

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

<b>MICHAEL L. SHAKMAN, <i>et al.</i>,</b>	)	
	)	<b>Case No. 69 C 2145</b>
<b>Plaintiffs,</b>	)	
	)	<b>Hon. Edmond E. Chang</b>
v.	)	<b>District Judge</b>
	)	
<b>CLERK OF THE CIRCUIT COURT</b>	)	<b>Hon. Gabriel A. Fuentes</b>
<b>OF COOK COUNTY, <i>et al.</i>,</b>	)	<b>Magistrate Judge</b>
	)	
<b>Defendants.</b>	)	

**AMENDED ELEVENTH REPORT OF SUSAN G. FEIBUS  
AS COMPLIANCE ADMINISTRATOR FOR THE  
CLERK OF THE CIRCUIT COURT OF COOK COUNTY**

Susan G. Feibus, Compliance Administrator for the Clerk of the Circuit Court of Cook County (“CCCA”), by her attorney, Sue Gombis, pursuant to Sections I(B) and III(C) of the August 10, 2018 Supplemental Relief Order, as amended June 19, 2019 (“SRO”) for Defendant Iris Martinez (“Clerk”), Clerk of the Circuit Court of Cook County (“CCCO”), Doc. No. 6382, submits her Amended Eleventh Report to the Court:

**I. INTRODUCTION**

On April 18, 2022, the CCCA filed the Tenth Report to the Court (“Tenth Report”). Doc. No. 7901. This Eleventh Report is to update the Court as to the Clerk’s progress towards Substantial Compliance<sup>1</sup> with the SRO since the Tenth Report.

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<sup>1</sup> All capitalized terms have the same meaning as in the SRO or Employment Plan, unless otherwise indicated. Under the SRO, Substantial Compliance requires: (1) the CCCO to implement a New Employment Plan, including procedures to ensure compliance with the New Employment Plan and identify instances of non-compliance; (2) the CCCO to act in good faith to remedy instances of non-compliance that have been identified and prevent a recurrence; (3) the CCCO to not have a policy, custom or practice of making employment decisions based on political factors except for Exempt Positions; (4) the absence of material noncompliance which frustrates the “Clerk of Court’s Decrees” and the SRO’s essential purpose; and the CCCO to implement procedures that will affect long-term prevention of the use of impermissible political considerations in connection with employment with the CCCO. Doc. No. 6382 at 13 – 14. The

Clerk Martinez has been in office nearly a year and one half. Good progress has been made towards Substantial Compliance. The bulk of the CCCO/Human Resources' efforts have been in bargaining unit entry-level hiring, Lateral Transfers and Promotions based on stated operational need. As the CCCA cannot dictate CCCO operational priorities (nor would she want to), the CCCA's monitoring efforts largely have focused in the same direction. The cooperation and collaboration between the CCCA and Human Resources described in prior reports has remained. From the CCCA's vantage point, the CHRO and her team have done the best they can with limited resources.

As the Court indicated in the April 27, 2022 order at §10, "there is substantial work to be done." The CCCA has no doubt that Clerk Martinez and her staff are committed to completing the necessary benchmarks in the SRO and Employment Plan to achieve the durable remedy required for Substantial Compliance. Whether they will be able to do so in the timeline the CCCO projects, as discussed below, remains to be seen.

## **II. OVERVIEW OF THE CCCA'S ACTIONS SINCE THE APRIL 18, 2022 TENTH REPORT**

The CCCA and her staff are actively engaged with the CCCO and its efforts to achieve Substantial Compliance. The CCCA's activities since the Tenth Report included:

- provided significant input into additional amendments to the Employment Plan (under discussion);
- provided significant input into reviewing and approving Exempt Candidates proposed by Clerk Martinez;

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"Clerk of Court's Decrees" refer to: (1) the 1972 Consent Decree which, *inter alia*, prohibited the CCCO from taking any action regarding governmental employment against any governmental employee based on political reasons or factors; and (2) the 1983 Judgment Order which prohibited the CCCO from, *inter alia*, conditioning hiring practices on political reasons or factors, except for specified positions that are "*Shakman Exempt*." *See* Doc. No. 6382 at 1.

- provided significant input into the training deck and practice session for the CCCO's Employment Plan-mandated Human Resources Employment Plan training (completed July 25, 2022);
- provided significant input into the training deck and practice session for the CCCO's Employment Plan-mandated Human Resources Validation training (completed July 27, 2022);
- provided significant input into drafting the Employee Handbook (under discussion);
- provided the CCCO/Human Resources with regular feedback regarding compliance with Shakman-related Employment Actions, policies and procedures;
- worked closely with the CCCO/Human Resources regarding the CCCO's use of the Lateral Transfer process under the Employment Plan for the bargaining unit positions of Court Clerk Trainer, Circuit Court Clerk, and the entry-level positions of Office Clerk and Financial Clerk;
- worked closely with the CCCO/Human Resources regarding the CCCO's use of the Promotion process under the Employment Plan for the bargaining unit positions of Court Clerk Trainer and Circuit Court Clerk;
- provided significant input into revising position descriptions for the CCCO's use of the Entry-Level Bargaining Unit Hiring process under the Employment Plan based on the CCCO's new Collective Bargaining Agreement ("CBA");
- reviewed and commented on CCCO's proposed positions for Actively Recruited Positions List (discussion ongoing);
- conducted exit interviews of departing CCCO employees;
- monitored bi-monthly CCCO grievance hearings;
- conferred with the COS on a regular basis;
- conferred with the Chief Human Resources Officer ("CHRO")/Shakman Liaison and Human Resources personnel on a regular basis;
- conferred with the DOC on a regular basis;
- conferred with counsel for Plaintiffs on a regular basis; and
- conferred with the CCCO's outside counsel on a regular basis.

**III. THE CLERK’S PROGRESS TOWARDS SUBSTANTIAL COMPLIANCE:  
EMPLOYMENT PLAN, EMPLOYEE HANDBOOK, TRAINING**

**A. Status of Employment Plan: Under Revision**

A prerequisite to Substantial Compliance under Section II(C) of the SRO is the creation of a full Employment Plan. The Court approved the Clerk’s original full Employment Plan on November 24, 2020, before Clerk Martinez assumed office, and amendments to the Employment Plan on March 19, 2021 and April 19, 2022.

The parties and CCCA have been discussing additional Employment Plan amendments since the April 19, 2022 version was approved. The additional amendments include memorializing the processes used for bargaining unit Lateral Transfer and Promotion processes based on the experience gained by use. The CCCO and Plaintiffs/CCCA also have or will propose additional amendments related to the hiring processes. The CCCA expects these amendments will be resolved by September 5, 2022 as the parties and CCCA are scheduling a meeting to discuss the proposals.

Of more significance is an amendment to the definition of “Electronic Application System (EAS)” that the CCCO added to the April 19, 2022 version. Prior to the April 19, 2022 amendments, the definition of EAS was: “The electronic application system used by the Clerk’s Office in the hiring of employees.” The CCCA understands this is the standard definition for Electronic Application Systems in the Employment Plans of other elected officials under Shakman decrees.

The CCCO’s new definition of Electronic Application System in the April 19, 2022 version of the Employment Plan is: “Any electronic employment application or tracking system used by the Clerk’s Office in the selection of Employees.” When the CCCO made this change, it did not front – through discussion or disclosure – why it proposed the definitional change and what the CCCO thought it meant.

In the absence of discussion or disclosure, the CCCA (and presumably Plaintiffs) viewed the CCCO's definitional change as non-substantive. The CCCA (and presumably Plaintiffs) surely did not agree that the CCCO could undertake bargaining unit Lateral Transfers and Promotions using a system without the safeguards that an electronic application system like Taleo, the electronic application system used by Cook County and other Cook County Elected Officials, provides.

In or about April 2022 (after the Employment Plan amendments had been approved), the CCCA indicated to the CHRO that the CCCO had to use an electronic application system (Taleo or something else) for bargaining unit Lateral Transfers and Promotions. Until April 2022, the CCCO/HR had been using Microsoft Forms, an on-line survey creator that is part of the Microsoft Office suite of products.

The CCCO's explanation for using Microsoft Forms was that the CCCO's version of Taleo had not been adapted for internal CCCO use and the Lateral Transfers and Promotions had to be effectuated quickly based on the Circuit Court of Cook County's great operational need. The CHRO indicated that the CCCO had been exploring how its version of Taleo (or another electronic application system) could be implemented for bargaining unit Lateral Transfers and Promotions in the future.

The CCCA understood the CCCO/Human Resources' explanation for the need to use Microsoft Forms in the short term. As a practical matter, the CCCA could not stop the CCCO/HR from using Microsoft Forms. The CCCA, however, made clear that an electronic application system was required for bargaining unit Lateral Transfers and Promotions – which Microsoft Forms indisputably is not.

Microsoft Forms is not acceptable for bargaining unit Lateral Transfers and Promotions because it lacks the safeguards of electronic application systems (like Taleo). The biggest problem with Microsoft Forms is that native data can be deleted and there is no way to retrieve or restore the original content. Nor is there any way with Microsoft Forms to identify who deleted the native data. The inability to irretrievably delete native data cannot happen with Taleo or other electronic application systems. On this basis alone (and there are others), Microsoft Forms never can provide the requisite safeguards of transparency and compliance.

While the CCCO/Human Resources has continued to use Microsoft Forms, the CCCA understands that the CCCO/Human Resources is continuing to investigate how Taleo or another electronic application system could be adapted for bargaining unit Lateral Transfers and Promotions.

Plaintiffs and the CCCA have proposed an amendment to the Employment Plan that restores the definition of EAS to what it was before the April 19, 2022 amendments. The CCCO will further advise the Court should the CCCO and Plaintiffs/CCCA be unable to resolve the issue.

**B. Status of Employee Handbook/Implementing Forms: Not completed**

1. Employee Handbook

Section IV(B) of the Employment Plan requires the CCCO “to maintain an up-to-date Employee Handbook” that “shall be consistent, in compliance with, and effectuate” the Employment Plan. The Shakman-related policies required to effectuate the Employment Plan include: training; layoffs/recall; reclassifications; temporary assignments; interim assignments; transfers; overtime/compensatory time; time and attendance; discipline; performance evaluations; and telework.

The CCCO provided a draft of the Employee Handbook on April 13, 2022. That draft did not include the Shakman-related policies of Layoff, Interim Assignment and Reclassification. The CCCO provided another document on July 11, 2022. In addition to not including Layoff, Interim Assignment and Reclassification policies, the July 11, 2022 version did not include Shakman-related Time and Attendance or Telework policies.

Also, the July 11, 2022 version did not include EEO, Drug and Alcohol, Workplace Violence, Workplace Visitor, Personal Cell Phone, Technology, Dress Code, Outside/Dual Employment, Anti-Harassment, Ethics or Employee Assistance policies. While these policies, standard fare for Employee Handbooks, may not directly implicate Shakman concerns, some (such as Workplace Violence or Outside/Dual Employment) implicate Shakman concerns indirectly.

Plaintiffs and the CCCA have not accepted the July 11, 2022 version as a proper Employee Handbook and are completing revisions to the April 13, 2022 version. Plaintiffs and CCCA expect to provide their revisions to the CCCO's April 13, 2022 version on or about July 29, 2022.

2. Employee Handbook Implementing Forms

The Employee Handbook requires implementing forms that are referenced in the various policies. Neither the CCCO's April 13, 2022 nor July 11, 2022 versions included draft implementing forms. It well may make sense to wait until the Employee Handbook is completed before addressing the implementing forms – but that is a piece that needs to be completed.

**C. Status of Employment Plan Mandated Training: Incomplete**

1. All-Employee Annual Employment Plan Training - Completed December 2021; required in December 2022

Section IV(G) of the Employment Plan requires, *inter alia*, comprehensive annual training for all employees to ensure that they are knowledgeable about the Employment Plan. As this training was completed in December 2021, it must be completed again in December 2022.

The 2021 training was satisfied by a combination of the Shakman training provided by the CCCA in February 2021 supplemented by the training initially provided by the DOC in November 2021 and completed in December 2021. As discussed and agreed with the CHRO and DOC, the 2022 all-Employee Employment Plan training and subsequent trainings should combine and incorporate both trainings.

2. Supervisor Annual Employment Plan Training – Completed

Section IV(F) of the Employment Plan requires, *inter alia*, comprehensive annual Employment Plan training for Supervisors to make sure that they are aware and knowledgeable about the Employment Plan.

As indicated in the Tenth Report at 7 – 8, this annual training was completed in April 2022. It will not be required again until April 2023.

3. Interviewer Training – Completed

Section IV(I) of the Employment Plan requires comprehensive training of all supervisory employees who are eligible to interview candidates for any position regarding proper interviewing conduct, techniques and requirements, as well as the prohibition against Unlawful Political Contacts and Unlawful Political Discrimination. Employees may not participate in an Interview Panel unless they have received Interviewer Training.

Since supervisor Employment Plan and supervisor Interviewer Training never had been done, the CCCO combined the initial presentations. The initial Interviewer Training was completed in April 2022.

4. Human Resources Annual Employment Plan Training – Completed July 25, 2022

Section IV(E)(1) of the Employment Plan requires, *inter alia*, comprehensive annual Employment Plan training for Human Resources employees “to ensure that they are aware of,

knowledgeable about, able to administer and able to answer questions they receive” about the Employment Plan.

The CCCO completed Human Resources Employment Plan training on July 25, 2022. The training was presented by the Director of Training and the DOC. The CCCA’s counsel gave extensive comments on multiple drafts of the training deck and the CCCA and counsel participated in a run-through with the Director of Training and the DOC. As the Human Resources Employment Plan training just was completed, the CCCA has not yet given feedback/analysis to the CCCO/Human Resources. The CCCA will advise the Court further on the Human Resources Employment Plan training in the next report.

5. Human Resources Validation Training – Completed July 27, 2022

Section IV(E)(3) of the Employment Plan requires comprehensive training of all Human Resources employees regarding proper validation and review protocols before they conduct such review and validation.

Human Resources Validation training was presented by the Director of Training on July 27, 2022. The CCCA’s counsel gave extensive comments on the training deck and participated in a run-through with the Director of Training. The CCCA will advise the Court further on the Human Resources Validation training in the next report.

6. Human Resources EAS Training – anticipated completion July 29, 2022

Sections IV(E)(2) and IV(R)(1) of the Employment Plan require all Human Resources personnel who review and validate applications to receive comprehensive training on EAS.

The Director of Training presented this training to Human Resources employees on February 19, 2021 and April 22, 2021. Human Resources has scheduled this training, to be

presented by the Director of Training, for July 29, 2022. The CCCA will advise the Court further on the Human Resources EAS training in the next report.

7. Human Resources Annual Employee Handbook Training - Not completed

Section IV(E)(1) of the Employment Plan requires, *inter alia*, comprehensive annual Employee Handbook training for Human Resources employees “to ensure that they are aware of, knowledgeable about, able to administer and able to answer questions they receive” about the Employee Handbook.

There has been no HR Employee Handbook training, a prerequisite to Substantial Compliance, as the Employee Handbook is not complete.

8. All-Employee Annual Employee Handbook Training – Not completed

Section IV(G) of the Employment Plan requires, *inter alia*, comprehensive mandatory annual training for all employees to ensure that they are knowledgeable about the Employee Handbook.

There has been no all-Employee Employee Handbook training, a prerequisite to Substantial Compliance, as the Employee Handbook is not complete.

9. Supervisor Annual Employee Handbook Training - Not completed

Section IV(F) of the Employment Plan requires, *inter alia*, comprehensive annual Employment Plan training for Supervisors to make sure that they are aware and knowledgeable about the Employee Handbook.

There has been no Supervisor Employee Handbook training, a prerequisite to Substantial Compliance, as the Employee Handbook is not complete.

#### IV. THE CLERK'S PROGRESS TOWARDS SUBSTANTIAL COMPLIANCE: HIRING

##### A. Exempt Positions

##### 1. Exempt List

A prerequisite to Substantial Compliance under Section II(E) of the SRO is the creation of an agreed Exempt List that identifies positions that involve policymaking to an extent or are confidential in such a way that political party affiliation is an appropriate requirement for the effective performance of the job.

As indicated in the Tenth Report at 5-6, the CCCO's Exempt List last was amended via the Court's April 19, 2022 order. Following that amendment, the number of CCCO Exempt positions is 92.

The April 19, 2022 amendments added two high-level (Associate Clerk) positions reporting directly to the CHRO: one for Human Resources Administration and the other for Labor and Legal Affairs. Based on the Human Resources reorganization, the parties and CCCA agreed, *inter alia*, that two Human Resources positions, Director of Personnel Services and Director of Training, would remain on the Exempt List provisionally, subject to periodic CCCO reports demonstrating job performance that satisfies *Branti*.

Based on the CCCO's May 2, 2022 report regarding the Director of Training and subsequent discussion, Plaintiffs and the CCCA did not agree that the Director of Training's duties were sufficient to meet the *Branti* standard. On July 26, 2022, the Director of Training resigned, effective July 29, 2022. Plaintiffs have indicated to the CCCO that, consistent with other offices under Shakman decrees, Plaintiffs will not agree that the Director of Training position should remain Exempt. (The CCCA concurs with Plaintiffs' analysis.)

The Director of Personnel Services position was vacant until June 6, 2022. The parties and CCCA agreed that the CCCO's first report regarding the Director of Personnel Services Exempt duties will be due on August 8, 2022. The CCCA will advise the Court further regarding the Exempt status (or not) of these two positions in the next report.

2. Exempt Hiring – changes since April 18, 2022 Tenth Report

Article XII of the Employment Plan governs the Exempt Hiring process. Since the Tenth Report, the CCCO has filled eight Exempt positions as a result of the addition of new positions to the Exempt List, new hires in existing Exempt positions, resignations and transfers: (1) Investigator/Security Detail Officer (2 positions filled); (2) Chief Deputy Clerk, Domestic Violence; (3) Assistant Chief Deputy Clerk, Domestic Violence; (4) Chief Deputy Clerk – Systems and Applications Services; (5) Director of Personnel Services; (6) Chief Deputy Clerk District 4; and (7) Chief Deputy Clerk, Juvenile. All positions were filled in accordance with Section XII of the Employment Plan.

Five Exempt positions are vacant: (1) Associate Clerk, Deputy Chief Human Resources Officer HR Administration; (2) Deputy General Counsel Labor and Employment; (3) Labor Counsel; (4) Scheduler to the Clerk; and (5) Chief Deputy Clerk Web Services.

**B. Actively Recruited Positions**

Section IX of the Employment Plan governs the hiring of positions on the Actively Recruited Positions List. The CCCO proposes position descriptions for inclusion on the Actively Recruited Positions List to which Plaintiffs and CCCA must agree. Actively Recruited Positions are non-Shakman Exempt supervisors or technical/professional positions that minimally require a Bachelor's Degree or technical certification. Hiring processes for Actively Recruited Positions tend to be shorter than those under the General Hiring Process (under Section VI of the

Employment Plan) as the applicants are not randomized and the CCCO may choose whom it wishes to interview.

The CCCO has done no hiring for Actively Recruited Positions. The CCCO recently took the first steps for hiring Actively Recruited Positions:

- On July 12, 2022, the CCCO proposed three position descriptions for the Actively Recruited Positions List: (1) Senior Accountant (Finance); (2) Senior SQL Database Administrator (MIS); and (3) Workforce Strategy Analyst (Human Resources recruiting position).
- On July 14, 2022, Plaintiffs and CCCA challenged the inclusion of the Senior SQL Database Administrator and Workforce Strategy Analyst for failure to meet the minimum educational requirements for Actively Recruited positions.
- On July 19, 2022, the CCCO provided a revised position description for the Senior SQL Database Administrator and agreed to remove the Workforce Strategy Analyst from the proposed Actively Recruited Positions List.

The CCCA has reviewed and commented on the revised position descriptions for the Senior SQL Database Administrator, Senior Accountant and Workforce Strategy Analyst. Once agreed, the positions will be ready for posting.

### **C. General Hiring Process**

Section VI of the Employment Plan governs hiring under the General Hiring Process that covers non-Shakman Exempt, non-bargaining unit positions that are not on the Actively Recruited Positions List.

The CCCO has done no hiring under the General Hiring process.

Section VI(D)(2) of the Employment Plan requires position descriptions to accurately reflect the Minimum Qualifications, Preferred Qualifications and knowledge, skills and abilities for the position (as determined by Human Resources in conjunction with the head of the Hiring Bureau where the position is located). Once determined, the position description must be given to Plaintiffs and CCCA for review and comment. Since the CCCO has not hired under the General

Hiring process and will be using position descriptions for the first time, a hiring process cannot be initiated until the position description is reviewed by the CCCO, provided to Plaintiffs and CCCA and agreed.

The only position description under the General Hiring Process proffered by the CCCO is the Workforce Strategy Analyst. As indicated above, once the position description is agreed, the Workforce Strategy Analyst position will be ready for posting.

#### **D. Entry-Level Bargaining Unit Positions**

Under Section VII of the Employment Plan, governing entry-level bargaining unit hiring, and consistent with the CCCO's CBA, the CCCO may externally post (using Taleo) vacant entry-level bargaining unit positions. The Entry-Level Bargaining Unit Position Hiring process does not require applicants to be interviewed. Following randomization and validation, offers are made via phone calls by Human Resources.

As indicated in the Tenth Report at 11, the CCCO initiated its first Entry-Level Bargaining Unit Position Hiring process in June 2021. The total number of employees hired was 161, with the last new employee orientation for entry-level positions on March 28, 2022.

As also indicated in the Tenth Report at 11 – 12, seven bargaining unit entry-level position titles were collapsed into three titles under the CCCO's new CBA: (1) Office Clerk; (2) Financial Clerk; and (3) Motor Vehicle Operator. All three new bargaining unit entry-level positions were posted in June 2022 and have been validated:

- Office Clerk – 12 vacancies; 704 completed applications; 241 applicants eligible.
- Financial Clerk – 3 vacancies; 368 completed applications; 121 applicants eligible.
- Motor Vehicle Operator – 1 vacancy; 87 completed applications; 2 applicants eligible.

Human Resources anticipates making offer calls soon, subject to final adjustments to the validated eligibility lists. The CCCA will continue to monitor these hiring processes and provide feedback to the CCCO, as necessary.

The CHRO has indicated that significant additional vacancies for bargaining unit entry-level positions (in the range of approximately 60 positions) are expected in the short term with many additional bargaining unit entry-level vacancies to follow. The bulk of these additional vacancies will be for the Office Clerk position. Given that only 241 applicants (of the 704 who applied) have been deemed eligible, the Office Clerk position may require reposting to fill all vacancies.

The CCCA will advise the Court further in the next report.

#### **E. Bargaining Unit Lateral Transfers**

Under Section VIII(B) of the Employment Plan, governing the bidding and selection processes for bargaining unit Lateral Transfers, and consistent with the CBA, the CCCO must offer certain Grade 12 entry-level bargaining unit vacancies to Grade 12 employees who hold those positions at another CCCO location (“Lateral Transfers”) before filling the vacancies with external applicants.

As indicated in the Tenth Report at 9-10, the CCCO completed the Lateral Transfer processes for entry-level bargaining unit positions (12 transfers) and the Circuit Clerk Court position (10 transfers) in April 2021 and for the Court Clerk Trainer position in February 2022 (no transfers).

Since the April 18, 2022 Tenth Report, the CCCO posted another round of Lateral Transfers for the Circuit Court Clerk position and for two of the entry-level bargaining unit positions - Office Clerk and Financial Clerk:

- Circuit Court Clerk – 38 employees bid for – and were offered - Lateral Transfers for the Circuit Court Clerk position. 17 employees accepted the Lateral Transfer offers but the CCCO did not effectuate any of the Lateral Transfers. As this Lateral Transfer process expired on July 10, 2022, apparently no moves will be forthcoming. The CCCA is reviewing the Posting File for the Circuit Court Clerk Lateral Transfer process and will provide feedback to the CCCO.
- Office Clerk and Financial Clerk - 50 employees bid for Lateral Transfer for the Office Clerk and Financial Clerk positions. The CCCO has not yet made offers to those employees. The CCCA will review the Posting File for the Office Clerk and Financial Clerk Lateral Transfers once the process is completed or the process expires on August 21, 2022 and will provide feedback to the CCCO.

#### **F. Bargaining Unit Promotions**

Under Section VIII(C) of the Employment Plan, governing bargaining unit promotions, and consistent with the CBA, promotions for certain bargaining unit positions must be offered to CCCO employees before the positions can be filled externally (through Section VI of the Employment Plan).

As indicated in the Tenth Report at 12, the CCCO completed the Promotion process for the Court Clerk Trainer position on March 29, 2022 (18 promotions). These promotions were effectuated on June 5, 2022. The CCCA reviewed the Posting File and provided the CCCO with a compliance analysis identifying various documentation deficiencies that the CCCO/Human Resources have corrected.

Since the April 18, 2022 Tenth Report, the CCCO completed Promotions for two positions:

- Circuit Court Clerk - May 2 – May 11, 2022 posting (92 promotions). Promotions effectuated July 3, 2022. CCCA has reviewed the Posting File and will provide feedback/compliance analysis to the CCCO.
- Court Clerk Trainer – May 23 – May 26, 2022 posting (11 promotions). Promotions effectuated June 5, 2022. CCCA has reviewed the Posting File and will provide feedback/compliance analysis to the CCCO.

**V. THE CLERK’S PROGRESS TOWARDS SUBSTANTIAL COMPLIANCE: POLICY IMPLEMENTATION**

As indicated in the prior reports, there have been issues regarding the CCCO/HR providing timely and adequate notice of Employment Actions<sup>2</sup> to the CCCA/DOC in accordance with Section I(G) of the SRO and Section I of the Employment Plan. The CCCA sent the CCCO/Human Resources compliance analyses detailing where Notices of Employment Action (“NEAs”) did not comply with Shakman-related policies (Temporary Assignments, Transfers, Telework), CCCO written policies or the CCCO’s CBA, from June 2021 through April 2022. The CCCA’s compliance analyses included requests for clarification, additional information and documentation.

As indicated in the Tenth Report, the CCCO/HR provided the information requested by the CCCA for June 2021 through September 2021 only. By June 2022, the CCCO’s responses were so overdue and the CCCA’s information requests were so stale, it no longer made sense for the CCCA to pursue them. The CCCA agreed to start anew with the CCCO’s April 2022 NEAs.

The CCCA’s July 5, 2022 compliance analysis regarding the CCCO’s April 2022 NEAs identified material, often recurring, compliance issues. These included:

**A. Temporary Assignments (Shakman-related policy)**

- Expedited Temporary Assignments of Two Weeks or Less (Section F) - failure to identify action as expedited temporary assignment; failure to timely notify HR; failure to timely notify CCCA and DOC; failure to make request to and/or timely request and/or notify Executive Clerk.

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<sup>2</sup> The Employment Plan’s definition of “Employment Action” is broad: “Any action (positive or negative) related to any aspect of employment, including, but not limited to, hiring, Promotion, Training, Interim Assignment, Temporary Assignment, Transfer, Reclassification, Compassionate Transfer, Layoff, assignment of Overtime (and other benefits of employment), Discipline and Termination.” The CCCA’s monitoring authority goes beyond Employment Actions as, per the SRO and Employment Plan, it extends to all aspects of the CCCO’s hiring.

- NPCCs (Section H) - failure to provide NPCC signed by employee; failure to provide NPCC signed by participating supervisor;
- Failure to provide notice to CCCA/DOC.

#### **B. Transfers (Shakman-related policy)**

- Transfers not authorized by policy – e.g., “return to work;”
- Inadequate employee Transfer requests (Section C) – inadequate documentation of requests for extension; inadequate documentation of approval for extension; failure of Executive Clerk to approve request.
- Inadequate notice of Transfer (Section D) – failure to notify HR; failure to provide Transfer form; inadequate documentation of request for extension; failure to provide written approval; failure to provide timely notice to CCCA/DOC.

#### **C. Termination During Probationary Period**

- Inadequate documentation of Termination – failure to document reason for termination; failure to include date of hire.

#### **D. Schedule Modification**

- Inadequate documentation of schedule modification – improper application of CBA to non-union employees; inaccurate documentation of employee volunteer; improper use of documentation; failure to include NPCC signed by the supervisor.

#### **E. Administrative Paid Leave and Return to Work**

- Inadequate documentation of administrative paid leave – failure to provide justification for administrative paid leave; improper rule citations.
- Inadequate documentation of return to work following administrative paid leave – failure to include documentation on the administrative paid leave.

The CCCO provided a response and documentation regarding the April 2022 NEAs on July 26, 2022, that the CCCA will review.

#### **F. Time and Attendance**

The CCCO manages workforce time and attendance via the combination of a “Comprehensive Time Policy;” Human Resources’ General Rules and Regulations; and a “points”

based attendance/discipline policy, all of which preceded Clerk Martinez. (For bargaining unit employees, the CBA also may apply). This amalgam of policies presumably will be consolidated and refined in the Time and Attendance policy in the upcoming Employee Handbook.

The CCCO, like other Cook County offices, tracks time and attendance using Cook County Time or “CCT” provided by the County. The CCCA’s ability to monitor and audit CCCO/HR time and attendance administration and enforcement under the existing policies has been hampered because of deficiencies in the CCCO’s version of CCT electronic timekeeping system that limit the ability to track time and attendance accurately and efficiently.

The CCCO (in consultation with the CCCA) has been asking Cook County’s Bureau of Technology (“BOT”) to remedy the deficiencies in CCCO’s version of CCT since shortly after Clerk Martinez assumed office. BOT’s progress had been slow apparently because of the pandemic and staffing issues. Through August 2022, BOT is in the midst of a systemwide CCT upgrade and therefore unable to address problems related to individual elected official’s CCT systems. Once the systemwide CCT upgrade is complete, BOT presumably will address the CCCO’s CCT problems. When accomplished, the modifications should enhance the CCCO/HR’s ability to administer and enforce time and attendance and the CCCA’s ability to monitor and audit the CCCO/HR’s actions.

Materially compliant administration and enforcement of Shakman-related policies is a precondition for Substantial Compliance. As indicated here and in prior reports, the CCCO/HR’s Shakman-related policy compliance for those policies that have been operational for some time is a work in progress. When the Employee Handbook is completed, the CCCO/HR will have additional policies to administer and enforce. The CCCA will advise the Court further in the next report.

**VI. THE HUMAN RESOURCES FUNCTION**

The CCCO’s Human Resources function is divided into two sections: (1) Labor and Legal; and (2) Personnel Services. Both “sides of the house” are overseen by the CHRO.

The following chart describes the Human Resources function/personnel. Shakman Exempt positions are in light grey boxes and vacant positions are identified in red:

<b>CHIEF HUMAN RESOURCES OFFICER</b>	
<b>Labor and Legal</b>	<b>Personnel Services</b>
Deputy CHRO Labor and Legal	Deputy CHRO HR Administration
Director of Labor	Director of Personnel
Deputy Director of Labor	Deputy Director of Personnel
Senior Labor Manager	Deputy Director of Personnel
Labor Liaison Officer	Workforce Strategy Analyst, Sr
Deputy General Counsel Labor	Workforce Strategy Analyst, Jr
Labor Counsel	Director of Training (as of 7/29/22)
	Deputy Director of Training
	Manager IV
	Manager III
	Personnel Analyst III
	Personnel Analyst

Labor and Legal is responsible for bargaining unit Lateral Transfers and Promotions. Personnel Services is responsible for hiring under the Employment Plan’s various hiring processes.

As the above chart indicates, Personnel Services currently consists of eight employees: Director of Personnel; Deputy Director of Personnel (2 positions); Deputy Director of Training; Manager IV; Manager III, Personnel Analyst III; and Personnel Analyst. As indicated above, the Director of Training resigned on July 26, 2022, effective July 29, 2022.

The CCCO has indicated it wishes to undertake immediate significant hiring – including multiple positions under the Actively Recruited hiring process and multiple positions under the General Hiring process – both for the first time since Clerk Martinez assumed office. Personnel Services’ ability to effectuate any hiring is circumscribed by the small workforce and their inexperience.

To date, the Director of Training was primarily responsible for all entry-level bargaining unit hiring (including validations) even though these duties were not enumerated in his position description. Also, the Director of Training was the only member of Personnel Services with significant experience hiring under Actively Recruited and General Hiring processes in his prior employment with the Offices Under the President for Cook County. His July 29, 2022 resignation only can be a blow to the CCCO’s hiring efforts.

The Deputy Director of Training has assisted with entry-level bargaining unit hiring, even though these duties are not enumerated in his position description either. As to the other members of Personnel Services, the Director of Personnel has been employed by the CCCO for less than two months (since June 2022) and her resume does not indicate Shakman experience. The two Deputy Directors of Personnel have limited, if any, hiring experience under the Employment Plan. To the CCCA’s knowledge, the two Managers and two Personnel Analysts in Personnel Services (low level positions) have not been involved with hiring and this may not be part of their job duties. And while the CCCO proffered a candidate for the Exempt Deputy CHRO HR Administration on

July 26, 2022, assuming she accepts the position, her start is unknown. Also, the proffered candidate's resume does not indicate Shakman experience.

While the CHRO is extremely competent, Personnel Services' ability to manage and accomplish: (1) hiring for the many indicated entry-level bargaining unit positions; (2) hiring under the Actively Recruited Hiring process for the first time; and (3) hiring under the General Hiring process for the first time - should be realistically viewed. While hiring under Employment Plan processes is eminently doable, these processes have many pieces and experience is necessary for both efficiency and Employment Plan compliance.

## **VII. THE DOC**

The CCCA first commented on the DOC in the Tenth Report at 16 – 17, at which time the DOC had been on the job for six months (since October 18, 2021). (The DOC now has been on the job for approximately nine months.)

As indicated in the Tenth Report, the DOC has been integrating herself into the CCCO/HR's operations and has been involved with the CCCO's training efforts, consistent with her duties under Section V of the Employment Plan. She also has been providing real-time feedback to Human Resources regarding NEAs. All of this is positive.

Since the Tenth Report, the DOC has become involved in the hiring of entry-level bargaining unit positions. (The first round occurred before the DOC was hired.)

As described in Section V(A) of the Employment Plan, one of the DOC's primary responsibilities is overseeing the CCCO's compliance with the Employment Plan. More specifically, the DOC's primary responsibilities include monitoring all facets of the various Employment Plan hiring processes "to identify and assess potential and existing problems, discrepancies and violations and reporting such results to the Clerk, Chief of Staff and CCCA."

Given this important charge, the DOC should have been driving Employment Plan compliance with the Entry-Level Bargaining Unit hiring process. That has not been the case.

By way of example:

- Section VI(M)(2) of the Employment Plan requires applicant eligibility for Minimum Qualifications (“MQ”) and Preferred Qualifications (“PQ”) be demonstrated “on the face” of the application materials. The DOC made inferences regarding applicants not supported by the application materials to (erroneously) find applicants eligible.
- Also in contravention of Section VI(M)(2) of the Employment Plan, after Human Resources, DOC and CCCA agreed that foreign educational transcripts could not meet the PQ of “Associate’s Degree or higher from an accredited college or university” unless the applicant provided proof of accreditation by a U.S. educational institution, the DOC took the position that applicants should be given credit without further proof. When the CCCA objected, it was agreed that applicants would receive credit for the PQ only if Human Resources can find proof that the foreign educational institutions are accredited in their (foreign) country.
- Section VI(M)(5) of the Employment Plan permits the DOC and CCCA to object to applicants’ inclusion or exclusion on the Validated Eligibility List based on the validation of their MQs and PQs. The DOC claims this does not require agreement between Human Resources, DOC and CCCA on which MQs and PQs applicants meet - apparently because the DOC does not find the requirement of such agreement in Section VI(M)(5) – even though this was the CCCO’s past practice (as well as that of other elected officials under Shakman decrees) since agreement is required to ensure that applicants deemed eligible meet all MQs and only are given credit for PQs that can be validated.

The DOC repeatedly has failed to recognize that not every nuance of the various hiring processes can be captured in the Employment Plan. As the primary internal enforcer of Employment Plan compliance, the DOC should read the Employment Plan broadly. The literal and/or technical reading the DOC apparently prefers does not honor and is inconsistent with the reason for an Employment Plan - to promote fairness and transparency and ensure that all applicants and candidates are treated the same.

The CCCA and her counsel have discussed these (and other concerns) with the DOC. The CCCA will advise the Court further in the next report.

### **VIII. POTENTIAL SUBSTANTIAL COMPLIANCE/SUNSET TIMELINE**

The April 27, 2022 order at §10 directed Plaintiffs to discuss “benchmarks” with the CCCO and CCCA “in an effort to draft a sunset plan.” The Court recognized that “the timeline is likely to be aspirational in some respects.” *Id.* Nonetheless the Court indicated that “it is sensible and appropriate to craft a timeline to avoid indefiniteness.” *Id.* In furtherance of that aim, the April 27, 2022 order required the parties to file a joint status report “reporting on the potential benchmarks and timeline for sunset.” *Id.*

The joint status report required by the April 27, 2022 order was filed on July 28, 2022. The joint status report set out certain of the benchmarks required by the SRO and Employment Plan as preconditions to a finding of Substantial Compliance. These include a revised Employment Plan; Employee Handbook; Employment Plan mandated training; hiring under the Employment Plan’s various processes; and Lateral Transfers and Promotions for bargaining unit employees.

The joint status report did not include a requisite period for the CCCA to monitor Shakman-related policy administration and enforcement, although that is a precondition to a finding of Substantial Compliance. Nor did the joint status report include the necessity for a professional and effective Human Resources function and a DOC who is carrying out her duties and responsibilities under the Employment Plan effectively – both of which are essential elements of a durable remedy.

#### **A. Hiring**

According to the joint status report, Personnel Services will complete eight hiring processes (four Actively Recruited and four General Hiring) in four months (from July 29, 2022 – November 28, 2022). The CCCO’s hiring plan requires Personnel Services to complete most validations in

one week (some simultaneously)<sup>3</sup> and conduct interviews for multiple positions at the same time (some overlapping with validation periods):

<b>CCCO's TIMELINE</b>  Per 7/28/22 Joint Status Report	<b>Workforce Strategy Analyst</b>  (GH)	<b>Accountant VI</b>  (GH)	<b>Desktop Support Technician I</b>  (GH)	<b>HR Position (TBD)</b>  (GH)	<b>Senior Accountant</b>  (AR)	<b>Senior SQL Database Admin.</b>  (AR)	<b>Senior Workforce Strategy Analyst</b>  (AR)	<b>Asst. Inspector General</b>  (AR)
<b>Position Description to Pltfs/CCCA</b>	Done	8/5/22	8/5/22	8/5/22	Done	Done	8/5/22	8/5/22
<b>Posting (2 weeks)</b>	7/29/22 - 8/12/22	8/26/22 - 9/9/22	9/2/22 – 9/16/22	9/16/22 - 9/30/22	7/29/22 - 8/12/22	7/29/22 - 8/12/22	8/12/22 - 8/26/22	9/9/22 – 9/23/22
<b>Validation Completed</b>	8/26/22	9/16/22	9/23/22	10/7/22	8/19/22	8/19/22	9/16/22	10/14/22
<b>Interviews Completed</b>	9/23/22	10/14/22	10/21/22	11/4/22	9/16/22	9/16/22	10/14/22	11/11/22
<b>Hiring Process Completed</b>	10/7/22	10/28/22	11/4/22	11/18/22	9/30/22	9/30/22	10/28/22	11/28/22
<b>Duration- (Posting – Completed)</b>	10 weeks	10 weeks	10 weeks	9 weeks	9 weeks	9 weeks	10 weeks	11 weeks (with Thanksgivi ng)

The CCCO hiring plan would be a heavy lift for Personnel Services if it was: (1) better staffed (including, *e.g.*, Workforce Strategy Analysts/recruiters); and (2) experienced in hiring

<sup>3</sup> The CCCO's hiring plan in the joint status report acknowledges that validation periods may be extended based on the number of applications or the need to extend the posting (presumably to try to achieve a larger hiring pool). Should a validation period be extended, the hiring process' duration presumably will be, too.

under the Actively Recruited and General Hiring processes. As indicated above, that is not the case.

As to Personnel Services staffing, even under the CCCO's optimistic hiring plan:

- Senior Workforce Strategy Analyst/Recruiter - hiring process will not be completed until October 28, 2022, with additional time presumably required before the new employee could be onboarded.
- Workforce Strategy Analyst/Recruiter - hiring process will not be completed until October 7, 2022, with additional time presumably required before the new employee(s) could be onboarded.

So Personnel Services apparently will not have recruiters – positions integral to hiring – until early October 2022 – at the earliest.

As to hiring experience, the addition of recruiters (preferably with Shakman experience) is critical because, as indicated above, Personnel Services does not have experience hiring under the Actively Recruited or General Hiring processes. (The only person who did was the Director of Training who resigned effective July 29, 2022.)

## **B. Training**

The joint status report includes the dates when Personnel Services will complete Employment Plan-mandated Employee Handbook training for Human Resources, all Employees and Supervisors:

- HR Handbook Training: 9/2/22 -10/7/22
- Employee Handbook Training: 9/9/22 -10/14/22
- Supervisor Handbook Training: 9/16/22 -10/21/22

Notably, Personnel Services is to be creating, refining and presenting these three major training benchmarks at the same time it is engaged in multiple hiring processes without adequate staff. Foremost, of course, is the absence of a Director of Training, as that is the Personnel Services

position responsible for driving the CCCO's training efforts. (While training is done in conjunction with the DOC, a professional and effective Human Resources function cannot abdicate its training duties and responsibilities to the DOC.)

As indicated above, the Director of Training position, on the Exempt List provisionally, apparently will be removed, per Plaintiffs, consistent with how the position is treated in other offices under Shakman decrees. The CCCO's hiring plan in the joint status report does not include the Director of Training. Assuming the position is added and can be filled through the Actively Recruited Hiring process, the CCCO's optimistic estimates of how long other hiring processes will take (9 – 10 weeks) suggests the Director of Training position will be vacant during the time projected for creating and potentially completing the three Employee Handbook trainings.

The CCCA applauds the CCCO's aggressive stance towards achieving Substantial Compliance. The CCCA however would be remiss if she did not provide the Court with a preliminary analysis of potential feasibility.

Dated: August 2, 2022

Respectfully submitted,

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**CERTIFICATE OF ELECTRONIC FILING**

I, Sue Gombis, the undersigned, do hereby certify that on August 2, 2022, I electronically filed a true and correct copy of the foregoing **Amended Eleventh Report of Susan G. Feibus as Compliance Administrator for the Clerk of the Circuit Court of Cook County** using the CM/ECF system, which sends notification of such filing to all registered users.

/s/ Sue Gombis  
Counsel to the CCCA