

**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.)	

**THIRTEENTH 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 Thirteenth Report pursuant to the terms of the Supplemental Relief Order entered on November 30, 2006 (the “SRO”). The SRO requires the CA to 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 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

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.

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 August 2, 2016, the CA submitted her Twelfth 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 Twelfth Report provided updates on 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 a further update on progress made by those offices on outstanding items in the past two months.

PROGRESS ON OUTSTANDING ITEMS SINCE TWELFTH REPORT

COUNTY

In the Twelfth 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, OIIG and the CA agreed that job descriptions needed to be created, but disagreed on the details of such job descriptions. With the aid of desk audit reports conducted by the County's Bureau of Human Resources as well as analysis and input by the CA and OIIG, the

parties recently reached an agreement on a two-tier job description approach for all Commissioner staffers, and on the duties and qualifications to be included for each of the two positions. Under this approach, each Commissioner's staffer would be assigned one of two job descriptions that most closely aligned with the duties assigned them by their respective Commissioner. The County has not yet indicated which job description will apply to each current Commissioner staffer; however, the CA expects that once those designations are made, they will be reflected on the County's Exempt List which will be updated on the County's website.

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 Twelfth Report, the County continued training all supervisors and managers on various discipline-related procedures and protocols. The County has implemented procedures necessary to ensure that: Departments are timely and accurately reporting discipline to BHR, those reports are collected in a central location, and BHR staff responsible for validating eligibility of job candidates regularly consult the collected data. The CA is looking into a potential issue concerning one department, but is largely satisfied with the County's implementation of this process.

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. Just after the filing of the Eleventh Report, the County proposed standard operating procedures (“SOPs”) for both third step grievance and EAB hearings. The CA raised several concerns with the SOP’s as drafted; yesterday, the County provided proposed edits to the SOPs. The CA will review these edits and work with the County to resolve this open issue.

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. Having monitored the County’s placement of exempt and executive assistant positions on ATAS, the CA believes the County has complied with these respective sections of the Plan.

PUBLIC DEFENDER

In the Twelfth 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 Twelfth Report, the CA has monitored the Public Defender’s most recent posting concerning interns/volunteers.

There were only a few minor issues with the validations conducted in connection with that posting, and those issues were appropriately resolved. The CA is still working with the PD to ensure that intern/volunteer assignments are entered and displayed on ATAS.

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 Twelfth Report; however, the CA noted in her previous report that 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. Since the Twelfth Report, the Public Defender and the County's BHR have collaborated on a procedure to properly implement this section of the Plan. The CA expects the Public Defender to hire new Direct Appointments in the near future and will monitor the process at that time.

CCHHS

In her Twelfth 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. Prior to the CA's Twelfth Report, CCHHS' Department of Human Resources ("DHR") reported it had begun looking for an external vendor to assist with the employment verification process. This matter remains unresolved.

3. Post updated quarterly employment action reports on CCHHS website

The CCHHS Plan requires DHR to post quarterly reports of the total numbers of hires, promotions, demotions, transfers, terminations and resignations by department. CCHHS Plan § IV.B. DHR has posted such reports covering employment actions through its most recent completed quarter.

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.* § V.J.3.b. The CA's Twelfth Report noted that at that time, DHR believed it was capable of electronically tracking all discipline and would train DHR employees on this tool in August

2016. The CA also noted that DHR anticipated training relevant managers and supervisors on proper disciplinary recordkeeping and reporting in October 2016. Since the Twelfth Report, the EPO trained relevant managers and supervisors on disciplinary recordkeeping and reporting and DHR leadership anticipates training its staff on the new electronic disciplinary tracking mechanisms in the coming weeks.

5. Implement an Ineligible for Rehire List

The CCHHS Plan requires DHR to create and maintain a list of former employees 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. CCHHS has not yet finalized and implemented its Ineligible for Rehire List.

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.

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. CCHHS later decided to use the Advanced Clinical Position (“ACP”) hiring process for such hires. Since the Twelfth Report, employees charged with conducting part-time temporary physician hiring have been trained on the ACP hiring process and DHR has recently posted two part-time temporary

physician positions on ATAS. The CA will monitor those (and any future such) postings and will report on the same in the future.

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. As of the filing of this report, the EPO has trained approximately 75% of the relevant staff across CCHHS on this process.

Since the Twelfth Report, the CA has monitored several ACP hiring processes. The CA has found that the individuals involved in the process are largely compliant with the requirements. Some continue to fail to document all steps taken in a sequence, and there remains work to be done in clarifying for some of the personnel involved how the process works. The EPO and DHR leadership are working together to resolve these – and other – issues and the CA will continue to monitor ACP implementation accordingly.

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. Last week, the CA received proposed Plan amendments from DHR and is in the process of reviewing the same. The CA anticipates that an amended CCHHS Plan will be filed 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 trained approximately 90% of staff tasked with implementing

these policies. CCHHS plans on going live with the implementation of the policies on October 24, 2016. The CA will monitor the implementation of the policies and will discuss the same in her next report.

OIIG

In her Twelfth Report, the CA identified one issue that she believed the OIIG needed to address pursuant to the OIIG Plan: conduct annual performance evaluations of all staff as required in the OIIG Policy Manual. Eleventh Report at 24. The OIIG has completed evaluations for all of his staff. The CA reviewed the evaluations and concluded that they complied with the OIIG Policy Manual.

OTHER UPDATES SINCE TWELFTH REPORT

In addition to working with the County, Public Defender, CCHHS and the OIIG 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 OIIG concerning *Shakman* compliance-related duties. Below are updates on other issues discussed in the Eleventh Report.

OIIG 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 OIIG Summary Report 14-0080. Eleventh Report at 20-21. The OIIG 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. At the time of the Eleventh Report, the County had

informed the CA it was currently in settlement discussions with the complainant. The CA was recently informed that settlement discussions were unsuccessful and that the matter is scheduled for arbitration later this month.

OIG Summary Report 16-0173

Shortly after the CA's Twelfth Report, the OIG issued Summary Report 16-0173 wherein the Inspector General found that CCHHS DHR worked with a department to alter a Direct Appointment job description to fit a specific candidate without being transparent about the reasons for so doing. The OIG concluded that DHR's actions violated the Plan and recommended that: 1) DHR stress to hiring managers the importance of analyzing language of job descriptions before recruitment efforts are initiated; 2) the CCHHS Plan be amended to require DHR to provide the OIG 10 days to review direct appointment hiring packets before any such hire is finalized; and 3) CCHHS comply with the Plan by being transparent about the bases for amending direct appointment job descriptions going forward. CCHHS has not responded in writing to the OIG's Summary Report; however, CCHHS has agreed to the OIG's second recommendation and met with the OIG (and CA) on the first and third recommendations. The CA will report on CCHHS' official written response and any further relevant developments in her next report.

EPO Finding Concerning Plan Violation

In her recent semi-annual report, the EPO discussed a hiring process filled with Plan violations including, but not limited to: panel members "did not complete the interview evaluations timely, clearly, completely or independently . . . one panelist changed the evaluation form and score for a candidate that she did not interview; and the panel did not consider the candidates that should have been considered at the selection meeting." The

EPO noted that all of the panelists were contractors and no longer work with CCHHS anymore; however, the EPO committed to monitoring “extensively” all hiring in the subject department going forward. This episode appears to be an aberration, but the CA will look to the EPO’s future monitoring for confirmation that that is the case.

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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