

**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.)	Hon. Edmond E. Chang
)	Mag. Judge Gabriel A. Fuentes
COOK COUNTY RECORDER OF)	
DEEDS, et al.,)	
)	
Defendants.)	

**INTERIM 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 Interim Report as follows:

I. Introduction

On April 27, 2020, the RCA filed her Twenty-Second Report to the Court (the “Report”) (Dkt. 6852) in which she discussed, among other things, the Cook County Recorder of Deeds² continued noncompliance with its Performance Management, Discipline and Time and Attendance Policies. The Report came shortly after the February 10, 2020 status hearing wherein the Court encouraged the parties and RCA to work on

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.

meaningful edits to the policies (as necessary) and for the ROD to ensure more rigid compliance with the same. *See generally* Feb. 14, 2020 Hr’g Tr. (Dkt. 6753). The Report noted the Chief Deputy Recorder’s well-received March 13th proposal for tackling the ROD’s chronic policy noncompliance issues and the RCA’s initial efforts to amend the Recorder’s Policy Manual³, and came a month after the Recorder’s March 23rd shutdown of all in-office operations due to the COVID-19 pandemic. Report at 3. Finally, the Report noted the challenges the Recorder faced in balancing the need to service the public with the health and safety of ROD customers and employees and praised the Chief Deputy Recorder for his – at that point – good communication with the RCA, concerning the selection of Employees to work during the first weeks of the shutdown. *Id.* at 2.

What transpired since the Report and through the resumption of Recorder in-office operations on July 6, 2020, has been a troubling set of unilateral Recorder decisions to ignore, amend or suspend outright the very employment policies (Performance Management, Discipline and Time and Attendance) that have been the subject of status hearings and RCA Reports over the years. Due to the egregiousness of the Recorder’s noncompliance, the RCA submits this Interim Report to apprise the Court of the same.

II. Updates Since Twenty-Second Report

A. Process for Amending Policies - Employment Plan Requirements and Court Guidance

The Employment Plan contains a detailed process that the Recorder’s Office must

³ The Chief Deputy Recorder proposed the following steps: (1) reviewing the Manual for potential edits that would foster easier compliance while retaining the value of the policies; (2) identifying any blind spots in the ROD’s policy implementation that might be inhibiting compliance; (3) revising the training presentations “to be more hands-on, interactive and example rich;” and (4) developing supplemental training documentation like flow charts to assist Supervisors with compliance. *Id.* at 3.

follow to amend either the Employment Plan (Section XII) or the Policy Manual (Section IV.A). For example, the steps required for Manual amendments include sending the proposed edits to the DOC and RCA for comment; providing written responses to any concerns from the DOC or RCA; the option for the DOC or RCA to object to any proposed changes within five days of receiving the above written responses; a meeting between the Recorder, Head of HRD, DOC and RCA to discuss any unresolved issues; the Recorder's final decision on any edits; and the need for HRD to post on its website the final updated Manual and any objections by the DOC or RCA to the final edits. Plan Section IV.F also requires that HRD or the DOC provide notice to all affected employees of any amendments "and allow a reasonable period of time to address any questions prior to implementing or enforcing such amendment[s]." The Court has been unwavering in its insistence that the Recorder follow the required processes when making Plan and Manual amendments. *See, e.g.*, Oct. 12, 2018 Hr'g Tr. at 33:13-34:24 (noting that "when you have a policy in place, it must be followed until you change the policy" and that any changes must be "aboveboard" and "not simply left to somebody's arbitrary discretion"); *see also* Jan. 10, 2020 Hr'g Tr. at 23:10-12 (during a discussion about proposed policy changes, noting that "until it is changed, this is, quote, 'the law of the land.'"). As detailed below, the ROD's unilateral amendment and suspension of policy violated these Plan provisions.

B. Initial Plan and Certain Efforts to Improve Compliance During Shutdown

On March 26, 2020, just three days after the ROD shutdown began, the RCA, DOC and Chief Deputy Recorder agreed to a plan to move forward with the Chief Deputy's multi-step proposal for improving compliance during the Office shutdown. In a call, the RCA acknowledged the ROD's bandwidth to both review and edit its policies and training

decks might be compromised while staff began working remotely. The RCA offered to review and propose edits to the Performance Management, Discipline and Time and Attendance policies and to begin working on updates to their respective training decks. The Chief Deputy eagerly accepted this offer of support; the RCA began work on the same.

The RCA spent the next several weeks reviewing and revising the Performance Management and Discipline Policies and working closely with the DOC on the edits. On April 30th, RCA Counsel emailed the parties the RCA's and DOC's collective proposed edits both to the Performance Management Policy and Evaluation Form, including a general explanation of her review process and an offer to discuss the proposed edits. The RCA also noted she had begun work on edits to the Performance Management Training Deck but would "not be able to complete that until after" there was an agreement on edits to the Policy and Form. On June 1st, she shared with the parties her and the DOC's joint edits to the Discipline Policy. The ROD never responded to either email.

C. ROD's Unilateral Policy Amendments and Suspension of Policies

While the RCA and DOC were working on amending the Recorder's employment policies and training materials, the Recorder's senior staff was suspending adherence to and enforcement of some of its main employment policies, without following the detailed process in the Plan to make such amendments.

When the Office shutdown began, the ROD faced many outstanding performance evaluations, pending disciplinary actions, and a host of unresolved issues with its Time and Attendance compliance. *See* Twenty-Second Report at 9-15. Over the first month of the shutdown, while the ROD halted enforcement of its Time and Attendance Policy and made no progress with pending Discipline and counselings, the DOC facilitated the finalization

of draft evaluations by some Supervisors and the conducting of evaluation review meetings telephonically. While a lull in policy compliance and enforcement was expected as the ROD calibrated to a remote working model, the Recorder's next steps were alarming.

On the issue of performance evaluations, rather than heed the Court's recent statements about Supervisors' continued consequence-free untimely performance evaluations (Supervisors cannot simply "get a veto on something by saying, I'm not going to do it"), *see* Feb. 14, 2020 Hr'g Tr. at 15:1-2, on April 28th, the ROD unilaterally extended deadlines associated with outstanding performance evaluations until five days after the ROD reopened its Office (a date that had yet to be determined).⁴ The following week, the RCA discussed her concerns with the Chief Deputy— noting that the suspension of the policy violated the Plan's process for amending policies, and that requiring Supervisors to complete evaluations in the same week the office reopens when there would be an expected backlog of other work was not advisable. The DOC shared similar concerns. Nevertheless, the Recorder upheld his decision and no evaluation deadlines were enforced for the remainder of the shutdown period.⁵

On the issue of pending Discipline, throughout the three-and-a-half months shutdown, the ROD did not advance any of its pending disciplinary actions or counseling.

The ROD suspended enforcement of its Time and Attendance Policy throughout the shutdown – even when Employees were required to begin working in the office and

⁴ In the interim, the Chief Deputy gave Supervisors the option to proceed with evaluations at their discretion.

⁵ Showing that an officewide suspension was unnecessary in the first place, the RCA notes that a few Supervisors opted to move forward with their evaluation drafts during the shutdown and did a terrific job complying with the Policy.

from home – and repeated inquiries from the DOC seeking clarity on attendance policy enforcement went largely unanswered by the ROD.

Attempting to improve communication, the RCA emailed the Chief Deputy, Chief of HRD and DOC on May 19th asking their availability for a call to discuss policy-related concerns and understand the Recorder’s plans for transitioning back to in-office operations. The DOC responded immediately with her availability. After repeated follow ups by the RCA, on May 27th the Chief Deputy proposed a meeting *after* the ROD moved forward with its reopening (a date that had still not been determined) and assured the RCA it was working on a reopening plan and would share it with the RCA when available.

Despite inquiries by the DOC over the ensuing weeks about the reopening plan and the change to the Recorder’s website in mid-June to reflect a July 6th reopening date, the Chief Deputy waited until the evening of June 30th to provide the DOC, RCA and Plaintiffs’ Counsel with a “draft” Executive Order (“EO”) the Recorder planned to send Employees in advance of the Office’s reopening. While the EO included details about cleaning procedures and health guidelines, it also included several changes to the Recorder’s Time and Attendance Policy and announced the Recorder was “temporarily” suspending its Performance Management Policy to allow staff to work through backlogged work. The following evening, the Chief Deputy provided the DOC, RCA and Plaintiffs’ Counsel with a return to work schedule showing which employees would be required to work at the ROD versus from home – but gave no explanation for the assignments or why the ROD had not provided the EO and schedule sooner.

The RCA emailed the Chief Deputy her disappointment with being provided the EO and return to work schedule with little time to review and advised that any statements

in the EO that altered existing ROD policies and procedures in the Plan or Manual should be removed prior to distribution as the Plan's process for policy amendment had not been satisfied. The DOC noted having myriad concerns with the proposed EO as well. During a July 2nd telephonic Court status, the Court reminded the ROD of its need to follow its policies and procedures. Nevertheless, the Recorder moved forward and issued the EO to its employees two business days after first providing them to the RCA, DOC and Plaintiffs. In doing so, the Recorder violated Plan Sections IV.A and IV.F by not following the steps required to amend the Manual and by making the policy amendments effective immediately – without giving employees a “reasonable period of time” to address any questions with the amended policies.

On July 8th, 2020, the parties and RCA had a phone conference, part of which focused on concerns with the Recorder's actions surrounding the EO – as well as with the content of the EO itself. While the ROD explained certain Cook County Government-related complications surrounding the finalization of the EO, it neither explained why it did not circulate a draft to the DOC, RCA and Plaintiffs earlier than it did nor why it did not follow the Plan-required process for proposing policy amendments. Toward the end of the call, the Chief Deputy Recorder explained that he had shared a prior version with the entire “executive team” a few weeks before he provided any version to the DOC, RCA and Plaintiffs' Counsel. The DOC requested the Chief Deputy provide that correspondence and any responses to the same.

A few days after the July 8th call, the Chief Deputy provided the requested emails which showed the following:

- Labor Counsel provided the Chief Deputy and Chief of HRD with a first draft of the EO on May 27, 2020 – 33 days before the DOC, RCA and Plaintiffs’ Counsel received a draft.
- The May 27th draft included the suspension of the entirety of the Manual’s Performance Management Policy as well as the entirety of the Manual’s Time and Attendance Policy not contained in the EO.
- Over the three weeks following the May 27th draft, the Chief Deputy, Labor Counsel and Chief of HRD made significant updates to the draft EO; however, the language concerning the suspension of the Performance Management Policy remained as did many changes to the Time and Attendance Policy.
- On June 16, 2020, the Chief Deputy emailed a draft EO to the Recorder, all exempt staff and one Non-Exempt Director (but, again, did not include the DOC, RCA or Plaintiffs’ Counsel).
- Between June 16th and June 30th, the ROD made additional edits to the EO – but only minimal edits to the Time and Attendance and Performance Management-related provisions.

Based on the information provided by the Chief Deputy, the RCA concludes that the Recorder’s delay in providing the draft EO to the DOC, RCA and Plaintiffs’ Counsel was unreasonable. From the early stages, the Recorder was contemplating major changes to his Policy Manual via indefinite suspensions of the Performance Management and Time and Attendance policies. While the draft EO changed significantly over the first few weeks of drafting, the RCA would have expected the ROD to include her and the DOC on the distribution of the June 16th version – especially given that it was largely representative of the final version issued to employees. While the Plan’s process for policy amendments takes time and effort, that only reinforces the need to bring the DOC (at a minimum) on board early in the process in order to proactively address compliance concerns with the proposed amendments. The Recorder’s decision to keep the DOC – and RCA and Plaintiffs’ Counsel – out of the loop until the eve of distribution to Employees, is not

reflective of an office that has implemented policies designed to create a durable remedy for Unlawful Political Discrimination.

III. Conclusion

Despite Recorder Moody's consistent outward expression that his main goal as Recorder is to achieve Substantial Compliance with the SRO, he has refused to follow the strictures of the Employment Plan (filed on August 7, 2013; revised most recently on September 17, 2019) and Policy Manual (effective January 27, 2015; revised on June 3, 2019). While the ROD is merging into the County Clerk's Office in December 2020, it is currently subject to Court Orders including the SRO and Employment Plan – the purposes of which are to ensure that the Recorder's Office is not allowing impermissible political reasons or factors to impact Employment Actions concerning Non-Exempt Employees. The RCA looks forward to discussing these issues further in the upcoming July 30th status conference.

Respectfully Submitted,

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