

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

MICHAEL L. SHAKMAN, PAUL M.)	
LURIE, KENNETH AYERS, ANN M.)	
KING, INDEPENDENT VOTERS OF)	
ILLINOIS-INDEPENDENT PRECINCT)	
ORGANIZATION, MICHAEL)	
SULLIVAN, DARRYN JONES,)	
STUART MAJERCZYK, RICHARD)	
GRAMAROSSA and CONNIE)	
GRAMAROSSA, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 69 C 2145
)	Judge Wayne R. Andersen
COUNTY OF COOK, et. al)	Magistrate Judge Schenkier
Defendants.)	
)	

**FIFTH REPORT OF THE COMPLIANCE ADMINISTRATOR
FOR COOK COUNTY**

Mary Robinson, *Shakman* Compliance Administrator for Cook County, by and through her attorney, Peter Monahan submits this Fifth Report pursuant to the order of the court entered November 30, 2006.

This report is presented pursuant to the terms of the Supplementary Relief Order (“SRO”), entered on November 30, 2006, requiring that the *Shakman* Compliance Administrator (“CA”) study the County’s existing employment practices, monitor the County’s compliance with the provisions of the SRO, assist in formulating a new hiring plan and in establishing training programs on non-political hiring practices, adjudicate claims based upon violations that preceded entry of the SRO, make recommendations to the Court as to how to resolve issues regarding *Shakman* exempt positions, and file an

initial report and then semi-annual reports identifying activity by the CA and progress toward achieving substantial compliance with the requirements of the SRO.

Julia M. Nowicki served as CA from entry of the SRO through February 2009. She filed an initial report in January 2007, and interim reports in July 2007, March 2008, and November 2008. Effective March 1, 2009, Judge Nowicki was granted leave to withdraw as CA and the Court appointed Mary Robinson as her successor. This report summarizes activity during the first six months of Mary Robinson's tenure, along with the activity under Julia Nowicki since her November 2008 report. It includes review of the activities the CA and her staff and review of the status of steps underway that are necessary for the County to achieve substantial compliance with the SRO.

Summary

The legal premise underlying the decrees entered in this case is this: the County may not condition hiring, promotions, transfers, or discharge of county employees upon political belief or affiliation unless political beliefs or affiliations are important to carrying out the duties of the particular position. Political considerations *are* important in deciding who will hold positions that involve making and implementing policy consistent with the President's political agenda and positions that involve access to confidential information important in implementing that agenda. Such positions are considered 'exempt.' They are included on a list called the 'exempt list,' and the President must be able to consider politics in choosing who will hold those positions. But most County jobs do not have those attributes, and for positions that are not on the list ('non-exempt'), employment decisions may not be based upon political considerations – period. The CA is charged with the responsibility of working with the County to assure that its

employment practices honor those principles.

The propositions seem clear enough, but implementing them has not been easy. On the one hand, the Office of the President, primarily through the President's attorney, Laura Lechowicz Felicione, as well as Assistant State's Attorneys Patrick Driscoll, Lisa Meador and Patricia Fallon (who represent the County in this matter) have been diligent and thoughtful in efforts to resolve claims of past discrimination and to construct new structures and procedures intended to prevent illegal political employment practices. In addition, the Board of Commissioners has taken critical steps in implementing and funding change. Progress since entry of the SRO includes: 1) the Board's adoption of an ordinance, and the President's issuance of an executive order, prohibiting illegal political considerations in hiring and other employment actions, requiring county workers to report violations, and prohibiting retaliation against any employee who makes a claim or report; 2) retention of an independent Bureau Chief for Human Resources; 3) delegation of control of the Health and Hospital System (H&HS) to an independent nonpolitical Board, including full authority for employment decisions for all H&HS positions; 4) creation of the Office of the Independent Inspector General (OIIG), appointment of an Independent Inspector General (IIG), and funding for retention of a capable OIIG staff; 5) resolution and payment of all but 2 claims alleging political discrimination in employment actions prior to adoption of the SRO; 6) elimination of some practices that once gave politically connected candidates advantages in applying for non-exempt employment; 7) training on Shakman requirements and procedures for all employees involved in employment decisions; 8) requiring written certification by every person who takes part in a hiring sequence for a non-exempt position that that person did not allow

political considerations to influence his or her activity; and 9) funding the purchase and implementation of an on-line application system. In addition, substantial work has been done toward developing a new hiring plan and creating a new exempt list.

If establishing appropriate policies and structures were the only challenge, then one could say that this war is three-quarters won. The difficulty is that while some County policy makers and their agents are busy drafting and adopting and implementing appropriate policies, others are busy evading and frustrating and defying the policies. Between monitors' observations and reports from County employees, the CA's office entertains a running series of alleged violations. They include politically sponsored candidates being screened as eligible for positions for which they do not have the required credentials or experience; candidates landing jobs because they were able to recite verbatim the answers to highly technical interview questions for entry level jobs; favored candidates getting jobs without having to appear for an interview; and politically connected candidates being held to less rigorous standards regarding criminal arrests and convictions than candidates without such connections. In several instances, it was receipt of anonymous tips or quiet information from present employees who do not want to be identified that caused the CA to recognize what was occurring. In some instances, the CA's inquiries about such incidents were answered with misleading or false information. Some departments consistently fail or delay in giving the CA the documentation necessary to monitor hiring decisions effectively.

Reports of violations point to weaknesses in present practices and provide reminders about how carefully structures and procedures must be crafted to minimize evasion and manipulation. Specific examples will be discussed in the body of this report.

More problematically, manipulations, misinformation, and stonewalling undermine trust. In point of fact, the CA believes that most of the County representatives with whom her office interacts, particularly in terms of designing practices and policies, are trustworthy and most want this job done right. Nevertheless, there are those who are not convinced that the days of patronage hiring for non-exempt positions are over, or that there will be any consequences for evading proscriptions of such practices. Their activities are slowing the process and will continue to do so, unless and until they are convinced by County leadership that they must stop.

I. ACTIVITIES OF COMPLIANCE ADMINISTRATOR

Following are the major categories of activity directed by the CA. These activities have been underway since at least spring of 2007, and they bring the CA and her staff into regular contact with individual employees, supervisors, department heads, and County leadership. Over time, the process has given the CA important insights into how the County functions and it has given County employees and management considerable exposure to the work of the CA's office.

A. Claims

The SRO provided a claims procedure for class members under the Office of the President or the Bureau of Health (now H&HS) with complaints of political discrimination in employment actions between August 2004 and February 2007. The CA's office investigated 209 claims, and CA Julia Nowicki adjudicated all of the claims before she withdrew. Of the 209 claims investigated, 108 claimants were awarded compensation totaling \$ 3,000,000. The County made a determination not to contest any of the awards, but 19 claimants sought additional damages in appeals to the Court. All

but 2 of those appeals have been resolved, with the court increasing the awards in 8 cases. The County has now paid all of the finalized awards.

The claims process brought the existence of the CA's office to the attention of county workers, and it resulted in the CA gaining considerable information on how the unlawful aspects of patronage operate and, in particular, how they impact individuals who do not have the benefit of political clout. The information learned and relationships developed through that process have provided context critical to the work of structuring future procedures and practices.

B. Monitoring

The CA's office continues to monitor several stages of the hiring process. Monitors assigned to the main offices of the Bureau of Human Resources (BHR) review all decisions by BHR screeners as to which applicants are eligible for posted employment positions. Since June of 2008, the monitors have reviewed screening decisions for 468 postings, where the number of applicants per posting ranges between one and 350. They report concerns and observations to the CA's office, where Patrice Perkins reviews the reports, confers with the CA, and then transmits questions and concerns to the BHR Chief. Lessons learned from this process and recommended reforms are discussed in Section I.A.2.c. (*infra*, pps. 17-23).

In addition, the County is required to provide notice to the CA's office of every interview for a non-exempt position, and CA monitors observe the interviews and the consensus meetings at which interview panelists discuss their assessments of the candidates. Since the last report, monitors have observed interviews for 210 postings where the number of candidates being interviewed might range from 2 to over 200. The

lessons learned from these observations convince that for the most part, interviewers themselves abide by the proscriptions on considering political factors in the hiring process, but that some continue to manipulate the process for apparent political reasons.

A recent incident suggests the challenge faced in developing structures that will oversee compliance with Shakman principles once the SRO is dissolved and the monitors are gone. A department wanting to hire 4 to 5 entry level employees who would have mechanical duties gave interview panels five technical questions to ask candidates, with instructions that they could not deviate from those questions and that candidates were to be scored based strictly upon their answers to the technical questions. The reports of the CA monitors who observed the interviews included observations that several candidates could not answer any of the questions, that interviewers commented to one another that the questions seemed unusually difficult given the entry level nature of the jobs, that two candidates responded to a particular question with the answer to another question, and that a few candidates gave responses that were verbatim to the script which management had provided to the interviewers for purposes of judging the correctness of responses.

After the interviews concluded, but before all of the scores had been compiled, the department head asked to meet with the CA. He explained that because so many applicants were interviewed, the questions had apparently been leaked to interviewees who were late in the cycle, several of whom had no qualifying experience, and he complained that he was going to have to hire unqualified candidates. While not agreeing that Shakman principles required that only interview scores could be considered, but wary of suggesting that the department head just use his best judgment, the CA offered to review the applications and scoring with the department head and the HR Bureau Chief to

find some reasonable resolution. About a week later, the department head scheduled a meeting with less than 24 hours notice. The CA said she would send a representative, but the meeting was subsequently cancelled.

In the meantime, an applicant for the position told a member of the CA's staff that she had complained about the difficulty of the questions to an employee of the department doing the hiring; that employee told her that she wasn't supposed to be able to answer the questions and that he had helped coach some pre-selected candidates on the correct answers. The CA then inquired of the County about the status of the hiring process, and she was told that because there was a determination that only two positions needed to be filled and because the top two scorers had qualifying experience, the department head had hired those two. When the names of the successful candidates (one of whom was related to a supervisor in the department) were shared, the CA confirmed that monitors' reports noted that both had given almost verbatim answers to the interview questions, and that other candidates with a similar number of correct answers and considerably greater experience were arbitrarily rated lower by particular interviewers.. Review of other applications showed that another candidate (who had tied the interview score of one of the successful candidates but did not have relevant experience) had mispronounced technical terms he used in giving his near perfect answers. This matter is still being investigated; the issues of who was involved in leaking the questions and whether the motive was political favoritism remain unresolved.

Let us assume that the tip about the deliberate coaching of pre-selected candidates is true, but that the source will deny it if questioned. Without the monitors' contemporaneous observations capturing the reactions of the interviewers to the difficulty

of the questions, the unlikely coincidence that two interviewees would give right answers to wrong questions, and the near verbatim responses of the successful candidates, this hiring sequence might have to be written off as entirely neutral.

Incidents such as this inform the CA's positions on the authority and independence which must be invested in the offices or individuals who will be responsible for enforcing Shakman principles after the SRO is dissolved. In particular, they suggest that the post-SRO future must include some monitoring by a politically independent office which will not look past red flags and which county workers perceive to be a safe place to bring information.

C. Current Patronage Investigations

Certain matters that come to the CA's attention through the monitoring function and through concerns voiced to the CA's office by County workers result in investigations aimed at detecting instances of ongoing unlawful patronage practices. In contrast to the work of IIG Patrick Blanchard and Complaint Administrator Mark Vogel, the goal in these investigations is not to determine whether an individual has been the perpetrator or victim of illegal practices and so should be disciplined or compensated. Instead, it is to develop better understanding of what unlawful practices continue to exist, how the practices impact individuals and departments, what factors allow the practices to persist, and what steps might be necessary to contain them.

An example is a series of complaints by nonexempt workers in a particular department. They have complained that they are subjected to harassing patterns of disproportionate discipline, with the concern that the goal is to get them to resign or to be able to fire them so that politically motivated supervisors can bring in someone connected

to fill their jobs. The current patronage investigators are able to pull together information about multiple instances of discipline, compare discipline of nonexempt and exempt workers in the department, identify instances when workers have been terminated or prompted to resign, and align that information with data from monitoring of hiring sequences for the department.

There are presently 98 open patronage investigations. For the most part, each is a file opened because of a complaint submitted by a County employee. When critical mass of complaints in a particular area is reached, a department file is opened. Three of the 98 open files involve departments, and three other department investigations are being contemplated. Some of the individual matters overlap with matters being investigated by the IIG or the Complaint Administrator, and when appropriate, the CA has made referrals to either or both, and in several cases, plans to defer to the resolutions of either or both. One category of matters that is likely to result in overlapping jurisdiction involves concerns of retaliation against workers who previously filed claims or who have provided information to the CA. In such a matter, the IIG might pursue an inquiry to determine whether an individual supervisor is subject to discipline because he or she retaliated against an employee for challenging unlawful practices, and the Complaint Administrator might investigate whether evidence of retaliation provides grounds that would warrant an award of compensation to an employee. The CA would carry on an independent current patronage investigation when it appears that the concerns transcend individual cases or that action beyond individual discipline or compensation should be considered.

This function is critical in addressing the requirement of the SRO that the County demonstrate that it has acted in good faith to remedy instances of noncompliance that

have been identified and to prevent a recurrence. In her Fourth Report, the CA observed that her office had gathered a wealth of information about problematic practices in the course of adjudicating claims, monitoring hiring sequences, and looking into some departments. The Fourth Report indicated that the CA's office was drafting reports summarizing information learned through the claims process about the various departments, and those would be shared with the County. The CA suggested that it was up to the County to identify whether there was any continuation of the practices identified through the claims process, through monitoring reports, through investigations of the OIG, and through the department reports, and, if so, to take the steps necessary to end them. She invited the County to present a plan for corrective action for the CA's review. (Fourth Report of the Compliance Administrator, p. 8-11)

The CA's office has delivered only two department reports to the County, and the County has responded to one. Upon review, the present CA wants to reconsider how the reports are presented, and believes that for many departments, more comprehensive investigation would be necessary to flush out the information learned through the claims process, particularly because there were so many observations that were only partially pursued because they were not necessary to a resolution of the claim. The CA believes it would be more productive to gather more comprehensive information and then have a conversation about what is actually going on in the departments and what can be done to eliminate the parts that are unlawful. The investigations being conducted in the current patronage matters are important for that purpose.

At the same time, the CA reiterates the invitation to the County to undertake its own review of the information already available, look for what needs to be changed, and

change it. There is no doubt that this process would move along more efficiently if that were to occur.

D. Training

The SRO requires the CA to assist the County in establishing a “train the trainer” program, to teach supervisors and employees politics-free hiring practices. The County has required that all those involved in the hiring sequences in the departments receive Shakman training before participating in interviewing or evaluating candidates. The training now taking place is conducted jointly by the CA and the county utilizing materials the County developed with input from the CA. These materials are available on-line on the CAs website.

Once the new hiring plan is adopted, the CA anticipates that her office will be carefully involved in developing the policies and procedures necessary to implement the new plan and then training the bureau chiefs, department heads and supervisors in the new processes.

Another important opportunity would be to provide training for elected officials willing to participate. The significance of how exempt and nonexempt positions differ is not self-evident, and elected officials who seek to promote candidates for positions need to understand when their intervention is legal and when it is not. There have been some instances over the last few months where the CA has been informed that politically influential persons contacted hiring managers to support candidates for nonexempt positions, a practice that violates the SRO and the County ordinance. Moreover, those officials who wish to legally intervene on behalf of individuals for exempt employment owe it to their constituents to understand the nature of exempt positions. Most exempt

positions are exempt because they involve responsibility for making and implementing policy. County services are not going to be efficient or capable if politicians press for hiring of candidates who do not have the experience, skill and judgment needed to perform those positions capably. When officials press to have unskilled, inexperienced, and untested persons hired into County positions, those who are expected to place the candidates in jobs have two choices: give them exempt positions for which they are not qualified or manipulate hiring practices to get the sponsored candidate into a nonexempt job. Those elected officials interested in working toward employment practices which maximize the value of County services would benefit from training on the nature of the positions for which they will recommend candidates.

II. PROGRESS OF WORK WITH COUNTY TO DEVELOP STRUCTURES AND PROCEDURES FOR ELIMINATING POLITICAL DISCRIMINATION IN EMPLOYMENT PRACTICES

The other significant activity in which the CA engages is to work with the County in developing and implementing structural and procedural changes necessary to bring the County into substantial compliance with the decrees entered in this case. Following are summaries of the status of those endeavors, with information on how the County has progressed toward making the change effective.

A. Structures

1. Adoption of Policies that Prohibit and Prevent Unlawful Patronage Employment Practices.

a. Ordinance. As required by the SRO, the Cook County Board adopted Ordinance 06-O-52, effective January 1, 2007, prohibiting unlawful political discrimination in all aspects of employment, including hiring, promotion, discharge,

award of overtime and transfer of employees in nonexempt positions under the Office of the President. The Ordinance also provides that it is the duty of any County employee who learns of unlawful discrimination or who believes such discrimination has occurred to report the information to the Cook County Inspector General's Office. The President sponsored an amendment effective September 3, 2008, to strengthen the ordinance by including additional detail about conduct prohibited and prohibiting retaliation. In addition, the President signed an executive order prohibiting retaliation against any employee who complains to or cooperates with the Shakman Compliance Administrator or the Independent Inspector General.

The ordinance and the executive order provide important statements of the County's policy. As far as the CA could tell, there was really no enforcement of the ordinance or the executive order until the Office of the Independent Inspector General was constituted. Now that the OIIG is operational, it appears clear to the CA that these provisions will be important tools in the OIIG's efforts.

b. Hiring Plan. The SRO provided that after at least six months of the CA monitoring then-current hiring practices, the parties should negotiate a new hiring plan. In February 2009, the County submitted to the CA a proposed New Plan. The CA submitted an alternative draft, and the CA, her attorney, Peter Monahan, and employment attorney Sherrie Travis have met with County representatives, including HR Bureau Chief, Joseph Sova, the President's lawyer, Laura Lechowicz Felicione, and Assistant Cook County State's Attorneys Patrick Driscoll, Lisa Meador, and Patricia Fallon to review each other's suggestions on ten to fifteen occasions over the past six months. Much time and effort has been devoted to assuring that the plan is realistic, that it will be

effective for purposes of implementing Shakman principles, and that, when feasible, it adheres to best employment practices.

In attempting to design procedures that will implement nonpolitical hiring objectives for nonexempt employment, the insights gained through monitoring of the screening and interview processes have been invaluable. Moreover, the process of reviewing present and preferred practices led to a few immediate changes in County hiring practices. An example is the manner in which applications must be presented. It has long been the case that the County will accept only applications delivered personally by the applicant to the Bureau of Human Resources offices on the Eighth Floor at 118 North Clark. In the early days under the SRO, the CA observed that that apparently neutral policy was being manipulated by another ostensibly neutral practice of awarding interviews to the first seven applicants to hand in applications who also met the minimum qualifications, favoring insiders who could get advance notice of a posting. In response to the CA's concern, the County discontinued what had come to be known as the Rule of 7, and it now either requires the hiring department to interview all eligible candidates or it uses a computer generated random selection from the longer list of eligible candidates for deciding who gets interviewed. Then, in September 2009, as a result of discussions about the hiring plan, the County changed the requirement of personal delivery to allow applications to be submitted through mail or courier, so long as the manner of delivery requires a return receipt. The CA concurs with the County's belief that an on-line application procedure is the right goal, but was glad to see interim progress toward procedures that do not give an advantage to "insiders" and expand the pool of applicants for county employment.

Discussions of the new hiring plan have progressed to an almost final draft. For the most part, the CA and County representatives have not disagreed about how the hiring procedures should be structured. The only substantial disagreements have centered on how compliance with the plan will be assured once the SRO is dissolved, discussed more fully below. The CA and the County expect to have a final draft incorporating revisions and setting forth alternative provisions on matters where disagreement persists ready for submission to the Plaintiffs' counsel within about a month.

2. Reforms to Bureau of Human Resources

a. Independent Bureau Chief. In her Second Semi-Annual Report issued March 2, 2008, the CA recommended that the County select a new HR Bureau Chief with the experience, education, and political autonomy to professionalize the County's Human Resources Bureau. After a nationwide search, the President appointed Joseph Sova as the new Chief in October 2008.

b. Reorganize Bureau of Human Resources. Bureau Chief Sova is a human resources professional who very much appears to have the knowledge, experience and autonomy to professionalize the County's department. But he also needs a mandate from the President's Office to do so, and it is not clear to the CA whether that mandate is there.

After substantial monitoring of employment practices and a desk audit of the Human Resources Bureau, the CA observed in her Fourth Semi-Annual Report that the HR Bureau needed reorganization. The desk audit revealed that authority within the Bureau was unwisely concentrated in only the Bureau Chief and two Deputies. The Deputies were not chosen by the present Bureau Chief, and both are long term, loyal,

exempt employees with a wealth of understanding of internal procedures, many of which are not committed to writing or well understood by others in or out of the Bureau. One Deputy has virtually exclusive control over important phases in every hiring sequence. As the CA's Fourth Semi-Annual Report observed, the present structure restricts transparency, hampers change, and allows divergence from required practice to go undetected and uncontrolled. That structure remains intact, and it leaves Bureau Chief Sova little room for the kind of transformation the Bureau needs.

Both the former and the present CA have urged the County to bring additional, independent HR professionals into the Bureau. In June 2009, the CA was told that the Bureau had 8 open positions. None have been filled and it is the CA's understanding that plans to fill those positions are on hold.

If the County wants to move forward, it should give Chief Sova the authority to use the funds budgeted for those eight positions to create his own structure, and to bring in his own team. The CA realizes that 5 of the 8 open positions are now exempt. In the CA's opinion, it will not help the cause if those positions are filled by someone other than BHR Chief Sova, or if he is asked or pressured to fill the positions with employees who are not committed to fully implementing the policies and procedures which the County and the CA are constructing. The CA assumes the President agreed to and did hire an independent Chief for BHR for the purpose of implementing the President's commitment to compliance with the decrees entered in this case. The independent Chief presently has only two deputies, both of whom are exempt. The deputy responsible for maintaining the list of exempt positions and for hiring into those positions also oversees the hiring process for all non-exempt positions, and that deputy is perceived by County employees

as being heavily invested in preserving political hiring practices. The Bureau needs independent supervisors who understand that they report to the independent Bureau Chief and who have real authority for overseeing the hiring, discipline, transfer, and termination practices governing nonexempt positions.

c. Reform Screening Process. Eligibility screening is conducted by nine employees in the Human Resources department who review employment applications to determine whether the candidate has submitted all required information and whether the information submitted demonstrates that the candidate has the minimum qualifications for the position. Candidates who pass on both fronts are included on the eligibility list for the position, and only those candidates can be given interviews. Screeners work in teams of two, and when they disagree, a supervisor reviews the applications and decides whether the candidate will be deemed eligible.

There is substantial room for manipulation of the hiring process at the screening stage. Screeners can favor someone they have been told is a politically sponsored candidate by looking past deficits or lack of clarity in that candidate's application, or screeners can reduce the competition by screening out unconnected candidates for hypertechnical or bogus reasons. A Shakman monitor reviews the application packets and screening decisions, and makes reports of instances where the decision might be questionable. The monitors question a full 25% of the screening decisions, but not necessarily because they are seeing direct evidence of politically motivated decisions. Instead, they typically question whether screening factors are being applied consistently. In many instances, the questions arise because policies are unclear or not understood or

changeable. In some instances, information that surfaces later in a hiring sequence shows that the inconsistency favored a politically sponsored candidate.

Some recurring issues include:

1) inconsistencies in enforcing requirements that documentation of credentials be submitted with an application (e.g., when a posting requires proof of a current nursing or med tech license, screeners might reject some applications because of the failure to submit the license, while going to the Internet and pulling evidence of a current license for other applicants, especially when they know that an internal candidate would need the license for the position they presently occupy);

2) inconsistencies in assessing the significance of unclear answers to the question that asks if a candidate has criminal convictions (e.g., in some cases, unclear responses are used to screen candidates out, and in other instances, they are accepted);

3) inconsistencies in assessing what driving records disqualify candidates for positions that involve driving (e.g., DUI convictions may not be disqualifying, accidents may);

4) inconsistencies in decisions about what fields are 'related' when postings require particular experience or degrees, or experience or degrees 'in a related field;'

5) inconsistencies in decisions about whether particular combinations of education and experience qualify when postings require a combination of experience and education;

6) overlooking incomplete or blank fields in applications of some candidates, while using the same factor as grounds to disqualify other candidates;

7) disparities in how terms in postings and in applications are interpreted (this is particularly problematic in screening for positions in the Health System).

For some time, the CA would collect instances of questioned decisions and send descriptions to the County, with requests for explanations. The BHR Chief would then provide explanations, sometimes in writing and sometimes orally at the regular meetings between the CA and County representatives. The process had faults, not the least of which was that the discussions were removed in time and did not involve the persons who had front-line responsibility for the monitoring or the screening decisions that were questioned. A few months into his tenure, BHR Chief Sova suggested a more effective process of weekly meetings attended by representatives of the CA, including Patrice Perkins, who supervises all monitoring, Chief Sova, and particular members of his staff, including Deputy Chiefs Doris Gershon and Jonathon Rothstein, and screening supervisor, Kim Shaffer. These meetings are held at the HR offices so that documents that might be relevant to particular queries can be accessed. These discussions have been considerably more helpful in illuminating the circumstances of questioned cases, and they have led to clarification of some policies.

The CA does not believe that all or most of the questioned screening decisions are deliberate efforts to benefit politically sponsored candidates, but confusion and inconsistency can provide cover for the handful of employees willing to answer the call when political considerations require that someone not qualified for a position pass the screening process. The fact that there is widespread imprecision in screening is a major red flag in any assessment of the County's efforts to eliminate unlawful practices.

Because the evasion of screening criteria awards jobs to those who are not qualified to perform them, this is a particularly pernicious attribute of unlawful patronage hiring practices, and it is disconcerting when some County representatives fall into expecting the CA to accept any decision for which some explanation can be offered, whether it is the real reason for the decision or not, as long as the CA does not have hard evidence that the decision was illegally motivated. And, of course, the CA will almost never have that kind of evidence. All too often the explanation offered is ‘human error,’ without an indication that someone is watching for patterns of errors or holding error-makers accountable.

A recent incident reminded the CA and her staff of how important it is to enforce screening criteria. The incident involved a candidate who applied for a position that required one year experience as a psychiatric nurse. The candidate had had several nursing positions, but her descriptions of those positions in both her application and her resume included no mention of psychiatric nursing experience. When the Shakman monitor questioned why that candidate was considered eligible, the explanation was that the applicant’s cover letter said that she had an “abundance of mental health opportunities, especially working with alcoholics, smokers and psychiatric patients,” and that as a coordinator for a community health program involving immunizations and medical testing, she had “worked closely with psychological counselors.” So far as the CA’s office knows, there is no policy about whether or when screeners can rely upon information in a cover letter to determine that a candidate has qualifications not revealed in her application or resume, and the monitors who review screening decisions do not recall having observed any other instance where that happened. Is it possible that this

was just a neutral instance of departure from procedure? Of course, and that is where the inquiry usually ends. But in this case, an employee of the hiring facility told the CA's office that when she called the candidate in question to set up an interview, the candidate insisted that the job had already been promised to her and she did not understand why she should have to go through an interview process.

Another incident involved an applicant for a seasonal driving job who submitted an abstract of his driving record (required by the posting) which showed a DUI arrest and two suspensions for driving during a suspension or revocation of his license. When conditionally offered employment (running from January through April 2008), he signed an affirmation that he had no convictions. During April, the CA's office received an anonymous tip that the applicant had gotten the job because of political clout, and checked the application file. Because the driving abstract appeared incomplete, the CA's office asked the County if there had been a check to determine the outcome on the DUI arrest shown on the abstract, and whether the County considered DUI arrests or license suspensions in determining whether an applicant was qualified for a driving position. The County's initial response was that a background check had been completed after the applicant was offered the position and showed no convictions, and that it would be illegal to declare an applicant ineligible because of an arrest. A request for a copy of the background check was discussed at a regular meeting between the County and the CA's representatives about monitoring observations, and a County representative asserted that no background check had been done because the applicant had been hired for seasonal employment. She added that the County learned later that the applicant had lied about not having convictions, and, because of that lie, he was rejected when he applied for

another position. The CA's representatives later reviewed records of the subsequent application, but the records showed that the applicant, while admitting that he had a conviction, was deemed eligible for the position, given a driving test, interviewed, and ranked high among the applicants. According to an employee who was involved in the interview process, before any decision was made, the department was informed that the hiring process was being pulled because the interviewers' rankings did not incorporate the candidates' driving scores. That occurred after the employee called HR to ask about the late addition of another candidate (with substantial political connections) to the eligibility list.

The CA understands that Bureau Chief Sova is relying upon the implementation of the automated application software to eliminate some of these issues. The software will do the screening based upon an applicant's responses to programmed questions, and it will eliminate most of the room for human error. By the same token, programming of the software will require concrete policies for what questions will be asked, how they will be phrased, and what answers will result in candidates being deemed eligible or not. In terms of some of the inconsistencies noted above, it will be necessary to have concrete policies about when criminal convictions will disqualify applicants, or how to articulate questions or assess answers intended to discern experience in a 'related field.' The efficacy of the automated system will also depend upon having well-crafted job descriptions that accurately describe the duties and requirements of positions in language that is consistent from one job to another. Moreover, the automated system will not totally eliminate judgment from the screening process. A human being will still be judging the adequacy of the proof of credentials applicants will be required to submit.

Someone will still have to make judgment calls about what answers the software can accept as showing eligibility.

Both to address present issues and to be poised for the future, the CA recommends that the County:

1. Draft written standard operating practices for: a) permissible and required actions by screeners when applications omit information or include information that is confusing or unclear, and for when applicants provide incomplete or questionable documentation of credentials; b) decisions on when criminal records will render a candidate ineligible; c) decisions on screening criteria that leave room for judgment, e.g., when experience or education is in a related field.

2. Train screeners on interpretation of screening criteria.

3. Develop a system for tracking questionable decisions by individual screeners, reviewing that information on some regular basis to identify patterns (mistaken interpretations, inconsistency, bad judgment), and holding screeners and their supervisors responsible.

d. Update technology, including implementing on-line application software. The County HR Bureau operates with minimal and outdated technology. For purposes of the hiring process, the software presently in use is a data base into which HR staff input demographic data from applicants and information about action taken concerning the application as it proceeds through the hiring process. For the most part, all data must be hand entered by HR staff, and reporting functions are limited. The other software available is a payroll program which also depends upon mostly hand entry of data and which requires IT assistance to run reports.

An example of present technological challenges is the process by which the HR Bureau prepares the monthly report of new hires which is used by the CA to track how the County's eventual hiring decisions align with the information observed by the CA monitors during job screening and interviews. Some of the information necessary to make the report useful cannot be pulled electronically, and so the report is prepared by hand by one of the Deputies. As a result, the report is typically delivered one or two months after the close of the month being reported, and there have been some significant omissions from the report (i.e., employees hired during the month who are not shown on the report) attributed to 'human error.'

Another example is the procedure for running the random selection of eligible candidates who will be given interviews when applications are numerous. A recent randomly selected 59 candidates out of 237 eligibles included two candidates who were both from Las Vegas and shared the same phone number, two candidates who were children of current employees who were assigned to the interview panels (but recused when their children were interviewed), and two sisters. It could happen that the random sort selected those candidates. But when that kind of coincidence occurs, it is important to be able to run an audit to assure that no one meddled with the random selection, and it does not appear that that is possible under present practices.

From the early days under the SRO, the County announced its intent to implement an on-line application system, and the CA's support for that plan has been a consistent theme of the CA's reports, beginning with the First Semi-Annual Report filed in July 2007. Funding for the purchase and implementation of such a system was finally approved as part of the 2009-2010, and the County is now engaged in negotiating a

contract with Taleo, the vendor for on-line application software recently implemented by the City of Chicago. The software will allow persons interested in County employment to complete an application on-line, and it will collect and sort the data submitted by candidates. Questions designed to test whether a candidate has the minimum qualifications for a job will be input for each posting, and, based upon the applicant's answers, the software will perform an initial screening for eligibility. The software will also have more automated features for tracking the progress of each application, and it will allow for significantly greater versatility in what reports can be run.

Once contracts are executed, Taleo will work with the County to adapt the software to the County's needs. The CA is working with Bureau Chief Sova to be a part of the process of designing how the software will function, and hopes to incorporate attributes suggested by the experience of Noelle Brennan, Shakman Monitor for the City of Chicago, based upon the City's implementation experience. Those would include flags which would generate automatic reports to whoever in the system is responsible for enforcing Shakman restrictions when certain events occur in any hiring sequence. Implementation of the Taleo software would be a major step in bringing County systems into compliance. The County hopes the implementation process will take 6 to 8 months. From today's vantage point, the CA believes it will be important to monitor use of the software for six months after it is up and running.

e. Perform a Comprehensive Review and Update of Non-exempt Position Descriptions. Effective use of the Taleo software for screening eligibility will depend upon the state of the County's position descriptions, since the questions that will be input for each posting will be based upon those descriptions. There are presently over

7000 position descriptions. The descriptions do not use consistent labels for required credentials and experience, and many no longer accurately describe the jobs being performed by incumbents. Some have not been updated in twenty years.

The phenomenon of imprecision, confusion and inconsistencies in how positions are described plays a critical part in evasion of the procedures intended to screen out unqualified candidates. The Taleo software will not, by itself, cure the problem. The software will screen based on information which an employee will input from the position descriptions. The CA understands that it would be costly to retain independent professionals to perform a comprehensive review and revision of the descriptions for the positions that remain under the President's authority. If the County is not able to do that, it should authorize Chief Sova to use the vacancies in the Bureau to hire some HR professionals who could at least rewrite the descriptions to bring them current and make them consistent.

3. Oversight Functions

a. OIIG. In July 2007, the Board of Commissioners adopted an ordinance creating the Office of Independent Inspector General, charged with responsibility to detect, deter and prevent corruption, fraud, waste, mismanagement, unlawful political discrimination or misconduct in the operation of County government. The IIG has authority to investigate complaints of corruption or illegality and to recommend action, including changes in County policy or procedure as well as discipline for individual County employees who are found to have done something wrong. In addition, the Court also appointed a Complaint Administrator, Mark Vogel, who is charged with responsibility for investigating and making recommendations for action on claims by individuals that they have been discriminated against in an employment action for

political reasons. (See below.)

In 2009, Patrick M. Blanchard was appointed Inspector General. Since his appointment, IIG Blanchard has retained a staff of investigators and an administrative assistant. IIG Blanchard volunteered to have the CA monitor the interviews he conducted for all of those positions. The CA and her staff have since worked in conjunction with the IIG and his investigators and have been duly impressed with their skills, energy and independence.

As we look toward a day when the SRO will be dissolved, it is critical that the OIIG be operating effectively so as to assume the full scope of the oversight and investigative functions which the CA and the Compliance Administrator presently perform. IIG Blanchard makes regular reports to the CA of complaints he receives that involve political discrimination in employment actions. When investigations overlap, the OIIG and CA's office share information, and the CA's staff and OIIG staff are undertaking cross-training efforts. The CA is impressed with the congruence of how both offices approach matters, as well as the thoroughness and integrity of the OIIG work. Considering the efficacy of the OIIG an indispensable part of substantial compliance, the CA will continue to stay abreast of the work of that office and to cooperate in joint undertakings.

The CA harbors two concerns about whether the ordinance creating the OIIG provides the authority that office needs in order to effectively detect, deter and prevent unlawful political discrimination in employment actions under the Office of the President. The first involves the limits of the IIG's authority with regard to individual misconduct. Under the ordinance, when the IIG finds evidence of misconduct, he makes

a confidential report recommending corrective action to the President or responsible department or bureau head, who is required under the ordinance to respond to the OIIG, explaining whether any action was taken in response to the report, and, if action taken was different from what was recommended, explaining why. Neither the IIG's reports nor the responses by the President or department or bureau head become public when report involves findings of misconduct by individuals. The IIG must make quarterly public reports that summarize the number and types of corrective actions recommended and whether the recommended action was taken, but it is not clear that the ordinance authorized the IIG to identify the particular misconduct found to have occurred, the perpetrator(s), or the official to whom the report was made. If that cannot be done, there is virtually no visibility or recourse if the President or the department and bureau heads he appoints do not take corrective action.

Thus far, the CA has been advised that the President has ordered discipline in each case in which the OIIG has recommended that action be taken so that this has not yet become an issue. The CA and the County are discussing proper interpretation of the ordinance in the event it does.

The second concern is that the ordinance limits the authority of the IIG to initiate an investigation based upon a complaint against an elected official to instances where the complainant verifies that the allegations are true. For purposes of the CA's jurisdiction, the only elected official is the President himself, but the limitation of the ordinance would also impact complaints that another elected official pressured someone within the President's ranks to hire or protect a political ally. It has been the experience of the CA and staff that County employees are generally highly reluctant to be identified as the

source of information that might shed light on political manipulations, and there would be few who would accept the challenge of making accusations under oath. One wonders why elected officials should be afforded protection that, practically speaking, comes close to full immunity against investigation by the IIG. The IIG is proposing an amendment to the ordinance that would eliminate that requirement. Adoption of the amendment would be an important showing of commitment to weeding out political discrimination by the Board of Commissioners.

b. Compliance Officer. Another function that must be effectively in place when the SRO is dissolved is some office or individual responsible for assuring compliance with the new hiring plan and all other procedures related to implementing the proscription against unlawful political hiring. This function has been the subject of much discussion in the development of the new hiring plan, and the County's representatives and CA largely agree that the position of Compliance Officer should be created and that the Compliance Officer would be responsible for oversight (through monitoring and auditing) of job postings, the screening of candidates for eligibility, determinations of who gets interviewed, the conduct of the interviews, and decisions on who gets hired. The Compliance Officer would also have responsibility for assuring that all employees in the Office of the President who will be involved at any stage of a hiring sequence have had training in appropriate practices. With some differences in opinion about the particulars, there is agreement that the Compliance Officer will have some responsibility for assuring the integrity of the exempt list and would be involved in the process that must be designed for adding to or deleting from that list.

We do not agree on one fundamental issue: whether the Compliance Officer

should be an exempt or non-exempt employee. The County takes the position that the Compliance Officer should be exempt because he or she will be an important policymaker, implementing the President's commitment to nonpolitical hiring practices for nonexempt positions. The CA is convinced that making this an exempt position could undermine the entire effort of preventing unlawful hiring practices. We have agreed to disagree in order to finalize a draft of a new plan, but this may be an issue that will have to be submitted to the Court. However it is resolved, it will be critical to get the position created and filled and working effectively before the SRO is dissolved.

5. Exempt List

Under the terms of the SRO, the new Hiring Plan must include an updated exempt list. The County has made an initial proposal to Plaintiffs' counsel, accompanied by updated position descriptions for each position proposed to be included on the list, and the President's attorney shared the proposal with the CA. Under the SRO, it is up to the County and Plaintiffs to attempt to reach agreement on the new list, and the CA's role is limited to making recommendations to the Court in the event there is disagreement. Nevertheless, the CA and the County's representatives have had productive discussions about some reservations the CA expressed, particularly as the proposal impacted positions in the HR Bureau and the Public Defender's Office. The County's representatives and Plaintiffs' counsel have met once to review the proposal.

It will be a significant step forward to get a new list in place. Over the years since the Court last approved a version of the list, there have been changes made through processes that make it difficult to understand what positions should or should not be included. The imprecision complicates efforts to monitor hiring practices. Moreover, a

combination of compromise, unapproved additions, and historical changes in how particular positions have evolved has resulted in a list somewhat short on principled line-drawing.

How the County conceives and uses an exempt list impacts all of County employment. It is apparent to the CA that at some times, some in the County have believed that the goal is to get as many positions as possible on the list to be used to meet the never-ending demands of political insiders seeking jobs for friends. When that is the goal, some position descriptions will be distorted to overstate the discretion and access to confidential policy information, while politicians feel free to fill those 'important' positions with friends and supporters who may or may not have the skills, judgment and reliability allegedly required. Previous reports filed by the CA recount the results: departments where all too many supervisors are not equipped or motivated to do their exempt jobs, requiring nonexempt employees to step up and do the work without the pay or the title, and without hope that they, being unconnected, will ever actually have a chance for promotion.

This would not happen if the County insisted that candidates for exempt positions have the skills, education, and motivation required to do the jobs well, and that incumbents in exempt positions be required to perform. The CA recognizes that there are some in leadership positions who understand the importance of doing just that. They are themselves capable and dedicated, and they do their best to bring in capable and dedicated employees and to insist that those under their supervision perform. But there are others who are resigned to things never changing, and still others who are heavily invested in things staying as they are.

One change under consideration which might help alleviate the effects of the unprincipled use of exempt employment to reward insiders is creation of a category of nonexempt positions for senior management, with modified hiring procedures. Senior managers would be defined to be limited to employees with supervisory authority or authority over a unique high-level function. Recognizing that so defined, the pool of qualified applicants would look different, the hiring manager would have more room to select which applicants are interviewed. A list of positions that would be subject to the modified hiring process would be attached to the new hiring plan, and some positions that are presently exempt would be converted to nonexempt senior management positions.

The change makes sense. It could be a useful step toward creating a capable management structure populated by present and potential nonexempt employees who have the skills and incentive to perform but no political connections. It could also be misused because the altered hiring procedures will eliminate the risk that a politically favored candidate would be randomly eliminated from consideration, and it would give hiring managers more room to select that candidate for the position. To avoid misuse, it will be important that the other procedures required under the hiring plan be carefully enforced, especially screening for eligibility, interviews of a minimum number of candidates by panels of at least three with objective scoring criteria, and audit of the hiring managers' selections for who gets interviewed and who is hired.

6. Health and Hospital Systems

In May 2008, the County Board created the Health and Hospital System, to operate under the authority of an independent Board of Directors. The Board, through President Warren Batts and Personnel Committee Chair Andrea Zopp has worked in

cooperation with the CA to design procedures that eliminate unlawful political employment practices and the debilitating effects those practices can have on the functioning of this system which is so critical to the residents of Cook County. In fact, the Board has gone considerably beyond what might be legally required of it, most notably, by deciding that political beliefs and affiliation are not important to effective performance of any H&HS position, and converting all H&HS positions, even top management, to nonexempt status.

Julia Nowicki was invited to address the Board and was kept informed as the Board conducted a search for a new CEO. The Board selected William Foley, who in May 2009, began the work of building a management team while adhering to the commitment that even top managers would not be exempt, so that the hiring process had to conform to Shakman procedures. Representatives of the Board, Plaintiffs' counsel, and the CA worked to agree upon an interim policy for hiring senior management that allowed for use of independent recruiters and more discretion by CEO Foley on which candidates would be interviewed, but continued to include monitoring of interviews.

In July 2009, the Board hired Deborah Tate as the Director of Human Resources for the Health System. The CA and Ms. Tate have met and talked several times in order to assure that, once resources are in place and the H&HS HR Bureau assumes full responsibility for hiring and other employment practices in the Health System, it will be poised to do so consistent with Shakman requirements. The CA provided to Director Tate the results of the desk audit of H&HS HR positions which was in process at the time Julia Nowicki filed her last report. Training in Shakman practices for the full management team is scheduled for mid-September.

It would be hard to overstate how important an independent, nonpolitical and health-based Human Resources department will be to the effective operation of the Health and Hospitals System. The System has thousands of positions, many of them in the upper salary tiers because of the licenses and skills required. There is no room for unqualified or underperforming employees. Literally, people will die if unqualified workers are hired or if workers in critical positions do not do their jobs. This is a System that is overwhelmed by the need for its services. The burdens that fall to those who work well and hard when others feel free not to do so are onerous.

It is also significant that Health and Hospitals System is a specialized endeavor, warranting staff with medical savvy and procedures that will allow the System to operate in a highly competitive employment market. A great number of the screening decisions which the CA monitors have questioned involved interpretation of medical credentials and experience, and it will be an important step forward to have the screening function performed under the auspices of medically knowledgeable management. Even in these difficult economic times, there are shortages of eligible employees for many medical positions, and strategies for posting and recruitment must be tailored to that reality.

During the desk audit interview, an assistant manager who performs some HR functions for the CORE facility told stories of multiple times when it took 7 or 8 months of persistent calls and memos to get open positions posted by the County's HR Bureau, followed by months of additional delay between the end of the posting period and when the facility would finally be sent a list of candidates to be interviewed. The assistant manager shared the belief expressed by other county workers that postings are sometimes delayed to build a reservoir of desirable jobs for when politicians come calling. She

agreed, too, that she had experienced the phenomenon of being 'gifted' with an employee the facility had not sought, who did not have the skills or experience necessary to do the jobs that were actually in need of being done. Not surprisingly, this apparently capable and dedicated employee came close to resigning out of frustration more than once.

The contrast under the new management is striking. Monitors who have observed the interviews for several of the top management positions, including Chief Medical Officer, report that the present medical managers who are taking part in the interviews seem intent upon conveying the new energy they have for their work to the candidates interviewing to be their leaders. These are employees who have stayed with the County despite frustrations because they believe in the mission and the clinical soundness of the County's facilities, and they are enthusiastic about being part of remaking the managerial structure. Candidates, who are themselves both impressive and enthused, consistently remark that the commitment to political independence is a critical piece of why they are interested in joining the System.

One of the many difficult challenges the independent Board and new management have faced is the fact that independence for the Health and Hospitals System is assured for less than two more years, through only June of 2011. There are discussions underway for extending that date, but if that does not occur, there will be additional challenges in achieving a status of substantial compliance. The plan at present is to work with new management on the assumption that the System's independence will continue well into the future, and that there will be a reliable commitment beyond the dissolution of the SRO to the policies and procedures being developed around that independence. If that assumption becomes unrealistic, the policies and procedures now being developed will

have to be reviewed and revised.

III. CONCLUSION

The CA shares the County's desire to have this process of oversight and planning conclude and to move on to an era when the SRO will be dissolved and the CA's office will no longer exist. The question remains how willing the County is to take the steps that are necessary to get there. The County has been diligent about instituting many of the necessary steps, particularly those involving development of new procedures. Thus far, the President has imposed discipline in cases where the Independent Inspector General has found misconduct and recommended action, including five cases involving exempt employees. The first case to recommend discipline because of misconduct involving unlawful political hiring practices is pending. It will be an important step for the President to impose consequences in that matter and in future cases involving Shakman related misconduct. Finally, the County has not yet taken any steps toward implementing fundamental change in the structure and operation of the Bureau of Human Resources. The President's lawyer is now assuring the CA that the County is willing to make such change happen, but there remains disagreement about the importance of HR staff being politically independent. The CA recognizes that once there is resolution as to which positions should be exempt, it is the President's prerogative to fill those positions. But the CA is convinced that if the President does so without making it crystal clear that anyone hired into those positions reports to the Bureau Chief and should expect to lose their positions if they fail to advance compliance with Shakman principles, the process for effecting the necessary change will be greatly delayed.

The remaining steps toward substantial compliance are these:

1. Hiring Plan:
 - a. Complete the draft of the new Hiring Plan (including any exhibits and listings of covered positions), submit the draft to Plaintiffs' counsel, reach agreement on all critical terms, and finalize and formalize the Hiring Plan.
 - b. Implement structural changes, including funding and staffing any new offices/positions called for by the Hiring Plan; draft and print revised forms that might be required and will be used.
 - c. Draft policies, standard operating practices necessary to implement the Hiring Plan.
 - c. Train HR staff, bureau chiefs, department heads and designated supervisors on the Hiring Plan's provisions.
 - d. Monitor implemented procedures for 3 to 6 months.
2. Finalize and post new exempt and senior manager lists.
3. Reform BHR.
 - a. Reorganize Bureau to create a transparent, consistent and organized hiring process for filling non-exempt positions, and assure that the process is implemented by managers who take seriously their responsibility to eliminate political factors and circumstances from that process.
 - b. Authorize Bureau Chief Sova to fill vacant and restructured HR positions with candidates who have formal HR training and/or experience and who are committed to change within the BHR and the County at large.
 - c. Reform screening function:
 - i. Draft written standard operating practices for making eligibility determinations.
 - ii. Train screeners on interpretation of screening criteria.
 - iii. Develop a system for tracking questionable decisions by individual screeners, reviewing the data for patterns of abuse, and holding screeners and their supervisors responsible for repeated errors.
4. Update position descriptions to match the duties and qualifications of the positions as they now exist, and redraft descriptions so that terms are used consistently.
5. Complete the purchase, design and implementation of on-line application software, and monitor its use for 3 to 6 months.

6. Implement recommendations by the OIIG and consider methods for bringing additional transparency to the actions that are and are not taken in response to the OIIG's recommendations.
7. Propose specific plans for addressing patterns of unlawful practices revealed through claims reports, monitoring reports, and department reports.
8. Hold hiring department managers accountable for making questionable hiring decisions, and take specific steps to reform those departments that have a history and pattern of abuse.
9. Health and Hospitals System.
 - a. Complete the organization and staffing of an independent HR department.
 - b. Negotiate and implement a hiring plan that is tailored to H&HS requirements, and monitor implementation for 3 to 6 months.
 - c. Update and revise position descriptions.
 - d. Implement on-line application function.
 - e. Develop policies and practices that will expand H&HS' autonomy, or have a plan for assuring that if H&HS is returned to the President's control, appropriate procedures will be in place that prevent the loss of the significant gains that have been made.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2009, I electronically filed the foregoing with the Clerk of the District Court using the CM/EFC system, which sent notification of such filing to the following e-mail addresses. I also certify that I mailed a copy of the foregoing on September 14, 2009 to those individuals without e-mail addresses on file with the District Court to the mailing addresses provided below via U.S. Mail from 69 W. Washington Blvd. Suite 840, Chicago, Illinois, as follows:

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