

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

MICHAEL L. SHAKMAN and PAUL M. LURIE, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 69 C 2145
)	
CLERK OF COOK COUNTY, et al.,)	Sidney I. Schenkier
)	Magistrate Judge
Defendants.)	
)	

PLAINTIFFS’ MOTION FOR SUPPLEMENTAL RELIEF

Plaintiffs Michael L. Shakman, et al. (“Plaintiffs”) respectfully move this Court to enter an order declaring that the Cook County Clerk (“Clerk”) has engaged in repeated and systematic violations of two consent decrees entered by the Court in 1972 and 1991, which prohibit unlawful political considerations in employment actions. Upon a finding of such violations, Plaintiffs request that the Court enter appropriate supplemental relief, including the following:

- A. An order rescinding the Clerk’s unlawful rotation policy for supervisors in the Clerk’s Bureau of Vital Records;
- B. An order prohibiting the Clerk from filling any position as an exempt position when that position is not on the list of exempt positions approved by the Court in 1991;
- C. An order prohibiting the Clerk from soliciting political donations from non-exempt Clerk employees;
- D. The appointment of a Clerk compliance administrator (“CCA”) to investigate and recommend appropriate reforms in the Clerk’s employment practices for non-exempt positions and to monitor the Clerk’s hiring and other employment practices to assure compliance with prior Court orders;

E. Implementation of reporting and disclosure procedures to prevent future violations of prior Court orders;

F. Development, with input from the CCA and Plaintiffs' Counsel, of a hiring, promotion, reassignment and employment plan for non-exempt positions;

G. Development, with input from the CCA and Plaintiffs' Counsel, of a new List of Exempt Positions; and

H. For such further relief as the Court deems appropriate to ensure future compliance with prior Court orders by the Clerk and its responsible personnel.

In support of their Motion, Plaintiffs state as follows:

I. Relevant prior orders of this Court.

In 1972, the Clerk entered into a consent decree ("1972 Consent Decree") which, among other things, prohibited the Clerk from "conditioning, basing or knowingly prejudicing or affecting any term or aspect of governmental employment, with respect to one who is at the time already a governmental employee, upon or because of any political reason or factor." (Ex. A at Paragraph E.(1).) In 1991, the Clerk entered into another consent decree ("1991 Consent Decree") to carry out and implement the 1972 Consent Decree and to "eliminate the conditioning, basing or affecting of employment with the Cook County Clerk on political reasons or factors." (Ex. B at p. 2.) Together, the 1972 Consent Decree and the 1991 Consent Decree are referred to as the "County Clerk Decrees."

In the 1991 Consent Decree, the Court retained jurisdiction:

to enable the parties to this Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of the [1972 Consent Decree] and this Judgment, for the enforcement of compliance with the provisions contained in the [1972 Consent Decree] and this Judgment, and for remedy for the violation of any of those provisions.

(Ex. B at Paragraph P)(2).)

The current Clerk, Karen Yarbrough, took office in December 2018. Successors in office are bound by County Clerk Decrees pursuant to Rule 25 of the Federal Rules of Civil Procedure and pursuant to Paragraph C of the 1991 Consent Decree. (Ex. B.) Plaintiffs bring this Motion pursuant to the Court's retained jurisdiction under the County Clerk Decrees and based upon events occurring on or after Karen Yarbrough assumed her position as Clerk in December 2018.

II. *Shakman* violations by the Clerk warrant supplemental relief.

Upon information and belief, the Clerk maintains and operates an illegal patronage employment system that violates the County Clerk Decrees. The Clerk's misdeeds arise from a pervasive disregard of the County Clerk Decrees by the Clerk and others operating under the Clerk's jurisdiction.

As shown below, the Clerk is violating the County Clerk Decrees in at least four different ways. First, the Clerk has adopted a rotation policy for certain employees of the Clerk designed to force these employees to quit, thereby freeing up their positions for the Clerk's friends and political allies. Second, and in a similar vein, the Clerk has imposed oral modifications to written employment policies to punish Clerk employees with no political connections to the Clerk. Third, the Clerk has violated the County Clerk Decrees by placing her political allies in positions that do not appear on the List of Exempt Positions approved by the Court in 1991. Finally, the Clerk is flouting the County Clerk Decrees by soliciting political campaign contributions from non-exempt employees.

A. *Selective enforcement of new rotation policy for supervisors in the Bureau of Vital Records.*

The United States Supreme Court decision in *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 75 (1990), held that public employers could not base promotion, recall, transfer or

hiring decisions on political affiliation or political support, except with respect to certain policy-making positions for which political affiliation is an appropriate requirement. In that opinion, the Supreme Court stated that “[e]mployees denied transfers to workplaces reasonably close to their homes until they join and work for the Republican Party will feel a daily pressure from their long commutes to do so.” *Id.* at 73. The Court clearly recognized that convenient office locations is a significant consideration for any employee, and that a public employer cannot assign office locations on the basis of political affiliation or support. *Id.* at 73-75.

When Ms. Yarbrough took office as Clerk in December 2018, she brought with her several employees from the Cook County Recorder of Deeds, including Erica Sanchez—an active member in Maywood politics. The Clerk immediately installed Ms. Sanchez as the Director of Vital Records, which is a *Shakman* exempt position. Four months later, Ms. Sanchez was given a \$14,000 raise and installed as the Deputy Clerk of Vital Records.

On May 9, 2019, six supervisors in the Bureau of Vital Records (collectively, the “Aggrieved Supervisors”) were brought into a meeting in the downtown Chicago office. Deputy Clerk Sanchez, the new Director of Vital Records, Byron Steele, and two representatives from Human Resources attended. At this meeting, the Aggrieved Supervisors were informed that the Clerk would be instituting a new rotation policy for supervisors in the Bureau of Vital Records. Specifically, beginning in June 2019, the Aggrieved Supervisors would have to “rotate” every 90 days to a different office location until all six of them served a 90-day stint at each of the Clerk’s suburban offices located in Bridgeview, Markham, Maywood, Rolling Meadows, and Skokie.

The Clerk’s justification for imposing this new rotation policy was dubious. According to the Clerk, the rotation policy would promote uniformity across all offices and would allow each of the Aggrieved Supervisors to learn how things are done in the other offices. The Clerk’s

purported rationale is difficult to square with the facts. The procedures governing employees in the Bureau of Vital Records are the same in all of the Clerk's locations. Thus, there is no reason to believe that the new rotation policy would lead to more uniformity within the offices.

More importantly, not all of the supervisors in the Bureau of Vital Records are being asked to rotate to a new office every 90 days—only the Aggrieved Supervisors have been singled out to participate in this disruptive rotation policy. Three other supervisors have been exempted from the rotation. One of the exempted supervisors is about to retire, so there is no need to push her out of the office. The other two exempted supervisors are politically connected. One is related to a former Chicago alderman; the other is connected to the County Board President. If the Clerk was interested in promoting uniformity, then *all* of the supervisors in the Bureau of Vital Records would have been required to rotate to each of the offices.

The Clerk's rotation policy was designed to impose a substantial burden on the Aggrieved Supervisors. There is no legitimate business purpose for the Clerk's rotation policy. Based on the selective implementation of this new policy, it is apparent that the Clerk's actual motivation is to make life so unbearable for the Aggrieved Supervisors that they have little choice but to resign. After sweeping out the supervisors in place under the prior regime, the Clerk will then be free to offer these positions to her political allies. It is well established that transferring or reassigning employees on the basis of political considerations is unlawful. *See Doyle v. City of Chicago*, 139 F. Supp. 3d 893, 899 (N.D. Ill. 2015) (reassignment from Mayor's security detail to make room for politically connected employees); *Auriemma v. City of Chicago*, 601 F. Supp. 1080, 1085 (N.D. Ill. 1984) (“The test is whether the adverse action is likely to

chill the exercise of constitutionally protected speech.”) (quoting *McGill v. Bd. of Education of Pekin Elementary School District No. 108*, 602 F.2d 774, 780 (7th Cir. 1979)).¹

In sum, it is apparent that the Clerk and her Deputy Clerk are trying to force the six Aggrieved Supervisors to quit, thereby opening up those positions for candidates with political ties to the Clerk. These actions violate the spirit and letter of the County Clerk Decrees and should be enjoined.

B. Oral modifications to written employment policies and selective enforcement.

Since Ms. Yarbrough took office in December 2018, Deputy Clerk Sanchez has altered written employment policies orally and refused to put those modifications in writing. Like the Clerk’s rotation policy discussed above, the Clerk’s orally-modified employment policies are selectively enforced against those employees with no political connections to the Clerk. For example, on one occasion earlier this year, one of the Aggrieved Supervisors received a 5-day suspension and was placed on probation for six months for violating an unwritten policy imposed by the Deputy Clerk relating to the issuance of birth certificates.

C. Placement of political allies in non-exempt positions.

The 1991 Consent Decree provides for a list of Exempt Positions, which is defined as “a Governmental Job, which is determined to be exempt from . . . this Judgment all as provided in Paragraph N below.” (Ex. B at Paragraph B.) In designating a position as exempt, the Clerk is obligated to adhere to the criteria that an Exempt Position be one where “political party affiliation or activity are appropriate requirements for the effective performance of the Governmental Employment position and therefore that hiring for or discharge from such position

¹ The Clerk’s actions also violate the collective bargaining agreement between the Clerk and the SEIU Local 73 union (“CBA”). The Aggrieved Supervisors have filed a grievance through the mechanism established in the applicable CBA. This Motion does not address the numerous CBA violations committed by the Clerk.

should be exempt from inquiry under this Judgment and the [1972 Consent Decree].” (*Id.* at Paragraph N.)

The 1991 Consent Decree specifies the procedure by which the List of Exempt Positions may be amended. It provides that “the Clerk may, from time to time, apply to the Court for a change in the List of Exempt Positions.” (*Id.*) However, unless the Court previously determined that a position is exempt, no “position shall be exempt from this Judgment and no action with respect to any such position shall be exempt from inquiry under this Judgment.” (*Id.*) A List of Exempt Positions with 22 positions was attached to the 1991 Consent Decree, which was approved by the Court as part of the 1991 Consent Decree. The Clerk has never availed itself of the procedures for amending the List of Exempt Positions in the 1991 Consent Decree, and the Court has never approved any changes to such list.

Since taking office, the Clerk has violated the 1991 Consent Decree by unilaterally treating positions as *Shakman* Exempt that were not on the List of Exempt Positions approved by the Court. The Clerk has done so without seeking Court approval. The Clerk has also hired politically connected individuals to non-Exempt positions.

Deputy Clerk of Security. For example, when she took office in December 2018, the Clerk created a new Deputy Clerk of Security position. (*See* Ex. C at p. 1 (“This is for the new Deputy Clerk of Security (Security Specialist Operator)”). Although this position did not appear on the List of Exempt Positions, the Request for Hire form checked the “SHAKMAN Exempt” box. (*Id.*) The Clerk hired Tim Curry—an individual with deep political connections to the Clerk and her husband—to serve as the Deputy Clerk of Security. The Clerk’s husband, Henderson Yarbrough, then the Mayor of Maywood, appointed Mr. Curry as the police chief in Maywood in 2009. When Ms. Yarbrough served as Recorder, she hired Mr. Curry to serve as

Chief of Security. At the time of the hire, the court-appointed Recorder Compliance Administrator (“RCA”) raised serious concerns about “seeming bias” toward Mr. Curry. (Dkt. 3616 at 14-15.) The RCA’s report noted that the interview panel in charge of selecting the security director was “potentially tainting the process in favor of a candidate with known political connections to the Recorder’s husband.” (*Id.*)

Clerk of the Board and Procurement Director. As another example, on February 7, 2019, the Clerk hired Cynthia Soto to serve as the Clerk of the Board and Procurement Director. This position is not on the Clerk’s List of Exempt Positions. Ms. Soto is a former colleague of the Clerk’s in the Illinois legislature. The Clerk has donated to Ms. Soto’s campaign in the past. (Ex. D at p.3.) Similarly, Ms. Soto was a member of the Host Committee for one of the Clerk’s fundraisers leading up to the 2018 elections. (Ex. E at p.2.)

Executive Assistant to the Deputy Clerk of Elections. In February 2019, the Clerk hired Holly Figliuolo into a non-Exempt Executive Assistant position. Ms. Figliuolo is related to Illinois State Senator Robert Martwick, Jr. Mr. Martwick is also the Democratic Committeeman for Chicago’s 38th Ward. Ms. Figliuolo’s father was the Democratic Committeeman for Norwood Park Township.

In taking these, and likely other, employment actions upon taking office, the Clerk violated the 1991 Consent Decree. As reflected above, the evidence supports the conclusion that the Clerk made these hiring decisions based on political factors or considerations in violation of the County Clerk Decrees.

D. Solicitation of political contributions from non-exempt employees.

Compelled or coerced political contributions from public employees violate protected constitutional rights. *See Branti v. Finkel*, 445 U.S. 507, 516-17 (1980); *Elrod v. Bums*, 427 U.S.

347, 355-56 (1976); *Shakman v. Democratic Organization of Cook County*, 435 F.2d 267, 269-71 (7th Cir. 1970). The 1972 Consent Decree prohibits “compulsory or coerced political financial contributions by any government employee, contractor or supplier, to any individual or organization.” (Ex. A at Paragraph D.) Further, in the 1991 Consent Decree, the Court permanently enjoined the Clerk from using “promises of . . . political support, activity or financial contributions” as a basis for hiring non-exempt employees in the Clerk’s office. (Ex. B at Paragraph E)(1).)

Despite these well-established prohibitions, the Clerk has been soliciting non-exempt Clerk employees for political donations. On information and belief, the Clerk solicited these political contributions through text messages sent to the Clerk employees’ private cell phone numbers the Clerk obtained from employment records. (Ex. F.) This tactic is consistent with the Clerk’s *modus operandi*. Indeed, as reported in Chicago magazine in 2012, “the Yarbroughs . . . have accepted tens of thousands of dollars in campaign contributions from municipal vendors and employees, and at least some of the money was solicited.” (Ex. G at p.2.) The Clerk should be enjoined from soliciting campaign contributions from non-exempt Clerk employees.

Prior to filing this motion, Brian Hays, one of the attorneys for the Plaintiffs, sent a draft of this Motion to representatives of the Clerk on August 15, 2019, asking for a time when the Clerk would be available to discuss the Motion in an attempt to resolve the dispute. The parties were unable to reach a resolution, thus forcing Plaintiffs to file this Motion.

IV. Meet and Confer

On August 20, 2019, Plaintiffs’ counsel provided a copy of this motion to one of the counsel for the Clerk. On September 5 and 6, 2019, counsel for the parties discussed the motion

via telephone and email. The Clerk indicated that she opposes the motion and the relief requested.

CONCLUSION

The law is well-settled that a party to a consent decree cannot ignore the terms of the court order or make unilateral changes. *See, e.g., Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367, 378 (1992) (stating that a consent decree “is an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree”). Unless a consent decree is amended by agreement of the parties or by the Court, the parties must adhere to its terms. Indeed, the Seventh Circuit has rejected the notion that a party may ignore or defy the terms of a consent decree because it contends that the factual or legal circumstances that gave rise to the consent decree have changed. *O’Sullivan v. Chicago*, 396 F.3d 843, 865, 868 (7th Cir. 2005); *Komyatti v. Bayh*, 96 F.3d 955, 963 (7th Cir. 1996) (“continuing respect for the valid decrees of a court commands that they be obeyed until changed”).

The foregoing establishes the need for supplemental relief with respect to the County Clerk Decrees. The Plaintiffs seek an order from this Court:

(1) rescinding the Clerk’s unlawful rotation policy for supervisors in the Clerk’s Bureau of Vital Records;;

(2) enjoining the Clerk from filling any position not on the 1991 List of Exempt positions without following the Clerk’s plan for hiring non-exempt personnel, until a new List of Exempt Positions is filed, served and approved pursuant to Paragraph N of the 1991 Consent Decree;

(3) prohibiting the Clerk from soliciting political donations from non-exempt Clerk employees;

(4) appointing a CCA to review and monitor the Clerk’s employment practices to ensure compliance with the Clerk of Court Decrees;

(5) implementing reporting and disclosure procedures to prevent future violations of the County Clerk Decrees;

(6) requiring the Clerk to develop, with input from the CCA and Plaintiffs' Counsel, a hiring, promotion, reassignment and employment plan for non-exempt positions;

(7) requiring the Clerk to develop, with input from the CCA and Plaintiffs' Counsel, a new List of Exempt Positions; and

(8) awarding such other relief as the Court deems just and necessary to ensure future compliance by the Clerk and its responsible personnel with the County Clerk Decrees.

Dated: September 6, 2019

Respectfully submitted,

MICHAEL L. SHAKMAN, et al.,

By: /s/ Brian I. Hays
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Certificate of Service

I, Brian I. Hays, an attorney, state that on September 6, 2019, I caused a true and correct copy of the foregoing to be served via e-filing upon all parties of record and by first-class mail, postage prepaid upon:

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/s/Brian I. Hays