

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHAEL L. SHAKMAN, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	Case No. 69 C 2145
CLERK OF THE CIRCUIT COURT)	
OF COOK COUNTY, <i>et al.</i> ,)	
)	Magistrate Judge Schenkier
)	
Defendants.)	

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

Clifford L. Meacham, Compliance Administrator for the Clerk of the Circuit Court of Cook County (“CA”), by and through his attorney, Margarita Kulys Hoffman (“Counsel”), pursuant to Section I(B) of the Supplemental Relief Order (“SRO”) submits this Initial Report:

I. INTRODUCTION

In 1972 the Clerk of the Circuit Court of Cook County (“Clerk’s Office”) entered into a Consent Decree (“1972 Consent Decree”) which prohibited the Clerk’s Office from “conditioning, basing or knowingly prejudicing or affecting any term or aspect of governmental employment, with respect to one who is at the time already a governmental employee, upon or because of any political factor”. In 1983 this Court entered judgment against a number of defendants (“1983 Judgment Order”), including the Clerk’s Office, which prohibited the Clerk’s Office from “conditioning, basing or affecting the hiring of Governmental Employees (other than Exempt Positions) upon or because of any political reason or factor”. Collectively, the 1972 Consent

Decree and the 1983 Judgement Order are referred to as the “Clerk of Court’s Decrees”. The parties have now entered into an SRO requiring the Clerk’s Office’s compliance with the Clerk of Court’s Decrees and the SRO. This Court entered the Preliminary Order approving the SRO on May 24, 2018, and on August 10, 2018, this Court entered the SRO. Clifford L. Meacham was appointed to serve as the CA to ensure future compliance with the Clerk of Court’s Decrees and the SRO.

II. CURRENT AND RECOMMENDED ADDITIONAL POWER FOR THE CA

The SRO requires, among other things, that the CA: (1) audit all hires, promotions, and transfers in the Clerk’s Office since January 1, 2014; (2) investigate any evidence of unlawful political discrimination; (3) recommend measures that may be necessary or appropriate to prevent any recurrence of any unlawful political discrimination uncovered; and (4) make recommendations for how to remedy any violations of the Clerk of Court’s Decrees. (Section I(A)). The CA is also to review the Clerk’s Office’s employment practices to determine whether the Clerk’s Office is complying with the Clerk of Court’s Decrees and hiring procedures and make recommendations for changes to the hiring practices, if warranted (Section I(G)); work with the Clerk’s Office’s employees to observe current employment practices, answer questions and provide guidance as deemed necessary (Section I(G)); actively monitor the Clerk’s Office’s compliance with the Clerk of Court’s Decrees, the SRO and the New Employment Plan until their termination (Section III(D)); and prepare and file reports with the Court providing an update regarding the Clerk’s Office’s compliance with the SRO, development and implementation of the New Employment Plan, and progress made toward substantial compliance (Section III(C)).

The CA¹ and Counsel have met with Joseph Gagliardo, counsel for the Clerk, and Brian Hays, counsel for the Plaintiffs. In accordance with the SRO, the Clerk's Office has appointed a liaison to the CA ("Liaison") (Section I(E)). The Liaison has been instrumental in providing the CA with office space and the necessary equipment to make the office fully operational. Because the CA uses a different server than the other compliance administrators he has had to obtain document management systems to manage the auditing and storage of confidential information.

The CA has set up a website, at www.shakmanclerkofcircuitcourtkookcounty.com, that went live on September 11, 2018. The website provides information for the general public with respect to background and information on the *Shakman* case and the SRO. The website contains a questionnaire that present and former employees can access as well as contact information and a link to the website for the Office of the Inspector General for the Clerk of the Circuit Court of Cook County ("IG"). The CA will post all reports to the Court on the website and will provide information to keep the public updated on the CA's progress.

At this point, the CA does not need any additional powers to perform the duties required by the SRO. However, the CA respectfully reserves the right to seek additional powers from the Court should it become necessary.

III. CURRENT AND ADDITIONAL STAFF FOR THE CA

In addition to Counsel, the CA has engaged three Deputy Compliance Administrators, two consultants and an administrative assistant. While the CA does not intend to interview and audit all Clerk's Office employees because of the large number of employees and the numerous

¹ The CA and his staff collectively will be referred to as the CA.

courthouse locations throughout the county, it is anticipated that additional monitors and law clerks may be required.

IV. ACTIVITIES TO DATE

A. Document Requests

The CA has begun gathering necessary information by meeting with the Liaison who has been responding to document requests and facilitating interviews of employees. The CA and Counsel meet weekly with the Liaison to discuss the document requests, interview schedules and any other issues that may arise.

The documents requested to date include Clerk's Office policies and procedures, orientation manuals, organizational charts, the collective bargaining agreement between the Clerk and Teamsters Local 700 ("CBA"), budget documents, employee lists, lists of all hires, transfers and promotions since January 1, 2014, various personnel files, discipline files and all employment applications going back to January 1, 2014. Many of these documents have been produced; others can be viewed on site when the need arises.

B. Auditing of Employment Actions from January 1, 2014 through August 10, 2018

1) Employee Questionnaires

The CA has sent questionnaires to all current and former Clerk's Office employees requesting information about any alleged unlawful political activity. The questionnaire to current employees was accompanied by a joint letter from the Clerk and the CA explaining the purpose of the SRO and the questionnaire and urging the employees to respond candidly. The response so far has been minimal. Interviewed employees have expressed reluctance to answer questions possibly

due to concerns triggered by the investigations of former Clerk's Office employees. Some employees question whether they themselves are under investigation. The CA has received some responses to the questionnaire from former employees and is in the process of following up on these responses.

2) Interviews with Human Resources Personnel

The Human Resources Department of the Clerk's Office consists of four sub-departments: Personnel Services and Training and Development, Employee Benefits, Labor Relations and Legal Research. The CA has interviewed all of the available senior staff in the Clerk's Human Resources Department so as to gain a better understanding of the organizational, operational and personnel structure of the office and to assist in reviewing the Clerk's Office's employment practices. The following is an overview of the hiring, promotion, transfer and discipline process:

a. Applications

The Personnel Services and Labor Relations Divisions oversee the hiring, transfer, promotion, discipline and discharge of employees covered by the CBA. Entry-level vacancies covered by the CBA are advertised in the Chicago Sun-Times and on the Clerk's website and recorded telephone messages are updated to indicate that the Clerk's Office is hiring. Applicants for positions within the Clerk's Office must fill out a written application and submit it by facsimile or in person at the Clerk's Office. Applications are accepted by the Clerk's Office at all times, regardless of whether the Clerk is hiring and are active for a period of one year. Applications are entered into a computer data base where they are scored based upon criteria contained in the computer program. These criteria include level of education and whether the applicant has had previous employment with the Clerk's Office.

b. Union Positions

The hiring process for union entry level positions is not subject to the CBA, although current employees are eligible to submit applications for entry-level positions. If they do, they will be considered as other applicants, except that they will receive extra points in the applicant scoring process because of their employment with the Clerk's Office. Applicants who receive the same number of assigned points are ranked in order of date of application; those who applied earliest are ranked above those who applied on a later date.

The CBA contains specific procedures whereby union employees may move from job to job: (1) lateral transfers; (2) semi-automatic promotions; and (3) internal/primary postings.

- **Lateral Transfers**

Employees may submit a Lateral Bid Form requesting a transfer to a vacancy in the same grade and position that is located in a different work area or location. A list of the bids is posted every three months. The selection is made based on seniority. Employees who have a disciplinary record or who have rejected an offer of the position in the past are considered ineligible, and the next most-senior employee on the list (if applicable) will be offered the transfer. If a position is not filled through the lateral transfer process, an employee who was previously employed in the same position as the vacancy, but who was laid off within a period of time specified in the CBA, will be offered the position (restoration).

- **Semi-automatic Promotions**

Union employees in certain positions who work in specific locations listed in the CBA have priority for promotion to posted positions that are in the next higher grade. These positions must be filled within 60 days of the date the vacancy is posted in order to avoid retroactive pay.

- **Internal Postings/Primary Postings**

Except in the case of entry-level positions, all openings approved by the County Budget Department that are not filled through the lateral transfer or restoration process are posted by a member of the Human Resources Department at every location where union-represented employees work. Employees submit bids for posted positions and the Human Resources Department prepares a list of all employees who bid on the position. That list is posted so employees are able to verify that their bids have been received.

The bids are scored by the employee's current Chief Deputy Clerk ("CDC"), the receiving CDC, the Labor Relations Department and a neutral member of management. Applicants are ranked and grouped within a five-point range: those with 100 to 95 points are in the first group to be offered the position in order of seniority. If none in the first group accept, the most senior employee in the next group will be offered the position until someone accepts the position.

Employees who have complaints about transfers or promotions file them with the Labor Relations Department. The CA was advised by the Chief Deputy Clerk for Labor Relations, that during his tenure, not a single complaint for unlawful political discrimination has been filed with his office.

c. Non-Union Positions

A different procedure is followed in the hiring, transfer and promotion of non-union employees. Vacancies for non-union positions are not generally posted or advertised. Employees may learn of such vacancies by word-of-mouth and either advise their supervisor or write a letter to the Clerk or the Chief of Staff expressing an interest in a promotion or vacancy. When a vacancy in a non-union position occurs or is anticipated, the Chief in that division may recommend a specific employee to fill that vacancy. The recommendation is made in writing to the Clerk and the Chief of Staff and the Chief's recommendation is often honored. If the Chief does not make a recommendation or the recommendation is not accepted, the Chief of Staff looks to other applicants. There is no written policy or procedure for employment actions relating to non-union employees. It appears that the Clerk makes or approves all hiring, promotion, transfer and termination decisions involving employees in non-union positions.

C. Interview with the Inspector General

The CA has also interviewed the IG. The SRO sets out numerous obligations for the IG: (1) training the Clerk of Court's employees, along with the head of Human Resources, in order to effectuate a culture free of political consideration (Section II(B)(1)); (2) expeditiously investigating Post-SRO complaints (Section IV(H)); (3) reporting the results of her investigation in writing (Section IV(I)); and preparing reports to the Court (Section IV(K)).

The IG has held this position since 2005 and reports directly to the Clerk. She receives and investigates charges of inappropriate conduct by employees that are referred by the Labor Relations Division, the public, and other sources. She currently supervises four investigators who appear to spend a majority of their time providing security to the Clerk's Office at the Richard J.

Daley Center. Less than 50% of their time as a group is dedicated to conducting investigations. At the time of the interview there were nineteen (19) active cases in the office: ten (10) from 2018, eight (8) from 2017 and one (1) from 2016.

The current IG states that she has never received a complaint of unlawful political discrimination. However, she has indicated that because she reports to the Clerk, if she does receive a complaint against the Clerk, she will refer the complaint to the Office of the Independent Inspector General for Cook County (“OIIG”). This point will be discussed further in the Preliminary Recommendations section of the report.

D. Interviews with Current Employees

The CA has been interviewing employees in the County, Probate and Chancery Divisions. Chief Judge Timothy Evans and the Presiding Judges of these division have been advised by the CA that interviews will be conducted at times and locations convenient to the clerks so as to disrupt court operations as little as possible.

E. Monitoring of Employment Actions

The CA has begun actively monitoring employment actions. The CA has requested that the Clerk’s Office provide prior notice of hiring and discipline (including grievance hearings) and written notice of promotions and transfers within 48 hours. CA staff has monitored new employee hiring, lateral transfers, investigatory interviews for possible discipline and new employee orientation. The CA expects to expand this monitoring.

The CA also intends to conduct desk audits of Clerk’s Office employees to gain a better understanding of the organizational, operational and personnel structure of the office. The Liaison

has provided the CA with a list of contacts in the different divisions who will facilitate the scheduling of the interviews. The CA has also begun interviews related to the auditing of hires, promotions and transfers from 2014 through August 2018.

F. Director of Compliance

Upon the Court's urging, the Clerk's Office has appointed an Acting Director of Compliance ("DOC"). At this time, the Acting DOC and will continue in her role as Deputy General Counsel for the Office of the General Counsel. The CA has no objection to this arrangement for the time being and looks forward to working with the Acting DOC.

V. PRELIMINARY RECOMMENDATIONS

A. Training

Under the SRO, the head of Human Resources and the IG are required to train the Clerk's Office's employees to effectuate a culture free of political considerations in all aspects of governmental employment for non-exempt positions. To date, the CA does not believe that there is any *Shakman* training in place. The Employee Orientation and Reference Manual provided to the CA by the Clerk's Office does not contain a *Shakman* section. At a recent orientation for new employees, *Shakman* was not addressed and the Clerk's Office's website contains minimal information about *Shakman* and the SRO.

Based upon conversations with Clerk's Office employees it is apparent that many of them, including those in management positions, do not understand the CA's role despite his attempts to explain both the SRO and his obligations under the SRO. The CA believes that if the employees have a better understanding of what constitutes unlawful political discrimination, and his role in investigating any evidence of political discrimination under the SRO, he may receive more

cooperation from the employees. The CA is willing to assist in developing training materials and protocol and in organizing and presenting training sessions. He recommends that the training aspect be given priority by the Clerk's Office.

B. Exempt List

The SRO provides that the Clerk's Office must propose a list of Exempt Positions to Plaintiff's Class Counsel for approval. (Section II(E)). The term "exempt" is not used in a consistent manner within the Clerk's Office. Most of the senior staff interviewed consider "exempt" positions to be non-union, at-will, FLSA exempt and *Shakman* exempt. In common usage, employees are either union employees or exempt employees. The "exempt" designation does not seem to bear any relationship to the employee's job duties.

The Revised Plan of Compliance of the Clerk of the Circuit Court of Cook County, which was intended to implement the 1983 Judgement, contained a list of 80 exempt positions. While the number of employees in the Clerk's Office fluctuates, the most recent documentation provided to the CA indicates that the Clerk's Office has 1423 employees and that 325 of them are non-union and are generally considered to be "exempt". To date, the Clerk's Office has not submitted a proposed list of *Shakman* exempt positions. Counsel for the Clerk and Plaintiffs have been made aware of the necessity of compiling this list as soon as possible. Having a list of *Shakman* exempt positions will enable the CA to concentrate his time and effort on those positions which are not exempt.

Toward this end, Plaintiffs' counsel has advised the CA that he will attempt to reconcile the original exempt positions with their current counterparts in the Clerk's Office and provide the CA with that list as soon as possible. For purposes of interviewing and auditing Clerk's Office

employees, the CA will consider the 80 positions listed in the Revised Plan of Compliance to be *Shakman* exempt until a final list has been agreed upon.

C. Inspector General

The IG's role in investigating complaints of political discrimination is a critical one and her ability to perform that role is of concern. While the SRO requires that the IG be provided with fair and reasonable resources to investigate Post-SRO complaints (Section IV(G)), at the current time she is understaffed. The investigators in her department only spend a portion of their time investigating complaints. Under these circumstances, the SRO's requirement that the IG attempt to complete her investigation within one hundred eighty (180) days after its initiation (Section IV(H)) may be difficult to meet.

Second, the IG is not an independent investigator because she reports directly to the Clerk. While the IG has indicated that she would refer complaints against the Clerk to the OIIG, the Clerk's Office has taken the position that it is not subject to the jurisdiction of the OIIG. The CA is discussing this issue with counsel for Plaintiffs and the Clerk.

VI. CONCLUSION

To date the CA has opened an office, retained competent and experienced staff, begun monitoring and conducting necessary interviews and audits, begun reviewing employment practices, policies and procedures, created a website and established a positive working relationship with the Clerk's Office. The CA believes that while work is progressing, fulfilling his obligations under the SRO will be a lengthy process given the number of employees, internal office departments and functions, and the reticence of employees to share their experiences. He expresses his appreciation for the consideration demonstrated to date by Clerk Brown in

cooperating with the CA's efforts to perform his assigned duties and looks forward to a productive relationship.

Respectfully Submitted,

/s/ Clifford L. Meacham

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CERTIFICATE OF ELECTRONIC FILING

I, Margarita Kulys Hoffman, the undersigned, do hereby certify that on November 8, 2018, I electronically filed a true and correct copy of the foregoing **Initial Report of the 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/ Margarita Kulys Hoffman
Counsel to the CA