

**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.)	
)	

**SECOND 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 (the “Appointment Order”), submits this Second Report as follows:

I. Introduction

On September 15², Ms. Spangler filed her Initial Report to the Court (Dkt. 7085) wherein she explained the duties assigned to her by the Court and provided updates on her initial attempts to carry out those duties. Since the Initial Report, the parties and CCCA have worked closely on trying to make progress with the duties outlined in the Appointment Order. There was significant progress on updating the Clerk’s Exempt List and the Clerk made several new Exempt hires; however, three Exempt hires showed the Clerk’s Office is not abiding by the Appointment Order and Exempt Hiring Process in its Policy Manual (the “Manual”) consistently. The CCCA proposed edits to the nine policies

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

² All dates in this Second Report refer to 2020 unless otherwise specified.

in the Manual (including the policy on solicitation of political donations) but the Clerk has responded to only one of those policies (Performance Management) thus far. The Clerk largely is not complying with its existing Manual as observed by the CCCA's review of recent Non-Exempt hiring and monitoring of the Clerk's Probationary Period Performance Evaluations, Discipline, and Training policies. Finally, the Clerk conducted significant hiring related to the Assumption of Duties ("AOD") of the Cook County Recorder of Deeds. The Clerk's Office struggled to comply consistently with the AOD Hiring Plan; however, the CCCA does not have any reason to believe at this time that Unlawful Political Discrimination ("UPD") impacted any of the AOD hiring sequences. Overall, the CCCA is working well with the Clerk's Office –in particular with the Deputy Clerk of HR and Chief Ethics Officer - on advancing the above issues. Unfortunately, in part due to significant complicating factors and personnel issues, progress was slow during this five-month period as described below.

II. Clerk's Efforts to Comply with Appointment Order Since Initial Report

A. Updating Clerk's Exempt List and Exempt Hiring

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." Appointment Order at 41. In her Initial Report, the CCCA noted, among other things, two points concerning this duty: (1) the CCCA had begun its review of the Clerk's 38 (at that time) proposed Exempt Positions after the Clerk's Office provided draft job descriptions for those Positions in mid-September; and (2) that in the Appointment Order, the Court prohibited the Clerk from filling any Exempt Positions that were not on the 1991 Court-approved Exempt List

without first gaining the approval of the Court.³ *See* Initial Report at 14-16.

Since the Initial Report, there has been significant progress on updating the Clerk's Exempt List resulting in the parties and CCCA agreeing to 25 Exempt Positions (with 15 remaining in dispute). The Clerk's Office hired 12 individuals into approved Exempt Positions – although the CCCA and Plaintiffs' Counsel raised concerns surrounding two of those hires – and the CCCA learned of the Clerk's use of the Exempt hiring process to hire an individual into a Position not on the 1991 Exempt List (and without directly notifying Plaintiffs and the CCCA of the hire).

1. Updating of 1991 Exempt List

Since the Initial Report, the parties and CCCA have spent significant time reviewing, revising, and conferring on the job descriptions for the Exempt Positions proposed by the Clerk's Office. These discussions have resulted in the agreement of 25 Exempt Positions while 15 proposed Exempt Positions remain in dispute.

a. Agreed Changes to the Exempt List

The CCCA and Plaintiffs agreed to the following 25 Exempt Positions: (1) Chief Deputy Clerk/Chief of Staff; (2) Chief Legal Counsel; (3) Deputy Chief of Staff and Labor Counsel; (4) Deputy Clerk of Public Policy; (5) Legal Counsel – Elections; (6) Legal Counsel – Recording Operations; (7) Deputy Clerk of HR and Employment Counsel; (8) Deputy Clerk of Recording Operations; (9) Deputy Clerk of IT; (10) Deputy Clerk of Real

³ The CCCA notes that this was not a new directive by the Court; rather, it was a reiteration of the provision in the 1991 Consent Judgment that prohibited the Clerk from hiring anyone into a Shakman Exempt Position without first receiving Court approval that the Position was Shakman Exempt. *See* Appointment Order at 23. The CCCA noted in her Initial Report that the Clerk's Office may have violated this directive in September 2020 when it was attempting to hire a new Director of Communications through the Exempt hiring process despite that Position not being on the 1991 Exempt List, but for the assistance of Plaintiffs' Counsel and the CCCA who helped the Clerk ensure it sought and received Court approval prior to finalizing the hire. Initial Report at 14-16.

Estate and Tax Services; (11) Deputy Clerk of Vital Records; (12) Deputy Clerk of Finance; (13) Director of Finance; (14) Deputy Clerk for the Clerk of the Board; (15) Deputy Clerk of Communications; (16) Director of Communications; (17) Deputy Clerk of Security; (18) Deputy Clerk of Elections; (19) Assistant Deputy Clerk of Elections; (20) Special Assistant to the Clerk for Outreach and Community Engagement; (21) Executive Assistant (“EA”) to the Chief Deputy Clerk and Chief Legal Counsel; (22) EA to the Deputy Clerk of Elections; (23) EA to the Deputy Clerk of Recording Operations; (24) EA to the Deputy Clerk of HR; and (25) EA to the Deputy Clerk of Vital Records.

Despite the agreement of the above 25 Positions, the Exempt List filed with the Court still requires updating and job descriptions for five of the Positions require finalization. At this time, only three of the above Positions are on the Court-approved Exempt List: the Director of Communications (added on September 9 (Dkt. 7069)) and the Deputy Clerk and Assistant Deputy Clerk of Elections (added on October 9 (Dkt. 7119)). During the October 15 status hearing, understanding that the parties and CCCA were actively negotiating additional changes to the Exempt List, the Court agreed to allow the Clerk to hire new employees into Exempt Positions that are not on the October 9 Exempt List, as long as the parties and CCCA agreed the Positions qualified as Exempt. After a new Exempt List was agreed to by the parties, they would file that with the Court for approval. *See* Oct. 15, 2020 Hr’g Tr. (Dkt. 7159) at 36:10 – 37:5. Lastly, the job descriptions for five of these 25 approved Exempt Positions require finalization; edits are pending with the Clerk’s Office.⁴

⁴ These outstanding job descriptions are: (1) Deputy Clerk of Public Policy (edits provided to Clerk on December 18); (2) Deputy Clerk of HR and Employment Counsel (edits provided to Clerk on December 30); (3) Deputy Clerk of Real Estate and Tax Services (edits provided to Clerk on

b. Proposed Exempt Positions in Dispute

Currently, there are 15 proposed Exempt Positions in dispute between the parties and CCCA. On November 6, the CCCA and Plaintiffs' Counsel provided the Clerk's Office with significant feedback concerning why they did not believe the job descriptions for these Positions qualified as Exempt under *Branti* and included additional comments and questions concerning the duties and qualifications contained in those job descriptions. The parties and CCCA conferred about that feedback multiple times between November and January. The parties and CCCA appear to be nearing impasse.

2. Exempt Hiring Since Initial Report

Since the Initial Report, the CCCA primarily has made three observations regarding the Clerk's Exempt hiring: (a) the Clerk has hired 10 individuals into Exempt Positions where the processes followed the Appointment Order and mostly complied with the Manual; (b) the Clerk hired individuals into two Exempt Positions where the individuals did not meet the Minimum Qualifications on their respective Job Descriptions; and (c) the Clerk used the Exempt hiring process to hire an individual into a Position that was not on the 1991 Exempt List and without authorization of the Court.

a. Mostly Compliant Exempt Hiring Since Initial Report

Since the Initial Report, the CCCA found the following 10 Exempt hires to be compliant with the Appointment Order's requirement that they be approved by the Court as Exempt and the Manual's requirement that Exempt hires meet the Minimum Qualifications on the Exempt Job Description: (1) Chief Legal Counsel; (2) Deputy Clerk of Public Policy; (3) Deputy Clerk of Communications; (4) Legal Counsel – Recording

December 30); (4) Deputy Clerk of Vital Records (edits provided to Clerk on December 30); and (5) Director of Communications (edits provided to Clerk on December 18).

Operations; (5) Deputy Clerk of Recording Operations; (6) Deputy Clerk of Finance; (7) Director of Communications; (8) Special Assistant to the Clerk for Outreach and Community Engagement; (9) Executive Assistant to the Deputy Clerk of Human Resources; and (10) Executive Assistant to the Deputy Clerk of Recording Operations.

Recently, the CCCA learned from the Deputy Clerk of HR that for all Exempt hiring since the Initial Report, the Deputy Clerk of HR (or her Designee) did not fulfill the Manual-required duty to confirm that the selected Exempt hires met the Minimum Qualifications on the Exempt job description. Manual § 4.6(a)(2). As such, these Exempt hiring processes did not fully comply with the Manual. The CCCA notes that her staff reviewed the resumes of the selected Candidates and did not have any concerns with whether those resumes supported the Candidates' meeting the Minimum Qualifications for their respective Positions.

b. Exempt Hiring with Minimum Qualification Issues

The Clerk's Office hired two individuals into Exempt Positions where the CCCA and Plaintiffs' Counsel raised concerns with whether the individuals met the Minimum Qualifications for the Exempt Positions. The first Position resulted in a sustained finding by the OIIG confirming the individual did not meet the Minimum Qualifications while the second Position was resolved by an agreed amendment to the Exempt Job Description.

i. Exempt Hire Referred to OIIG

On October 13, in a call with the CCCA, the Clerk's outside counsel notified the CCCA that the Clerk had hired someone into a specific Position on the Court-approved Exempt List. The CCCA emailed the Clerk's Counsel that same day asking for the hiring documentation and resume of the selected Candidate. The Clerk's Office initially objected

to the request as it viewed such a review by the CCCA as outside the Appointment Order. The parties and CCCA discussed this matter with the Court during the October 15 status hearing. The Court agreed that the Appointment Order encompassed, at a minimum, the CCCA's review of resumes for Exempt hires. *See* Oct. 15, 2020 Hr'g Tr. (Dkt. 7159) at 31:25 - 32:10.

On October 23, after additional follow-up from the CCCA, the Clerk provided the resume of the newly hired Exempt employee. On October 26, the CCCA emailed the Clerk's Office a request that it identify the work experience on the resume that the Clerk's Office deemed satisfied the Minimum Qualifications on the job description. On November 16, after additional follow-up by both the CCCA and Plaintiffs' Counsel, the Clerk's Office provided the same resume it had already provided – only with a few sections highlighted in yellow. No additional explanation of the employee's qualification was provided. The same day, Plaintiffs' Counsel emailed the Clerk noting that the specific issue was that the resume provided “almost no detail” about the duties the employee performed at the job that the Clerk believed qualified her for the Position. The Clerk did not respond to this email. On November 27, the CCCA provided the Clerk notice that she had referred the matter to the Office of the Independent Inspector General (“OIIG”).⁵

On January 27, 2021, the OIIG issued a Summary Report wherein it concluded that the employee did not meet one of the Minimum Qualifications for the Position and that the Clerk's process for reviewing the Candidate's resume and work experience did not comply with the Manual. *See* Summary Report IIG20-0663. The OIIG found that the individual

⁵ The Clerk's Office subsequently objected to the CCCA's authority to refer any matters to the OIIG. The Court confirmed that such referrals were not improper. *See* Dec. 21, 2020 Hr'g Tr. (Dkt. 7278) at 41:17 – 42:15.

who is charged by the Manual to ensure an Exempt hire meets the Minimum Qualifications for the Position, relied on the “vague language” in the Candidate’s resume rather than “conducting the type of inquiry that was necessary to obtain clarity on the issue of minimum qualifications.” IIG20-0663 at 5. The OIIG also concluded that the Deputy of the hiring department, who was a part of the interview process, “essentially disregarded the importance of having the minimum qualifications in the job description.” The OIIG made four recommendations: (1) HR “create a protocol to allow for a meaningful opportunity to confirm minimum qualifications prior to interview or hire”; (2) discipline for two Deputies Clerk involved in the hire; (3) modification of the Exempt Hiring Process in the Manual so the Deputy Clerk of HR is required to certify in writing that a selected Candidate for an Exempt Position meets the Minimum Qualifications for the Position; and (4) that the Clerk “vacate” the current Exempt hire and restart the hiring process. *Id.* at 6. The CCCA will update the Court in her next Report on any response by the Clerk.

ii. Deputy Chief of Staff and Labor Counsel Position

The second Exempt hire with Minimum Qualifications issues concerned the Deputy Chief of Staff and Labor Counsel. Here, the CCCA engaged directly with the (now former) Chief Legal Counsel on the issue. The Chief Legal Counsel was responsive and, through discussion, the parties and CCCA agreed that one of the Minimum Qualifications in the Job Description was unnecessarily narrow given the breadth of focus for the Position. On December 11, the CCCA proposed an edit to the Job Description; the Clerk’s Office agreed to that amendment on January 28, 2021.

c. Clerk’s Use of Exempt Hiring Process for Non-Exempt Position

Recently, the CCCA learned that the Clerk used the Exempt hiring process to hire

an individual into a Position (Director of Training and Professional Development) that was not on the 1991 Exempt List. The issue remains unresolved and is another sign that the Clerk's Office has not embraced the requirements of the Appointment Order and Manual concerning Exempt hiring.

In early January 2021, the CCCA learned that the Clerk's Office used the Exempt hiring process in August to hire a Director of Training.⁶ After learning of this non-compliant Exempt hire, the CCCA reminded the Clerk that this Court's Appointment Order specifically prohibited the Clerk's Office from hiring any employees into any Exempt Position not on the 1991 Exempt List. Appointment Order at 41. Because the Director of Training and Professional Development title was not on the 1991 Exempt List, the CCCA explained that this hire appeared to violate the Appointment Order.

The CCCA is concerned with the above hire for two reasons. First, it was a clear violation of the Appointment Order which unequivocally prohibited such hires without prior Court approval. Second, the Clerk made the hire without notice to the CCCA. Even after the CCCA and Plaintiffs' Counsel guided the Clerk's Office to ensure a September hire of a new Exempt Director of Communications complied with the Appointment Order (*see* Initial Report at 15-16), the Clerk did not disclose the non-compliant hire of the Director of Training that had occurred just weeks prior. Given the clear exchange at that time concerning the Director of Communications hire, it is confounding that the Clerk's Office did not identify its recent non-compliant hire of a Director of Training. Given the issues with the above hires discussed in this section, the Clerk's Office has not demonstrated a consistent ability to abide by the Exempt hiring process.

⁶ The Director of Training is one of the proposed Exempt Positions that both the CCCA and Plaintiffs' Counsel objected to as not satisfying the *Branti* standard. *See above* at 5.

B. Status of Manual Updates and Clerk's Adherence to the Existing Manual

The second duty assigned to the CCCA by the Court is to review the Manual “to determine whether the policy is in fact applied in the observance rather than the breach . . . identify any discrepancies in the application of the policy, and propose any appropriate revisions.” Appointment Order at 41. In her Initial Report, the CCCA relayed that the Clerk's Office acknowledged it had not implemented its Manual and intended to make significant changes to it. Initial Report at 16. Since then, the Clerk's Office requested that the CCCA propose the first draft of Manual edits. Between November 25 and December 4, the CCCA provided her proposed edits to all nine policies⁷ in the current Manual and proposed a new Temporary Assignment Policy. Unfortunately, the Clerk has only provided responsive edits to the Performance Management Policy. In the meantime, the Clerk's Office is required to follow its existing Manual. Appointment Order at 41.

1. Efforts to Update Manual

Updating the Manual, a critical piece of the compliance puzzle, is moving at an exceedingly slow pace. Initially, the Clerk's Office indicated it intended to propose updates to its Manual. *See, e.g.*, July 30, 2020 Hr'g Tr. (Dkt. 7019) at 20:23 – 21:24. Then, on September 15, the Clerk's Office requested that the CCCA take the lead on proposing edits to the Clerk's Manual as the Clerk's Office did “not need to reinvent the wheel.” At the October 15 Court status, the parties, CCCA and Court agreed that by December 11, the CCCA would circulate proposed edits to the entire Manual with the goal that the parties

⁷ The nine policies in the Clerk's Manual are: General Provisions, Code of Conduct and Discipline, Time and Attendance, Hiring, Training, Performance Management, Ethics (which includes the policy on solicitation of political contributions), Safety, and Technology. The CCCA notes that her proposed edits to the Hiring Policy did not include a draft hiring process for elections-related Positions as the Clerk is charged with proposing that draft hiring process. *See* Oct. 15, 2020 Hr'g Tr. (Dkt. 7159) at. 19:24-20:4 and 21:17-24.

and CCCA could complete the revisions by early January 2021. *See* Dkt. 7128. Unfortunately, while the CCCA abided by the Court's deadline for circulating revisions, the Manual is nowhere near being finalized.

After the CCCA circulated her draft edits to the Manual, the bulk of the Clerk's attention with respect to policy revisions focused on the Performance Management Policy. This was by design as the Clerk was in the midst of hiring over 50 new employees via its AOD obligations. Despite the CCCA providing a draft Performance Management Policy on November 25, a week before any AOD hires began their employment, the Clerk did not provide responsive edits until December 9. The CCCA appreciates the hard work demonstrated by the Deputy Clerk of HR who has worked closely with the CCCA on revising this Policy. Nevertheless, the Clerk's Office is now two-and-a-half months into the probationary periods of its newly hired employees and it does not have a revised Performance Management Policy. The impact is that the Clerk's Office will have to abide by its existing Performance Evaluation Policy (Section 4.9 of its Manual) for these new hires and loses an opportunity to demonstrate that it can comply with its revised policy. The CCCA will report on the Clerk's efforts to revise the Manual in her next report.⁸

2. Clerk's Adherence to its Existing Manual

Since the Initial Report, the CCCA completed its review of the Clerk's Non-Exempt hiring from the first half of 2020 and monitored, among other things, three probationary performance evaluations (one resulting in termination); three disciplinary processes (one

⁸ In addition to the Performance Management Policy, the Clerk and CCCA worked on one additional policy not currently in the Manual: a Telecommuting Policy. The Clerk provided a draft Telecommuting Policy to the CCCA for review on December 3, and the CCCA provided its most recent responsive feedback on December 14. This policy is currently pending with the Clerk and still requires Plaintiffs' Counsel review prior to finalization.

resulting in termination); various trainings; and portions of two temporary assignments. Overall, the Clerk's Office is not complying with the policies in its existing Manual.

a. Review of Recent Clerk Hiring Files

As previously reported, 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. Initial Report at 17. This review revealed many gaps in both the Manual's processes as well as the Clerk's application of those processes. *Id.* at 17-20. At the time of the Initial Report, the CCCA was set to meet with the Director of HR to further understand the process HR followed for its 2020 hiring. Through that meeting, the CCCA learned of the following deviations from the Manual's hiring process: for at least one Position a second round of interviews was held at the Deputy Clerk of HR's request (a process not included in the Manual), applications were accepted in person from at least two Applicants (despite the Postings requiring electronic submission), there was no Conflict of Interest ("COI") vetting process (despite the Manual's COI reporting requirements) and Applicants who did not provide proof of meeting the Minimum Qualifications in their application materials nevertheless were selected for interview based on the Deputy and/or Director's personal knowledge of the Applicant's qualifications. The lack of process or adherence to the current Manual leaves the Clerk's Office vulnerable to claims of UPD. It is imperative that the Clerk's Office abide by its written hiring processes. The CCCA provided edits to the current General Hiring Process on November 27 and hopes this policy's updates will be finalized and implemented soon.

b. Probationary Period 90-Day Evaluations

The Clerk's Office has implemented a Probationary Performance Evaluation Policy

in an inconsistent manner. Manual Section 4.9 requires that Employees who begin service with the CCCO receive a “New Hire Performance Evaluation on or before the 90th business day of employment.” *See* Manual at 53. Prior to the CCCA’s April 2020 appointment, the Clerk hired four employees in February 2020 which required New Hire Performance Evaluations. On September 15, the Clerk’s Office issued four probationary period extension letters to these employees detailing that because the County Clerk was closed to the general public between March 18 and July 6, “management was unable to fully assess your performance during your first 90 days of employment.” As a result, they notified the Employees that their probationary period was extended through October 6.

In October, the CCCA monitored probationary evaluation meetings for three of the four employees whose probationary periods were extended by HR. The CCCA observed the Managers provide the employees with a completed evaluation form and explain the scores on the form. One Employee who received poor evaluation scores had her scores explained in writing by her Manager and in more detail, verbally, at the time of issuance. Her employment was terminated. The CCCA did not receive notice of an issuance meeting for the fourth Employee whose probationary period was extended – a violation of Section 4.9 which requires issuance of the evaluation.

c. Discipline Monitoring

The Clerk’s Office is not abiding by certain requirements of its Discipline Policy. Since the Initial Report, the CCCA monitored one disciplinary sequence that showed a lack of adherence to the processes and required documentation in the Discipline Policy and

began monitoring two additional disciplinary sequences.⁹ This monitoring showed a lack of implementation of certain documentation required in the Discipline Policy although the Chief Ethics Officer has made efforts to correct this non-compliance.

i. Problematic Disciplinary Sequences

Since the Initial Report, the CCCA monitored a disciplinary sequence conducted by the former Director of HR that did not comply with the Discipline Policy's documentation requirements and appears to have been stopped without resolution. The CCCA also received notice of two additional disciplinary sequences that did not comply with the Policy and remain outstanding.

On October 2, the former Director of HR provided the CCCA with the opportunity to monitor her call with an employee regarding a September 2020 attendance violation. At the time of the call, the Director forwarded an unsigned Disciplinary Action Form ("DAF") to the CCCA wherein she already had marked a 3-day suspension as the assigned discipline. However, during the call, the Director repeatedly stated that she was not issuing the DAF, but rather presenting the Employee with the "allegations" against him and giving him an opportunity to provide a written statement by October 7. On October 15, the Director of HR forwarded to the Chief Ethics Officer and the CCCA the Employee's

⁹ Also, since the Initial Report, the CCCA monitored the former Chief Legal Counsel's investigation into an allegation of discrimination and harassment. Upon receiving the complaint, the Chief Legal Counsel worked expeditiously to address the complaint. The CCCA monitored all aspects of the Chief Legal Counsel's internal investigation and appreciates her transparency in the investigatory process. The Chief Legal Counsel concluded that the evidence did not support the complainant's allegations but referred to the Chief Ethics Officer a time and attendance policy-related issue uncovered in the investigation for consideration when updating that Policy. The CCCA notes that Manual Section 4.12(d) states that "all complaints will be kept confidential to the extent possible while allowing the Office to conduct a prompt, thorough, and fair investigation" but otherwise is deficient in providing any other guidance regarding the investigatory process. The CCCA has proposed a more robust investigatory process for inclusion in the Manual.

written statement and suggested that the matter be discussed the following week; however, the CCCA did not receive any further contact on the matter. Recently, after follow-up by the CCCA, the Clerk's Office informed that it had no record of any further action taken on this pending disciplinary action and has decided not to pursue it further.¹⁰

There were several issues with the HR's handling of this disciplinary process. First, as the CCCA explained previously, the Clerk's Office is not utilizing the Incident Report and Incident Docket Sheet required in its Discipline Policy. *See* Initial Report at 20. Rather, the former Director of HR provided a draft DAF that appears to serve as the Incident Report, but the DAF did not contain a specific infraction and was not signed. Next, the Director of HR deviated from the Pre-Disciplinary Hearing process outlined in the Manual which does not include the submission of a "written statement" by the Employee. Finally, the Director never concluded the disciplinary action and HR lost sight of it after her departure.

The CCCA also notes that she has received notice of two additional disciplinary proceedings, neither of which appear to have been conducted in accordance with the Manual. The first concerned a draft DAF submitted by a Deputy Clerk in November alleging a violation of the Cook County Personnel Residence Requirement¹¹, however, the Deputy failed to list the specific infraction, and instead submitted the DAF as a request to

¹⁰ The CCCA encourages the Clerk's Office to learn from issues detailed in reports by the Recorder Compliance Administrator concerning the impacts of delayed disciplinary proceedings. *See, e.g.*, RCA's Twenty-First Report to the Court (Dkt. 6671) at 22-23; RCA's Fourteenth Report to the Court (Dkt. 4818) at 14-15.

¹¹ Section 2.2(c) lists Violations of Other Office or County policies; specifically, Section 2.2(c)(1) states: "For current (non-grandfathered) and probationary employees covered by the Cook County Personnel Residence Requirement Ordinance, failure to maintain a residence in Cook County within 6 months of employment shall lead to termination of employment."

“confirm compliance with Cook County residency requirement.” This investigation remains pending with the Chief Ethics Officer. The second discipline request occurred on January 8, 2021, when an Assistant Manager submitted a draft DAF for an employee’s alleged sleeping on duty. The CCCA is not aware of any response by the Deputy Clerk of HR or the DAF being approved and issued to the Employee.

ii. Recent Improved Disciplinary Processes

In contrast to the above, two other disciplinary process were conducted by the Chief Ethics Officer, whose process was more closely aligned with the procedures outlined in the Manual. On October 28 and 31, a Deputy Clerk submitted two draft DAFs to the Chief Ethics Officer, alleging a Director committed two major cause infractions. The CCCA monitored the entirety of the disciplinary investigations and believes the Chief Ethics Officer conducted himself professionally and in accordance with the Manual with the exception that certain documentation required in the Discipline Policy was not utilized.¹² For the first DAF, the Chief Ethics Officer issued a 1-day suspension without pay. For the second DAF, he issued a two-week unpaid suspension and required the Director to register with the County’s Employee Assistance Program (“EAP”) within seven days or be subject to further discipline. After the Director failed to register with EAP in the designated timeframe, the Chief Deputy Clerk terminated the Director. The CCCA monitored the process and has no concerns to report. The CCCA commends the Chief Ethics Officer’s

¹² These two disciplinary sequences suffered from similar documentation non-compliance as all others monitored by the CCCA in that they did not utilize an “Incident Report Form” that is required in the Policy. However, on February 11, 2021, the Chief Ethics Officer provided the CCCA with a copy of the Incident Docket Sheet for both investigations. The CCCA will work with the Clerk’s Office to ensure that the revised Discipline Policy reflects the actual forms the Clerk’s Office utilizes for its disciplinary-related investigations.

transparency and expeditious handling of this disciplinary process as well as his thorough written analysis which frequently referenced the Manual in his findings.

d. Training

The Clerk's Office is not complying with the various trainings required in its Manual. In Manual Section 4.4, HR is assigned the responsibility of conducting the following training at specified times: (1) HR Personnel Training for all HR staff within 30 days from the date of hire and annually thereafter; (2) all Employee training on the Manual and UPD within 30 days from the date of hire and annually thereafter; (3) Supervisor Training on the Manual within 60 days from the date of hire and annually thereafter; and (4) Interviewer training for all Employees eligible to serve as interviewers prior to serving as an interview panelist in a hiring process. With few exceptions, the Clerk's HR is delinquent on the above training responsibilities.

The CCCA is not aware of HR conducting any HR Personnel Training since the Manual went into effect in March. Likewise, HR has not trained all employees on the Manual since it went into effect in March.

The two Manual-required trainings that HR conducted since the CCCA's Initial Report were Supervisor and Interviewer Training. Concerning Supervisor Training on the Manual, the CCCA previously reported that the former Chief Legal Counsel informed the Court that Clerk employees never received the training.¹³ *See* Initial Report at 16. Since the Initial Report, HR conducted a Supervisor Training for five newly hired AOD Managers. This training consisted of little more than reading the Manual word-for-word

¹³ However, after the Initial Report, the former Director of HR told the CCCA that she conducted a cursory Supervisor Training on the Manual prior to the Office's March 2020 shut down. She explained that she was asked to conduct the training on the day of the training and just read the PowerPoint presentation to the attendees.

aloud and a short question-and-answer session. Concerning Interview Training, in advance of the AOD Hiring process, HR conducted several Interviewer Trainings in September and October and another in January 2021. The CCCA notes that trainers provided little detail beyond what was already included in the training deck. During the October 27 Interviewer Training, one attendee asked a question regarding the scoring definitions, but the trainers referred the Supervisor to the AOD Plan without answering the question. As discussed below, inconsistent scoring was an issue in the AOD hiring processes and might have been avoided with a more thorough training presentation. *See below* at 25-26.

e. Temporary Assignment

The Manual does not currently have a Temporary Assignment Policy in it; however, the Clerk's Office has executed two recent Temporary Assignments ("TA") that followed different processes. A Director initiated the first TA by emailing the Deputy Clerk of HR who approved the request. The CCCA monitored the Director's discussion with an employee regarding a possible "reassignment" and the presentation of a TA memo which (a) outlined the expected duties while in the TA, (b) explained that the employee was selected as the most senior employee, (c) offered a temporary increase rate in pay for the duration of the TA and (d) limited the TA to 120 days or less. The employee declined the TA and the TA was then offered and accepted by the next most senior employee.

A Deputy requested the second TA, also via email to the Deputy Clerk of HR who approved the request in writing. However, there was no further communication concerning this TA and no indication of which – if any – employee received the TA. The CCCA recently followed up with the Clerk's Office on this TA and is awaiting a response.

C. 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.” In her Initial Report to the Court, the CCCA expressed concerns that the Clerk’s existing policy on solicitation of political donations *required* Clerk employees to report ethical rule or policy violations internally – to the employee’s Deputy Clerk and Deputy Clerk of HR – and *permitted* the employee to report the same to the Board of Ethics and OIG. Initial Report at 21. On December 4, the CCCA proposed edits to the policy governing solicitation of political donations that made reporting of alleged violations of this policy to the OIG mandatory while reporting the same allegation to an internal Compliance Position at the Clerk’s Office permissive. The Clerk has not responded.

D. Review Hiring-Related Aspects of the Assumption of the Recorder’s Duties into the Clerk’s Office

The fourth task assigned to the CCCA by the Court is to “review the incorporation of the Recorder’s Office into the County Clerk, to determine, among other things, whether political considerations are improperly used in deciding which Recorder’s Office non-exempt employees are retained by the County Clerk.” Appointment Order at 42.¹⁴ Since the Initial Report, the Clerk’s Office posted for 20 Non-Exempt Positions, conducted 153

¹⁴ Part of the CCCA’s efforts to review this incorporation was by examining documents provided by the Recorder of Deeds (“ROD”) concerning its communications with the Clerk’s Office related to the Assumption of Duties. The CCCA also interviewed the Clerk’s (now former) Chief Legal Counsel and the Recorder’s Chief Deputy Recorder and Deputy Recorder of Finance about these communications. On account of a document produced by the Recorder’s Office, the CCCA questioned the Recorder’s and Clerk’s intent on whether and how ROD employees would be onboarded into the Clerk’s Office. Both the Clerk and ROD explained that, from before the CCCA’s appointment, the Clerk’s intent was to hire for the Non-Exempt AOD Positions through a public posting process; not to onboard or transfer ROD employees directly to the Clerk’s Office.

interviews, and ultimately hired 62 new employees to fill those 63 vacancies.¹⁵ It was a significant undertaking in a condensed timeframe. Given the Clerk's Office did not finalize a Hiring Plan to govern the hiring of these AOD Positions until October 9 and job descriptions for the Positions oftentimes were not finalized until days before (and sometimes the same day) postings went live to the public, it was unsurprising that numerous issues manifested during these hiring processes.

Aside from these issues, the CCCA recognizes the contributions of the Deputy Clerk of HR, the Institute for Compliance and Learning ("ICL"), and the Chief Ethics Officer who worked cooperatively with the CCCA to develop a stand-alone hiring process related to the Assumption of Duties (the "AOD Plan") and to implement the AOD Plan. As discussed below, the Deputy Clerk of HR and ICL also worked dutifully to provide the CCCA with requested information to address the many issues as they arose.

1. AOD Hiring Plan

The Clerk did not provide a first draft of what would become the AOD Plan until September 22. The draft that the Clerk provided required considerable collaboration between the CCCA and Clerk to develop an effective policy. Despite the late-stage receipt of the draft policy, the CCCA and Deputy Clerk of HR worked closely and reached agreement on an AOD Plan on October 9 - the same day the first wave of AOD postings

¹⁵ On November 5, the Clerk requested to fill three AOD Information Technology Positions with the three existing IT personnel at the ROD, citing the need for maintenance of the niche and outdated nature of the technology used for recording, and the three individuals' in-depth knowledge of the same, rendering them "uniquely qualified to provide the continuing maintenance that the Clerk's office will require." The CCCA and Plaintiffs' Counsel reviewed the request and informed the Clerk on November 18 that there were no objections to bringing over the entirety of the ROD's IT department in this manner, pending updates to the job descriptions for accuracy. The three job descriptions were finalized on November 27 after the Clerk amended them to detail the knowledge of the unique systems required. The employees began employment with the Clerk in December.

went live.¹⁶ The AOD Plan detailed the requirements for the posting, review of applications, interviews of Candidates, and documentation for AOD Positions.

2. Clerk's Compliance with the AOD Hiring Plan

The CCCA closely monitored every step of the process and was engaged in consistent communication with the Clerk throughout. The CCCA noted discrepancies or deviations from AOD Plan requirements occurring at each stage of the process. The Deputy Clerk of HR and ICL were highly responsive to issues as they arose, however, had the CCCA not alerted the Clerk to those issues, the discrepancies and AOD Plan violations would have remained and significantly impacted the hiring sequences. Below are descriptions of a few of the issues that occurred.

a. Posting and Review of Applications

For several of the initial group of AOD postings, the job postings were inaccurate which resulted in the cancellation and reposting of two postings and validation issues in four other postings. Under the AOD Hiring Plan, ICL is required to post a Notice of Job Opportunity on the Clerk's website and that Notice must include, among other things, the job description, all Minimum and Preferred Qualifications for the Position, and be posted for a minimum of 10 days. *See* AOD Plan § IV.2. Additionally, each Minimum and Preferred Qualification must have a corresponding Prescreening Question for the Applicant to answer. *Id.* § IV.H. If an Applicant indicates in their answers to the Prescreening Questions that they possess all Minimum Qualifications, they are placed on the Preliminary

¹⁶ The AOD Plan was revised on October 20, incorporating minor adjustments, and again on November 20 to define and detail additional procedures for AOD Manager and "Craft" Positions as defined in the AOD Plan, such as including an increased number of interview questions, panel members, and a required selection meeting where all panelists could speak freely about the interviews and collaboratively develop a final ranking of the Candidates. All versions were posted on the Clerk's website.

Eligibility List (“PEL”). *Id.* § IV.I. ICL must then utilize a computerized program to assign each Applicant on the PEL a randomized number and then sort all Applicants into groups based on how many Preferred Qualifications they indicated they have (the “Sorted PEL”). *Id.* § IV.K-L. ICL then reviews Applicants’ resumes to determine if they indeed possess the Minimum and Preferred Qualifications on the job description. The Clerk’s Office, ICL and CCCA agreed that, at this stage, ICL and the CCCA would compare validation determinations and discuss any discrepancies; however, the final decision concerning an Applicant’s eligibility rests solely with ICL. Applicants who ICL determines not to meet the Minimum Qualifications are disqualified. ICL then places the remaining Candidates¹⁷ into groups based on the number of Preferred Qualifications they were validated as having, thus constituting the Validated Eligibility List (“VEL.”) *Id.* § IV.N. Finally, ICL offers Candidates interviews in the order the Candidates appear on the VEL.

For six of the initial group of AOD postings, the Prescreening Questions did not accurately reflect the Minimum and Preferred Qualifications on the job description. While these errors were not irreparable, they had consequences such as the cancellation and reposting of two postings and, for four Manager postings, ICL and the CCCA were unable to validate one Preferred Qualification because it was incorrectly drafted on the Posting. After these errors were identified, the Clerk’s Office asked the CCCA to review draft postings prior to postings going live on the Clerk’s website. The CCCA agreed and caught multiple draft posting errors in advance of their posting; ICL corrected the same so that the remaining postings were accurate when posted.

¹⁷ The AOD Hiring Plan defines “Candidates” as Applicants “who after review and validation of their application materials has been found to possess the Minimum Qualifications required in the Job Description.” AOD Hiring Plan at 2.

Regarding the review of applications, nearly every list mentioned above (PEL, Sorted PEL, VEL), for every AOD posting contained discrepancies that warranted (sometimes extensive) feedback from the CCCA. These discrepancies included Applicants omitted from the PEL erroneously, Applicants erroneously included on the PEL, and Applicants placed in the incorrect grouping on the PEL. The CCCA notified ICL of issues on nearly every VEL, including inconsistent assessment of similar experience or credentials listed between Applicants, resulting in Candidates who would have been improperly disqualified, improperly determined to be eligible, or placed in the wrong grouping based on the number of Preferred Qualifications possessed. Despite the breadth of issues, ICL was responsive to all questions and concerns raised by the CCCA and seemed committed to conducting the process in accordance with the AOD Plan.

b. Observed Compliance Issues with Interview Process and Offers

While interviews did not contain as much need for consistent feedback from the CCCA, there were several deviations from the AOD Plan that occurred. For example, the AOD Plan requires the Clerk to interview three Candidates per vacancy, with interviews offered in the order the Candidates appear on the VEL. *See* AOD Plan § IV.O.1. For one posting, the Clerk's Office incorrectly identified the number of vacancies, resulting in six interviews for a single opening. The AOD Plan also requires at least three interview panelists for Manager Positions. *See id.* § IV.Q.1. One interview sequence for a Manager Position contained just two panelists. Additionally, the AOD Plan requires that all offers to interview be sent via email to the Candidate, copying the CCCA, with any responses from Candidates forwarded to the CCCA. *See id.* § IV.Q.2. With a few exceptions, the CCCA was neither copied on interview offers nor forwarded Candidate responses.

Other deviations included (1) the Clerk's Office's consistent failure to provide the CCCA with copies of final interview questions at least three business days prior to the interviews for review and comment (AOD Plan § IV.Q.3) and (2) the Clerk providing interview questions to interview panelists a day or more before the first day of interviews despite the AOD Plan requiring the questions "be considered and treated as confidential" and shared with panelists only on the morning of the first day of interviews. *Id.* The latter was remedied after the CCCA notified ICL of the issue following interviews for the first group of AOD postings. The former proved problematic throughout the AOD hiring process. For multiple Positions, the CCCA questioned whether the Clerk's proposed interview questions met the AOD Plan's requirement that they be based on the specific job duties of the Position and were designed to assess the Candidate's skills and suitability. *Id.* These questions and concerns resulted in edits to the questions, oftentimes at the last minute due to the lack of proper notice.

The CCCA also identified discrepancies on multiple Scored Interview Lists, such as incorrect scoring attached to a Candidate, resulting in incorrect rankings. These issues were resolved upon receipt of the CCCA feedback. However, for one Position, ICL extended an offer to the incorrect Candidate.¹⁸ By the time the CCCA identified the issue

¹⁸ The AOD Plan requires the use of computerized randomization to break ties when two Candidates receive the same overall scores on the Scored Interview List. AOD Hiring Plan § IV.R.5. For one hiring process, this randomization process was used to break the tie between two Candidates tied with the sixth highest overall average interview score. After multiple Candidates declined offers of employment, the sixth Candidate was to receive an offer. However, the offer was issued in opposite order of the randomization results. The CCCA alerted the Clerk and ICL of the circumstance and monitored a meeting where the Clerk and ICL said the incorrect offer was made simply in error. The Clerk determined there was nothing that could be done to rectify the situation, but that a memo explaining the circumstance would be circulated and placed in the Posting File for the Position. As of the date of this Report, the CCCA has not received the memo or the Posting File for the Position.

and raised it with the Clerk, the incorrect Candidate had begun employment with the Clerk's Office. The Clerk acknowledged the error and determined the best course was to allow the Employee to remain employed.

c. Need for Additional Training for Interview Panelists

Over the course of the CCCA's monitoring of the AOD Plan, her team monitored 153 interviews. Overall, the Clerk employees who conducted the interviews appeared to take the process seriously and attempted to comply with the duties assigned to them in the AOD Plan. That said, the CCCA observed significant issues with some interviewers' scoring decisions and justifications, with Managers' notifications of potential Conflicts of Interest, and the refusal of one Deputy Clerk to participate actively during the Ranking Meetings for four managerial Positions.

When examining the Interview Evaluation Forms, the CCCA found examples of scoring and comments that did not align with the AOD Plan's requirement that "[a]ll scores must be explained by the interviewer on his or her Interviewer Evaluation Form." AOD Plan § IV.R.3. Often, panelists simply recorded their notes of the Candidate's answer, without providing an examination as to the quality of that answer that would correspond to their score. There also were many examples of ratings that supported the need for additional interviewer training, such as scores of 3 or 2 when a candidate said they did not know or could not address the elements of a question in any material way. While the CCCA does not suspect nefarious intent with the problems contained in the comments and scores, the issues display that significant additional training is needed for the panelists to be able to detail transparently and consistently that hiring decisions are based solely on the Candidate's merit, free from bias, including Political Reasons or Factors. The CCCA

shared her observations with the Deputy Clerk of HR who agreed with the need for supplemental training.

Next, the CCCA observed several notifications of potential COIs that did not comply with the AOD Plan. Under the AOD Plan, interview panelists “are required to disclose to the Chief Ethics Officer and Legal Counsel if they know any Candidates in any way.” AOD Plan § IV.R.2.c. While the COIs were found, there were multiple instances where a panelist did not provide the required disclosure in sufficient time for the Chief Ethics Officer to determine if a COI was present, such as in the minutes before an interview was to begin. The Chief Ethics Officer and Legal Counsel recommended that more time be built into the interviews so that potential COI could be sufficiently vetted when one was identified at the start of an interview. The CCCA agrees with this recommendation and will seek to incorporate it into the hiring processes in the Manual.

Finally, the CCCA observed one Deputy-level employee refuse to actively participate in four Plan-required Selection Meetings although her performance improved in later hiring sequences. Section IV.S.2 of the AOD Plan requires that interviewers for all AOD Manager and Craft Positions, “conduct a meeting at which all of the interviewers are present and at which each interviewer has an opportunity to freely and without fear of retaliation express his or her opinion regarding the Candidates” in order to “identify all Candidates they recommend for hire and rank them on the Interview Panel Ranking Form.” The CCCA monitored Selection Meetings covering 10 AOD Manager and Craft Positions. During the Selection Meetings covering four Manager Positions, one panelist, a Deputy Clerk, repeatedly questioned the purpose of the Selection Meeting and expressed her strong opinion that the scores spoke for themselves and did not require further

discussion of the Candidates. The Deputy refused to engage in the Selection Meeting other than by stating that the rankings should stand and leaving the two other panelists to engage in the substantive discussion. The Deputy Clerk of HR handled the obstinance well and, the following month, the same Deputy actively participated in Selection Meetings for two other AOD positions; nevertheless, this was a disappointing example of the highest levels of the Clerk's administration not supporting compliance with the Clerk's existing policies.

d. Hiring Documentation Issues

The AOD Plan requires that "all forms and correspondence concerning an AOD Position" must be included in the Posting File, a copy of which is to be provided to the CCCA "at the conclusion of a hiring process." AOD Plan § IV.X. Despite each AOD hiring process having concluded, the CCCA has yet to receive a Posting File for any Position.¹⁹ The CCCA has also not received copies of certain documentation that must be provided in real time (*e.g.* interview notices) or within one business day (*e.g.* Justification to Hire Forms for each selected Candidate, a separate Disqualification List for each Position). The CCCA acknowledges the amount of work the Clerk's Office and ICL put forth to finalize the AOD hiring; however, she reminds the Clerk's Office of the need to fully comply with its written policies which includes assembling, finalizing and providing the CCCA with the entire Posting File for each Position.

e. Onboarding and Organizational Structure

During the review of AOD related job descriptions, the CCCA repeatedly asked the Clerk's Office to provide an accurate account of the organizational structure at the Clerk's

¹⁹ In addition, the Clerk has not provided No Unlawful Consideration Certifications (NUCCs) signed by the Clerk employees involved in the AOD hiring processes. The AOD Plan requires that Posting Files include these signed NUCCs – which, in part, certify that the Clerk employee did not take Political Reasons or Factors into consideration at any point of the Non-Exempt hiring process. *See* AOD Plan §§ III.G & IV.X.

Office, specifically to identify to whom AOD Positions would report. In response to these questions, the Clerk said it could not provide that level of detail for each Position, citing the need for flexibility in its reporting structure. After the first wave of Employees hired through the AOD process were onboarded, the organizational structure remained unclear. Recently hired AOD Management personnel expressed, weeks into their employment, that they were unsure as to which Employees were reporting to them. Despite several CCCA requests, the Clerk has yet to provide a current and accurate Organizational Chart. The two Organizational Charts provided (in October and November 2020, respectively) were explicitly labeled as in “draft” form, contain several elements that do not align with what the CCCA has observed through its monitoring, and were confirmed by the Deputy Clerk of HR to not be accurate. The CCCA reiterates her request for the Clerk’s Office to provide a current and accurate Organizational Chart. If the Clerk’s Office is unable to assign the resources to such a request, the CCCA offers her assistance in reaching out directly to Managers and line staff to create such a chart herself.

The accounting of the extensive issues that occurred during the AOD hiring process is not meant to convey that the process was conducted incompetently. The Clerk’s Office and ICL undertook an immense amount of work in a short period of time in order to finalize the hiring of 62 new employees under the AOD Hiring Plan. The rushed nature of what the Clerk attempted to accomplish, however, led to numerous foreseeable errors. Without the CCCA’s monitoring efforts, these errors very likely would have not been recognized or rectified, resulting in the diminished integrity of each hiring sequence.

E. 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.” On account of the Clerk’s issues with Exempt hiring, the CCCA proposed in November a more robust Exempt Hiring Process. Since then, the OIIG recommended the Clerk modify its process to require the Deputy Clerk of HR or Designee certify in writing that a selected Candidates meets the Minimum Qualifications for the Exempt Position. *See above* at 8. The CCCA recommends the Clerk accept and implement the CCCA’s and OIIG’s proposed edits to its Exempt Hiring Process in order to prevent continued non-compliance.

III. 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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