

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

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

**SIXTH 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, Dina Masiello, 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 Sixth Report to the Court:

I. INTRODUCTION

On October 21, 2020, the CCCA filed the Fifth Report to the Court (“Fifth Report”). Doc. No. 7143. This Sixth Report is to update the Court as to the Clerk’s progress towards Substantial Compliance¹ with the SRO since the Fifth Report.

¹ 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 of Court’s Decrees” refer to: (1) the 1972 Consent Decree which, *inter alia*, prohibited
(Footnote continued on next page)

This is the CCCA's first report since Clerk Martinez assumed office on December 1, 2020. These first seven weeks, overall, have provided a good start.

Clerk Martinez has indicated her commitment to Shakman compliance. That her leadership team has significant Shakman experience is both consistent with that commitment and a considerable benefit:

- The Chief of Staff ("COS") has been involved in Shakman compliance efforts for over seven years, both as an Assistant State's Attorney representing elected officials and as an in-house lawyer advising elected officials in their efforts to achieve Substantial Compliance with supplemental Shakman relief orders.
- The Chief Human Resources Officer ("CHRO"), who has been designated the Shakman Liaison under the SRO, has over three years of experience advising elected officials in their efforts to achieve Substantial Compliance with supplemental Shakman relief orders.

Based on the COS and CHRO's experience and conduct to date, indicates that they understand, among other things, what active Shakman monitoring entails and what is required to achieve Substantial Compliance. This only can facilitate achieving that goal.

Clerk Martinez's need to qualify many Exempt Candidates² even before assuming office to allow a functioning team from the start provided an opportunity for the parties and the CCCA to demonstrate the ability to work collaboratively and, in this instance, expeditiously. The CCCA is hopeful that this approach, which undoubtedly will require resolving disagreements, will continue - as it is the most effective path to Substantial Compliance. The CCCA looks forward to assisting the CCCO in achieving that goal.

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.

² Unless otherwise indicated, capitalized terms have the same meaning as in the Employment Plan.

II. OVERVIEW OF THE CCCA'S ACTIONS SINCE THE OCTOBER 21, 2020 FIFTH 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 Fifth Report included:

- provided significant input into the completion of a full Employment Plan, which the Court entered on November 24, 2020;
- provided significant input into the CCCO's request to amend the Exempt List (the current version was entered by the Court on November 16, 2020);
- provided significant input into reviewing and approving the many Exempt Candidates proposed by Clerk Martinez;
- provided significant input into reviewing and revising to make current and accurate the Exempt position descriptions (process is ongoing);
- provided significant input into a Telework policy and implementing forms before Clerk Martinez took office and since Clerk Martinez took office;
- provided significant input into a "temporary" Temporary Assignment policy, required to address stated CCCO immediate operational needs;
- provided continued input into the CCCO's hiring under the Interim Employment Plan (prior to December 1, 2020);
- reviewed weekly reports from the Director of Compliance ("DOC") with periodic interaction;
- conducted exit interviews of departing CCCO employees (prior to December 1, 2020);
- monitored bi-monthly CCCO grievance hearings;
- conferred with Clerk Martinez's COS and CHRO/Shakman Liaison 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

A. Matters Relating to Exempt Positions Based on Change of Administrations

1. Exempt List

A prerequisite to Substantial Compliance under Section II(E) of the SRO is the creation of an agreed Exempt List, which 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.

The Court entered the current version of the Exempt List on November 16, 2020. It has 80 positions. At the November 19, 2020 status, Plaintiffs reported that the new Clerk wished to add four new Exempt positions and that discussions had begun. The Court’s November 19, 2020 order granted “pre-approval to add those positions to the Amended Exempt List, even before formal filing of a motion and the entry of an order,” if the parties could reach agreement. Ultimately, Clerk Martinez proposed three new Exempt positions (Senior Policy Advisor; Executive Clerk of External Affairs; and Assistant Chief Deputy Clerk – Domestic Violence) to which the parties and the CCCA agreed.

The CCCA understands that the CCCO is waiting for information regarding the official Cook County Position Identification Description (“PID”) numbers and job titles, required for the Exempt List, for certain new and reclassified Exempt positions. The CCCO has indicated that once this information is received, an amended Exempt List will be prepared and transmitted to Plaintiffs for the filing of a motion to amend the Exempt List.

2. Exempt Position Descriptions

Sections XII(C)(1) and (2) of the Employment Plan requires Exempt position descriptions, which are subject to review and comment by Plaintiffs, the CCCA and the DOC, to be “current

and accurate” and include the position’s Minimum Qualifications. Clerk Martinez’s Exempt hiring gave rise to the need to review the Exempt position descriptions to ensure that the essential job duties were accurate and the Minimum Qualifications were appropriate.

To that end, the parties and the CCCA agreed to a transparent and comprehensive plan governing Exempt Minimum Qualifications:³

Executive Clerk (Grade 24)	Associate Clerk (Grade 24)	Chief Deputy Clerk (Grade 23)	Assistant Chief Deputy Clerk (Grade 21-22)
<ul style="list-style-type: none"> • Master’s degree, MBA or Law Degree • 5 yrs F/T exp • 5 yrs supervisory exp 	<ul style="list-style-type: none"> • Master’s degree, MBA, or Law Degree • 4 yrs of F/T exp • 3 yrs supervisory exp 		
<ul style="list-style-type: none"> • Bachelor’s degree • 7 yrs of F/T exp • 5 yrs supervisory exp 	<ul style="list-style-type: none"> • Bachelor’s degree • 6 yrs of F/T exp • 3 yrs supervisory exp 	<ul style="list-style-type: none"> • Bachelor’s Degree • 5 yrs of F/T exp • 2 yrs supervisory exp 	<ul style="list-style-type: none"> • Bachelor’s Degree • 3 yrs of F/T exp • 1 yr supervisory exp
<ul style="list-style-type: none"> • HS Diploma/GED • 10 yrs of F/T exp • 5 yrs supervisory exp 	<ul style="list-style-type: none"> • HS Diploma/GED • 8 yrs of F/T exp • 3 yrs supervisory exp 	<ul style="list-style-type: none"> • HS Diploma/GED • 7 yrs F/T exp • 2 yrs supervisory exp 	<ul style="list-style-type: none"> • HS Diploma/GED • 5 yrs of F/T exp • 1 yr supervisory exp

This Minimum Qualifications plan addresses most of the CCCO’s Exempt positions. It applies to the 47 Exempt positions in Court Operations and Administration and applies or informs CCCO “back office jobs” (e.g., public policy, Human Resources, finance, information technology).⁴ As the required educational and experience increases based on the job level, the plan should ensure that Exempt employees are appropriately qualified.

As to the position descriptions, themselves, the parties and the CCCA are in the process of finalizing the revisions. This includes (a) transforming the prior administration’s unrevised

³ The parties and the CCCA further agreed that supervisory experience may be waived by agreement on a case-by-case basis for Exempt positions that do not include supervisory duties.

⁴ The security and investigative positions are the obvious outliers. The parties and the CCCA agreed to Minimum Qualifications plan for those positions that reflect the job level.

position descriptions into the new agreed form; and (b) creating new agreed position descriptions, as required. Based on the collaborative effort of all involved, this significant project is nearing completion.

3. Exempt Hiring

Article XII of the Employment Plan governs the Exempt Hiring process. As would be expected, Clerk Martinez began assembling Candidates for Exempt positions even before assuming office to allow her team to start on day one of her administration. Plaintiffs and the CCCA reviewed and approved application materials for those Candidates, consistent with Article XII of the Employment Plan. The review process has continued since Clerk Martinez assumed office. Of the 80 positions on the current Exempt List, 73 have been filled. And of the three new agreed Exempt positions, two have been filled.

B. Shakman Training

The parties and the CCCA agree that training the CCCO workforce on Shakman precepts is imperative. This starts with the Exempt staff, much of which is new to a Shakman environment, and extends to the Non-Exempt employees.

The CCCO has asked the CCCA to present the Shakman training and she has agreed to do so. The CCCA understands this request was made because the CCCA presented Shakman training in June 2019 in the role of Interim DOC and will be able to deliver the training once the CCCO has made necessary arrangements (including employee scheduling; technological support since the training will be done remotely; and employee evaluation forms).

On January 19, 2021, the CCCO has suggested February 24, 2021 as the date for Shakman training. The CCCA has agreed and expects the training to proceed on that date.

C. Matters Related to the Employment Plan Based on Change of Administrations

1. Employment Plan Revisions

A prerequisite to Substantial Compliance under Section II(C) of the SRO is the creation of a full Employment Plan. The Court entered the Clerk's full Employment Plan on November 24, 2020.

On January 21, 2020, the CCCO proposed revisions to the Employment Plan. Upon cursory review, the changes appear modest. It would appear that the parties and the CCCA should be able to agree to an amended Employment Plan in the near term.

2. Employment Plan Training

While the Employment Plan requires Employment Plan training, *see* Sections IV(F) and (G), the parties and the CCCA agree that this significant project should be deferred until the Employment Plan is amended. Once that is accomplished, the CCCA would expect Employment Plan training to follow shortly.

3. Non-Exempt (Union and Non-union) Hiring under the Employment Plan

There has been no union or non-union Non-Exempt hiring since Clerk Martinez assumed office. The CCCO has indicated that it is identifying its workforce needs, which must be accomplished before hiring can begin. Also, before the CCCO can hire for positions that require interviews, employees eligible to interview Candidates must receive Interviewer Training, *see* Employment Plan Section IV(I). This is another incentive to complete the Employment Plan amendments and Employment Plan training.

D. CCCO/HR Failure to Give Notice of Employment Actions

Section I(G) of the SRO authorizes that CCCA to, *inter alia*, "review the Clerk of the Court's employment practices." Section I of the Employment Plan authorizes the CCCA to, *inter*

alia, “monitor any and all Employment Actions⁵ involving both union and non-union Employees whether in Exempt or Non-Exempt Positions.” Without notice of an Employment Action, the CCCA’s authority to monitor is illusory. The agreed notice period is at least two business days.

From the outset, the CCCO recognized its obligation to provide notice of all Employment Actions. Despite considerable conversation on the subject, the CCCA personally did not receive notice of any Employment Actions until January 20, 2021; this was seven weeks after Clerk Martinez took office. Based on cursory review, the CCCO has provided notice of seven Employment Actions, six of which appear to relate to temporary assignments and one appears to relate to a termination. As received only yesterday afternoon, the CCCA has not had the opportunity to review their quality.

The CCCA does not view the CCCO’s failure to provide notice as an intentional effort to avoid Shakman oversight. But since this enterprise is based on monitoring, failing to give proper notice of Employment Actions⁶ is self-defeating in the CCCO’s path towards Substantial Compliance. The CCCA knows that the CCCO understands this. But the gap between understanding and doing what is required must be filled.

The CCCA expects these notice issues will be worked out and that the CCCO will provide timely notice, using an agreed form, of all Employment Actions going forward. (In addition, the CCCO should provide notice of any CCCO Employment Actions since the December 1, 2020 change in administrations not yet received - as late notice is better than no notice.) But given the

⁵ 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.” (Emphasis supplied.)

⁶ 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. This report focuses on notices of Employment Actions as that is what is relevant to this discussion.

importance of timely notice of Employment Actions, the CCCA thought it incumbent to bring this deficiency to the Court's attention.

E. Shakman-Related Policies

The Employment Plan governs CCCO employment practices, policies and procedures (including, but not limited to, Employment Actions). This report focuses on those policies that are immediately relevant to the new administration.

1. Telework Policy

Plaintiffs, the CCCA and the Court went to great lengths to ensure that the prior administration created, implemented and trained its workforce on a Telework policy. Only after Clerk Martinez took office did Plaintiffs and the CCCA learn that the prior administration did not follow the Telework policy including, but not limited to, giving the CCCA notice of teleworking decisions. So we essentially are starting over.

The CCCO has indicated its need to facilitate and increase remote working by employees so long as the pandemic remains active. The CCCO also has acknowledged the need for written telework procedures and implementing forms. The parties and the CCCA have negotiated a revised Telework policy, which is nearly complete, subject to the CCCO providing the implementing forms for Plaintiffs/CCCA review. The CCCA expects that this time implementation will be more successful.

2. Temporary Assignment

On December 10, 2020, the CCCO informed Plaintiffs and the CCCA of an immediate operational need to temporarily assign employees from one work location to another. As the CCCO does not have a Temporary Assignment policy, the CCCO proposed a process by which employees would be selected for temporary assignments.

Given the stated exigency, the parties and the CCCA negotiated and agreed to a written “temporary” Temporary Assignment policy on December 11, 2020. By its terms, the “temporary” policy is to expire on January 29, 2021. The understanding at the time of drafting was to replace the “temporary” policy with something more robust. As the CCCA did not receive notice of the temporary assignments until yesterday, as noted above, it would seem that a discussion between the parties and the CCCA is in order to discuss next steps, including whether revising the “temporary” policy is necessary at this time.

3. Time and Attendance Policy

The new administration concurs in the previously identified need to create and implement a transparent Time and Attendance policy by which the CCCO will administer its attendance “points”-based discipline. The CCCA has advised the CCCO/HR of the prior interactions with the Cook County Bureau of Technology (“BOT”) regarding the enhancement of the CCCO’s Cook County Time (“CCT”) system and the elimination of the CCCO’s legacy timekeeping system. As discussed in the Fifth Report, these changes will allow the CCCO to effectively implement and enforce a time and attendance system and the CCCA to effectively monitor it.

The CCCA understands that the CCCO/HR is in the process of reengaging BOT and expects a meeting will take place soon.

IV. RECOMMENDATIONS

It has been the CCCA’s experience that close oversight by the Court, including imposing deadlines as appropriate, has been effective in creating movement towards Substantial Compliance:

- A. **Recommendation No. 1** - The CCCO should be directed to provide Plaintiffs with an Amended Exempt List as soon as practicable to allow the filing of a motion for entry by the Court.

- B. Recommendation No. 2** – The parties and the CCCA should be directed to finalize an Amended Employment Plan in the near term or by a date certain, should the Court deem that appropriate.
- C. Recommendation No. 3** – The CCCO should be directed to provide proper notice of all Employment Actions to the CCCA starting immediately and notice of all prior Employment Actions in the near term or by a date certain, should the Court deem that appropriate.

Dated: January 21, 2021

Respectfully submitted,

Susan G. Feibus
Compliance Administrator for the Clerk of the
Circuit Court of Cook County
69 West Washington St., Suite 1422
Chicago, IL 60602

and

105 West Adams St., 35th floor
Chicago, IL 60603
(312) 637-9637
susan@feibuslaw.com

By her attorney:

Dina Masiello
69 West Washington St., Suite 1422
Chicago, IL 60602

CERTIFICATE OF ELECTRONIC FILING

I, Dina Masiello, the undersigned, do hereby certify that on January 21, 2021, I electronically filed a true and correct copy of the foregoing **Sixth 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/ Dina Masiello
Counsel to the CCCA