

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

<b>MICHAEL L. SHAKMAN, et al.,</b>	)	
	)	<b>Case No. 69 C 2145</b>
<b>Plaintiffs,</b>	)	
	)	<b>Hon. Edmond E. Chang</b>
v.	)	<b>District Judge</b>
	)	
<b>COOK COUNTY ASSESSOR, et al.</b>	)	<b>Hon. Gabriel A. Fuentes</b>
	)	<b>Magistrate Judge</b>
	)	
<b>Defendants.</b>	)	

**FIRST INTERIM STATUS 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 first Interim Status Report to the Court:

**I. INTRODUCTION**

The Court’s March 22, 2021 and March 24, 2021 orders, which followed the March 19, 2021 court status, set out a potential timeline for the filing of a Motion to Dissolve the Assessor’s Consent Decrees<sup>1</sup> and the September 19, 2012 Agreed Order (“Agreed Order”), either jointly (AO, Plaintiffs and the ACA) or by the AO, alone, in accordance with Section III(F) of the Agreed Order. In either instance, the target date was July 30, 2021. In connection with that target date, the Court ordered the ACA to provide two Interim Status Reports and a Final Report “for

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<sup>1</sup> The “Assessor’s Consent Decrees” refer to the Consent Decrees to which the Assessor entered: (1) in 1972, which, *inter alia*, prohibited the Assessor from taking any employment action against a current employee based on political reasons or factors; and (2) in 1995, which extended the prohibitions of the 1972 Consent Decree to include the Assessor’s hiring practices, certain exclusions.

maximum transparency.” This is the First Interim Status Report, which follows the ACA’s Eighteenth Report to the Court (“Eighteenth Report”), filed on April 19, 2021.

Unanticipated developments undercut the hoped-for July 30, 2021 target date for a Motion to Dissolve. First, and the most significant change since the April 20, 2021 court status, is the resignation of the Director of Compliance (“DOC”), effective June 4, 2021. Second, the reorganization of the AO’s Human Resources structure and personnel, discussed at the April 29, 2021, has not been implemented. Third, the AO’s failure to materially comply with the Employment Plan and the employment policies and procedures that the Employment Plan requires (“Shakman-related policies”) continues.

Each of these factors will be discussed below, as in the Eighteenth Report, in the context of whether the Assessor has satisfied the “five prongs” of Substantial Compliance,<sup>2</sup> which under Section III(F)(8) of the Agreed Order, require:

1. The Assessor has implemented the New Employment Plan, including procedures to ensure compliance with the New Employment Plan and identify instances of non-compliance;
2. The Assessor has acted in good faith to remedy instances of non-compliance that have been identified, and prevent a recurrence;
3. The Assessor does not have a policy, custom or practice of making employment decisions based on political reasons or factors except for Exempt Positions;
4. The absence of material noncompliance which frustrates the Assessor’s Consent Decrees and this Agreed Order’s essential purpose. However, technical violations or isolated incidents of noncompliance shall not be a basis for a finding that the Assessor is not in substantial compliance; and
5. The Assessor has implemented procedures that will effect long-term prevention of the use of impermissible political considerations in connection with employment with the Assessor.

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<sup>2</sup> All capitalized terms have the meaning ascribed to them in the Agreed Order, Employment Plan or Employee Handbook, unless otherwise indicated.

## II. THE ASSESSOR'S PROGRESS TOWARDS SUBSTANTIAL COMPLIANCE

### A. **Has the Assessor implemented the New Employment Plan, including procedures to ensure compliance with the New Employment Plan and identify instances of non-compliance?**

#### 1. Employment Plan Implementation: Hiring Since the Eighteenth Report

A significant component of the Employment Plan relates to its six separate hiring processes: (1) Exempt; (2) Actively Recruited; (3) General Hiring; (4) DOC; (5) Executive Assistant and (6) Intern. Substantial Compliance requires a demonstrated ability by the AO to hire in compliance with these schemes. Since the Eighteenth Report, the AO has hired employees under the Exempt and General Hiring processes:

##### *a. Exempt Hiring*

Per the amended Exempt List entered by the Court on May 26, 2021, the AO has 33 Exempt positions. The AO filled three positions through the Exempt hiring process since the Eighteenth Report:

- Director of Human Resources: June 1, 2021 date of hire (filled by former Senior Human Resources Generalist)
- Director of Policy: June 1, 2021 date of hire (filled by former Director of Human Resources)
- Director of Labor and Employment: June 7, 2021 anticipated date of hire (new hire)

These Exempt Positions were filled in accordance with the Employment Plan.

Five Exempt positions currently are vacant:

- Executive Assistant – Assessor: vacant since March 1, 2021
- Director of Legal: vacant since March 26, 2021
- Director of Communications: vacant since April 5, 2021
- Special Assistant – Projects Lead: new Exempt Position, vacant since May 26, 2021

- Director of Valuations Research: new Exempt Position, vacant since May 26, 2021
- b. *Non-Exempt Hiring: General Hiring Process*

The AO has filled (or is close to filling) three positions through the General Hiring process since the Eighteenth Report:

- Manager of Computer Assisted Mass Appraisal (“CAMA”): May 10, 2021 date of hire
- Residential Junior Analyst: May 10, 2021 date of hire (the final of 3 vacancies)<sup>3</sup>
- Manager of Data Collection: Final selection and offer pending since April 16, 2021 Ranking Meeting

The deficiencies in these General Hiring processes include:

- Human Resources failed to put all required documentation into the Posting File. (*Manager of CAMA; Residential Junior Analyst*)<sup>4</sup>
- Human Resources failed to create the required Sorted Preliminary Eligibility List. (*Manager of CAMA; Manager of Data Collection*)
- Human Resources’ initial tabulation of interview scores and draft of Scored Interview List contained errors; correction by ACA required. (*Manager of CAMA*)
- Human Resources improperly allowed one Candidate who did not provide the required education documentation by the end of the interview process to interviewed. HR did not identify the error and, instead of being disqualified, the Candidate was considered at the Ranking Meeting. (*Manager of Data Collection*)

Hiring is underway for six positions under the General Hiring Process: (1) Senior Residential Field Inspector (two vacancies); (2) Incentive Senior Analyst; (3) Industrial Commercial Field Inspector (two vacancies); and (4) Division Analyst. The ACA will report these hiring sequences in her next report.

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<sup>3</sup> As the Residential Junior Analyst hiring process was nearly complete, the ACA reported on the deficiencies in that hiring process in the Eighteenth Report. See Eighteenth Report at 5-7.

<sup>4</sup>This does not mean that the Posting File for the Manager of Data Collection is complete. Completeness is assessed when a Candidate is selected, which has not yet happened - even though the position was posted in December 2020.

*c. Intern Hiring*

ACA has advised the AO/HR of deficiencies in its Intern Hiring Process. These include:

- Failure of Policy Department position description to provide “objectively ascertainable” Minimum Qualifications. (§§ II & X.B) (1 position description)
- Deputy failure to provide required documentation for Policy and Data Modeling Internships (*e.g.*, Request for Intern Form; list of background/skills sought; and scope of duties to be performed). (§ X.A) (9 interns)
- HR failure to provide required documentation for hiring of Policy and Data Modeling Internships (*e.g.*, position description; date internship to begin; whether internship was paid or unpaid; expected duties; time commitment; accurate graduation date; and whether intern met Minimum Qualifications of position). (§ X.B) (9 interns)
- Failure to provide NEA to DOC and ACA no later than two business days after Intern’s start date. (§ X.B) (1 intern)

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These continued material deficiencies in the AO’s hiring processes indicate that the AO has not implemented procedures to ensure compliance with the Employment Plan and identify instances of non-compliance – and therefore has not satisfied the first prong of Substantial Compliance.

2. Procedures Required by the Employment Plan: Shakman-Related Policies

To implement and ensure compliance with the Employment Plan, Substantial Compliance requires Shakman-related policies and the ability to identify instances of non-compliance with those policies. Agreed Order at II(D), III(F)(8)(1). The Employment Plan requires the Shakman-related policies to be included in the AO’s Employee Handbook, which is to be revised and maintained by HR and distributed to all employees. *See* Section IV.B.

The Shakman-related policies in the AO’s Employee Handbook, issued on November 16, 2020, are: Reclassification; Performance Evaluation; Overtime; Layoff and Recall; Interim

Assignment; Temporary Assignment; Training; Performance Improvement Plan (“PIP”); Time and Attendance; and Discipline.

Currently, two Shakman-related policies are under revision: (1) Time and Attendance; and (2) PIPs.

*a. Time and Attendance*

The Eighteenth Report indicated that the parties and the ACA were discussing additional policy revisions to address policy implementation issues and the ACA expected final agreement on a revised policy in short order. That has not happened.

The outstanding issue is the use of compensatory time by employees, about which there has been considerable discussion regarding language - but no agreement. On June 3, 2021, the AO told Plaintiffs, the DOC and ACA that the AO was discussing revised language on the use of compensatory time – that had not been fronted with the ACA or Plaintiffs – with the AO’s union. The AO indicated it would “advise” Plaintiffs, the DOC and ACA “if any agreement is reached regarding this topic.”

That the AO apparently has decided to deal with the outstanding policy issue unilaterally is inconsistent with its commitment (advanced most recently at the April 19, 2021 court status) for more “front-end” involvement with the ACA. *See, e.g.,* 4/19/21 Tr. at 25 - 26.

*b. PIP*

The parties and the ACA agreed to a revised PIP policy on May 13, 2021. As the changes were significant, the three implementing forms require revision and three additional implementing forms are needed.

The ACA provided the revised and new forms to the AO on May 21, 2021. The AO has not responded.

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The AO cannot satisfy the first prong of Substantial Compliance until the Shakman-related policies and implementing forms are revised and agreed.

3. Procedures Required by the Employment Plan: Training

a. *Employment Plan Mandated Annual Employee Employment Plan Training*

Section IV(F) of the Employment Plan requires the “Director of HR or Designee, in conjunction with the Chief Administrative Officer (“CAO”), the Director of Training, and the DOC” to conduct, *inter alia*, annual comprehensive Employment Plan training, including training on UPDs.

This annual training was in May 2021. The AO has a new on-line learning system, which it is using to implement the Employment Plan training. Employees are required to view the training between May 27, 2021 and June 11, 2021.

To the ACA’s knowledge, neither HR nor the CAO were involved in creating/updating the training deck. The ACA worked exclusively with the DOC to revise the deck and the DOC recorded the training.

As the training is ongoing, the ACA’s assessment will be included in her next report.

b. *Employment Plan Mandated Annual Supervisor Employment Plan Training*

Section IV(E) of the Employment Plan requires the “Director of HR or Designee, in conjunction with the Chief Administrative Officer (“CAO”), the Director of Training, and the DOC” to conduct, *inter alia*, annual comprehensive Employment Plan training. While the AO has provided Employment Plan training to all employees and Interview training (as required by Section IV(H) of the Employment Plan) the Supervisors, the AO has not provided Employment Plan training specifically for Supervisors, in accordance with Section IV(E).

*c. Employment Plan Mandated Annual HR Personnel Training*

Section IV(D) of the Employment Plan requires the “Director of HR or Designee, in conjunction with the Chief Administrative Officer (“CAO”), the Director of Training, and the DOC” to conduct annual comprehensive mandatory training programs for all personnel within HR on the Employment Plan and Employee Handbook, including training to ensure that HR personnel are able to “administer relevant portions of [the] Employment Plan and the Employee Handbook, and are able to answer questions they may receive.”

Since December 2018, the only training provided to HR personnel pursuant to Section IV(D) is new employee and training on Taleo and the validation of applications. The AO represented at the April 29, 2021 status that they were aiming for June 2021 for the HR Personnel Training, after the annual employee Employment Plan training was completed, “but the work will start before then as far as preparing the training information for the HR annual training.” 4/29/21 Tr. at 16. The ACA is unaware of any efforts by the AO regarding the Employment Plan mandated HR Personnel Training.

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The AO cannot satisfy the first prong of Substantial Compliance until all Employment Plan mandated training is accomplished and current.

4. Procedures Required by the Employment Plan: Position Description Revisions

Section IV(K)(1) of the Employment Plan requires that position descriptions be “accurate and reflect[] the actual duties and Minimum Qualifications and Preferred Qualifications, if any, for the job.” If the AO wishes to revise a position description, it must provide the proposed revisions to the DOC and ACA and, in the case of Exempt positions to Plaintiffs, for review and comment. *Id.*



Since the Eighteenth Report, the AO has advised the DOC, ACA and Plaintiffs of a desire to revise several Exempt and non-Exempt position descriptions, typically to change Minimum Qualifications and/or Preferred Qualifications. Following the DOC, ACA and Plaintiffs' review, the AO's proposed revisions have been negotiated and agreed.

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To date, the AO's creating and updating of position descriptions has been Employment Plan compliant.

**B. Has the Assessor has acted in good faith to remedy instances of non-compliance that have been identified, and prevent a recurrence?**

Since Substantial Compliance requires consistent and effective policy implementation, Agreed Order at III(F)(8)(1), this section will address the current state of the AO's compliance with Shakman-related policies. In the ACA's view, this second prong of Substantial Compliance should be considered in connection with the fourth prong of Substantial Compliance, which speaks in terms of the "absence of material noncompliance which frustrates the Agreed Order's essential purpose." The ACA's discussion of the fourth prong, below, will endeavor to do that.

The ACA's assessment of the current state of AO Shakman-related policy implementation is based on the monitoring of many Employment Actions according to the standards imposed by the November 2020 Employee Handbook. In large measure, the ACA's assessment has been conveyed to the AO through regular written feedback on policy implementation issues.

1. PIPs

The ACA has monitored the nine PIPs initiated by the AO since January 1, 2021. Each PIP arose as a result of a deficient performance evaluation during the annual performance evaluation cycle. Five PIPs have concluded or nearly so; of these five, one was successful; it

appears another will be successful; and it appears that three are or will be unsuccessful. The other four PIPs are in the beginning stage.

Based on this monitoring, the ACA provided the AO with extensive feedback on its compliance with its PIP policy<sup>5</sup> (regarding predominately the five PIPs that are complete or nearly so) on June 1, 2021. The compliance deficiencies observed by the ACA include the following 20 issues:

- PIP was not created by the employee's supervisor. (§3.2)<sup>6</sup> (5 PIPs)
- PIP did not include specific examples of how the employee was failing to perform at a satisfactory level. (§3.2) (2 PIPs)
- PIP did not identify the rule, standards or policies that the employee is required to follow or meet. (§3.2) (3 PIPs)
- PIP did not attach copies of referenced rules, standards or policies. (§3.2) (4 PIPs)
- PIP did not designate a timeline for each action step. (§3.2) (1 PIP)
- PIP action steps were extended or modified. (§3.2) (4 PIPs)
- Supervisor failed to submit PIP to the Immediate Supervisor and/or Deputy for review prior to the initial PIP meeting, as evidenced by the absence of signatures on the PIP. (§3.2) (2 PIPs)
- HR failed to give the ACA and/or DOC at least two business days' notice of the initial meeting, including a copy of the PIP form. (§3.2) (1 PIP)
- Supervisor did not ensure that the employee understood the consequences of failing the PIP. (§3.2) (2 PIPs)
- Supervisor did not discuss each action step at the PIP progress meeting. (§3.3) (5 PIPs)
- Supervisor did not discuss whether or not the employee was meeting expectations, had improved or had satisfied any PIP performance area. (§3.3) (3 PIPs)

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<sup>5</sup> As the revised PIP policy has not been implemented, the ACA's comments are based on the PIP policy currently in effect.

<sup>6</sup> The section in the parentheses refer to the relevant policy provision.

- Supervisor created additional actions step(s) but did not include a timeline by which action step(s) must be accomplished. (§3.3) (3 PIPs)
- PIP progress form did not include specific, factual and objective examples. (§3.3) (3PIPs)
- PIP progress form did not state whether employee had improved or satisfied any PIP performance area. (§3.3) (3 PIPs)
- PIP progress form did not include timeline for additional action steps. (§3.3) (3 PIPs)
- PIP progress form did not include documentation showing employee's progress or lack of progress. (§3.3) (3 PIPs)
- PIP progress form did not include all progress meeting dates, including next scheduled progress meeting. (§3.3) (2 PIPs)
- HR failed to provide signed PIP progress form to ACA. (§3.3) (2 PIPs)
- Final PIP progress form did not include a description of deficient performance areas with explanation and specific details. (§3.4) (1 PIP)
- Supervisor did not give final PIP progress form to Immediate Supervisor and/or Deputy for review and approval prior to final PIP progress meeting. (§3.4) (1 PIP)

## 2. Performance Evaluations

The AO has conducted eleven 90-day or 180-day Performance Evaluations of new hires or current employees in new positions between January 30, 2021 (the end of the annual performance cycle) and April 30, 2021. The ACA monitored nine of the eleven Performance Evaluations – two were 90-day reviews and seven were 180-day reviews. Based on this monitoring, the ACA provided the AO with detailed feedback on its compliance with its Performance Evaluation policy on May 28, 2021.

The compliance deficiencies observed by the ACA include:

- Supervisor failed to evaluate employee in a fair and consistent manner in overall scoring. (§§ 3.1 and 3.2) (2 performance evaluations)

- Supervisor identified employee's wrong AO Division or Unit on Performance Evaluation form. (§§ 3.1 and 3.2) (6 performance evaluations)
- ACA and DOC not copied on all emails where Supervisor, Immediate Supervisor and Deputy deliberated about employee's performance evaluation. (§ 3.5) (2 performance evaluations)
- Department Deputy did not review/sign/initial comments on Performance Evaluation form before it was given to employee. (§ 3.5) (6 performance evaluations)
- 90-day Performance Evaluation not held. (§§ 3.3 and 3.4) (1 performance evaluation)
- 90/180-day Performance Evaluation not timely/late. (§§ 3.3 and 3.4) (3 performance evaluations)
- Supervisors did not thoroughly explain scores or discuss employee's performance expectations for the following performance period. (§§ 3.3 and 3.4) (3 performance evaluations)
- Supervisor read Performance Evaluation form verbatim and/or failed to meaningfully discuss employee's performance. (§§ 3.3 and 3.4) (8 performance evaluations)
- HR did not provide timely notice of Performance Evaluation meeting to DOC and ACA. (§ 4) (4 performance evaluations)
- Improper Performance Evaluation Meeting Attendees. (§ 4) (4 performance evaluations)
- Employee-signed Performance Evaluation form not timely provided to employee's supervisory chain, DOC and ACA. (§ 5) (3 performance evaluations)

### 3. Time and Attendance

Since the Eighteenth Report, the ACA audited the AO's compliance with its Time and Attendance policy from March 1, 2021 through April 30, 2021. This audit was based on information contained in Cook County Time ("CCT"), Cook County's electronic timekeeping system, and information provided by the AO/HR, generally in the form of email. The ACA

provided the AO with feedback on its compliance with its Time and Attendance policy from March 1, 2021 through April 30, 2021 on May 28, 2021.

Based on the Time and Attendance policy revisions, the number of compliance deficiencies were reduced, but not eliminated. The compliance deficiencies observed by the ACA include:

- *Section 2.5* - Employees Departing Early Resulting in an Unexcused Absence (4 employees)
- *Section 2.7* – Employees Working After the Conclusion of Their Shift (4 employees (punched out late))
- *Section 3.2* – Improper Use of Vacation Leave (employees allowed to use vacation time on same day requested without supervisory explanation in CCT) (2 employees)

Also, the AO continues to fail to enforce its Time and Attendance policy vis-à-vis employees by imposing Discipline, as the Time and Attendance policy requires, which has been an issue since Assessor Kaegi took office:

- *Section 2.5(B)* requires employees with an Unexcused Absence to be Disciplined. The ACA received no notices of disciplinary action regarding the four employees with Unexcused Absences. Information from the AO for documentation indicating that Discipline was imposed was requested - none was provided.
- *Section 2.7* requires employees who work after the conclusion of their shifts to be Disciplined. The ACA received no notices of disciplinary action regarding the four employees who punched out late. Information from the AO for documentation indicating that Discipline was imposed was requested - none was provided.

Regarding the two Supervisors who failed to specify in CCT why they allowed employees to use vacation time on the same day as requested, as *Section 3.2* requires, the Payroll Manager sent emails reminding them that the employees' requests and the supervisory approvals violated *Section 3.2*. This policy compliance was an improvement from prior AO practice.

#### 4. Discipline

The ACA monitored five disciplinary processes that were completed, or nearly so, from January 1, 2021 through May 25, 2021. Three were based on a supervisory request and two arose from failed PIPs.

Based on this monitoring, the ACA provided the AO with detailed feedback on its compliance with its Discipline policy from January 1, 2021 through May 25, 2021 on May 27, 2021.

The compliance deficiencies observed by the ACA include:

- AO failure to timely discipline employees. (§1) (3 employees; one disciplinary process took 8 months; two have been pending for 4 months)
- HR approved disciplinary proceeding where basis of employee's violation not identified. (§1) (one employee)
- Supervisory failure to timely submit a Request for Disciplinary Action Form ("RDAF"). (§4(A)(2)) (4 occurrences)
- HR failure to timely provide RDAF to ACA and DOC. (§4(A)(2)) (2 occurrences)
- HR failure to determine whether investigation was required. (§4(A)(3)) (1 occurrence)
- HR failure to give timely notice to Supervisor and/or ACA and DOC as to whether investigation was required. (§4(A)(3)) (3 occurrences)
- HR failure to give notice of investigatory interviews to ACA and DOC. (§4(B)) (1 occurrence)
- HR failure to provide adequate written summary of investigation. (§4(C)) (1 occurrence)
- HR failure to provide Disciplinary Action Form with required information. (§4(C)(1)) (1 occurrence)
- HR failure to timely provide Disciplinary Action Form to ACA and DOC. (§4(C)(1)) (1 occurrence)

- HR conducted meeting where Discipline was issued, overstepping its role of meeting facilitator. (§4(D)(2)) (1 occurrence)

The AO currently has three pending disciplinary proceedings. The ACA will report on those in future reports.

#### 5. Overtime

The ACA audited the AO's compliance with the AO's Overtime policy in March 2021 and April 2021 since the Eighteenth Report. Based on this audit, the ACA provided the AO with feedback on its policy compliance in March 2021 on May 18, 2021, and its April 2021 policy compliance on May 27, 2021.

The AO had minimal overtime in March and April 2021: Overtime with Advanced Notice by Exempt Analysts in the Legal Department (3/26/21 – 4/2/21); Overtime Without Advanced Notice by TPI Specialists in Administrative Operations (3/30/21 – 4/21/21); and Overtime Without Advanced Notice for Supply Assistant II in Administrative Operations (4/20/21).

The Overtime With Advanced Notice (Legal) generally was compliant with Section 3.1 of the AO's Overtime policy, although HR's notice of the overtime to the DOC and ACA was untimely. The Overtime Without Advance Notice for Supply Assistant II (Administrative Operations) generally was compliant with Section 3.2 of the AO's Overtime policy.

The Overtime Without Advance Notice for the TPI Specialists (Administrative Operations), requested by the CAO, had deficiencies that included:

- CAO did not explain why overtime was an "emergency operational need;" AO did not respond to ACA's request for explanation in 5/18/21 feedback
- Documentation offering overtime was incomplete
- Documentation offering overtime unclear regarding the number of hours required to be worked
- Documentation offering overtime failed to include deadline for acceptance

- Supervisor approved incorrect Weekly Overtime Records
- Human Resources did not provide timely notice of the overtime to the DOC and ACA.

6. Temporary Assignment

The AO has not undertaken any Temporary Assignments since the Eighteenth Report.

7. Interim Assignment

The AO has not undertaken any Interim Assignments since the Eighteenth Report.

8. Training

The AO has engaged in considerable training, including training required by the Employment Plan, since the Eighteenth Report. The ACA receives notices of those trainings via Notices of Employment Actions (“NEAs”). The ACA monitored those NEAs for March 2021 and April 2021 since the Eighteenth Report and gave the AO feedback on their deficiencies on May 18, 2021 and May 27, 2021.

The NEAs regarding trainings for March and April 2021, as those described in the Eighteenth Report and many reports prior, were incomplete and/or inaccurate and notice to the DOC and ACA was untimely: March 2021 (12 improper notices; 2 were for Shakman trainings; notices for 13 trainings late); April 2021 (4 improper notices; 2 were for Shakman trainings; notices for all 6 trainings were late).

9. Reclassification

The AO has reclassified certain union positions since the Eighteenth Report. The process was policy compliant.

10. Layoff/Recall

The AO finalized the recall that was discussed in the Eighteenth Report.



**C. Does the Assessor not have a policy, custom or practice of making employment decisions based on political reasons or factors except for Exempt Positions?**

The AO has not been found to have engaged in Unlawful Political Discrimination (“UPD”). However, at the April 29, 2021 court status, the representative from the Office of the Independent Investigation General told the Court: “The OIG’s office has recently begun investigating into an allegation of UPD from the [A]ssessor’s [O]ffice” which “if it proves to be true would be a matter of significance to the Court and the parties.” 4/29/21 Tr. at 43.

Another recent allegation of UPD has been raised, for which the OIIG has indicated it has opened a file, although the DOC began conducting an internal investigation into the matter.

At this juncture, the Assessor does not appear to have a policy, custom or practice of making employment decisions based on political reasons or factors except for Exempt Positions. The ACA’s conclusion is subject to change based on the results of these UPD investigations.

**D. Has the Assessor demonstrated the absence of material noncompliance which frustrates the Assessor’s Consent Decrees and this Agreed Order’s essential purpose? (However, technical violations or isolated incidents of noncompliance shall not be a basis for finding that the Assessor is not in substantial compliance.)**

As discussed in the Eighteenth Report, in the ACA’s view, this fourth prong of Substantial Compliance should be read in conjunction with the second prong of Substantial Compliance as their requirements appear to overlap. For “maximum transparency,” the ACA will identify those Shakman-related policies with which, based on current knowledge: (1) the AO has achieved material compliance; and (2) the AO has not achieved material compliance, including those where compliance deficiencies, even if arguably “technical,” are sufficient in number, kind or duration to amount to material noncompliance.

1. Shakman-related policies – Material Noncompliance

*a. PIP*

The recitation of the many compliance deficiencies of the PIP policy under the second prong shows that the AO's implementation of this policy is not materially compliant. Once finalized, if the revised PIP policy/forms are properly implemented (including supervisory training), this should assist the AO in reaching material compliance.

In addition to the compliance deficiencies discussed above, the ACA is particularly concerned about the PIPs in the Valuations Department, which comprise six of the nine PIPs under review. Of those six PIPs, only one is being overseen by her Supervisor, as the PIP policy requires. The other five improperly are being overseen by another Supervisor, the employee's Immediate Supervisor (who is the Supervisor of the employee's Supervisor) or an Immediate Supervisor who is not in the employee's chain of command. This is an issue unique to Valuations.

The Deputy of Valuations has demonstrated the ability to implement a policy, for example with performance evaluations. So his pattern of not assigning the proper Supervisor – and that HR has allowed this repeated policy violation – along with other issues, including those raised above regarding the conduct of the PIPs, raises the Shakman concern of whether the PIPs in Valuations are being handled in a transparent and fair manner.

*b. Discipline*

The recitation of the many compliance deficiencies regarding the Discipline policy, above, shows that the AO's implementation of this policy is not materially compliant.

*c. Performance Evaluation*

While the AO's implementation of the Performance Evaluation policy has improved since the first annual performance evaluation cycle, the many compliance deficiencies described above shows that the AO's implementation of this policy is not materially compliant.

*d. Time and Attendance*

The AO's reluctance to enforce its Time and Attendance policy, virtually since Assessor Kaegi took office, has been the subject of prior ACA reports. While the compliance deficiencies have been reduced, largely because of agreed policy revisions, the history of AO policy non-enforcement, including those described above, do not support the conclusion that the AO is presently materially compliant with the Time and Attendance policy.

Also, the "late arrival"/tardiness issues, as described in Sections 2.5 and 2.6 of the Time and Attendance policy, and addressed in earlier ACA reports, has not been an issue – presumably because the bulk of the AO's workforce was working remotely during this period. As the AO workforce largely returned to on-site work in early June 2020, the ACA will have the opportunity to monitor the AO's policy compliance/enforcement with the AO workforce back on site.

*e. Overtime*

The AO's inability to comply with its Overtime policy has been reported by the ACA in prior reports, as well as by the DOC. Against that backdrop, the limited AO overtime in the approximately five weeks since the Eighteenth Report is insufficient to support a finding of material compliance, particularly since the Overtime Without Advance Notice, as noted above, was not policy compliant.

Also, the AO's use of Overtime while its workforce largely worked remotely was significantly less than when the workforce operated on site. As the AO workforce largely returned

to on-site work in early June 2020, the ACA will have the opportunity to monitor the AO's policy compliance/enforcement with the AO workforce back on site.

*f. Temporary Assignment/Interim Assignment*

As indicated above, the AO has not engaged in Temporary or Interim Assignments in the five weeks since the Eighteenth Report. But the AO's history of noncompliance with these policies does not support a conclusion that the AO presently is materially compliant with the Temporary and Interim Assignment policies.

*g. Training*

The AO's failure to provide accurate and timely Training NEAs has been a longstanding issue identified by the ACA and DOC. The AO's failure to rectify these issues, as discussed above, preclude a conclusion that the AO is materially compliant with the Training Policy.

*h. Layoff/Recall*

As indicated above, the AO finalized one recall in the five weeks since the Eighteenth Report. The significant compliance deficiencies that accompanied that recall preclude a conclusion that the AO presently is materially compliant with the Layoff /Recall policy.

2. Shakman-related policies – Material Compliance

*Reclassification*

As indicated above, the AO reclassified certain union positions since the Eighteenth Report and it went well. Assuming the AO will follow the same procedures going forward, this supports the conclusion that the AO is materially compliant with its Reclassification policy.

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Since Assessor Kaegi took office, the ACA has provided regular written feedback on whether the AO/HR's (1) hiring practices complied with the Employment Plan; and (2)

implementation of Shakman-related policies complied with the Employee Handbook. Except on rare occasions, the AO/HR denied, minimized, justified, excused or ignored the ACA's feedback. Requested documents were not provided. Offers to discuss the feedback were not accepted. Most importantly, many of the compliance deficiencies identified – in the hiring processes and Shakman-related policy implementation – were not remedied.

At the April 29, 2021 status, Assessor Kaegi told the Court that he “make[s] sure to praise managers who have done well.” 4/29/21 Tr. at 19. The ACA is unaware of any effort by the Assessor to tell managers who have not done well that they must do better.

Little value appears to be placed on complying with the Employment Plan and Employee Handbook. “Imperfect execution,” as the Chief Legal Officer told the Court at the April 29, 2021 status, apparently is good enough. 4/29/21 Tr. at 24. While the Agreed Order makes it clear that perfection is not required to achieve Substantial Compliance, neither can AO non-compliance be excused in the guise of “imperfect execution.” The bottom line is that the AO must follow its Shakman-related policies and hire in accordance with the Employment Plan. The AO's continued and repeated compliance deficiencies on both scores show that it is not doing that. As but one example, HR's inability to properly maintain the Posting Files was raised by the ACA in October 2020 and by the ACA and DOC many times thereafter – yet remains an issue today.

We are judged by our deeds and not our words. That the AO/HR still cannot hire in material compliance with the Employment Plan or implement Shakman-related policies in compliance with the Employee Handbook – in the face of years of feedback from the ACA and DOC identifying compliance deficiencies - reasonably suggests that compliance is not an AO priority. Because, if it was, the AO presumably would have taken whatever actions were required – including holding responsible employees accountable - to make sure that material Employment

Plan/Employee Handbook compliance was achieved. In the interest of “maximum transparency,” the ACA will not join a Motion to Dissolve until that material compliance happens.

**E. Has the Assessor implemented procedures that will effect long-term prevention of the use of impermissible political considerations in connection with employment with the Assessor?**

At the December 17, 2020 and March 19, 2021 status hearings, the Court referenced the fifth prong of Substantial Compliance, quoted above, 12/17/20 Tr. at 9; 3/19/21 Tr. at 39, and advised the Assessor: “[I]f you want a focus, it is...implementing these procedures so they have long term prevention.” *Id.*

1. Assessment of the Human Resources Function Reorganization

The requisite procedures required to achieve Substantial Compliance cannot be implemented without a “HR staff of experienced and knowledgeable professionals” who are “responsible for fulfilling the Assessor’s Office obligations under [the] Employment Plan and Employee Handbook.” Employment Plan at Section III(I).

*a. Human Resources Structure – Anticipated Changes*

At the April 29, 2021 status, the AO advised the Court that it had decided to reorganize its HR function. Based on the AO’s comments at the status and subsequent communication, the ACA understands that under the anticipated revised HR structure: (1) the CAO no longer is responsible for the Human Resources function; (2) a new Exempt position of Deputy Assessor of Human Resources, reporting directly to the Chief Deputy Assessor, will be created; and (3) the Director of Human Resources will become a non-Exempt position, reporting to the Deputy Assessor of Human Resources.

Although the AO has not provided a revised HR organizational chart since March 30, 2021, the ACA presumes that the current structure, with the Senior Human Resources Generalist(s), Human Resources Generalist and Manager of Payroll reporting to the Director of Human

Resources, will be retained. The ACA does not know the status of the Director of Training position, which currently reports to the CAO.

The ACA views the HR reorganization as a positive development in the AO's path towards Substantial Compliance. The issues with the prior Director of Human Resources' conduct have been the subject of prior reports, including the Eighteenth Report. The ACA presumes that the former Director of Human Resources will not be involved with HR as he has become the Exempt Director of Policy, effective June 1, 2021. Should that not be the case and should issues arise, the ACA will apprise the Court in future reports.

*b. Human Resources Reorganization - Status*

The anticipated HR reorganization has not been implemented. To date, one of the Senior Human Resources Generalists has become the Director of Human Resources, effective June 1, 2021.<sup>7</sup> While not part of HR, a new Exempt position of Director of Labor and Employment, which the AO has represented will support the HR function, *see* 4/29/21 Tr. at 7-8, has been created with the selected Candidate's start date on June 7, 2021.

The Exempt List has not been amended to add the Deputy Assessor of Human Resources position and remove the Director of Human Resources position. While the AO has indicated that it has identified a Candidate for the Deputy of HR position, her application materials have not been presented and when she is able to start has not been disclosed. Also, the AO has not indicated if or when it will fill the now-vacant Senior Human Resources Generalist position.

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<sup>7</sup> As the Director of Human Resources currently is on the Exempt List, the position was filled through the Exempt Hiring process.

2. Assessment of the Director of Compliance

The requisite procedures required to achieve Substantial Compliance also cannot be implemented without an effective DOC who “functions as the Employment Plan compliance officer for the Assessor’s Office by assuming responsibilities relating to monitoring, investigating, and auditing Employment Actions to ensure compliance with the Employment Plan and [Shakman-related] policies in the Employee Handbook.” Employment Plan at Section V(A). As the Court said at the March 19, 2021 status: “[T]here is an extraordinary burden on the DOC, and it’s extraordinary because it is a correspondingly important duty that he has.” 3/19/21 Tr. at 58.

*a. DOC’s activities since Eighteenth Report*

Since the Eighteenth Report, the DOC provided the AO with summary feedback of one hiring sequence under the General Hiring Process (Manager of CAMA) and weekly reports summarizing his activities and observations. The DOC made modest recommendations, some of which the AO acted on and others that it did not.

The AO/DOC’s plan for transitioning primary responsibility to the DOC by June 2021, as imagined in the parties and ACA’s March 12, 2021 Joint Status Report, did not occur. In fact, the DOC was unable to assume primary responsibility for monitoring any Employment Actions and there has been no passive monitoring by the ACA. This failure occurred because assumptions contained in the March 12, 2021 Joint Status Report, including the following, turned out to be erroneous:

- *A Compliance Analyst would be hired in March 2021 and would assist the DOC in monitoring all hiring and Employment Actions beginning in April 2021.* In fact, the Compliance Analyst did not begin until April 26, 2021, six weeks ago, and is in the process of learning the hiring processes under the Employment Plan and the Shakman-related policies. While the Compliance Analyst has begun monitoring, it essentially has been in addition to the DOC, not *in lieu* of him.



- *One of the Senior HR Generalists would assist the DOC in the monitoring of all Employment Actions (hiring and Shakman-related policies), beginning in March 2021. That never happened. In fact, the Senior HR Generalist was not involved in DOC monitoring at all.*

*b. Transition following DOC's June 4, 2021 resignation*

As indicated above, the DOC resigned, effective June 4, 2021. The parties and ACA have agreed to a revised position description. The AO has indicated the intent to post the DOC position in the week of June 7, 2021, with a two-week posting period in accordance with the Employment Plan. Until a new DOC is hired, and as discussed with the parties, the ACA is prepared to serve as the Interim DOC to carry out the DOC's responsibilities under the Employment Plan, as has been the past practice in the Assessor's Office and in other offices under a supplemental Shakman relief order.

Prior to the DOC's departure, the ACA met with the DOC and the Compliance Analyst to discuss the Compliance Analyst's activities during the transition period. The ACA agreed to be a resource for the Compliance Analyst, with the goal of continuing his professional development in the absence of a DOC.

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The AO cannot satisfy the fifth prong of Substantial Compliance, which requires a "durable remedy" until (1) the HR reorganization is implemented and the new HR team demonstrates that it is capable of fulfilling the AO's obligations under the Employment Plan and Employee Handbook; and (2) a new DOC is hired and he/she demonstrates the ability to effectively fulfill the DOC's duties and responsibilities under the Employment Plan.

**III. Status of Motion to Dissolve**

The Court's July 30, 2021 target date for a Motion to Dissolve, set at the March 19, 2021 status, was based on the parties and ACA's March 12, 2021 Joint Status Report, which suggested

the July 30, 2021 date. As noted above, the March 12, 2021 Joint Status Report was based on a number of assumptions that turned out to be erroneous. Additionally, when the parties submitted the March 12, 2021 Joint Status Report, the HR reorganization discussed at the April 29, 2021 status, and above, was not contemplated. Nor, of course, was the DOC's resignation.

At the April 29, 2021 court status, Plaintiffs and the ACA expressed doubt as to whether the July 30, 2021 deadline was realistic. While the Court did not reset the timeline on April 29, 2021, it advised the AO that extending the deadline "might in the end be a much faster way to terminate and reach [S]ubstantial [C]ompliance." 4/29/21 Tr. at 51.

As the Court has indicated, the July 30, 2021 target date requires a June 30, 2021 "share date" of the Assessor's proposed Motion to Dissolve with Plaintiffs and the ACA. *See* Agreed Order, § 3(F)(1). The unanticipated HR/DOC issues and the AO's continuing material compliance issues makes the June 30, 2021 "share date" and the July 30, 2021 filing date of a Motion to Dissolve (joint or otherwise) unworkable.

Conditions precedent to filing a Motion to Dissolve are certifications by the AO's Director of Human Resources<sup>8</sup> and DOC that each believes the Assessor has achieved Substantial Compliance. Agreed Order at § 3(F)(5). This cannot be accomplished by the June 30, 2021 "share date" because:

- The AO will not have a DOC to make the required Substantial Compliance certification on June 30, 2021. The absence of a DOC, in and of itself, is enough to continue the July 30, 2021 target date.
- If a Deputy of HR has been hired, her tenure will have been less than a month. This is insufficient to make a knowing Substantial Compliance certification.

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<sup>8</sup> Presumably the HR certification responsibility will fall to the Deputy Assessor of HR, the highest-ranking HR person under the AO's anticipated HR reorganization. Even if that were not the case, the Director of Human Resources (former Senior HR Generalist) has been in the position for a week and will have to prove that she is up to the task.

- Based on the AO's material compliance issues discussed in this report, the AO has not substantially complied with the Agreed Order and will not achieve Substantial Compliance by the June 30, 2021 "share date."

The ACA expects that the Court would prefer to extend the target date for a Motion to Dissolve, no matter how speculative, rather than abandon a timeline altogether. With that in mind, the ACA suggests that the target date for a Motion to Dissolve be extended until October 29, 2021, with the AO's "share date" extended until September 29, 2021. The ACA also suggests that the dates for Interim Status Reports be adjusted in accordance with the revised schedule.

Dated: June 7, 2021

Respectfully submitted,

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**CERTIFICATE OF ELECTRONIC FILING**

I, Matthew D. Pryor, the undersigned, do hereby certify that on June 7, 2021, I electronically filed a true and correct copy of the foregoing **First Interim Status 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