

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

MICHAEL L. SHAKMAN and)	
PAUL M. LURIE, <i>et al.</i>,)	Case No. 69 C 2145
Plaintiffs,)	
)	Wayne R. Andersen
v.)	United States District Court Judge
)	
DEMOCRATIC ORGANIZATION OF)	Sidney I. Schenkier
COOK COUNTY, <i>et al.</i>,)	United States Magistrate Judge
Defendants.)	

**December 4, 2009 REPORT OF THE MONITOR REGARDING STATUS OF CITY'S
SUBSTANTIAL COMPLIANCE**

The events detailed in this Report constitute serious violations of the City's Hiring Plan. It should not, however, be read as an indictment of all of the City of Chicago's employees and their efforts to follow the rules and implement meaningful changes. Many City employees have worked closely and cooperatively with the Monitor's office over a long period of time and, without that assistance, the progress made toward Substantial Compliance could not have been achieved. The process of moving the City toward Substantial Compliance is fluid and it is inevitable that there will be obstacles, as well as successes. This Report focuses on recent obstacles.

Without a transparent and honest monitoring of the City of Chicago's employment practices, there can be no assurance that the City's employment practices will not revert to the illegal hiring/promotion schemes which were uncovered by the United States Attorney's Office in 2005. In an effort to establish such a system, the City, the Plaintiffs, and the Monitor's office spent more than eighteen months negotiating the City's 2007 Hiring Plan.¹ Much of those negotiations concerned the provisions contained in the "Compliance" section which were painstakingly drafted, revised, and re-revised numerous times. This section was intended to create a hiring compliance system that would replicate the Monitor's office's function to ensure future compliance with the City's Hiring Plan and the law after court oversight ceases. One of the key components of that section requires that complaints, investigations, violations, and other information about hiring irregularities be reported to the Department of Human Resources

¹ After the first eighteen months, the parties then briefed the dispute over the placement of the compliance official (the "HPCM") responsible for hiring compliance, which took several additional months. We are *still* negotiating the Hiring Plans for the Chicago Police Department and Fire Department, which were expected to have been completed almost two years ago.

(“DHR”), the Department of Law (“DOL”), and in certain instances, the Inspector General’s Office (“IGO”) by the Office of Compliance (“OCX”).² As we have explained in various filings, adherence to the reporting requirements in the Hiring Plan is essential to the City’s ability to achieve Substantial Compliance. Failure to document complaints and problems results in an environment where everyone has “plausible deniability.” Without a record of the rules, violations of the rules and consequences for violations, the response to violations is “I did not know the rules,” “the rule was not clear,” etc. As noted in the IGO’s October 26, 2009 Report to Court regarding the City’s continuing hiring violations committed through the use of alleged contractors, the IGO stated “we note that this case illustrates how seriously ineffective the City’s approach to implementing policies relating to common-law employees and contractor hiring has been.” October 26, 2009 IGO Report to the Court, at 29. The reporting and documentation requirements in the Hiring Plan were intended to increase the effectiveness of policies, provide notice to employees of policies and violations, and create an institutional memory *in writing*, so that future compliance would be increased and the ability to credibly deny knowledge of the rules and violations would be eliminated or reduced. These requirements were also key to establishing transparency in employment practices—something the City has previously lacked.

Recently, this office discovered that OCX has failed to follow the reporting requirements in the Hiring Plan, which constitutes a violation of this Court’s orders. In isolation, this failure would not likely have been of major significance. Here, however, the violations were repeatedly identified to OCX and it was provided numerous opportunities to correct the violations. As explained below, OCX not only failed to remedy the violations, it also repeatedly made misleading statements to this office in response to questions about its compliance with the Hiring Plan. Thus, we were compelled to send a formal memo outlining the violations to the City and the Plaintiffs. Since our formal notification of the violations, on November 12, 2009, OCX has offered no comprehensive explanation or justification.

The series of events described below are not isolated nor are they misunderstandings. Moreover, although the factual details are extensive, the problem is simple—the Hiring Plan *requires* that hiring violations and irregularities get reported—OCX failed, repeatedly, to do so. After this office uncovered the violation described immediately below, we undertook a preliminary review of other representations made to this office or in public filings and quickly identified several other inaccurate or incomplete assertions made by OCX.

This is not the first time our office has received misinformation from the City; however, it is the most significant instance. Over the past almost two years, we have had a close working relationship with OCX and we have repeatedly expressed public and private support for OCX’s authority and independence. Notably, OCX is supposed to assume this office’s function post-

² This Report refers repeatedly to the obligations of OCX. In many instances, Hiring Plan obligations are specifically set out for the Hiring Process Compliance Manager (“HPCM”) in OCX. Because the Monitor’s office works with the HPCM, the Executive Director of OCX and the First Deputy of OCX jointly on many of these issues, this Report refers to OCX’s reporting obligations as a whole, except as otherwise specified.

Accord. Thus, OCX's violation of the Hiring Plan and its attempts to cover up the violation goes to the heart of the City's ability to attain Substantial Compliance under the *Accord*.

1. DHR Deputy Commissioner Investigation

Part of the Hiring Plan provides that complaints or discovery of irregularities get investigated and reported on by either OCX or the IGO. This office routinely sends memos to the City outlining complaints that we have received and believe require more investigation based on our initial evaluation and inquiry.

In September of 2008, the Monitor's office sent a memo regarding complaints received about a DHR Deputy Commissioner to the then DHR Commissioner Homero Tristan, Corporation Counsel Mara Georges, and OCX Executive Director Tony Boswell. See Attachment 1, Exhibit A (Sept. 18, 2008 e-mail and memo).³ After some debate about who should conduct an investigation into the complaints, OCX asserted and the parties agreed that OCX would investigate and report on the matter. Between October of 2008 and December of 2008, Victoria Daniels, the HPCM,⁴ conducted interviews regarding the complaints and began preparing a report. She completed a "Draft" of her investigation report on April 29, 2009, right around the time the DHR Deputy Commissioner was terminated for a different Hiring Plan violation. The Monitor's office had also reported this new Hiring Plan violation to the HPCM. However, the Monitor's office did not make a recommendation as to how to address any of the violations. When the City terminated the DHR Deputy Commissioner, it failed to document its reason for the termination or the circumstances surrounding the violation. However, in its First Progress Report to the Court, dated June 1, 2009, OCX asserted that it recommended the termination of the DHR Deputy Commissioner.

After the DHR Deputy Commissioner's termination, during a May 5, 2009 meeting, the Monitor's office requested that OCX finalize and distribute its investigation results and report regarding the September 2008 complaints pursuant to the Hiring Plan. OCX Executive Director Boswell questioned the need to finalize the report in light of the fact that the DHR Deputy Commissioner had already been terminated and mentioned that any such report would be subject to the Freedom of Information Act ("FOIA"). In response, the Monitor's office explained that the City's failures to document violations, the remedy of violations, and the reason for terminations is a recurring problem within the City and that the Hiring Plan and OCX's role under the Plan is to encourage transparency in the City's employment practices. The Monitor also explained that the fact that the DHR Deputy Commissioner was terminated was not an excuse not to finalize and distribute the report, especially in light of the fact that there were no

³ All identifying information regarding the complainants or the subject of the complaints has been redacted and/or changed within the body of Attachment 1 and all Exhibits thereto.

⁴ In the Hiring Plan, the HPCM is supposed to be the equivalent of and have the same duties as the Monitor and is intended to replace her and her office's function post *Accord*.

other documents explaining the reasons for her termination. Boswell agreed to finalize and release the report.

On May 11, 2009, Daniels emailed a “Draft” report to the Monitor’s office dated April 29, 2009 and copied Boswell and OCX First Deputy Mark Meaney. *See* Attachment 1, Exhibit B (May 11, 2009 e-mail and April 29, 2009 “Draft” memo). In a June 17, 2009 meeting, the Monitor again raised concerns that OCX was not finalizing and distributing its reports to DHR and DOL, as required by the Hiring Plan, and specifically noted that her office had not received confirmation that the “Draft” DHR Deputy Commissioner Report had been finalized and distributed. Boswell again raised the question of whether it was necessary to finalize the Report, as the individual at issue had been terminated. In response, the Monitor again explained that ensuring transparency in the City’s basis for employment actions is a crucial function of OCX’s duties and is necessary to ensure future compliance. In addition, the Monitor explained that a record of the violation and remedy would create a precedent for future corrective actions, prevent the employee from being rehired at some later date and was *required* under the Hiring Plan.⁵ Simply sending a “Draft” was insufficient—it defeated the purpose of creating a paper trail demonstrating that the City was investigating and addressing Hiring Plan violations, which is a crucial component of the City’s ability to attain Substantial Compliance with the *Accord*. Subsequently, at a June 23, 2009 meeting, Daniels stated that her reports had all been sent to DHR, DOL, and the IGO. At this point, the Monitor’s office believed that a final version of the DHR Deputy Commissioner Report had been distributed.⁶

In an effort to confirm the Report’s finalization and distribution, the Monitor’s office made the following efforts:

1. On June 29, 2009, the Monitor’s office requested via email confirmation of the DHR Deputy Commissioner Report distribution. *See* Attachment 1, Exhibit C (June 29, 2009 e-mail). No response was received.⁷
2. On August 25, 2009, the Monitor’s office requested during a meeting a copy of the *finalized* DHR Deputy Commissioner Report (and another report that was purportedly finalized and sent) and the transmittal email showing the distribution. Daniels stated that she thought she had already sent the confirmation and perhaps it went to the wrong email box. The Report and e-mail were not provided.

⁵ Although the City maintains a “Do Not Hire” list for employees that have been terminated for cause, that list has not been consistently utilized.

⁶ It was later discovered that Daniels had sent the “Draft” report to DOL, DHR and IGO on June 22, 2009. Presumably, the Monitor’s office was not copied on that email because OCX was aware of our continuing concern that the “Draft” was never *finalized* and distributed.

⁷ As noted in its July 16, 2009 Report of the Monitor Regarding Status of City’s Substantial Compliance, by the time the July 16, 2009 Report was filed, the Monitor believed that OCX had rectified its prior deficiencies in report distribution and finalization (including with regard to the DHR Deputy Commissioner Report).

3. On September 21, 2009, the Monitor's office informed Executive Director Boswell that it still had concerns about report distribution and specifically asked again for a copy of the *finalized* DHR Deputy Commissioner Report. No response was received.
4. On October 6, 2009, the Monitor's office again asked Daniels for the *finalized* Report and the transmittal email showing the Report was distributed. No response was received.
5. On October 20, 2009, the Monitor's office again informed Boswell that OCX reports were not being *finalized* and *distributed* pursuant to the Hiring Plan and specifically raised as an example the DHR Deputy Commissioner Report. In response Boswell stated that OCX "HAS released ALL reports in final and copied to you." (emphasis in original). See Attachment 1, Exhibit D (Oct. 21, 2009 e-mail). Daniels then sent an email stating "I know I provided the final report on [the DHR Deputy Commissioner]." See Attachment 1, Exhibit E (Oct. 21, 2009 e-mail). Despite these assurances, the Report itself and the transmittal email were not provided.
6. On October 21, 2009, the Monitor's office sent another email discussing OCX's reporting requirements under the Hiring Plan and stating, again, that this office never received the *finalized* DHR Deputy Commissioner memo. See Attachment 1, Exhibit F (Oct. 21, 2009 e-mail). In response, Daniels stated again that the final Report was sent to the Monitor's office. See Attachment 1, Exhibit G (Oct. 21, 2009 e-mail). The Report itself, however, was not provided.
7. Again on October 21, 2009, the Monitor's office sent an email stating in part:

To be clear, the [Sexual Harassment Officer] memo, [DHR Deputy Commissioner memo] and [another report recommending termination for a different employee] memo were all given to us with a prominent "Draft" stamp, indicating that they were, in fact, drafts. As Noelle stated, those reports, in final form, must be transmitted to DHR, DOL and our office (and in some instances the IGO). We have no evidence demonstrating that the memos were finalized and sent to the appropriate parties. As you know, I have asked you on several occasions to forward the [DHR Deputy Commissioner Report] in final form, as it was transmitted to the City. The letter that we have is addressed to Noelle and ccs Mark and Tony and stamped "Draft." To the best of our knowledge, it was never sent to DHR or DOL. ...

...I think that we all need to sit down tomorrow and resolve this. It would be helpful if you would bring the final versions of all those memos and the dates they were sent to DOL, DHR and us. See Attachment 1, Exhibit H (Oct. 21, 2009 e-mail).

8. On October 22, 2009, the Monitor's office met with Boswell, Daniels and Meaney. The requested DHR Deputy Commissioner Report and transmittal email (or any of the other requested reports) were not provided.
9. On October 29, 2009, the Monitor's office again requested several finalized memos and verification that the memos were distributed to DHR, DOL, and IGO. The email stated in part "we are in the middle of writing a report and really need the information before Tuesday." *See* Attachment 1, Exhibit I (Oct. 29, 2009 e-mail). No reports were provided.
10. On October 30, 2009, during a conversation with one of the Monitor's attorneys, Daniels explained that she was having trouble finding the transmittal email for the DHR Deputy Commissioner report that would verify the distribution to the appropriate parties due to city-wide switch in email programs. Again, no Report was provided.

As of October 30, 2009, the Monitor's office had made at least 10 requests for a *finalized* Report and evidence that it had been distributed. On at least five occasions, OCX affirmatively represented that the Report had been finalized and distributed. In other instances, OCX simply did not respond. Notably, during the various requests and responses described in items 1 through 10, *no one* in OCX – not Boswell, not Daniels or Meaney (who was present for some discussions and copied on some emails, although not involved in the responses to our requests for the Report) – ever stated that they would not finalize and distribute the Report for particular reasons or could not finalize and distribute the Report for particular reasons. Nor did anyone suggest that they were too busy with other duties. (Indeed, the report was done, with the exception of removing the "Draft" designation). Rather, Daniels and Boswell repeatedly assured the Monitor's office that the Report was, in fact, finalized and distributed.

If there had been some compelling reason to deviate from the Hiring Plan on this particular Report, the Monitor's office certainly would have considered that. No reason, however, was provided. Instead, on October 30, 2009, OCX faxed what appears to be an altered document to the Monitor's office and asserted that it was the finalized Report and that it had been distributed. *See* Attachment 1, Exhibit J (April 29, 2009 memo, faxed to Monitor's office Oct. 30, 2009).

2. Concerns Regarding Authenticity of October 30, 2009 Report Sent by OCX

On October 30, 2009, Daniels faxed to the Monitor's office a document that was purported to be the "Final Report" on the DHR Deputy Commissioner that purportedly was distributed to DHR, DOL and IGO. *See id.* The October 30, 2009 Report was identical to the earlier supplied "Draft," except the cover letter was now signed by Daniels, the "Draft"

distinction was removed from each page, the individuals on the “cc” list now included Mara Georges, David Hoffman, Homero Tristan (and others) and one sentence was added to the end of the Report. *See id.* The new sentence read:

For this reason and in furtherance of the City’s forward movement towards substantial compliance, OCX recommends that [DHR Deputy Commissioner] should no longer have a material or managerial role in the City’s Hiring Plan. *Id.* at 11.

In light of the history of the events described above, the Monitor’s office had concerns about the authenticity of the report and therefore requested an electronic copy. *See* Attachment 1, Exhibit K (Oct. 30, 2009 e-mail). An electronic copy would have allowed someone to determine when the changes in the report (removing the “Draft” designation) were made. Daniels claimed that she could not locate an electronic copy of the document.

Upon further inquiry the Monitor’s office concluded the following:

- 1) A “Draft” of the report had been sent to DHR, DOL, and the IGO on June 22, 2009 which was identical to the “Draft” provided to the Monitor’s office and copied only to Tony Boswell and Mark Meaney;
- 2) According to the revised “cc” list, one of the parties that received the Final Report was Homero Tristan, the previous Commissioner of DHR;
- 3) If the “Final Report” had indeed been finalized and distributed as represented, the time frame for the distribution was limited to a two week period – between the June 22nd date the “Draft” was sent and July 7, 2009, the last day of Homero Tristan’s employment;
- 4) If the “Final Report” had actually been finalized and distributed during that time period, OCX’s failure to provide the Monitor’s office the requested report for a full five months is inexplicable; and
- 5) Daniels’ assertion that she did not have an electronic copy of the document was without explanation.

Notably, OCX was unable to identify even a general time frame for the Report’s purported distribution in final form. Thereafter, the Monitor’s office made the following inquiries and was told that none of the contacted parties listed on the “Final Report” Daniels faxed over had any record of having received the purported “Final Report.” Specifically:

- 1) the IGO, after reviewing David Hoffman's archived emails and files and other IGO files, determined that it had no record of ever receiving the Final Report;
- 2) DHR, after reviewing Homero Tristan's archived emails and files and other DHR files, determined that it had no record of ever receiving the Final Report;
- 3) Corporation Counsel, after reviewing her own emails and files, determined that she had no record of ever receiving the Final Report.

Finally, on November 10, 2009, after it became apparent that the Monitor's office was continuing to pursue this matter, OCX distributed finalized copies of the DHR Deputy Commissioner Report and other requested reports to the required recipients. *See* Attachment 1, Exhibit M (cover letter dated November 9, 2009 and attached Report). The cover letter stated:

Per your request, the attached document has been finalized and copies will be provided to all parties per the City of Chicago's New Hiring Plan.

If you have any questions, please feel free to contact me directly. Thank you for bringing this matter to my attention.

Id. There was no indication in the November 10, 2009 cover letter (dated November 9, 2009) as to the history of this office's attempts to get OCX to comply with the Hiring Plan during the preceding six months.

3. Attempts to Seek Explanation from OCX

After the Monitor's office compiled the above described information and reviewed the material comprehensively, we concluded that OCX had intentionally misrepresented material matters to this office. Despite the apparent violation, because of our relationship with OCX, our repeated support for OCX to the Court, our desire to see OCX succeed, as well as the good work that OCX had done in the past, we decided to send a comprehensive memo to the Office of Compliance requesting an explanation or any additional or mitigating factors that we should consider in assessing the matter. Thus, on November 12, 2009 (at the same time Corporation Counsel announced the City would be seeking dissolution of the *Accord*), we sent the memo with supporting documentation to OCX, DOL, and the Plaintiffs (and later to the Mayor's Chief of Staff). *See* Attachment 1 (Nov. 12, 2009 memo).

After not receiving any response, the Monitor emailed Boswell stating that we needed to address the issues raised. In response, Boswell stated that the matter had been "resolved" because Daniels sent the finalized memos out on November 10, 2009 (there were three memos

for which we had been seeking proof of finalization and distribution). On November 17, 2009, the Monitor and her counsel attended a city-wide meeting that included OCX (Boswell, Meaney, Daniels and OCX Deputy Director Torrick Ward), Mara Georges, Mayor's Chief of Staff Paul Volpe and representatives from DHR and IGO. At this meeting, the Monitor questioned Daniels and Boswell about the apparent violations and misrepresentations made to our office. Neither provided a response that actually addressed the issues raised. The Monitor then asked for Volpe and Georges to weigh in on the violation. Both expressed reluctance to get involved for fear of appearing to impede OCX's independence.⁸

Since the November 17, 2009 meeting, the Monitor's office has made separate requests to Daniels and Boswell to provide a comprehensive written response to the November 12, 2009 memo. In both of those conversations, the Monitor has asked if there is some other reason the Report was not finalized and distributed and both Daniels and Boswell have denied any such concern. Boswell and Daniels were both specifically asked if the failure to finalize the report was an attempt to avoid production of the document pursuant to a FOIA request. The inquiry was made due to Boswell having made a reference to FOIA in an earlier discussion regarding this particular report. Both denied that intent.

4. Boswell December 3, 2009 Response

On the eve of the filing of this Report, Boswell provided a written response. *See* Attachment 2 (December 3, 2009 Letter). With respect to the DHR Deputy Commissioner Report, Boswell essentially asserts that there was a misunderstanding between our respective offices and states:

Once I was made aware that there was disconnect between what you received and what [Daniels] maintains she sent you, I intervened and directed the HPCM to simply resend any and every final report for any and every issue that we have addressed.

...

I cannot offer input or insight into other electronic mails, communications or other conversations that took place between your office and the HPCM.

This response ignores the following information that was attached to the November 12, 2009 Memo including:

- the June 29, 2009 email request from Monitor's office stating we "were not clear regarding which of your investigation reports have been finalized and distributed

⁸ Part of that reluctance is likely due to the fact that complaints have previously been made against the Mayor's former Chief of Staff and DOL for interfering with OCX's independence. Moreover, the Monitor's office reported concerns about DOL's interference with OCX's independence in its March 5, 2009 Report.

to the City....please confirm that the [DHR Deputy Commissioner Report and others]... were **finalized and distributed.**” (emphasis added). *See* Attachment 1, Exhibit C (June 29, 2009 email).

- the October 21, 2009 email from the Monitor’s office to Daniels (copied to Boswell) stating:

We continue to have a disconnect when discussing reports. Under the HP, reports (in final form) must go to DOL and DHR, as well as our office. **It is not sufficient to provide Tony a “final” report if the “final” report does not go to the above identified departments.** Thus, although I understand that the recent report re: SHO was finalized, the final version was clearly not provided to Paul, Mara or us—although we were certainly led to believe that it had been. ...

I do know that I have never seen a final memo that actually included the [DHR Deputy Commissioner Report].” *See* Attachment 1, Exhibit F (Oct. 21, 2009 email).

- A subsequent October 21, 2009 email from Monitor’s office to Boswell:

“We have no evidence demonstrating that the memos were finalized and sent to the appropriate parties. As you know, I have asked you on several occasions to forward the [DHR Deputy Commissioner report], in final form, as it was transmitted to the City. The letter that we have is addressed to Noelle and ccs Mark and Tony and stamped "draft." To the best of our knowledge, it was never sent to DHR or DOL.” (emphasis added). *See* Attachment 1, Exhibit H (Oct. 21, 2009 email).

Boswell’s response also ignores the in-person meetings held on August 25, 2009, September 21, 2009, October 20, 2009, and October 22, 2009 (among others) where this office repeatedly and emphatically explained that we were *not* receiving finalized reports and that we did *not* have any evidence that they had been distributed. In short, the evidence does not support the contention that “once [Boswell] was made aware that there was a disconnect” he intervened and directed the HPCM to resend certain memos.

The fact that Boswell instructed the HPCM on November 9, 2009 to send the finalized memos does not resolve the matter. Boswell’s response fails to address the altered document provided to our office October 30, 2009, purporting to be the “Final Report” and the fact that the document 1) was never sent and 2) cannot be provided in an electronic format. In short, the response does little to clarify the sequence of events that led to this Report.

5. A FOIA Request Was Made and Report Not Produced

During the preparation of this Report, the Monitor's office contacted DHR to determine if, in fact, a FOIA request for the DHR Deputy Commissioner's file had been made, and if so, what information was produced. Documents produced by DHR confirm the following:

On May 28, 2009, the terminated DHR Deputy Commissioner submitted a FOIA request seeking, among other things:

Any and all documentation of Office of Compliance investigations regarding me including interview notes, and reports.

On June 15, 2009, DHR responded but did not include any documents related to OCX or any investigation done by OCX (which DHR did not have at that time). On June 22, 2009, the employee sent a follow up email stating:

I know that there were definitely memos from the monitor about me and at least one investigation each with the IG and Compliance.⁹

On June 30, 2009, the DHR Information Officer replied that she had followed up on the former DHR Deputy Commissioner's email and was told "that there are no other documents." (At this point in time, the DHR Commissioner *did* have the "Draft" report, but DHR did not include it in response to the request). The DHR Information Officer explained to this office that when responding to a FOIA request, the department receiving the request does not, as a matter of course, seek documentation outside that particular department and that she did not contact OCX or the IGO to seek responsive documents.

This office has no evidence to suggest that OCX's actions were an attempt to avoid producing documents pursuant to FOIA. However, the fact that the Report was not finalized and sent to DHR as required did result in the employee's inability to obtain such documents.

6. Additional Items Recently Identified

After presenting OCX with the November 12, 2009 memo and receiving no response, the Monitor's office reviewed a limited number of other representations to the Monitor's office and/or the Court, to see if there were any obvious discrepancies that we had previously failed to identify.

⁹ The employee had also asked for any memos from this office that had been sent to DHR. At that time, there were two separate memos from this office to DHR, one which was sent directly to DHR, and one which was sent to OCX who forwarded it to DHR. To the best of our knowledge, neither of these was provided in response to the FOIA request.

A. Failure to Report Escalations and Irregularities

First, the Monitor's office reviewed the HPCM Quarterly Report for September of 2009, which is supposed to be a summary of certain activities for the year to date and is required under the Hiring Plan.¹⁰ The September 2009 Report states that there have been zero "escalations" (which are identifications of potential hiring or employment irregularities) and only two "irregularities" in the hiring process identified by OCX for the *entire* year of 2009. On November 17, 2009, the Monitor's office alerted OCX to the fact that it had failed to identify a number of escalations of which the Monitor was aware. After bringing this fact to OCX's attention, OCX indicated that, in its opinion, the numbers were correct. Thus, according to OCX, there have been only two irregularities identified, pursuant to the Hiring Plan, for 2009. In Boswell's December 3, 2009, letter to the Monitor's office, he asserts that "[i]t is our contention that your interpretation [of the Hiring Plan] is an inaccurate reading of the Hiring Plan and also fails to consider a number of other reporting dynamics within the Department of Human Resources." *See* Attachment 2 (December 3, 2009 letter).

Under the Hiring Plan, the escalation procedure permits Recruiters and Analysts to "raise concerns about a decision of a Hiring Manager or Hiring Authority to successively higher levels of oversight and authority for resolution within the City." Hiring Plan, p. 14. In addition, "[t]o the extent that the HPCM and his/her staff identifies an irregularity [in the course of their duties] the escalation process...shall be followed." Hiring Plan, p. 15-16. After reviewing any matter escalated by DHR or discovered by the HPCM, the HPCM is required to "report on issues identified, the HPCM's review of same, and the proposed or actual resolutions of those escalated matters." Hiring Plan, p. 16.

In our July 16, 2009 Report of the Monitor Regarding Status of City's Substantial Compliance, the Monitor's office reported that OCX had failed to distribute and/or finalize some of its reports, and "urge[d] OCX to continue to document all of its reviews of potential violations, especially when the review results in a recommendation for corrective action." July 16, 2009 Report of the Monitor. In our November 5, 2009 Report of the Monitor Regarding Status of City's Substantial Compliance, the Monitor's office again raised the issue of OCX's failure to finalize and distribute reports, and indicated that we had concerns that the Monitor was not receiving notification of all escalations. November 5, 2009 Report of the Monitor. In that Report the Monitor's office wrote that "OCX's reporting duty is central to the goal of maintaining a fair and transparent hiring system at the City" and that OCX "must serve as a model of transparency and compliance to other City departments." *Id.* The Monitor's office detailed extensively the provisions of the Hiring Plan which elucidate OCX's reporting duties

¹⁰ These Quarterly Reports are supposed to be substantive summaries of OCX's monitoring and auditing activities. When the Hiring Plan was drafted, the parties envisioned that these Reports would be more than a simple recitation of figures, without any factual development or analysis. Rather, the expectation was that these Reports would be similar to "Monitor Reports" so that the public would be aware of the items identified, documented, and remedied (when possible).

and laid out why “[o]ral recommendations or written recommendations without accompanying facts are insufficient.” *Id.*

OCX contends that there have been two irregularities in 2009. After a preliminary audit of e-mails and memos from 2009, the Monitor’s office identified twenty escalations and/or irregularities that should have been reported in the Quarterly Reports:

- On February 6, 2009, an OCX employee drafted a report for Boswell identifying allegations of misuse of the intern process in the Department of Environment. The letter indicates that these issues were being referred to the HPCM.¹¹
- On March 30, 2009, OCX identified a problem with an OEMC hire sequence in which a consensus meeting had been conducted to select candidates before all aspects of the test and interview had been completed by the candidates.
- On April 7, 2009, a Recruiter sent an e-mail to OCX regarding a former employee who was alleging an improper lay-off. On April 22, 2009, the Recruiter informed our office via an e-mail that OCX was conducting the investigation into this matter.
- On April 15, 2009, our office sent a memo to the HPCM regarding a DHR Deputy Commissioner who had moved an applicant from ineligible to eligible despite the fact that she should not have had any role in determining the eligibility of candidates, and absent the required documentation to qualify the applicant for the position.
- On April 21, 2009, our office sent a memo to the HPCM regarding deficiencies with hire packets for the Senior Compliance Officer position in OCX.
- On or about April 22, 2009, the Monitor’s office notified the HPCM that the Chicago Fire Department had permitted candidates to pick up oral examination materials after the deadline for picking up the materials had passed.
- As of May 5, 2009, OCX had been notified by the Monitor’s office that Field Vehicle Investigator recalls in the Department of Streets and Sanitation had been handled improperly. Streets & Sanitation and DHR had not followed appropriate procedures in bringing back these individuals, and had not given several individuals a chance to accept the opportunity.
- On June 8, 2009, the HPCM sent a memo to Boswell alleging falsification of documentation by DHR with regard to acting up.

¹¹ This potential violation was never reported to our office by OCX.

- On June 10, 2009, a Recruiter sent an e-mail to the HPCM notifying her about an intern who had been recalled into the Department of Administrative Hearings in violation of the appropriate procedures.
- On June 25, 2009, a Recruiter sent an e-mail to the HPCM with the subject heading “Escalation.” The Recruiter raised concerns about improper procedures being used to hire an Executive Secretary II in the Department of Finance.
- On July 14, 2009, an OCX employee sent a memo to Boswell regarding the potentially improper layoff of an employee in the Department of Information and Technology.
- On July 16, 2009, the Monitor’s office sent an e-mail to the HPCM referring a complaint to her by an individual claiming that a co-worker had been spared from layoff due to improper influence exerted by management on her behalf.
- On July 17, 2009, a Clerk in DHR sent an e-mail to the HPCM indicating that two Department of Public Health employees had been processed incorrectly.
- On July 18, 2009, a Clerk in DHR sent an e-mail to the HPCM informing her that an employee was displacing another employee and moving into a higher paying position through the reduction-in-force.
- On July 21, 2009, a Recruiter sent an e-mail to the HPCM entitled “Escalation.” The Recruiter raised concerns about potential pre-selection in a Police Legal Officer II hiring sequence.
- On August 4, 2009, the HPCM informed the Monitor’s office that PCOII’s in OEMC were acting up into other titles. She also raised concerns about a Clerk III who had been acting up in Family and Support Services for years.
- On August 11, 2009, OCX sent a memo to All Department Heads in the City regarding accurate reporting of acting up activity. The memo indicated that OCX had found a number of violations of the Acting Up policy in a recent audit.
- On August 24, 2009, a Recruiter informed OCX that a department had requested that she take down an active posting and make changes to it, and that the Recruiter had complied with the request.¹²

¹² Because the recruiter failed to initiate the escalation herself, Daniels sent an email stating, “I am speechless and truly perplexed about [the employee’s] perception of the escalation process. DHR has provided training, Compliance has provided training and the Monitor’s office has discussed this same issue with the staff on multiple occasions that included things that should be escalated...”

- On or about August 26, 2009, the HPCM notified the Monitor's office that the Commissioner of Streets & Sanitation had contacted OCX about detailing an Alderman's employee into his office.
- On September 25, 2009, the Monitor's office sent an e-mail to the HPCM informing her that the Chicago Fire Department had started approximately 20 employees on September 16, 2009 absent approved paperwork.

We are not suggesting that all of these items are *necessarily* actual violations of the Hiring Plan (although some of them certainly are). Whether these items are considered escalations or irregularities, they are clearly problems to which OCX was alerted to and should properly identify in its Quarterly Reports.

B. Contractor Violations Not Remedied

Second, the Monitor's office reviewed OCX's representations that it had remedied contractor violations City-wide with two exceptions. In its audit of contractors functioning as common law employees at the City of Chicago, OCX determined that 40 such individuals were working in the Department of Water. In October of 2009, OCX publicly reported that the City "no longer exercise[d] direction and control over individual contractors in all departments except the Department of Environment (DOE) and the Department of Cultural Affairs (DCA)." In November 2009, the Monitor's office conducted a preliminary audit of one department (the Department of Water Management) to ensure that those violations had been remediated as reported by OCX. The Monitor's initial audit, based on documentation provided by the Department of Water Management, indicates that 36 of those 40 contractors are still working at the City, performing the same functions as they performed before and reporting to City employees.

CONCLUSION

If the DHR Deputy Commissioner Report were the only instance in which OCX failed to finalize and distribute reports pursuant to the Hiring Plan, this issue would not be as serious. This is not, however, the only instance. For example, at a City meeting on October 14, 2009, in response to the Monitor's question as to whether a different memo had been finalized, Daniels held up a document (which did not contain the prominent "DRAFT" designation) and showed it to the Monitor and her counsel, *suggesting* that it had been finalized, although she later admitted that a final version had never been distributed. In another instance, where a report was drafted recommending the termination of another employee, this office repeatedly asked for confirmation that the report had been distributed pursuant to the Hiring Plan. It had not been. Moreover, as discussed above, OCX's interpretation of the Hiring Plan, were it accurate, would render the reporting requirements in the Hiring Plan meaningless. That was not the intent of the parties in drafting the Plan, nor does it conform to the language in the Plan.

In Boswell's December 3, 2009 letter, he states:

"The fact that a combination of misunderstandings and differing priorities is immediately turned into a claim of active misrepresentation and an allegation that we attempted to conceal information about a corrective action process (that the City actually got 100% right) is baffling." See Attachment 2 (December 3, 2009 letter).

Unfortunately, the series of events described above do not constitute "misunderstandings" or "differing priorities." Moreover, the Monitor's office did not "immediately" turn this matter into a claim of active misrepresentation. On the contrary, we gave OCX numerous and repeated opportunities, over a period of more than five months, to cure the problems. We sent numerous emails explaining our concerns. We have had repeated meetings to discuss these concerns. We repeatedly laid out OCX's reporting duties under the Hiring Plan in various filings and OCX failed to correct the problems. Not until we indicated that we were filing a public Report, did OCX even respond to our November 12, 2009 memo. If any other department had acted in a similar manner, we would likely have taken action sooner.

Moreover, the Office of Compliance *is not* just "any other department." Rather, it is the entity empowered to enforce compliance with the Hiring Plan. If it cannot follow simple rules requiring reporting now, under the auspices of a court appointed monitor, then it is difficult to see how it could perform that function post-*Accord*.

Finally, this Report will undoubtedly result in much finger pointing and accusations of self-interest, etc. The fact is that this office has been a long-standing supporter of the Office of Compliance. We cannot, however, let our relationship with individuals interfere with our obligation to report accurately and publicly on the matters relating to our monitoring function. To do so would be to apply the rules differently to different people because of our relationship with those people—the very thing we are seeking to eliminate within the City.

Respectfully submitted this 4th day of December, 2009.

_____/s/ Noelle C. Brennan_____
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