward to the CCRD's response and corrective actions.

6. Discipline Compliance

The CCRD revised its Discipline Policy in July 2019, in part, to help the Office apply Discipline and counseling more consistently. Labor Counsel and the DOC were to review all draft Incident Reports prior to issuance, and Labor Counsel was to reject or approve the drafts. Supervisors, however, were not providing Labor Counsel with counseling forms they issued, which meant that Labor Counsel did not have the necessary information to track and ensure consistent application of the Discipline Policy. In November 2019, the CCRD accepted the RCA's recommendation to amend the Counseling Form to add Labor Counsel to the distribution list. Unfortunately, the notice issue persisted and seemed to result in Labor Counsel approving Discipline in an inconsistent manner in January 2019. The RCA raised the issue with Labor Counsel and the DOC. The RCA appreciates the DOC's response: she acknowledged that it is her and Labor Counsel's

responsibility to “ensure that discipline is consistent,” raised on her own an additional recent example of inconsistent Discipline, acknowledged that the CCRD did not appear to be administering Discipline consistently and proposed an audit of Time and Attendance Policy enforcement. The RCA is hopeful that the CCRD will conduct this proposed audit soon and take other measures to ensure consistent implementation of this Policy.

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, the Moody Administration’s responses to DOC and OIIG reports noted in prior RCA Reports, as well as summaries of some recent DOC findings.

1. DOC Updates Since RCA’s Twentieth Report

Since the Twentieth Report, the DOC has been very active with conducting investigations and issuing reports and NOV’s. She has issued five Investigative Reports (three not sustained) and six Notices of Violation. The DOC also issued seven additional Investigative Reports between the Nineteenth and Twentieth Reports that were not detailed in the Twentieth Report.¹² Details on some of those issuances are below.

a. DOC Investigative Report 19-006 (finding that a non-Exempt Employee violated the Anti-Harassment Policy)

On October 1, 2019, the DOC issued Investigative Report 19-006, wherein she found a non-Exempt Employee engaged in “behavior resulting in an uncomfortable

¹² In her Twentieth Report, the RCA detailed that the DOC issued nine Investigative Reports since the Nineteenth Report. Twentieth Report at 18. The correct number was 16.

environment” and “harassing behavior.” The DOC further found that it was “not an isolated incident,” concluded that the Employee violated the ROD’s Anti-Harassment Policy¹³, and recommended the Employee receive Discipline for the same.

Labor Counsel responded timely on October 2, 2019, accepting the DOC’s recommendations. The Employee was issued an Incident Report, citing a Major Cause Infraction for violating the Office’s Harassment Policy, and was terminated on October 23, 2019, following a Pre-Disciplinary Hearing. Independent of the subject matter at issue, the RCA emailed the Hearing Officer on December 2, 2019, with concerns about the accuracy of his characterization of the record in his written findings. The RCA received recently a short response that did not address any of the RCA’s concerns. The RCA will follow up on this matter and will update the Court further in her next report.

b. DOC Investigative Report 19-009 (finding that two non-Exempt Employees engaged in hostility toward one another)

On October 18, 2019, the DOC issued Investigative Report 19-009, which detailed an investigation she referred to an Exempt Employee¹⁴ regarding an altercation between two Non-Exempt Employees. In his summary of the investigation, the Exempt Employee determined that no physical altercation occurred, and found no Manual violation. The DOC agreed with the Exempt Employee’s assessment that no physical altercation occurred, but found that the loud argument between the Employees, confirmed by all witnesses, constituted the Minor Cause Infraction of “[h]ostility that is directed toward another

¹³ Section 1.F of the 2015 Manual. The statement that prompted the investigation occurred prior to the Manual revisions.

¹⁴ In the Twentieth Report, the RCA addressed non-compliance with the Plan involving previous DOC referrals. Twentieth Report at 10-11. The RCA notes that this Referral adhered to all Plan requirements.

Employee...” Manual at 47. The DOC recommended the Employees receive Discipline.

The Chief Deputy Recorder responded timely on November 18, 2019, stating, “CCRD agrees to counsel both of the Employees involved in the argument.” The Plan requires that the Recorder respond to the DOC either “(a) confirming implementation of the DOC’s recommended action,” or “(b) explaining why the recommended action was not implemented and describing the alternative action the Recorder has elected to take and the specific reasons for such alternative action.” As counseling is not Discipline, the Recorder decided not to implement the DOC’s recommendation and failed to provide the reasoning. The DOC requested clarification on the Recorder’s response to her recommendation. The Chief Deputy Recorder responded that the Recorder agreed with the findings but viewed counseling as a more appropriate remedy to address the matter. The counseling has not been issued nearly two months after the Chief Deputy Recorder stated it would be issued.

c. DOC Investigative Report 19-013 (finding that CCRD Employees are consistently violating the swiping provisions of the Manual and Supervisors are not monitoring the same)

On December 10, 2019, the DOC issued Investigative Report 19-013, wherein she found that CCRD Supervisors were not monitoring and tracking their subordinates’ compliance with the swiping provisions in the Manual. As a result, violations of the same were not being identified and/or acted upon. The DOC also found that clarity is required on the Minor Cause Infraction of failing to swipe on two or more dates in a 30-day period and the CCRD’s interpretation of the same.

The DOC recommended that: (1) the Recorder provide written reminders to all Employees and Supervisors about the Manual’s swiping requirement; (2) the Recorder initiate counseling or Discipline to (a) all Employees who violated the Manual by failing to swipe on two or more dates in a 30-day period, and (b) all Supervisors, Directors and

Deputies Recorder who failed to monitor their subordinates' swipes; (3) that the Recorder evaluate the Manual's language governing missed swipes and revise the Manual to clarify whether the 30-day timeframe represents a calendar month as opposed to a rolling period; and (4) the Recorder review CCRD's practices regarding verifying an Employee was working amid a missed swipe, and revise the Manual to provide clarity and consistency.

The CCRD requested and was granted an extension to reply to the DOC's findings. The RCA will update on the Recorder's response in her next report.

d. DOC Investigative Report 19-017 (findings that Employee harassed co-worker and interfered with DOC Investigation)

In the Twentieth Report, the RCA detailed that the DOC investigated several complaints where, in lieu of submitting an Investigative Report as required by the Plan, she referred the duty to reach conclusions and provide recommendations to supervisory-level Employees. Twentieth Report at 10-11. The RCA also detailed that she discussed her concerns with these Plan violations with the DOC, who was receptive to the feedback and agreed to issue Investigative Reports for all previous referrals. *Id.*

On December 11, 2019, the DOC issued Investigative Report 19-017. The DOC noted that she had investigated the matter and referred it on March 1, 2019, outside the process permitted in the Plan. In her Investigative Report, the DOC found that a Non-Exempt Employee engaged in Harassment of a co-worker and violated the Manual by "knowingly or willfully interfering in or not cooperating in an investigation or knowingly or willfully providing false information during an investigation." Both violations are Major Cause Infractions; the DOC recommended Discipline for the Non-Exempt Employee.

The DOC recounted the Discipline that occurred subsequent to her referral. The Non-Exempt Employee received an Incident Report citing the Major Cause Infractions.

The Hearing Officer did not sustain the Harassment charge, but did sustain the Interference violation, and levied a 7-day suspension for the same. The Recorder timely responded to the Report and noted the recommended suspension had already been issued.

e. DOC Notices of Violation

Since the Twentieth Report, the Recorder responded to one previously issued NOV and the DOC issued six new NOVs. Below are updates.

- 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. Since the Twentieth Report, the CCRD responded and accepted the DOC's recommendations. The Chief Deputy Recorder subsequently counseled the Exempt Employee.
- December 4, 2019: Three separate NOVs with identical findings that three Supervisors and a Deputy Recorder failed to timely counsel or Discipline subordinate Employees for attendance violations. DOC recommended Supervisors ensure prospective compliance with the Discipline Policy and that the Chief Deputy Recorder review the findings for potential counseling or Discipline. The Recorder timely responded by agreeing with the first recommendation and committing to counsel the Supervisors and Deputy Recorder. The counseling remains pending for one of the Supervisors and the Deputy Recorder.
- December 26, 2019: Two separate NOVs with findings that two Supervisors failed to timely counsel or draft Incident Reports for attendance violations. DOC recommended Supervisors ensure prospective compliance with the Discipline Policy and that the Chief Deputy Recorder review the findings for potential counseling or Discipline. The Recorder's Response is due January 25, 2020.
- December 26, 2019: Finding that a Director violated the Plan by not including required details in a Notice of Listing ("Notice") of why the CCRD was attempting to place that former Employee on the CCRD's Do Not Hire Without Further Consideration List. The DOC also concluded the Director failed to provide a copy of the Notice of Listing to the DOC and RCA. She recommended the CCRD issue the former Employee a revised, compliant Notice (and presumably begin the appeal process anew). She recommended that the Chief of HRD consider the violations for potential further action. The Recorder's Report is due January 25, 2020.

The RCA will include Recorder responses to these NOVs in her next report.

2. OIIG Updates Since RCA's Twentieth Report

Since the Twentieth Report, the OIIG dismissed its lone pending Post-SRO Complaint, in part for lack of timeliness, and engaged in further dialogue with the CCRD regarding a previously filed report.

In the Twentieth Report, the RCA detailed her disappointment with the Recorder's initial response to the OIIG's Report that found a Supervisor willfully failed to cooperate by refusing to truthfully answer an OIIG investigator's questions. Twentieth Report at 27-28. The Recorder initially declined to accept the OIIG's finding and recommendation that the Supervisor receive at least a 15-day suspension. In a supplemental Response, the Recorder pledged to issue an all-office memo reinforcing Employees' requirement to cooperate with the OIIG, and also committed to counseling the Supervisor for failing to cooperate with the OIIG. Since the Twentieth Report, the CCRD conducted both actions.¹⁵

For several reasons, the RCA is troubled by the Recorder's decision to Counsel – rather than issue Discipline – in this case. First, the CCRD has a practice of suspending (or terminating) staff who are found to have failed to cooperate in, interfere with, or provide false information during, an investigation. *See, e.g.*, above at 19-20; Twentieth Report at 21; Sixteenth Report (Dkt. 5220) at 3-5 (filed October 5, 2017); Tenth Report (Dkt. 3759) at 10-20 (filed May 2, 2014). Here, the OIIG recommended a 15-day suspension, yet the Recorder, after initially disagreeing with the OIIG's findings regarding this Employee altogether, ultimately opted to issue non-disciplinary counseling.

Second, the Manual does not contemplate counseling as appropriate here. The Counseling Form issued to the Employee explains that the Employee committed a Major

¹⁵ The memo was distributed on the same day the 19th Report was filed.

Cause Infraction (“knowingly or willfully interfering or not cooperating in an OIIG investigation”). The Manual states that counseling is meant to correct “minor unsatisfactory conduct in the attempt to avoid similar infractions in the future.” Manual at 45 (noting that “prior to the imposition of formal Discipline, an Employee may be counseled for a Minor Cause Infraction”). It appears the CCRD violated the Manual by counseling, rather than Disciplining, for a Major Cause Infraction.

Finally, the RCA does not agree with the CCRD’s argument that, once the CCRD reconsidered the OIIG’s findings and agreed with them, it was time-barred to pursue Discipline. First, the CBA does not state that Discipline must be issued within a set period of time from the date of the infraction; rather, it states that Discipline must be “timely, progressive and accompanied by counseling where appropriate . . .” *See* CBA between Local 73 - Service Employees International Union and the County of Cook/Recorder of Deeds, §14.8 (“Discipline”). Second, while the Manual used to require Discipline be issued within 30 days of the date of the incident or the discovery thereof, the CCRD specifically removed this provision in its 2019 edits to the Manual. *Compare* 2015 Manual at 52-53 (“Incident Reports must issue in a timely fashion as provided in any applicable CBA, but is otherwise understood to be no more than 30-days from the occurrence of the infraction or discovery thereof”) *with* 2019 Manual at 43-53 (“Discipline Policy”). Third, the CCRD previously has slow-walked disciplinary actions until the RCA or OIIG identified the delay, but then argued Discipline was no longer ripe to pursue. *See, e.g.*, RCA’s Twelfth Report at 9-11 (Dkt. 4603) (filed June 1, 2016) (discussing OIIG’s conclusion that UPD was at play when the then-Director of HRD escaped Discipline despite a considerable history of poor work performance issues); RCA’s Fourteenth Report at 14-15 (Dkt. 4818) (filed Dec.

15, 2016) (discussing the CCRD's decision not to Discipline an Employee (whose hiring the OIIG found had been based on Political Reasons or Factors) due to timeliness concerns after waiting three months to respond to a DOC Report that found the Employee violated the Manual). Here, the CCRD created the delay and then claimed that very delay tied the Recorder's hands from pursuing Discipline. Such action is not reflective of an office acting in good faith to remedy instances of policy non-compliance.

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. There have not been any findings of UPD by the OIIG in this reporting period, which is a positive development. The RCA, however, is not yet able to confirm the ROD does not have a policy, custom or practice of basing Non-Exempt employment decisions on political factors as there are too many gaps in the ROD's implementation and enforcement of its employment policies. The RCA hopes that the ROD can make substantial progress in this area during the next reporting period.

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 DOC and RCA found material violations of the Plan and Manual. The RCA is hopeful that the supplemental training on Performance Evaluations will help Supervisors understand and adhere to the responsibilities assigned to them. The RCA

recommends the CCRD focuses on policy compliance and enforcement – particularly with Discipline and Attendance – to address issues raised both by the DOC and RCA.

E. Prong 5: *Has the Recorder implemented procedures that will effect long-term prevention of the use of impermissible political considerations?*

The last component of Substantial Compliance requires the Recorder to have implemented procedures to ensure that the principles that form the basis of the *Shakman* litigation will carry on long into the future. The CCRD has the policies in place and a Chief of HRD and DOC who are capable of helping the Office consistently implement and enforce those policies. More consistent adherence to and enforcement of the policies by Exempt staff, Directors and Supervisors is required for meaningful implementation of the procedures aimed at preventing long-term use of impermissible political considerations.

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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