

**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.)	

**ELEVENTH 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 Eleventh Report as follows:

I. Introduction

On May 2, 2014, the RCA filed her Tenth Report to the Court (“Tenth Report”) in which she discussed Cook County Recorder of Deeds² Karen Yarbrough’s efforts to comply with the SRO. In that Report, the RCA provided and summarized the OIIG’s findings and recommendations in connection with a number of Non-Exempt hiring processes that she referred to the OIIG. She also provided an update on the status of open

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

² The “Cook County Recorder of Deeds”, the “Recorder” and/or “Recorder’s Office” hereinafter shall refer to the Recorder, Karen Yarbrough, and/or her staff.

items such as the hiring of the Director of Compliance (the “DOC”), training on the Employment Plan (the “Plan”), and updates to the Policies and Procedures Manual (the “Manual”). In this Eleventh Report, the RCA focuses on the Recorder’s progress toward satisfying the five-prong definition of Substantial Compliance³ set forth in the SRO, and reports on her monitoring findings over the last seven months.

As discussed in more detail below, the Recorder has taken strides in meeting portions of the definition’s first prong by implementing the Employment Plan and reaching agreement with the RCA and Plaintiffs’ counsel on the policies contained in the Office’s new Policy Manual. But the RCA does not yet believe that the Office has procedures in place to ensure compliance with that Plan or to identify instances of non-compliance. The RCA also questions, among other things, whether a custom or practice exists in the Office of non-compliance with the SRO and/or making employment decisions relating to Non-Exempt employees based on political reasons or factors in light of (1) the OIIG’s findings as reported upon in the Tenth Report and (2) the OIIG’s June 2014 finding that the Recorder and several senior staff members violated the SRO in connection with the termination of a *Shakman* Non-Exempt employee.

The RCA also includes in this Report updates on her monitoring of several

³ The SRO states that “Substantial Compliance means: (1) the Recorder has implemented the New Employment Plan, including procedures to ensure compliance with the New Employment Plan and identify instances of non-compliance; (2) the Recorder has acted in good faith to remedy instances of non-compliance 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.

Recorder Employment Actions since the RCA's Tenth Report. While there have been some concerning missteps in a few of the Recorder's recent hiring sequences, the RCA does not currently have any reason to believe these Non-Exempt employees were hired on the basis of politics. The RCA also provides an update on the Recorder's undrafted Do Not Rehire Without Further Consideration List as well as updates on the Recorder's Political Contact Log responsibilities. While these monitoring findings are discussed in a section separate from the Substantial Compliance prongs, curing the issues raised are important as the Recorder attempts to reach Substantial Compliance.

II. Prong 1: *Has the Recorder implemented the Employment Plan, including procedures to ensure compliance with the Plan and identify instances of non-compliance?*

The first prong of Substantial Compliance requires that the Recorder implement an Employment Plan as well as procedures to ensure both compliance with the Plan and identify instances of non-compliance. Since the Tenth Report, the Recorder has continued utilizing most portions of, and conducted some training on, the Plan. She also completed revisions to the Manual as required by the SRO and Plan and hired a DOC. The Plan training, however, revealed that the department with significant responsibility for ensuring the implementation and compliance with the Plan does not have a firm grasp of the Plan's content or meaning. In addition, the DOC tendered her resignation only six weeks after beginning her employment. For these, and other reasons, the RCA is concerned that the Recorder's Office lacks sufficient procedures both to ensure compliance with the Plan (and Manual) and to identify instances of non-compliance.

1. The Recorder's Office finalized a Policies and Procedures Manual

The SRO requires the Recorder to have written policies and procedures that cover

non-hiring Employment Actions, such as assignment of Compensatory Time/Overtime, Discharge, Discipline, Promotion and Transfer. SRO § II.C. On July 17, 2014, the parties and RCA reached agreement on final language to the Manual. This was a significant achievement, which ultimately should lead to greater transparency and consistency in the application of work rules within the Office. The RCA hopes such transparency and consistency will increase once the Office implements the Manual by (1) providing quality, in-depth training to all employees on the Manual and (2) ensuring compliance with its contents. The Recorder's Office has indicated its desire to complete the training and begin implementing the Manual as soon as practicable. The RCA will update the Court on the Recorder's progress in this regard in her next Report.

2. Human Resources Division's Knowledge and Understanding of the Plan and Manual

The RCA previously has reported on how important a strong, professional Human Resources Division ("HRD") is to achieving Substantial Compliance. This is because HRD has significant responsibility for training employees on and administering both the Plan and Manual; for ensuring consistency in employee coaching, counseling and discipline; and for ensuring the accuracy of job descriptions, among other duties. In order to fulfill this roll, HRD itself must have a thorough, complete and accurate understanding of the Plan and Manual. In the year since the Recorder filed her Employment Plan with the Court⁴, however, she has not demonstrated her HRD has the requisite knowledge of the Plan in particular or the capability of fulfilling the Department's other functions in a manner that will move this Office closer to Substantial Compliance.

⁴ The Recorder filed the Plan on August 14, 2013.

For example, at a July 9, 2014 HRD-led Employment Plan training session for supervisor level and above employees⁵, the Director of HRD provided factually incorrect answers to employees' questions about the Plan. Another Recorder employee interrupted the questioning and instructed employees to submit any additional questions to the Office in writing. Immediately following the training session, the RCA discussed with the Office her concerns about the training. This included her belief that the Director of HRD did not have a firm grasp of the Plan because (1) he read verbatim from the slide presentation for over two hours and (2) was unable to answer questions about the Plan accurately. The Office acknowledged the RCA concerns and agreed to provide participants with corrected information, which it did on July 22, 2014.

In addition, the Recorder has not demonstrated and the RCA has not observed that the Director of HRD, or any of his properly delegated subordinates, plays any role in ensuring consistency in employee coaching, counseling and discipline; or for ensuring the accuracy of job descriptions, among other of his core duties as specifically delineated in the Director's job description. It will be difficult for the Recorder's Office to meet the first prong of the Substantial Compliance definition without a HRD that has a solid understanding of the Plan and an observable role in driving, directing and ensuring consistency in personnel actions.

⁵ With the agreement of Plaintiffs' Counsel and the RCA, the Recorder had delayed conducting the requisite training while the Office attempted to hire a DOC; however, after that hiring process stretched on, the Recorder sought and received the RCA's approval to begin the training sessions prior to hiring a DOC. The training lasted approximately three hours and included brief introductory comments by the RCA and OIIG. All but one of the eligible Supervisors/Interviewers attended the training. The RCA provided her comments on the presentation materials prior to the training date.

3. The Recorder Hired a DOC who Resigned Six Weeks Later

One of the requirements of the Plan is that the Recorder hire a Director of Compliance to oversee the Recorder's compliance with the provisions of the Plan, SRO and Consent Decree. Plan § IV.C. After many months of sincere efforts to hire a DOC, the Recorder hired Denise Williams to serve in that capacity effective August 11, 2014. In filling this role, the ROD followed the process agreed to by the parties which included a job description with negotiated Minimum Qualifications, the use of a DOC Hiring Panel⁶ for the first round of interviews, and a second round of interviews conducted by the Recorder's Office. The RCA monitored the entire hiring process and had no *Shakman*-related concerns.

During the DOC's employment, the RCA had many productive and positive meetings with her and received weekly reports from the DOC as required by her job description. On September 23, 2014, the DOC tendered her letter of resignation to the Recorder.⁷ Shortly after the DOC's resignation, the RCA initiated a meeting with the parties to discuss both the concerns raised by the DOC in her resignation letter and witnessed by the RCA as well as a plan for moving forward with the DOC position. The Recorder's Office has not re-posted the DOC position so the RCA will report on any developments regarding the same in her next report.

The lack of both a DOC and a strong HRD raise concerns about the Recorder's

⁶ The DOC Hiring Panel, agreed to by the parties, consisted of JAMS Arbitrator, Hon. Wayne Andersen (ret.), former *Shakman* Compliance Administrator for the Cook County Forest Preserve District, Jan Carlson, and current Clark Hill Counsel/former President of the Chicago Bar Association, Aurora Abella-Austriaco. The RCA would like to thank them for the time and energy they spent throughout the three separate hiring processes for the DOC position.

⁷ The RCA will file an Interim Report with more details concerning the DOC's short tenure and the RCA's thoughts about how the Recorder's Office could more successfully integrate and support a future DOC.

ability to meet the first prong of the Substantial Compliance definition both in the short and long-term. The RCA sincerely hopes that the Recorder does all she can not only to hire a DOC and strengthen HRD, but to give both the needed resources, autonomy and authority to effectuate long-term change within the Office.

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 Recorder has acted in good faith to cure instances of non-compliance when identified. Since the RCA's Tenth Report, the OIIG has concluded that (1) the Recorder herself committed UPD when she terminated an employee early in her administration and (2) senior staff involved in the termination attempted to mislead the RCA concerning the same. The Recorder has not yet responded to the OIIG's findings, despite being required to do so by the Plan. Further, the RCA pointed out instances in which a senior Non-Exempt employee was spared discipline for committing infractions of the same office policies for which other Non-Exempt employees regularly have been disciplined. These issues cast doubt on whether the Recorder is acting in good faith to remedy instances of non-compliance.

1. The OIIG concluded that the Recorder committed UPD and that Recorder's senior staff violated the SRO by attempting to mislead the RCA

Since the Tenth Report, the OIIG completed its one remaining Post-SRO Complaint investigation. On June 19, 2014, the OIIG issued a report concerning a Post-SRO Complaint filed by the Recorder's former Concourse Manager who was terminated by Recorder Yarbrough on February 15, 2013. The OIIG:

- 1) Concluded that pursuant to Section V.A., Paragraph 9 of the SRO, impermissible political factors were considered in the employment decision to terminate the former Concourse Manager; and
- 2) In addition to “sustaining findings against the Recorder for unlawful political discrimination” with respect to the Complainant, the OIIG concluded that, “the Office of the Recorder violated the SRO where senior staff acted with the intent to mislead the Recorder Compliance Administrator.”
- 3) Concluded that these senior-level employees “made continued efforts to mislead the RCA” which amounted to a “campaign of pretext” to “continuously mislead the RCA into believing [the complainant] had serious performance issues.”

On June 25, 2014, the IG sent a letter of recommendation for remedial action to the Recorder noting his June 19th findings that “the preponderance of the evidence developed during the course of the investigation revealed that several *Shakman*-exempt employees actively and in collaboration engaged in an effort to create the appearance of circumstances to justify the termination of [the complainant].” The IG noted that these employees (the former Chief Deputy Recorder, current Chief Deputy Recorder, and a current Deputy Recorder), “in an attempt to justify the termination of [the complainant] subverted the managerial efforts of [the complainant] and engaged in conduct intended to mislead the Recorder Compliance Administrator and the OIIG.” The IG noted that these actions “were a continuation of the unsuccessful efforts to prevent the hire of [the complainant] as outlined in a prior OIIG investigative report.”⁸ The IG stated that the

⁸ On November 2, 2012, the RCA issued an *Interim Report of the Shakman Compliance Administrator for the Cook County Recorder of Deeds* to address concerns related to a hiring process affected by external

Recorder's senior staff's actions "constitute[d] a violation of the Consent Decree" and concluded that "the preponderance of the evidence developed by the investigation also demonstrates that [two current *Shakman* Exempt employees and one former *Shakman* Exempt employee] gave statements during this investigation which concealed the actual purpose of their actions leading up to the discharge of [the complainant that] constitute[d] a failure to cooperate as required by the SRO."

The OIIG recommended that the Recorder (1) place the former Chief Deputy Recorder on the Do Not Rehire Without Further Recommendation List pursuant to Section IV.Q of the Plan and (2) "impose significant discipline upon [the Chief Deputy Recorder and Deputy Recorder] for their parts in the scheme to develop pre-textual circumstances to support the discharge of [the former Concourse Manager] while acting to conceal this conduct."

Pursuant to Section IV.N.2 of the Plan and Section V.A.6 of the SRO, if the OIIG's Summary Report contains a finding that an Unlawful Political Contact or Unlawful Political Discrimination has occurred or includes a recommendation of corrective action, the Recorder has 30 days within receipt of the Summary Report, to prepare a Recorder's Report which must include among other things "[a] statement (i) confirming implementation of the OIIG's recommended action or (ii) explaining why the recommended action was not implemented and describing any alternative action the

political influence. The RCA also contacted the OIIG concerning the possibility that the former Chief Deputy Recorder, under Eugene Moore's administration, removed a posting after being contacted by Representative Karen Yarbrough's campaign manager, acting on behalf of Ms. Yarbrough, who was then the Democratic Candidate for the Recorder of Deeds. The OIIG's Investigation No. IIG12-0067 (January 11, 2013) found that the preponderance of the evidence demonstrated that Ms. Yarbrough and her campaign manager influenced the Chief Deputy Recorder's decision to cease non-exempt hiring within the Recorder's Office which was a direct violation of the terms and spirit of the SRO and the Executive Order.

Recorder has elected to take and the specific reasons for such alternative action.” On July 18, 2014, the Recorder requested a 30-day extension to respond to the OIIG Summary Report that expired on August 17, 2014. As of the filing of this Report, the Recorder has not issued her Recorder Report.

2. The Recorder issued outstanding Recorder Reports concerning previous OIIG findings and recommendations

Under the Plan, the Recorder’s Office may hire Executive Assistants for certain positions without publicly posting the job opportunities. Rather, the employee who will supervise the Executive Assistant may hand-select an Executive Assistant and, as long as: (1) that Candidate meets the Minimum Qualifications for the position, (2) the Executive Assistant Supervisor provides “a description of the basis on which the Executive Assistant Supervisor has selected the individual (e.g., past knowledge of his or her employment history, past working relationship, etc.)”; and (3) the Executive Assistant Supervisor signs an NPCC certifying that no political reasons or factors were considered in the hiring process. Plan at § IX.D. On February 26, 2014, the OIIG issued a 29-page report finding several violations of the SRO and Plan related to three Executive Assistant Hiring processes (Chief Deputy Recorder, Deputy Recorder and Director of HRD). Tenth Report at 10-20.

The RCA noted in her Tenth Report that while the Recorder issued Recorder Reports⁹ responding to findings concerning one of the Executive Assistant hiring processes (Director of HRD) covered in the OIIG’s February 26, 2014 Summary Report,

⁹ Requests by the public for Recorder Reports are permitted by the Plan and the Recorder’s Office is required to respond to the same. Plan § IV.N.3. During the period covered by this Eleventh Report, the Recorder’s Office received two requests from the public for copies of specific Recorder Reports that were issued in response to OIIG findings and recommendations. The RCA will discuss the details surrounding the Recorder’s response to these requests in her next report.

she had failed to respond to findings related to two other hiring processes also covered in that same report (Chief Deputy Recorder and Deputy Recorder). Tenth Report at 19-20. After the Tenth Report was filed, Labor Counsel informed the RCA that the Recorder had not believed the Plan required Recorder Reports for the two Executive Assistant hiring processes because the OIIG had not concluded that UPD had occurred. The RCA explained to Labor Counsel that: 1) the Plan requires Recorder reports if the OIIG's Summary Report "contains a finding that an Unlawful Political Contact or Unlawful Political Discrimination has occurred *or* includes a recommendation of corrective action," and 2) the OIIG's Summary Reports contained recommendations for corrective action for all four hiring processes covered. Plan at § IV.N.2 (emphasis added). Labor Counsel agreed with the RCA's interpretation and informed the RCA that the Recorder Reports would be written and issued. Below are summaries of the February 26, 2014 OIIG Reports followed by summaries of August 7, 2014 Recorder Reports.

a) *Executive Assistant to the Chief Deputy Recorder*

In her Tenth Report, the RCA summarized the OIIG's findings regarding the hiring process for the Executive Assistant to the Chief Deputy Recorder ("CDR") as follows:

[t]he OIIG's investigation into the Executive Assistant to the CDR hiring process concluded that the Executive Assistant violated (1) Section V.A.6 of the SRO by making false statements to the OIIG during the investigation of a Post-SRO Complaint and (2) Section 2-285 of the OIIG Ordinance by knowingly making false statements to the OIIG. The OIIG recommended that the Recorder terminate the employment of this Executive Assistant.

Tenth Report at 18. In concluding that one Executive Assistant hiring process "involved prohibited political reasons and factors" (Director of HRD) and another was

“accomplished in contravention to the Executive Assistant Hiring Process” (Deputy Recorder), the OIIG also recommended that the “Office of the Recorder suspend further reliance on Section IV of the Hiring Plan [Executive Assistant Hiring Process] and fill such vacancies through the General Hiring process in Section V until that time that the Office of the Recorder has stabilized the HR Department.”

On August 7, 2014, the Recorder issued a one-page Recorder Report concerning the OIIG’s findings related to this Executive Assistant hiring process.¹⁰ The Recorder’s Report noted that “[t]he hearing officer [Labor Counsel] did not agree with the OIIG’s conclusion and recommended that the employee receive no discipline.” The Recorder accepted the hearing officer’s recommendation and, in her report, wrote that she “also declines to accept the OIIG’s recommendation to further burden operations by suspending the Executive Assistant Hiring Process adopted by the Employment Plan.” The Recorder stated that, “[t]here is no evidence that the executive assistant who was hired is not capable or otherwise competent to perform the job, and the CCRD believes that the evidence does not support the OIIG’s finding in this case on the facts presented.”

¹⁰ On May 7, 2014, the OIIG issued a letter to the Recorder noting that “it appears that the Hearing Officer re-interviewed the subjects of the Office of the Independent Inspector General (OIIG) investigation and blindly accepted their accounts of the issues under consideration and the circumstances surrounding their OIIG interviews. I believe that it is extremely important for you to be aware that I and representatives of this office are available, if called, to provide testimony in any hearing in which an OIIG investigation and recommendation is at issue. This is important in cases, such as these, where a subject provides self-serving and different accounts from those provided in prior OIIG interviews while offering untruthful accounts of the circumstances of OIIG interviews. Such testimony could also provide clarification to ensure that OIIG findings are not misconstrued. In this case, I am confident that the Hearing Officer and yourself as the policy maker would have only benefited from an awareness of all the available evidence when considering the accounts of the witnesses in light of the investigation as a whole. Accordingly, I encourage you to notify your staff that the OIIG investigator(s) handling the matter and/or I are also available in the future to present evidence developed in an OIIG investigation, including rebuttal evidence when appropriate.” On August 4, 2014, at a meeting with the RCA, Class Counsel and Recorder’s Counsel, the Recorder’s Labor Counsel confirmed that the Recorder’s Office has accepted the OIIG’s offer and will provide the OIIG with notice of and the opportunity to attend any future hearings or interviews related to findings by the OIIG.

The Recorder concluded by writing that “the CCRD has agreed with the OIIG’s recommendation to issue a statement to employees reinforcing the obligation to cooperate with the OIIG on investigations into unlawful political discrimination and political contacts, and issued such memo to employees on May 21, 2014.”

b) Executive Assistant to the Deputy Recorder

The Tenth Report states that the OIIG’s Summary Report concluded that for the Executive Assistant to the Deputy Recorder hiring process the current Chief Deputy Recorder (who was the Deputy Recorder/Executive Assistant Supervisor at the time of the Executive Assistant’s hire) violated:

(1) Section V.A.6 of the SRO by making false statements to the OIIG during the investigation of a Post-SRO Complaint and (2) Section 2-285 of the OIIG Ordinance by knowingly making false statements to the OIIG. The OIIG did not find that the CDR violated the 1992 Consent Decree by involving political factors in the hiring of this Executive Assistant, a Non-Exempt employee. The OIIG recommended that the Recorder terminate the employment of the CDR. The OIIG did not find any violations of the SRO, OIIG Ordinance or Consent Decree against the Executive Assistant herself.

Tenth Report at 19-20.

On August 7, 2014, the Recorder issued her Recorder Report concerning this hiring process. The Recorder concluded that:

while the CCRD does agree that no political reasons or factors were involved in the hiring sequence, the CCRD disputes the OIIG finding in connection with the duty to cooperate. The preponderance of the evidence does not establish that the Employee provided any misleading or false information. The Executive Assistant Hiring Process in the CCRD’s Employment Plan does not require that an employee have extensive details regarding the background of an executive assistant As such, the CCRD declines to accept the OIIG’s recommendation of termination based on the facts presented.

The Recorder then reiterated her rejection of the OIIG’s recommendation to suspend the

Recorder's use of the Executive Assistant Hiring Process in the Plan and noted her issuance of a statement requiring employees to cooperate with OIIG investigation on UPD and UPC.

3. The Recorder's Office is not consistently disciplining Non-Exempt employees

For several years, the RCA has written about the importance of issuing discipline consistently for similarly-situated employees. See, for example, the RCA's Third Report at 5-6 (filed August 26, 2011). From the time Recorder Yarbrough took Office through the filing of this Report, the RCA has received notice of over 135 instances where a Non-Exempt employee was written up for poor work performance (resulting in two terminations, 22 days of suspension, eight written reprimands, 19 verbal reprimands, and 63 Supervisor counseling sessions¹¹). While the RCA initially noted positive developments with the disciplinary process under the Yarbrough Administration, see RCA's Eighth Report at 8-9, the RCA's concerns regarding ad hoc decision-making and disparate treatment of Non-Exempt employees in the disciplinary process have been revived.

The RCA has shared with the Recorder and her Counsel her concerns about specific situations in which Non-Exempt employees avoided discipline despite exhibiting conduct virtually identical to that exhibited by other Non-Exempt employees who received discipline. While the RCA is not concluding an explanation as to why these employees are being treated differently, the RCA recognizes that when a Non-Exempt employee is treated differently than other Non-Exempt employees, that disparate treatment opens the door for inferences that political reasons or factors are playing a role

¹¹ The remaining write-ups either did not result in any issued discipline or are still pending.

– particularly when no plausible alternative explanation for the disparate treatment is provided. The RCA has stressed this point to the Recorder and her counsel in several meetings over the past several months but has not yet seen any meaningful action on the same.¹²

In working toward satisfying the second prong of Substantial Compliance, the Recorder must do a better job of directly responding to the Inspector General’s findings of UPD and his recommended corrective actions. The Recorder must also do the same when the RCA brings to her attention inconsistencies with how Non-Exempt employees are being treated in terms of disciplinary actions. The policies and procedures contained in the Plan and Manual must be implemented and enforced consistently across all Non-Exempt employees and the Recorder must remedy instances when they are not.

C. **Prong 3: *Is there a policy, custom or practice of making employment decisions based on political factors except for Exempt Positions?***

The third element of Substantial Compliance focuses on whether the Recorder currently has a “policy, custom or practice of making employment decisions based on political factors except for Exempt Positions”. In this regard, the RCA does not take lightly the OIIG’s findings to date that (1) unlawful political discrimination occurred in some hiring sequences and one termination and (2) senior Recorder employees provided false and misleading information to the RCA and OIIG.

¹² In the last report, the RCA discussed the Recorder’s suggested changes to the Recorder’s disciplinary process including the development of Supervisor training on the same. Tenth Report at 7. Since the Tenth Report, the Recorder has not instituted any formal changes to the disciplinary process nor conducted any additional training; however, the Recorder’s Office informed the RCA of its intent to work with the DOC to train relevant personnel on standard disciplinary guidelines. The RCA encourages the Recorder’s Office to implement such training for supervisors independent of the timeframe to fill the vacant DOC position.

The RCA recognizes that many of the OIIG's findings relate to employment actions and conduct occurring within the first year of the Recorder's tenure and involving some Recorder employees who are no longer with the Office. Nevertheless, she remains concerned that the culture within the Office still permits the existence of politically-based decision-making. The RCA's opinion is based upon (1) the totality of the OIIG's findings to date and (2) her observations of ongoing seemingly disparate discipline in favor of at least one senior-level Non-Exempt employee.

For example, since Recorder Yarbrough took office on December 3, 2012, the OIIG has concluded that six Recorder employees (including the Recorder herself) were directly involved in either Non-Exempt hiring or termination processes that involved political reasons or factors. Further, the OIIG has concluded that eight Recorder employees provided false or misleading information to either the OIIG or RCA in relation to at least one of those hiring or termination sequences. Overall, the OIIG has concluded that four of the twelve Non-Exempt hires and one of the eight terminations under the Yarbrough Administration were tainted by political reasons or factors and/or false or misleading information provided by Recorder employees. More specifically, the OIIG has concluded that:

- "...because of the pattern and frequency of the false and misleading statements that have been made to this office and our finding that Recorder Yarbrough in her individual capacity failed to cooperate during our investigations . . . we believe that a policy, custom or practice of non-cooperation has developed within the Office of the Recorder." Tenth Report at 13.
- "...several Shakman-exempt employees actively and in collaboration engaged in an effort to create the appearance of circumstances to justify the termination of [the complainant]." The IG noted that these employees, the former Chief Deputy Recorder, current Chief Deputy Recorder, and a current Deputy Recorder, "in an attempt to justify the termination of [the

complainant] subverted the managerial efforts of [the complainant] and engaged in conduct intended to mislead the Recorder Compliance Administrator and the OIIG.” See above at 8.

On the positive side, however, the RCA did not observe *Shakman*-related issues with any of the Recorder’s most recent Non-Exempt hires, including the DOC. And with several hiring processes either imminent or already underway, the Recorder’s Office has a prime opportunity to demonstrate its commitment to strict compliance with the Plan in hiring sequences and fostering a work environment free from even the inference of unlawful political discrimination.

Contributing to the RCA’s concern that the culture within the Recorder’s Office still permits the existence of politically-tainted decision-making is the Recorder’s seemingly disparate disciplinary treatment in favor of at least one senior-level Non-Exempt employee. For example, one such employee provided inaccurate responses to employee questions during a training presentation attended by the employee’s supervisor. Although the Office acknowledged to the RCA the serious nature of the employee’s performance, the RCA is unaware of the employee receiving any related counseling or discipline. A different Non-Exempt employee, however, allegedly committed the same infraction – providing inaccurate information during a training presentation – but received a counseling and a change in job duties. Eighth Report at 11.

On another occasion, the senior-level Non-Exempt employee approved and submitted to the RCA hiring paperwork for a Candidate who did not meet the Minimum Qualifications for the position and who failed to complete several sections of the application. Ninth Report at 16-17. The employee again received no related counseling or discipline. A different Non-Exempt employee received a verbal reprimand for failing

to submit to the employee's supervisor properly completed pre-disciplinary paperwork related to a subordinate employee. Given that the disciplinary process (or lack thereof) in this Office historically has been used simultaneously as a shield to protect the politically connected and a sword against those without such connections, it is imperative that the Recorder ensure that Office policies apply consistently to all Non-Exempt employees.

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 violated the SRO. The significant findings by the OIIG, the Recorder's failure to directly address many of the OIIG's factual findings, and the perception of disparate discipline for Non-Exempt employees as discussed above all create an environment within the Office that permits material noncompliance with the SRO and the Consent Decree. See above §§ II.B-C. The RCA encourages the Recorder to consider implementing the recommendations set forth in § II.E below, which will allow her Office to demonstrate compliance with these important Court orders.

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

The last element of Substantial Compliance is the most forward-looking one as it focuses on the procedures in place to ensure long-term prevention of the use of impermissible political considerations. While "long-term prevention" is not defined in the SRO, the RCA believes it means more than just creating a Plan and Manual. It

requires ensuring the policies and procedures have taken root in the Recorder's Office so that the next Recorder's administration – whenever that may be – will inherit an Office with established and entrenched *Shakman*-compliant employment policies. Consequently, unlawful political discrimination will not be able to again run rampant without being efficiently and effectively checked by internal safeguards. The public must be assured and confident that, should a change in administration occur, the remaining Recorder employees will continue to follow the Plan and Manual and that ad hoc employment decisions will not creep back into the Recorder's Office, thus allowing political considerations to reappear. To get to the point where the public can have that confidence, the Recorder's Office still has significant work to do with training, hiring a DOC, and strengthening HRD.

The Recorder's Office must complete the Plan training it began months ago and conduct training on the Manual as well. These training presentations must be comprehensive and accurate and, ideally, provide employees the opportunity to have their questions about the Plan and Manual accurately answered. Next, the Recorder's Office must consistently apply the Plan and Manual to Employment Actions affecting all Non-Exempt employees. Additionally, the Recorder must hire a new independent Director of Compliance to fulfill the many duties assigned that position in the Plan and Manual. That DOC must be given the support needed to conduct the duties assigned that role. The Recorder herself must lead the charge in providing the DOC that support, by implementing the new policies and procedures and ensuring her senior staff consistently follows them so that the Office undergoes the cultural change necessary for Substantial Compliance.

As for HRD, as the RCA has stated in numerous reports¹ that having a strong HRD is a necessary component to reaching Substantial Compliance. Additionally, in the recent hearing wherein the City of Chicago was found by this Court to be in Substantial Compliance, your Honor noted that:

[c]hanging a long-entrenched culture of patronage or other kind of culture generally is not a revolutionary process but an evolutionary one. It happens over time, and what I have seen since 2006 and particularly in the last several years is that this evolutionary process has taken a solid footing in the City of Chicago. We see that in the conference of employment rules that have been put into place. We see that in the strong Human Resources Department to oversee the implementation of those rules. We see that in the systems that are in place that allow the transparency of information needed for Human Resources to audit employment decisions and to identify any problems, and we see that in the Office of the Inspector General with an Inspector General who has the ability to identify and make public problems if they arise and with the will to do so.

Tr. 86:5-19.

The RCA encourages the Recorder to keep the above words in mind as she attempts to navigate her Office toward Substantial Compliance with the SRO. It is vital that the Recorder's Office have a HRD that is capable of and permitted to effectively implement the new policies and procedures outlined in the Plan and Manual and doing so in a manner that promotes the "transparency of information" heralded by this Court in the City's *Shakman* proceeding. As the RCA has noted above and highlights below in Sections III.A.5-6, the RCA is concerned that certain duties assigned to HRD personnel in the Plan are being handled or otherwise directed by a *Shakman* Exempt employee outside of HRD. The RCA has voiced this concern to that Exempt employee as well as to the Recorder herself – noting that the Plan is clear that HRD should be conducting various hiring-related duties and that by agreement of the parties no Exempt employees exist in HRD. The RCA further noted that in order to demonstrate that the Recorder's

HRD is effective, it must be permitted to conduct the duties assigned to it without constant outside intervention and direction. The RCA hopes the Recorder appreciates the importance of allowing HRD to conduct the duties assigned it under the Plan and that she instructs her staff to permit HRD to do the same.

III. Monitoring Findings

Since her Tenth Report, the RCA has monitored numerous Employment Actions. Brief updates on some of those Employment Actions follow. While technical violations of the Plan occur with some regularity, to the extent any material violations occurred for a given Employment Action, the RCA provides those details below.

A. The Recorder Conducted Hiring Processes for Eight Positions

1. Director of Compliance (Shakman Non-Exempt)– see above at 5-6.
2. Administrative Assistant V – Supervisor of Property Fraud (Shakman Non-Exempt)

The Recorder's Office posted the Administrative Assistant V (Property Fraud Supervisor) position from April 28, 2014 through May 13, 2014. On August 11, 2014, the Executive Assistant to HRD informed the RCA that only one Applicant who attached the necessary paperwork also met all of the Minimum Qualifications. That Candidate subsequently failed the typing test on September 11, 2014. This position was not reposted.

3. Chief Legal Counsel (Shakman Exempt)

On August 8, 2014, upon the Recorder's request, the Director of HRD forwarded to the RCA an HRD-approved copy of James R. Gleffe's Application for Employment for Chief Legal Counsel. This position had become vacant when the prior Chief Legal

Counsel resigned effective February 28, 2014. Tenth Report at 6. The RCA shared with the Director of HRD the RCA's concerns about whether the Applicant's resume and application clearly demonstrated that he met one of the Minimum Qualifications for the position. After the HRD provided the RCA with an amended Job Description that clearly demonstrated the Applicant met the Minimum Qualifications, the RCA withdrew her concerns. Mr. Gleffe began his employment with the Recorder's Office on September 8, 2014.

4. Executive Assistant to the Deputy Recorder – Operations (Shakman Non-Exempt)

On September 19, 2014, the Recorder's Office provided the RCA a copy of the Request to Hire ("RTH") documentation for a new Executive Assistant to the Deputy Recorder – Operations. The RCA had no *Shakman*-related concerns with the paperwork. On September 19, 2014 the selected Candidate failed the required typing test for the position.¹³ The position of Executive Assistant to the Deputy Recorder – Operations remains vacant.

5. Director of Management Information (Shakman Non-Exempt)

On August 18, 2014, HRD provided the DOC with a copy of the Job Description to the Director of Management Information position.¹⁴ On August 27, 2014 the DOC provided HRD with comments, questions, and suggested revisions. On September 9, 2014, HRD posted the Director of Management Information position despite (1) never

¹³ The RCA notes her serious concerns about the testing atmosphere created by HRD for this Candidate during her typing test. The RCA subsequently discussed these concerns with the Recorder and her Exempt staff and hopes that necessary changes are made to create a more professional testing environment.

¹⁴ The RCA notes that this position was originally called the "Director of IT" but later changed to "Director of Management Information". For the sake of clarity, the RCA uses the final title throughout this section.

responding to the DOC's concerns with the Job Description, (2) not securing a signed RTH from the Chief Deputy Recorder and (3) not permitting the RCA the opportunity to review the final signed packet prior to posting. The RCA later learned that an Exempt employee had directed HRD to post the position; a directive HRD followed despite knowing of the procedural deficiencies.

Had HRD taken into consideration the DOC's recommended changes and responded to her questions prior to posting, HRD might have avoided what occurred next. During the validation process for this position, HRD and the RCA ultimately agreed that no single Applicant met all of the Minimum Qualifications largely due to the fact that one Minimum Qualification was worded in a way that made it very difficult for Applicants to demonstrate they met the qualification. This same Minimum Qualification was one the DOC had alerted HRD to in her August 27, 2014 correspondence.

On October 30, 2014, the Director of Human Resources submitted a signed RTH for the Director of Management Information position. The Recorder re-posted the position on November 14, 2014 and is now in the process of validating applications.

6. Investigator II (Shakman Non-Exempt)

The Recorder's Office posted for one Investigator II position from September 9, 2014 through September 23, 2014. The Recorder's Office received 188 completed submissions from Applicants claiming they met all the Minimum Qualifications. Because of the number of Applicants, the Plan required HRD to randomize the list of Applicants and validate the first 25 on the randomized list. Plan § V.I.2. However, rather than forming a smaller pool of 25, the Director of HRD validated the submissions from all 188 Applicants. The RCA contacted the Director of HRD directly to inquire why the

submissions were not randomized prior to validation. Labor Counsel responded and admitted that he had directed HRD to validate the applications rather than randomize. The RCA encouraged both Labor Counsel and HRD to follow the procedures in the Plan. After interviews and a Selection Meeting, the Recorder ultimately hired one of the interviewed Candidates who began employment on December 3, 2014.

7. Director of Public Information (Shakman Non-Exempt)

As previously noted in Section III.A.2, the Recorder's Office was unable to fill the Administrative Assistant V – Property Fraud Supervisor position due to a lack of eligible Applicants. Rather than repost for this position the Deputy Recorder-Communications requested that the Recorder's Office post for a Director of Public Information position that would incorporate the Administrative Assistant V – Property Fraud Supervisor job duties and responsibilities as well as other supervisory duties in the Public Information Division. The Recorder's Office circulated a new RTH on Friday, October 17, 2014 and the RCA provided revisions and comments on October 21, 2014. Without responding to the RCA's October 21, 2014 revisions and comments, HRD posted the Director of Public Information position from October 24, 2014 through November 8, 2014. HRD is in the process of validating the applications.

8. Security Officer I (Shakman Non-Exempt)

On August 29, 2014, a Security Officer I resigned from the Recorder's Office. On September 25, 2014, the Executive Assistant to HRD provided the RCA a copy of the RTH for a Security Officer I to replace the resigned employee. The Recorder hired one of the remaining ranked Candidates from a prior Security Officer I posting. That new Security Officer I began his employment on November 10, 2014.

B. *The Do Not Rehire List Has Not Yet Been Implemented*

The Plan contains a section titled “Do Not Rehire Without Further Consideration List” (the “List”). Plan § IV.Q. This section requires the Recorder’s HRD to maintain “a list of individuals who are disqualified or ineligible for employment with the Recorder” for various reasons including “engaging in such disqualifying actions in connection with investigations into unlawful conduct or violation of court orders, written policies or applicable law.” Plan § IV.Q. The Plan requires that individuals placed on the List be provided notice and the right to appeal placement on the list. Unless reversed on appeal, an individual’s name will remain on the list for five years.

Since the RCA’s Tenth Report, the Recorder has proposed changes to the language in the Plan concerning the List. On August 4, 2014, the parties and RCA met to discuss those proposed changes. The parties and RCA have not yet reached a resolution on any changes to the current language in the Plan. The RCA will update the Court if such an agreement is reached but notes that the Recorder thus far has not implemented this Section IV.Q of the Plan.

C. *The Recorder’s Office Has Submitted Eight Political Contact Logs and is Training Employees on the No Political Consideration Certification*

The Plan requires that “[a]ny employee who receives or has reason to believe a Political Contact has occurred or is occurring is required to complete a Contact Log Reporting Form and submit it immediately to the OIIG.” Plan § IV.F. The Plan also requires that employees involved in any step of an Employment Action must complete a No Political Consideration Certification (“NPCC”) certifying that they did not take politics into consideration in the Employment Action. Plan § IV.L.

To date, the Yarbrough Administration has submitted copies of eight Political

Contact Logs completed by Recorder employees. All but the last three logs have been reviewed by the OIIG and none resulted in any positive findings. The last three logs were submitted recently by the Recorder's Office and concern the same resume submitted by a Candidate for a recent position. The OIIG is currently reviewing these Logs.

The OIIG also trained all attendees of the July Supervisor/Interviewer training session mentioned above on the Plan's requirements regarding political contact reporting. The OIIG has committed to including in all future Plan training sessions an explanation of the political contact reporting and NPCC requirements.

IV. Conclusion

The RCA has identified in this Report several steps she believes the Recorder must take in order to move forward on her path to Substantial Compliance. But she remains hopeful that, once those steps are taken, the Recorder can move quickly toward that ultimate goal. A robust Human Resources Division, a strong Director of Compliance, a properly trained and informed workforce, and consistent adherence to the Plan and Manual together will lead to short- and long-term prevention of politics improperly entering into workplace decisions within the Office. The RCA looks forward to reporting on the Recorder's progress on these measures in her next Report.

Respectfully submitted,

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Her Attorney

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