

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

MICHAEL L. SHAKMAN, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 69 C 2145
)	Magistrate Judge Sidney Schenkier
COUNTY OF COOK, et al.,)	
)	
Defendants.)	

**TWELFTH REPORT OF THE *SHAKMAN* COMPLIANCE ADMINISTRATOR
FOR COOK COUNTY**

Mary Robinson, *Shakman* Compliance Administrator for Cook County (the “Compliance Administrator” or the “CA”¹), by and through her attorney, Matthew Pryor, submits this Twelfth Report pursuant to the order of the Court entered November 30, 2006.

This report is presented pursuant to the terms of the Supplemental Relief Order entered on November 30, 2006 (the “SRO”), requiring that the Compliance Administrator study the existing employment practices of Cook County Government (the “County”)², monitor the County’s compliance with the provisions of the SRO, assist in formulating a

¹ “CA” shall refer to the Compliance Administrator and/or her staff.

² For the purposes of this and future reports, “Cook County” and “the County” shall refer to the defendant, Cook County and, in particular, to those departments and functions that operate under the direct control of the President. There are three units of County government which, due to developments since entry of the SRO, operate independently of the President for hiring and other purposes relevant to the dictates of the SRO, and separate practices are being implemented for each. Those units will be designated as follows: the Office of the Cook County Public Defender (the “Public Defender”), the Office of the Independent Inspector General for Cook County (“OIIG”) and the Cook County Health and Hospitals System (“CCHHS” or the “System”). Within the first year after entry of the SRO, the Juvenile Temporary Detention Center (“JTDC”) began operating under the authority of a court-appointed monitor and then was recently transferred to the authority of the Chief Judge of the Circuit Court of Cook County. The CA has engaged in no oversight of JTDC since August 2007.

new hiring plan, assist in establishing training programs on non-political hiring practices, adjudicate claims based upon violations that preceded entry of the SRO, make recommendations to the Court as to how to resolve issues regarding *Shakman* Exempt positions, and file reports describing the activities of the CA and the County's progress toward achieving Substantial Compliance with the requirements of the SRO.

On May 26, 2016, the CA submitted her Eleventh Report to the Court wherein she provided updates on the County's progress toward Substantial Compliance made by the County, the Public Defender, CCHHS and the OIIG. The Eleventh Report concluded with a list of outstanding compliance-related matters that the CA believed the County, Public Defender, CCHHS, and OIIG needed to address in order to be in a position to achieve Substantial Compliance with the SRO. The CA submits this report as an update on progress made by those offices on those outstanding items in the past two months. The CA anticipates filing reports with similar updates in conjunction with the scheduling of status conferences with the Court until these offices are found by this Court to be in Substantial Compliance with the SRO.

PROGRESS ON OUTSTANDING ITEMS IDENTIFIED IN ELEVENTH REPORT

COUNTY

In the Eleventh Report, the CA identified four issues that she believed the County needed to address pursuant to the SRO and Employment Plan (the "Plan"). Updates on the County's progress on those four issues are below.

1. Develop job descriptions for exempt staff hired by Commissioners

The County's Plan requires that all positions have job descriptions that include job duties and minimum qualifications. Plan at 10. Because Commissioners' staffers (who are exempt County employees) do not currently have job descriptions, the County, Plaintiffs, OIG and the CA have been engaged for some time on how best to resolve this issue. Plaintiffs have requested that each Commissioner staffer position have a unique job description that details the duties of that position with minimum qualifications related to those duties. The County believes that Commissioner staffers have such varying and broad duties that anything more than one general job description to cover all Commissioner staffers would be too burdensome and restrictive.

After considerable discussion between the parties and discussion with this Court, the parties agreed that the County's BHR would conduct desk audits of the staffers for four Commissioners and would provide to Plaintiffs, the OIG and CA copies of the audits as well as a summary report of the same. Since the Eleventh Report, the County's BHR conducted those audits (monitored by the County's Compliance Officer) and provided the audits and summary report to the relevant parties. The summary report concluded that Commissioners do not use their personnel in the "exact same manner" and that while "[m]ost positions had defined roles [] there was a degree of overlap to many of the roles." The summary report recommended that the County adopt the single "Commissioner Staff" job description previously proposed by the County as it would provide Commissioners with "total flexibility in deciding how to best utilize their personnel [and provides them] with a high degree of flexibility around pay rate decisions for their employees."

The Compliance Officer issued a memo approving the proposed job description for all Commissioners' staffers. The OIIG subsequently responded with several concerns about the proposal. The OIIG agreed that Commissioners did not use the same staffing model and that there were occasionally overlap between staffers' roles; however, the OIIG also concluded that the proposed job description was "vague and falls short of the requirement of the Employment Plan." The OIIG recommended a three-tiered approach to the staffers' job descriptions, so as to provide for three types of positions: 1) policy-oriented; 2) public relations-oriented; and 3) administrative support. Finally, the OIIG took issue with allowing all Commissioner staffers to be Grade 24 when the County's practice (with limited exception) is to require a college degree for Grade 24 positions.

The CA is in the process of scheduling a meeting with the parties to discuss this issue further. If an agreement cannot be reached at that time, the Plan allows the County to request that this Court decide the matter. The CA will provide further updates in her next report.

2. Develop, implement and monitor procedures to ensure accurate and consistent reporting of discipline relevant to an employee's eligibility for other employment

The Plan requires that employees who have been disciplined within a specified period of time are not eligible for consideration for other County positions. Plan § V.J.2. Since the Eleventh Report, the County initiated training of all supervisors and managers on various discipline-related procedures and protocol including: the importance of issuing progressive discipline and best practices for disciplinary file recordkeeping and reporting. The training sessions will continue through October. The CA attended one of the first training sessions and found the materials and presentation to be highly professional and

substantive, both as to best practices for implementing progressive discipline and as to the record-keeping requirements of the Plan. Supervisors in attendance appeared appreciative of the guidance they were being given for effective use of disciplinary measures.

Concerning the County's need to implement checks of disciplinary histories during the hiring process, the County's Compliance Officer has assured the CA that such disciplinary checks are in place using a BHR-created master disciplinary tracking spreadsheet. The CA is conducting an audit to ensure this issue has been resolved.

3. Develop, implement and monitor procedures for conducting disciplinary hearings to foster predictability in process and consistency in outcomes

In her Eleventh Report, the CA noted that the County lacked written procedures for disciplinary hearings – both third step grievances and for the Employee Appeals Board (“EAB”) – and that the significant variability in hearings monitored by the CA opens the door for impermissible political considerations. Eleventh Report at 10. Since the Eleventh Report, the County proposed standard operating procedures (“SOPs”) for both third step grievance and EAB hearings. The SOPs for third step grievance hearings cover the grievance process from the filing of a grievance by an employee through the time a hearing officer issues a final decision on the grievance. The third step SOPs also cover: ensuring grievances are heard in a timely fashion; proper record-keeping practices; ensuring notice of hearings is provided to the Compliance Officer and OIIG; and a detailed protocol for conducting a hearing. The proposed SOPs for EAB Hearings cover many of the same issues as the third step SOPs. The CA is preparing recommendations for edits to the drafts, and is coordinating with the County's Senior Labor Counsel who is working on draft amendments to the County Ordinance addressing procedures to be used by the EAB. The CA will provide

an update in her next report on the progress toward completion and adoption of procedures.

4. Ensure that all exempt and executive assistant hiring applications are input on ATAS

The Plan requires the County to place all exempt and executive assistant applications for hire on the online applicant tracking and application system (“ATAS”) when feasible. Plan §§ XII.A.3 & X.E.3. By having such applications on ATAS, the Compliance Officer, OIIG and CA may all more easily audit and monitor exempt and executive assistant hiring to ensure that such hires meet the minimum qualifications on their positions. Earlier this year, the County began the process of implementing this Plan requirement; however, the CA noted issues with the implementation – mostly concerning the lack of thorough documentation (application and resume) that showed the selected candidate met the minimum qualifications for a given position. Since the Eleventh Report, the County has largely corrected the deficiencies of prior postings and ensured all necessary files are uploaded for exempt and executive assistant hires going forward.

PUBLIC DEFENDER

In the Eleventh Report, the CA identified three issues that she believed the Public Defender needed to address pursuant to the SRO and the Plan. Updates on the Public Defender’s progress on those three issues are below.

1. Correct missteps with implementation of intern/volunteer program and develop processes to ensure future compliance

The Plan contains a specific process through which the Public Defender may operate an intern/volunteer program. Plan § IX.B. Since the CA’s Eleventh Report, the CA and BHR

have met several times with relevant Public Defender personnel to discuss concerns with how the Public Defender had implemented the intern/volunteer program. Based on these conversations, the CA is encouraged that the Public Defender understands the shared concerns of BHR and the CA. The most recent intern/volunteer posting expires in mid-August and the CA will work with the Public Defender in August in hopes of ensuring prior validation missteps are not repeated. In addition, the Public Defender is revamping record-keeping for purposes of identifying what assignments are given to each volunteer accepted into the program, and transitioning responsibility for keeping those records to an employee who will have the appropriate time for assuring that the records are complete and accurate. Further updates will be included in the next report.

2. Ensure CO and CA are permitted to monitor disciplinary processes

No disciplinary hearings concerning Public Defender employees have been held since the CA's Eleventh Report; however, the Public Defender has assured the CA that she will support the CA's right to monitor any such hearings in the future. The CA will continue to attempt to monitor such hearings and will report on the same in the future.

3. Ensure that all Direct Appointment applications are placed on ATAS

The Plan requires that applications for hire for Public Defender direct appointment positions be entered on ATAS. Plan § VII.J.7.3. BHR resolved technical issues for implementing that requirement several months ago, and arrangements have been made for BHR to coordinate with the Public Defender to assure that applications and supporting documentation be posted to ATAS for multiple direct appointments that should occur in the near future. The CA will monitor and report on that process once new direct appointments are hired.

CCHHS

In her Eleventh Report, the CA identified nine issues that she believed CCHHS needed to address pursuant to the SRO and the CCHHS Employment Plan (the “CCHHS Plan”). Updates on CCHHS’ progress on those nine issues are below.

1. Implement internal candidate preference option

The CCHHS Plan permits department heads to request that current employees in the department who apply for a posted position be exempted from randomization where the experience of those current employees would be beneficial in carrying out the duties and responsibilities of the position, as long as they meet the minimum qualifications of a posted position. Plan § V.B.3. CCHHS has not yet implemented this part of the Plan.

2. Implement employment verification procedures for non-credentialed positions

Based on OIG reports wherein selected candidates for non-credentialed CCHHS positions were found to have provided false and/or misleading information concerning their qualifications, CCHHS agreed to implement more robust employment verification procedures to ensure selected candidates are accurately representing their qualifications and experience. CCHHS’ Department of Human Resources (“DHR”) reported it has begun looking for an external vendor to assist with the employment verification process.

3. Post updated quarterly employment action reports on CCHHS website

The CCHHS Plan requires the DHR to post quarterly reports of the total numbers of hires, promotions, demotions, transfers, terminations and resignations by department. CCHHS Plan § IV.B. Since the Eleventh Report, DHR posted reports through the most recent fiscal quarter and is now current with this task.

4. Implement process to disqualify candidates because of discipline

The CCHHS Plan requires DHR to review the personnel files of internal candidates for open positions and to disqualify any such internal candidates from consideration if they have been suspended in the 12-month period prior to their applications. Plan § V.J.3.a. The CCHHS Plan also requires such review of disciplinary history for former employees applying for CCHHS positions if they were employed in the previous 12-month period. *Id.* at § V.J.3.b. DHR reported it is now capable of electronically tracking all discipline and anticipates training DHR employees on this tool in August 2016. DHR will also train relevant managers and supervisors on proper disciplinary record-keeping and reporting in October 2016.

5. Implement an Ineligible for Rehire List

The CCHHS Plan requires DHR to create and maintain a list of former employee who are ineligible for employment with CCHHS based on violating one of many specified CCHHS Personnel Rules or Sections 44-54 or 44-56 of the County Code of Ordinances. CCHHS Plan § IV.P. The CCHHS Employment Plan Officer (“EPO”) informed the CA that she is currently reviewing the Ineligible for Rehire List created by DHR. Once the EPO approves the List, DHR will need to implement use of the List in its hiring processes.

6. Ensure that all Direct Appointment applications are placed on ATAS

The CCHHS Plan requires that all direct appointment hires will complete an employment application on ATAS and provide licenses and certifications that demonstrate the hire meets the minimum qualifications for the position. Plan § VIII.G.3. CCHHS has not yet begun including direct appointment hiring applications on ATAS but plans to reach out to the County’s BHR to adopt their process for this task.

7. Develop and implement a hiring process for part-time temporary physicians

Prior to finalizing the CCHHS Plan, DHR agreed to later develop a hiring process that would cover its use of part-time temporary physicians. Since the CA's Eleventh Report, DHR has decided to use the recently-developed Advanced Clinical Position ("ACP") hiring process (explained further below) for such hires. Employees charged with conducting part-time temporary physician hiring have been trained on the ACP hiring process; however, CCHHS has not yet conducted any hiring of such physicians with the ACP process.

8. Train relevant staff and implement recently-completed ACP hiring process

Upon request of CCHHS, the parties and CA developed the new ACP hiring process to allow for more flexible procedures (but still monitored by the EPO and CA) for hiring doctors and other advanced clinicians. Eleventh Report at 4. This hiring process was piloted in Cermak in the spring and the EPO has trained approximately 75% of the relevant staff across all other CCHHS sites on this process. Continued training is underway. New postings under this process went live on ATAS in mid-July – which the CA is actively monitoring – and the CA will include details of the same in her next report. Finally, the CA is working with the parties on amending the CCHHS Plan to include the ACP process as well as other minor, but necessary, amendments. The CA anticipates that CCHHS will amend its Plan and file the same with the Court shortly.

9. Finalize, train relevant staff, and implement policies and procedures for non-hiring employment actions such as discipline, transfer, overtime and compensatory time, and others

In June 2016, the parties and CA agreed to supplemental policies that would cover the following non-hiring employment actions: reclassification, transfer, training, overtime, discipline, interim assignment/interim pay, layoff/recall, third-party provider, desk audit,

and demotion. The EPO has begun training relevant staff on these policies and such training will extend through the end of September. CCHHS plans on going live with the implementation of the policies in mid-October 2016. The CA will monitor the training and implementation of the policies and will discuss the same in her next report.

OIG

In her Eleventh Report, the CA identified one issue that she believed the OIG needed to address pursuant to the OIG Plan: conduct annual performance evaluations of all staff as required in the OIG Policy Manual. Eleventh Report at 24. Since the Eleventh Report, the Inspector General has begun conducting these evaluations. He has completed the evaluations for his most senior staff (including all of his Investigator Vs) and is currently completing evaluations for his Investigator IVs and IIIs. The CA reviewed the completed evaluations and concluded that they complied with the OIG Policy Manual.

OTHER UPDATES SINCE ELEVENTH REPORT

In addition to working with the County, Public Defender, CCHHS and the OIG on the above issues, the CA has continued to monitor discipline in the County and Public Defender, the Public Defender's volunteer program, hiring in CCHHS, and the performance of the Compliance Officer, EPO and OIG concerning *Shakman* compliance-related duties. Below are updates on other issues discussed in the Eleventh Report.

DHR has not responded to EPO Report 15-026

In the Eleventh Report, the CA discussed a January 14, 2016 EPO report (15-026) wherein the EPO found that an interview panelist who participated in a hiring sequence had a child with a candidate who was being considered, but she failed to disclose the fact

that they knew one another as required in the Plan's section on Conflict of Interest [and that] same employee provided the EPO with false information during her investigation." Eleventh Report at 16. The CA noted that DHR's written response to the EPO's report and recommendations concerning the panelist was pending. On August 1, 2016, DHR responded to the EPO's recommendations by confirming in pertinent part that: 1) the subject-panelist voluntarily resigned from CCHHS employment effective July 8, 2016 and her name would be placed on the Ineligible for Rehire List; and 2) DHR was in the process of retaining resources that would permit it to comply with the Plan's requirement that DHR "verify the accuracy of the information contained on the application" by contacting at least one professional reference. The CA is aware that CCHHS has sought proposals from third-party vendors to assist in verifying credentials. The CA will provide an update in her next report on DHR's progress on securing assistance to conduct Plan-required application verification.

The County has not settled or responded to OIG Summary Report 14-0080

The CA previously detailed concerns with the County's handling of a matter concerning a successful Post-SRO complainant that was detailed in OIG Summary Report 14-0080. Eleventh Report at 20-21. The OIG recommended that the County and CCHHS provide the complainant the same consideration afforded to other similarly-situated applicants by requesting and considering an explanation from the complainant for an omission on his application for hire. The County has informed the CA it is currently in settlement discussions with the complainant.

CONCLUSION

The CA believes progress is being made by the various offices and will report on further progress in her next report. The CA thanks the parties for their sincere efforts and this Court for its continued guidance on this matter.

Respectfully Submitted,

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Cook County *Shakman* Compliance
Administrator

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