

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

<b>MICHAEL L. SHAKMAN, <i>et al.</i>,</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, <i>et al.</i>,</b>	)	<b>Hon. Gabriel A. Fuentes</b>
	)	<b>Magistrate Judge</b>
	)	
<b>Defendants.</b>	)	

**FIFTH INTERIM 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 Fifth Interim Report:

**I. INTRODUCTION**

The Court’s January 19, 2022 order (at §8) extended the potential target date for filing 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, to May 18, 2022. Based on that target date, the AO’s “preview date” for the motion is May 4, 2022. Also, in connection with that target date, the Court

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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.

ordered the ACA to provide a Fifth Interim Report by February 10, 2022. In a February 9, 2022 order, the Court extended the due date for the ACA's report until February 15, 2022.

This is the Fifth Interim Report. It follows the ACA's June 6, 2021 First Interim Report ("First Interim Report"), August 16, 2021 Second Interim Report ("Second Interim Report"), September 27, 2021 Third Interim Report ("Third Interim Report) and November 10, 2021 Fourth Interim Report ("Fourth Interim Report) and December 13, 2021 Supplement to Fourth Interim Report ("Supplement to Fourth Interim Report").

The Agreed Order's conditions for sunset are in Section III(F) and include achieving Substantial Compliance,<sup>2</sup> as defined therein,<sup>3</sup> and Certifications of Substantial Compliance by the Assessor, the Deputy of Human Resources and the Director of Compliance. As the Court indicated at the August 18, 2021 status, before termination, the Assessor "must ensure that there is a durable remedy so there isn't any partisan employment decision-making where there ought not to be." 8/18/21 Tr. at 7-8.

The prior Interim Reports focused on areas that are a threat to the Assessor's implementation of a durable remedy because they pose a substantial risk of political decision-making (as opposed to best human resources practices). *See Shakman v. Office of the Governor of Ill.*, No. 1:69-CV-02145 (N.D. Ill. Mar. 31, 2021) at 29. This report will do the same.

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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.

<sup>3</sup> Substantial Compliance under Section III(F)(8) of the Agreed Order requires: (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.

These areas include:

1. Revising the Employment Plan and the implementing forms.
2. Revising the Employee Handbook and the implementing forms.
3. Completing Employment Plan-mandated Training (HR Employment Plan and Employee Handbook Training; Supervisor Employment Plan Training; All-Employee Employee Handbook Training; and Supervisor Employee Handbook Training).
4. AO/HR General Hiring process Employment Plan violations, with particular attention to the Valuations Department; and
5. AO/HR deficiencies in Shakman-related policy implementation and enforcement.

The Fifth Interim Report will address: (1) the AO/HR's progress regarding these areas, as well as additional areas of concern that pose a substantial risk of political/subjective decision; and (2) the reasonableness of the May 4, 2022 AO preview date for a potential Motion to dissolve and the May 18, 2022 potential target date for the motion to be filed.

In addition, since the Assessor expressed dissatisfaction with the timeliness of the AO's hiring processes at the January 18, 2022 status, the ACA will address that first.

## **II. THE AO/HR IS RESPONSIBLE FOR THE TIMELINESS OF THE AO'S HIRING PROCESSES**

The Assessor expressed dissatisfaction with the timeliness of the AO's hiring processes at the January 18, 2022 status and intimated that the ACA was causing undue delay. 1/8/22 Tr. at 14. The Court asked the Assessor to identify "where specifically" the Assessor had "a concern in a past hiring sequence in which the compliance administrator added time that [the Assessor thought] was too long" as the Court indicated it was "not hearing that from [the Assessor's] actual staff members." *Id.* at 15 – 16. The Assessor could not provide any specifics. *Id.* at 15. The Court also established that the Assessor had not raised the issue with the ACA. *Id.*

The January 19, 2022 order (at §3) reflected this colloquy:

The Assessor reported that he is dissatisfied with the timeliness of the hiring process but did not articulate a specific sequence in which the Compliance Administrator unduly added time lag to the hiring, nor had this issue been presented to the Compliance Administrator before the status hearing. If the Assessor believes that there is a specific time lag caused by the Compliance Administrator, then conferral is the obvious first step.

#### A. FOIA Specialist

The only position the Assessor mentioned at the January 18, 2022 status was the FOIA Specialist. According to the Assessor: “It’s taken quite a long time. We knew this needed to be filled in June, and here we are still and it’s not filled yet.” *Id.* at 15.

The Assessor may have known that the FOIA Specialist needed to be filled in June 2021, but Deputy of the hiring Department, Chief Administrative Officer (“CAO”) and the Director of HR did not sign the Request to Hire, which is required to initiate a hiring sequence, until October 22, 2021.

Nearly fourth months later, the FOIA Specialist hiring sequence is not complete. The chart below, that details the steps of the FOIA Specialist hiring sequence to date, makes clear that delay is attributable to the AO/HR – not the ACA:

<b>ACTION</b>	<b>DATE STARTED</b>	<b>DATE COMPLETED</b>	<b>DAYS TO COMPLETE</b>	<b>DAYS TO NEXT STEP</b>
<b>Request to Hire</b>	10/15/21	10/22/21	<b>7 days</b>	0 days
<b>Notice of Job Opportunity</b>	10/22/21	10/26/21	5 days	2 days
<b>Taleo Posting</b>	10/29/21	11/12/21	14 days	<b>16 days</b>
<b>Randomization/PEL</b>	11/29/21	11/29/21	1 day	<b>17 days</b>
<b>Validation Meeting/Interview Questions</b>	12/17/21	12/20/21	4 days	<b>21 days</b>
<b>Interviews</b>	1/11/22	1/14/22	4 days	5 days

<b>Ranking Meeting</b>	1/20/22	1/20/22	1 day	<b>14 days</b>
<b>Justification to Hire/Grant of Authority</b>	2/4/22	To DOC/ACA on 2/10/22 but Posting File incomplete	---	---
<b>SUBTOTAL</b>		<b>119 DAYS</b>		
<b>Offer</b>	---	---	---	---
<b>Date of hire</b>	---	---	---	---
<b>TOTAL</b>				

Among other things, the delay in the FOIA Specialist hiring sequence was caused by:

- Deputy of HR took a week to sign the Request to Hire after it had been signed by the Deputy of the hiring Department and the CAO.
- HR took over two weeks to randomize the applicants and create a Preliminary Eligibility List after the Taleo posting was completed.
- HR took three weeks to hold a Validation Meeting after the Preliminary Eligibility List was created.
- Deputy of the hiring Department/HR took two weeks to complete the Justification to Hire after the Ranking Meeting.

The delay in these steps alone – none of which is attributable to the ACA - extended the hiring process by two months.

**B. Community Outreach Specialist**

The Community Outreach Specialist hiring sequence was completed since the Fourth Report. That hiring process took 245 days – or over eight months. The delay - attributable to the AO/HR and not the ACA - included:

- HR took nearly ten weeks to sign the Request to Hire after it has been signed by the Deputy of the hiring Department and the CAO (5/18/21 – 7/26/21) .

- HR took nearly four weeks to create a Notice of Job Opportunity after the Request to Hire was completed (7/26/21 – 8/24/21)
- HR took nearly six weeks to propose interview questions after the Validation Meeting (9/23/21 – 11/3/21).
- AO took over two weeks to initiate the Justification to Hire and Grant of Authority after the Ranking Meeting (11/15/21 – 12/2/21).
- HR took over three weeks to extend the second offer after the first offer was accepted (12/15/21 – 1/7/22).

The delay in these steps alone – none of which is attributable to the ACA - extended the hiring process by nearly six months.

**C. Industrial Commercial (“IC”) Field Inspector**

The IC Field Inspector hiring sequence was completed since the Fourth Report. That hiring process took 273 days – or over nine months. The delay - attributable to the AO/HR and not the ACA - included:

- HR took nearly two weeks to hold a Validation Meeting after the applicants were randomized (6/2/21 – 6/15/21).
- HR took over five months to propose interview questions after the Validation Meeting (6/15/21 – 11/24/21).
- AO took nearly three weeks to initiate the Justification to Hire and Grant of Authority after the Ranking Meeting (12/9/21 – 12/28/21).

The delay in these steps alone – none of which is attributable to the ACA - extended the hiring process by over six months.

**III. ISSUES THAT POSE A THREAT TO THE ASSESSOR’S IMPLEMENTATION OF A DURABLE REMEDY: NON-EXEMPT GENERAL HIRING PROCESS**

**A. Hiring Under the General Hiring Process Since the Fourth Interim Report**

The AO completed two hiring sequences under the General Hiring process since the Fourth Interim Report: (1) Community Outreach Liaison and (2) IC Field Inspector. This report focuses

on Employment Plan violations during those hiring sequences that open the door to subjectivity and partisan decision-making.

1. Community Outreach Liaison

- *HR improperly extended an offer before receiving a signed Justification to Hire and Grant of Authority*

Under Section VII.W.2 of the Employment Plan, if the selected candidate does not accept the offer, an offer is made to the next highest ranked Candidate. Under Section VII.W.2 of the Employment Plan, offers cannot proceed without a Justification to Hire and Grant of Authority.

Two Candidates were ranked for the Community Outreach Liaison position. The Deputy of the hiring Department signed a Justification to Hire and Chief Deputy Assessor and Deputy of HR signed a Grant of Authority for the first-ranked candidate who declined the offer on or about December 16, 2021.

On December 20, 2021, the Director of HR extended an offer to the second-ranked candidate who accepted that day. The Director of HR made the offer without obtaining a Justification to Hire and Grant of Authority. Neither HR nor the DOC noticed the Section VII.W.2 violation until the ACA alerted them to it. Only after the ACA flagged the violation were the Justification to Hire and Grant of Authority completed for the second-ranked Candidate.

2. IC Field Inspector<sup>4</sup>

- *HR failed to provide members of Interview Panel with complete information about an internal candidate at December 10, 2021 Ranking Meeting*

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<sup>4</sup> The Fourth Interim Report (at 3-4), discussed: (1) the Deputy of Valuations' attempt to disqualify all eligible IC Field Inspector candidates and repost in violation of the Employment Plan; and (2) the Deputy of HR's initial willingness to go along with the Deputy of Valuations' violations. Only after the ACA flagged the Employment Plan violations did HR agree to schedule the four eligible candidates for interviews.

Section VII.R.1 of the Employment Plan requires HR to give the Interview Panel the two most recent performance evaluations for internal candidates. At the December 10, 2021 Ranking Meeting, the Deputy of Valuations told HR that the Interview Panel had not received one internal candidate's 2020 performance evaluation – which HR then provided. That internal candidate had been placed on a Performance Improvement Plan (“PIP”) after her 2020 performance evaluation. HR gave the Interview Panel the internal candidate's first two PIP Progress Meeting forms – but not the third and fourth PIP Progress Meeting forms that showed she had successfully completed the PIP. HR's failure to provide documentation of the successful PIP potentially precluded the Interview Panel from giving the internal candidate, who did not get the job, full and fair consideration.

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The AO/HR has not done much hiring since the Fourth Interim Report so the ACA's basis to assess its Employment Plan compliance is limited – although Employment Plan violations continue to occur. Additionally, the Supplement to the Fourth Interim Report addressed the longstanding and recurring compliance issues attendant to hiring in the Valuations Department and the need for a showing by the AO/HR that Valuations can hire in compliance with the Employment Plan. The single hiring of the IC Field Inspector since the Fourth Interim Report is insufficient to make that showing.

**IV. STATUS OF EMPLOYMENT PLAN AND EMPLOYEE HANDBOOK/SHAKMAN-RELATED POLICY AND FORM REVISIONS: INCOMPLETE**

Plaintiffs long have indicated that a Motion to Dissolve (joint or by the AO only) must include: (1) a revised Employment Plan and implementing forms; and (2) a revised Employee

Handbook and implementing forms (as a revised Employee Handbook is required to effectuate the Employment Plan). Both are preconditions to a durable remedy. These revisions are not complete.

**A. Revisions to Employment Plan**

The parties and ACA indicated at the January 18, 2022 status that the Employment Plan was nearly complete. *See* 1/19/22 Order at §4. The status is the same. A meeting with the parties and ACA is scheduled for February 17, 2022 to discuss outstanding issues.

The AO indicated at the January 18, 2022 status that it would provide proposed revised Employment Plan forms on January 20, 2022. *See* 1/19/22 Order at §4. The AO provided the revised forms, properly labeled, on February 8, 2022. They are under review by Plaintiffs and the ACA.

**B. Revisions to Employee Handbook/Shakman-related policies**

At the January 18, 2022 status, the parties and ACA indicated that the Employee Handbook revisions would be complete by February 4, 2022. *See* 1/19/22 Order at §6. That did not happen.

On or about January 24, 2022, the AO indicated that it was going to propose a substantially revised Time and Attendance policy. On February 1, 2022, the AO sent Plaintiffs and the ACA proposed revisions to the Employee Handbook that did not include a revised Time and Attendance policy. The AO has not provided Plaintiffs and the ACA proposed revised forms used to implement various policies.

Plaintiffs and the ACA are reviewing the AO's February 1, 2022 proposed Employee Handbook revisions and will provide comments in advance of the March 3, 2022 status. They await the AO's proposed revised Time and Attendance policy and proposed revisions to the Employee Handbook's implementing forms.

Since the January 18, 2022 status, the AO has indicated that, once the revisions are completed, the Employee Handbook must go to the AO's union for review and the union has up to 21 days for that review. This added layer of union review, as well the failure to meet the contemplated timetable for completing the Employee Handbook and implementing forms, will affect the contemplated Employment Plan mandated training schedule and the timeline towards Substantial Compliance, as discussed below.

**V. ISSUES THAT POSE A DURABLE THREAT TO THE ASSESSOR'S IMPLEMENTATION OF A DURABLE REMEDY: TRAINING**

**A. Employment Plan Mandated Annual HR Employment Plan Training Has Been Accomplished; Employment Plan Mandated Annual HR Employee Handbook Training Has Not Been Accomplished**

Section IV.D of the Employment Plan requires annual comprehensive mandatory Employment Plan and Employee Handbook training programs for all HR personnel to ensure that they are able to “administer relevant portions of [the] Employment Plan and the Employee Handbook, and are able to answer questions they may receive.” The purpose of this training is to go beyond the Employment Plan and Employee Handbook training which employees and Supervisors must receive under Sections IV.E and IV.F and focus on what is required for HR to administer the Employment Plan and the Employee Handbook competently.

**1. HR Employment Plan Training**

On July 27, 2021, the AO/HR provided a draft training deck called “HR Role in Hiring.” This training deck addressed the Employment Plan only and did not cover the Employee Handbook. On August 9, 2021 and August 10, 2021, the ACA provided comments on the AO's draft training deck. On September 27, 2021, the AO/HR provided a revised training deck that also addressed the Employment Plan only. On October 4, 2021, the ACA provided additional comments.

The AO presented the HR Employment Plan training on November 10, 2021. Much of the ACA's comments on the training deck and recommendations for improvement were ignored. Of particular concern was the insufficient explanation of the hiring processes, especially the more complicated portions such as sorting applicants and validation, as well as how to determine if an applicant meets the Minimum Qualifications ("MQs") and Preferred Qualifications ("PQs") given the issues that have been raised regarding HR's ability to do so. That the training's effectiveness was limited is evidenced by the continuing Employment Plan compliance issues since the November 10, 2021 training, some of which are recounted in this report.

## 2. HR Employee Handbook Training

The parties and ACA indicated at the January 18, 2022 status that the AO will give the HR Employee Handbook training deck to the ACA by February 15, 2022; the ACA will provide comments by March 1, 2022; the training will be uploaded by March 7, 2022 and completed by March 15, 2022. *See* 1/19/22 Order at §7. Based on the status of the Employee Handbook revisions indicated above, the schedule in the January 19, 2022 order will not hold. The ACA anticipates the AO will propose a revised schedule.

### **B. Employment Plan Mandated Annual Supervisor Employment Plan Training Has Not Been Accomplished**

Section IV.E of the Employment Plan requires annual comprehensive Employment Plan training for Supervisors.<sup>5</sup> The purpose of this training is to go beyond the Employment Plan training required under Section IV.F and focus on those sections of the Employment Plan,

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<sup>5</sup> Section IV.F of the Employment Plan also requires annual comprehensive training on the Employment Plan for all employees. The AO last presented that training in May – July 2021 so this training is not due until in or about June 2022. *See* 1/19/22 Order at §5(B).

primarily related to the various hiring processes, which Supervisors must implement. To date, the AO/HR never has conducted Supervisor Employment Plan training.

The parties and ACA indicated at the January 18, 2022 status that the AO will give the Supervisor Employment Plan training deck to the ACA by January 20, 2022; the ACA will provide comments by February 3, 2022; the training will be uploaded by February 15, 2022 and completed by March 1, 2022. *See* 1/19/22 Order at §5(A). The AO timely provided the Supervisor Employment Plan training deck to the ACA. The ACA provided ten pages of general and slide-specific comments on February 4, 2022.

The ACA's general comments included that little of the training deck was supervisor specific. Much was a rehash of the 2021 all-employee Employment Plan training and Interviewer Training or focused on HR's duties and responsibilities (which is not the subject of this training). There is little description/discussion of supervisory responsibilities under the Employment Plan - on which this training is supposed to focus. This includes the General Hiring process, including creating the Request to Hire, creating and reviewing position descriptions, the validation process (we suggested an illustration) that makes clear the significance of the MQs and PQs and how that sets the stage for the hiring; and the significance of fashioning interview questions that focus on the MQs and PQs to ensure that ranked Candidates are (at least) minimally qualified to do the job.

The AO has not indicated that the training (presumably revised in light of the ACA's extensive comments) will not be uploaded by February 15, 2022 and completed by March 1, 2022. If that schedule has changed, the AO presumably will so report at the March 3, 2022 status.

**C. Employment Plan Mandated Annual All Employee Handbook Training Has Not Been Accomplished**

Section IV.F of the Employment Plan requires annual comprehensive mandatory training of all employees to ensure that they are aware of and knowledgeable about the Employee

Handbook. Since the AO/HR last conducted all Employee Handbook training on November 17 – 19, 2020, this annual training was due in November 2021. Plaintiffs and the ACA agreed that it made sense to continue the training until the Employee Handbook and implementing forms were revised.

The parties and ACA indicated at the January 18, 2022 status that the AO will give the all- Employee Handbook training deck to the ACA by February 27, 2022; the ACA will provide comments by March 15, 2022; the training will be uploaded by March 19, 2022 and completed by March 30, 2022. *See* 1/19/22 Order at §7(A). Based on the status of the Employee Handbook revisions indicated above, the schedule in the January 19, 2022 order will not hold. The ACA anticipates the AO will propose a revised schedule.

**D. Employment Plan Mandated Annual Supervisor Employee Handbook Training Has Not Been Accomplished**

Section IV.E of the Employment Plan requires annual comprehensive Employee Handbook training for Supervisors. The purpose of this training is to go beyond the Employee Handbook training required under Section IV.F and focus on those sections of the policies in the Employee Handbook that Supervisors must implement. Since the AO/HR last conducted Supervisor Employee Handbook training in December 2020, this annual training was due in December 2021. Plaintiffs and the ACA agreed that it made sense to continue the training until the Employee Handbook and implementing forms were revised.

The parties and ACA indicated at the January 18, 2022 status that the AO will give the Supervisor Employee Handbook training deck to the ACA by March 7, 2022; the ACA will provide comments by March 30, 2022; the training will be uploaded by April 1, 2022 (although that date presumably was in error if the AO is to consider the ACA's comments) and completed by April 7, 2022. *See* 1/19/22 Order at §7(B). Based on the status of the Employee Handbook

revisions indicated above, the schedule in the January 19, 2022 order will not hold. The ACA anticipates the AO will propose a revised schedule.

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The quality of the HR Employment Plan training, continued absence of HR Employee Handbook training and Supervisor Employment Plan training and need for the annual all-employee and supervisor Employee Handbook training is a threat to the Assessor's implementation of a durable remedy. That these trainings be presented effectively is key for the Assessor's implementation of a durable remedy – particularly in light of the policy implementation issues described in the ACA's prior reports and below.

**VI. ISSUES THAT POSE A THREAT TO THE ASSESSOR'S IMPLEMENTATION OF A DURABLE REMEDY: SHAKMAN-RELATED POLICY IMPLEMENTATION**

**A. Performance Evaluations**

1. 90-day and 180-day performance evaluations

Between October 26, 2021 and November 30, 2021, the AO conducted two 90-day performance evaluations that the ACA monitored. On January 16, 2022, the ACA gave the AO detailed written feedback on its compliance with the Performance Evaluation policy between October 26, 2021 and November 30, 2021.

While the January 16, 2022 feedback was more extensive, the policy violations included:

- AO failed to conduct Performance Expectation Meetings for two new employees, in violation of Section 3.4;
- AO failed to timely conduct a 90-day performance evaluation for one employee, in violation of Section 3.4 (six weeks late); and
- AO failed to timely conduct 180-day performance evaluations for three new employees, in violation of Section 3.4 (each was approximately two months late).

Between December 1, 2021 and January 31, 2022, the AO conducted three 90-day performance evaluations and five 180-day performance evaluations. These will be included in the ACA's next report.

2. Annual performance evaluations

Between October 26, 2021 and November 30, 2021, the AO conducted three annual performance evaluations in the Communications and Outreach Department – that kicked off the annual September 1 – January 31 performance evaluation cycle. Between December 1, 2021 and January 31, 2022, the AO conducted 172 annual performance evaluations. The AO completed the annual performance evaluations on a timely basis, with the exception of one employee.

The ACA monitored approximately half the 180 annual performance evaluations. The AO's compliance with the Performance Evaluation policy regarding these annual evaluations will be included in the ACA's next report. Preliminarily, the AO utilized a new automated tool which helped Performance Evaluation policy compliance in certain ways and appears to have hindered compliance in others.

4. HR's promised report regarding Valuations employee's 90-day performance evaluation

The Deputy of HR still has not provided her promised report on the 90-day performance evaluation of the Valuations employee whose overall score was reduced from 3.7 ("Good") to 2.4 ("Needs Improvement") over ten-days in May and June 2021 where the performance evaluation form went through four iterations. Throughout this evaluation process, the ACA/Interim DOC improperly was excluded from monitoring the Supervisor Meetings in violation of Section 3.5 of the Performance Evaluation policy. *See* Second Interim Report (at 14 – 15).

## B. Discipline

The ACA monitored all AO/HR disciplinary activity from October 26, 2021 through December 31, 2021. This included conduct-related discipline and time and attendance-related discipline:

- Conduct-related Discipline - Two disciplinary actions were completed and one was closed due to the employee's retirement. Four are pending. One was initiated.
- Time and Attendance-related Discipline - One disciplinary action was completed and two are pending. One was initiated.

On January 16, 2022, the ACA provided the AO with detailed feedback on its compliance with the Discipline policy from October 26, 2021 through December 31, 2021.<sup>6</sup> While the ACA's January 16, 2022 feedback was extensive, this report is limited to significant policy violations that were not discussed in the Fourth Interim Report regarding then-pending disciplinary actions:

### 1. Failure to issue Discipline in a timely fashion. (§1)

#### *a. The four disciplinary actions that concluded were not done in a timely manner*

- Discipline requested on May 10, 2021; discipline issued on November 22, 2021 (process lasted nearly six months)
- Discipline requested on August 15, 2021; concluded on December 31, 2021 due to employee's retirement with no discipline issued (process lasted over four months)
- Discipline requested on September 22, 2021; concluded on December 27, 2021 with no discipline issued (process lasted over three months)
- Discipline requested on September 28, 2021; concluded on December 16, 2021 without investigation and no discipline issued (process lasted nearly three months)

#### *b. Of the five disciplinary actions pending as of December 31, 2021, two had been pending nearly five months; two had been pending nearly four months; and one had been pending over three months.*

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<sup>6</sup> The ACA plans to provide additional feedback on time and attendance-related Discipline policy violations.

2. Disciplinary Action Form failed to correctly identify each policy violated. (§4(C)) (one employee)
3. Request for Disciplinary Action Form failed to consider employee's disciplinary history. (§4(C)) (one employee)
4. Requesting metric-based discipline for Valuations employee without specifying applicable metrics or that employee was advised of applicable metrics

The Valuation Department's proclivity to take negative Employment Actions against employees based on purported objective metrics - without making those metrics clear and/or advising employees of the metrics - is not a new issue. It was the theme of the ACA's criticism of the PIPs in Valuations that resulted from last year's annual performance evaluation cycle. The Shakman concern, of course, is the potential to apply purported metrics subjectively – or not tell employees what they are - as a means to subvert Shakman-related processes (*e.g.*, disciplinary actions, performance evaluations and PIPs).

This issue arose again when the Deputy of Valuations requested discipline of a Valuations supervisor based on his purported lack of productivity without indicating by what standard/metric the supervisor's work was being judged or whether the supervisor had been apprised of the applicable standard/metric. When the ACA questioned the propriety of the discipline request, the Director of HR produced an investigative report recommending that the supervisor not be disciplined, in part because of the absence of metrics on which his purported lack of productivity was based.

This same issue (alleged low productivity without specifying applicable standard) arose in connection with three Counselings in Valuations – one for the same supervisor for whom discipline was sought and two other employees. When the ACA questioned the propriety of two, the Deputy of Valuations agreed to rescind the Counselings.

### C. Time and Attendance

The ACA monitored the AO/HR's time and attendance policy enforcement in October and November 2021. On December 15, 2021, the ACA provided feedback on the AO/HR's policy compliance.<sup>7</sup>

While the December 15, 2021 feedback was more extensive, it included the following policy violations:

- Repeated supervisory failure to follow policy did not result in Counseling or Discipline (four supervisors)
- Employees with Unexcused Absences (Departing Early or Late Arrival) without supervisor approval not Disciplined (§2.5) (one employee)
- Employee with 4 or 5 Unexcused Late Arrivals not Disciplined (§2.6) (one employee)
- Supervisor approved compensatory time to offset a Late Arrival for payroll purposes without Cook County Time notation and initials not Counseled or Disciplined (§2.6) (supervisors of six employees)
- Supervisor allowed improper use of vacation leave not trained, Counseled or Disciplined (§3.2) (supervisors of six employees) (Payroll Manager failed to send "training" emails to three supervisors)
- Supervisors approved compensatory time to offset Unexcused Absence for payroll purposes without CCT notation and initials not Counseled or Disciplined (supervisors of 59 employees) (Payroll Managers failed to send "training" emails to 33 offending supervisors and incorrectly sent "training" emails to 11 non-offending supervisors)
- Supervisors allowed improper use of compensatory time (employee request and use on the same day) not Counseled or Disciplined (supervisors of three employees)

These are the same type of Time and Attendance policy violations about which the ACA has been advising the AO/HR for years. These policy violations continue presumably because

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<sup>7</sup> The AO provided a response to the ACA's 12/15/21 feedback, including supporting documentation, on 2/9/22. The ACA has not yet reviewed the AO's response.

supervisors are not held accountable when they fail to enforce the policy – even repeatedly – assuming the Payroll Manager recognizes the violation, which is not always the case.

On or about January 24, 2022, as discussed above, the AO indicated an intention to propose a new Time and Attendance policy that apparently will significantly revise the current policy. The ACA (and presumably Plaintiffs) are agnostic about the AO's Time and Attendance policy so long as it provides the clarity and transparency that Shakman requires. The ACA will further advise the Court in the next report.

#### **D. Overtime**

The ACA reviewed 14 Notices of Employment Actions regarding Overtime from October 16, 2021 to November 30, 2021 and gave the AO feedback on January 30, 2022. All 14 NEAs failed to comply with at least one requirement of the AO's Overtime policy.

The policy violations included:

- HR failed to timely provide NEAs and supporting documentation to DOC and ACA (Article XII) (all 14 NEAs) (most were at least two weeks late and one never was provided)
- Absence of documentation to indicate that CAO/Deputy authorized supervisor to offer overtime (§2) (one NEA)
- Department Deputy failed to provide employees with at least two business days' notice of the voluntary overtime (§3.1(A)) (two NEAs)
- Notice of Overtime failed to include the time by which employees must respond to overtime offer (§3.1(B)) (five NEAs)
- Failure by supervisor to sign overtime record forms for two employees (§3(1)(G)) (one NEA)

#### **E. Temporary Modified Work Schedules of More than Five Days**

The ACA reviewed four Notices of Employment Actions regarding Temporary Modified Schedules of five days or less from October 16, 2021 to November 30, 2021 and gave the AO

feedback on January 30, 2022. All four NEAs failed to comply with the AO's Time and Attendance policy.

The policy violations included:

- Department Deputy failed to indicate why temporary modified work schedule approved (§2.4(B)(ii)) (three NEAs)
- Department Deputy failed to sign a NPCC sign Notice of Employment Action for employee temporary modified work schedule (§2.4(B)(ii)) (one NEA)
- HR failed to provide documentation specifying operational need for modified work schedule. (§2.4(B)(iii)) (two NEAs)

#### **F. Telecommuting**

The ACA reviewed three Notices of Employment Actions regarding Telecommuting from October 16, 2021 to November 30, 2021 and gave the AO feedback on January 30, 2022. All three failed to comply with the Telecommuting policy.

The policy violations included:

- HR failed to provide documentation that the CAO determined employee could work remotely with minimal disruption to operations. (§5.5(B)) (three NEAs)
- HR failed to provide DOC and ACA with timely notice of the approved Telecommuting request (Article V, Section 5.5.C) (one NEA) (identified by DOC)

#### **G. Interim Assignment**

On January 11, 2022, the AO provided documentation indicating that the (Exempt) Director of Special Properties had been given the Interim Assignment of (Exempt) Director of Commercial Valuations (following the resignation of the employee in that position) in addition to the Director of Special Properties duties. On January 12, 2022, the ACA informed the AO that its action violated the Interim Assignment policy that does not allow an Exempt employee to assume the duties of another Exempt position in addition to the employee's own. The AO also failed to

submit a written request for a position that is on the Exempt List to be filled by an Interim Assignment, as the Interim Assignment policy requires.

While the AO mentioned to Plaintiffs and the ACA that the Interim Assignment was being contemplated, HR did not provide the required written request. The AO also did not propose a policy amendment to cover the dual employment situation. Plaintiffs proposed such an amendment.

#### **H. Operational Training**

The ACA reviewed the AO/HR's Notices of Employment Action for the AO's six operational training opportunities from October 16, 2021 through November 30, 2021. The ACA provided the AO with feedback on whether these six NEAs complied with the AO's Training policy on January 30, 2022. Two NEAs did and four NEAs did not.

While compliance has improved, the policy violations included:

- AO/HR failed to sufficiently identify the specific positions to receive mandatory training (Section 2.B) (one training)
- AO/HR failed to include employee in identified operational unit to attend mandatory training (Section 2.B) (one training)
- AO/HR untimely/no notice to ACA/Interim DOC (Section 2.F; Article XII) (two trainings)

#### **I. PIPs**

From October 16, 2021 through December 30, 2021, the ACA monitored the only operative PIP - for a management-level employee based on his unsatisfactory job performance. There were no material compliance issues. The PIP recently concluded, and the ACA will report further in the next report.

As a result of the annual performance evaluations, it appears that eight AO employees will be placed on PIPs. This should provide a good opportunity for the ACA to assess the AO/HR's

ability to comply with the AO's PIP policy that has been significantly revised. The ACA will report further in the next report.

**J. Other Shakman-related Policies**

The ACA has no basis to comment on the Temporary Assignment or Layoff/Recall policies as the ACA did not receive NEAs for those Employment Actions since the Fourth Interim Report. The ACA received NEAs regarding Reclassifications that appear to be in order.

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The Shakman-related policy deficiencies/violations identified above have, for the most part, been the subject of prior Interim Reports. That they continue casts doubt that the AO/HR has the "objective firewalls," *see* 6/9/21 Tr. at 30, necessary to guard against partisan decision making.

**VII. ISSUES THAT POSE A THREAT TO THE ASSESSOR'S IMPLEMENTATION OF A DURABLE REMEDY: HUMAN RESOURCES AND DOC**

**A. Human Resources**

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). As the Court said at the August 18, 2021 status: "[T]he HR function is key so that the...HR department is able on a long-term basis make sure that the [Employment] [P]lan is being complied with." 8/18/21 Tr. at 19.

1. Human Resources Reorganization – Status

As the Shakman Liaison indicated at the January 18, 2022 status, the AO has completed its planned expansion of HR staffing. *See* 1/18/22 Tr. at 32 - 33. The HR function is comprised of the Deputy Assessor of HR, Director of HR and four Senior HR Generalists. The HR function is supported by a Payroll Manager in the Administrative Operations Department.

2. Director of Training n/k/a “Director of Learning and Development”

The AO has renamed the Director of Training position as the Director of Learning and Development. This position is not part of the HR function as it is in the Administrative Operations Department and reports to the CAO. The Director of Learning and Development assists HR with the Employment Plan mandated training.

The now-called Director of Learning and Development position has been vacant since June 2021. The position was posted on December 15, 2021. As indicated at the January 11, 2022 status, HR did not treat the posting consistent with the Actively Recruited Hiring process (*e.g.*, the Applicants were randomized which is not part of the Actively Recruited Hiring process) but the ACA agreed that hiring could be under that process with the goal of obtaining the best possible Applicant pool. The interviews of eight candidates were completed on February 10, 2022. The Ranking Meeting is scheduled for February 17, 2022. The ACA will report further in the next report.

3. Human Resources – Assessment

As indicated by the compliance deficiencies described in this report (and prior reports), the HR function has not reached the level of professionalism and proficiency required to fulfill the Assessor’s obligations under the Employment Plan and Employee Handbook and provide the requisite firewall against partisan decision making.

Ensuring that HR achieve adequate professionalism and proficiency rests with the Deputy of HR. The ACA’s interaction with the Deputy of HR has been limited since, at the ACA’s request, the Deputy of HR no longer acts as the Shakman Liaison. The Deputy of HR’s interaction with the ACA continues to be combative - as opposed to cooperative – which is not useful.

The continuing violations described above and in prior reports raise concerns about the Deputy of HR's understanding of and/or ability to implement the Employment Plan and Employee Handbook. This raises concerns about her ability to ensure that the Director of HR (who reports directly to the Deputy of HR) performs effectively.

The Director of Human Resources also has an important role in fulfilling HR's role under the Employment Plan. The Director of Human Resources was promoted to this then-Exempt position approximately seven months ago. While the Director of Human Resources appears to be working and trying hard, she has yet to demonstrate a command of the Employment Plan and Employee Handbook commensurate with her position. This raises concerns about the Director of Human Resources' ability to ensure that the four Senior Human Resources Generalists (two of whom are recent hires and one of whom has had chronic performance issues) who report directly to her perform effectively.

## **B. Director of Compliance**

### **1. Competence**

Substantial Compliance 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.

The DOC began her employment on August 23, 2021 and has been on the job for nearly six months. Virtually all of the compliance deficiencies in this report were identified by the ACA, not the DOC. The same is true for many day-to-day issues that are not described in this report - although the DOC and Compliance Analyst provided real time guidance to the AO/HR regarding

the annual performance evaluations and have commented on discipline and hiring issues. After six months on the job, the ACA would expect greater identification of compliance issues and recommendations for corrective action, as appropriate, if the DOC is to show that she can fulfill her duties and responsibilities under the Employment Plan.

## 2. Independence

The Agreed Order cannot terminate without a certification that, after appropriate review and inquiry, the DOC believes the Assessor has achieved Substantial Compliance. Agreed Order at Section III(F)(2). For this certification to be meaningful, it must be independent and credible.

Since assuming the job, the DOC has not identified a single compliance deficiency in Employment Plan or Employee Handbook implementation that she has deemed material. To the extent her weekly reports to the Assessor note compliance issues, the issues are deemed not “substantial.” This was the DOC’s position at the January 18, 2022 status where she told the Court that she did not believe any compliance issue she has “spotted” is “substantive.” 1/18/22 Tr. at 23 – 24. *See also* Fourth Interim Report at 24.<sup>8</sup> The DOC’s position, which also fails to consider the volume of compliance issues on all fronts, is at odds with the AO’s compliance efforts as reported in this and prior reports and in many communications not described in this report.

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HR and the DOC are key component in the firewall against partisan decision making. The AO cannot demonstrate a “durable remedy” until (1) the Deputy of HR and her team demonstrates

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<sup>8</sup> At the October 4, 2021 status, not much more than a month into the job, the DOC claimed the AO “seems to have been acting in good faith in an effort to remedy the instances of noncompliance” because the AO says “they don’t have a policy, custom or practice of making their employment decisions on political reasons or factors.” 10/4/21 Tr. at 11-12. The Court responded that is merely “the baseline” and “in the context in which we’re at, it’s about making sure that there is a durable remedy so that what happened in the past does not repeat or at least as far as possible. So that’s the purpose of having the [Employment] plan and objective policies as well as transparency.” 10/4/21 Tr. at 12.

that it is capable of fulfilling the AO's obligations under the Agreed Order and the Employment Plan; and (2) the DOC demonstrates that she effectively can fulfill the DOC's duties and responsibilities under the Agreed Order and Employment Plan and that any certification of Substantial Compliance that she may offer is independent and credible.

**VIII. MOTION TO TERMINATE: REASONABLENESS OF MAY 4, 2022 MOTION PREVIEW DATE AND MAY 18, 2022 MOTION DEADLINE**

The January 19, 2022 order (at §12) extended the date of the sunset motion to May 18, 2022, with a preview date of the AO's motion to Plaintiffs' and the ACA by May 4, 2022. Based on the AO's inability to meet most of the Employment Plan mandated annual trainings, the limited hiring (particularly in Valuations), as well as continuing implementation issues of Shakman-related policies and the issues identified regarding HR and the DOC, it appears that these dates are unrealistic.

The ACA and Shakman Liaison have conferred about the need to extend the dates and Plaintiffs have been apprised of these conversations. Additional discussions are contemplated before the March 3, 2022 status, at which time the ACA expects the AO to suggest revised dates.

Dated: February 15, 2022

Respectfully submitted,

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**CERTIFICATE OF ELECTRONIC FILING**

I, Matthew D. Pryor, the undersigned, do hereby certify that on February 15, 2022, I electronically filed a true and correct copy of the foregoing **Fifth Interim 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