

**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.)	
)	

**FIFTH 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 Fifth Report as follows:

I. Introduction

On September 15, 2020, 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. On February 16, 2021, she filed her Second Report to the Court (Dkt. 7298) wherein she described progress on updating the Clerk’s Exempt List, and the Clerk’s Office’s limited progress on revising its Policy Manual then in effect (the “2020 Manual”) and lack of consistent compliance with the same. She filed her Third Report (Dkt. 7526) on August 2, 2021, covering the progress on updating the Clerk’s Exempt List, and the limited progress on revising the Manual. Ms. Spangler filed her Fourth Report (Dkt. 7709) on December 15, 2021, wherein she detailed the Court’s

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

ruling on the disputed Exempt Positions, discussed the finalization of the Manual updates with training concluded in the days before the Report was filed, and that performance issues within HR required intervention and oversight from the Deputy Chief of Staff and Labor Counsel (“Deputy COS”). Finally, the CCCA recently filed two Interim Reports. The First Interim Report (Dkt. 7941) was filed on May 10, 2022, and addressed important omissions, mischaracterizations and erroneous findings and recommendations in the Clerk’s January 2022 investigatory report regarding the Director of Training hiring process. The Second Interim Report (Dkt. 7945) was filed on May 12, 2022 and included findings that the Clerk’s Director of HR falsified her resumes for both the Deputy Clerk of HR and Director of HR positions and made false statements to the CCCA in the course of her investigation. Per the Appointment Order², the CCCA files this Fifth Report to provide the Court with her factual findings concerning the Clerk’s efforts to comply with the Consent Decrees and Appointment Order and advise on whether the CCCA’s period of appointment should be extended. As explained below, the CCCA believes her appointment should be extended.

II. Clerk’s Efforts to Comply with Appointment Order and Consent Decrees

A. Updating Exempt List and Complying with Exempt Hiring Process

In 1972, the Cook County Clerk (as well as several other governmental agencies in Illinois) entered into a consent decree (the “1972 Consent Decree”) “barring them from ‘conditioning, basing or knowingly prejudicing or affecting any term or aspect of

² In the Appointment Order, the CCCA and parties were directed by June 30, 2021, “to advise the Court as to their views concerning whether the period of appointment should be extended.” Dkt. 6928 at 44. Per agreement of the parties and Court, the CCCA was assigned the role of filing a Report advising the Court on her views of the need for additional monitoring (or not) followed by filings from both parties. *See* Dkt. 7645. Also, by agreement of the parties and consent of the Court, the Court extended the CCCA’s deadline for such a filing several times to allow the Clerk’s Office additional time to demonstrate compliance with the Consent Decree and Appointment Order, the last of which required the CCCA to file this Report by May 16, 2022. Dkt. 7913.

government employment, with respect to one who is at the time already a governmental employee, upon or because of any political reason or factor.” See Appointment Order (Dkt. 6829) (quoting the 1972 Consent Decree at 3). The County Clerk entered into a Consent Judgment in 1991 (the “Consent Judgment”), prohibiting the Clerk from affecting governmental employment with political reasons or factors for most Clerk Positions unless they are included on a list of 22 Positions attached to the Consent Judgment (the “1991 List”). See Initial Report at 14-15. The Consent Judgment describes the process the Clerk must follow to amend the 1991 List – a process that requires Court approval. In the Appointment Order, the Court found, among other things, the Clerk violated the Consent Judgment and her own policies by (a) revising the 1991 List without court approval and (b) hiring individuals into Positions not on the 1991 List without publicly posting the same. See Initial Report at 2-3; Appointment Order at 24. As a result of these findings, the Court assigned the CCCA the duty to “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.” Appointment Order at 41-42. The Court also assigned the CCCA the duty to monitor the Clerk’s implementation of and adherence to its Policy Manual – which included a hiring process for Exempt Positions. *Id.* at 41. What follows are updates on the Clerk’s progress on updating the Exempt List and adherence to the Exempt Hiring Process when filling approved Exempt Positions.

1. Updating the Exempt List

For much of the first six months after the CCCA’s April 2020 appointment, progress on revising the Exempt List was slow. The Clerk was not responsive to the CCCA’s request (first made on May 4, 2020) for draft Exempt Job Descriptions and related

documents. After multiple follow-up requests, on July 17, 2020, the Clerk provided the CCCA with a proposed Exempt List of 21 Positions and Job Descriptions for 7 of those 21 Positions. Initial Report (Dkt. 7085) at 15. The Clerk subsequently provided an amended Exempt List that increased the number of proposed Exempt Positions to 38 but did not provide a complete set of proposed Job Descriptions until mid-September 2020. *Id.* The Clerk subsequently proposed three additional Exempt positions, raising the total of proposed Positions to 41.³

Over the subsequent months, the parties and CCCA spent significant time reviewing, revising, and conferring on the Job Descriptions for the proposed Exempt Positions. By April 2021, the parties and CCCA had agreed on 30 Exempt Positions while 10 proposed Exempt Positions remained in dispute.

Discussions on these Job Descriptions were marked by significant delays from the Clerk in responding to feedback as well as unfulfilled commitments to provide requested documentation. For example, based on the Clerk's assertion that these 10 disputed Positions had significant policymaking duties, on January 8, 2021, Plaintiffs' Counsel requested examples of what policies current or former office holders of the proposed Exempt Positions created or examples of where they had meaningful input into developing policies. Despite the Court's characterizing the request as "sensible"⁴ and the Clerk at one point agreeing to provide the information, the Clerk ultimately did not provide the

³ During this time, the Court approved two joint motions to amend the Exempt List to add two Exempt Positions: Director of Communications (Dkt. 7069) and Assistant Deputy Clerk of Elections (Dkt. 7119).

⁴ Per the Court, "[Plaintiffs' Counsel] and the compliance administrator would be shirking your duties if you did not go beyond the job descriptions as to what these individuals actually do. So that's perfectly sensible." *See* Feb. 25, 2021 Hr'g Tr. (Dkt. 7323) at 34:25 – 35:4.

documentation and instead, in April 2021, deemed the request unnecessary. *See* Third Report at 3-4.

Ultimately, the parties reached impasse on the remaining 10 Positions and, on April 12, 2021, the Clerk filed a Motion to Amend the Exempt List to add the disputed Positions. (Dkt. 7375-1). The Court later granted Exempt status for two Positions, denied Exempt status for six Positions (four without prejudice), and granted provisionally two Positions, requiring the Clerk to provide the Plaintiffs and CCCA updates every 45 days with evidence that these roles are being fulfilled in a way that warrants exemption. Fourth Report at 4-5. After the ruling, the parties filed, and the Court approved, an Agreed Exempt List adding these four Exempt Positions. Dkt. 7731 (entered on December 30, 2021).

In addition to updating the Exempt List with the Court, the Clerk is also required under the Policy Manual (the “Amended Manual”) to: (1) post and maintain the current Exempt List on the Clerk’s website and (2) post all Job Descriptions for Exempt Positions on the Clerk’s website. Amended Manual at §§ IV.E.1-3.⁵ Since the Court’s Order approving the Exempt List, the Clerk posted on its website the Exempt List⁶; however, the Clerk has neither finalized the Exempt Job Descriptions nor posted them on its website despite multiple reminders from the CCCA and promises to the Court that it would do so. *See, e.g.*, Fourth Report at 4-5; Third Report at 4; Dec. 22, 2021 Hr’g Tr. at 7:1 – 8:12 (Dkt. 7732). The CCCA believes the Clerk must finalize these steps to satisfy the transparency surrounding Exempt Positions in the Appointment Order and Amended Manual.

⁵ The Clerk’s Amended Manual may be viewed at: <https://www.cookcountyclerkil.gov/careers>

⁶ The Clerk is required in the Amended Manual to post updates to the Exempt List within five business days of approval by the Court. Amended Manual at § IV.E.1. The Court’s approval of the Exempt List on Dec. 30, 2021 meant the Clerk was required to post the Exempt List on her website by Jan. 7, 2022. The Clerk did not post the Exempt List until March 10, 2022 - 42 business days after she was required to do so.

2. Exempt Hiring during the CCCA's tenure

The Clerk's history of following the hiring restrictions related to Exempt Positions is checkered and was one of the primary reasons the Court appointed the CCCA in 2020. *See* Appointment Order at 36-37 (noting that "the County Clerk ignored that changes to the exempt list require Court approval; the County Clerk ignored that hiring employees without posting of the job opening is a violation of the 1991 Consent Judgment..."). Despite the insertion of a Court-appointed Compliance Administrator monitoring her Exempt hiring, the Clerk continued her inconsistent (and occasionally troublesome) approach to Shakman Exempt hiring.

The hiring process for Exempt Positions is straightforward: if the Position is on the Court-approved Exempt List and has an updated and accurate Job Description, the Clerk can select whoever she wants for the Position if the Candidate meets the Minimum Qualifications ("MQs") for the Position (as verified by the Deputy Clerk of HR (or Designee)). *See* Third Report at 11. During the CCCA's appointment, the Clerk must also give the CCCA notice of the selected hire's application and credentials for review and comment at least two business days *in advance* of extending an offer. Amended Manual, § IV.E.4. As this straightforward process has been consistent across the 2020 Manual and the Amended Manual, the following covers the entirety of the Clerk's compliance in relation to Exempt hiring during the CCCA's tenure. Since the CCCA's appointment, the Clerk has hired 20 Exempt Employees, and attempted to utilize the Exempt hiring process on three other occasions (one withdrawn hire; two hiring attempts, including one completed hire, for positions not on the Exempt List). Most of the Clerk's Exempt hiring processes – including those that resulted in hires - involved some level of non-compliance, with

multiple instances of significant and troubling non-compliance.

a. Compliant Exempt Hiring Sequences

The Clerk's hiring for six of the 20 Exempt Positions filled since the CCCA's appointment all involved Candidates that displayed on their resume that they met the MQs for the Exempt Position they were hired into, with the Deputy Clerk of HR properly verifying the same without the need of the CCCA pointing out deficiencies in the materials provided in relation to the MQs. The Clerk also provided the required advance notice to the CCCA and Plaintiffs' Counsel for these hires. For these hires, the Clerk's Office complied fully with its Exempt hiring policy.⁷

b. Non-compliant Exempt Hiring Sequences

Despite direct and collaborative efforts from the CCCA and Plaintiffs' Counsel, the Clerk ran afoul of the Exempt Hiring policy in connection with the Director of Communications position, twice with respect to the Non-Exempt Director of Training position (which the Clerk attempted to fill using the Exempt Hiring Policy), and the Special Assistant to the Government Affairs position. Summaries of the issues with these hiring sequences – as well as a brief recitation of other Exempt hires that required significant engagement by the CCCA regarding the selected Candidates' qualifications – are below.

i. Director of Communications (Exempt)

The CCCA described in her Initial Report how the Clerk notified the CCCA on September 3, 2020 of her intent to hire a new Director of Communications, with a start

⁷ The CCCA noted in the Second Report that the then-Deputy Clerk of HR had acknowledged that for all Exempt Hiring to that point (encompassing 11 positions), she had not conducted the Manual-required confirmation that the hires met the MQs of their positions. The CCCA independently concluded that the resumes of all but one of those 11 hires reflected experience that satisfied the MQs for their positions. The other discrepancy was rectified via minor edits to the Job Description. Second Report (Dkt. 7298) at 5-6.

date of September 7, 2020. Initial Report at 15. But for the CCCA and Plaintiffs' Counsel objecting to the hire because the Position was not on the court approved Exempt List, the Clerk likely would have violated the Appointment Order by permitting the individual to begin working on September 7. *Id.* The CCCA and Plaintiffs concluded that the Position qualified as Exempt under *Branti*, and the parties worked together to file an agreed motion to amend the Exempt List. *Id.* The CCCA remarked that she was "hopeful that this specific situation will not recur." *Id.* In doing so, the CCCA was unaware that the Clerk already had violated the Appointment Order in a similar manner in August 2020.

ii. Director of Training (Non-Exempt)

In August 2020, the Clerk hired a Director of Training using the Exempt Hiring Process without the Position being included on the Court-approved Exempt List, and without any notice to the CCCA of the hire. *See* Second Report at 9. The CCCA first learned of the nature of the hire in January 2021 at which time she again 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. *Id.* The lack of notice for the hire was troubling enough, but the fact that the Clerk did not notify the CCCA of the hire after the September 2020 discussions surrounding the Director of Communications was deeply troubling.

More problems surrounding the hiring of a Director of Training ensued. In June 2021, the Clerk again attempted to fill the Position via the Exempt Hiring process, this time while the Clerk's motion to approve the Position as Exempt was pending with the Court. *See* Third Report at 17 (noting the Clerk rescinded the offer only after CCCA intervention). While the Clerk described this attempted hire of a Non-Exempt position using the Exempt

Hiring policy as a “miscommunication”, *see id.*, a subsequent joint investigation by the Deputy COS and CCCA showed there was much more at play. *See* Dkt. 7941.

After the Court denied Exempt status for the Director of Training, the Clerk initiated a public posting for the Position utilizing the Actively Recruited Process. *See* Fourth Report at 17. During that hiring sequence, the Deputy Clerk of HR disclosed a potential Conflict of Interest (“COI”) to the Chief Ethics Officer. During the COI inquiry, the Chief Ethics Officer discovered that the potential COI involved the very same individual the Clerk attempted to hire as Exempt in June 2021. Concerns by the CCCA with whether the Deputy Clerk of HR had been truthful and comprehensive in her disclosure prompted a joint investigation conducted by the CCCA and Deputy COS. *Id.* At 18. The bulk of the Deputy COS’ January 19, 2022 report (and the CCCA’s feedback on the same) is discussed in the First Interim Report (Dkt. 7941); however, we discuss here the portions of that investigative report that relate to the June 2021 attempt by the Clerk to use the Exempt Hiring process to fill the Non-Exempt Director of Training position.

In his report to the Chief of Staff (“COS”), the Deputy COS detailed that in April 2021, the Clerk, COS, former Deputy Clerk of HR and current Director of HR interviewed a Candidate for the Director of Training position prior to submitting the Candidate to the CCCA as a proposed hire. As it occurred outside of any codified process to fill a Non-Exempt Position, the Deputy COS found this interview, as well as the attempted hire of the Candidate through the Exempt process, constituted violations by “the Office” of Section 4.5 of the 2020 Manual (governing the Non-Exempt Hiring Process) *See* Deputy COS Report at 19-20. The COS has not responded to the Deputy COS’ report, as the Manual requires him to do so within 45 days of issuance and has not responded to the CCCA’s

February 25 email following up on whether the COS intended to do so. As described below, the Clerk's efforts to use the Exempt Hiring process for a second time to fill a position that was not on the Court-approved Exempt List shows the Clerk's disregard for the restrictions surrounding Exempt hiring. Furthermore, she made both attempts while under the CCCA's oversight and the unsuccessful attempt was thwarted only after CCCA intervention. These are not the actions of an office that has implemented a durable remedy concerning compliant Exempt hiring, as required by the Appointment Order.

iii. Special Assistant to the Clerk for Government Affairs (Exempt)

Significant Exempt hiring non-compliance also occurred when the Clerk hired a Special Assistant to the Clerk for Government Affairs (the "Special Assistant") on October 28, 2021—the same day the Clerk forwarded the individual's credentials to the CCCA as a proposed hire. *See* Fourth Report at 12-14. The Clerk did not disclose to the CCCA that the Candidate had already begun employment - which violated the Manual's requirement that the Clerk provide the credentials two days before offering the position to the Candidate. *Id.* Even after the CCCA objected to the Clerk that the Candidate's educational credentials did not satisfy the MQs on the Job Description, the Clerk still did not alert the CCCA that the individual had already begun employment. *Id.* Only after reading a draft of the CCCA's Fourth Report in December of 2021 did the Clerk acknowledge the hire and state that the Clerk's Office was under the "assumption. . . that everyone understood that [the Candidate] would serve in this position until we could rectify the issues relating to the minimum qualifications to the job description." *Id.* at 13. In reality, there was no such shared assumption and the Clerk's Office knew that any changes to the MQs on the Job Description must occur before, not after, attempting to fill the Exempt Position. *See id.* at

13-14. As such, this hire violated Sections IV.E.3-4.a of the Amended Manual by (a) failing to provide the CCCA and Plaintiffs' Counsel with the opportunity to review and comment on proposed changes to an Exempt Job Description prior to implementing; and (b) failing to provide the selected Candidate's resume and qualifications to the CCCA for review and comment at least two business days before extending an offer to the Candidate. *Id.* The Clerk's reasoning for its actions were not persuasive. *See id.* at 12-14.

iv. Abandoned Attempt to hire Director of HR as Deputy Clerk of HR

The Clerk's initial attempt to hire an Exempt Deputy Clerk of HR in 2021 was also problematic. After the CCCA raised serious concerns that the selected Candidate, the Director of HR, did not possess the credentials listed on her resume, including those necessary to meet the MQs, the Clerk withdrew the proposed hire. Fourth Report at 15. The CCCA's concerns resulted in an investigation that is the subject of her Second Interim Report (*see* Dkt. 7945). We note here only that, absent CCCA intervention, the Clerk likely would have hired the Director of HR as the Exempt Deputy Clerk of HR.

v. Additional Exempt Hiring Processes with Significant Qualification Issues

Additional Exempt hiring sequences were also problematic. For example, selected Candidates for three Exempt Positions either did not meet the MQs on the Exempt Job Description (like the Special Assistant above) or their initial submissions did not clearly demonstrate they satisfied the MQs, thus requiring significant conferral with the CCCA to address the deficiencies. These issues encompassed the following hires: (1) the Deputy COS (*see* Second Report at 8); (2) the Director of Real Estate and Taxes (Fourth Report at 16); and (3) the Director of Elections Operations Center (Fourth Report at 16). Regarding the Director of Real Estate and Taxes, the Court granted the Clerk provisional approval of

the Position's Exempt status, provided that the Clerk submit updates to the Plaintiffs and CCCA every 45 days, detailing "relevant evidence that the role is being fulfilled in a way that warrants the exemption." *See* Dkt. 7541 at 11-12. The Clerk did not submit its first report until the 137th day of employment for the hire (March 11, 2022), encompassing the entire period of employment to that point. The Clerk also did not submit timely the next report, which was due on April 25, 2022, and remains outstanding. The March 11, 2022 report consisted of the employee's personal attestation and description of duties she conducts. On March 31, 2022, after conferral with the CCCA, Plaintiffs' Counsel requested from the Clerk additional information concerning the employee's policy development duties and details of her work with the Communications Division to assess whether she was performing Exempt-qualifying duties. The Clerk did not respond to the request. Without a response to the requested information, the CCCA and Plaintiffs' Counsel will be unable to conclude that the Employee is performing Exempt qualifying duties thus increasing the likelihood that Court intervention will be necessary.

Based on the above, the Clerk has satisfied the part of the Appointment Order that requires her to finalize an updated Exempt List; however, she neither has posted Exempt Job Descriptions on her website (as the Manual requires) nor demonstrated consistent adherence to the restrictions and requirements surrounding Exempt hiring. The Clerk has put forth several Candidates who did not meet the MQs of their positions, has attempted to use the Exempt hiring process to fill Non-Exempt Positions, and has largely ignored the Court's order to provide Plaintiffs and the CCCA with regular detailed reports regarding provisionally-granted Exempt Positions when filled. The Clerk has not held anyone to account for these violations. As noted above, one of the reasons the Appointment Order

was instituted was because the Clerk's violations of the 1991 Consent Decree in relation to Exempt hiring (hiring individuals into positions not on the approved Exempt List without public posting). The Clerk has significant work left to demonstrate she has instituted a durable remedy concerning adherence to its Exempt Hiring Policy.

B. Clerk's Adherence to the 2020 Manual, Interim Hiring Policy and Amended 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. Unlike some of the other duties assigned to the CCCA that could not begin immediately (*e.g.*, updating the Exempt List required draft Exempt Job Descriptions that the Clerk had not yet created at the time of the CCCA's appointment), the CCCA could have begun immediately the duty of monitoring the Clerk's adherence to her Policy Manual. Indeed, (a) the Clerk had represented to the Court in February 2020 that she had finalized a Manual (*see* Appointment Order at 32); (b) the CCCA was staffed with a team that had spent many years monitoring at the Recorder's Office the same Employment Actions covered in the Clerk's Manual (hiring, termination, discipline, transfer, performance management); and (c) the Clerk herself as well as many of her senior staff had experience with the concept of a Court-appointed Compliance Administrator monitoring their Employment Actions while at the Recorder's Office or other governmental agencies. Despite the potential to make headway on this duty right away, for several months, the Clerk did not provide the CCCA with notice of her Employment Actions to allow for monitoring, the Clerk then failed to demonstrate consistent adherence to her 2020 Manual, and the Clerk acknowledged the need for wide-

sweeping edits to her Manual but took nearly 20 months after the CCCA's appointment to finalize the same. In the meantime, due to the missing steps in the 2020 Manual's hiring provisions, an Interim Hiring Policy was developed to facilitate hiring sequences until a revised Manual was formalized. *See* Third Report (Dkt. 7526) at 15-16. The following discusses the background of the Manual revisions, and the Clerk's efforts to comply with her 2020 Manual, the Interim Hiring Policy (effective June 2021) and the Amended Manual (effective December 13, 2021).

1. Updating the Clerk's Manual

The Amended Manual contains structure, clarity and accountability within the policies that the 2020 Manual sorely lacked, and the Clerk's commitment and efforts to develop the Amended Manual should be acknowledged at the outset. The Clerk's cooperation and meaningful efforts to revise the Manual were intermittent, however, despite the Clerk's Office identifying very early on that its Manual needed significant revisions. Lengthy, and often unnecessary, delays contributed to the rollout of the Amended Manual not occurring until December 13, 2021, approximately 20 months after the CCCA's appointment. The bases for the delay – and the corresponding reduced timeframe the CCCA has been able to monitor the Clerk's implementation of her Amended Manual – are important to keep in mind when considering whether the Clerk has demonstrated compliance with her Amended Manual.

First, the Clerk did not cooperate with the CCCA for the first several months after her appointment – seemingly viewing her Motion to Stay the Appointment Order as the equivalent of a granted Stay (despite this Court's explicit instructions otherwise). *See* Initial Report (Dkt. 7085) at 7-8. The CCCA made consistent efforts to monitor the Clerk's

existing policies in real time but was not permitted the opportunity to do so by the Clerk. The Clerk's lack of cooperation during this period included not providing notice of Employment Actions, not providing documentation concerning recently completed, ongoing and upcoming Employment Actions, and feigning a lack of understanding of the role of the CCCA in monitoring the Clerk's Employment Actions. *Id* at 8-11.

Second, the Clerk acknowledged early on she had not implemented (nor trained her Employees on) the Manual and intended to make significant changes to the Manual. After many months of not proposing any changes, the Clerk asked the CCCA to propose the first round of edits – noting specifically the desire not to reinvent the wheel. *See, e.g.*, July 30, 2020 Hr'g Tr. (Dkt. 7019) at 20:23 – 21:24. After working with the Clerk on developing an Assumption of Duties Hiring Plan and monitoring the beginning implementation of the same between November 25 – December 4, 2020, the CCCA provided proposed revised drafts of all nine Clerk Policies as well as a new Temporary Assignment Policy. Unfortunately, the Clerk failed to work with CCCA and Plaintiffs at a consistently efficient pace on the proposed edits in the succeeding months. The Court set deadlines for exchanging drafts and for the parties and CCCA to confer on the same (*see, e.g.*, Dkt. 7128), but the Clerk continually failed to meet those deadlines. Third Report at 5-6. The Court ultimately noted that, “The longer the Clerk waits to implement policies, and the less concrete the policies are in establishing a durable remedy against First Amendment violations (the standard for termination), the less likely it will be that the Clerk will prevail on the motions” to be released from the Appointment Order. Dkt. 7385.

During June 2021, the parties and CCCA had a series of conferral meetings whereby significant progress was made on updating the policies. *See* Third Report at 5-7.

The CCCA quickly turned around revised policies based on those meetings and provided them to the Clerk for review. After a few weeks of delay by the Clerk's Office, the parties set a new target of the end of July 2021 for finalization of the Amended Manual (and forms) and for the Clerk to begin conducting the Manual-required training by mid-August 2021. Ultimately, an Amended Manual was not agreed upon until early October, and the Amended Manual was not presented to Employees until December 1, 2021. *See* Fourth Report (Dkt. 7709) at 5-6. All employee training on the Amended Manual was completed on December 13, 2021 (while additional required trainings remain outstanding, *see below* at 42-44). Because of this long delay in updating the Clerk's policies, widespread lack of compliance with the 2020 Manual, and continued non-compliance with the Interim Hiring Policy and Amended Manual (as described below) – the CCCA does not believe the Clerk has demonstrated consistent and effective compliance with her policies such that court oversight is ripe for termination.

2. Clerk's Adherence to the 2020 Manual and Interim Hiring Policy

Notwithstanding the Clerk's Office's early acknowledgment of the need to revise the Manual, it was required to follow its existing Manual in the interim. Appointment Order at 41. As the CCCA has previously reported, the Clerk's efforts at complying with the 2020 Manual were inconsistent for some policies and non-existent for others. The Clerk acknowledged at the outset of the CCCA's tenure that the 2020 Manual required significant revisions and Clerk Employees had not been trained on the Manual. Initial Report at 16-17. The gaps in the 2020 Manual's General Hiring process were so extensive that hiring sequences could not credibly be conducted under it as it contained no explanation of the steps HR was to take between the submission of an application and the conducting of

interviews. *See* Initial Report at 18; *see also* Feb. 25, 2021 Hr’g Tr. (Dkt. 7323) at 23:9-16 (where the Court noted that “...with respect to gaps in policies such as the hiring policy, that’s a situation where the January 2020 policy just doesn’t address what has to happen between, for example, posting and interviewing. . . . [a]nd so in that sense, the policy is not being implemented....”). Nonetheless, the Clerk posted six Non-Exempt Positions under the General Hiring Process or Actively Recruited Process without explanation of how she would perform the missing steps in the Manual. Third Report at 15-16. After the CCCA highlighted this deficiency, the Clerk engaged in negotiations to develop an Interim Hiring Policy to facilitate these six (and other) hiring sequences until the Amended Manual could be finalized. *Id.*

Additionally, the 2020 Manual (and Amended Manual) – like Employment Plans for other Cook County agencies – required the Clerk to have updated and accurate Job Descriptions for all Positions, and the Clerk has so far failed to produce or develop such Job Descriptions for most Non-Exempt Positions. *See* Fourth Report at 9-10. The Clerk has also struggled to provide an updated and accurate Organization Chart showing the correct reporting structure of the office, but her efforts to produce the same have increased significantly in recent months. When provided notice by the Clerk’s Office, the CCCA monitored the Clerk’s adherence to the 2020 Manual in real time (or audited after the fact) including the following Employment Actions: hiring for both Exempt and Non-Exempt Positions, Discipline, Performance Management, Temporary Assignments, Time and Attendance, and Training. Based on the CCCA’s monitoring, the Clerk’s Office did not

demonstrate consistent compliance with the 2020 Manual or the Interim Hiring Policy.

a. Non-Exempt Hiring under the 2020 Manual

As detailed in the Third Report, the CCCA undertook an audit of the Clerk’s hiring sequences that took place (or were finalized) after the CCCA’s appointment.⁸ Third Report at 13-14. Between the CCCA’s review and an OIIG Report concerning a mid-2020 Non-Exempt hiring sequence for Security Officer I, the Clerk did not implement and abide by significant portions of the 2020 Manual’s Non-Exempt Hiring policy. *Id.* at 13-15. Many important elements of compliance and transparency were missing, including a lack of required documentation such as completed Interview Evaluation Forms, Interview Panel Ranking Forms, proof that interviewed Candidates possessed the educational MQs, and signed No Political Consideration Certifications (“NPCCs”) from those Clerk employees involved with the hiring sequences. *Id.* In its investigation of the Security Officer I hiring sequence, the OIIG found similar issues, as well as compromised elements of the process regarding the number of applications reviewed and validation of those applications, interview panel selection, and the interview process itself. *See* Third Report at 14-15 (discussing IIG20-0583). As the Court noted in the July 6, 2021 Status Hearing, the Clerk’s hiring process fell far short of an acceptable standard.⁹

b. Other Policy compliance under the 2020 Manual

The CCCA also monitored the Clerk’s activities under the 2020 Manual in relation to Discipline, Performance Management, Temporary Assignment, Time and Attendance

⁸ The Clerk did not provide the CCCA with the opportunity to monitor any aspect of these hiring processes in real time – including hiring interviews conducted in late July – three months after the CCCA’s appointment.

⁹ “This is certainly an example of, even though no political discrimination was found, it’s the kind of process or lack of process that...it’s very easy to envision how (political discrimination) could have seeped in there if the process is as haphazard as this one was.” (Dkt. 7501) at 30:7-11

and Training. The CCCA has previously described the Clerk's non-compliance in relation to these policies under the 2020 Manual as follows:

- Discipline: The Clerk was inconsistent with applying her Discipline Policy among similarly situated Employees, did not provide clear dispositions regarding each charge an Employee faced, and did not utilize or provide proper documentation to the CCCA on completed (or discontinued) discipline sequences. *See* Third Report at 20-22; Fourth Report at 24-26. However, the Clerk displayed commitment and improvement in addressing the issues identified.

- Performance Management: As the 2020 Manual did not contain a Performance Management Policy and the Clerk aimed to onboard more than 60 Employees pursuant to the Assumption of Duties ("AOD") process at the end of 2020, an urgent need for a revised Performance Management Policy existed shortly after the CCCA's appointment. *See* Second Report at 10-11. Despite the urgency for a revised policy, limited conferral with the CCCA occurred, and the Clerk unilaterally finalized the revised policy on February 25, 2021, which was preceded by a hasty training the day before. The CCCA observed the following non-compliance with the policy:

- Supervisors rarely held required meetings with employees to (1) establish the performance milestones and (2) check-in on Employees' progress on those milestones during probationary periods;
- Only 5 of the 64 probationary evaluations were issued timely;
- Managers did not meet with or engage in substantive correspondence with the Supervisor who drafted the evaluation, as the policy required; and
- Time and Attendance assessment was inconsistent as Supervisors were allowed to create their own metrics despite the CCCA recommending a consistent standard be applied across the Clerk's Office.

See Third Report at 18. The Clerk did not respond to the CCCA's June 3, 2021 feedback detailing the above issues, among others. Based on these issues, the CCCA concludes the Clerk did not demonstrate consistent compliance with her Performance Management Policy prior to the Amended Manual's adoption.

- Temporary Assignment: No Temporary Assignment ("TA") policy existed in the 2020 Manual; however, the Clerk conducted TAs amid development of a policy to be included in the Amended Manual. To assess the Clerk's compliance, the CCCA sent feedback to the Clerk regarding her TA activity in relation to the draft policy as the parties and CCCA had substantially agreed to the content of the same. *See* Third Report at 23. This feedback, addressing nine TAs, noted issues such as a lack of proper documentation of the reasoning for selection and the job titles the Employees were being temporarily assigned to and a lack of proper notice to the relevant Employees. *Id.* After CCCA

feedback, the Clerk improved her compliance, most notably by citing various components of the policy in her notice of the TA requests. *See* Fourth Report at 27. However, issues remained with failure to provide the CCCA with notice of the status of the TAs and other required procedural steps after the TA requests. *Id.* Further, the Clerk executed at least one TA of an employee who now – over 17 months since the TA began, remains in the TA with no end in sight. This TA crossed over from its initiation under the 2020 Manual to its continuation under the Amended Manual, and as discussed below at 36-38, its continuation directly violates the Clerk’s policy which states that TAs may not surpass 120 days (unless appropriately extended by another 120 days, not to exceed 240 days total) in a calendar year.

- Time and Attendance: The CCCA conducted a partial audit to obtain a representative sample of the Clerk’s level of compliance with the Time and Attendance provisions in the 2020 Manual. *See* Third Report at 23-24. CCCA findings and questions were delivered to the Clerk on May 24, 2021. The sample of information obtained from the audit exhibited widespread non-compliance with the Clerk’s written policies, including:

- Lack of discipline for widespread violations of the 2020 Manual’s prohibition of “Excessive Tardiness” (three or more tardies in a calendar month.)
- More than 7,400 hours of overtime without the required written authorization.
- Failure to memorialize altered work schedules.
- No consequences for two Non-Exempt Employees who, for one or more month(s) in a row, did not swipe in or out at all, but were paid for full days.

Despite the CCCA’s initial request for a response by June 10, 2021, the Clerk did not respond until January 10, 2022 (in a response to the CCCA’s Fourth Report), simply conceding that she did not follow the Time and Attendance provisions in the 2020 Manual, and her compliance efforts regarding Time and Attendance would be forward looking under the Amended Manual. *See* Clerk Response to Fourth Report (Dkt. 7756) at 13.

- Training: The Clerk did not complete required trainings under the 2020 Manual, including all Employee training and HR personnel training. July 30, 2020 Hr’g Tr. (Dkt. 7019) at 21:6-12. The Clerk conducted one Supervisor Training under the 2020 Manual but involved only five newly hired managers via the AOD process, and as the CCCA noted, the training consisted of little more than reading certain provisions of the 2020 Manual word-for-word and a short question-and-answer session. *See* Second Report at 17-18.

The Clerk conducted Interviewer Training pursuant to the AOD process in September and October 2020, and prior to Interim Hiring Policy interviews on September 28, 2021. The Clerk also conducted general Interim Hiring Policy training on June 10, 2021, shortly

after its adoption. These trainings were conducted virtually. The trainings tracked very closely to the information on the slides for the attendees, without much elaboration for context. One notable exception is the portion covering Conflict-of-Interest during the October 2020 training, where the Chief Ethics Officer provided significant context to the attendees regarding how to handle potential Conflicts of Interest, inclusive of examples. The Chief Ethics Officer implored the Employees to err on the side of caution relative to potential conflicts, and allow him to make the call on whether the circumstance rose to a Conflict, consistent with the AOD Plan's requirements.

c. Non-Exempt Hiring Under the Interim Hiring Policy

In March 2021, the Clerk posted six Non-Exempt Positions and stated her intent to fill these vacancies either through the General Hiring or Actively Recruited Process. *See* Third Report at 15. After the CCCA noted that the Clerk provided no specifics on how she would perform the missing steps in the General Hiring Process and that no separate Actively Recruited Process existed in the 2020 Manual, the Clerk engaged in negotiations with the CCCA and Plaintiffs to develop an Interim Hiring Policy to address the deficiencies and govern compliance with the hiring sequences until the Amended Manual was finalized. *Id* at 15-16. The Interim Hiring Policy was finalized in early June 2021.

In total, the Clerk initiated 17 postings involving 13 Non-Exempt Positions under the Interim Hiring Policy. *See* Fourth Report at 18-19. The Clerk brought three of the hiring sequences to completion prior to the December 2021 rollout of the Amended Manual, while the others stalled at various stages prior to interview. *Id* at 20. The CCCA detailed the Clerk's inability to demonstrate consistent compliance or independence in execution of the Interim Hiring Policy, exemplified at the application review stage by constructing inaccurate Applicant Lists, incorrect and/or inconsistent validation, and incorrect sorting of Applicants based on Preferred Qualifications ("PQs"). *Id* at 20-21. Regarding the three sequences that reached the interview stage, the CCCA provided detailed feedback on issues that occurred, including, among others, a lack of understanding of how to randomize, sort

and validate Applicants per the policy's requirements, a lack of production of NPCCs by Clerk employees involved with the hiring sequences, failure by interview panelists to provide any or sufficient explanation of scores on Interview Evaluation Forms, and the failure to provide complete Posting Files to maintain full documentation and transparency of the hiring sequences. *Id.* at 18-20. Throughout the various stages of the hiring sequences (and similar to the execution of the AOD Hiring Plan discussed below at 49-51), the Clerk's Office did not display subject matter expertise of the Interim Hiring Plan, consistently relying on the CCCA to identify issues and interpret the policy. *See* Third Report at 16-18. The Deputy COS recognized this dynamic, assessing in October 2021 that despite some headway being made, the Clerk's "efforts to comply with the interim hiring policy have been a struggle..." *See* Oct. 5, 2021 Hr'g. Tr. (Dkt. 7603) at 32:10-12. Based on the above, the CCCA does not believe the Clerk demonstrated consistent compliance with her hiring policies under the 2020 Manual or Interim Hiring Process to support the presence of a durable remedy.

d. Organizational Charts and Non-Exempt Job Descriptions

One of the first requests the CCCA made after her April 2020 appointment was for the Clerk to provide copies of Job Descriptions for all Non-Exempt Positions, as well as updated and accurate Organizational Charts.¹⁰ *See* Initial Report at 6-7. Outside of active hiring sequences, the Clerk has either provided an outdated Job Description or no Job Description at all for most of the Non-Exempt Positions. *See* Third Report at 8; Fourth Report at 10. Given the paucity of Job Descriptions in the Clerk's Office, the CCCA

¹⁰ Although an Organizational Chart is not directly addressed in the Appointment Order, the Court agrees that it is "a basic foundational document to have an organization chart because [] the employment policies refer repeatedly to supervisors and chains of command. And so it's very difficult to have one without the other." Feb. 25, 2021 Hr'g Tr. (Dkt.7323) at 41:3-9.

understands the enormity of the task to provide updated and accurate Job Descriptions for each Position; however, the size of the task does not absolve the Clerk from the negative impacts of the circumstance.

A plurality of Employees is operating without an updated Job Description and the accompanying awareness of the specifics and scope of their duties and responsibilities. The concern is not academic. For example, during a February 11, 2022 meeting monitored by the CCCA, one employee reported that she was asked in vague terms by management to act in the place of her Supervisor following the Supervisor's retirement at the end of 2021. No formal process was initiated (such as a Temporary Assignment) such that the Employee would be clear on what was expected of her. The Employee then requested a copy of her Job Description and an itemization of her duties as other members of the unit were complaining that the Employee was treating them unfairly, and the Employee wanted clarity on her supervisory authority. As far as the CCCA is aware, HR did not provide the employee with an updated Job Description, but rather provided the Employee a copy of the Notice of Job Opportunity from the 2015 internal promotion opportunity from which the Employee received her current title. This notice provided a description of duties, but to the CCCA's knowledge, the Clerk has not formally addressed expectations (or utilized any process) to clarify what the Employee's role is in the wake of the Supervisor's absence. Given the lack of updated and accurate Job Descriptions, something this Court has noted value in developing, *see* Aug. 12, 2021 Hr'g Tr. (Dkt. 7558) at 29:11-14, Employees are left vulnerable to being asked to perform duties outside of their Positions, and are potentially subject to discipline for "incompetence or inefficiency in the performance of duties of the position..." Manual § V.D.1(e), without knowing specifically what those

duties and responsibilities are.¹¹ This is highlighted also by an HR Employee who, during a July 2021 Pre-Disciplinary Hearing for negligence in the performance of duties, noted she had previously requested a copy of her Job Description numerous times to no avail.

Regarding an updated and accurate Organizational Chart, the Clerk did not become meaningfully engaged on the issue until mid-2021, nearly one year after the CCCA's appointment and initial requests. *See* Third Report at 8-9. The initial charts the Clerk provided (in October and November 2020, respectively) contained myriad entries that did not align with what the CCCA had observed through monitoring and were confirmed by the then Deputy Clerk of HR to be inaccurate. *Id.* at 9-10. After multiple offers by the CCCA to develop an updated Organizational Chart were rebuffed, and a court-imposed deadline of April 20, 2021 came and went without production, the Clerk provided a more coherent Organizational Chart on May 19, 2021. *Id.* Issues of accuracy and completeness remained, however. After the CCCA provided the Clerk with extensive feedback on the May 2021 Organizational Chart, the Deputy Clerk of HR agreed that CCCA meetings with Deputies of each Department would assist in developing a more accurate Organizational Chart. These meetings were valuable; however, the Clerk took several months to arrange them and only did so after direction from the Court. *Id.* After all Deputy meetings took place, the Clerk provided an updated Organizational Chart on March 4, 2022. The CCCA

¹¹ After receiving training on the Amended Manual's Discipline Policy, an Employee submitted a question in reference to this infraction, asking "Does every employee have access to their job description? If we wanted to view our essential job duties, where might we find them?..." The Clerk's written response was: "Any employee who wishes to obtain a copy of their job description should inquire with HR." The CCCA recommended that the Clerk provide a more fulsome answer that would detail to the Employee whether an updated job description existed for their position and if not, how they could obtain a description of their duties. The Clerk declined this recommendation, explaining that the Clerk "felt that the best way to handle inquiries from Employees about Job Descriptions was for HR to field those questions on a case-by-case basis." As noted above, Employees do not appear to have success when they seek a copy of their Job Description from HR.

provided feedback on this draft on March 22 noting, *inter alia*, areas where the chart did not align with the structure the Deputies Clerk described, inconsistency between operational and budget titles, and unclear reporting relations (particularly in the Elections Division; the CCCA is awaiting a response (or a corrected Chart) from the Clerk. As such, the Clerk has not yet provided an updated and accurate Organizational Chart – a task for an office of just over 300 employees that surely should not take the over 700 days it has taken to date to fulfill.

Overall, it is clear the Clerk’s Office did not demonstrate consistent compliance with its Policy Manual from the CCCA’s April 2020 appointment through the December 13, 2021 effective date of the Amended Manual. The non-compliance was widespread – ranging from demonstrated lack of understanding of certain policies (Hiring, Performance Management and Temporary Assignments) to an admitted lack of implementation of others (Time and Attendance and Training). For other policies, the Clerk made some efforts to comply with the Policy Manual but fell far short of compliance such that by the end of 2021, the CCCA could not conclude the Clerk had effectively implemented any of her employment policies.

3. Clerk’s Adherence to the Amended Manual

As noted above, the Amended Manual became effective on December 13, 2021. The following recounts the Clerk’s level of compliance with the Amended Manual and the CCCA’s ability to observe the same.

a. *Status of Clerk’s Human Resources Department*

The Clerk’s HR Department is faced with numerous responsibilities, only one of which is its important role in ensuring compliance with significant portions of the Amended

Manual. HR must provide the normal HR functions to an organization with over 300 Employees, and has had to adjust to the unique challenges posed by a global pandemic, all the while experiencing significant turnover within its ranks. The CCCA is certainly sensitive to the obstacles HR has faced, some of which no doubt have contributed to a pattern of non-compliance. But the Clerk also seemingly has failed to make compliance a priority, only communicating the challenges she faces - such as within HR - after the CCCA has identified instances of non-compliance, instead of proactively engaging with the CCCA to address the challenges to ensure compliance.

The Clerk is required to “maintain an HR staff of experienced and knowledgeable professionals” who, in addition to meeting the MQs for their Position, are “primarily responsible for implementing the hiring policies and procedures of the Clerk’s Office.” Amended Manual at §IV.B.8. HR is also responsible for “initiating, directing, coordinating, and overseeing the Human Resources Division processes, policies and procedures of the Clerk’s Office relating to all Employment Actions, and for training employees regarding those matters, in consultation with the Chief Ethics Officer.” Amended Manual § IV.C.

As the CCCA has previously detailed, the Clerk’s HR department has struggled with a lack of responsiveness and clarity when responding to CCCA questions and requests for information and documents. Fourth Report at 7. HR also has made continual violations of the Clerk’s hiring policies, resulting in significant CCCA feedback to prevent further violations. *Id.* A major factor in these struggles has been significant turnover within HR, resulting in a reduced staff consisting only of a Deputy Clerk, Director, HR Coordinator and Executive Assistant for nearly the last nine months. Further complicating matters is that the lack of a Deputy Clerk of HR between the October 22, 2021 termination of the

then-Deputy Clerk and the November 29, 2021 start of her successor – the third Deputy Clerk of HR during the CCCA’s tenure.

To assist HR in its policy compliance and responsiveness to the CCCA, on October 5, 2021, the Deputy COS informed the Court he would serve as liaison to the CCCA until HR could become “self-sufficient.” Fourth Report at 7-8. The CCCA welcomed this development as the Deputy COS has significant experience with *Shakman* compliance and the CCCA had a positive working relationship with him from his time at the Recorder’s Office. After his involvement, there was a notable improvement in the consistency and cohesion of the communications. *Id* at 8. However, as the CCCA noted to the Court and the Deputy COS, the necessity of the Deputy COS’ oversight revealed that the Clerk did not yet have an HR staff capable of fulfilling its duties under the 2020 Manual or the Amended Manual and the CCCA would need to see the Clerk’s HR staff operate on their own (without reliance on the Deputy COS) before concluding HR was capable of effectively conducting its Manual-assigned duties. *Id*. The Deputy COS has not informed the CCCA that he has pulled back his role, signifying he does not deem HR to be self-sufficient yet, much less the “well-oiled machine that can . . . efficiently and effectively function and work through these hiring processes,” he hoped HR could become. Oct. 5, 2021 Hr’g Tr. (Dkt. 7603) at 32:19-25.

Given that compliance issues at each stage of hiring processes remain, as well as other non-compliance with the Amended Manual as described below, the CCCA does not believe the HR Department is self-sufficient from a compliance perspective. While the CCCA is encouraged by the new Deputy Clerk of HR’s temperament and understanding of the compliance issues when presented to him, the CCCA still has not observed the HR

department display: subject matter expertise of the hiring policy, the ability to independently adhere to the policy's provisions, or the ability to proactively identify and rectify non-compliance with the same. Reinforcements appear to be on the horizon as the Clerk just completed long-languishing hiring sequences in April 2022 for a Leave of Absence Coordinator and a Senior HR Generalist (posted in July and August of 2021, respectively). At this stage, however, HR has not demonstrated the ability to effectively implement the employment policies contained in the Amended Manual.

b. *Non-Exempt Hiring under the Amended Manual*

As noted above, the Clerk concluded three of the 17 hiring sequences initiated under the Interim Hiring Policy. Once the Amended Manual took effect on December 13, 2021 and with CCCA consent, the Clerk decided that HR would utilize the Amended Manual to complete the remaining steps in those 14 in-process hiring sequences. Since the Amended Manual has been in effect, the Clerk used the General Hiring Process to conduct interviews for Clerk V – Vital Records, Senior HR Generalist, Leave of Absence Coordinator, Supervisor of Mail Ballot Processing, and used the Actively Recruited Process to conduct interviews for the Director of Training. The Clerk also advanced the hiring sequences of six other Positions that have yet to reach the interview stage.

The Clerk's new Deputy Clerk of HR has displayed a clear ambition to abide by the General Hiring Policy when non-compliance has been brought to his attention, and his efforts are greatly appreciated. Given that he and the Director of HR are the only HR Employees substantively working on advancing the hiring sequences, the effort these two have put forward has not gone unnoticed. Unfortunately, consistent with what the CCCA noted under the AOD and Interim Hiring Policies, Clerk dependence on the CCCA to

identify non-compliance and interpret what is required under the hiring policies has persisted under the Amended Manual. While the Deputy Clerk of HR has shown a willingness to address issues the CCCA has identified, the Clerk has yet to display proactive compliance in her implementation of the Non-Exempt Hiring Policies.

i. *Problematic Validation of Applications by HR*

Consistent with hiring activity under the AOD and Interim Hiring policies, the Clerk has encountered issues with Preliminary Eligibility Lists, Randomized Sorted Preliminary Eligibility Lists and Validated Eligibility Lists for nearly each Position. The posting of Legal Support Coordinator exemplifies this dynamic. Legal Support Coordinator involved a single MQ that contained both an education standard and an experience standard, but could be met if the Applicant possessed either; they did not need to possess both.¹² After receiving a draft of the July 2021 job posting, the CCCA alerted the Clerk that HR had broken the single MQ into two separate Disqualifying Questions. The CCCA suggested that the Clerk create a single Disqualifying Question to correlate with the single MQ. HR ignored this recommendation. The result was the first Preliminary Eligibility List¹³ provided by the Clerk only contained the names of the Applicants that answered yes to *both* Disqualifying Questions, contrary to policy requirements in both the

¹² The MQ was “Associate Degree from an accredited college or university in Paralegal or Legal Studies OR Three (3) years of full-time experience as a paralegal, legal administrator or legal support coordinator.” (emphasis in original)

¹³ As this list was provided on August 25, 2021, while the Interim Hiring Policy was still in effect, it was titled the Applicant List, but it functions exactly the same as the Preliminary Eligibility List under the Amended Manual.

Interim Hiring Policy and Amended Manual.¹⁴

The Clerk submitted a revised Validated Eligibility List¹⁵ that only encompassed review of approximately half of the appropriate Applicants, necessitating further correspondence and explanation by the CCCA. The Clerk then sent another revised VEL, still without having validated all eligible Applicants, requiring the CCCA to again explain the issue and detail its impact. Despite the application period for this posting expiring on August 19, 2021 and the CCCA last providing comments to the Clerk on the VEL on February 14, 2022, the VEL remains pending with the Clerk. Were it not for the CCCA, approximately half of eligible Applicants would have been disqualified contrary to the Amended Manual.

While not to the severity of Legal Support Coordinator, other non-compliance consistently occurred in relation to application review under the Amended Manual including incorrect Preliminary Eligibility Lists, Sorted Preliminary Eligibility Lists, Validated Eligibility Lists and Interview Lists. The discrepancies were not contained to subjective interpretation of an Applicant's stated credentials, but rather the applicability of the plain language of the Manual. This type of feedback for one or more of the enumerated lists was required for 10 Positions¹⁶ (*i.e.*, every hiring sequence the Clerk has undertaken

¹⁴ "HR shall create a Preliminary Eligibility List for the Position containing only the names of the Applicants who completed the application process in EAS and who, based on their answers to the Disqualifying Questions, indicated that they possess all Minimum Qualifications for the Position."

¹⁵ The revision was necessitated because the CCCA pointed out the initial VEL that HR submitted indicated the Clerk had not evaluated Applicants relative to PQs in accordance with the Interim Hiring Policy (and Amended Manual).

¹⁶ These positions are: (1) Vital Records Clerk V; (2) Leave of Absence Coordinator; (3) Senior HR Generalist; (4) Legal Support Coordinator; (5) Data Scientist; (6) Clerk V – EDU; (7) Field Coordinator; (8) Technology Manager – Election Equipment; (9) Administrative Assistant III – Clerk of the Board; (10) Director of Training (Actively Recruited).

while the Amended Manual has been in effect).

ii. *Interview compliance*

Concerning interviews, the Clerk has improved regarding certain issues noted from the AOD and Interim Hiring processes. The CCCA previously has provided the Clerk feedback regarding interview sequences under those policies where panelists often only recorded their notes of the Candidate's answer with no explanation of how that answer correlated to the score given. *See* Second Report at 25-26; Fourth Report at 19-20. Encouragingly, many panelists have demonstrated improvement in recording explanations for their interview scores, an important element of transparency within the hiring process. In the limited interviews occurring under the Amended Manual to date, the CCCA has not noted any issues regarding the reporting of potential Conflicts-of-Interest, an element that occurred within AOD interviews. Second Report at 26.

Despite improvement, non-compliance continued in the form of failing to copy the CCCA on offers for interview and any Candidate responses. The CCCA has previously reported on this type of non-compliance under the AOD and Interim Hiring Policy. *See, e.g.,* Second Report at 23. Accordingly, the CCCA cannot confirm that all Candidates received sufficient, and the same, notice of interview. The importance of this requirement in the Manual is so that all Candidates receive equitable opportunity to interview. This non-compliance has persisted despite our previous reporting on the issue, as well as the CCCA's Nov. 18, 2021 feedback to the Clerk's Office on the GIS Chief Analyst hiring process. Given the multitude of issues in hiring under the Amended Manual, the CCCA does not believe the Clerk has demonstrated consistent compliance with her hiring policies;

additional monitoring is required.

c. *Discipline Policy*

The CCCA has monitored the evaluation of 58 Disciplinary Action Forms submitted to the Deputy COS for his review in accordance with the Amended Manual. The Deputy COS is tasked with determining whether the DAF “contains all of the information that is required to be included” and “whether the description of the Employee’s conduct, if taken to be true, would support a finding that a violation of the Policy Manual has occurred. Amended Manual § V.F.2. The CCCA has observed the Deputy COS provide extensive and relevant feedback to the submitters of the DAFs to ensure they are compliant with the Amended Manual. This feedback has included, among other things, instructions to clarify the relevant sections of the Manual allegedly violated, inquiry as to whether actions as stated on the DAF constitute a policy violation, and ensuring that all required fields on the DAF form are properly completed. While the number of DAFs that require feedback has been significant, signifying that training on the Discipline policy was not effective in this area, the Deputy COS’ efforts and performance in this regard has been notable and has resulted in limiting non-compliance.

The CCCA has also monitored 34 Pre-Disciplinary Hearings under the Amended Manual. Generally, the hearings have operated in a policy compliant manner, but concern remains that the Clerk has implemented Discipline inconsistently for similarly situated individuals. For example, on March 30, 2022, the CCCA provided feedback to the Clerk on the results of discipline stemming from her Covid-19 attestation and vaccination policy. The CCCA noted, among other things, that some Employees who failed to timely submit their Covid-19 attestation forms were deemed to have committed the Major Cause

Infraction of “Gross Insubordination” and received suspensions, while others who committed the same violation were charged with the Minor Cause Infraction of “Insubordination” and provided counseling. The Clerk did not respond to the feedback.

The above inconsistencies notwithstanding, the CCCA has observed the Clerk attempt to implement discipline in line with the policy. However, the Clerk has inconsistently disciplined employees for certain policy violations and not disciplined others who committed the same violations. The result is that certain Employees have escaped discipline for clear, and at times persistent and/or serious, policy violations. As noted above (at 20) and below (at 40), the Clerk has failed to discipline some employees for numerous time and attendance violations, or only initiated discipline after receiving CCCA feedback identifying the violations. This includes failure to initiate discipline for excessive tardiness, failure to swipe (in some cases no swipes over periods of several months), and the unauthorized accrual of compensatory/overtime, among others. It is important to note that the CCCA’s identification of the violations were pursuant to limited audits of particular Divisions, representing just a snapshot of the Clerk’s potential lack of compliance.

Even amid the violations the CCCA has brought to the Clerk’s attention, the Clerk has applied a timing restriction without a discernable standard. The Manual states that “[g]enerally, DAFs are required to be submitted within thirty (30) days of the date in which the incident occurred.” The Clerk has invoked this standard inconsistently among Employees where the DAF was or would be submitted more than 30 days after the incident occurred. For example, the Clerk stated that she could not discipline two Employees who accrued unauthorized compensatory time because the 30-day threshold elapsed but stated that she could discipline five other Employees for the same offense, explaining that

“although the time frames are slightly beyond the general guideline requiring discipline to be issued within 30 days of the conduct, discipline is being initiated.” On May 5, 2022, the CCCA asked why the Employees were treated differently and awaits the Clerk’s response. The CCCA will recommend the Clerk amend this language either to eliminate the word “generally” or to set forth clearly the circumstances that would allow for an extension of the 30-day deadline. The alternative allows for a vague standard that could be utilized arbitrarily to benefit, or punish, Employees based on political favoritism.

Finally, the CCCA is concerned with the Clerk’s lack of action concerning the Director of HR’s resume discrepancies first identified by the CCCA in October 2021 and the subject of her May 12, 2022 Second Interim Report. When the Clerk has discovered that other Employees included inaccurate (or false) information on their resume, those Employees were terminated. *See* Third Report at 28; Fourth Report at 29. The Clerk has taken no disciplinary action against the Director of HR for the irreconcilable discrepancies present on her resume despite learning of the same over six months ago.

The CCCA has previously commented on being encouraged by the Clerk’s effort to improve her discipline policy compliance. *See* Third Report at 22. She has also expressed optimism that the additional structure provided within the Amended Manual and training on the same would provide the Clerk the opportunity fill in the gaps of discipline compliance. *See id.* The CCCA remains optimistic, particularly because of the performance the Deputy COS has displayed in reviewing initiated discipline. However, that positive element is immaterial if the Clerk’s Office inconsistently enforces policy violations. Accordingly, the CCCA cannot conclude the Clerk has demonstrated effective compliance with the Discipline Policy and recommends additional monitoring.

d. *Performance Management Policy*

As detailed above at 19, the Clerk struggled to abide by the requirements of the Performance Management Policy that was developed prior to the adoption of the Amended Manual, particularly in the areas of conducting required meetings during an Employee's first 30 days of employment (milestone meetings), and between the Employee's 30th and 60th day of employment (check-in meetings). Under the Amended Manual, the Clerk has conducted the probationary Performance Evaluation for the sole employee whose probationary period has occurred since the Amended Manual went into effect. The CCCA provided feedback on how the content of the milestone meeting satisfied the requirement that the Employee's duties contained in the Job Description be discussed but fell short of providing the "milestones that will be evaluated during the probationary period." Consistent with previous evaluations, the Manager did not conduct the formal "check-in" meeting, which is designed to "provide the Employee with clear, direct feedback about the Employee's work performance to date and any recommended areas of improvement..." The Manager also utilized an incorrect Performance Evaluation form to facilitate the evaluation issued to the Employee. Also, it did not appear the required review of the draft evaluation by the author's Immediate Supervisor occurred as the CCCA was not provided any notice of the same.

The Performance Management Policy agreed to in February 2021, as well as the Performance Management policy contained in the Amended Manual, also contemplates annual evaluations for all Non-Exempt, non-probationary Employees. The Clerk has not conducted any annual evaluations nor indicated that she plans to conduct any annual evaluations anytime soon. With only one Performance Evaluation conducted under the

Amended Manual (which had significant issues), the CCCA does not believe the Clerk has demonstrated consistent compliance with the Performance Management Policy.

e. *Temporary Assignment Policy*

The CCCA noted in her Fourth Report that Temporary Assignment compliance had improved as the Clerk began citing various components of the draft TA policy (which substantially reflected the final policy in the Amended Manual) in the notices of requested TAs. This trend continued with the two TAs requested under the Amended Manual. However, non-compliance remains ongoing.

On January 13, 2022, the CCCA sent correspondence to the Clerk, requesting updates on the existing TAs of which the CCCA was aware. Specifically, as referenced above (at 19-20), the CCCA noted that for one TA, a Clerk V had seemingly been temporarily assigned as a Supervisor since November of 2020. The CCCA also requested updates on Temporary Assignments in the Finance Department that began in July of 2021, exceeding the 120-day limit contained within the Amended Manual (and the draft policy the Clerk committed to abiding by when the TAs commenced). After receiving no substantive response to the inquiry, the CCCA included the questions formally in her Sixth Request for Documents and Information on February 10, 2022.

The Clerk detailed in her initial response that the TA originating in November 2020 remained ongoing, and she planned on filling the position competitively, but at an unknown time to occur after the Clerk completed other prioritized hiring. The CCCA informed the Clerk that placing the Employee into a higher-graded Position (which included an increase in pay) for an indefinite period violates the Amended Manual, which limits TAs to 120-days in a calendar year, unless extended by an additional 120 days, for a maximum of 240

days. This TA has been ongoing for more than 500 days. When asked how the Clerk intended to address the ongoing non-compliance, she simply repeated that she intended to hire for the position after concluding its other hiring priorities. When specifically asked why no other Employees were rotated into the Position, the Clerk stated that, due to the tasks within the Department, she could not afford to train anyone new on the skills needed to fulfill the duties of the position. Doing so would not be “advantageous for the Division or operationally efficient.”

This non-compliance is significant as the indefinite period of placement into a Position with a higher pay-grade is a de-facto promotion, circumventing the requirements present in the 2020 Manual, the Amended Manual and the Appointment Order that the Clerk conduct all hiring for Non-Exempt Positions via a publicly posted and competitive process. In explaining why the Clerk declined to follow through with a separate TA request initiated in January 2022 that similarly would have placed another Employee in a supervisor role with a pay increase, the Clerk cited that the Amended Manual did not contain a provision to accommodate a TA with a pay increase and therefore it had to be abandoned. By contrast, because the ongoing noncompliant TA originated under the 2020 Manual, the Clerk said it was “contractually obligated” to provide the pay increase. The 2020 Manual does not contain any provision that authorizes a pay increase in this scenario, and the Clerk failed to explain how she was “contractually obligated” to continue with the pay increase. Upon further CCCA questioning, the Clerk acknowledged that the Manual contains no obligation to provide the pay increase, but asserted she was not contractually prohibited from doing so either as the 2020 Manual was silent on the issue. The Clerk stated that as the pay increase is already in place, reversing course would incur union

objection.

The Clerk also informed the CCCA on February 22, 2022, that she had extended the TAs in the Finance Division in November 2021 without notice to the CCCA. The Clerk attributed this lack of notice to “human error” given the “volume of messages being exchanged.” Given the above non-compliance, the CCCA does not believe the Clerk had demonstrated consistent compliance with her Temporary Assignment Policy.

f. *Telecommuting*

Section VII of the Amended Manual allows Deputy Clerks to authorize routine or emergency telecommuting in writing for employees in their Divisions. Amended Manual at 62-64. Telecommuting may only be authorized based on documented operational needs and/or documented extenuating circumstances. The Telecommuting Policy allows routine as well as emergency telecommuting, the latter which is limited to 14-calendar days or the duration in which an emergency declaration is in place unless extended by the employee’s Deputy Clerk or designee. Emergency telecommuting is also limited to circumstances including: “inclement weather, exigent circumstances, or declared national, state and/or local emergencies.” *Id.* at 63.

Since implementation of the Amended Manual, the Clerk has used the Telecommuting Policy in at least 60 instances. On March 24, 2022, the CCCA sent the Clerk extensive feedback regarding its compliance with the Telecommuting Policy for the period of December 13, 2021 through February 28, 2022. The CCCA commends the Deputy Clerks of Recording Operations, Real Estate and Tax, Clerk of the Board, Vital Records as well as Legal Counsel for their efforts to comply with this Policy. Despite these efforts, certain improvements are needed to tighten the Clerk’s compliance with the policy.

The CCCA's March 24, 2022 feedback included, *inter alia*, the following compliance issues: (1) 26 telecommuting requests resulted in schedule changes without the Deputy following the Clerk's policy on schedule changes; (2) 10 emergency telecommuting requests did not meet the definition of "emergency" in the Manual; (3) 18 emergency telecommuting authorizations extended beyond the 14-day limit without policy-compliant authorization to do so; (4) one Deputy submitted a telecommuting extension but did not specify the names of employees affected by the extension; and (5) eight of the 60 telecommuting requests did not include the policy required NPCCs. Based on the above, the CCCA believes the Clerk has not yet demonstrated consistent compliance with this policy.

g. *Time and Attendance*

The CCCA audited the actions of certain Divisions to ascertain the Clerk's level of compliance under the Amended Manual. On February 18, 2022, the CCCA provided the Clerk the results of her audit covering the Clerk of the Board, HR, and Security Divisions for the period of December 16, 2021 through January 31, 2022. On March 21, 2022, she provided her audit covering Recording Operations and the Property Fraud Unit for the period of February 1, 2022 through February 28, 2022. Both audits identified, *inter alia*, significant numbers of tardiness policy violations that the Clerk had not initiated discipline for; Employee failure to adhere to the swiping requirements in the Manual; and the Unauthorized accrual of Compensatory/Overtime. The Clerk responded to these audits on April 5 and April 12, 2022, respectively.

Some of the non-compliance initially identified by the CCCA's audits was resolved based on new information provided by the Clerk; however, most non-compliance could not

be reconciled. For example, certain tardiness in the Recording Division which resulted in discipline would not have been initiated but for the CCCA's audit, and the Clerk informed the CCCA that she could not pursue discipline for tardiness within the Security division because it was stale. The Clerk also acknowledged that several Employees identified in the March 21 audit who accrued unauthorized compensatory time should have been disciplined, and that the Clerk would be initiating the same. The Clerk has since begun discipline against some such employees. Regarding widespread failure to swipe in and out for lunch, the Clerk contended that the Manual's provision that FLSA Exempt, Shakman Non-Exempt Employees are required to adhere to all swiping requirements (including to swipe in and out for lunch) was not what the Clerk intended, and they would pursue an amendment to the Manual. The Clerk has not yet proposed such an amendment.

The CCCA identified swiping issues for two Directors that were particularly problematic. The Director of HR (FLSA Exempt, Shakman Non-Exempt) stopped swiping in or out on October 25. This coincides with the timeframe the Clerk proposed the Director of HR as Deputy Clerk of HR. (Exempt Employees need not swipe in or out, but as noted above, the Director of HR was never hired as the Deputy Clerk of HR). The Director of HR resumed swiping on March 8, 2022, after the CCCA identified the issue. The Clerk's explanation was that the Director of HR "was unaware that she was required to (swipe in and out) previously. As the Director of HR was swiping until October 25, 2021, this explanation is not credible. Additionally, the Director of Clerk of the Board and Procurement ("Director of COB"), also FLSA Exempt, Shakman Non-Exempt, has not been swiping in or out since at least July of 2021.¹⁷ The Director of COB still does not

¹⁷ All swipes for the Director of COB prior to July 2021 reflect swiping in and out exactly at 9:00 and 5:00, respectively, indicating the swipes were automatically generated.

swipe in or out despite the CCCA raising the issue. Neither the Director of HR nor the Director of COB have received Discipline for their swiping violations.

h. *Training*

No element of compliance may have been more directly affected by the challenges posed by the pandemic than training. Put simply, gathering Employees in one location to receive training has been difficult, and throughout the CCCA's tenure, the Clerk has had to configure ways to best provide virtual training – no small task. Compounding these challenges was the Clerk's dissatisfaction with the performance of the Director of Training (hired inappropriately as Exempt in August 2020) leading to the Employee's termination in June 2021. The Director of Training position remains vacant. Other significant turnover in HR (as detailed above at 26-28) has only exacerbated the challenge to provide effective training. It has taken considerable effort from the Deputy COS and Chief Ethics Officer to facilitate Amended Manual-related trainings. Nevertheless, the Clerk is required to fulfill her obligations under the Amended Manual to conduct various trainings. So far, she has fallen short on these obligations.

i. *Completed and Pending Trainings*

The Amended Manual requires HR to conduct the following four trainings: (1) all Employee training “to ensure [employees] are aware of and knowledgeable about the Policy Manual, and Unlawful Political Discrimination” (Section IV.C.4); (2) HR Personnel Training “to ensure that they are aware of and knowledgeable about the Policy Manual and will be able to administer relevant portions of the Policy Manual and answer any questions they may receive” (Section IV.C.2); (3) Supervisor Training “to ensure they are aware of and knowledgeable about the Policy Manual” (Section IV.C.3); and (4) Interviewer

Training “of all Employees who are eligible to interview Candidates for any Position regarding proper interview conduct, techniques, and requirements, as well as the prohibition of Unlawful Political Contacts and Unlawful Political Discrimination” (Section IV.C.5). To date, the Clerk has only conducted All Employee Training of the Amended Manual (and limited Interviewer Training). She has not conducted any training on Supervisors or HR Personnel and has missed deadlines imposed by the Court during a recent status hearing to provide draft training decks to the CCCA for review. A summary of the completed and outstanding trainings follows.

The two trainings the Clerk has conducted under the Amended Manual covered the All Employee Training and, for a handful of Supervisors, Interviewer Training. Concerning the All Employee Training, the CCCA reviewed the draft training deck and provided “over a dozen pages of identified inaccuracies in the decks and recommended changes aimed at improving effectiveness of the training.” *See* Fourth Report at 6. The Clerk accepted most accuracy-related edits but not the other recommendations and edits aimed at improving effectiveness. *Id.* Further, as explained in the March 2022 status, the Clerk received written questions from Employees on the training, shared a draft response with the CCCA and the CCCA provided proposed edits to the same; however, the Clerk issued the response to the Employees without incorporating nearly any of the CCCA’s proposed edits and without notifying the CCCA she had issued the response.

Concerning the Interviewer Training, the Clerk provided the CCCA with a draft training deck, the CCCA provided significant proposed edits to ensure accuracy and improve effectiveness, and the Clerk adopted the accuracy-related edits. Overall, the CCCA believed this training deck was of a much higher quality than the All Employee

Training deck as it included more examples and context for the target audience. The Clerk then implemented the Interviewer Training for 18 of around 50 Supervisors in February 2022 without providing the CCCA notice of the same (a violation of Section IV.C.3 of the Amended Manual). When asked why the CCCA was not copied on the notice of training as the Manual requires, the Clerk responded that no correspondence was sent to Employees notifying them of the Interviewer Training, rather, “[e]ach Employee that HR, in consultation with the Division Deputies, anticipated may be participating on an Interview Panel was told to log on” and complete the training. The Clerk asserted that “[a]s a result, there was no message on which to copy the CCCA.”

This explanation (1) confirms non-compliance with the Manual¹⁸, and (2) is an example of the Clerk not engaging in a spirit of compliance. The Clerk’s response to the lack of notice avoided any acknowledgement of her obligation to provide the same, rather pointing to what she perceived to be a loophole to avoid transparency and notice obligations under the Amended Manual. At this stage of the CCCA’s appointment, for the Clerk to advance this type of argument on a matter so simple and clear-cut as notice of a training makes the CCCA wonder what other technicalities and loopholes the Clerk has been utilizing to avoid her compliance obligations.

ii. Outstanding Required Trainings

The two remaining Manual-required trainings are for HR Personnel and Supervisors. The HR Personnel Training is critical as HR is “primarily responsible for implementing the hiring policies and procedures of the Clerk’s Office” and, further,

¹⁸ Manual § III.M requires that “Notice of Mandatory Trainings will state that the training is required and that failure to attend the training will subject an Employee to Discipline up to and including Termination.” As there is no record of the content of the verbal notice to verify it satisfies the requirements of III.M, verbal notice is noncompliant with the Amended Manual.

because, as the Deputy COS acknowledged, HR had not yet “become self-sufficient” and was still learning the very policies it was tasked with implementing. Fourth Report at 7-8. Supervisor Training is similarly critical as many policies in the Amended Manual – such as Discipline, Performance Management and Time and Attendance, begin with the Supervisors (rather than with HR) so it is important those Supervisors understand their roles and responsibilities under the policies.

During the March 3, 2022 status, the Clerk’s Office committed to providing the CCCA with draft training decks for the HR Personnel Training and Supervisor Training on March 11, 2022 and March 18, 2022, respectively. *See* Dkt. 7832. As of the filing of this report, the CCCA has not received any draft training decks (or updates from the Clerk) on the same. As such, these critical trainings remain outstanding and the Clerk has not demonstrated compliance with her Training policies.

i. *Development of Seasonal Election Policy and Hiring Activity*

The Clerk’s Office hires a significant number of employees on a temporary basis to help facilitate its obligations to conduct elections. As no written policy existed to govern this hiring, the Court encouraged the Clerk to negotiate such a written policy after the 2020 election cycle concluded. *See* Oct. 15, 2021 Hr’g Tr. (Dkt. 7159) at 21:9-24. The Clerk’s initial proposal was to use the same external vendor that the Chicago Board of Elections used to facilitate its elections-specific seasonal needs. *See* Third Report at 6, n.4; Fourth Report at 19, n.15. The Clerk advised in December 2021 that the third-party vendor would not be a realistic solution and sought to negotiate the development of a stand-alone process with the Plaintiffs and CCCA. *See* Dec. 22, 2021 Hr’g Tr. (Dkt. 7732) at 33:2-21.

On or around March 10, 2022, the parties and the CCCA substantially agreed to a

policy that required all seasonal hiring to be conducted pursuant to public posting of a single seasonal election position (Seasonal Clerk IV) via the same Electronic Application System the Clerk uses for all other Non-Exempt hiring. The draft policy also included, *inter alia*: requirements that a job description for the seasonal position be developed, inclusive of Minimum Requirements; that the posting would contain Disqualifying Questions based on those Minimum Requirements; and that Applicants would be eligible for seasonal employment if they answered in the affirmative to all the Disqualifying questions. The Clerk also agreed with the Plaintiffs' and CCCA's suggestion to give preference to any Applicant that had previously worked for any election authority (rather than just for the Clerk's Office). Because the policy was substantially agreed to, the CCCA did not object to the Clerk posting the seasonal Clerk position on March 15.

Immediately after the posting went live, the CCCA provided the Clerk with feedback regarding significant policy non-compliance with the posting. This non-compliance included that the Disqualifying Questions the Applicants were required to answer, the only element to evaluate suitability for employment, did not match the Minimum Requirements on the posting. Additionally, the required "statement that Candidates who confirm they have worked on an election previously for an election authority will be given offers of seasonal employment prior to those without such experience" was not present on the posting; rather, the Clerk inserted a question that signified preference for a standard that was not agreed upon, whether the Applicant had "previously worked with *Cook County* as an Election Worker." The Clerk did not respond to this feedback.

Less than a week later, after receiving the first Eligibility List pursuant to the

posting, the CCCA again provided feedback regarding non-compliance, reiterated the previous feedback, and additionally included the following non-compliance: HR had deemed Applicants as eligible who either did not answer, or answered in the negative, the Disqualifying Questions; HR had listed certain Applicants twice on the eligibility list; HR had provided preferential treatment only to Applicants who worked previously for the Cook County Clerk's Office for an election, not any election authority (as the parties and CCCA had agreed). After the Clerk protested that the non-compliance was immaterial and would only serve to delay her seasonal elections hiring, the CCCA reiterated that the feedback provided was simply identifying non-compliance with the policy and Job Description to which the Clerk had substantially agreed. The Clerk responded by proposing edits to the policy that would eliminate the non-compliance identified by the CCCA.

On March 29, 2022, Plaintiffs' Counsel responded noting their "object[ion] to the Office disregarding its written policy and then trying to correct the violations by amending the policy after the fact. If changes are necessary for business reasons, the Office should revise the policy and then act, not the other way around." Plaintiffs' Counsel then responded to the substantive edits proposed by the Clerk, agreed to many, and made additional proposed edits. The Clerk's Chief Legal Counsel stated that the Clerk would respond to the Plaintiff's comments and questions on the policy "in due course." The Clerk did not respond until May 2 when she accepted all of Plaintiffs' edits.

Additionally, in the Third Report, the CCCA described concerns regarding the Clerk's continued retention of seasonal election workers and the lack of any written process for the same. *See* Third Report at 14, n.9. In November 2021, the Clerk identified six "remaining seasonal workers," three of whom have since been terminated and one of whom

received a permanent position via a Memorandum of Understanding with the Union. *See* Fourth Report at 19, n.15. The other two remain employed with the Clerk’s Office. As the Court noted, the retentions of these Employees without process “shines a light on the need to eliminate these kind of informal processes.” *See* Aug. 12, 2021 Hr’g Tr. at 20:4.

Overall, it is clear the Clerk has significant ground yet to cover to demonstrate consistent compliance and the presence of a durable remedy with respect to her Amended Manual. HR Personnel and Supervisor Trainings remain outstanding and, as evidenced by the consistent issues with the Clerk’s hiring processes, draft disciplinary documentation, and time and attendance compliance, it is clear these trainings are sorely needed by the respective audiences. At this stage it simply does not appear HR possesses the subject matter knowledge to implement the Amended Manual effectively. Further, the CCCA found in the Second Interim Report that the Director of HR committed a Major Cause Infraction by falsifying her resumes for both her current position and the abandoned attempt to hire her as Deputy Clerk of HR, especially troubling given her role. Without a more robust HR function, the Clerk’s Office will have a difficult time demonstrating the existence of a durable remedy with its employment policies. As such, the CCCA recommends additional monitoring of all aspects of the Clerk’s Amended Manual and suggests initiating bi-weekly meetings with HR to discuss outstanding compliance matters so issues may be resolved and course-corrected more expeditiously.

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.” Appointment Order at 42. As 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 departmental Deputy Clerk and the Deputy Clerk of HR – and *permitted* the employee to report the same to the Board of Ethics and OIIG. Initial Report at 21. This element was rectified in the Amended Manual as it (1) adopts Cook County’s policy on political solicitations as found in the County’s Ethics Ordinance; (2) requires Employees to report violations of the same only to the OIIG or County Ethics Board (consistent with the Ethics Ordinance) and (3) allows Employees (at their discretion) to report such allegations to the Clerk’s Chief Ethics Officer. Fourth Report at 28. Based on the finalization of the relevant policy, the CCCA believes the Clerk has satisfied this part of the Appointment Order.

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 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. A stand-alone process was developed to govern this hiring (the “AOD Plan”). A summary of the development of that process is below. Given the Clerk’s hiring under the AOD Plan constituted a significant amount of the Clerk’s Non-Exempt hiring since the Appointment Order was implemented, we examine below whether the Clerk adhered to the AOD Plan “in the observance rather than the breach.” *Id* at 41. Overall, the Clerk’s Office did not demonstrate the ability to effectively implement the AOD Hiring Plan; rather, they relied heavily on issue spotting, guidance and recommended course correction from the CCCA.

Additionally, the Clerk has not yet confirmed that one AOD hire possessed the education degree “relied upon to qualify for the Minimum and Preferred Qualifications prior to their start date.” AOD Plan § IV.W.

Finally, after the AOD hires began employment, the Clerk’s organizational structure and use of some of these Employees differed significantly from representations on the posted Job Descriptions and Clerk’s organizational charts. While the CCCA has not concluded that Political Reasons or Factors were at play with any of the AOD-related hires, the breadth, seriousness, and ongoing nature of the non-compliance does not yet permit a conclusion that such factors were not at play. At a minimum, the CCCA does not believe the Clerk executed the AOD process with the procedural integrity necessary to prevent Unlawful Political Discrimination; the Clerk has operated (and continues to operate) in the breach of the AOD Hiring Plan, rather than in the observance.

1. AOD Plan Development and Compliance

The CCCA detailed in her Initial Report that between her April 2020 Appointment and late August 2020, the “Clerk’s Office’s consistent cooperation was not forthcoming.” Initial Report at 6. Despite awareness of her obligations to assume the duties of the Recorder’s Office and the need to provide the CCCA and Plaintiffs’ Counsel with an explanation of how she intended to accomplish this task, the Clerk did not provide a draft of the AOD Hiring Plan until September 22, 2020 – just over two months before the Clerk would officially assume the duties of the Recorder’s Office. Second Report at 20. The Clerk’s delay in providing a draft proposal created a need for considerable effort by the CCCA to review, provide feedback on and work with the Clerk’s Office and the Clerk’s third-party vendor (the “Vendor”) to develop an effective written policy as quickly as

possible given the imminent closing of the Recorder's Office. *Id.* The parties and CCCA finalized an AOD Hiring Plan on October 9, 2020, the same day the first batch of AOD postings were posted for public application. *Id.* at 20-21. AOD postings were slowed, at first, by the Clerk's significant delays in providing draft Job Descriptions for the AOD Positions. These delays then demanded rapid review and conferral resulting in the finalization of many Job Descriptions in the days – and hours – before the Vendor posted the jobs online. *Id.*

The CCCA has discussed the Clerk's compliance with the AOD Plan, recounting the significant undertaking involved and the meaningful work by the former Deputy Clerk of Human Resources and the Vendor to complete the process, particularly in their efforts to swiftly address issues as they arose during the hiring sequences. Second Report at 20-21. The Clerk Employees who conducted interviews appeared to take the process seriously and attempted to comply with the duties assigned to them. *Id.* at 25.

However, numerous deviations from the AOD Plan's requirements and foreseeable errors occurred. Given the (unnecessarily) condensed timeframe available to complete the AOD process, the instances of non-compliance with the AOD Plan were significant. *See Id.* at 19-20. The CCCA monitored each stage of the AOD hiring process and noted issues at every step. Some, but not all, of these issues included:

- Errors with postings that required correction while the posting was active, adjustment in the process for validation applications to address the error in the posting, and at times re-posting. *See* Second Report at 21-23.
- For all postings, discrepancies with the Vendor's validation of applications, resulting in consistent (and at times extensive) feedback from the CCCA to resolve the issues. *Id.*

- Issues with interview scoring, including panelists who did not properly detail the reasoning for their interview scores and/or scores that belied the substance (or lack thereof) of the Candidate's answer. *Id.* at 25-26
- Failure by the Clerk to provide the CCCA with interview questions in advance (as required by the AOD Plan), resulting in last-minute edits. *Id.* at 24.
- Incorrect rankings of Candidates based on their interview scores after conclusion of the interviews. *Id.* at 24-25
- Notifications of potential Conflicts of Interest that did not comply with the AOD Plan. *Id.* at 26.
- Posting files did not contain all required documentation, or in some instances contained inaccurate documentation. *Id.* at 26-28.
- The Clerk, who received approval from the CCCA and Plaintiffs' Counsel to hire three existing IT Personnel from the ROD without public posting, hired one individual who did not meet the MQs for the Job Description developed. The Clerk also never provided NUCCs for these hires, dubiously claiming that NUCCs were not required to be executed because the three individuals "were not hired using the formal AOD hiring process." *Id.* at 28-30.
- Prior to any AOD hire beginning employment, the Clerk was charged with obtaining documentation verifying the hire possessed "proof of the most advanced educational credential and certifications relied upon to qualify for the Minimum and Preferred Qualifications..." AOD Plan § IV.X. If the Candidate does not provide the documentation, they are to be "deemed disqualified for the position." *Id.* The CCCA identified and communicated to the Clerk numerous instances of non-compliance with this provision, and when the Third Report was filed in August 2021, verification remained outstanding for 16 hires, eight months after they began employment. Third Report at 26-27. By December's Fourth Report, verification for eight hires remained outstanding. Fourth Report at 29. As of the most recent status hearing, verification of the credentials remained elusive for one Employee, resulting in this Court offering its assistance to resolve the matter. *See* Mar. 1, 2022 Hr'g Tr. (Dkt. 7832) at 30:22-31:7. The CCCA has not been notified that the Clerk has accepted this assistance and resolved the matter. All told, the Clerk's non-compliance with this element began in December 2020, and the Clerk has still not fully completed this foundational element of hiring some 17 months after the first Employees were hired pursuant to the AOD process. Were it not for the CCCA identifying the issue, the Clerk would not have verified these hires possessed what they were credited with to obtain their positions. The Clerk terminated one of the Employees after discovering they did not actually possess the educational credential for which they received credit. Third Report at 27. For a few others, the Clerk never obtained the required documentation but the circumstance was moot as the Employees had been separated from the Clerk for other reasons. *Id.*

- The CCCA noted that the organizational structure at the Clerk’s Office remained unclear to the point that some recently hired AOD Assistant Managers, weeks into their employment, remained unsure which Employees were reporting to them. Second Report at 27-28. In particular, the CCCA observed that one Assistant Manager appeared to be operating in a title different from the one she was hired into and inquired multiple times with the Clerk to clarify this Employee’s title and reporting structure. Nearly 17 months later, and after multiple requests from the CCCA for clarification on the matter, these issues remain outstanding.
- The Vendor, not the Deputy Clerk of HR or Designee (as the AOD Plan required), maintained the Posting Files until at least May 14, 2021. *See* Third Report at 27.

Overall, the Clerk’s implementation of the AOD Hiring Process deviated significantly from what the policy required and was not reflective of an office demonstrating compliance with her written policies.

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.” Appointment Order at 42. As detailed above, the CCCA has collaborated with the Clerk and Plaintiffs’ Counsel to develop the AOD and Interim Hiring policies, Seasonal Hiring Policy, and the Amended Manual. The CCCA believes that the Amended Manual is comprehensive and effectively addresses the universe of Clerk Employment Actions. Accordingly, the Clerk demonstrating strong adherence to the Amended Manual is the best method to address the noncompliance uncovered to this point. To that end, the CCCA maintains the recommendation she has made on multiple occasions, most recently within the First Interim Report (Dkt. 7941 at 20), that the Clerk establish a Non-Exempt Director of Compliance tasked with assisting the Clerk’s Office with Manual compliance and independently and objectively investigating potential

violations of the Manual. The CCCA restates this recommendation here as she believes the adoption of this recommendation – and the hire of an effective Director – has the potential to help shore up many of the issues identified above.

III. Conclusion

Because of the extensive factual findings described above and in the CCCA's various reports to the Court to date, the CCCA recommends this Court extends her period of monitoring pursuant to the Appointment Order for a duration the Court deems appropriate and necessary.

Respectfully Submitted,

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