

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

<b>MICHAEL L. SHAKMAN and</b>	)	
<b>PAUL M. LURIE, <i>et al.</i>,</b>	)	<b>Case No. 69 C 2145</b>
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>Honorable Wayne R. Andersen</b>
	)	
<b>DEMOCRATIC ORGANIZATION OF</b>	)	
<b>COOK COUNTY, <i>et al.</i>,</b>	)	
<b>Defendants.</b>	)	

**MONITOR’S REPORT AND RECOMMENDATIONS  
REGARDING CITY OF CHICAGO’S PROPOSED “NEW PLAN”**

Establishing a new hiring plan that minimizes the potential for unlawful patronage and promotes a lasting positive change in the City of Chicago’s employment practices is a tremendous undertaking. After lengthy deliberation and negotiation, the *Shakman* Decree Monitor (the “Monitor”) and the City were able to reach agreement on the vast majority of the components in the City’s recently proposed “New Plan.” Notwithstanding the significant effort on both sides, however, agreement on all aspects of the proposed New Plan could not be reached. Specifically, the Monitor and the City have reached an impasse on two important elements of the City’s proposed New Plan. First, the City disagrees with the Monitor’s determination that monitoring and auditing of the City’s compliance with the New Plan be handled by the existing Audit Division of the Inspector General’s Office. Second, the City disagrees with the Monitor’s determination that all contacts by Alderman, the Mayor’s Office or any other elected officials regarding the employment of a particular job seeker or employee remain transparent and reported.

**I. Procedural History and Posture**

Section II of the Agreed Settlement Order and Accord (the “Accord”) provides that the City of Chicago shall create a New Hiring Plan (the “New Plan”) to replace the existing Detailed Hiring Plan. Section II also provides that the *Shakman* Decree Monitor shall facilitate the development of the New Plan. Section II (D) specifically provides that if “the City and the SDM reach an impasse regarding any component of the New Plan, the SDM shall report to the Court the nature of the unresolved issue(s) and shall make a written recommendation as to how to resolve such issue(s) for the Court’s determination.” After allowing for the Parties to be heard on such objections, as agreed to by the Parties, the Court shall then rule on the Monitor’s recommendations. Accord, Section II (D). The City and the Plaintiffs have all expressly agreed that “such ruling(s) shall become part of the New Plan.” *Id.* Pursuant to Section II (D) of the Agreed Settlement Order and Accord, the Monitor submits this report to the Court outlining the nature of the unresolved issues related to the New Plan and the Monitor’s recommendations for the Court’s resolution of such issues.

**II. Auditing and Monitoring Functions Established in New Plan Should Rest With the Existing Audit Division of the Inspector General’s Office.**

If there is to be any real prospect for eradicating unlawful patronage practices within the City of Chicago, the City’s New Plan must include a vigorous and effective compliance system. Effective compliance is the *key* to the overall success of the New Plan. The Monitor and the City agree that an effective compliance framework must provide for auditing and monitoring of the City’s hiring processes. To that end, under the City’s New Plan, a new Hiring Process Compliance Manager and staff (hereafter referred to collectively as the “HPCM” or “Hiring Process Compliance Manager”) would be charged with responsibility for such auditing and monitoring functions. The Monitor supports the City’s proposal regarding the scope of

monitoring and auditing duties to be performed by the HPCM. However, the Monitor strongly opposes the City's proposal to house this new HPCM outside of the existing Audit Division of the Inspector General's Office (hereafter referred to as the "IGO").

The primary purpose of the auditing and monitoring functions to be performed by the HPCM under the proposed New Plan is the *detection of problems*. For that reason, these functions properly belong within the Audit Division of the IGO, which is best suited to most effectively perform such functions within City government. This is true for several important reasons. First, the effective detection of problems related to the City's compliance with a New Plan requires a multifaceted, but integrated approach. Second, the effective detection of compliance problems requires sufficient independence to resist political and/or other pressures to downplay such problems. As further explained below, these compliance components become even more crucial when viewed through the prism of the City's history of non-compliance with the *Shakman* Decree.

**A. Effective Detection of Problems Requires a Multifaceted and Integrated Approach.**

The City's proposed new hiring plan separates the monitoring and auditing compliance functions from the existing investigative function already established in the Inspector General's Office. As explained below, divorcing the monitoring and auditing functions from the investigative function will result in weakening the effectiveness of *all* compliance components. Ferreting out the correct information needed to meaningfully assess the City's compliance with any new hiring rules will be no easy task. The sheer size and complexity of City government poses a real impediment to the effective detection of non-compliance with such hiring rules. Therefore, the most effective hiring compliance system must collect and integrate information obtained in three ways: (1) from investigating allegations or suspicions of non-compliance; (2)

from selectively monitoring hiring activities as they take place; and (3) from conducting audits of documentation and processes related to hiring.

After more than two years of overseeing the City's current hiring practices, there is no question that the integration of these functions within the Monitor's office has been crucial for detecting compliance problems. Investigating, monitoring, and auditing the hiring process are highly interrelated activities—they each involve the detection of problems and irregularities. And when combined, they create a synergy that would otherwise not exist, producing results far greater than the sum of the separate parts. Simply put, the combined knowledge gathered through investigating complaints, monitoring interviews and testing, and auditing relevant records and processes allows for better detection of problems. Better detection of problems unquestionably will lead to better prevention and correction.

Under the Accord, the Inspector General's Office has been given responsibility for conducting investigations into complaints of unlawful political discrimination in employment practices occurring after the Accord's entry. Currently, the Inspector General's Office has assigned a group of its investigators to focus on investigations into political discrimination allegations.<sup>1</sup> Additionally, the Inspector General's Office has an existing Audit Division that is already authorized to do the type of monitoring and auditing that is contemplated in the City's proposed New Plan. Notably, the City's Inspector General Ordinance gives the Inspector General's Office "the power and duty" to investigate employees and programs "in order to *detect and prevent* misconduct, inefficiency and waste." § 2-56-030(b)(emphasis added). Beyond investigations, the Inspector General's Office is also given the "power and duty" to "review programs," to identify "potential for misconduct," and to recommend policies and methods for

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<sup>1</sup> To date, however, the Inspector General's Office has not received the additional staff or funding to carry out the duties imposed on it by the Accord.

preventing misconduct, all in order to “promote . . . integrity in the administration of [City government] programs and operations.” §2-56-030(c). There is no question that the Inspector General’s Office has been vested with the power and duty to detect non-compliance with City rules and regulations through multiple avenues.<sup>2</sup>

Notwithstanding the fact that the Inspector General’s Office is currently equipped and specifically designed to perform the functions of monitoring and auditing, the City proposes creating a new City department (the “Office of Compliance”) to house the HPCM. This Office of Compliance shall be headed by a new “Executive Director of Compliance” (who has not yet been identified) who will be vested with the power to hire and oversee the HPCM and her staff. Notably, the City’s original proposal called for the HPCM to be hired by and report to the City’s currently existing Chief Compliance Officer. The Chief Compliance Officer, along with her team known as the “Compliance Unit,” currently reports to the Corporation Counsel and is a subdivision within the City’s own Law Department. The Monitor expressed numerous misgivings about such a framework, not the least of which was the apparent and potentially serious conflicts of interest that could result (not to mention, the appearance of this system resulting in little more than the “fox watching the henhouse”). The City has since revised its proposal, but its current proposal remains objectionable for several reasons.

First, the City’s proposal continues to segregate responsibility for investigating complaints on the one hand (which *must* be handled by the Inspector General’s Office pursuant to the Accord), from the functions of monitoring and auditing the hiring process, on the other

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<sup>2</sup> The City has previously objected to permitting the Inspector General’s Office to handle monitoring and auditing of the hiring process based on the contention that the IGO is required to keep *all* information it obtains from monitoring and auditing confidential. That is incorrect. Nothing in the City’s Inspector General Ordinance requires information obtained from monitoring and auditing to be kept “confidential.” On the contrary, only “*investigatory* files and reports” are confidential. *See* Inspector General Ordinance at § 2-56-060 Investigative Reports (emphasis added).

hand. As detailed above, separating these detection tasks will unnecessarily hamper the City's ability to identify problems and detect irregularities. The need for centralizing these compliance functions is particularly crucial in the present environment, where there is substantial and frequent movement of employees in and out of positions throughout the City.

Such movement has previously resulted in the loss of relevant information related to compliance, which, in turn, makes compliance even more challenging. For example, the City recently sought to reinstate an individual that had been barred from having any personnel responsibilities by the City's former Chief of Staff in 2005. Now, according to the City, no one is aware of *why* the individual was moved out of personnel duties in the first instance. Thus, the City has proposed simply reinstating her to those functions despite the fact that it has been unable to discern the reasons for her initial removal. As this example illustrates, records and documentation regarding the detection of past and present compliance problems must be centrally maintained and available to facilitate the detection of on-going and future compliance issues.

Another problem with dispersing compliance functions as proposed under the City's New Plan is that along with placing the HPCM outside of the IGO's Audit Division, the City has also proposed to set up a separate complaint and investigation system. This will undoubtedly create terrible confusion about jurisdiction over and responsibility for investigations and will likely result in incomplete information for both entities. As explained above, the Inspector General is *already* tasked with receiving complaints and conducting investigations of patronage allegations in employment practices.

The City contends that its proposed "alternative" complaint system will not conflict with the Inspector General's Court mandated duties because the HPCM will simply forward all

complaints of patronage to the Inspector General for investigation. This contention relies on the assumption that on its face, every complaint will be readily discernible as either a patronage complaint, or a non-patronage complaint. Yet, many complaints received by the Monitor are highly nuanced. They do not always clearly suggest a patronage violation. However, after investigation or when reviewed in light of information from other complaints, or from monitoring or auditing, patronage problems that require further investigation often emerge. The expectation that the new Hiring Process Compliance Manager, who will have limited knowledge and background in patronage practices in the City of Chicago, should or would be capable of exercising that type of discretion is unrealistic.

The City has suggested that this problem can be resolved by requiring that the HPCM provide the IGO with a written log of complaints it has received. This does not redress the deficiencies in the City's proposal. First, the ability to review a log that by definition will contain only very basic information does not provide for the same level of shared information that would exist by housing the HPCM within the IGO. Moreover, the HPCM's ability to conduct meaningful investigations will be hindered by being separated from the IGO and denied the benefit of its existing body of information and expertise. By placing the HPCM outside of the IGO, s/he will be unduly constrained in the ability to fully investigate complaints. The City's proposal promises to inhibit the flow of information that is necessary for detecting problems.

By placing the Hiring Process Compliance Manager within the Audit Division of the Inspector General's Office, one office would serve as the clearinghouse for all complaints related to the New Plan. Nothing would prevent the Hiring Process Compliance Manager from forwarding any complaints that are wholly unrelated to patronage to the appropriate City department for further review or action.

Placing the monitoring and auditing functions within the IGO simply makes most sense. The IGO has the necessary knowledge, experience, powers and duties to detect potential problems in the City's compliance with a New Plan through investigations, audits, and monitoring.

**B. The HPCM Must Have Independence from Political and Other Outside Influences and Pressures.**

Independence from the Mayor's Office, the Department of Law and the other operating departments is fundamental to the success of the HPCM. The ability to provide a full and accurate assessment of all detected problems, even when pressured to minimize or downplay such problems, is indispensable for an effective compliance system under the New Plan. Readiness and willingness to provide a full and accurate description of any problems detected is essential if compliance is to be achieved.

The City's proposal to house the HPCM in a new Office of Compliance provides little to no assurance that the HPCM and his/her staff will have the independence necessary to engage in meaningful monitoring and auditing of the City's hiring practices. Although the City suggests that the proposed Office of Compliance will have and exercise the same independence and credibility as the Inspector General's Office, this argument is entirely speculative. First, because the Office of Compliance will be new, it will likely lack the credibility or authority to deal effectively with the City's various established departments. The expectation that a newly created department would have the ability to deal effectively and forcefully when trying to detect problems within some City departments is unrealistic. Second, the proposed Office of Compliance has no track record, history or experience with monitoring employment practices in the City or dealing with the unique difficulties in eliminating patronage practices and enforcing a hiring plan.

In assessing any compliance group's ability to be successful in ensuring compliance with the New Plan, one must recognize that compliance with hiring rules is often at odds with the hiring department's desire to make its own hiring selections. Robust compliance will inevitably frustrate an individual or department's goal to "get things done." Ensuring real compliance will require the ability to withstand pressure from departments and individuals who may view particular rules or requirements as obstacles to their work.

For example, when the Monitor reported an apparent manipulation of a hiring sequence in the Office of Emergency Management Communications ("OEMC"), the City initially resisted taking any remedial action because the position involved was a "critical" safety position. After extensive discussions and several meetings, the City finally agreed that the hiring sequence should be redone with new candidates because the individual selected did not meet the position's stated minimum qualifications. Although it seems obvious that the City would want the best candidate possible (or at least one that met the minimum qualifications) for a so-called "critical" slot, this is but one example of the conflict between ensuring compliance with the hiring rules and a department's desire to fill positions. This demonstrates the point that any compliance group must have the ability to challenge all levels of employees in all City departments. Accordingly, unquestionable independence from the Mayor's Office, the Department of Law and the other operating departments within the City is critical for the effective monitoring and auditing of the City's hiring.

By placing the HPCM in a new department, which has no track record, history or experience in monitoring and auditing the City's hiring practices, the City's proposal reduces the likelihood that the HPCM will be capable of exercising the independence necessary to engage in meaningful compliance activities. The limited success of departments outside of the IGO in the

area of oversight of *Shakman* principles attests to this fact. For instance, even after the Monitor's appointment by the Court, the Mayor's Office and the Law Department have had repeated difficulty obtaining compliance from various departments with agreed upon hiring rules. In one case, the Monitor notified the City that a department had engaged in extensive and blatant manipulation of the hiring rules to promote two pre-selected individuals into higher paid positions. It was then agreed upon by the Monitor, the Mayor's Office and the Law Department that, at a minimum, the hiring sequence would be redone with different interviewers. Yet, more than four months later the Monitor discovered that despite the parties' agreement, these two individuals had simply continued to "act up"<sup>3</sup> into the positions, thereby receiving both the higher position's pay and the benefit of additional experience, which were both denied to the other qualified candidates. The Inspector General's Office, by contrast, *does* have a track record of uncovering and investigating hiring improprieties and has demonstrated its independence from the remainder of the City.

The City's proposed Office of Compliance's independence may also be encumbered by the fact that many, if not most, of its employees will be current City employees. The City admittedly intends to move various existing groups of City employees into this "new" Office of Compliance. These employees currently work in the City's Law Department, Department of Human Resources, and other departments. Moreover, the City's proposal leaves open the possibility that the new "Executive Director" of the Office of Compliance and the Hiring Process Compliance Manager may be hired from within the City. The City has proposed only that it will "make every effort" to fill those positions with individuals that are not current City employees.

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<sup>3</sup> "Acting-up" refers to a process where an employee is selected to perform the duties of a higher level employee, usually at the higher rate of pay.

The benefits of hiring a non-City employee to fill the HPCM role are obvious. First, hiring a non-City employee decreases the chance that pre-existing loyalties and/or pressures will unduly influence compliance activities. Notably, current City employees who perform compliance-type functions have sometimes expressed reluctance to follow up on violations that involve or implicate City employees with whom they are friendly or for whom they feel some other allegiance. A similar reluctance is evident when the alleged wrongdoer holds a powerful position or has a close relationship with senior officials within the City.

Even were the City to commit to selecting a non-City candidate for the HPCM position, the concerns expressed herein would not be eliminated as long as the HPCM was segregated from the Inspector General's Office. Under the City's proposal, the HPCM will be an island surrounded by incumbent City employees who may have competing agendas. As recent history reflects, the pressures to conform and be a "team player" or to acquiesce in wrongdoing are often overwhelming. It bears repeating that the violations of the *Shakman* Decree revealed during the recent criminal proceedings against City employees and identified in the Monitor's First Report to the Court took place despite the presence of a designated "*Shakman* Compliance Officer" within the City and despite allegations that violations were reported to officials within the Personnel Department and the Law Department at the time, without any meaningful response.

Ensuring the HPCM's independence from the executive branch will also better protect City employees who report and/or refuse to participate in hiring plan violations from possible retaliation. The risk of retaliation is real and must be minimized. For example, recently a City employee reported to the Monitor that she was aware of a serious alleged *Shakman* violation that was not reported to the Monitor, despite the Court Order requiring such reporting. When the identity of this employee was discovered by the City, the employee reported that individuals in

the Mayor's Office retaliated against her by attempting to exclude her from meetings, attempting to have her stripped of certain duties and attempting to isolate her from the rest of her working group. An explanation given by one City employee for this differential treatment was that the complaining employee "could not be trusted."

As demonstrated above, ensuring maximum independence for the new Hiring Process Compliance Manager and her staff is key to future compliance with City hiring rules. The Inspector General's Office has already established itself as a credible force that is willing to exercise the necessary independence. Although any compliance group will face difficulties securing adherence to the rules in some cases, using an existing structure with a track record of independence and established authority makes most sense and increases the chances of success going forward. Rather than gamble that the newly created Office of Compliance will be vested with the necessary independence and credibility to engage in meaningful compliance, the preferable option is to simply house the Hiring Process Compliance Group in the Inspector General's Office.

### **C. The City's Past Compliance Record Cannot Be Ignored**

When considering where to place responsibility for future monitoring and auditing functions designed to detect compliance problems, one cannot ignore the history of the City's non-compliance with prior *Shakman* decrees which led to the appointment of the Monitor. Recent federal indictments, guilty pleas, and criminal convictions related to the City's hiring practices make plain that the City's hiring was improperly manipulated for political purposes. Blatant violations of the prior *Shakman* decrees (now judged also to have involved criminal conduct) were occurring within the executive branch, and with the knowledge of many department officials, but no successful effort was made to halt these practices by the Law

Department, the Mayor's Office or any other member of the executive branch. The evidence adduced at the trial of *USA v. Robert Sorich, et al.* demonstrated that these practices were not hidden, yet the violations continued.

The Monitor's own preliminary study of the City's hiring practices revealed that compliance with the *Shakman* Decree was essentially non-existent. The City's "*Shakman* Compliance Manager" claimed to have never received a single complaint alleging non-compliance with the *Shakman* decrees. Yet, interviews of individuals involved in hiring revealed that violations of the Detailed Hiring Plan and the *Shakman* Decree had been reported to officials within the Department of Human Resources (formerly the Department of Personnel) and the Law Department. There is no indication, however, that any meaningful remedial or preventative actions were taken to ensure compliance going forward. As recently as 2005, City employees and managers were relying on complicated color-coded lists for awarding City jobs and promotions in exchange for political activities. Even now, resistance and resentment towards reforms designed to curb patronage in employment practices still exists.

Placing responsibility for auditing and monitoring functions with the IGO is also prudent in light of the City's more recent record monitoring its own compliance under the *Shakman* decrees. As discussed in the Monitor's December 15, 2005 Report, the *Shakman* exempt list that was maintained by the Law Department and regularly "updated" with the Court through official filings contained significant errors and omissions. Even after the appointment of the Monitor, the City continued to violate the *Shakman* decree by appointing individuals into "exempt" positions which simply did not exist. To "correct" this problem, a former Deputy Chief of Staff violated the decree further by moving open *Shakman* exempt slots from one department to another, an action prohibited by the Orders entered by the Court.

Similarly, although the City agreed to and the Court subsequently ordered that individuals involved in the hiring process would certify, under penalty of perjury, that such hire was free from political influence, the City initially failed to comply with this agreement and Court Order. Only after a routine audit by the Monitor's staff, was it discovered that the City was not complying. Specifically, this audit revealed that hundreds of certifications were missing for completed hires and only partial certifications existed for others.

The City's current inability to rectify non-compliance with its "Acting Up" policy exemplifies why "audits and investigations must go hand in hand." As detailed in the Monitor's December 5, 2006 Annual Report, "Acting Up" is the informal tap-on-the-shoulder promotion practice used in City employment to give individuals higher rated jobs or less onerous duties, often at significantly higher pay, through a completely discretionary and non-competitive process. Many individuals were allowed to act into higher paying positions in violation of the *Shakman* Decree for a period of years. As noted in the Annual Report, the cost to the City of allowing extensive use of "acting up" practice surpassed \$1.3 million during a ten month period.

The Monitor learned of the City's systemic acting up *Shakman* violations through numerous complaints. Complainants alleged that individuals across City departments were selected to "act up" allegedly because of political connections or clout. The Monitor's investigations into these allegations led to the audit of certain pay records and departments, as well as to closer monitoring of certain interview and hiring sequences. The ability to investigate, monitor and audit the acting up practice, and to effectively share and integrate information derived from all of those sources, resulted in a comprehensive understanding of the extent and breadth of the acting up violations. It also resulted in the ability to identify new or ongoing violations.

It is worth noting that the City was actually aware of this “acting-up” practice *prior* to the Monitor’s report of the problem in the Spring of 2006. It appears, however, that no action was taken by the individuals responsible for ensuring compliance with the *Shakman* Decree to address or remediate these extensive violations. Although these same individuals remained responsible for ensuring the City’s compliance with the *Shakman* Decree, only after months of insistent and repeated requests from the Monitor was any effective action taken to begin to address the violations.

On November 24, 2006, after approximately six months of negotiations, the City agreed to implement a new written policy governing the use of “acting up” which was jointly drafted with the Monitor. Notwithstanding the new policy, the Monitor continued to receive complaints about violations, resulting in a preliminary audit of the City’s compliance with its Acting-Up policy earlier this year. This simple audit revealed that substantial violations of the new Acting Up policy continued to exist across the City. Despite the Monitor’s repeated reports of these problems, the violations of the new policy continued. It was not until March of 2007, after the Monitor informed the City that she had no choice but to report these continuing violations to the Court, that the City gave responsibility for rectifying the ongoing “acting up” violations to the City’s new “Compliance Unit” in the Law Department.<sup>4</sup>

Shortly afterwards, the Monitor was assured that the ongoing extensive violations previously identified had been eliminated. Notwithstanding the City’s assurances, a new audit by the Monitor’s office in May of 2007 revealed that many of those violations had not, in fact, been cured. At present, more than a year and one half after the Monitor’s initial report to the City about the acting up violations, and despite repeated promises and assurances, the City’s

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<sup>4</sup> The Compliance Unit is headed by the Chief Compliance Officer, who reports to the City’s Corporation Counsel.

ability to comply with the new Acting Up policy remains deficient. This has happened for several reasons.

First, responsibility for auditing the City's compliance with the new policy has been shared or transferred between the Law Department's Compliance Unit and the City's Department of Human Resources at various points. This has resulted in significant delay and confusion with respect to auditing adherence to the new Acting Up policy. The sharing and/or transferring of duties has also led to incomplete information within any one group in the City regarding its compliance with the policy. In fact, for several months the Department of Human Resources was under the incorrect impression that the Compliance Unit was reviewing certain documentation that explained or justified a deviation from the policy, while the Compliance Unit assumed that the Department of Human Resources was handling this. Consequently, *no one* at the City was reviewing this documentation for several months. Acting up assignments that were made in contravention of the policy simply went unquestioned during this time.

Further complicating the City's ability to comply with its Acting Up policy is the fact that responsibility for investigating violations of the policy that are allegedly based on patronage are handled by the Inspector General's Office. Yet, only until recently did the City begin to share information related to acting up violations with the Inspector General's Office.

Similarly, when the Compliance Unit was recently informed by a personnel director that, in her opinion, acting up assignments were being awarded based on political clout in her own department, the Compliance Unit failed to report that information to the Monitor. This failure occurred despite the Court's order requiring such reports be made and despite the fact that the City knew the Monitor's office was auditing Acting up violations. The excuse for failing to report the alleged violation was that the incident was reported to the Inspector General. This

incident illustrates the danger in the City's proposal to separate compliance functions and to establish competing complaint and investigation processes.

The City's failure to ensure compliance with its Acting Up policy demonstrates why the City's proposal to house the HPCM outside the Inspector General's Office is faulty. Sharing of compliance duties will inevitably result in less compliance. The Monitor's recommendation that the HPCM be inside the Inspector General's Office will eliminate some the problems illustrated by the City's inability to adequately comply with the Acting-Up policy.

**D. The City's Opposition to Housing the HPCM under the Inspector General's Office Is Unfounded.**

Over several months of negotiations, the City has consistently raised certain objections to the Monitor's recommendation that the HPCM be housed in the Inspector General's Office. First, the City contends that the Inspector General's Office may not share all compliance-related information with the City, which would leave the City unaware of issues which would otherwise be effectively addressed by executive action if the HPCM reported to the Executive Director of the Office of Compliance. Closely related to this first objection, is the contention that the City's ability respond immediately to hiring irregularities (for example, where an immediate suspension of a particular hiring sequence is warranted) will be compromised if the HPCM is housed in the Inspector General's Office.

The Monitor's proposal directly addresses these two concerns by requiring that the HPCM share the results of all monitoring and audit functions with both the Department of Human Resources and the Department of Law. In fact, at the City's request, the IGO was previously asked for its position on this point. The IGO confirmed its agreement to this protocol in writing directly to the City. Accordingly, there is no question that all audits and review of information conducted by the HPCM will be reported to the Commissioner of Human Resources

and the Department of Law. If the HPCM identifies any specific or systemic violations of the City's hiring processes, such violations are also to be reported promptly to the Commissioner of Human Resources and the Department of Law. If the HPCM identifies any irregularities during her monitoring function, such irregularities will be promptly reported to the Commissioner of Human Resources and/or the Department of Law.

Additionally, all matters flagged during the hiring process (via the "escalation" procedure in the City's proposed plan) are reported simultaneously to the Commissioner of Human Resources and to the HPCM. The Corporation Counsel also receives notice of any escalated matters that are referred to the Inspector General's Office for a formal investigation. If and when matters are referred to the Inspector General's Office for a formal investigation, any findings and recommendations of the Inspector General are reported to the City. Nothing in the Monitor's proposal would interfere with or inhibit the City's ability to promptly and immediately respond to any hiring irregularity. Thus, the City's concerns about access to information and its ability to respond quickly to violations are fully addressed.

The City also claims that housing the HPCM in the Inspector General's Office will interfere with the City's ability to "manage" the hiring of its employees. However, the Monitor's proposal provides that the Commissioner of Human Resources in consultation with the Department of Law has the *exclusive* right to determine whether and when a hiring sequence should be halted or cancelled entirely and the exclusive authority to take corrective action or impose discipline. With respect to allegations of political discrimination or matters that are referred to the Inspector General's Office for formal investigation, the City retains its current right to *reject* the Inspector General's findings or recommendations. The HPCM's role is only to

*recommend* corrective actions. These safeguards should sufficiently alleviate the City's concerns regarding its ability to manage its hiring process.

Most recently, the City has also contended that its proposed compliance framework is consistent with "best practices" for compliance programs. The "best practices" referenced by the City, however, are taken from the corporate context, not the government context. Those practices do not readily apply in the governmental setting. Notably, governmental entities typically contain inspector general's offices, which is not true in corporate settings. It is precisely the absence of independent oversight bodies like inspector general's offices that has required recent and drastic reforms in corporate "best practices" in the area of compliance.

Ironically, one of the City's principle citations for its arguments regarding its proposed compliance framework has been to the Federal Sentencing Guidelines. The City's reliance on the Federal Sentencing Guidelines to support its proposal to house the HPCM outside the Inspector General's Office is misplaced. The Federal Sentencing Guidelines provide that an organization (like a corporation) that is found guilty of criminal conduct may be entitled to a reduction in its "Culpability Score" at the time of sentencing or may be eligible for "Probation" if it can demonstrate it has an effective compliance and ethics program. *See 18 USCS Appx § 8B2.1*. Notably, to have an effective compliance program for these purposes, the organization must "(1) exercise due diligence to prevent and detect criminal conduct; and (2) otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law." *Id.* Thus, although the Guidelines are inapplicable in the present context, the description of "an effective compliance program" mirrors the current duties of the City's Inspector General's Office.

The compliance model that is proposed here by the Monitor is actually consistent with “best practices” within government settings, where inspector general’s offices **typically** have responsibility for performing monitoring and auditing functions. In fact, in June of 2005, before the new Inspector General was hired, the City itself had drafted a Proposal for “Reinventing the Inspector General’s Office” which recommended that the Inspector General’s Office “build [a] proactive capacity” that includes “regular and consistent examination” of City departments. *See* “Reinventing the Inspector General’s Office—A Proposal – 2005,” attached as Exhibit A. The City’s proposal explained that the “Best Practices Research” demonstrates that New York City, Los Angeles and the Department of Justice (among others) all utilize the Inspector General’s Office to conduct proactive audits and to monitor compliance with internal systems. It also specifically noted that the City of Chicago had “no meaningful capacity to systematically detect and root out misconduct, inefficiency or waste.” (emphasis in original). The City’s proposal contemplated allowing the Inspector General’s Office to operate as a “layer of independent oversight of departments to identify vulnerable internal systems that may lead to misconduct, inefficiency or waste” and to identify “problem employees who could compromise internal systems.” The City’s proposal further found that: “Regular Audits and Investigations Must Go Hand in Hand.” Since that time, the IGO has actually created just such an audit unit and has been provided resources for staffing such a unit through the City’s budget ordinance. It is clear that the Monitor’s proposal is not only consistent with best practices for governments, it is also consistent with a proposal previously supported by the City itself.

#### **E. The Monitor’s Recommendation for Resolution of the Dispute**

Based on all of the foregoing reasons, and after months of extensive deliberation and careful review of several possible compliance proposals, it is the Monitor’s conclusion that in

order for the New Hiring Plan and its compliance component to have any real likelihood of long-term success, the Inspector General's Office must have principal responsibility for conducting the monitoring and auditing functions under the City's New Hiring Plan. These compliance activities must be housed where they can be most effective—the Inspector General's Office. Any other placement will not only be substantially less effective, it will fail to engender any real confidence that the City's commitment to an honest and open hiring system is bona fide. It is vital in the present context to establish a compliance framework that has the most likelihood of success, as opposed to gambling on a framework that currently does not exist.

### **III. Transparency in Elected Officials' Involvement in Employment Matters Is Crucial to Effective Monitoring and Auditing the City's Compliance with the New Plan**

Apart from needing to provide the most effective compliance mechanism possible, the New Plan must also provide adequate transparency with respect to the involvement of any elected officials in the employment of any individual by the City (except, of course, for *Shakman*-exempt positions). Any contacts by Alderman, the Mayor's Office or other elected officials with the hiring departments or the Department of Human Resources regarding the employment of *a particular job seeker or employee* should remain transparent and be consistently reported to the HPCM. Currently, the Monitor receives reports of *all* contacts regarding all employment actions regarding particular individuals, regardless of whether such reports are deemed "improper" or not.

Under the City's current proposal, however, the degree of reporting that is currently in place is significantly reduced. The City's proposed New Plan only requires that a report be made to the HPCM when an improper contact based on political reasons or factors from any elected officials, including from Aldermen or from the Mayor's Office, be recorded on a log and

forwarded to the HPCM. The City's proposal requires each individual that receives an inquiry to determine whether the inquiry was improperly "based on political reasons or factors." This provision requires various individuals within different departments to determine independently what constitutes an improper contact based on political reasons or factors. Inevitably, different individuals will report or not report contacts based on his or her determination of what constitutes an "improper" contact. Requiring the reporting of all contacts eliminates the need to exercise discretion, which would otherwise result in inconsistent reporting.

Notably, some department heads have indicated that the mandatory requirement that they report all contacts by Aldermen to the Monitor has both reduced the number of contacts and has eliminated the pressure to comply with requests. Thus, continuing this practice of reporting all contacts is recommended.

#### **IV. Monitor's Proposed Plan**

The Monitor's revised New Plan is attached hereto as Exhibit B. As reflected in Exhibit B, much of the City's original proposal regarding the scope of duties and powers for the Hiring Compliance Manager and staff remains intact. The key changes provide for placing principal authority for monitoring and auditing functions related to the City's compliance with the New Hiring Plan within the Inspector General's Office. The Inspector General's Office is the obvious and appropriate choice for housing the HPCM: it has the legal authority to do these jobs; it has the duty to perform investigations in this area. This framework is consistent with the typical model for governments that combine oversight functions in the IGO to maximize overall compliance. In addition, the Monitor's proposal eliminates the words "based on political reasons or factors" from Section II paragraph 10 of the New Plan. In all other respects, the Monitor agrees with the City on the provisions contained in its New Plan.

Respectfully submitted this 27th day of September, 2007

\_\_\_\_/s/ Noelle C. Brennan\_\_\_\_\_

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