

**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
)	
COOK COUNTY ASSESSOR'S)	Hon. Gabriel A. Fuente
OFFICE, <i>et al.</i> ,)	Magistrate Judge
)	
Defendants.)	

**SIXTEENTH REPORT OF THE ASSESSOR COMPLIANCE
ADMINISTRATOR FOR THE COOK COUNTY ASSESSOR**

Susan G. Feibus, Assessor Compliance Administrator for the Cook County Assessor (“ACA”), by her attorney, Matthew D. Pryor, pursuant to Section III(C) of the September 19, 2012 Agreed Order for the Cook County Assessor’s Office (“AO”), Doc. No. 3007, submits the ACA’s Sixteenth Report to the Court:

I. INTRODUCTION

On April 21, 2020, the ACA filed the Fifteenth Report to the Court (“Fifteenth Report”). Doc. No. 6837. This was her ninth eighth report since her January 26, 2016 appointment (effective February 1, 2016). *See* Doc. Nos. 4751, 4856, 5059, 5204, 5725, 5894, 6369, 6534 (ACA’s Sixth – Fifteenth Reports). This Sixteenth Report is to update the Court as to the Assessor’s progress towards Substantial Compliance with the September 19, 2012 Agreed Order (“Agreed Order”) since the Fifteenth Report.

As the Agreed Order puts it, Substantial Compliance requires:

1. a New Employment Plan, including procedures to ensure compliance with the New Employment Plan and identify instances of non-compliance;

2. the Assessor must act in good faith to remedy instances of non-compliance that have been identified and prevent a recurrence;
3. the Assessor must 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 Assessor's Consent Decrees¹ and this Agreed Order's essential purpose; and
5. the Assessor must implement procedures that will affect long-term prevention of the use of impermissible political considerations in connection with employment with the Assessor.

Doc. No. 3007 at 18.

Despite effort on a variety of fronts, which certainly has been complicated by the COVID-related shutdown and largely remote current work environment, there is considerable distance between where things stand now and Substantial Compliance. On the positive side, the AO's hiring has been largely Employment Plan compliant. But the Employment Plan revisions are not complete, although almost so. The Shakman-related policies in the Employee Handbook remain in a state of revision; considerable work remains. The AO is not yet implementing Shakman-related policies in manner that breeds confidence of long-term prevention of the use of impermissible political considerations in connection with employment with the Assessor. The Human Resources ("HR") function is not operating at the level required to fulfill the AO's obligations under the Employment Plan and Employee Handbook.

The AO rightly will note that there have been no findings of Unlawful Political Discrimination since Assessor Kaegi took office. But that is not the touchstone for Substantial Compliance. To achieve Substantial Compliance, the Agreed Order requires an Employment Plan,

¹ The "Assessor's Consent Decrees" refer to the combination of (a) a 1972 Consent Decree which, *inter alia*, prohibited the Assessor from taking any action regarding governmental employment against any governmental employee based on political reasons or factors; and (b) a 1995 Consent Decree which incorporated the 1972 Consent Decree's prohibitions and extended those prohibitions to the Assessor's hiring practices, with certain exclusions. *See* Doc. No. 3007 at 5.

policies and procedures to effectuate that plan and the effective enactment of these policies and procedures. These are the structural pieces designed to eliminate the environment – no matter the Assessor – where Unlawful Political Discrimination can take hold.

The ACA shares the AO's goal of achieving Substantial Compliance. She remains a collaborative partner towards that end.

II. OVERVIEW OF THE ACA'S ACTIONS SINCE THE APRIL 21, 2020 FIFTEENTH REPORT

The ACA and her staff remain actively engaged with the AO, Plaintiffs and the DOC in the AO's efforts to achieve Substantial Compliance. In summary, the ACA's activities since the Fifteenth Report included:

- reviewed, monitored and regularly provided feedback regarding many Employment Actions;
- provided feedback regarding AO training materials and monitored many training sessions;
- reviewed and monitored the Assessor's Exempt hiring;
- provided significant input into and monitoring of the Assessor's non-Exempt hiring;
- provided significant input and comments regarding the AO's proposed revisions to various Position Descriptions;
- met and conferred with counsel for Plaintiffs on a regular basis;
- met and conferred with the Director of Compliance ("DOC") on a regular basis;
- provided significant revisions to the Employment Plan;
- provided significant review and comments to the AO's proposed revisions to the Employee Handbook;
- provided detailed feedback to the AO regarding issues attendant to its efforts at implementing its Shakman-related policies, particularly the Time and Attendance, Discipline and Performance Evaluation policies;

- provided significant review and comments to the AO's proposed Data Integrity Rotation Policy, Telecommuting Policy and support staff review procedure;
- provided significant review and comment to the AO's COVID-related shutdown staffing plans;
- conducted desk audits of various AO employees; and
- conducted exit interviews of various AO employees.

III. THE ASSESSOR'S PROGRESS TOWARDS SUBSTANTIAL COMPLIANCE

A. The Employment Plan

1. The Employment Plan Has Not Been Revised

Section II(D) of the Agreed Order requires the creation of an Employment Plan. To achieve Substantial Compliance, the Assessor must implement that plan. Agreed Order at III(F)(8)(1). The AO, Plaintiffs and ACA have been negotiating revisions to the Employment Plan since shortly after Assessor Kaegi took office in December 2018. The process, involving multiple iterations, has taken longer than expected. But it appears that completion is near.

2. Mandatory Employment Plan Training was Completed

Section IV(G) of the Employment Plan requires HR, in conjunction with the DOC, to conduct "comprehensive, mandatory training of all Employees to ensure that they are aware of and knowledgeable about [the] Employment Plan...and Unlawful Political Discrimination." The April 2020 Fifteenth Report noted that the annual mandatory Employment Plan training under Section IV(G) of the Employment Plan, which was due in February 2019, had not been completed. This has been accomplished since the Fifteenth Report.

B. Assessment of the Assessor's Hiring Practices

A significant component of the Employment Plan relates to its five separate hiring processes: (1) Exempt; (2) "Actively Recruited"; (3) General Hiring Process; (4) DOC; and (5)

Executive Assistant. One element of implementing the Employment Plan, as required for Substantial Compliance, is hiring in compliance with these schemes. Since the Fourteenth Report, the AO has hired employees under the Exempt and General Hiring processes.

1. Exempt Hiring

Per the amended Exempt List entered by the Court on December 6, 2019, the AO has 27 Exempt positions.

Since the Fifteenth Report, one new Exempt position was filled:

- Director of Data Integrity: July 9, 2020 date of hire

Since the Fifteenth Report, three Exempt employees separated from the AO and were replaced:

- Deputy Assessor, Chief Valuations Officer: July 7, 2020 date of hire
- Director of Commercial Valuations: April 27, 2020 date of hire
- Director of Special Properties: July 20, 2020 date of hire

These hires were conducted in accordance with the Employment Plan.

Currently, two Exempt positions are vacant:

- Legal Counsel: vacant since May 11, 2020
- Director of Special Projects – Valuations: vacant since July 7, 2020

2. General Hiring Process: Non-Exempt Hiring

The AO filled three positions through the General Hiring process since the Fifteenth Report:

- Assistant Manager of Commercial Field: May 26, 2020 date of hire
- Paralegal: June 8, 2020 date of hire
- Assistant Manager of Residential Field (two vacancies): June 8, 2020 dates of hire

The hiring for these positions generally was Employment Plan compliant. HR made errors in the scoring of all three positions but the DOC and/or ACA identified the errors and they were corrected. With the exception of the scoring error, the AO executed the Paralegal hiring process well and the ACA provided the AO with positive feedback of the same - particularly concerning the HR Generalist tasked with overseeing this hiring sequence. For both Assistant Manager positions, HR failed to provide the complete Posting File, as the Employment Plan requires, until prompted by the DOC and ACA. HR provided the incorrect interview questions for the Assistant Manager of Commercial Field hiring, which necessitated partial re-interviews of the first three Candidates. At the Ranking Meeting for the Assistant Manager of Residential Field, the Director of Human Resources suggested that the Interview Panel could discuss the Candidates from the lowest ranked to the highest ranked but the ACA monitor informed the panelists that the Employment Plan requires the opposite and the correct procedure was followed. Because remedied, these errors did not affect the validity of the hirings.

Currently, the General Hiring Process is underway for three positions: (1) Taxpayer Information Specialist (three vacancies); (2) Residential Field Inspector (five vacancies); and (3) Industrial Commercial Field Inspector (five vacancies).

3. Additional Non-Exempt Vacancies/New Position

The Manager of Commercial Valuations recently resigned; if filled, it will be via the Actively Recruited Hiring Process. Two existing positions, Manager of Divisions and Manager of Records Management, are vacant. And the AO has proposed the new position of Manager of Data Collection. Discussions are ongoing between the parties, DOC and ACA regarding the minimum qualifications for these three manager-level jobs and whether they qualify for hiring under the Actively Recruited Process.

The ACA will comment on these ongoing and open hiring processes, to the extent they are completed, in a future report.

C. The Employee Handbook Has Not Been Revised

Essential elements of implementing the Employment Plan, as required for Substantial Compliance, are AO employment policies and procedures to ensure compliance with the Employment Plan and identifying instances of non-compliance (“Shakman-related policies”). Agreed Order at II(D), III(F)(8)(1).

The Employment Plan requires Shakman-related policies to be included in the AO’s Employee Handbook,² which is to be revised and maintained by HR and distributed to all employees. Section IV.B. An Employee Handbook was in effect in December 2018, when Assessor Kaegi took office. The AO wished to review and revise the existing policies and negotiated revisions with Plaintiffs and the ACA. A revised Employee Handbook was promulgated in September 2019. Since then, although the parties and the ACA have exchanged various drafts, a revised Employee Handbook is not completed.

The AO’s most recent revisions (to which the ACA/Plaintiffs have responded) indicate many issues to be resolved; the most serious disagreements are about the Discipline Policy and Time and Attendance Policy.

1. Discipline Policy

The AO’s proposed revisions to the Discipline Policy would allow HR, at its discretion, to outsource disciplinary investigations and the responsibility for notifying the DOC and ACA of all actions taken in connection with the investigation to AO line managers. Given the importance of

² The AO’s Employee Handbook includes the Shakman-related policies and other personnel policies that are not required by the Employment Plan. The AO’s Shakman-related policies are Reclassification; Performance Evaluation; Overtime; Layoff and Recall; Interim Assignment; Temporary Assignment; Training; Performance Improvement Plan; Time and Attendance; and Discipline.

consistent and transparent Shakman-related policies and procedures, of which discipline is one, outsourcing the discipline process to line managers seems inconsistent with and an impediment to demonstrating the professional HR function required for the AO to achieve Substantial Compliance.

2. Time and Attendance Policy

The AO's enforcement of a time and attendance policy has been an issue since shortly after Assessor Kaegi took office in December 2018. In February 2019, the AO unilaterally suspended the strict "points" time and attendance discipline under which the AO had operated under the previous administration and apparently well before that. The September 2019 revised version of the Employee Handbook replaced "points" discipline with this standard: **"Four or more unexcused late arrivals and/or unexcused early departures within a one-month period shall result in disciplinary action, up to and including termination of employment."** (Emphasis in original.) There was almost no AO enforcement of this standard up to the March 2019 COVID-related shutdown.

The deficiencies in the AO's enforcement of its Time and Attendance Policy extend beyond making sure employees are at work when they are supposed to be, arrive on time and don't leave early. The DOC and ACA repeatedly have raised questions about employees' improper use, *inter alia*, of sick time (detailed in a February 2020 report by the DOC to which the AO never has responded), vacation time, floating holidays and personal days.

Based on the AO's revisions to the Time and Attendance Policy, its solution is not better enforcement but to make enforcement more difficult by, for example, defining key policy terms vaguely (*e.g.*, "unexcused absences," "late arrivals" and "unexcused absences"); not requiring managers to notate in the timekeeping system, Cook County Time, whether an employee's absence

was excused (which easily can be done); and not holding managers accountable via the discipline process for failure to enforce the policy.

While a failure to administer a Time and Attendance policy based on objective standards presents organizational issues, the ACA's concern from a *Shakman* perspective is that it improperly leaves open the door for treatment (positive or negative) based on Political Factors or Reasons.

Since Substantial Compliance requires an Employee Handbook, the ACA is hopeful that the AO will reasonably collaborate to bring the revisions to closure.

3. Mandatory Employee Handbook Training is Due in September 2020

Section IV(G) of the Employment Plan also requires HR, in conjunction with the DOC, to conduct "comprehensive, mandatory training of all Employees to ensure that they are aware of and knowledgeable about...the Employee Handbook." HR/DOC last conducted this mandatory Employee Handbook training in September 2019. To be Employment Plan compliant, Employee Handbook training must be presented in September 2020.

Employee Handbook training is an important piece of Shakman compliance, particularly as it extends to training managers on how to implement the policies. As HR/DOC's efforts in presenting this training best would be directed towards the revised policies that have been under discussion, this highlights the need for the Employee Handbook to be completed.

D. Assessment of AO's Implementation of Shakman-related Policy Implementation

While promulgating Shakman-related policies is a necessary step towards Substantial Compliance, it is not sufficient. To achieve Substantial Compliance the AO must consistently and effectively implement these policies. Agreed Order at III(F)(8)(1).

The ACA monitors all AO actions regarding Shakman-related policies and gives the AO regular written feedback about noncompliance. The ACA is not observing effective implementation. The major Shakman-related policy implementation issues that the ACA has observed since the Fifteenth Report are described below.

1. The Performance Evaluation Policy/Process

a. Policy Implementation, Generally

The AO cannot achieve Substantial Compliance unless and until it demonstrates the ability to conduct annual and (for new employees) 90-day and 180-day performance evaluations in compliance with its Performance Evaluation Policy. The AO has not conducted annual performance evaluations since at least 2010 when Assessor Berrios took office and they have not begun since Assessor Kaegi took office. The AO has indicated that it will begin annual performance evaluations in September 2020 for the Taxpayer Services Division, although a schedule has not been provided.

The AO has been conducting, and the ACA has been monitoring, the 90-day and 180-day performance evaluations required for new hires and the 90-day performance evaluations required for current employees who are selected for a new position. While these performance evaluations cannot substitute for the requisite annual performance evaluation process, they provide insight into the AO/HR's difficulties in managing the process to date.

The Fifteenth Report noted that managers had conducted eight 90-day performance evaluations since the September 2019 issuance of the revised Employee Handbook and reported on the many failures to comply with the Performance Evaluation Policy. These supervisory deficiencies included incomplete performance evaluation forms; inadequate oral feedback including failure to review position description and job expectations and/or give examples of the

employee's positive/negative performance; inadequate written feedback including failure to provide examples of the highest and lowest scores; failure to accurately calculate the employee's overall score; and failure to conduct the evaluation on a timely basis.

The ACA observed these same policy deficiencies in the six 90-day evaluations and five 180-day performance evaluations monitored since the Fifteenth Report. The ACA also observed additional policy deficiencies in these performance evaluations including the managers' failure to conduct the required discussion of the draft evaluation with their superiors prior to the performance evaluation meeting; failure to include DOC and ACA in the supervisory discussion (when it did take place); failure to timely provide the performance evaluation to the DOC and ACA; failure to provide the employee with the performance evaluation form prior to or at the performance evaluation meeting; and failure to give the employee the opportunity to review performance evaluation form.

b. The CAO's Performance Evaluation of her Executive Assistant

Of concern is the Chief Administrative Officer's ("CAO") deficient 90-day performance evaluation of her executive assistant. The CAO's review did not comply with the Performance Evaluation Policy in four ways: (1) the CAO did not give the Performance Evaluation Form to the DOC and ACA until the performance evaluation meeting started, even though the policy requires it be provided at least 48 hours in advance; (2) the CAO did not copy the DOC and ACA on the emails that constituted the supervisory meeting with the Chief Deputy Assessor; (3) the CAO did not require the Chief Deputy Assessor to indicate the authorship of her comments on the Performance Evaluation Form; and (4) the CAO did not give the ACA a copy of the Performance Evaluation Form signed by the employee. Since the CAO oversees the HR function and has been

identified as the AO's Shakman Liaison under the Agreed Order, her inability to comply with the Performance Evaluation Policy is indicative of the absence of effective policy implementation.

c. Manager's "Self" Performance Evaluation

Of greater concern is the 180-day performance evaluation of an AO Manager. Late in the afternoon on the day before the performance evaluation was scheduled, the CAO first provided the DOC and ACA with the emails that constituted the policy-required supervisory meeting.³ The DOC was the first to notice that the supervisory emails indicated that the employee to be evaluated had filled out his own Performance Evaluation Form. The DOC asked whether that had happened and, if so, what remedial actions the AO would take to rectify what the DOC saw as a clear policy violation. The next morning, the DOC recommended that the performance evaluation not proceed that afternoon so what happened could be determined. The CAO initially resisted, indicating that, in her experience, "the self-evaluation process has worked very well." When the ACA also objected and the DOC indicated that he was going to look into the matter, the performance evaluation was postponed.

The DOC commenced an investigation, which included reviewing documents and interviewing the employee, his supervisor (an AO Director), the supervisor's supervisor (an AO Deputy) and the Director of Human Resources. These interviews were monitored by the ACA.

On August 14, 2020, the DOC issued an Investigation and Recommendation Report pursuant to Section V(F) of the Employment Plan. The DOC found:

[t]he Assessor's Compliance Administrator and the DOC did not have the opportunity to monitor the entirety of the performance evaluation process in violation of the [Employment] Plan, and [the employee] was also inappropriately given the opportunity to write the first draft of his evaluation in violation of the [Employee] Handbook. These violations resulted in a poorly executed

³ Since most of the AO was working remotely, on May 14, 2020, the AO and ACA agreed that the required supervisory meetings could be conducted via email, as opposed to in person, so long as the DOC and ACA were copied on the emails so they could monitor the evaluation process.

Performance Evaluation Form, rubberstamped by supervisors; with little or no usefulness to the employee being evaluated.

The DOC made two recommendations: (1) “the employees involved in this performance evaluation receive counseling as to the importance of the performance management process, particularly as it relates to Shakman compliance;” and (2) “the Director of Human Resources receive counseling as to the language of the Employment Plan that commits the Office to complying with the spirit and law of the Plan and Agreed Order.”

The ACA concurs with the DOC’s conclusions and finds his recommendations reasonable and appropriate. Under Section V(F)(7) of the Employment Plan, the Assessor has 30 days, until September 14, 2020, to respond, with the option of extending the deadline by an additional thirty days by providing notice to Plaintiffs, DOC, and the ACA.

2. Time and Attendance Policy

As noted above, the AO’s enforcement of its Time and Attendance Policy since Assessor Kaegi took office has been less than satisfactory. This lack of enforcement has continued since the Fifteenth Report. The most significant compliance issue remains the AO’s failure to enforce attendance discipline under the agreed-to standard (four or more unexcused late arrivals and/or unexcused absences early departures in a month).

While the ACA recognizes the challenges presented by the present circumstances, that did not give the AO/HR a blank check to disregard attendance discipline. But this is what it did.

On July 22, 2020, a manager improperly issued a “counseling” (which is not discipline) to an employee who violated the attendance discipline policy by being late more than four times in in June 2020. Rather than discipline the manager for failing to enforce the policy, Human Resources allowed the employee’s counseling to stand, claiming that to issue discipline, as the policy required, “would not be the best management practice at this time for this situation.”

The ACA objected, stating, *inter alia*: “[T]he [manager’s] error, which speaks to supervisor inability to enforce the policy, should be corrected – not excused. To be policy compliant, disciplinary action should be initiated against [the employee].” The DOC concurred, stating: “I have to agree with the ACA on this point. Can you confirm that the office is going to take appropriate steps to initiate discipline against [the employee] so that we are consistent with our policy and issuing discipline fairly among our employees?”

No confirmation was forthcoming. Because rather than correct the manager’s error and enforce the attendance discipline policy, the Director of Human Resources, with the apparent assent of AO inside legal counsel, decided not to enforce the attendance discipline policy against any employee in June 2020 (apparently there were four violators).⁴

The Director of Human Resources’ August 2020 decision not to enforce attendance discipline in June 2020 was made after the fact, without prior discussion with the DOC and ACA and over their objections. The Director of Human Resources memorialized his decision in an August 3, 2020 memorandum, labeled “Attorney-Client Work Product - Privileged and Confidential,” which he transmitted to the responsible managers via email with this admonition: **“Please do not share this memo.”** (Emphasis in the original.)

The DOC and ACA received a copy of the Director of Human Resources’ August 3, 2020 memorandum after he sent it to the managers. Besides deciding not to enforce attendance discipline, the August 3, 2020 memorandum is troubling because of the Director of Human Resources’ patent efforts to try to keep it secret. First, he labeled the memorandum “Attorney-Client Work Product - Privileged and Confidential.” Of course, neither the attorney-client

⁴ Communications from the Director of Human Resources indicate that while he has not enforced attendance points discipline in June 2020, left to his own devices, he believes he can extend the non-enforcement period.

privilege nor attorney work product protection attach to the August 3, 2020 memorandum as the Director of Human Resources, while a lawyer by training, does not operate in the AO in a legal capacity. Second, he expressly directed the managers to whom he sent the August 3, 2020 memorandum not to share it. These acts of attempted secrecy strike at the heart of why Plaintiffs sought the Agreed Order in the first place.

3. Back-to-Work Policy/Plan

As the AO was entering the COVID-related shutdown in March 2020, it was open with Plaintiffs and the ACA regarding its anticipated remote work plan. This included information on how (and in what order) employees would be selected to perform their jobs remotely. The AO recognized that transparency was necessary given the Shakman concern of potential Unlawful Political Discrimination (“UPD”) if, for example, employee selection was as a reward or as punishment for their political affiliation.

In early July 2020, some AO employees returned to work on site all of the time, some returned to work on site some of the time and some have not returned on site at all. Despite the potential Shakman UPD concerns (*e.g.*, allowing employees to work remotely as a reward for their political affiliations or forcing them work on site as punishment for their political affiliations, or lack thereof), the AO devised and implemented its back-to-work plan without providing any information to Plaintiffs, the ACA and, to the ACA’s knowledge, the DOC, about how the plan would operate, including how employees were selected to work on-site or remotely.

When the ACA sought communication and transparency, the AO provided a report that raised as many questions about employee selection as it answered. Additional ACA inquiries yielded vague answers such as “management made decisions based on business need and employee capacity to work remotely” or “employee’s preference with manager’s approval.” On August 5,

2020, the DOC followed up on the ACA's queries and asked for additional information and explanations about 14 employee selection decisions. To date, the AO has responded to only one of the DOC's questions.

4. Telecommuting Policy

When the AO workforce turned to remote working it became apparent that a clear and transparent telecommuting policy was necessary to guard against potential UPD (*e.g.*, employees not being held accountable for their time based on political affiliation). The AO, Plaintiffs, DOC and ACA began negotiating a telecommuting policy to deal with the emergent COVID-related shutdown with an agreement that a more robust policy, advocated by the DOC, would be put into place by September 1, 2020.

While largely negotiated, the initial telecommuting policy has not been finalized. Given that September 1, 2020 is nearly upon us, the ACA looks forward to the AO's upcoming draft of the more robust telecommuting policy.

5. Data Integrity Rotation Policy/Initiative

The AO proposed to reorganize the office to heighten its data integrity (quality control) function. This was a significant project that began in early 2020 with the creation of a new Exempt Director of Data Integrity position and extended to reviewing and revising non-Exempt position descriptions and creating a clear and transparent policy and process for assigning employees in specific job titles to the data integrity function on a rotating basis. This was a project with cooperation and collaboration between the AO, led by the Chief Legal Officer, and Plaintiffs, DOC and ACA, and achieved an excellent result.

F. Assessment of the Director of Compliance

In the Fifteenth Report, the ACA commented on the DOC's job performance pursuant to

Section V(D) of the Employment Plan (“the ACA may monitor any and all aspects of the DOC’s job performance”). The DOC’s essential job duties are described in Section V(A) of the Employment Plan and the DOC position description. Since an effective DOC is integral to achieve Substantial Compliance, the ACA plans to continue to apprise the Court of her assessment, which is based on the DOC’s assigned duties and her interactions and observations.

As indicated in the Fifteenth Report, the DOC identifies Shakman compliance issues and appears committed to assisting the AO in achieving Substantial Compliance. The DOC continues to provide periodic reports to the AO identifying compliance issues, *inter alia*, with the various hiring processes, Shakman-related policy development and Shakman-related policy implementation. While identifying compliance issues is the first step, the ACA has encouraged the DOC to be more proactive in offering solutions.

The DOC has been involved in AO training efforts. He recently provided investigation training to the Director of Human Resources and one (of the two) Senior HR Generalists. He also is engaged in the AO’s supervisor training on Shakman-related policies.

The DOC has issued one Investigation and Recommendation Report on August 14, 2020, which addressed the improper self-evaluation of an AO Manager *in lieu* of a policy compliant performance evaluation, referenced above. The ACA understands that the DOC plans to issue a report addressing the AO/HR’s failure to enforce the attendance discipline policy, also referenced above.

But the DOC only can be as effective as the AO allows him to be. The DOC should be the AO’s first-line internal Shakman compliance counselor. The AO should be looking to the DOC for advice and counsel before it engages in conduct that implicates the Agreed Order. Based on the ACA’s information and observations, that does not appear to be happening as regularly would

be expected as the AO works towards Substantial Compliance.

First, it appears that the AO engages in major endeavors that implicate Shakman compliance without consulting with the DOC. One example is the “back to work” plan, which the AO apparently designed and implemented without consulting with the DOC.

Second, it appears that when the AO does ask for the DOC’s counsel, it may be ignored. One example is the Shakman-related policy revisions where the ACA understands that the DOC’s counsel to maintain, *inter alia*, HR’s responsibility and the notice requirements to the DOC and ACA largely was ignored.

Third, the DOC issued a report in February 2020, based on an extensive investigation, that found significant potential abuse of sick time by AO employees. The AO has not responded and, to the ACA’s knowledge, has not implemented remedial measures.

Given the importance of the DOC to the AO’s achieving Substantial Compliance, the ACA is hopeful that the AO will appropriately seek and utilize his advice and counsel.

G. Assessment of the Human Resources Function

Substantial Compliance cannot be achieved without a professional, effective HR function. *See* Section III.I of the Employment Plan. The AO employee responsible for the HR function is Chief Administrative Officer (“CAO”), whose duties include but extend beyond HR. The Director of Human Resources reports to the CAO.

The current Director of Human Resources became employed by the AO on August 19, 2020. The October 7, 2020 Fourteenth Report, when the Director of Human Resources had been on the job less than two months, expressed concern that he was capable of implementing the Employment Plan. These concerns were based on the Director of Human Resources’ repeated refusal to accept constructive ACA feedback and his continual efforts to avoid what he

characterizes as the “transaction costs” attendant to Shakman oversight - even if they are required by the Employment Plan or Shakman-related policies.

After the Fourteenth Report was issued and discussed with the Court, the then-CAO kept the Director of Human Resources in check and the work crucial to Substantial Compliance proceeded. The CAO resigned, effective December 30, 2020. Once she left, the Director of Human Resources’ prior behavior resumed.

On February 24, 2020, the AO hired a replacement CAO, whom the AO identified as its Shakman liaison per Section I(E) of the Agreed Order. Representations were made that she would be directing the AO’s Shakman compliance efforts, supported by the Director of Legal as the CAO is not a lawyer. As indicated in the Fifteenth Report (at page 17), the ACA was optimistic that “this personnel change... should result in a more cordial and productive working relationship with the ACA, which is integral to the AO/Plaintiffs’/ACA’s shared goal of Substantial Compliance.”

It has not worked out that way. From all outward appearances, the CAO’s involvement in Shakman compliance has been limited. The Director of Human Resources appears to be calling most of the shots, sometimes supported by the AO’s legal function. The Director of Human Resources continues to be unable or unwilling to recognize the Assessor’s obligations under the Agreed Order – as exemplified by his improper handling of the employee performance evaluation that was the subject of the DOC’s August 14, 2020 investigation and recommendation report, referenced above.

The DOC’s August 14, 2020 report recommended the Director of Human Resources receive counseling to be reminded of the Employment Plan’s concluding language (in Section XVI): “It is not possible to anticipate and address every situation that may give rise to Unlawful

Political Contact or Unlawful Political Discrimination, and the Assessor is prepared to comply with the spirit of the law to meet those situations in the future.”

The basis for the DOC’s recommendation, explained below, typifies the Director of Human Resources’ inappropriate approach to Shakman compliance:

[The Director of Human Resources] takes the position that the [employee’s] 180-Day Evaluation is one “of...many situations where the monitors are going to assume because the handbook is silent that [the Office] cannot do it.” As one of the “monitors,” and at the risk of speaking for the ACA, the assumption is not that the Office cannot do it, but rather the Office will follow the spirit of the Plan and Handbook...From [the Director of Human Resources’] perspective, there was ambiguity in the Performance Management Policy. Rather than discuss the ambiguity with the DOC and ACA in the spirit of the Plan...[the Director of Human Resources] decided that his perceived ambiguity provided a green light for the Office to proceed as it pleased.

How the Director of Human Resources handled this performance evaluation issue was not an aberration. The ACA has seen the Director of Human Resources disregard the spirit of the Employment Plan and Employee Handbook over and over since he arrived a year ago. Sometimes it’s major (*e.g.*, trying to eviscerate the AO’s time and attendance policy) and sometimes it’s minor (*e.g.*, making an issue of what recruitment training requires). And sometimes it’s disregarding the Plan or Handbook, altogether - as with his unilateral disregard for attendance discipline enforcement, discussed above.

The most unfortunate consequence of this approach to Shakman compliance is that it has the corollary effect of impeding the AO’s progress towards Substantial Compliance.

IV. THE ACA’S ACTIVITIES AS INTERIM DOC SINCE THE FIFTEENTH REPORT

On December 4, 2018, the Court appointed the ACA to simultaneously serve as the Interim DOC as a result of the DOC’s resignation. The ACA held that post until April 29, 2019, when the

new DOC's AO employment began. She continues to work on the follow-up investigation regarding the hiring of the Executive Assistant to the Chief Deputy Assessor.

V. RECOMMENDATIONS

As has been her practice, the ACA makes the following recommendations:

- A. Recommendation No. 1 - Employment Plan:** The Court should impose a deadline for completing revisions to the Employment Plan.
- B. Recommendation No. 2 – Employee Handbook:** The Court should impose a deadline for completing revisions to the Employee Handbook, including a Telecommuting Policy.

Dated August 17, 2020

Respectfully submitted,
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CERTIFICATE OF ELECTRONIC FILING

I, Matthew D. Pryor, the undersigned, do hereby certify that on August 17, 2020. I electronically filed a true and correct copy of the foregoing **Sixteenth Report of the Assessor Compliance Administrator for the Cook County Assessor** using the CM/ECF system, which sends notification of such filing to all registered users.

/s/ Matthew D. Pryor
Counsel to the ACA