

**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-SECOND REPORT OF THE  
*SHAKMAN* COMPLIANCE ADMINISTRATOR  
FOR THE COOK COUNTY RECORDER OF DEEDS**

Cardelle B. Spangler, *Shakman* Compliance Administrator for the Cook County Recorder of Deeds (“RCA”)<sup>1</sup>, by and through her attorney, Matthew D. Pryor, pursuant to Art. III.C of the Supplemental Relief Order for the Cook County Recorder of Deeds (“SRO”), submits this Twenty-Second Report as follows:

**I. Introduction**

On January 21, 2020, the RCA filed her Twenty-First Report to the Court (the “Twenty-First Report”) (Dkt. 6671) in which she discussed the Cook County Recorder of Deeds’<sup>2</sup> efforts to comply with the SRO. The Twenty-First Report discussed the progress made and challenges encountered by the Office of the Recorder, Edward M. Moody, to

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

<sup>2</sup> 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 Compliance<sup>3</sup> with the SRO during his first year as Recorder. The ROD has encountered various challenges and achieved some success in its compliance efforts since the last report.

The ROD's most acute challenge began on Friday, March 20, 2020, when it shut down onsite operations indefinitely due to the COVID-19 pandemic. The RCA understands the economic and emotional hardship such necessary action has had on the dedicated employees of the ROD and sincerely hopes they and their families are remaining safe and healthy during this uncertain time. The RCA also understands the difficulty the Recorder faces as he works to ensure both the continuity of public services offered by his Office and the health and safety of ROD customers and employees. The Chief Deputy Recorder has kept the RCA informed of the Recorder's efforts to arrange for certain recording and indexing personnel to work from home in order to reduce the impact of the Recorder's closure on the title and mortgage industries. She is also appreciative of both the Chief Deputy Recorder's communication and the efforts of the Director of Compliance ("DOC") to ensure the process for selecting Employees to work during the shutdown was transparent and fair.

Other challenges faced by the ROD before the shutdown include (1) attrition in the Human Resources Division ("HRD") that has resulted in a skeleton crew severely

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<sup>3</sup> The SRO states that "Substantial Compliance" means: (1) the Recorder has implemented the New Employment Plan, including procedures to ensure compliance with the New Employment Plan and identify instances of non-compliance; (2) the Recorder has acted in good faith to remedy instances of noncompliance that have been identified, and prevent a recurrence; (3) the Recorder does not have a policy, custom or practice of making employment decisions based on political reasons or factors except for Exempt Positions; (4) the absence of material noncompliance which frustrates the Recorder's Consent Decree and the SRO's essential purpose. The RCA and the Court may consider the number of post-SRO complaints that have been found to be valid. However, technical violations or isolated incidents of noncompliance shall not be a basis for a finding that the Recorder is not in substantial compliance; and (5) the Recorder has implemented procedures that will effect long-term prevention of the use of impermissible political considerations in connection with employment with the Recorder. SRO at 13.

compromised in its ability to handle such HR functions as payroll and myriad duties assigned to it under the Employment Plan (“Plan”) and Policies and Procedures Manual (“Manual”) and (2) complying with certain employment policies noted in the Twenty-First Report (Performance Management, Discipline, Time and Attendance).

In terms of successes, in addition to implementing the remote work arrangement (which demonstrated the ROD’s ability to implement fair and transparent processes), the Chief Deputy Recorder also acknowledged the ROD’s difficulty with policy compliance and engaged with the DOC and RCA on how best to approach addressing those issues given HR’s staffing issues. Indeed, shortly after the February 14, 2020 Status Hearing, the Chief Deputy Recorder presented the DOC and RCA with a thoughtful multi-step approach to shoring up policy non-compliance that included: reviewing the Manual for potential edits that would foster easier compliance while retaining the value of the policies; identifying blind spots in the ROD’s policy implementation that might be inhibiting its ability to comply with those policies; revising the Manual training presentations to be more hands-on, interactive and example rich; and developing supplemental training documentations such as flow charts that would assist Supervisors with understanding their daily and weekly duties required by the Manual.

The DOC also continued to be a positive influence on compliance efforts and made significant strides getting current on her backlog of Semi-Annual Reports and investigations. And, even being short-staffed, the Chief of HRD worked hard to fill in certain gaps in her Division. The RCA appreciates these efforts and provides below further updates on the ROD’s progress toward Substantial Compliance.

Finally, the RCA recognizes that this is her final Report to the Court with the Honorable Sidney I. Schenkier presiding over the case. The RCA is grateful for Judge Schenkier's oversight of the Recorder's efforts since the SRO was entered on September 14, 2010. Judge Schenkier has been invaluable with helping the parties and RCA navigate through many difficult periods over the years and has been central to the progress made during that time.

## **II. The Five Prongs of Substantial Compliance**

### **A. *Prong 1: Has the Recorder implemented the Employment Plan, including procedures to ensure compliance with the Plan and identify instances of noncompliance?***

The first prong of Substantial Compliance requires the Recorder to implement a Plan and other procedures to ensure compliance with the principles of *Shakman* and identify instances of non-compliance. In her Twenty-First Report, the RCA reported HRD's admirable job working through a backlog of information requests from the RCA, but that HRD had recently absorbed the resignation of its Director – a vacancy that the ROD had not clearly explained how it would work to fill. *See* Twenty-First Report at 4-5. That Report also discussed the DOC's efforts to work closely with Supervisors on assisting their policy compliance efforts and her significant backlog of investigations and Semi-Annual Reports to complete. *Id.* at 11. Overall, the Report outlined the ROD's continued struggles complying with three primary employment policies – Performance Management, Discipline, and Time and Attendance.

Since the Twenty-First Report, the DOC issued an Annual Report as well as several outstanding investigation reports. Additional progress occurred in the six weeks preceding the COVID shutdown when, after direct intervention from the Chief Deputy Recorder,

Supervisors began more timely issuing performance evaluations. Unfortunately, further progress was stunted by a number of issues such as: the attrition in HRD; considerable time engaging with the ROD on policy interpretation issues the RCA believed had long ago been addressed, and a continued failure to hold Supervisors, Directors and Deputies Recorder consistently accountable for violations of Office employment policies. These issues are discussed in more detail below.

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. The Twenty-First Report noted the recent departure of the Director of HRD and the lack of clarity surrounding plans to replace her. *See* Twenty-First Report at 4-5. Since then, the ROD’s only HR Generalist resigned, leaving the Division with a Chief and Executive Assistant. As explained below, given these severe staffing limitations, HR’s ability to initiate, direct, coordinate and oversee certain employment policies has been limited.

a. *HRD Staff Changes*

On February 14, 2020, the ROD’s lone HR Generalist resigned. The Generalist was the only HR Employee assigned payroll functions; therefore, the Chief of HRD worked tirelessly to learn payroll and enlisted the help of the County’s Bureau of Human Resources temporarily to assist. Given the ROD is less than eight months away from its merger with the Cook County Clerk’s Office, understandably the ROD opted not to post for a new HR Generalist. Instead, it began pursuing contractor help through the County budgeting process. The RCA is hopeful that such help can be secured soon.

b. *Impact of HRD Staffing Attrition*

Because of the recent attrition, HRD's assigned and customary role in Employment Actions has been curtailed significantly. HRD is no longer attending performance evaluation meetings and giving feedback to Supervisors on their draft evaluations. HRD has also scaled back its role in attending disciplinary meetings. HRD's swiftness in responding to RCA document and information requests – something the RCA praised in her Twenty-First Report (at 4) – has also decreased understandably. Finally, the RCA offered – and the Chief Deputy Recorder accepted – to increase her involvement in traditionally HR-driven areas such as employment policy amendments and related training presentation development.

A consequence of the attrition and the Recorder's decision not to seek permanent replacements for the Director and Generalist roles, is that the ROD is unlikely to have a fully-functioning, independent HRD for the remainder of its months as a separately elected office. This will have an impact on the Office's ability to reach Substantial Compliance before the 2020 merger. While that reality might discourage some offices from further pursuing compliance progress, the RCA has been encouraged by the leadership of the ROD – particularly the Chief Deputy Recorder and DOC – who appear focused on helping the office solve as many of the compliance-related issues that have long plagued the ROD. The RCA will continue to support those efforts as significant progress is achievable in the months ahead.

2. Director of Compliance

Since the Twenty-First Report, the DOC issued an annual report covering the first

12 months of the Moody Administration, has issued one new Notice of Violation (“NOV”) (*see below* at 18-19), made significant progress in working through a backlog of investigations, and has continued to provide effective guidance to ROD staff on Plan and Manual compliance. *See below* at 10, 15-19.

a. *DOC Annual Report*

In her Twenty-First Report, the RCA noted that the DOC had yet to issue Semi-Annual Reports covering the periods of December 16, 2018 – June 15, 2019 and June 16, 2019 – December 15, 2019. *See* Twenty-First Report at 11. On March 10, 2020, the DOC issued a Report covering both semi-annual periods. This is the first such Report from the DOC during the Moody Administration. The Report covered the ROD’s progress in providing “successful and meaningful” Plan Training, as well as revisions to the Manual and the delivery of office-wide training on the same. This included training for Supervisors on their specific roles in relation to the Manual, the first of its kind at the ROD.

The Report also detailed areas where the ROD failed to gain traction, most notably with performance evaluations. The DOC highlighted that while improvements were made in early 2019 regarding timeliness and overall quality of evaluations, the ROD regressed thereafter. Supervisors’ struggles with meeting deadlines, preparedness and inaccurate and/or insufficient content again became commonplace. (Similar issues were highlighted in the DOC’s prior Semi-Annual Report and discussed extensively in the RCA’s Twenty-First Report at 7-11.) The DOC commented that part of the regression was due to communication breakdown between HRD and Supervisors after the former Chief of HRD resigned in July 2019.

The DOC also highlighted the ROD’s struggles to adhere to and implement the

Time and Attendance Policy, including widespread non-compliance with swiping policies by Employees and the failure of Supervisors to monitor, recognize violations, and initiate Counseling or Discipline for their subordinates. The DOC detailed that while the ROD made some progress in its compliance with the Compensatory Time provisions of the Manual, considerable issues remained. Finally, the DOC noted that despite revisions to the Discipline Policy meant to ensure consistency, monitoring the ROD's "compliance efforts regarding Discipline continues to be a challenge" on account of identified instances of inconsistent and disparate Discipline.

The RCA appreciates the DOC's accounting of compliance issues noted in her Annual Report and deems invaluable her efforts to work more closely with Supervisors on a one-on-one basis to ensure they understand the responsibilities assigned them under the Plan and Manual. It is likely that the ROD can make even more significant progress toward policy compliance following the shutdown when its staff can follow the DOC's lead in providing such personalized training and guidance to employees.

### 3. Hiring

Since the RCA's last report, the Recorder has not filled any Positions but is in the process of hiring for two vacancies. In February 2020, the ROD posted for two Satellite Cashier positions; however, upon validating the applications, HRD questioned whether certain software-related Minimum Qualifications were necessary given the Position's duties. After discussion with the DOC and RCA, HRD confirmed with current Satellite supervisory staff that Satellite Cashiers do not need to know how to use any software to be minimally qualified to perform their job. HRD thereafter updated the Job Description and reposted the position, which expired on April 25, 2020. The RCA will update the Court on



this hiring process in her next report.

#### 4. Job Description Updates and Enforcement

For several years, the ROD has worked to update (or, in some instances create) Job Descriptions for all of its Positions. Other than being required by Section IV.I of the Plan, updated and accurate Job Descriptions allow all staff to understand their work expectations and on what their performance evaluations will focus. The RCA's Twenty-First Report discussed how a handful of Job Descriptions remained outstanding, in part because of a 2019 union grievance settlement. RCA Twenty-First Report at 5. On January 24, 2020, the ROD provided draft edits to these five Job Descriptions. The RCA responded with comments and proposed additional edits on January 30, 2020. The Job Descriptions remain pending with the ROD. Given these are the final Job Descriptions requiring updating in the ROD, the RCA is hopeful the ROD will finalize the edits soon.<sup>4</sup>

#### 5. Performance Management Policy Compliance

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.<sup>5</sup> See Manual at 31-32. For the past year and a half,

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<sup>4</sup> In the Twenty-First Report, the RCA noted concerns about recent acknowledgements from several Employees and Supervisors that certain Employees did not know how to perform many of their essential job duties. See Twenty-First Report at 6. The RCA is not aware of any training or corrective action taken by Supervisors to address these issues but is hopeful that steps will be taken after the ROD resumes in-person operations. In the meantime, the RCA is preparing to submit proposed edits to the Performance Evaluation Form that would require Supervisors to highlight any essential job duties that an Employee did not know how to perform and to ensure the Supervisor provide specific training on such duties during the subsequent rating period.

<sup>5</sup> 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

the ROD has attempted to implement its Performance Management Policy. In her Twenty-First Report, the RCA discussed ongoing concerns with the timeliness and content of many evaluations as well as concerns with the Recorder's proposed solutions to these problems. *See* Twenty-First Report at 7-11. The timeliness issues were particularly egregious as they included several Supervisors who did not submit a single draft evaluation for their subordinate Employees even months after drafts were due. Compounding the problems were Deputies Recorder and Directors' failures to hold accountable these Supervisors for their disregard of the Policy's deadlines. Rather than rectify the Policy violations with a combination of training and Discipline, just prior to the RCA's Twenty-First Report, the Recorder proposed significant edits to the Performance Management Policy and Evaluation Form that both removed any requirement that Supervisors ensure their evaluations were accurate and thorough and would have weakened significantly the value of the evaluations themselves (a point raised by the DOC). The RCA and Plaintiffs' counsel voiced their concerns with this approach in a February 10, 2020 meeting with the ROD. The ROD listened and ultimately agreed to follow the policy in place while they further considered the issue.

Since the Twenty-First Report, there have been several positive developments on the Supervisor accountability and training issues as well as on efforts to make meaningful edits to the policy itself. First, in mid-January 2020, the Chief Deputy Recorder met individually with the Supervisors who had not submitted draft evaluations despite deadlines passing weeks (if not months) prior. The Chief Deputy Recorder made clear that

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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").

such behavior was not permitted and provided the Supervisors with concrete deadlines within which to complete the drafts. The Supervisors responded by turning around drafts within those deadlines. While there were still some issues with the content of those evaluations, it is clear the Chief Deputy Recorder's meetings had a positive impact on Supervisor responsiveness. Second, the DOC provided several one-on-one tutorials to Supervisors on improving the accuracy and thoroughness of draft evaluations. This extra assistance also had a positive impact on several Supervisors whose draft evaluations showed marked improvement from past drafts and who appeared more comfortable and engaging during evaluation issuance meetings with their subordinates. Third, even after the COVID shutdown began, several Supervisors have continued finalizing evaluation drafts and conducting Supervisor Meetings telephonically. While it is unclear if these evaluations will ultimately be issued to Employees, the RCA is encouraged at the progress being made under the circumstances. Moreover, one Supervisor requested an extension on her evaluation deadlines – a request the RCA viewed positively when compared to those Supervisors months prior who ignored deadlines outright. The RCA believes these efforts – both before and after the shutdown – show progress with Performance Management compliance.

On the issue of holding accountable those Supervisors who ignored performance evaluation deadlines for months, during the February 14, 2020 Status Hearing, the Court noted that Supervisors cannot simply “get a veto on something by saying, ‘I’m not going to do it.’” Feb. 14, 2020 Hr’g Tr. at 15:1-2 (Dkt. 6753). While those Supervisors ultimately completed the evaluation drafts and were working toward issuance prior to the COVID

shutdown, the RCA notes that they were not disciplined for their conduct – an action the RCA expected would have occurred even before the shutdown.

Finally, the RCA considered the ROD's concerns with the policy and made significant changes to the policy aimed at addressing some of those concerns while maintaining the value of the evaluations. She will be providing the ROD with her proposed edits in the coming week and will provide further updates in her next Report.

#### 6. Discipline Policy Compliance

In her Twenty-First Report, the RCA discussed the importance of Labor Counsel receiving all Counseling and Discipline so he could ensure the Office was meting out Counseling and Discipline consistently across the ROD. *See* Twenty-First Report at 15. Unfortunately, much of the time since the Twenty-First Report was spent debating whether the ROD's Manual required consistent enforcement of Counseling and Discipline.

In late January 2020, the RCA emailed the ROD to inquire about inconsistent treatment among three non-Exempt Employees who committed the same attendance related Minor Cause Infraction.<sup>6</sup> Each Employee had a different Supervisor. ROD Counsel responded that the disparate results were compliant with the Policy because Supervisor discretion in whether to initiate Counseling or Discipline was paramount, opining that “consistency in the implementation of Discipline does not equate to identical outcomes for like violations.” The RCA responded that such an interpretation conflicts with the plain

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<sup>6</sup> One Employee received an Incident Report for the first offense; another Employee was counseled once prior to receiving an Incident Report for a second offense; and the third Employee received two instances of Counseling.

language of the Discipline Policy<sup>7</sup>, and ROD Counsel's logic would permit one Supervisor to counsel an Employee indefinitely for violating a policy while another Supervisor could follow the progressive disciplinary track and terminate an Employee after the fifth violation of the same policy.

After weeks of emails between the RCA and ROD on the implications of this approach, the Chief Deputy Recorder ultimately conveyed that the Recorder agreed with the RCA and was committed to enforcing Discipline and Counseling consistently for similarly situated Employees across the ROD. It is unfortunate so much time was wasted on this issue that had been resolved years ago in the Policy Manual drafting.

On the issue of addressing the disparate disciplinary application affecting the above-mentioned three Non-Exempt Employees, the ROD expressed its intent to bring two of the three Employees' results in line with one another, but ultimately did not do so. Regarding the third Employee, the ROD decided not to advance him to the appropriate progressive disciplinary step, instead permitting him to receive two Counselings (and no Discipline) for the same number of attendance violations as one of the other two Employees who received a Counseling and then Discipline. The RCA finds troubling the ROD's decision to permit inconsistent results in identically situated Employees and believes it runs counter to the Recorder's recent reaffirmation to apply Discipline consistently across the Office. The Recorder has not provided any acceptable justification for his decision.

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<sup>7</sup> "For all Non-Exempt Employees, the CCRD will apply Discipline consistently in similar situations." Manual § XVII.G.

### 7. Time and Attendance Policy Compliance

In the Twenty-First Report, the RCA noted several concerns with the Recorder's implementation of its Time and Attendance Policy including: Supervisors not completing Compensatory Time Authorization Forms on a timely basis (if at all), a lack of Division Heads holding Supervisors accountable for this failure, and a dearth of Supervisors holding Employees accountable both for unauthorized accrual of Compensatory Time and swiping violations. The RCA noted that, without consequence, Supervisors largely ignored HRD's attempts at getting them to address instances of missed swiped by subordinates. The RCA also discussed the DOC's recommendation that the ROD undertake an audit of its Time and Attendance Policy enforcement to identify any inconsistencies with when Discipline resulted from policy violations. Twenty-First Report at 12-15.

Since the Twenty-First Report, a sign of progress has been the increase of Supervisors submitting Compensatory Time Authorization Forms; however, several implementation issues remain. Many Employees accrued Compensatory Time without any record as to whether the accruals were authorized. Compensatory Time accrual is still not being tracked as required by the Policy. Manual at 18. Supervisors also are not being held accountable for their failure to submit forms or for submitting forms that are untimely or noncompliant. The issues noted in DOC Investigative Report 19-013 concerning widespread non-compliance with the swiping policy continued unabated; the RCA is not aware of any plans by the ROD to conduct the time and attendance audit recommended by the DOC. *See below* at 17.

While the state of Time and Attendance compliance remains largely the same as detailed in the RCA's Twenty-First Report, the RCA is working on Policy revisions and

supplemental training to help alleviate ambiguity and address some of the difficulties the ROD is having with compliance. The RCA is hopeful that such measures will have a significant positive impact on the ROD's compliance with this Policy.

#### 8. 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 with the ROD for five years if they were terminated, resigned or retired in lieu of termination as a result of certain findings by the OIIG or DOC.<sup>8</sup> In her Twentieth Report, the RCA discussed sharing concerns with the DOC and HRD about the process followed when placing one former Employee on the Do Not Hire List and processing the appeal. *See* Twentieth Report at 12, n.11. In her Twenty-First Report, the RCA detailed that the DOC was similarly concerned and issued an NOV regarding the matter. *See* Twenty-First Report at 12, 20.

The Recorder timely responded to the NOV on January 24, 2020, accepting the DOC's recommendations. On February 12, 2020, HRD mailed a corrected Notice to the former Employee, informing that the previous Notice and accompanying appeal were rescinded. In the corrected Notice, HRD accurately informed the former Employee of the reason the ROD determined placement on the Do Not Hire List to be appropriate<sup>9</sup>. HRD

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<sup>8</sup> 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 OIG 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.

<sup>9</sup> That the ROD determined the former Employee to have retired in lieu of termination due to a DOC finding of knowingly or willfully providing false information during an investigation.

also detailed that the former Employee could appeal within 30 days of the notice. HRD informed that the former Employee received the letter but did not file an appeal.<sup>10</sup>

**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 DOC, the Recorder's responses to DOC reports noted in prior RCA Reports, as well as summaries of recent DOC findings.

1. DOC Updates Since RCA's Twenty-First Report

Since the Twenty-First Report, the DOC issued a DOC Report covering two semi-annual periods (*see above* at 6), issued one new NOV as well as five new reports covering matters she referred previously. Details on these findings and updates to the Recorder's responses to prior issuances are below.

*a. 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 Employee regarding an altercation between two Non-Exempt Employees. The investigation revealed no physical altercation but a loud argument between the Employees that the DOC found amounted to the Minor Cause

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<sup>10</sup> The RCA also detailed in her Twentieth Report that the ROD only attempted to put three of four former Employees on the Do Not Hire List who were required to be placed on the List by the Plan because they were terminated or resigned in lieu of termination. See Twentieth Report at 12. The former Employee who the ROD did not attempt to place on the Do Not Hire List was terminated after being found to have harassed customers and provided false information during a DOC investigation. See Twentieth Report at 20-21. In January 2020, the ROD expressed the intent to place the former Employee on the Do Not Hire List but has not yet done so.



Infraction of “hostility that is directed toward another Employee...” Manual at 47. The DOC recommended the Employees receive Discipline.

The Chief Deputy Recorder responded timely on November 18, 2019, choosing to Counsel rather than initiate Discipline against the Employees. In her Twenty-First Report, the RCA noted that the Counseling had yet to be delivered nearly two months after the Recorder’s Response. *See* Twenty-First Report at 18. On February 11, 2020, the Chief Deputy Recorder issued separate Counselings for both Employees. The RCA reminds the ROD of the importance of timely implementing corrective actions stemming from DOC investigations.

*b. DOC Investigative Report 19-013 (finding that ROD 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 ROD Supervisors were not monitoring and tracking subordinates’ compliance with the swiping provisions in the Manual. As a result, violations of the same were not being identified or acted upon.

The DOC made several recommendations: (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 its practices regarding verifying an

Employee was working amid a missed swipe.

The ROD's timely response contained an analysis of the 26 swiping violations identified by the DOC, determining that only nine rose to the level of requiring Discipline or Counseling. The Recorder otherwise accepted all of the DOC's recommendations. On February 11, 2020, the Chief Deputy Recorder issued a memo to all Employees reminding them of the swiping provisions in the Manual and issued a separate memo to Supervisors reminding them of their obligations to monitor the same. The ROD informed the RCA it intends to review and amend its Time and Attendance Policy, but did not commit to conducting the recommended audit. The ROD issued Counselings in five of the nine instances it identified as warranting Discipline or Counseling. Of the 10 Supervisors identified in the DOC's report, only two have received Counseling for their failure to address the missed swipes of their subordinates. Finally, Employees are still being permitted to submit written statements vouching for the time they arrived at work when they miss a swipe, despite the Policy not permitting them to do so. The ROD has much work to do to implement effectively its swiping policy and the RCA is hopeful that supplemental training of Supervisors, Directors and Deputies Recorder will go a long way toward shoring up these deficiencies.

*c. DOC Notices of Violation*

Since the Twenty-First Report, the Recorder responded to three previously issued NOV's and finalized its response to another. The DOC issued one new NOV. Below are updates.

- December 4, 2019: The RCA noted in her Twenty-First Report that a Counseling remained pending for one of the Supervisors subject to a NOV issued on December 4, 2019, which found that the Supervisor failed to timely counsel or Discipline

subordinate Employees for attendance violations. *See* Twenty-First Report at 20. That Counseling occurred on February 11, 2020.

- December 26, 2019: Two separate NOVs with findings that two Supervisors failed to timely counsel or draft Incident Reports for attendance violations. The 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 to both NOVs, accepting the DOCs findings. The two Supervisors received Counseling.
- December 26, 2019: Finding that a Director violated the Plan by not including required details in a Notice of Listing (“Notice”) of why the ROD was attempting to place that former Employee on the ROD’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 ROD issue the former Employee a revised, compliant Notice (and presumably begin the appeal process anew.) She further recommended that the Chief of HRD consider the violations for potential further action. The Recorder timely responded, accepting the DOCs recommendations. As discussed above in this Report (*see* 14-15), a revised, compliant notice was sent to the former Employee. As the Director resigned shortly after this NOV was issued, any further action by the Chief of HRD became moot.
- January 31, 2020: Finding that a Supervisor and the Supervisor’s Director failed to timely initiate Counseling or Discipline for a subordinate’s attendance violation. The DOC recommended that the Chief Deputy Recorder consider the matter for further action. The Recorder timely responded and accepted the DOC’s recommendations. Included in the response was a commitment to drafting an Incident Report for the Supervisor, as well as holding a discussion with both the Supervisor and Director to remind them of their obligations under the Manual. As of the date of this Report, neither has occurred.

The RCA will include any updates to the above responses in her next report.

*d. Outstanding Reports of Previously Referred Matters*

As noted in previous RCA Reports, the DOC committed to providing written reports to summarize matters that previously she referred outside of the provisions in the Plan. *See* Twentieth Report at 10-11 and Twenty-First Report at 19. Since the Twenty-First Report, the DOC has issued six such reports (three of which were issued since the Office shutdown). The underlying allegations largely concern conduct-related complaints

between Employees. Two examples are:

- March 31, 2020: The DOC issued Investigative Report 18-001, detailing that on February 5, 2018, she received a complaint from a non-Exempt Employee alleging that a former Director was discourteous when discussing an FMLA application. The DOC referred the matter to the former Chief of HRD on February 26, 2018. In response, the former Chief of HRD informed that she discussed the matter with the former Director and determined the interaction between the Employee and former Director was proper. The DOC explained that she agreed with the former Chief of HRD's assessment and the matter was closed.
- April 1, 2020: The DOC issued Investigative Report 18-002, detailing that on February 16, 2018, she received information from a non-Exempt Director referencing a possible breach of information security involving Employee passwords. The DOC referred the matter to the former Director of Management Information on February 26, 2018. The former Director responded timely, explaining that the concern stemmed from a member of his staff suggesting a Supervisor could allow a subordinate to use the Supervisor's password to access a recording program. The former Director believed that suggestion was consistent with language in the Manual at the time. The DOC explained that she agreed with the former Director's assessment and that no violation occurred.

The DOC is working diligently on completing the remaining six reports of this nature during the shutdown; the RCA will report on that progress in her next report.

## 2. OIG Updates Since RCA's Twenty-First Report

Since the Twenty-First Report, the OIG did not issue any reports concerning alleged Unlawful Political Discrimination and has not pending Post-SRO complaints pending; however, initiate a new investigation into alleged UPD that remains ongoing.

### **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 OIG in this reporting period, which is a positive development. The RCA, however, still cannot confirm the ROD

does not have a policy, custom or practice of basing Non-Exempt employment decisions on political factors on account of myriad gaps in the ROD's implementation and enforcement of its employment policies. As the Court noted, while no UPD findings is noteworthy, the employment policies and procedures "are not simply a matter of good personnel practices. They're the kind of procedures that. . . in place and followed are a safeguard against those things happening and that provide some assurance that they won't happen." Jan. 10, 2020 Hr'g Tr. at 37:4-8 (Dkt. 6667). The RCA hopes that the collaborative efforts between the ROD, DOC and RCA on policy amendments and training development will prove effective in addressing these implementation issues.

**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 – particularly with the Performance Management, Discipline and Time and Attendance Policies. The RCA recommends that the Recorder's senior staff follow the approach taken by the DOC in recent months by providing one-on-one targeted assistance to Supervisors who are struggling with adhering to the Plan and Manual. A combination of increased check-ins by senior staff along with revised personalized training by HRD and the DOC should pay significant dividends in the ROD's efforts to comply with its employment policies.

**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 RCA will continue to work with the ROD on revising various policies in its Manual and will assist HRD and the DOC on training relevant staff on the same. The RCA hopes that after such training and a serious and sustained commitment by the Recorder to hold accountable Employees of all levels for Policy non-compliance, the ROD will have moved significantly closer to demonstrating it has implemented policies and procedures aimed at preventing impermissible political considerations in Recorder Employment Actions.

**III. Conclusion**

The RCA will continue to work closely with the ROD on developing necessary and helpful policy changes, drafting and presenting supplemental training materials, and working through other issues identified in this Report.

Respectfully Submitted,

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