

**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.)	

**FOURTH 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, 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, submits this Fourth Report as follows:

I. Introduction

On August 26, 2011, Cardelle B. Spangler, the Recorder Compliance Administrator (“RCA”)¹, filed her Third Report to the Court (“Third Report”). The Third Report included an update on the RCA’s Pre-SRO Claims investigation findings and on the RCA and Recorder’s progress in achieving the goals established in the Strategic Plan for the Office of the Cook County Recorder of Deeds (“Recorder’s Office”) to obtain

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

substantial compliance with the Supplemental Relief Order (“SRO”).² The RCA submits this Fourth Report to update the Court on her additional Pre-SRO Claims investigation findings and developments concerning the Recorder’s recent progress toward substantial compliance with the SRO.

II. Pre-SRO Claims Findings

The SRO directs the RCA to adjudicate claims timely filed by “[a]ny past or present employee or applicant for employment with the Recorder . . . who alleges that she or he suffered injury as a result of unlawful political discrimination in connection with any aspect of employment with the Recorder” from May 25, 2005 until, and including, September 13, 2010. SRO at Art. IV. While the original deadline to file a Pre-SRO Claim was January 8, 2011, due to a notice issue, the deadline was extended until April 8, 2011. *See Order Extending Claims Deadline and Opt-Out Date Until April 8, 2011* (Dec. 30, 2010). The RCA issued claims determinations on July 7, 2011 – the Claims Adjudication Deadline – for all Pre-SRO claims filed by April 8, 2011. However, as reported in the Third Report, a few days before the July 7, 2011 Claims Adjudication Deadline, the RCA learned that a group of former Recorder employees inadvertently were not sent notice of the Pre-SRO Claims process. The parties and the RCA agreed that notice should be provided to these former employees. As a result, this Court entered an Agreed Order to Provide Notice to Certain Former Employees (the “July 7th Agreed Order”) that also set August 25, 2011 as the deadline for these former employees to file a Pre-SRO Claim with the RCA.

² “Recorder” hereinafter shall refer to the Cook County Recorder of Deeds, Eugene Moore, and/or his staff.

After providing the required notice, the RCA received four timely filed Pre-SRO forms articulating 21 separate claims against the Recorder's Office.³ The RCA interviewed three Pre-SRO Claimants and the spouse of a recently deceased Pre-SRO Claimant.⁴ The RCA also reviewed hundreds of pages of documents (some of which were produced by the Recorder's Office), conducted interviews with the Chief Deputy Recorder⁵ and other senior staff and employees, and reviewed all responses provided by the Recorder's counsel (as permitted in Art. IV.D.3. of the SRO). The RCA issued her claims determinations on November 23, 2011 as required in the July 7th Agreed Order.

The RCA found that the Recorder himself and/or the Chief Deputy Recorder discriminated against three claimants on the basis of unlawful political reasons or factors. The RCA awarded those claimants a combined total of \$107,370.69. Primarily, the RCA found that unlawful political discrimination invaded the selection process for the reduction in workforce that occurred in 2007 and adversely affected two claimants.⁶

2007 Reduction in Work Force

On or around December 18, 2006, then-Cook County Board President, Todd Stroger asked Cook County elected officials, including the Recorder of Deeds, to make

³ Many Pre-SRO Claimants included multiple, separate claims for relief in their claim forms. A number of those claims were time-barred or lacked an articulated political nexus for the alleged discrimination.

⁴ The Pre-SRO Claimant passed away only a few weeks prior to the July 7, 2011 Claims Adjudication Deadline. Had he received timely notice of the Pre-SRO Claims process he would have been eligible to file the claim on his own behalf.

⁵ On October 24 and 29, 2011, the RCA requested interviews with the Recorder and the Chief Deputy Recorder regarding the remaining Pre-SRO Claims. The RCA did not receive a response to these requests. The RCA issued a third request for these interviews on November 9, 2011. The RCA subsequently interviewed the Chief Deputy Recorder, but was told that the Recorder himself was unavailable for an interview and that she could submit written questions to him regarding the Pre-SRO Claims. The RCA issued such questions on November 16, 2011. The RCA did not receive any responses to these questions.

⁶ The third successful claimant was awarded \$500.00 for a transfer based on unlawful political discrimination.

certain budgetary reductions. As a result of this request, the Recorder's Office underwent a reduction in workforce that included the layoffs of 11 employees, including two Pre-SRO claimants. Both Pre-SRO claimants claimed that the Recorder specifically spared employees politically connected to him while targeting employees without such connections were targeted. One claimant asserted that the Recorder selected her for a layoff because of the ill-will between them after she declined to continue her political support of the Recorder.

When questioned on how employees were selected for termination, the Chief Deputy Recorder explained to the RCA that she and the Recorder looked at positions where employees either lacked, or had overlapping, duties and responsibilities – mainly floor and department managers. However, this explanation was not supported by the evidence as it pertained to the two Pre-SRO claimants.

In interviews with the RCA, a former senior member of the Recorder's staff as well as the claimant's direct supervisor contradicted the Chief Deputy Recorder's justification for the layoff decisions. They stated that one of the Pre-SRO claimants did not lack, or have overlapping, duties and responsibilities at the time of the layoff, as the Chief Deputy Recorder claimed. Rather, the claimant was the sole Supervisor of a recently formed department. The claimant's immediate supervisor described this claimant as "a guy that did the work more than any other supervisor" while the senior staff member stated that this claimant "had full days." As for the second Pre-SRO claimant laid off in 2007, the Chief Deputy Recorder stated that this claimant was only added to the layoff list at the very end and was done so at the Recorder's direction. The

Recorder did not provide her with an explanation. The RCA provided the Recorder with several opportunities to explain his actions, however, he chose not to.⁷

Through the RCA's own desk auditing process and interviews with other senior staff and employees, the RCA learned that the Recorder intentionally spared from layoffs numerous employees who were politically-connected to him and who had minimal job duties yet higher salaries than those employees who were laid off in 2007. The RCA gave the Recorder ample opportunity to provide sufficient non-political justification for his layoff decisions, but the Recorder failed to provide any such justification. For this and other reasons, the RCA found that unlawful political reasons or factors played a substantial role in the Recorder's 2007 layoff decisions and the two Pre-SRO claimants were the victims of such unlawful political discrimination.

III. Strategic Plan for Substantial Compliance

In addition to the above Pre-SRO claims investigation and findings, the RCA worked on advancing other items on the Strategic Plan for Substantial Compliance initially discussed in the Second Report. Second Report at 2-4. While great strides have been made in some areas, such as the promotion and hiring process, much remains to be done in other areas.

A. Monitoring Findings

In the RCA's Third Report, the RCA recognized the Chief Deputy Recorder's

⁷ The RCA issued her Tenth Document Request on September 8, 2011 which included a request that the Recorder's Office provide the criteria and justification for the decision to layoff each employee in connection with the 2007 layoffs. No response was provided for this particular request. The RCA also issued questions on November 16, 2011, that asked the Recorder to please explain the criteria and justification for the decision to layoff both claimants. As stated earlier, the Recorder did not provide a response to the RCA.

increased efforts to comply with the SRO. Third Report at 16. In the months following the Third Report, the Deputy Recorder increasingly took initiative to familiarize himself with and follow the Recorder's written employment procedures. More recently, when a situation occurred that was not covered by a written employment procedure, the Deputy Recorder posed thoughtful questions to the Recorder's internal Labor Counsel and Director of Personnel and proceeded with decisiveness, clarity, and fairness.

While the Deputy Recorder gives the RCA hope that more members of the Recorder's senior staff will help move this Office towards Substantial Compliance, other senior staff members continue to hinder any such efforts. One senior staff member in particular has taken an unnecessarily obstructive and confrontational demeanor towards the RCA. Despite numerous in person meetings, telephonic conferences and written communications to the Recorder and his staff regarding the importance of notifying the RCA regarding upcoming Employment Actions, some of which have been documented in previous reports (*see e.g.*, Second Report at 5-6), this senior staff member continuously fails to provide any such notice directly to the RCA. Moreover, this individual refuses to answer the RCA's most basic questions and has informed union level employees that it is their responsibility to notify the RCA of employment actions against them. Union employees have no such responsibility. The RCA has brought this employee's unacceptable behavior to the attention of the Chief Deputy Recorder on numerous occasions but the behavior persists. So long as senior staff members are permitted to actively thwart the efforts of the RCA, it will be difficult for this Office to achieve Substantial Compliance.

1. Hiring & Promotions

Since the Third Report, the Recorder's Office demonstrated a commitment to the improvement of its hiring and promotion processes. The RCA previously reported that the Recorder's Office renewed its efforts to fill two of the positions that the RCA asked the Recorder's Office to refrain from finalizing pending review of documents related to those Employment Actions. *See, e.g.,* Second Report at 7-8 and Third Report at 10. These promotions gave the Recorder's Office its first opportunity to develop a promotion process that accurately followed the terms of its Collective Bargaining Agreement ("CBA"), including a new scoring system to rank applicants for these positions. Upon the RCA's suggestion, the Recorder's senior staff also took this opportunity to enhance the interview experience by meeting with employees and supervisors with first-hand knowledge of the relevant positions and departments in order to develop interview questions aimed at identifying the most qualified candidates. The RCA appreciates the Director of Personnel's openness to the RCA's suggestions on improving the promotion and hiring processes and would like to see him and other senior staff take the lead in the review and development of such processes.

As reported in the Third Report, after completing the interview process for a position, the Chief Deputy Recorder refrained from awarding a hire and instead chose to repost the position when the RCA pointed out that the selected candidate did not meet the minimum qualifications of the position. Third Report at 10. After the Recorder reposted this position, the RCA monitored the pre-screening, interviews, reference checks and selection meeting for this position and is pleased to report a strict adherence by the Recorder's senior level employees to its newly developed employment procedures. As

stated in the Third Report, vigilant following of the stated policies and procedures is critical once the RCA and the parties finalize and implement the Employment Plan. Third Report at 10. The RCA hopes this is the first of many such employment actions where adherence to the written procedures is the norm.

As a result of promotions and retirements, the Recorder's Office is in the process of filling numerous positions and continues to work closely with the RCA to revise job descriptions so they accurately reflect the duties and responsibilities of employees. The RCA will continue to carefully monitor the promotion and hiring process and report such observations in the Fifth Report.

2. *Disciplinary Hearings*

As stated in the Third Report, the Pre-SRO Claims Investigations revealed serious issues with the manner in which the Recorder's Disciplinary Hearing Officers' issued "progressive discipline" and their continued practice of pre-disciplinary hearings that did not result in the next progressive disciplinary step, or any discipline, despite a finding that the employee committed the infraction. Third Report at 5 & 11. Since the Third Report, the RCA has seen some improvement in the manner in which one of the Disciplinary Hearing Officers issues progressive discipline. The RCA, however, remains concerned that this improvement is attributable to her monitoring efforts rather than a sustained commitment to adhere to written employment procedures. This concern is based upon the Disciplinary Hearing Officers' stated preference for use of subjective guidelines over established written procedures.

Pre-Disciplinary Hearings. For example, recently, the RCA monitored multiple pre-disciplinary hearings during which the Disciplinary Hearing Officer initially decided

not to pursue discipline against a politically-connected employee; rather, she allowed that employee an opportunity to obtain documentation excusing the persistent behavior. When the employee failed to produce the requested documentation, the Disciplinary Hearing Officer chose to delay resuming the employee's discipline until the RCA inquired about the status of the employee's response. The Disciplinary Hearing Officer consequently scheduled the hearing for its completion.⁸ Although the end result was satisfactory to the RCA, the RCA encourages the Disciplinary Hearing Officers to enforce the CBA and Policy Manual's provisions on progressive discipline without requiring the RCA's constant input.

Investigations. Through the Pre-SRO Claims Investigations, the RCA also found that alleged investigations into the wrongdoing of certain politically-connected employees were biased and incomplete. Third Report at 6. The RCA recently monitored an investigation by the Disciplinary Hearing Officer into allegations of harassment by an employee with political ties to the Recorder himself. The investigation included numerous interviews of Recorder employees by the Disciplinary Hearing Officer who is known, by the RCA and Recorder employees, to be the Recorder's campaign Treasurer. Several of the employees who were interviewed later stated that they had not been as forthcoming in the interviews because they feared retaliation if they spoke negatively about this politically-connected employee. The RCA previously voiced her concerns about the Recorder's campaign Treasurer serving as the Disciplinary

⁸ Had the Disciplinary Hearing Officer followed the progressive discipline procedure set forth in the CBA, this employee would have faced discharge for the repeated infractions. This individuals' employment continues with the Recorder.

Hearing Officer for all union and non-supervisory discipline, yet the Recorder has chosen not to address the issue. Third Report at 6.

Disciplinary Process. The Recorder's senior staff explained to the RCA in the fall of 2010 that two Disciplinary Hearing Officers, one for union and non-supervisory employees and the other for supervisors only, are charged with the task of issuing discipline to their respective employees. Given these assigned duties, the RCA remains perplexed by the Chief Deputy Recorder's intimate involvement with the disciplinary process. Recently, the RCA monitored a disciplinary hearing during which the Disciplinary Hearing Officer issued a one-day suspension effective the following day for a supervisor with political connections to the Chief Deputy Recorder. The RCA was surprised to see this same supervisor at work the next day and not serving her suspension. When questioned on the matter, the Chief Deputy Recorder admitted to revoking the suspension (without notifying the RCA) because she did not deem the suspension appropriate to the infraction. The RCA has spoken to the Recorder on numerous occasions about the importance of notice and noted in both her Second and Third Reports that her role as an active monitor requires notification of all of the Recorder's Employment Actions. *See, e.g.*, Second Report at 4 and Third Report at 9. After the fact accounts by the Chief Deputy Recorder of her decision making process are wholly unacceptable. *See, e.g.*, Second Report at 5. Continued ad-hoc decision making by the Chief Deputy Recorder, without the RCA's ability to monitor the deliberative process associated with her actions, will only frustrate the Recorder's ability to reach Substantial Compliance.

B. Employment Plan

The RCA is in the process of finalizing a draft of the Employment Plan for distribution to Class Counsel and the Recorder.

C. Compliance Officer

When the RCA filed her Third Report, the RCA considered the Compliance Officer issue resolved and anticipated the position would be filled at the beginning of 2012. Unfortunately, this is no longer the case. While the Compliance Officer position was approved in the OIIG's 2012 budget, due to a difference of opinion between the State's Attorney's Office ("SAO") and OIIG concerning the OIIG's authority to investigate certain Recorder issues not specifically covered in the SRO, any further steps to hire a Compliance Officer were suspended indefinitely. The RCA hopes that the OIIG and SAO resolve this conflict – at least as it relates to the Recorder's Office – as the RCA firmly believes the Compliance Officer should report directly to the Inspector General.

D. Exempt, Senior Manager and Executive Assistant Lists

The RCA noted in the Third Report that she was expecting to receive "updated organizational charts, a proposed new Exempt List with corresponding job descriptions and lists and job descriptions of proposed Senior Manager and Executive Assistant positions" from Recorder's counsel. Third Report at 14. The RCA has not yet received any of these materials and hopes to in the near future.

E. Automated Online Application Tracking System

Since the Third Report, several members of the Recorder's Personnel and Information Technology departments received preliminary training on the online application tracking system software the County uses ("Taleo"). While additional

training is needed, and will be provided, the RCA views this as a positive step in the necessary introduction of Taleo to Recorder's employees. The County is negotiating with Taleo for additional customer support and servicing and the RCA hopes that after those negotiations conclude, the Recorder's Office will receive additional training and will move toward implementing this online application tracking software for all of its hiring practices.

F. Political Contact Log and No Political Consideration Certification

In the Third Report, the RCA noted the then-recent agreement between the parties, OIIG and RCA on amended language for the Political Contact Log, No Political Consideration Certification, and corresponding training materials." Third Report at 15. The RCA noted its expectation that the OIIG would train Recorder's employees on these materials imminently. *See id.* Due to the subsequent disagreement between the OIIG and SAO on the scope of the OIIG's oversight of the Recorder's Office, the training was postponed indefinitely. The RCA hopes the OIIG and SAO resolve this issue soon so the training can take place and the Recorder's Office implements the Political Contact Log and No Political Consideration Certification.

G. Post-SRO Complaints

According to the most recent quarterly report from the OIIG, as required by Art. V.A.11 of the SRO, there have been no additional Post-SRO complaints since the RCA's Third Report. On September 11, 2011, the OIIG issued a notice extending the 180-day deadline for the Post-SRO complaint filed with the OIIG on or about [insert date]. The RCA looks forward to the OIIG's findings and will report on the same in her next report.

IV. Conclusion

The RCA appreciates the steps certain of the Recorder's senior-level staff members have taken to help move this Office toward Substantial Compliance. She urges all senior management in the Office to adopt a similar and sustained commitment to bring the Office into compliance with the SRO. The RCA hopes to include many examples of the Recorder's positive progress in her Fifth Report.

Respectfully submitted,

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Her Attorney

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