

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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| MICHAEL L. SHAKMAN, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | Case Number: 69 C 2145 |
| v. |) | |
| |) | Judge Edmond E. Chang |
| COOK COUNTY RECORDER OF |) | Mag. Judge Gabriel Fuentes |
| DEEDS, et al., |) | |
| |) | |
| Defendants. |) | |

**TWENTY-THIRD 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-Third Report as follows:

I. Introduction

On April 27, 2020, the RCA filed her Twenty-Second Report to the Court (the “Twenty-Second Report”) (Dkt. 6852) in which she discussed the Cook County Recorder of Deeds² efforts to comply with the SRO. In the Twenty-Second Report, the RCA discussed the policy implementation issues facing the Recorder’s Office at the time it shut down in-office operations on March 20, 2020, as well as the Recorder’s proposed plan 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.

address those issues even during the shutdown. *See* Twenty-Second Report at 2. The RCA also discussed the positive and engaging work of the DOC to assist the Office with compliance issues but noted continuing challenges with the Human Resource Division’s (“HRD”) engagement in addressing policy non-compliance largely on account of staffing attrition. *Id.* at 5-7.

On July 23, 2020, the RCA filed an Interim Report to alert the Court to significant concerns with the Recorder’s policy noncompliance since the Twenty-Second Report. The RCA noted the Recorder’s “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.” Interim Report (Dkt. 6973) at 2. The RCA detailed how the Recorder made significant changes to its employment policies – some through an Executive Order – but did not follow the process in the Employment Plan that requires for notice and dialogue about any such changes with the DOC, RCA and Plaintiffs’ Counsel. *Id.* at 6-8. The parties and RCA discussed the Interim Report and other updates during a July 30th status hearing.

Through this Report, the RCA does not intend to restate the observations included in the Interim Report. Rather, she aims to provide other updates on the Recorder’s compliance efforts since the Twenty-Second Report, including developments since she filed the Interim Report three weeks ago. The RCA acknowledges that the Recorder’s Office will only exist in its current form for three-and-a-half more months. Given some very recent developments, there is hope that those remaining months can see more policy compliance than the last several. With the retention of a pair of HR contractors and the continued tireless efforts of the DOC, the ROD is in a position to ensure compliance with

its policies for the duration of its existence. Further, the Recorder seems to have heard the concerns raised about its recent approach to policy changes as, since the July 30th status, his senior staff has been working with the DOC, RCA and Plaintiffs' Counsel on amending its policies and its recent Executive Order in a collaborative, and policy-compliant, manner. The RCA provides these and other updates since the Twenty-Second Report 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 a Plan and other procedures to ensure compliance with the principles of *Shakman* and identify instances of non-compliance. In her Twenty-Second Report, the RCA detailed the commendable initial efforts undertaken by the ROD to continue serving the public amid the significant challenges the COVID-19 pandemic presented. Twenty-Second Report at 2-3. In that Report, the RCA highlighted continued attrition within HRD following the loss of its lone HR Generalist, and the associated impact on HRD's ability to perform its customary role in Employment Actions. Noncompliance with the ROD's Performance Management, Time and Attendance and Discipline policies persisted, but the RCA was encouraged by the ROD's stated plan to address the noncompliance. *Id.* Unfortunately, the compliance issues intensified including the Recorder's unilateral decisions to ignore, amend or suspend outright the three key employment policies. *See* Interim Report at 2.

Since the Twenty-Second Report, HRD secured additional assistance from a pair of contractors. The DOC issued a Semi-Annual Report, finalized her outstanding Investigation Referral Reports, and continued her efforts to improve the ROD's policy

compliance, a task made more difficult by senior management not including her on discussions on how the Office intends to apply its policies. These issues are discussed in more detail below.

1. Human Resources

Under the Plan, HRD has 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. In her Twenty-Second Report, the RCA described the impact attrition had on HRD’s ability to provide its customary role in Employment Actions. *See* Twenty-Second Report at 5-6. This attrition led HRD to be overwhelmed addressing day-to-day functions of the Office. These challenges were exacerbated during the shutdown.

The RCA has expressed the hope that the ROD would be successful in procuring a contractor to assist with the functions normally performed by an HR Generalist.³ *See* Twenty-Second Report at 6. On July 16, 2020, the Chief of HRD notified the RCA that the contractor, comprised of two individuals (one of whom is Cook County’s former Chief of HRD) had recently begun working at the ROD.⁴ In addition to HR Generalist functions, HRD indicated that the contractor will assist with implementation and compliance with its Time and Attendance policy. As discussed further in this Report, Time and Attendance implementation remains a challenge. *See below* at 13-15.

With the ROD’s retention of an HR contractor, it is important for HRD to resume

³ On February 14, 2020, the ROD’s lone HR Generalist resigned, leaving HRD with only a Chief and an Executive Assistant.

⁴ The Chief of HRD stated at the July 30, 2020 status hearing that the contractor began work as of July 6, 2020. *See* July 30, 2020 Hr’g Tr. at 30:15-17

the customary role in Employment Actions that has been curtailed. For the past several months, HRD has all but eliminated its normal participation in the Performance Management and Discipline Policies, and has shown reduced communication with Supervisors regarding Time and Attendance issues. Responsiveness with RCA and DOC inquiries suffered as well. The DOC, as detailed below, has continually offered HRD whatever assistance she can provide, even amidst the shutdown. *See below* at 6. The RCA encourages HRD to accept that offer more consistently so HRD can best fulfill its duties in the Plan and Manual during the ROD's remaining months.

2. Director of Compliance

Since the Twenty-Second Report, the DOC issued a Semi-Annual Report, has issued one new Notice of Violation, and continued to progress through a backlog of investigations, including the finalization of all outstanding Referral Reports. *See below* at 6-7, 15-16. The DOC also continued to provide effective guidance to ROD staff on Plan and Manual compliance, despite the challenges presented by the shutdown and senior management excluding her from discussions surrounding the application of their employment policies.

Throughout the shutdown when the ROD failed to adhere to or outright abandoned the Performance Management, Time and Attendance and Discipline policies, the DOC consistently made efforts to improve the Office's compliance with, and to amend where necessary, these policies. The DOC was the primary facilitator of the Performance Management Policy until it was effectively suspended, and throughout June, the DOC held productive meetings with individual Supervisors to elicit feedback on how to improve the Performance Management training and implementation when adherence to the policy

resumed. The DOC made several inquiries during the shutdown regarding outstanding and ongoing compliance issues involving various policies in an effort to move matters forward. In acknowledgment of the inherent challenges presented by the shutdown, the DOC repeatedly offered her assistance to senior management. Unfortunately, her inquiries on compliance matters and offers to help were largely ignored.

While the lack of communication from senior management made it difficult to advance compliance issues, the DOC diligently continued to work through her investigative reports during the shutdown. *See below* at 15-16. After the Office reopened, the DOC continued her efforts to bring the ROD into compliance with its Plan and Manual, particularly its Time and Attendance, Discipline and Performance Management policies. The RCA appreciates the DOC's steadfast commitment to her responsibilities and again reiterates her recommendation that the ROD utilize the DOC as the great asset that she is in the Recorder's compliance efforts.

a. *DOC Semi-Annual Report*

On July 1, 2020, the DOC issued a Semi-Annual report covering the time period of December 16, 2019 – June 15, 2020. In the report, the DOC acknowledged the various challenges the Office faced during the COVID-19 suspension of operations, and commended the efforts made to provide essential services to the public in the interim. The DOC also highlighted the ROD's response to guidance received at court status hearings, resulting in a demonstrated commitment between January through mid-March 2020 to improving compliance with the Time and Attendance, Performance Management, and Discipline policies. The DOC detailed that after the March shutdown any progress made in the early part of the year was thwarted by disregard for current policy and the Office's

failure to engage with the DOC and RCA to facilitate the agreed-upon need to revise all three policies. As a result, “CCRD’s polices (both the draft policies and the policies currently in place) were effectively abandoned.” *See* DOC Semi-Annual Report at 2. The DOC made the following additional observations:

- Time and Attendance Policy Compliance – The DOC wrote that issues she previously identified⁵, involving widespread noncompliance with CCRD swiping procedures and Supervisors’ failure to identify and discipline for the same, persisted during the reporting period. She noted also that the abandonment of Time and Attendance requirements after the shutdown resulted in confusion of how Employees tasked with working from home were to account for their time, and highlighted the disparity between the Employees required to work and those who were not, while all were in paid status. *Id.* at 6-7.
- Performance Management Policy Compliance - The DOC noted that several Supervisors were able to complete meaningful draft evaluations for their subordinates despite not being physically in the office; however, the Chief Deputy Recorder allowed all Supervisors to defer their obligations under the Performance Management policy until the reopening of the office. The DOC detailed the over 50 outstanding evaluations spanning 12 Sections, displaying that many of the delinquent evaluations had been pending since 2019. As a result, the DOC determined the decision to postpone the Performance Management process “caused a bad situation to become worse.” *Id.* at 7-10.
- Discipline Policy Compliance - The DOC detailed that implementation of the Discipline policy was “held in abeyance” during the office shutdown, including outstanding discipline pursuant to Performance Management violations dating back to 2019. *Id.* at 10-11.

Finally, the DOC detailed how her meetings with the Recorder and senior management became less frequent and more strained over the reporting period.

The issues detailed in the DOC’s Semi-Annual report display that she has maintained close oversight of compliance matters despite the difficulties recent times have presented. The RCA appreciates the efforts of the DOC and encourages the ROD to address

⁵ Detailed in Investigative Report 19-013, issued December 10, 2019.

the items the DOC has raised.

3. Hiring

Since the Twenty-Second Report, the ROD filled the Exempt Position of Deputy Recorder of Communications and two Satellite Cashier positions. The RCA monitored the above hiring processes and had no material concerns with the Recorder's compliance with the Plan's hiring requirements. One of the Satellite Cashier hires requested and was granted a return to their previous Position consistent with the Collective Bargaining Agreement ("CBA"), creating an additional vacancy. The RCA will update on any developments on filling this vacancy in her next Report.

Related to hiring, on April 30th, the RCA requested certain documents from the ROD concerning, among other things, internal communications and communications with the Cook County Clerk's Office related to staffing and position retention deliberations for the Clerk's upcoming assumption of the Recorder's duties. Despite having over three-and-a-half months to respond, the Recorder has yet to produce a single document. The RCA sent another inquiry to the Recorder on August 13, 2020 concerning the status of the production. As only a few months remain in the Recorder's tenure, every day of delay further complicates the RCA's ability to monitor effectively this transition to ensure that political reasons or factors do not impact any staffing or position retention decisions for the upcoming transition.

4. Temporary Assignments

In November and December of 2019, the ROD placed two employees in Temporary Assignments ("TA"). One TA was policy compliant while the other was not. The non-compliant TA ended on March 30, 2020. The Chief of HRD sent an email to the Employee

serving in this TA on March 27, 2020, asking if she was willing to extend the TA pursuant to the Policy and the CBA. The Employee did not respond for two-and-a-half months, ultimately rejecting the extension on June 11, 2020. Instead of timely ending the TA upon its expiration and the Employee's non-response, HR did not end the TA in writing pursuant to the Policy until June 22, 2020, 85-days after the TA's official end date. The DOC issued a Notice of Violation to the Chief of HRD regarding the same. *See below* at 15-16.

5. Job Description Updates

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. In her Twenty-First Report, the RCA discussed how a handful of Job Descriptions remained outstanding, in part because of a 2019 union grievance settlement. *See* Twenty-First Report at 5. In the Twenty-Second Report, the RCA detailed that the Job Descriptions remained pending with the ROD since the RCA provided comments to the draft Job Descriptions on January 30, 2020. *See* Twenty-Second Report at 9.

Included in the RCA's January 2020 comments were recommendations that HRD amend certain Minimum and Preferred Qualifications for two supervisory positions to be consistent with the requirements contained in other similarly situated supervisory Job Descriptions. The ROD declined the RCA's recommendations, which he was not required to accept, and finalized the Job Descriptions in August 2020.

6. Performance Management Policy Compliance

Supervisors are required by the Manual 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. In her Twenty-Second Report, the RCA discussed several positive developments in the implementation of the Performance Management Policy: The Chief Deputy Recorder met individually with Supervisors who were delinquent with evaluations; the DOC conducted several one-on-one tutorials to help Supervisors improve the accuracy and thoroughness of their evaluations; and the Office displayed a commitment to progressing with the policy even after the shutdown began. *See* Twenty-Second Report at 10-11. While issues with timeliness and quality of the evaluations persisted, improvements were notable, and the RCA was encouraged by the trajectory toward Performance Management compliance. *Id.*

To further improve compliance, the RCA agreed to spearhead editing the Performance Management Policy and training deck. *Id.* at 3. As detailed in the Interim Report, the RCA circulated proposed edits to the policy, Performance Evaluation Form, and training deck; however, the ROD never responded to those proposed edits. Interim Report at 4. Instead, the ROD effectively suspended the Performance Management Policy by allowing Supervisors the option to defer their obligations under the policy until the

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").

unknown date of a return to the office⁷, and maintained that position after the DOC and RCA expressed concern. *Id.* at 5.

The ROD reaffirmed its stance in its Executive Order (“EO”) governing the Office’s reopening⁸, announcing the Recorder was “temporarily” suspending its Performance Management Policy so staff would be fully devoted to processing backlogged work. As detailed in the Interim Report, this dissemination violated Plan Sections IV.A and IV.F of the Plan by not following the steps required to amend the Manual, and was done even after concerns about the policy and reminders of the need to follow its policies and procedures were delivered via email by the RCA and DOC. *Id.* at 6-7.

During the July 30th court status, the parties and Court discussed the Recorder’s proposal to discontinue its annual performance evaluation process. After the Chief Deputy Recorder confirmed to the Court that the Recorder’s Office would not provide the Cook County Clerk with any performance evaluations, Discipline or other employment records to aid with the Clerk’s consideration of any Recorder Employees to Clerk employment positions⁹, the parties agreed there was limited utility in continuing on with annual

⁷ This decision was made after a Supervisor proactively requested an extension on her evaluation deadlines. As noted in the Twenty-Second Report, the RCA viewed the Supervisor’s extension request in a positive light as historically, one of the ROD’s problems with Performance Management was Supervisors ignoring deadlines altogether. *See* Twenty-Second Report at 11.

⁸ A “draft” EO was first provided to the DOC, RCA and Plaintiffs’ Counsel on June 30th, 2020, two business days before it was distributed to Employees.

⁹ The RCA notes that on April 17, 2020, she was appointed by this Court to serve in a similar capacity as Compliance Administrator for the Office of the Cook County Clerk. *See* Appointment Order (Dkt. 6829) at 41-42. One of the duties assigned to the County Clerk Compliance Administrator (“CCCA”), is to “review the incorporation of the Recorder’s Office into the County Clerk, to determine, among other things, whether political considerations are improperly used in deciding which Recorder’s Office non-exempt employees are retained by the County Clerk.” *Id.*

performance evaluations. *See* July 30, 2020 Hr’g Tr. at 32:10 – 34:18. Subsequently, the ROD followed the Plan-required process for amending its Performance Management Policy. The resulting changes removed the need for Supervisors to conduct annual evaluations of all Employees; only new hires and current ROD Employees who receive new positions are subject to continued evaluations. The amended policy will require much less work from the ROD during the remaining months, but the RCA encourages the ROD to adhere to the policy in the circumstances that it continues to apply.

7. Discipline Policy Compliance

Improving compliance with the ROD’s Discipline policies has been a longstanding issue. *See, e.g.*, Twentieth Report (Dkt. 6590) at 14 (noting consistent missteps at each stage of the disciplinary process). To help the Office apply Discipline and Counseling more consistently, the CCRD revised its Discipline policy in July of 2019, in part, to allow for more leeway to institute counseling for Minor Cause Infractions, require Labor Counsel and the DOC to review all Incident Reports prior to issuance, and assign Labor Counsel the responsibility to identify the appropriate step of Discipline in every instance. *See* Manual at 48-52. However, despite these changes, insufficient record-keeping and inconsistent application of Discipline remained issues. *See* Twenty-First Report at 15-16.

Subsequent to a February 2020 status hearing where the ROD was guided by the Court’s statement that “absence of compliance with policies...creates a situation where it is a petri dish for a Shakman violation,”¹⁰ the ROD declared its intent to remove any leeway

Ms. Spangler will file her first report to the Court in her role as CCCA on or around September 15, 2020. In that report she will discuss, amongst other things, her observations of the Clerk’s processes related to the upcoming incorporation of the Recorder’s Office into the Clerk’s Office.

¹⁰ *See* Feb 14, 2020 Hr’g Tr. (Dkt. 6753) at 13:16-18.

for Counseling and require a single mandatory Counseling when an Employee committed a Minor Cause Infraction. On June 1st, the RCA circulated a revised Discipline Policy that included the Recorder's changed approach to Counseling, as well as other proposed edits. The ROD did not respond.

Prior to the shutdown, the landscape of outstanding discipline consisted of a significant backlog stemming from potential violations of the Performance Management and Time and Attendance policies dating as far back as December 2019. While the Chief Deputy Recorder drafted a few Incident Reports associated with Supervisors who ignored deadlines pursuant to the Performance Management Policy, that potential Discipline was not issued prior to the shutdown. Despite prodding from the DOC, the ROD did not address any of this outstanding Discipline during the shutdown.

Following the July 30th court status, the ROD reached out to the DOC and RCA to schedule a meeting to discuss outstanding Discipline. After this meeting, the Chief Deputy Recorder finalized the pending Incident Reports for certain Performance Management Policy violations and provided the same to the relevant Employees. Disciplinary hearings on these Incident Reports remain pending. The ROD is still contemplating how it plans to address pending Time and Attendance-related Discipline for violations that pre-dated the COVID-shutdown. The RCA will update the Court on the same in her next Report.

8. Time and Attendance Policy Compliance

The RCA previously detailed significant issues with the Recorder's adherence to its Time and Attendance Policy, such as unauthorized accrual of Compensatory Time, the submission of Compensatory Time authorization forms on a timely basis (if at all), compliance with the Manual's swiping provisions, and a lack of record-keeping and

holding Supervisors accountable regarding the above violations. *See* Twenty-Second Report at 13-14; Twenty-First Report at 12-14. In her Twenty-Second Report, the RCA acknowledged the significant challenges that attrition in HRD and the COVID-19 pandemic presented regarding the ROD's ability to effectively implement its policy. *See* Twenty-Second Report at 5-6. Time and Attendance implementation issues persisted in the months since the Twenty-Second Report – first during use of skeleton crews during the shutdown, then through the issuance of an unclear Executive Order, and finally in the weeks since the Office resumed in-person operations.

To address a backlog of work that piled up during the shutdown, the ROD utilized “skeleton crews” on six days in June 2020. Employees were contacted in order of most seniority and asked if they would volunteer to work. If there were not enough volunteers, Employees were drafted to work based on reverse seniority. The process followed by the ROD created confusion. When seeking volunteers, Supervisors did not provide uniform information to Employees, including whether the Manual's Time and Attendance provisions would be applicable.

As the ROD drew closer to reopening in-person operations, the ROD provided Employees with an Executive Order that, in part, aimed to detail changes to time and attendance policies upon the reopening. As explained in the Interim Report, the Recorder provided the Executive Order to Employees on July 2nd, one business day before reopening its downtown office for in-office operations, and just two days after providing the same to the RCA and DOC – in contravention of the Plan's process for policy amendment. Interim Report at 6. Moreover, the details of the Executive Order concerning the use of benefit time and the accrual of Compensatory Time and Overtime were unclear

and, at points, contradictory. The RCA, DOC, Chief Deputy Recorder, Chief of HRD and Labor Counsel discussed the DOC's and RCA's concerns with the Executive Order; the Chief Deputy Recorder subsequently provided a draft revised Executive Order addressing those concerns. The RCA expects that the Recorder will provide Employees with a revised Executive Order in the coming days. Had the ROD involved the DOC and RCA sooner, it is likely that many of these issues would have been addressed, Employees would currently be operating with more certainty, and the ROD's Plan violations might have been avoided.

Since the Office resumed in-person operations, the RCA and DOC have noted a number of Time and Attendance Policy violations, including, a lack of enforcement of the policies concerning swiping requirements and unauthorized accrual of Compensatory Time, as well as several non-compliant changes to Employees' schedules.

As the state of Time and Attendance compliance remains largely the same as detailed in the RCA's Twenty-First, Twenty-Second and Interim Reports, the RCA is hopeful the newly retained contractor will increase HRD's bandwidth to monitor closely and communicate issues consistently. The RCA also remains willing to assist in revising the Time and Attendance Policy as necessary. These measures will hopefully increase the ROD's compliance and provide clarity for Employees who currently are subject to uncertainty and inconsistency regarding Time and Attendance. The RCA will update on any developments in her next Report.

Based on the above, the RCA cannot state that the ROD has met this first prong of Substantial Compliance.

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-Second Report

Since the Twenty-Second Report, the DOC issued a Semi-Annual Report (*see above* at 6-7), one new Notice of Violation and nine reports covering matters she referred previously. Details on these findings and updates to the Recorder's responses to prior issuances are below.

a. *DOC Notices of Violation*

In her Twenty-Second Report, the RCA noted that the Recorder responded to a January 2020 NOV finding that a Supervisor and the Supervisor's Director failed to timely initiate Counseling or Discipline for a subordinate's attendance violation. Despite accepting the DOC's recommendations and committing to discipline the Supervisor and initiate either counseling or discipline for the Director in the Recorder's February 2020 response, neither had occurred as of the Twenty-Second Report. *See* Twenty-Second Report at 19. As of the date of this Report, the Recorder has not disciplined either the Supervisor or Director.

Since the Twenty-Second Report, the DOC issued one new NOV. On July 7, 2020, the DOC issued a NOV finding that HRD violated the Manual by failing to provide written notification upon the conclusion of an Employee's Temporary Assignment. The DOC reiterated her recommendation from a previous NOV (accepted by the ROD in April 2019) that an HRD Employee be assigned to track all relevant dates of any Temporary

Assignments and responsible for all required written notifications of the same. The ROD has not yet provided its Response, which was due on August 6th.

b. 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, e.g.*, Twentieth Report at 10-11. Since the Twenty-Second Report, the DOC followed through on that commitment and completed the final nine outstanding reports of this nature prior to the office reopening. *See* Semi-Annual Report at 13-21.¹¹ The RCA commends the DOC on utilizing time during the COVID shutdown to address these outstanding reports.

2. OIIG Updates Since RCA's Twenty-Second Report

Since the Twenty-Second Report, the OIIG did not issue any reports concerning alleged Unlawful Political Discrimination and has no pending Post-SRO complaints; however, one investigation into alleged UPD remains pending.

Based on the above-noted lack of follow-through on DOC findings, the RCA cannot state that the Recorder has satisfied this second prong of Substantial 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. While another reporting period passed without any findings of UPD by

¹¹ This DOC Semi-Annual Report may be viewed at: <https://cookrecorder.com/wp-content/uploads/2020/07/DOC-Semi-Annual-Report-Dec.-16-2019-to-Jun.-15-2020.pdf>

the OIIG, which is positive news to be sure, the ROD's abandonment of some of its key employment policies during this same period prevents the RCA from being able to confirm the ROD does not have a policy, custom or practice of basing Non-Exempt employment decisions on political factors. The RCA hopes pending policy and Executive Order revisions will be circulated to Employees soon and that they will provide Employees with greater clarity on the policies affecting their employment. The RCA will continue to work closely with the DOC and ROD on any further needed policy amendments to put the Recorder's Office in the best possible position to comply with its policies during its remaining months as a separately elected County agency.

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. On account of the widespread policy noncompliance during this reporting period, the RCA believes there remains material noncompliance with the ROD's Consent Decree and SRO's essential purposes. In her Twenty-Second Report, the RCA recommended "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." The RCA reiterates that recommendation here and, again, urges the Recorder to improve his and his senior staff's working relationship with the DOC.

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 Recorder's decisions to set aside several of its employment policies during this reporting period – and to do so in a manner that did not comply with the Plan – underscores that it has not implemented procedures that will effect long-term prevention of the use of impermissible political considerations. The RCA will continue working with the ROD on this aim during the final months of the Recorder's existence as a separately elected agency.

III. Conclusion

The RCA identified many instances of policy noncompliance during this four-month reporting period but is hopeful that the ROD work consistently with the DOC, RCA and Plaintiffs' Counsel in these remaining months to get its compliance efforts back on track. Such compliance will help ensure that ROD Non-Exempt Employees remain free from the consideration of impermissible political considerations during their final days as Recorder Employees.

Respectfully Submitted,

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