

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

MICHAEL L. SHAKMAN, et al.,)	
)	
Plaintiffs,)	
v.)	Case Number: 69 C 2145
)	Judge Edmund E. Chang
COOK COUNTY CLERK, et al.,)	Mag. Judge Gabriel A. Fuentes
)	
)	
Defendants)	

AGREED PROTECTIVE ORDER

Pursuant to Federal Rule of Civil Procedure 26(c) and the Memorandum Opinion and Order dated April 17, 2020 (“Appointment Order”) [Dkt. 6829], Class Plaintiffs and Defendant Cook County Clerk (hereinafter referred to as “Party” or “Parties”), by and through their respective counsel, state as follows:

WHEREAS, as set forth in the Appointment Order, the Special Master (hereinafter referred to as the “County Clerk Compliance Administrator” or “CCCA”) must review confidential business, personnel and other information maintained by the Cook County Clerk (“Clerk’s Office”) or obtained from potential witnesses, complainants or others in order to fulfill the duties provided in the Appointment Order and such information may include, but not limited to, documents, data, information compiled through oral interviews and monitoring, and other materials and information related to reviewing the Clerk’s Office employment practices; reviewing and monitoring the implementation of the Clerk’s Office’s employment policies; monitoring compliance with the Clerk’s Office Consent Decrees and the Clerk’s Office’s employment policies; investigating alleged violations to recommend remedies; and any other responsibilities set forth in the Appointment Order and/or approved by the Court; and

WHEREAS, the Parties recognize that the scope of review will encompass the production by the Clerk’s Office or the CCCA of some documents and/or other information that may contain sensitive and/or confidential security, personal, personnel, employment, disciplinary, payroll, financial, investigatory, witness, business and/or medical information of a non-public nature (hereinafter referred to as “Confidential Matter”).

ACCORDINGLY, the Court having found good cause for the entry of this Protective Order, IT IS ORDERED THAT:

Purpose

1. This Protective Order governs all Confidential Matter disclosed by the Clerk’s Office to the CCCA and the Plaintiffs, including all copies, excerpts, or notes thereof. It also shall govern the designation and handling of all confidential documents and information

produced in this action by the CCCA, any Party, non-party, person or entity (“Producing Person”).

2. Neither the entry of this Protective Order nor the designation of any document or information as Confidential Matter, nor the failure to make such designation, shall constitute evidence with respect to any issue in this action.

3. The designation of documents or information as “Confidential Matter” does not create any presumption for or against that treatment. The Parties, the CCCA, the Cook County Office of the Independent Inspector General and any individual who files a complaint against the Clerk’s Office may challenge the designation of any material as “Confidential Matter.” The Production Person designating the material as “Confidential Matter” bears the burden of demonstrating that the document or information meets the standards of Rule 26(c) or other applicable law.

Confidential Designation

4. Any Producing Person may designate as “CONFIDENTIAL — Shakman v. County Clerk” the whole or any portion of documents or information the Producing Person believes, in good faith, constitutes Confidential Matter. If the Producing Person expresses no opinion as to whether the document or information should be designated as “CONFIDENTIAL — Shakman v. County Clerk,” the CCCA or the Parties may so designate the documents or information. The CCCA also may designate documents or information obtained in connection with her work, but not limited to, the identity of any complainant, as “ATTORNEYS’ EYES ONLY — Shakman v. County Clerk.”

5. Any information that has not been reduced to documentary form may be designated as Confidential Matter by informing the CCCA and/or counsel for the Parties, in writing, that it is “CONFIDENTIAL.”

6. All documents or information designated as Confidential Matter shall bear the label or stamp “CONFIDENTIAL - Shakman v. County Clerk” or “ATTORNEYS’ EYES ONLY — Shakman v. County Clerk.” Materials designated as Confidential Matter shall be examined and otherwise used only by the CCCA and/or as approved by the Court and/or by the Parties for purposes of this litigation. Failure to label or stamp documents or information “CONFIDENTIAL – Shakman v. County Clerk” or “ATTORNEYS’ EYES ONLY — Shakman v. County Clerk.” shall not constitute a waiver of such a designation.

7. To the extent that any document or information contains any Protected Health Information (“PHI”) as defined by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) set forth in 45 CFR 160.103 and 160.501, that information shall be considered Confidential Matter. Any production of PHI shall not be construed as a waiver of any employee right under HIPAA and nothing in the disclosure shall be deemed a violation of HIPAA. Further, to the extent that any document or information produced contains any personal information (e.g., social security numbers, home addresses, dates of birth, identities of family members), that information shall be considered Confidential Matter. Any production of such personal information shall not be construed as a waiver or violation of any privilege.

Disclosure of Confidential Matter and other Documents and Information

8. Documents or information designated as “CONFIDENTIAL — Shakman v. County Clerk” may be disclosed only to:

- a. The Court-appointed CCCA, Shakman compliance administrators and monitors, their counsel, consultants, paralegals, investigators, and secretaries only for purposes of this litigation;
- b. The Parties and their counsel, paralegals, and investigative, secretarial and clerical personnel only for purposes of this litigation;
- c. The Cook County Office of the Independent Inspector General and its investigators and staff;
- d. Witnesses or potential witnesses in the course the CCCA’s duties or Plaintiffs’ monitoring, provided that they agree to be bound by this Protective Order;
- e. The Court and Court personnel; and
- f. Court reporters transcribing or recording testimony in this case.

9. Documents or information designated as “ATTORNEYS’ EYES ONLY – Shakman v. County Clerk” may be disclosed only to:

- a. The Court-appointed CCCA, Shakman compliance administrators and monitors, their counsel, consultants, paralegals, investigators, and secretaries only for purposes of this action;
- b. Counsel for the Parties only for purposes of this litigation. Counsel for the Parties may render advice to their respective clients and rely generally on their inspection of such documents and/or information; provided that counsel shall not make any specific disclosure of the contents of “ATTORNEYS’ EYES ONLY” documents or information that have been so designated or marked to their clients. However, this provision shall not apply where a claimant subsequently has filed a lawsuit or arbitration demand under the Clerk’s Office collective bargaining agreement(s) and these documents are necessary for the adjudication of that claim or action;
- c. When satisfying the CCCA’s requests for documents, interviews and other information, the Clerk’s Office’s will not reveal the purpose for those requests;
- d. The Court and Court Personnel; and
- e. The Cook County Office of the Independent Inspector General, paralegals, investigators and secretaries only for the purposes of this action.

10. All persons to whom documents or information designated as Confidential Matter or Attorneys' Eyes' Only Matter are disclosed are hereby enjoined from disclosing those materials to any other person except as provided herein, and are further enjoined from using those materials except in this action. No person receiving or reviewing such material shall disseminate or disclose it to any person other than those described in Paragraph 8 (in the case of Confidential Matter) or Paragraph 9 (in the case of Attorneys' Eyes Only Matter) above and for the purposes specified, and in no event shall such person make any other use of such material.

11. The CCCA is an agent of the Court and only has those powers conferred by the Court. Any information provided to or gathered by the CCCA is pursuant to her activities fulfilling her duties as an agent of the Court under the Appointment Order. Therefore, this Court retains jurisdiction to decide whether any documents or information provided to the CCCA should be disclosed to third parties. If either the CCCA or the Plaintiffs receives a subpoena or other request seeking the disclosure of any documents or information pertaining to the Clerk's Office obtained during the course of this litigation from the Clerk's Office or any other Producing Person, the person receiving the subpoena or other request shall notify the Clerk's Office and the Producing Person as soon as possible. Within five (5) business days of receiving notice, the Clerk's Office or the Producing Person shall notify the person receiving the request of the Clerk's Office's or Producing Person's intent to oppose the disclosure of the information or documents. If the Clerk's Office or the Producing Person fails to notify the person of the intent to oppose the request within the five (5) business days, the person receiving the request may produce the requested documents or information. This Court retains jurisdiction to decide any motion brought by the Parties, the Producing Person, or the CCCA seeking to protect any materials relating to the Clerk's Office obtained during the course of this litigation from disclosure, regardless of whether the material has been designated confidential under the Protective Order or is subject to a confidentiality agreement between the CCCA and the Clerk's Office. The CCCA and the Plaintiffs will not otherwise produce any information or document relating to the Clerk's Office obtained during the course of this litigation in response to any request except pursuant to a court order or by agreement of the Clerk's Office.

Filing of Confidential Matter with the Court

12. Documents, information and/or deposition testimony or witness statements that include Confidential Matter may be referred to in reports or pleadings such as briefs and memoranda filed with the Court or made exhibits to such documents, provided that any such pleadings filed with the Court that contain or attach Confidential Matter shall be filed under seal upon advance approval by the Court pursuant to Local Rule 26.2(b), and shall be made public in whole or in part only after notice to all Parties and the Producing Person and opportunity for them to be heard. The person claiming a document or information should be kept under seal or otherwise protected bears the burden of demonstrating that the document or information meets the standards of Rule 26(c) or other applicable law. A copy of the report or pleading with the Confidential Matter redacted shall be filed as part of the public record in this case.

Inadvertent Disclosure

13. Any inadvertent or unintentional disclosure of Confidential Matter or privileged information, whether or not so designated, shall not constitute a waiver of any confidential status or claim of privilege otherwise attaching to the document or information or as to any other

information relating thereto or on the same or related subject matter. Privileged Information shall include, but may not be limited to, information subject to the attorney-client privilege, the joint defense privilege, the work product doctrine, or any other applicable privilege, rule, or immunity from discovery. In the event a producing party inadvertently discloses Confidential Matter or privileged information, the party shall within seven (7) days of the date of discovery of the inadvertent disclosure notify counsel for all parties to this lawsuit. Upon such notification, the receiving parties will either treat the Confidential Matter as required under this Order or return the privileged information and all copies thereof to the producing person within three (3) business days. Any reference in any document to the inadvertently produced privileged information shall be removed.

Disposition of Confidential Matter

13. Upon final termination of the Clerk's Office's Consent Decrees and the Appointment Order, the provisions hereof relating to the documents or information shall continue to be binding upon all Parties, their attorneys, employees, officers, experts, consultants and others. The original and all copies of all Confidential Matter shall be returned to the Producing Person or destroyed within sixty (60) days of the termination of the Clerk's Office's Consent Decrees and Appointment Order.

Miscellaneous

14. If disputes arise concerning whether certain documents or information should be released from the provisions of this Protective Order, or concerning any other matter relating to the application of this Protective Order, counsel shall attempt to resolve these disputes by agreement before asking the Court to resolve these disputes pursuant to the applicable Federal and Local Rules of Civil Procedure.

15. This Protective Order shall satisfy the requirement set forth in the Appointment Order that the CCCA sign a confidentiality agreement.

16. This Protective Order may be modified by order of this Court upon application to the Court with notice.

Dated: August 28, 2020



Honorable Edmund E. Chang
United States District Court Judge
for the Northern District of Illinois