

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

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

**SECOND 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, Margarita Kulys Hoffman, pursuant to Sections I(B) and III(C) of the August 10, 2018 Supplemental Relief Order as amended June 19, 2019 (“SRO”) for Defendant Dorothy Brown (“Clerk”), Clerk of the Circuit Court of Cook County (“CCCO”), Doc. No. 6382, submits her Second Report to the Court:

**I. INTRODUCTION**

On May 9, 2019, the CCCA filed the First Report to the Court (the “First Report”). Doc. No. 6319. This was the CCCA’s first report since her March 11, 2019 appointment. This Second Report is to update the Court as to the Clerk’s progress towards Substantial Compliance with the SRO since the First Report.

The CCCA has been on the job for almost six months. In that time, some good progress towards Substantial Compliance has been made. 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<sup>1</sup> and the SRO's essential purpose; and
5. 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. *See also* Exhibit III.F(2) (Certification of Substantial Compliance).

Notably, an Interim Employment Plan has been entered, which is the first step towards the Employment Plan required for Substantial Compliance. Also, CCCO employees received Shakman training. And entry of an Exempt List is within our grasp.

Substantial Compliance also requires hiring without consideration of political factors. The first hiring sequence has commenced under the Interim Employment Plan. This demonstrated the CCCO's need for an electronic application system more robust than indeed.com, which cannot post a job that is Interim Employment Plan-compliant. The Clerk apparently has recognized that Taleo should be used for this function. The problems revealed by the first hiring sequence necessarily require a reevaluation of the Director of Compliance ("DOC") job posting. This will cause unfortunate delay.

While the cooperation and communication between the CCCO and the CCCA generally has been positive, this has not extended to the CCCO's timely production of documents, as

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<sup>1</sup> The "Clerk of Court's Decrees" refer to: (a) 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 (b) 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.

required by the SRO, which is critical to the CCCA's ability to do her job. Also, the CCCA just became aware of one hiring by the Clerk without any notice to the CCCA and the possibility that there may be others. If true, this violates of the SRO. The Clerk cannot achieve Substantial Compliance with such violations.

Finally, the Clerk's announcement that she will not seek reelection must be mentioned. About fifteen months remain on her term. Significant progress towards Substantial Compliance can be made in that time by continuing and building on the momentum that has begun. The CCCA hopes the Clerk will continue her commitment to the pledge she made by entering into the SRO. The CCCA will be her partner in that effort.

## **II. OVERVIEW OF THE CCCA'S ACTIONS SINCE HER MAY 9, 2019 FIRST 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 First Report include:

- provided live *Shakman* training to CCCO non-bargaining unit employees, which was videotaped and is being used to provide Shakman training to all CCCO bargaining unit employees;
- provided significant input into the Interim Employment Plan, which has been approved by the Court;
- provided significant input into the recent first job postings under the Interim Employment Plan;
- began investigating what would be required for CCCO to use Taleo, Cook County's electronic application system
- began work on Interim Employment Plan training for CCCO Human Resources personnel and supervisors;
- provided significant input into a Protective Order, which has been entered by the Court;
- involved with the Amendment to the SRO, which transferred investigations of unfair political discrimination from the CCCO's Inspector General to the Director of Compliance;

- appointed Interim DOC, in addition to role as CCCA, pending the hiring of a DOC;
- provided significant input into revising the Director of Compliance position description and hiring process – which is awaiting finalization by the CCCO;
- involved with revising the CCCO’s Exempt List – which is awaiting finalization by the CCCO;
- revised and updated the CCCA website;
- examined past and current CCCO hiring practices, including interviews of CCCO employees;
- conducted exit interviews of departing CCCO employees;
- created standard document requests to the CCCO for certain employment actions (primary postings, grievances, retirements, resignations and Shakman training)
- monitored a variety of CCCO employment actions including primary postings, grievances, discipline, semi-automatic promotions and overtime;
- met and conferred with counsel for Plaintiffs on a regular basis;
- met and conferred with the CCCO’s *Shakman* liaison, on a regular basis; and
- met and conferred with the CCCO’s outside counsel on a regular basis.

**III. THE CLERK’S PROGRESS TOWARDS SUBSTANTIAL COMPLIANCE**

**A. Two of the Four Prerequisites to Shakman Compliance Discussed in the First Report Have Been Accomplished**

The First Report identified four elements that must be put into place as a foundation for Substantial Compliance: (1) finalizing an Interim Employment Plan; (2) providing Shakman training for the CCCO’s workforce; (3) finalizing the Shakman Exempt List; and (4) hiring a Director of Compliance. Two of these have been completed and two have not:

1. An Interim Employment Plan has been approved by the Court

On July 17, 2019, the Court approved an Interim Employment Plan that applies to all (1) new hires; and (2) transfers, promotions and demotions of current non-bargaining unit employees,

except those who are deemed Shakman Exempt.<sup>2</sup> Doc. No. 6413-1. The Interim Employment Plan is the first step towards the Employment Plan required for Substantial Compliance under the SRO.

- a. *Supervisor and Human Resources personnel training under the Interim Employment Plan should be upcoming*

The Interim Employment Plan requires the CCCA, in conjunction with the CCCO's Chief Human Resources Officer, to provide comprehensive mandatory training for all supervisors and Human Resources personnel to ensure that they are knowledgeable about the Interim Employment Plan and the prohibition of consideration of Political Reasons or Factors. The CCCO has requested that all approximately 300 non-bargaining unit employees be trained.

The CCCA is in the process of preparing that training and has a completion goal of on or about September 30, 2019. This is contingent on the CCCO's logistical support, which includes providing an appropriate training venue and arranging for videotaping as this training should be used to train new hires and employees promoted into supervisory positions during the Interim Employment Plan's pendency. The Shakman Liaison is to propose a training plan.

- b. *The initial recent job posting under the Interim Employment Plan showed the inadequacy of the CCCO's electronic application system and the need for Taleo*

On August 14, 2019, the CCCO posted its first job under the Interim Employment Plan. It is for the Clerk IV, Sr. position for which there are 18 openings. The CCCA worked cooperatively and expeditiously with the CCCO to get the job posted as she was informed of a grave CCCO operational need for these positions to be filled. Because of that need, the CCCA did not object to the CCCO's use of indeed.com to host the job posting – even though every County office that is or was under a *Shakman* decree uses Taleo, a well-established talent management software that,

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<sup>2</sup> All capitalized terms used herein have the same meaning as in the Interim Employment Plan, unless otherwise indicated.

in large part, automates the hiring process.<sup>3</sup> Using indeed.com showed that it lacks the capacity for a job posting that is Interim Employment Plan-compliant.

Section II(D) of the SRO requires the CCCO to utilize an electronic application system (“EAS”) to implement the Employment Plan:

The Clerk of the Court’s Office, with input of the Plaintiffs, shall implement an application tracking system that is user friendly and available to applicants through web-based access, to determine their current status in the hiring process in order to enhance the availability of information about the hiring process. All hiring activity for non-exempt positions shall employ the application tracking system.

Doc. 6382 at 8.

Implicit in the SRO’s requirement of an EAS is its ability to post jobs in compliance with the Interim Employment Plan. indeed.com’s deficiencies revealed through the Clerk IV, Sr. posting included, but were not limited to:

- indeed.com cannot accommodate screening questions for Minimum Qualifications that are not in yearly increments. Since many of the Minimum Qualifications for the Clerk IV, Sr., job only required six months experience, qualified applicants may not have applied.
- indeed.com cannot accommodate an application form which the Interim Employment Plan requires. The application form is an important part of the process as it provides information about an applicant’s Minimum and/or Preferred Qualifications that may not be apparent from a resume. One example is whether prior work was “full-time” as often is a requirement to meet a Minimum and/or Preferred Qualification.
- indeed.com does not allow applicants to upload documents other than a resume. This precludes requesting documents such as educational transcripts, certifications or licenses that may be prerequisites to the job.

The CCCA had advocated for the CCCO’s use of Taleo prior to the Clerk IV, Sr. posting. And she had reached out to the County to learn how the CCCO could use Taleo in conjunction with the County’s Taleo contract. Prior to the Clerk IV, Sr. posting, the CCCA was told that the

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<sup>3</sup> Taleo’s capabilities include tracking job openings, an on-line job application system, tracking job applicants, applicant screening and assessment tools, applicant communication functions, interview management and interviewee assessment.

Clerk had little interest in using Taleo. The CCCA understands that based, *inter alia*, on the experience with Clerk IV, Sr. posting, the Clerk's attitude has changed. The CCCA is informed the CCCO will be investigating Taleo and that the CCCA will be kept in the loop.

2. The CCCA provided Shakman Training to the CCCO workforce

a. *Non-bargaining unit employees*

On June 13 and 19, 2019, the CCCA provided live "Shakman" training to the CCCO's approximately 300 non-bargaining unit employees "to effectuate a culture free of political consideration in all aspects of governmental employment for non-Exempt Positions, including, but not limited to, hiring promotion, discharge, overtime and transfers" of CCCO employees. SRO at II(B).<sup>4</sup> These sessions were videotaped. A CCCA monitor reviewed the videotapes and recommended edits which resulted in the video to be used for future training. The video has been used for makeup training for CCCO non-bargaining unit employees who could not attend the live training. It also will be used for new employee on-boarding.

b. *Bargaining unit employees*

The CCCO's collective bargaining agreement requires any training of the bargaining unit workforce to be done during working hours. With that stricture and the fact that the bargaining unit workforce is over 1000 employees at fifteen different locations, live training was not feasible. The CCCA's videotape of the non-bargaining unit training is being used to train the bargaining unit workforce. The CCCA understands that this training is ongoing. The Clerk has represented that it will be completed by the end of September 2019, and that agreed-to documentation of the training timely will be provided to the CCCA.

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<sup>4</sup> While the SRO speaks of training in the context of a new Employment Plan, the CCCO, with encouragement from the Court, recognized an immediate need for Shakman training for its workforce.

3. The Exempt List has not been finalized

As of the last Court status on July 8, 2019, the positions on the Exempt List had been finalized and the parties told the Court that the Exempt List would be filed by July 15, 2019. In preparation for the anticipated filing, the CCCO discovered that the Position Identification (“PID”) numbers for the Exempt positions, a part of the Exempt List, were inaccurate.

The PID numbers are basic information. Assembling them should be no more than a ministerial act. The CCCO represented that the PID numbers would be provided to Plaintiffs in short order, so they could complete the filing. The CCCA just learned that on August 20, 2019, about six weeks since the need for accurate PID numbers were identified, the CCCO’s outside counsel finally sent what they purport to be the final Exempt List with accurate PID numbers to Plaintiffs. The CCCA was not included. Given the passage of time, Plaintiffs and the CCCA must review the information for accuracy before Plaintiffs can file the Exempt List for Court approval.

4. The Director of Compliance position has not been posted

As of the last Court status on July 8, 2019, the DOC position description had been finalized and the parties told the Court that the position would be posted by July 15, 2019. All that stood in the way was finalizing the on-line application and the sites where the position would be posted. These were essentially ministerial acts. Yet the CCCO never provided the CCCA with these final pieces and told her that she should not expect them before August 29, 2019. The CCCO’s foot-dragging on finalizing and posting the DOC position was unexplained.

Now there is a caveat. The CCCO’s failure to finalize and post the DOC position was unrelated to the problems with indeed.com uncovered by the recent Clerk IV, Sr. posting. But these problems raise issues for the DOC posting because (in the absence of Taleo) the DOC posting sites were to be indeed.com and monster.com. (The CCCA understands that monster.com’s

capabilities are not significantly different from those of indeed.com.) The CCCA and Plaintiffs had acceded to using these sites because of the desire to have a DOC on board as soon as possible.

Based on the experience with indeed.com for the Clerk IV, Sr. posting, the DOC posting cannot include an application form for as required by the Interim Employment Plan. This means, for example, whether an applicant's work experience was full-time cannot be validated.

Also, the DOC on-line application process requires applicants to provide three lists detailing: (a) all instances where he/she served as a candidate, officer, employee or consultant of any partisan political organization or partisan politically-affiliated group; (b) any work he/she has done on behalf of any party, entity or individual in connection with the *Shakman* litigation; and (c) any familial, business or professional relationship with any current employee of the CCCO. Neither indeed.com nor monster.com can accommodate these lists.

Maybe there are work-arounds for the problems with indeed.com and monster.com. And maybe the CCCO will be able to use Taleo in a relatively short period of time. The prudent course is to assess the options so the Clerk, CCCA and Plaintiffs can come to a reasonable path forward to post the DOC position.

**B. The CCCO Website Does Not Conspicuously Provide Information About the Clerk's Compliance with the SRO**

The Employment Plans of other elected officials formerly or presently under supplemental Shakman orders require(d) their websites to include information about compliance with the supplemental order. The Employment Plans further required this information on their websites to be conspicuous.

The Clerk's website says nothing about Shakman compliance. The two references to Shakman are difficult to find. One is buried under the "Resources" section at the bottom of the "Services" heading and is nothing more than a link to the CCCA's website. The second is under

in the “Apply for a Job” section of “Employment Info” and is a link to the CCCA’s website, the Notice on Hearing for Approval of the SRO, an outdated version of the SRO and an outdated Post-SRO Complaint Form. This is inadequate.

First, the location of the Shakman-related information must be significantly more prominent. By way of example, the Cook County Assessor includes “Shakman” as one of the major categories at the top of his website. The Recorder of Deeds includes Shakman under the “Jobs” heading, one of the major categories at the top of his website, where it can be reached in one click.

Second, content about the Clerk’s compliance with the SRO must be provided. The content on the Assessor and Recorder’s websites is robust, including an overview, Employment Plan, Exempt List, information on the complaint process, contact information for the Compliance Administrator, Director of Compliance and Plaintiffs’ counsel and other information that is required by the Employment Plan.

While the Clerk’s Employment Plan may not yet be operative, there should be no reason why the Shakman-related information cannot conspicuously be provided now given its importance to the public and CCCO employees.

**C. The Clerk has violated the SRO by failing to provide the CCCA with requested documents in a timely manner**

The SRO requires the CCCO to cooperate with the CCCA by, among other things, “providing reasonable access to all relevant non-privileged documents.” SRO at I(E). The CCCA’s access to documents is not at the CCCO’s discretion. The SRO imposes a mandatory timeframe: “Within two weeks of receiving a request from the [CCCA], the [CCCO] *shall* either produce all requested documents or provide a time frame for when documents will be produced.” SRO at I(F) (emphasis supplied).

The CCCO has engaged in a continual pattern of failing to produce documents requested by the CCCA within two weeks or providing a timeframe for production. The CCCA has tried to make the process easier (although there is nothing in the SRO that requires this) by providing weekly document requests and using standard document requests for certain employment actions (*i.e.*, primary postings, grievances, retirements, resignations and Shakman training). The violations have not abated. Right now, the CCCA has many document requests outstanding for over a month.

The SRO requires the CCCA to, *inter alia*: (a) audit all hires, promotions and transfers in the CCCO since January 1, 2014 (SRO at I(A)); (b) investigate any evidence of unlawful political discrimination (*Id.*); and (c) review the CCCO's employment practices including observing actual hiring sequences to determine whether the CCCO is complying the Clerk's Decrees and hiring procedures (SRO at I(G)). The outstanding document requests seek, for example, a current employee list and lists of all new hires, promotions, transfers, resignations, retirements and terminations since the SRO was entered. This is basic information. (There is more.) Without it, the CCCA cannot effectively do her job.

**D. It appears that the Clerk has violated the SRO by hiring at least one employee without giving the CCCA notice**

The SRO empowers the CCCA to monitor all CCCO employment actions which include, but are not limited to, hiring.<sup>5</sup> The CCCA cannot monitor an employment action unless she has reasonable notice of it. The CCCO has agreed that reasonable notice to the CCCA means at least 48 hours.

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<sup>5</sup> More fully described, an employment action is any action (positive or negative) related to any aspect of employment including, but not limited to, hiring, training, change in job assignment, transfer, promotion, demotion, assignment of overtime (and other benefits of employment), discipline and discharge. *See* SRO at II(C).

On August 20, 2019, in the course of interviewing a member of the CCCO's Human Resources department about CCCO timekeeping, the CCCA was told that the Clerk recently hired a Deputy General Counsel. This was the first that the CCCA heard of this – in flagrant violation of the SRO. The CCCA requested that information from the CCCO about this hire – and any other hires about which she was not told – be provided immediately.<sup>6</sup> Nothing has been forthcoming.

Whether any undisclosed hiring by the Clerk was of employees that she considered “Exempt” is of no moment. Even hires that are Shakman Exempt under an Exempt List (let alone all at-will hires which has been the Clerk's definition of “Exempt”) cannot and do not evade CCCA scrutiny.

#### **IV. ACTIONS BY THE COURT SINCE THE MAY 9, 2010 FIRST REPORT THAT FURTHER SUBSTANTIAL COMPLIANCE**

##### **A. An Amended Supplemental Relief Order Was Entered**

On June 6, 2019, the Court, on Plaintiffs' motion, entered an Amended SRO. Doc. No. 6382. The purpose of the amendment was to transfer authority for the investigation of post-SRO complaints from the CCCO's Inspector General to the independent DOC. On May 13, 2019, the Court appointed the CCCA to act as Interim DOC, in addition to her role of CCCA, until a DOC is hired. Doc. No. 6326.

##### **B. A Protective Order Was Entered**

The SRO references the potential entry of a Protective Order. SRO at I(F). Prior to the CCCA's appointment,<sup>7</sup> a Protective Order had not been entered. Since other elected officials under

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<sup>6</sup>The Clerk's violation of the SRO by failing to give the CCCA notice of the apparent Deputy General Counsel hiring (and any others of which the CCCA is not yet aware) presumably would have been minimized or avoided if the CCCO had complied with the CCCA's outstanding document request, noted above, for a list of all new hires since the SRO went into effect.

<sup>7</sup> The CCCA was appointed on March 11, 2019 to replace the prior CCCA, who resigned. Doc. No. 6256.

the Shakman decree and supplemental relief orders have agreed to such orders as issues sometimes arise where the existence of a Protective Order is useful, the CCCA urged that one be entered in this case. Plaintiffs moved for the entry of a Protective Order, which the Court granted on May 14, 2019. Doc. No. 6329.

**C. The CCCO's Union's challenge to the CCCA's ability to review CCCO documents and monitor employment actions, including grievance procedures, was resolved by Court order**

As described in the First Report, Doc. No. 6319 at 8, the CCCO's union, Teamsters Local 700, objected to the CCCO giving documents to the CCCA, and to her monitoring of employment actions, including grievance procedures, alleging that this impacted the union's duty to bargain collectively under the CBA. Plaintiffs attempted to resolve the issue with the union. When that failed, Plaintiffs moved for declaratory relief seeking an order "declaring that [the CCCA] has the authority to monitor all employment actions involving employees covered by the [collective bargaining agreement], including the authority to attend and monitor grievance proceedings, to ensure that the employment decisions are not affected by unlawful political reasons or factors." Doc. No. 6385.

After the motion was fully briefed, with the union responding, the Court granted Plaintiffs' motion and ordered the relief sought. Doc. No. 6455. Based on the Court's order, the CCCA expects that she will monitor grievance procedures going forward without union interference.

**V. RECOMMENDATIONS**

It has been the CCCA's experience that close oversight by the Court, including imposing deadlines, has been effective in creating movement towards Substantial Compliance. This informs the CCCA's recommendations below:

**A. Recommendation No. 1 – The Court should order the Clerk to comply with the SRO and produce documents requested by the CCCA in a timely manner**

Timely production of documents by the Clerk, as required by the SRO, is critical to the CCCA's mission. The Clerk should be ordered to comply with all outstanding document requests by September 3, 2019, and to comply with the SRO going forward. The Clerk also should be informed of the potential consequences for continued noncompliance.

**B. Recommendation No. 2 – The Court should order the Clerk to comply with the SRO and give the CCCA notice of all employment actions – including any contemplated hiring**

The CCCA's ability to monitor all employment actions, as required by the SRO, is critical to the CCCA's mission. The Court should be ordered to provide the CCCA notice of all new hires (bargaining unit and non-bargaining unit) since August 10, 2018, when the SRO went into effect. And to apprise her of all contemplated hiring going forward. The Clerk also should be informed of the potential consequences of noncompliance.

**C. Recommendation No. 3 – The Court should require the Clerk to update her website to provide information about her compliance with the SRO in a conspicuous manner**

The Court should require the Clerk to update her website by the time of the next Court status. The location and content should be subject to review and comment by the CCCA.

**D. Recommendation No. 4 – The Court should maintain close oversight of the CCCO's progress towards the use of Taleo**

The Court should require a report from the Clerk by no later than the next status, as to when the CCCO will begin using Taleo and the parameters of that use.

Dated: August 22, 2019

Respectfully submitted,

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**CERTIFICATE OF ELECTRONIC FILING**

I, Margarita Kulys Hoffman, the undersigned, do hereby certify that on August 22, 2019, I electronically filed a true and correct copy of the foregoing **Second 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/ Margarita Kulys Hoffman  
Counsel to the CCCA