

**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.)	
)	

**REPLY OF THE COMPLIANCE ADMINISTRATOR FOR THE CLERK OF
COOK COUNTY TO THE CLERK’S RESPONSE TO THE COMPLIANCE
ADMINISTRATOR’S SECOND REPORT TO THE COURT**

On February 16, 2021, Cardelle B. Spangler, County Clerk Compliance Administrator (“CCCA”)¹, by and through her attorney, Matthew D. Pryor, submitted her Second Report to the Court (Dkt. 7298) wherein she updated the Court on the Clerk’s progress toward complying with the Appointment Order. On February 23, 2021, the Clerk filed a Response to the CCCA’s Second Report (Dkt. 7307). The CCCA files this Reply to correct some of the factual errors and false statements in the Clerk’s Response.

1. The Clerk states that “[s]ignificantly, the Second Report demonstrates that the Clerk has not engaged in UPD, has had no claims of UPD and, therefore, has not violated the Consent Decrees.” Response at 3. While the Clerk is correct that the CCCA did not *discuss* any pending UPD investigations in her Second Report, any implication that there are no pending UPD complaints concerning the Clerk’s Office is inaccurate. The

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

Office of the Independent Inspector General (“OIIG”) noted during the December 21, 2020 status hearing that it had two pending inquiries regarding allegations of UPD at the Clerk’s Office. *See* Dec. 21, 2020 Hr’g Tr. (Dkt. 7278) at 43:3 – 43:9. In order to avoid the Clerk wrongly interpreting the CCCA’s silence on the number of pending UPD investigations as confirmation of a lack thereof, in future reports, where appropriate, the CCCA will include such information. The CCCA, however, will continue to reserve analysis and recommendations until after the OIIG issues Summary Reports on the same.

2. Regarding the CCCA’s discussion of Exempt Hiring sequences, the Clerk states that, “[t]he CCCA describes 10 of these hires as ‘mostly compliant,’ though she does not explain how an Exempt hire can be ‘mostly’ compliant where there was no violation of the Manual or Consent Decrees.” Response at 3. Contrary to the Clerk’s assertion, the CCCA clearly stated that there was a violation of the Manual. *See* Second Report at 6. The Manual requires that the Deputy Clerk of HR or designee confirm that an Exempt hire meets the Minimum Qualifications for the position. The Deputy Clerk of HR confirmed that she did not do this and she did not designate another employee to do this. As discussed in the Second Report, when this step is not completed it can result in the hiring of an individual who does not in fact meet the Minimum Qualifications for the position. *Id.* at 6-8. The CCCA viewed the process for the Exempt hires at issue as “mostly” compliant with the Manual because it complied with two of the three steps required and there were no other issues that raised concerns. The CCCA is puzzled as to why the Clerk would take issue with the “mostly” compliant characterization, but if she prefers that the CCCA take a binary view of compliance – using only “fully compliant” or “non-compliant” designations – the CCCA can accommodate that request going forward.

3. Relatedly, the Clerk objects to “the CCCA’s statement that ‘for all Exempt hiring, the Deputy Clerk of HR (or Designee) did not fulfill the Manual-required duty to confirm that the selected Exempt hire meets the Minimum Qualifications on the Exempt job description.’” Response at 4. This clipped quotation is problematic for two reasons: (1) it removes vital words establishing context and (2) it misquotes the CCCA’s Second Report. The CCCA wrote she “*learned from the Deputy Clerk of HR that for all Exempt hiring since the Initial Report, the Deputy Clerk of HR (or Designee) did not fulfill the Manual-required duty...*” Second Report at 6 (emphasis added). This belies the Clerk’s contention that “[t]he CCCA identifies no instances where the Deputy Clerk of HR or Designee did not fulfill the Manual-required duty...” – as she indicated all Exempt hires since the Initial Report ran afoul of this step in the Manual. Response at 4. The CCCA relied on the Deputy Clerk of HR’s own assessment to make the determination. Had the Deputy Clerk of HR fulfilled this duty or designated someone else to do so, surely the Clerk would have indicated as much in her Response. Unfortunately, this is not the only time where the Clerk chose to misquote the CCCA in her Response. *See below* at ¶ 10.

4. The Clerk argues in her Response that the CCCA took different approaches when raising concerns with whether two Exempt hires (the Deputy Chief of Staff and Labor Counsel and the Assistant Deputy Clerk of Elections (“ACDE”)) met the Minimum Qualifications for their positions. Response at 4-5. The Clerk describes the CCCA’s approach regarding the Deputy Chief of Staff and Labor Counsel as utilizing “a constructive conversation with the Clerk,” which was “in stark contrast” to how the CCCA handled concerns with the ACDE hire. *Id.*

The CCCA did not approach the two circumstances differently. As detailed in the

Second Report, in both instances, the CCCA first reached out to the Clerk to express her concerns with the Exempt hires. For the ACDE hire, the CCCA engaged in a phone call and multiple emails with the Clerk's Office on the matter, yet the Clerk's Office took weeks to respond and, when it did, provided minimal and unsatisfactory information. The CCCA then referred the matter to the OIIG and informed the Clerk of the same. Second Report at 6-7. For the Deputy Chief of Staff and Labor Counsel hire, the CCCA again raised her concerns directly with the Clerk's Office. Here, however, the Clerk's then-Chief Legal Counsel engaged with the CCCA directly and substantively on the issue, yielding a solution that satisfactorily addressed the CCCA's concerns. The CCCA will continue to raise with the Clerk's Office any concerns with Exempt hiring. The Clerk's level of responsiveness will instruct what happens next.

5. Regarding the ACDE hire, the Clerk writes that, “[a]s an Exempt position, it is outside the scope of the 1991 Consent Decree and, therefore, regardless of whether the individual met the Minimum Qualifications defined in the job description, this has no impact on whether the CCCA’s continued monitoring of the Clerk is necessary.” Response at 10. Additionally, the Clerk states that, “[a]s an initial matter, any concerns regarding hires to approved Exempt positions should not be included in this Court’s analysis of whether the Clerk’s office is complying with the Consent Decrees, because Exempt positions are, by definition, exempt from the Decrees.” *Id* at 3.

The Clerk’s contention concerning the purported lack of relevance of hiring minimally qualified Exempt hires is incorrect. Exempt hires must meet the Minimum Qualifications of their positions. *See* Manual § 4.6(a)(2). To permit an Exempt hire to move forward when the hire does not meet the Minimum Qualifications would be a violation of

the Manual. As the CCCA is charged with monitoring the Clerk's adherence to its Manual, this analysis clearly is relevant to any discussion concerning continued monitoring.

6. In her Response, the Clerk explains her hiring of a Director of Training and Professional Development as purportedly compliant with the prohibition in the Appointment Order (and Consent Judgment) against the Clerk hiring employees into Exempt positions that are not on the Court-approved Exempt List. The Clerk states that, “[t]he Director of Training is the equivalent of the position titled Executive Assistant to the Director of Elections (the “EADA”), which is on the 1991 Exempt List.” Response at 11. This explanation defies logic.

First, there is no such position as the “Director of Elections” in the Clerk's Office nor is there an Executive Assistant (or Assistant) to the Director of Elections. Rather, the Clerk sought – and received – approval to add the Deputy Clerk of Elections and Executive Assistant to the Deputy Clerk of Elections to the Exempt List. Second Report at 4. Second, the Executive Assistant position was filled before Ms. Spangler's appointment and the job description for that position appropriately details clerical and administrative duties supporting the Deputy Clerk of Elections. In contrast, the Clerk hired the Director of Training in August 2020 and the draft job description states that the position reports directly to the Deputy Clerk of HR and is responsible for planning, organizing and leading training for the entire Clerk's Office. While the job description includes responsibilities for developing training for the Elections Department, it does not contemplate that the position serves as an assistant or clerical support for the Deputy Clerk of Elections. Accordingly, there is no support for the proposition that these positions are the same or that the Clerk's unposted hiring of the Director of Training complied with the Appointment Order, which

it did not do.

7. Relating to updates to the Manual, the Clerk describes in her Response that the lack of progress was mitigated by various specific personnel-related issues. Response at 13. The Clerk argues the CCCA was aware of the issues “and to not acknowledge them in the Second Report is not providing this Court with a complete picture.” *Id.*

In reality, the CCCA did acknowledge these issues in her Second Report. In her Introduction, the CCCA summarized the Clerk’s progress, highlighted that the overall working relationship with the Clerk was going well, but noted that “[u]nfortunately, in part due to significant complicating factors and personnel issues, progress was slow during this five-month period...” Second Report at 2. The CCCA addressed the general impact of these issues but did not deem it appropriate to report in detail the specific titles and personal circumstances that may have hindered their ability to perform their duties. To suggest the CCCA did not acknowledge the personnel issues is simply false.

8. The Clerk wrote that “[a]fter more than 1,500 hours of monitoring in only three months, the CCCA has not found any instances of UPD or violations of the Consent Decrees, and only ‘deviations’ from the Manual. Against the backdrop of these figures, it is an unfounded judgment that the Clerk, ‘overall’ is not complying with its Manual. The report would have been much longer were that the case.” Response at 13.

The CCCA agrees that the Second Report would have been much longer had she included all the ways the Clerk has not complied with its Manual. The CCCA exercised discretion in choosing which examples to cite, given that from nearly the beginning of the CCCA’s oversight, the Clerk’s Office has described its Manual as insufficient and requiring significant overhaul. For example, at a July 2020 status hearing, Clerk’s outside

Counsel informed the Court:

And then, your Honor, if I may just on the second point on the employment manual, so this is where it kind of – we have difficulties because it has been drafted in January. We have a new HR director who was hired in October who didn't have a role in it. She's an attorney, formerly had been at the circuit clerk's office. It was finalized in March, and then we went right into the election and then everything – everybody's been at home. So there hasn't been training on it. There is a training manual that was prepared which we submitted to the [CCCA], but there haven't been like any individual trainings. And actually, now that it's in effect, they see things that they think, you know, they want to change both because they have a new HR director who has more experience who thinks things should be handled differently.

July 30, 2020 Hr'g Tr. (Dkt. 7019) at 20:23-21:12. At the following status, in detailing to the court her difficulty in knowing what to provide the CCCA notice of, the Deputy Clerk of HR further explained the significant problems with the existing Manual:

As I have shared with Mr. Vaught and as I believe he has shared with the compliance administrator and her counsel, the policy manual came into existence prior to me coming into this office. As I have had an opportunity to actually sit with the manual, there are gaping holes in the manual. The manual needs to be revised, expanded, modified, and so it is just very difficult for me to understand exactly what is covered and then to also give those marching orders to the HR staff, and all of that is coupled with the fact that we have the election in November.

See Aug. 31, 2020 Hr'g Tr. (Dkt. 7056) at 23:5-12. Largely due to the acknowledgements that the Manual required significant overhaul and other acknowledgements from the Deputy Clerk of HR that significant portions of the Manual had not been implemented, the CCCA opted to minimize her focus in the Second Report on restating the obvious – that the Clerk's Office is, for the most part, not following its existing Manual. Nevertheless, the CCCA takes the Clerk's critique under advisement and will consider more exhaustive enumeration of any Clerk non-compliance with its Manual in future reports.

9. Regarding disciplinary documentation, the Clerk objects to the CCCA's report that the Clerk is not utilizing the Incident Report and Docketing Sheet required in its Discipline policy, asserting that, "[t]he CCCA has not accurately identified any specific instances where the Clerk failed to use the proper forms, with the exception of a single matter involving the Director of HR, who has since been terminated." Response at 16.

This statement is inaccurate as the CCCA has identified four such instances of incorrect documentation in disciplinary investigatory proceedings outside of the one involving the former Director of HR. In the paragraph following the discussion of the Director of HR's non-compliance with the Manual, the CCCA detailed two additional proceedings where the Disciplinary Action Form was used in lieu of an Incident Report contrary to the Manual's requirements. Second Report at 15-16. One DAF contained content deficiencies and the CCCA is not aware if the other was signed and issued as required. The other two instances are discussed immediately below.

10. The Clerk also asserts that "[t]he CCCA incorrectly states that the two investigations conducted by the Chief Ethics Officer 'suffered from the same documentation non-compliance as all others monitored by the CCCA.'" Response at 16. By placing a period where none exists, the Clerk again omits words that provide critical context. The relevant quote follows the CCCA explaining that the Chief Ethics Officer conducted himself in accordance with the Manual regarding two disciplinary sequences, detailing the exception that "[t]hese 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.*" Second Report at 16 (emphasis added). The CCCA went on to report in the footnote that the Chief Ethics Officer

provided a copy of the Incident Docket Sheet for both matters five days before her Report was filed. *Id.* The CCCA is concerned with these multiple instances of the Clerk misquoting and/or mischaracterizing the CCCA's reports and expects the Clerk will ensure any future quotes attributed to the CCCA are accurate and in context in future filings.

11. The Clerk described the CCCA's proposed edits to the policies concerning the solicitation of political donations as "unfounded" and "redundant." Response at 17. The Clerk's rationale is that in the Manual, the Clerk adopts the Cook County Ethics Ordinance and instructs employees to "strictly adhere to the rules and laws governing ethical conduct." The Clerk reasons that because the Ethics Ordinance includes "a provision requiring County employees, including Clerk employees, to report any ethical rule or policy violation to the Cook County Board of Ethics and Cook County Independent Inspector General" the CCCA's proposed edits to the policy are unnecessary.

The Court has previously discussed the need for clarity in the Clerk's policy concerning the solicitation of political donations:

I went through and I read the citation. The Manual, the current one, did seem confusing on that point. It did say 'nothing herein prevents' as opposed to requiring reporting to the board of ethics and the OIG. And I understand that the clerk's office position is that, well, the entire ethics ordinance is attached to the manual and it incorporates the manual and the requirement is in the ethics ordinance. The concern there, of course, just from a very practical standpoint...for employees to read through a 20-page, single-spaced ordinance to tease out requirements like that, it's all written in legalese, is not the way to set up a structure where you minimize ethics, and at least for my purposes, more importantly First Amendment concerns.

See Oct. 15, 2020 Hr'g. Tr. (Dkt. 7159) at 42:21-43:9. Consistent with the Court's statements, clarity on this policy is needed for Employees, and therefore the CCCA's recommendations aimed at achieving that clarity are neither redundant nor unfounded.

12. Relating to the review of the AOD hiring process, the Clerk writes that “[t]he Appointment Order did not mandate that an AOD Hiring Plan be written, or provide a role for the CCCA in writing an AOD hiring plan.” Response at 18. The Clerk is correct that an AOD Hiring Plan was not required by the Appointment Order; however, the CCCA is directed in the Appointment Order to monitor the Clerk’s existing policies. As Plaintiffs’ Counsel noted during a status hearing without objection from the Clerk’s Office, “...the monitoring is not limited to the exact words in the manual. If the office throws out the manual, that doesn’t relieve them of their obligation to provide notice of employment actions to the compliance administrator so that she can monitor that.” *See* Aug. 31, 2020 Hr’g Tr. (Dkt. 7056) at 25:9 – 27:25. Here, the Clerk, in no small part because of the self-described “gaping holes” in the existing Manual, decided on its own to create a stand-alone policy to govern the AOD hiring process. In accordance with the CCCA’s duties in the Appointment Order, she provided feedback on the draft policy as it was being formulated and then monitored its implementation.

13. As part of its response to the CCCA’s assessment of the Clerk’s compliance with the AOD Hiring Plan, the Clerk attached to its Response a letter from James Hill of ICL “in light of the CCCA’s criticisms of ICL in the Second Report...” Response at 19. Hill’s letter contains multiple inaccurate characterizations, two of which require correction.

a. Mr. Hill began his letter by referring to the CCCA’s obligations under the Appointment Order, opining that the CCCA’s “monitoring” was “much more intrusive...than what a lay person would expect.” To demonstrate the “intrusive” monitoring of the CCCA, Hill asserted the CCCA was “mandating that every email communication involving (the Clerk’s office) must include a ‘CC’ to the CCCA,” as well

as “mandating that every telephone conversation during the hiring process involving (the Clerk’s Office) must include staff from the CCCA...” Response Exhibit 2 at 3.

There are two significant issues with Mr. Hill’s statements. First, it is not within the scope of ICL’s role to assess the propriety of the method the CCCA utilizes to fulfill her obligations to monitor, or any other obligation, under the Appointment Order. If the Clerk takes issue with the CCCA’s monitoring, that comment should come directly from the Clerk. Second, Mr. Hill fails to acknowledge both the existence of the AOD Hiring Plan – which the Clerk’s Office retained ICL, in part, to help implement – and that the Plan included specific notice and monitoring requirements regarding the CCCA:

The CCCA, while acting, has the right to monitor any and all aspects of this AOD Hiring Plan. All Clerk’s Office employees, the Recruiting Consultant and any other third-party entity procured by the Clerk’s Office who engages in any activity covered in this AOD Hiring Plan, will cooperate fully and at all times with the CCCA by providing the CCCA with the opportunity to monitor all steps of the AOD Hiring Plan and providing documents and information relating positions posted under the AOD Hiring Plan.

AOD Hiring Plan § III.K. While the CCCA retained the right to monitor any and all aspects of the AOD Hiring process, discretion was always present. For example, on October 2, 2020, in an early email exchange between the CCCA and ICL, Hill asked whether the CCCA needed to monitor ICL’s conversations with the Clerk’s IT department. The CCCA responded “no, we do not, but we appreciate you asking.” While the CCCA has no doubt that ICL would have interacted with the Clerk’s Office differently had the Clerk not been under active Court oversight, the reality is that the Clerk is subject to active monitoring of its policies (which includes the AOD Hiring Plan).

b. Mr. Hill also asserts that the GIS Analyst hiring sequence, initially posted on December 5, 2020, was “thereafter ordered by the CCCA to be edited, letters then had

to be sent out to applicants and the job had to be reposted” on December 7, 2020. Hill stated that the CCCA “mandated” that the position be reposted over the difference between “full-time experience” and “full-time work experience.” Mr. Hill is incorrect for two reasons.

First, the CCCA has repeatedly informed the Clerk (and ICL) that she cannot and will not mandate they take any action. That said, when compliance concerns are present, per the Clerk’s request, the CCCA will alert the Clerk of the issue and make recommendations to remedy the same. It is entirely up to the Clerk whether to heed those recommendations, and the Clerk has declined to do so on several occasions. Accordingly, it is the CCCA’s duty to report not only on the issues that arose, but the Clerk’s decisions in response.

Second, Mr. Hill’s characterization of the CCCA’s recommended clarification within the Minimum Qualifications as “minor” is not accurate. Multiple Minimum Qualifications on the Posting and the associated Disqualification Questions asked if the Applicant simply had either “experience” or “full-time experience.” The CCCA recommended that, consistent with the GIS Analyst job description and all other AOD postings, the Clerk notify Applicants on the job posting of the requirement to possess “full-time paid work experience.” While this change involved only two words, as Hill described in bold, underlined text, those two words have critical distinction relating to the type of experience that would qualify an Applicant for the Position. As Applicants had already submitted applications to the incorrect posting, the CCCA recommended to HR that the posting be discontinued, revised and reposted – and that Applicants to the first posting be informed of the reposting so they did not believe erroneously that their applications for the first posting would be considered for the second posting. The Deputy Clerk of HR concurred with the recommendations. To allege the CCCA somehow mandated this action take place

demonstrates a lack of understanding of the CCCA's role and ignores the Office's agreement with the CCCA's recommendations.

The CCCA files this Reply for the sole purpose of correcting the above factual errors and does not respond at this time to other contentions in the Clerk's Response with which she might disagree.

Respectfully Submitted,

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