

**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.)	
)	Judge Edmond E. Chang
CLERK OF COOK COUNTY, et al.,)	Mag. Judge Gabriel Fuentes
)	
Defendants.)	
)	

**INITIAL REPORT OF THE COMPLIANCE ADMINISTRATOR
FOR THE CLERK OF COOK COUNTY**

Cardelle B. Spangler, County Clerk Compliance Administrator (“CCCA”)¹, by and through her attorney, Matthew D. Pryor, pursuant to the Memorandum Opinion and Order filed on April 17, 2020, submits this Initial Report as follows:

I. Introduction

On April 17, 2020, this Court entered a Memorandum Opinion and Order (the “Appointment Order”) wherein the Court granted in part Plaintiffs’ motion for supplemental relief, named Cardelle B. Spangler as “special master”² and directed her to discharge certain duties identified in the Appointment Order. *See* Appointment Order (Dkt. 6828). On April 30, after concluding there was no basis upon which to disqualify Ms. Spangler from the appointment, this Court finalized the appointment and directed Ms.

¹ “CCCA” hereinafter shall refer to the County Clerk Compliance Administrator and/or her staff.

² Upon request of the County Clerk and by agreement of the parties and Court, Ms. Spangler later changed the name of her role from Special Master to County Clerk Compliance Administrator. The change in name did not have any impact on the duties assigned to her in the Appointment Order.

Spangler “to commence forthwith with the work outlined” in the Appointment Order. (Dkt. 6863) In the Appointment Order, the Court directed Ms. Spangler to file her Initial Report by August 17.³ Ms. Spangler files this Initial Report: (1) to provide the public with an overview of the circumstances that brought about her appointment; (2) to explain the duties the Court has charged her with carrying out; and (3) to provide updates on her initial efforts to carry out the duties assigned to her.

II. Court’s Findings Resulting in Ms. Spangler’s Appointment and the Scope of Her Duties

In order to understand the scope of the work assigned to Ms. Spangler regarding the Clerk’s Office, it is helpful to understand the context surrounding her appointment.

A. Proceedings Culminating in Ms. Spangler’s Appointment

On September 6, 2019, Plaintiffs filed a motion for supplemental relief (Dkt. 6486) arguing that Clerk Yarbrough had violated the 1972 Consent Decree and 1991 Consent Judgment and that the Court should appoint a special master to ensure the Clerk complied with the Consent Decrees. Appointment Order at 2. The Clerk denied the Plaintiffs’ allegations of Consent Decree violations.⁴ After months of discovery and contested pleadings, on April 17, 2020, the Court determined that the Clerk violated the 1991 Consent Judgment by making “unilateral revisions to the exempt list without court approval.” *Id* at 24. The Court also found the Clerk violated the 1991 Consent Judgment, and her own policies, by hiring individuals into non-exempt positions that were not publicly posted. *Id*

³ The Court later extended this deadline *sua sponte* to September 15, 2020. Given Ms. Spangler is required to file reports every four months following her initial report, the next report will be filed by January 15, 2021.

⁴ The Clerk also made several arguments challenging Plaintiffs’ standing to bring the complaint. The Court dismissed those arguments in its April 17 Order. *See* Appointment Order at 3 - 22.

at 25 – 26. Additionally, the Court detailed that the Clerk’s stated rationale for a policy that required certain supervisors to rotate between the downtown and suburban offices⁵ was not supported by the record and that “the evidence strongly suggests that the rotation policy was instituted for the purpose of making life miserable” for the supervisors to which it applied, “suggesting an intent to drive them to quit.” *Id* at 30-33. The Court further found there were “significant indications” that supervisors exempted from this policy had a political pedigree that those who were subject to the policy did not have. *Id* at 34. Based on the above (and other) conclusions, the Court appointed Ms. Spangler as the County Clerk Compliance Administrator in this matter.⁶

B. CCCA’s Scope of Duties

The Court assigned Ms. Spangler the following tasks in the Appointment Order:

1. Work with the Clerk’s Office (with input from Plaintiff’s Counsel) to develop a list of Shakman Exempt Positions to be approved by the Court.
2. Review the Clerk’s “recently adopted personnel policy and monitor the application of that policy to determine whether the policy is in fact applied in the observance rather than the breach (which we deem important in light of the evidence that there has been a frequent disregard of the prior policies concerning applications for employment), identify any discrepancies in the

⁵ To align the suburban offices and the downtown office to the same standard of operation. *See id.* at 30.

⁶ The Clerk subsequently motioned for this Court to stay the Appointment Order pending its appeal to the Seventh Circuit Court of Appeals. The Court denied the Clerk’s motion. *See* July 8, 2020 Order (Dkt. 6938). Subsequently, the Clerk filed a Motion to Stay with the Seventh Circuit. That motion was also denied. *See* August 17, 2020 Order (Dkt. 7028). Accordingly, the Appointment Order remains in full effect while the Clerk’s full appeal with the Seventh Circuit remains pending.

- application of the policy, and propose any appropriate revisions;
3. Recommend policies to govern the solicitation of political donations or support and the reporting of any such solicitations;
 4. 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; and
 5. Make recommendations as to how to remedy any violations of the Consent Orders that she might find in conducting the foregoing activities."

Appointment Order at 41-42. The Court concluded the Appointment Order by noting that Ms. Spangler's appointment was only valid through August 31, 2021, but that it could be extended by the Court. *Id.* at 44. Updates on the CCCA's efforts to carry out her assigned duties thus far are discussed at length in Section III.A below.

C. Ms. Spangler's Background with the *Shakman* Litigation

As the Court noted in the Appointment Order, Ms. Spangler⁷ has served as the Shakman Compliance Administrator for the Cook County Recorder of Deeds since her appointment to that role in September 2010. In her role as the Recorder's Compliance Administrator ("RCA"), Ms. Spangler and her team have monitored the Recorder's Office's efforts to comply with its Employment Plan and Policy Manual and their prohibitions on the consideration of political reasons or factors in Employment Actions impacting Non-Exempt Positions. As RCA, Ms. Spangler worked closely with the Recorder's Director of Compliance, Human Resources Division, and staff at all levels,

⁷ Ms. Spangler's primary work is as a Partner at the law firm, Winston & Strawn LLP.

assisted the Recorder with identifying noncompliance, and filed regular reports updating the Court⁸ on the same. Noting her significant experience gained as the RCA, this Court appointed Ms. Spangler as the CCCA to perform the duties noted in II.B. above. *See* Appointment Order at 41.

D. CCCA’s Methods of Performing Assigned Duties

In the Appointment Order, the Court provides Ms. Spangler with the right to employ staff to fulfill her duties, permits her and her staff the ability to have *ex parte* communications with the Court and with the parties and the parties’ counsel, provides her with the power to cause subpoenas to be issued and take testimony consistent with the Federal Rules of Civil Procedure, but directs her to “use her best efforts to minimize disruption to the workplace during the course of her activities.” Appointment Order at 42-43. Regarding the Clerk, the Court directed the Clerk and her employees to “cooperate with [Ms. Spangler] in connection with her activities . . . including providing reasonable access to all relevant, non-privileged documents and reasonable access to employees at all levels.” *Id.* As Ms. Spangler has discovered during her still ongoing tenure as RCA, gaining access to documents and employees is critical to her efforts – particularly the ability to observe in real-time the communications leading up to employment actions such as hiring sequences, performance evaluations and disciplinary decisions.

Since her appointment, Ms. Spangler has retained a staff of experienced attorneys and an executive assistant all of whom have worked with her for years in her capacity as the RCA. The CCCA informed the Clerk that she and her staff will perform their duties in

⁸ These Reports and other related updates concerning the Recorder’s efforts to reach Substantial Compliance with its Supplement Relief Order may be found on the RCA’s website: <http://www.recordershakman.com>.

the same manner they have performed similar (but not identical) duties as the RCA. This means that Ms. Spangler will continue to keep an open line of communication with both the Clerk's Office and Plaintiffs' Counsel as she tries to work with both sides to accomplish the duties assigned her.

III. Clerk's Initial Efforts to Comply with Appointment Order

Since her April 30, 2020 appointment, the CCCA has not made much progress on carrying out the duties assigned to her by the Court. In order for her to attain progress, she requires cooperation from the Clerk's Office; however, the Clerk's Office's consistent cooperation was not forthcoming until late August 2020. Details of the CCCA's attempts to conduct her assigned duties and monitor Employment Actions in real-time and the Clerk's responses to those efforts are below.

Given the above, the CCCA has not been able to monitor current Employment Actions to see if the Clerk is adhering to its Manual; however, through a review of some files provided by the Clerk regarding recent hiring sequences and one recent disciplinary process, the CCCA gained some insight into the Clerk's application of its policies and discussed the same with the Clerk's Office. Overviews of these findings are discussed below as are other updates on the Clerk's progress with complying with the Appointment Order.

A. CCCA's Efforts to Perform Duties

On May 4, 2020, a few days after her appointment, Ms. Spangler spoke with the Clerk's outside Counsel and requested various key documents from the Clerk (*e.g.* the Exempt List, Job Descriptions for Exempt Positions, the Clerk's written employment policies and procedures, any Collective Bargaining Agreements for Clerk employees, and

the most recent organizational charts for the Clerk's Office). Ms. Spangler discussed the Court's specific charge to monitor the upcoming incorporation of the Recorder's Office into the Clerk's Office and requested the Clerk to provide her with "notice and the opportunity to monitor" any transition-related meetings or communications either within the Clerk's Office, between the Clerk and Recorder's Offices, or between the Clerk's Office and any third parties, if those communications include "anything that might have an impact on which Non-Exempt Recorder employees are retained by the Clerk or are not retained." Clerk's Counsel agreed to provide the requested documents; the CCCA memorialized the request in an email the following day to Clerk's Counsel.

On May 11, the Clerk's outside Counsel informed Ms. Spangler that his client had instructed him not to provide her with any requested documents and not to approve her request to set the rates of her staff until the District Court and the Seventh Circuit ruled upon a yet-to-be-filed Motion to Stay this Court's Appointment Order. Ms. Spangler responded the following day that while the Clerk had the right to appeal the Court's decision, the Clerk did "not have the right to unilaterally disregard a current court order" and that she would proceed with performing the duties assigned her until the Court directed her otherwise. On May 20, the Clerk filed with this Court a Motion to Stay the Appointment Order (Dkt. 6889).⁹

Despite the effectiveness of the Appointment Order and reminders by Plaintiffs' Counsel and the CCCA that filing a motion to stay does not stay the Appointment Order, the Clerk continued its course of not providing the CCCA with requested documents and

⁹ This Motion to Stay as well as the Clerk's subsequent Motion to Stay in the Seventh Circuit, were both dismissed. *See above* at 3, n. 6.

notice of Employment Actions. On June 26, after receiving a copy of the Clerk's Policy Manual from Plaintiffs' Counsel, the CCCA emailed the Clerk's Counsel and requested the Clerk provide her with "48 hours' written notice of all current Employment Actions that are covered in the Policy Manual so that we may be able to monitor the same. This includes, but is not limited to, hiring, discipline, performance evaluations, time and attendance, and training." The Clerk's outside Counsel responded on June 29 and objected to the request, reiterating the Clerk's objection to any costs associated with the CCCA's work while the Clerk appealed the Appointment Order, stating that the request for 48-hours' notice was "not reasonable" and "highly intrusive" and that the specific Employment Actions noted in the CCCA's request were "vague and ambiguous."

On July 9, after additional exchanges between the parties and CCCA, and a July 2 informal conference with the Court, the Clerk committed to producing its first documents the following week – a proposed Exempt List and related job descriptions. As explained further below, while the Clerk provided the proposed Exempt List, it did not provide the job descriptions for most positions on that list until last week, thus impeding the CCCA's ability to analyze whether the positions on the proposed Exempt List justifiably qualify as *Shakman* Exempt under the law. *See below* at 12-13.

On July 10, the CCCA provided the Clerk with a series of document requests as well as requests for access to Clerk employment policy files and, again, for notice of Employment Actions. Many of the July 10 requests had been previously requested by the CCCA either in her May 4 conversation with the Clerk's Counsel, or in subsequent communications. The CCCA requested certain documents by July 17 and the rest by July 24. On July 17, the Clerk provided a few of the requested documents including: the Policy

Manual, two Collective Bargaining Agreements, a draft 2019 Exempt List, an employee roster¹⁰, and a handful of job descriptions. The Clerk provided no more documents until on July 29, the eve of the first formal status hearing before the Court. At that time, the Clerk provided (admittedly) incomplete posting files for nine hiring and “internal promotions”¹¹ that were finalized after the Appointment Order and a one-page draft organizational chart with sparse details that the Clerk’s Counsel noted had not been adopted. The Clerk agreed to supplement the incomplete hiring/promotion files by the end of the week (July 31) but did not do so until early September.

On July 30, the Court held a joint status hearing regarding the Clerk’s and Recorder’s Offices. At the status, among other things, the Court made it clear that the Clerk needed to permit the CCCA to monitor Clerk Employment Actions in real-time. *See* July 30, 2020 Hr’g Tr. (Dkt. 7019) at 19:3-17. The Court also directed the Clerk to provide the CCCA with more timely responses to her document requests. *Id.* at 16:3-7.

On August 12, the CCCA met with the Clerk’s Chief Legal Counsel and Deputy Clerk of Human Resources. The Clerk’s outside Counsel was present. During the meeting, Ms. Spangler explained the scope of her assigned duties as well as what she needed from the Clerk’s Office to perform those duties. She explained that in order to confirm whether the Clerk’s Office was adhering to its policies, she would need to be included in real-time monitoring of the decision-making process (i.e. the deliberative process) behind Employment Actions and other areas included in the Appointment Order. She explained

¹⁰ The Clerk provided only some of the employee information requested by the CCCA and noted its objection to providing salary grade, FLSA status, union status, and assigned work schedules of employees as the Clerk deemed that information outside the CCCA’s duties.

¹¹ There is no “promotion” policy in the Clerk’s Manual.

this meant that she would be able to monitor discussions and meetings surrounding, for example, Employment Actions and be copied on emails throughout the life cycle of such actions. The CCCA offered to conduct a training for senior management so they could understand fully the notice and monitoring requirements; the Clerk's Counsel said she would consider the offer. As of the date of this report, the Clerk's Counsel has not informed the CCCA whether the Clerk intends to accept Ms. Spangler's offer.

On August 24, the CCCA received a copy of a memorandum purportedly addressed to all Clerk employees and authored by the Clerk's Chief Legal Counsel. In the memo – dated August 21, over four months after the Appointment Order, Chief Legal Counsel announced the Court's appointment of a "Shakman monitor," noted the Clerk's Office was "disappointed and strongly disagrees with the appointment" but nevertheless is "100% committed to prohibiting, conditioning, basing, or affecting any aspect of government employment upon or because of any political reason." She further stated the five tasks assigned to the CCCA and notified employees they may begin seeing the CCCA and her staff copied on emails and that they should "reply all" and include the CCCA on any responses. She announced that "the monitor may seek reasonable access to employees" and explained what "reasonable access" meant to the Clerk: employees would receive notice from the Clerk inside or outside Counsel to schedule any meeting with the CCCA. She ended by stating,

[i]n the event you receive communication via phone call, email, an error² directly from the monitor, or if any other misunderstanding has occurred, you should immediately contact me via email. . .

(The footnote attached to the word "error" read: "The Clerk's Office has not waived any

right to communication with Shakman, his counsel, or other parties to the lawsuit.”

Upon receiving the memo, Ms. Spangler emailed the Clerk’s outside Counsel a copy of the memo, requested he confirm its authenticity and whether it had been distributed, and, if confirmed as authentic, requested a call with the Chief Legal Counsel to discuss the meaning behind the above block quoted language. The CCCA further explained the need, and her intention, to have direct communications with Clerk employees and that she would not require that all such communications go through the Clerk’s Counsel. Two days later, the Clerk’s outside Counsel responded and, in part, confirmed the authenticity of the memo and explained that one of two attorneys from their law firm (Hinshaw & Culbertson LLP) “should be able to be present when you talk to an employee, and we cannot do so if you are contacting employees directly.” The CCCA notified the Clerk’s outside Counsel that she would request this topic be discussed at an upcoming August 31 status hearing.

At the August 31 status, the Clerk explained that the memo was intended not to prohibit or prevent employees from contacting the CCCA directly, but to give employees notice of the monitoring process, to let them know of the Clerk’s intent to be cooperative, and to address concerns from employees who were anxious about the prospect of being contacted directly by a Court-appointed monitor. The Court stated that a clarifying memo would be necessary, asked the parties and the CCCA to confer on the language of the memo and gave a deadline of September 11 to reach agreement on the same. After the status, the Clerk’s Chief Legal Counsel moved swiftly and worked with the CCCA on agreed upon language for the clarifying memo which Chief Legal Counsel circulated to all Clerk

employees on September 2.¹² The CCCA appreciated the collaboration and speed with which the Clerk's Office resolved this issue.

B. Clerk's Motion to Recuse Ms. Spangler and her Counsel

On August 28, 2020, the Clerk filed a Motion to Recuse the County Clerk Compliance Administrator and her Counsel. (Dkt. No. 7053). That same day, the Court entered a Minute Entry in which it set a briefing schedule for the Motion and noted "[o]n preliminary review of the motion, the arguments appear to be weak, with some bordering on frivolous." (Dkt. 7054). The Court also instructed Ms. Spangler to respond to the Clerk's motion by September 11.

On September 4, the Clerk's counsel e-mailed Ms. Spangler and her counsel as follows: "In light of the Court's order last Friday and the status Monday, I had a conversation with my client. She has directed me to withdraw the pending motion. We'll contact the Court about what process we should use to do so." The Clerk filed her Motion to Withdraw the August 28 Motion to Recuse (Dkt. No. 7065) the following day. The Court granted the Clerk's motion on September 8.

While Ms. Spangler did not object to the Clerk's Motion to Withdraw, the fact that the Clerk filed the Motion to Recuse in the first instance is deeply troubling particularly because the bases on which she sought to recuse Ms. Spangler and her counsel were specious at best. As but one example, the Clerk stated in her Motion that she provided Ms. Spangler with draft job descriptions concerning new Clerk positions that would perform

¹² The September 2 memo, among other things, clarified that "employees are free to speak directly with the CCCA without informing anyone at the County Clerk's office" that they have done so and that all employees "are required to cooperate with the CCCA and may do so without fear of reprisal."

duties currently handled by employees at the Cook County Recorder of Deeds. *See* Mot. to Recuse at 6. This statement is true. The Clerk, however, went on to allege that Ms. Spangler provided those draft job descriptions to the union who represents both Recorder and Clerk employees (Service Employees International Union (“SEIU”)) and, by doing so, “appears to be aligning with SEIU” and therefore her impartiality is in question. *Id.* at 5-8. This allegation is false.

The CCCA’s office, which includes Ms. Spangler, her Counsel and her staff, has not provided (directly or indirectly through any other person or entity) the union with any documents of any kind including, but not limited to, draft job descriptions. Nor has the CCCA’s office discussed or otherwise shared (directly or indirectly) the content of any such documents with the union. In fact, the CCCA’s office had no knowledge of even the possibility that the union could be in possession of draft job descriptions until the Clerk’s counsel informed Ms. Spangler of the Clerk’s belief that the union had those documents. There is simply no truth to the Clerk’s allegations, which is evident from her failure to attach any affidavits or provide any factual support for her claims.

Ms. Spangler views the Clerk falsely calling into question the integrity of her and her staff as both an act of intimidation and an attempt to frustrate her ability to perform her Court-directed work. The CCCA certainly hopes the Clerk spends less time engaging in these tactics and more time ensuring that the Clerk’s Office works cooperatively with her with the ultimate goal of bringing this matter to a close. As detailed above, until recently, the conduct of the Clerk’s office has slowed significantly the CCCA’s progress on the five

assigned tasks. Below are updates on any such progress.

C. Updating Clerk's Exempt List

The first duty set forth in the Appointment Order is for the CCCA to “[w]ork with the Clerk’s Office (with input from Plaintiff’s Counsel) to develop a list of *Shakman* Exempt Positions to be approved by the Court.” This task has not yet been completed because it was not until September 9 that the Clerk’s Office provided the CCCA and Plaintiffs’ Counsel with the necessary job descriptions to review and analyze whether the positions qualify as Exempt.

By way of background, the 1991 Consent Judgment, to which the Clerk’s Office was a party, prohibits the Clerk from affecting governmental employment with political reasons or factors for employees in most positions. The exception is those positions included on a list of 22 Positions that was attached to the Consent Judgment (the “1991 List”). These positions are exempted from the prohibitions on impermissible political considerations affecting employment because “political party affiliation or activity are appropriate requirements for the effective performance of the Governmental Employment position.” 1991 Consent Judgment at 10.¹³ This means the Clerk can hire, fire and otherwise make employment decisions of employees in such positions based on political reasons. The Consent Judgment describes the process through which the Clerk can amend

¹³ The 1991 Consent Judgment reflected the Supreme Court’s 1980 holding in *Branti v. Finkel*, 455 U.S. 507, where the Court held that to determine whether a governmental employment position could be exempt from prohibitions on political discrimination, courts should consider “not whether the label ‘policymaker’ or ‘confidential’ fits a particular position; rather, the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved.” *Id.* at 518. The Court further explained that, “party affiliation is not necessarily relevant to every policymaking or confidential position.” *Id.*

the List of Exempt Positions – a process that requires Court approval. *Id.* at 10-11. In the Appointment Order, the Court concluded that Clerk Yarbrough had amended that list without going through the process required by the 1991 Consent Judgment and, by so doing, violated that Judgment. Appointment Order at 24. The Court ordered the CCCA to work with the Clerk and Plaintiffs’ Counsel on properly updating the Exempt List and, until the amended List is approved by the Court, prohibits the Clerk from filling any Exempt Positions that were not on the 1991 List. *Id.* at 41.

After multiple requests by the CCCA, on July 17, the Clerk provided her with an Exempt List (labeled “Draft” and dated August 22, 2019) that included 21 positions and job descriptions for 7 of those 21 positions. The Clerk subsequently provided a proposed amended Exempt List that increased the number of positions from 21 to 38 but only provided three additional job descriptions.

On September 3, the Clerk’s Office provided the CCCA with notice of its intent to hire a new Director of Communications and that the selected candidate would begin work the following Monday (September 7). The job description, however, did not indicate whether or not the position was Shakman Exempt. Upon inquiry from the CCCA, the Clerk’s Office confirmed it intended the position to be Shakman Exempt.

The CCCA reminded the Clerk’s Office that the Director of Communications position was not on the 1991 List of Exempt Positions and asked whether the Clerk intended to proceed with hiring for this position. Plaintiffs’ Counsel weighed in by stating that “absent a court order approving the Director of Communications position as an Exempt Position, any attempt to fill that position outside of the competitive hiring process using political considerations will be a willful and knowing violation of two very clear court

orders.” Afterward, Plaintiffs’ Counsel and the CCCA separately reviewed and concluded that the Director of Communications job description qualified as Exempt under *Branti* and informed the Clerk of the same. The parties worked together to file an agreed motion to amend the Exempt List, which the Court approved on September 9, 2020. (Dkt. 7069). While the result was positive, the CCCA is concerned that, had she and Plaintiffs’ counsel not immediately voiced objections to this hire, the Clerk may have violated the Appointment Order by permitting this employee to begin work on September 7 prior to the Court approving an amendment to the Exempt List. Now that the Clerk has provided the RCA with additional proposed Exempt job descriptions, the CCCA is hopeful that this specific situation will not recur.

Indeed, on September 9, the Clerk provided the CCCA and Plaintiffs’ Counsel with the remaining proposed Exempt job descriptions. The CCCA now has begun her analysis of whether these positions meet the *Branti* standard for Exempt status. In connection with that review and to aid in her overall understanding of the Clerk’s office, the CCCA has requested and the Clerk’s office has agreed to provide her with an organizational chart showing how these proposed positions fit in the Clerk’s existing structure. The CCCA will report on the status of this review in her next report.

D. Clerk’s Adherence to its Policy Manual

The Clerk currently has a Manual that covers employment policies and procedures such as hiring, discipline, performance evaluations, time and attendance, and training. While the Manual is dated January 2020, the Clerk’s Counsel informed the Court that it was not finalized until March 2020, that Clerk employees were never trained on it, and that the Clerk intends to propose significant edits to the Manual. *See* July 30, 2020 Hr’g Tr. at

20:23 – 22:17. As explained further below, the CCCA’s review of the Manual and documentation concerning some recent hiring processes and one pending disciplinary process indicates that there are significant gaps in certain policies that require attention. The CCCA intends to propose edits to these policies after she is able to discuss the same with certain Clerk staff and monitor in real-time the application of these policies.

1. CCCA’s Review of Recent Clerk Hiring Files

In order to review the Clerk’s recent application of its hiring policies, on July 10, the CCCA requested documents pertaining to all Non-Exempt positions posted or filled since April 17, 2020. In response, the Clerk provided some documents related to hiring processes for a (1) Security Officer I and (2) Chief Ethics Officer and Legal Counsel. Other than a job description, the Clerk has yet to provide any documents concerning a third recent hiring process – for an Information Security Analyst – the posting for which expired on July 8. The posting did not result in a hire and the Clerk’s Office has informed the CCCA that it intends to repost for that role. The Clerk also provided documents related to the “promotion” of existing employees to the following positions: Back End Manager for Vital Records, Election Judge Township Coordinator, Election Judge Student Coordinator, Early Voting Manager, Early Voting Supervisor and IVRS Specialist. The majority of these hiring processes took place in June and July of 2020. The Clerk did not provide the CCCA with the opportunity to monitor any aspect of these hiring or promotion processes in real time – including hiring interviews conducted in late July – three months after her appointment. Our review of the Clerk’s Manual as well as the hiring/promotion documentation identified gaps in both the Manual’s processes as well as the Clerk’s

application of the processes as written.

One gap is the absence of explicit language prohibiting Clerk employees from considering political reasons or factors in connection with the General Hiring Process and Actively Recruited Hiring Process. Such an explicit prohibition is included for hiring processes for Executive Assistants (Section 4.8) and Interns (Section 4.11). In the August 12 telephone conference with the CCCA, the Deputy Clerk of HR stated the omission was an oversight and would be amended in the next iteration of the Manual. Another gap is that the General Hiring Process, which governs the majority of Clerk positions, does not include any explanation of what happens between the submission of an application and conducting of an interview. Manual at 40-47. The Manual is silent on who reviews and validates applications for eligibility and what process is followed to select Applicants for interview.¹⁴ These missing steps are vital parts of a transparent hiring process and necessary to ensure that candidates are chosen based on their qualifications and not based on Political Reasons and Factors. The CCCA will work with the Clerk on filling these, and other, gaps in the Manual over the next reporting period.

Because the Manual does not include a validation process and the Clerk only provided validation spreadsheets for a few of the positions filled, the CCCA could not determine why certain Applicants who appear not to meet the Minimum Qualifications for a position nevertheless were interviewed while some candidates who met the Minimum Qualifications were not. The CCCA observed this issue in at least two of the eight hiring

¹⁴ What is more perplexing about the omission of these steps of the general hiring process is that the definitions section of the Manual includes terms related to validation (*e.g.*, “Eligibility List”) and interview selection (“Preliminary Interview List”), yet despite defining the terms, the hiring process skips right to interviewing of candidates. Manual § 4.2.

and promotion sequences. This observation contrasted with a statement by the Clerk's Office that all candidates who met the Minimum Qualifications received interviews and only those candidates who met the Minimum Qualifications received interviews. The CCCA met with the Clerk's Office to discuss these observations and, for several of the hiring processes audited, was told to direct her questions to a specific HR employee who handled those validations. The CCCA today met with that employee and has requested additional documentation from her concerning these hiring processes. The CCCA will update the Court on that exchange further in her next report.

Other deviations from the Clerk's Manual included the following:

- Only one of the eight hiring/promotion files reviewed complied with the requirement in the Manual that Interview Panels consist of the Deputy of the Hiring Department and two or three management level employees in the hiring department "with knowledge and competence in the skills and abilities sought of the Position to be filled."¹⁵ Manual at 48.
- The Clerk's Office did not require Candidates to provide diplomas, degrees, licenses and certifications until either they were offered the position or during orientation, despite some postings requiring them to be provided at the time of interview and the Manual requiring that such documentation be provided by the end of the last interview for the position. *Id.* at 48.
- None of the hiring files included any No Political Consideration Certifications ("NPCCs"), despite the Manual's requirement that NPCCs "accompany or be included on forms relating to any Employment Action." *Id.* at 44.

Finally, the Clerk's production did not include certain Manual-required documentation for some of the hiring/promotion processes, such as: completed Interview

¹⁵ During the September 10 status hearing, the Clerk's Office explained that it did not comply with this Manual requirement because, in some departments, it did not have two to three management level employees. The CCCA will explore this issue further in the coming weeks including, for example, understanding the Clerk's rationale for incorporating this requirement into the Manual if the Office could not adhere to it.

Evaluation Forms and Interview Panel Ranking Forms. After the CCCA met with the Clerk's Office to discuss some of the above hiring sequences, the Clerk provided some additional records for these hires. The CCCA will review the same and follow up with the Clerk if there are any remaining issues.

The above noted issues illustrate the importance of real-time monitoring of a hiring process that includes detailed explanations of each step of the process. Based on her limited monitoring to date, the CCCA cannot report that the Clerk's Office is consistently applying its current hiring processes.

2. **Discipline**

On August 12, the Clerk provided documents related to one disciplinary sequence concerning a Non-Exempt employee. A review of the documents revealed several procedural deviations from the Manual.

First, the file lacked an approved, signed and dated Incident Report from the Deputy Clerk of HR. *See* Manual at Section 2.3(c). The file included a Disciplinary Action Form ("DAF") that appears to serve as the Incident Report, but the DAF does not contain a specific infraction¹⁶, it was not signed¹⁷, and it is unclear who drafted it.¹⁸ Additionally, the production did not include any information suggesting the Clerk satisfied the requirement that HR "create an Incident Docket Sheet to track the progress of the incident through the

¹⁶ Section 2.2 of the Manual requires that Supervisors detail the specific violations, including the citation with the applicable category and infraction number.

¹⁷ Regarding Discipline, Manual Section 2.3 details generally that "...all official documents tendered during the process must be signed and emailed so as to preserve a timeline of all actions."

¹⁸ Per Manual Section 2.3(b), the potential violator's immediate Supervisor is charged with completing an Incident Report and forwarding the same to their Deputy Clerk (or designee) and the Deputy Clerk of HR.

processing procedure.” *Id.*

The process culminated with a Pre-Disciplinary Hearing conducted by the Director of Human Resources. The Manual provides that a Hearing Officer will be “the Deputy Clerk of Human Resources or her designee...” *Id.* § 2.3(e). In a memorandum describing the findings, the Director of HR detailed that the Deputy Clerk of HR “presented management’s case-in-chief.” The CCCA discussed the above observations with the Clerk’s Office, which informed her that it did not have a form called an Incident Report and did not maintain an Incident Docket Sheet. The review of this single disciplinary file raises a question as to whether the Clerk is implementing its Discipline Policy as set forth in the Manual.

E. Recommend Policies Concerning Solicitation of Political Donations

The third task assigned to the CCCA in the Appointment Order is to “recommend policies to govern the solicitation of political donations or support and the reporting of any such solicitations.” We note that the Clerk’s Manual adopts Cook County’s Ethics Ordinance and that the County’s Ethics Ordinance includes language governing the solicitation of political donations. We also note the Clerk’s Manual deviates from the County’s Ethics Ordinance in one key manner. The County’s Ethics Ordinance requires all County employees to “[r]eport any violations, suspected violations, or other misconduct under this Article to the Board of Ethics or the Office of the Independent Inspector General in a timely manner.” County Ethics Ordinance §2-561(a)(8). The Clerk, in her Manual requires Clerk employees to report any ethical rule or policy violations to the employee’s Deputy Clerk as well as the Deputy Clerk of HR and notes that employees are not prevented from reporting the same to the Board of Ethics and OIIG. *See* Manual § 7.2. During the

next reporting period, the CCCA will undertake a more in-depth review of the policy, will discuss the Clerk's application of the same, and will recommend any proposed edits.

F. Review Hiring-Related Aspects of the Incorporation of the Recorder's Office into the Clerk's Office

The Court tasked Ms. Spangler with the duty 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." Appointment Order at 42. Despite significant efforts to conduct this review, the Clerk's Office has provided the CCCA with almost no ability to monitor this process.

In an effort to begin the review of the incorporation of the Recorder's Office into the Clerk's Office, on May 4, Ms. Spangler requested that the Clerk provide her with "notice and the opportunity to monitor" any transition-related meetings or communications either within the Clerk's Office, between the Clerk and Recorder's Offices, or between the Clerk's Office and any third parties, if those communications include "anything that might have an impact on which Non-Exempt Recorder employees are retained by the Clerk or are not retained." The Clerk did not provide any such notice. On July 10, the CCCA sent the Clerk's Office a request for all documents concerning any such meetings, discussions or correspondence since her April 17 appointment, "that concern or relate to which ROD Non-Exempt Positions and/or ROD Non-Exempt Employees will be retained by the Clerk's Office, might become retained or employed by the Clerk's Office, or might not be retained or employed by the Clerk's Office before or upon completion of the upcoming merger between the Clerk's Office and the ROD." In response, the Clerk has provided a single document - the Final Implementation Plan that the Clerk and Recorder submitted to

Cook County's Committee on Legislation and Intergovernmental Affairs in advance of a July 29 appearance there.¹⁹

During the July 30 status, the Clerk's Counsel informed the Court (and the CCCA for the first time) that the Clerk intended to post 79 new positions based on assuming the duties of the Recorder's Office and that the Clerk intended to post for 30 of those positions on August 10. The Clerk's Counsel explained that the postings would be open to anyone and that Recorder employees could apply alongside members of the public. The Clerk's Counsel represented that the Clerk anticipated utilizing an outside vendor – the Institute of Compliance and Learning (“ICL”) to review applications and recommend Candidates for interview – but that the Clerk's Office would conduct interviews and, presumably, make final decisions. *See* July 30, 2020 Hr'g Tr. at 8:9 – 9:7. Both Clerk and Recorder Counsel confirmed to the Court that the Clerk would not consider – and the Recorder's Office would not provide – Recorder employment records (e.g. performance evaluations and discipline records), that interview questions and considerations would not be Recorder specific, and that the Clerk's Office would not have “discussions with the recorder's office about anybody who applies.” *Id.* at 8:9 – 13:15, 32:10 – 31:12. Given the Clerk's anticipated date of posting was “imminent”, the Court advised the Clerk to confer with the CCCA, provide her with draft job descriptions, and “keep the lines of communication open . . . [as] the earlier they are involved in just seeing what the output is, then the less likely there will be

¹⁹ On the eve of that Committee hearing, the Clerk emailed the CCCA that, “[a]side from the public hearing on merger activities, the Clerk's office and Recorder's office have had no discussions related to hiring any specific employees from the Recorder's office in the Clerk's office.”

for disruption going forward.” *Id.* at 14:9-17.

After the status, the CCCA requested the Clerk provide her with all draft job descriptions and job postings for the pending Recorder-related hiring sequences. After not receiving any such drafts, the CCCA followed up again on August 14 noting the Clerk “has not given me a single document concerning the upcoming assumption of duties nor has it provided me with the notice of any meetings or discussions concerning the same.” On August 17, the Clerk provided the CCCA with draft job descriptions of five positions that the Clerk characterized as “in the initial draft stage.” On September 9, the Clerk produced 17 job descriptions (including the 5 job descriptions provided previously). The CCCA has begun its review of the draft job descriptions and intends to meet with the Clerk’s Office in the coming weeks to discuss them.

As for the process the Clerk anticipates utilizing to fill the Recorder-related positions, on August 12, the CCCA met with the Deputy Clerk of HR who explained that she was contemplating a hiring process that would fall outside the Manual but that she had not put pen to paper yet to iron out the details. The CCCA asked the Deputy Clerk to keep her in the loop on the development of that process as she had been anticipating the Clerk to follow the hiring processes outlined in its Manual. Given the Clerk’s Counsel had represented to the Court two weeks prior that the Clerk anticipated posting for 30 positions on August 10, the CCCA was surprised that, on August 12, the Clerk’s Office was unsure of what hiring process it would follow (and, at that time, had yet to produce any draft job descriptions or job postings to the CCCA) for those anticipated postings. The Clerk has not yet provided the CCCA with her intended hiring process for these Recorder-related

positions.

Finally, the week of August 17, the CCCA was informed that the Clerk's Office had been engaging in communications with SEIU 73 (the union that represents Recorder and Clerk employees) concerning the Recorder-related positions that the Clerk intended to create and how current Recorder employees may be considered for those positions.²⁰ As the CCCA had long ago requested the Clerk to notify her of any such discussions, she emailed the Deputy Clerk of HR asking her to verify the accuracy of the allegation and, if accurate, provide details of the meeting and explain why she was not permitted the opportunity to monitor the same. In response, the Deputy Clerk of HR wrote that she did not believe the allegation was accurate but would investigate the matter and report her results. (No updates on this investigation have been provided.) On August 25, the CCCA emailed the Clerk's outside Counsel and noted that she had received additional information that the Clerk's Office might have had a second meeting with SEIU concerning the Recorder-related positions and that the Clerk's Office may have represented to the union that they could not provide the union with job descriptions regarding those positions until the CCCA has reviewed them. Ms. Spangler wrote that, "I want to be clear that nothing my office is doing is preventing the Clerk from providing to the union draft job descriptions or any other information it normally would provide." She then asked that if the alleged representation was made to the union, that the Clerk correct it immediately" and inform

²⁰ For its part, SEIU has also reported concerns with the Clerk's lack of transparency regarding the assumption of Recorder-related positions. See <http://seiu73.org/2020/08/01/fighting-for-jobs-at-cook-county-recorder-of-deeds/> (noting, on August 1, that the "Cook County Clerk's Office agreed to a meeting with SEIU Local 73 that will take place next week. SEIU Local 73 will be proposing that the current Cook County Recorder of Deeds employees be assured job security when the merger is finalized.") The CCCA learned of this meeting after-the-fact and not from the Clerk.

the CCCA of the details surrounding the statement (including who made it).

In response, the Clerk's outside Counsel demanded to know the CCCA's source of information, reiterated the Deputy Clerk of HR's statement the allegation of a meeting was "not accurate", but nevertheless went on to admit that a meeting between the Clerk's Office and SEIU actually did take place and that during the meeting "the fact that the Clerk's office will be posting these positions was raised." This revelation was unsurprising given SEIU's website had announced the upcoming meeting and noted SEIU would be "proposing" that current Recorder employees "be assured job security when the merger is finalized." While the Clerk's Counsel attempted to assure the CCCA that "there was no discussion about a specific employee or a specific position," he did not explain how these meetings fell outside of the Appointment Order or why the CCCA was not provided notice and an opportunity to monitor them. Further, he did not (and has not since) answered the CCCA's questions about whether a Clerk employee represented to the union that the CCCA prevented the Clerk's Office from providing draft job descriptions to the union.

Since the above exchange, the Clerk provided the CCCA with notice of an upcoming meeting between the Clerk and SEIU 73 presumably to discuss Recorder-related positions. The CCCA will monitor the same.

The Clerk's Office is three months away from assuming the duties of the Recorder's Office. Given the length of time that hiring processes can take, the CCCA is concerned that, at present, the Clerk's Office provided her just last week with drafts of the Recorder-related job descriptions it intends to fill and has not provided any clarity on the process it will use to fill those positions. The CCCA hopes to report further on this issue in her next

report.

G. Recommendations for Remedies of Discovered Violations of the Consent Orders

The final task assigned to the CCCA in the Appointment Order is to “make recommendations as to how to remedy any violations of the Consent Orders that she might find in conducting the foregoing activities. At this time, the CCCA does not have any recommendation for remedies as she has not monitored enough of the Clerk’s employment processes to report on the existence or absence of violations of the Consent Orders.

IV. Conclusion

The CCCA will continue to attempt to work collaboratively with both parties and will report on progress in her next report.

Respectfully Submitted,

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Administrator

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