

**SUMMARY REPORT**  
**Inspector General's Office Case #'s 09-0481 and 09-0482**  
**June 26, 2009**

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**I. INTRODUCTION**

On March 5, 2009, the Shakman Decree Monitor ("Monitor") filed a report with the Court that, among other things, raised concerns regarding five hiring incidents. In a March 30, 2009 order, the Court stated that the Monitor was to refer the matters to both the Office of Compliance and the Inspector General's Office ("IGO"). On April 16, 2009, the Monitor provided the IGO with the information she had obtained regarding these five matters. The IGO has been conducting an investigation into these five matters since that time.

The IGO has concluded its investigation regarding two of those matters – both of which involve the failure of the Commissioner of the Department of Human Resources ("DHR") and other City employees to report contacts from elected officials to the Monitor and the Office of Compliance, as required by the Court's January 18, 2008 ruling on the City's Hiring Plan (the "Court Order"). Because the cases have similar allegations against the same individual, the IGO's findings and recommendations have been combined into one report.

**II. EXECUTIVE SUMMARY**

**A. *Failure to Report Letter from Alderman***

In January 2009, an employee with the Chicago Department of Public Health ("CDPH") was reassigned to a new work location in the Uptown area as a result of the City's reduction-in-force. The employee opposed the transfer and wanted to be either relocated downtown or laid off in lieu of working in the Uptown location. An alderman wrote a letter to the DHR Commissioner dated January 29 requesting that the employee, who lived in his ward, either be assigned to a downtown work location or be placed on the City's layoff list until such a position became available.

Under the Court Order, this letter clearly needed to be reported to the Monitor and/or the Office of Compliance. In the Order, the Court explained that it was rejecting the City's proposed rule that only "improper" contacts from elected officials be reported. The Court held that "the only effective way to monitor attempts to influence hiring on the basis of political reasons" was to require that *all* contacts by elected officials and the Mayor's Office regarding individual employment matters be reported. The Order therefore established an unequivocal rule placing an obligation on City employees to report such contacts.

The alderman gave the letter to a DHR Assistant Commissioner, who gave the letter to the DHR Intergovernmental Affairs Liaison. The Assistant Commissioner sent the DHR Commissioner an email the same day explaining the contents of the alderman's letter.

According to the Liaison's consistent statements to both the Monitor and the IGO, the Liaison told the DHR Commissioner about the alderman's letter no more than one day after the letter was received. A January 30 email from the Liaison to the Commissioner (asking to see the Commissioner about the alderman's request) and two emails to the Commissioner from his assistant (stating that the Liaison was waiting to see the Commissioner about an alderman) corroborate the Liaison's statements.

At this point, at least three DHR employees had seen or knew about the letter – the Commissioner, the Assistant Commissioner, and the DHR Liaison. Ironically, it was precisely these three DHR employees who had conducted training for aldermen on this issue in Fall 2008 with the Office of Compliance. At the training, the DHR Commissioner explicitly told aldermen that all contacts from them to DHR regarding individual employment actions would need to be reported to the Monitor and the Office of Compliance. In short, all three of these DHR employees clearly knew the hard-and-fast reporting rule contained in the Court Order.

Nevertheless, none of them reported the letter. Instead, the DHR Liaison forwarded the letter to the Law Department's lead attorney on *Shakman* matters to ask whether the letter should be reported. The Law Department Attorney did not get back to the DHR Liaison for some time and did not report the letter until much later.

Meanwhile, the DHR Liaison began to take steps to inquire about whether the employee could be helped as requested by the alderman. After consulting with the DHR Commissioner, the DHR Liaison spoke with the DHR Director of Labor Relations to ask whether the employee was eligible to be placed on the layoff list in these circumstances. He was told that she was not eligible. It appears that the inquiry about assisting the employee ended there, and in fact no assistance was given to the employee. (She ultimately was required to report to the Uptown location and when she did not, her employment was terminated.)

But at this point, the contact had still not been reported to the Monitor or the Office of Compliance. About three weeks later, the Law Department Attorney finally told the DHR Liaison that he would report the contact to the Monitor. The Law Department Attorney still did not report the contact, however. One week later, on February 26, 2009, after a meeting with the Monitor regarding an unrelated hiring violation, the Law Department Attorney finally reported the alderman's letter to the Monitor and the Office of Compliance.

When asked about this matter by the Monitor's Office in a phone conversation on March 3, the DHR Commissioner confirmed what the DHR Liaison said and the emails showed – that he had seen the letter close to the date it was delivered to DHR. He said that he had not reported it because he thought the letter fell in a “gray area.”

The Commissioner's failure to report the letter was a clear violation of the Court Order, and his attempt to defend this decision on the ground that this was a “gray area” is troubling, given that he is the head of DHR and administered training on this very issue. Had this been the extent of the DHR Commissioner's misconduct, we would have recommended a suspension of one to two weeks.

However, the DHR Commissioner made matters worse once the IGO investigation began. When the IGO conducted a tape-recorded, in-person interview with the DHR Commissioner two months after the Monitor's report, the DHR Commissioner changed his story. He said that his statements to the Monitor had been mistaken, because he had been flustered, and that in fact he was unaware of the letter until late February when the Law Department Attorney asked him if he had reported it and sent him a copy of the letter.

We find that the Commissioner's statements to the IGO investigators are not credible. His statements are inconsistent with his March 3 statement to the Monitor (which was documented by contemporaneous notes by an attorney in the Monitor's Office); with the consistent statements of the Liaison, who said he briefed the Commissioner shortly after the letter arrived; and with the emails, including one from the Assistant Commissioner that explicitly advised the Commissioner of the alderman's request.

If the Commissioner's statements to the IGO investigators were correct, then the Commissioner somehow managed to remain completely unaware of the alderman's letter for four weeks despite the fact that two of his staffers immediately took steps to brief him about the request (as any staffer in this situation would have), and despite the fact that any commissioner in this situation would not ignore two staffers and an assistant who were telling him that he needs to be briefed on an aldermanic issue. It would also mean that the DHR Liaison lied to the Monitor and the IGO or has a detailed memory of a briefing that did not occur; that the Commissioner ignores his emails; that the Commissioner gave completely false information to an attorney in the Monitor's Office; and that he failed to correct this false statement even after the Monitor's public report criticizing him for this.

We believe that the preponderance of the evidence shows that the DHR Commissioner was not truthful in his interview with IGO investigators. Because of his position as a commissioner, and as the head of the City's hiring department that is under extensive supervision from the Court and others, making false statements to investigators in this matter is especially significant. In addition, the Commissioner's changing stories and questionable credibility in this situation mean that it will be difficult to have confidence in the future that situations less straightforward than this one will be handled in an honest and appropriate fashion. Taken together, this is a very serious problem for the City.

It is therefore our recommendation that the DHR Commissioner be removed from his position. In our view, this is the appropriate result in light of his misconduct and the importance to the City of avoiding any integrity questions in this area.

In addition, three other individuals knew about the letter and failed to report it: the principal Law Department *Shakman* attorney, the DHR Assistant Commissioner, and the DHR Liaison.

The most serious failure involves the Law Department Attorney, since he is the City's point person on this issue. Although he ultimately reported the contact, he did so one month after learning of the contact and in a manner (subsequent to an interview with the Monitor regarding another potential violation) that does not inspire confidence that he will report these

matters promptly in the future. The attorney appears remorseful about the delay and says it was in part caused by some tumult in his personal life and his perceived need to check with the Corporation Counsel first. While these may mitigate the significance of his failure to report, we still find that his failure to report this contact given the clear-cut Court Order is significant, especially in light of his position. We therefore recommend a suspension of a short period of time, either one day or, if the Law Department determines that it cannot impose a suspension short of one week (even if the attorney were to waive any rights under the Fair Labor Standards Act), one week.

The DHR Assistant Commissioner and DHR Liaison also failed to report the letter, despite the fact that they obviously knew about the Court Order, since they helped administer training on it. We find that this failure violated the Order, but we believe a written reprimand is sufficient discipline. Their initial actions in immediately notifying their Commissioner and (in the Liaison's case) the Law Department Attorney were prompt and reasonable actions. However, we believe that after time had passed and the letter had still not been reported, they had an independent obligation to ensure that the letter was actually reported, especially since they had helped train on this issue and therefore knew that the reporting rule was clear-cut.

***B. Failure to Report Contact From City Clerk***

The Monitor discovered that the job duties of Administrative Assistant III's ("AA III") in the City Clerk's Office were very different than the AA III job description. This prompted a "reclassification audit" by DHR. The DHR Analyst assigned to the audit analyzed what the AA III's did in the Clerk's Office and concluded that the proper title / job description for these positions was License Enforcement Aide, a lower-graded position. The DHR Commissioner then sent a letter to the City Clerk informing him of this conclusion. The City Clerk wrote a letter back disagreeing with the audit and arguing that the proper title / job description was closer to that of a Revenue Investigator, which would have been a slightly higher-graded position. Although the City Clerk is an elected official, this was obviously a step taken by the City Clerk as a department head and would be a typical step for a department head in this situation.

A few days later, the DHR Commissioner emailed one of his top deputies (with a cc to the DHR Analyst) stating that the Clerk "is upset regarding a reclass[ification decision]. [C]an we address it and make it happen for him, and if we can't please let me know what the problems are." Later that day, the DHR Analyst wrote a memo to the Commissioner explaining why the City Clerk's suggestion was not possible and why her original analysis was correct.

The DHR Commissioner continued to question the DHR Analyst about the findings in the audit, and the DHR analyst was asked to write another memo analyzing the pros and cons of the City Clerk's proposal. She wrote that there were no pros and explained the cons. A meeting with the City Clerk, the DHR Commissioner, and relevant staff followed. The Clerk's Office said that the AA III's were now doing additional duties which were more consistent with an equal or higher-graded position. The DHR Commissioner directed a second DHR analyst to do a "re-audit" in light of this new information. The second analyst reached the same conclusion as the first DHR Analyst. Ultimately, the DHR Commissioner sent another letter to the City Clerk

reaching the same conclusion as his initial letter – that the AA III's would need to be downgraded to License Enforcement Aides.

Because the City Clerk is an elected official, his contacts with DHR about the reclassification audit fall within the language of the Court Order requiring that such contacts be reported. Nevertheless, the DHR Commissioner failed to report any of the City Clerk's contacts to the Monitor or the Office of Compliance. This violation of the Court Order is significant when considered in light of the DHR Commissioner's prior political relationship with the City Clerk – the Commissioner was the head of a political action committee that endorsed and financially supported the City Clerk and other candidates in the 2007 municipal election. This should have made the DHR Commissioner especially sensitive to perceptions of bias and led him to report the contacts. It should have also prompted him to interact with his staff more carefully, as his actions relating to the reclassification audit could have reasonably been perceived as pressure to grant the City Clerk's request.

We find that although the DHR Commissioner violated the Court Order by failing to report the City Clerk's contacts, we would have recommended a reprimand as the appropriate discipline for the Commissioner had it been his only violation, as his belief that the City Clerk was acting as a department head and not an elected official somewhat mitigates the violation. However, in light of our recommendation in the matter relating to aldermanic contact, discipline for this second matter can be folded into the discipline for the first matter.

### **III. SUMMARY OF EVIDENCE**

#### **A. Regarding Contact by the Alderman**

##### ***1. Background and Documentary Evidence***

Correspondence from December 2008 through February 2009 between a CDPH employee and CDPH indicated that the employee's position was cut as part of the City's reduction-in-force, but CDPH told her that she could remain an employee and that she was being reassigned to a CDPH facility in Uptown. The CDPH employee did not want to accept the transfer and requested to be put on the layoff list instead. DHR denied her request. Toward the end of January, the CDPH employee took seven vacation days off to decide whether to accept the transfer or resign.

On January 29, 2009, an alderman wrote a letter to the DHR Commissioner about the CDPH employee. The letter stated that the employee was a constituent of his, "has an excellent work record," and had transportation difficulties regarding this work location. The letter requested that the CDPH employee either be placed in a downtown work location or be placed on the layoff list. The letter closed by thanking the Commissioner "for your assistance regarding this request."

In October 2008, the DHR Commissioner, with the assistance of the DHR Assistant Commissioner, the DHR Liaison, and staff from the Office of Compliance, had conducted a

training for alderman regarding the Court Order and its requirement that all contacts by elected officials regarding employment matters be reported.

A DHR Assistant Commissioner told the Monitor that he received the letter directly from the alderman on January 29 because the DHR Commissioner and the DHR Liaison were not present when the alderman dropped off the letter at DHR. The Assistant Commissioner told the Monitor that he forwarded the letter to the DHR Liaison and voiced his concern that it needed to be reported. Also, he said he tried to reach the DHR Commissioner about the letter but was unsuccessful.

At 1:20 p.m. on January 29, 2009, the same date as the letter, the DHR Assistant Commissioner sent an email to the DHR Commissioner, copying the DHR Liaison, stating the following: “[An alderman] stopped by inquiring about [the CDPH employee]. This employee was reassigned to a new work location on the North Side. The Alderman is requesting DHR to review options for having this employee relocated back to the downtown area or placed on the lay-off list. [The DHR Liaison] will follow up with [the DHR Director of Labor Relations] and report his findings.”

The DHR Liaison told the Monitor that he received the letter from the DHR Assistant Commissioner. The Liaison told the Monitor that on January 30, he discussed the letter with the DHR Commissioner. Emails from that morning show the Liaison wanting to speak to the Commissioner on this matter. Between 9:30 and 10:00 a.m., the DHR Commissioner’s assistant sent him two emails indicating that the DHR Liaison was wanting to speak with him about the alderman. And at 11:14 a.m., the Liaison sent the Commissioner an email stating, “When you have a minute to spare, I[’d] like to talk to you about a request [the alderman] brought to HR.”

The DHR Liaison told the Monitor that he also forwarded the letter to the Law Department Attorney on January 30 for advice on whether to report it. At 1:03 p.m. on January 30, 2009, the Liaison sent an email to the Law Department Attorney stating, “I need your guidance. See attached PDF file and please advi[s]e as to w[h]ether it should be reported to the monitor.” The Law Department Attorney emailed back later that day that he would get back to the DHR Liaison.

On February 13, 2009, the DHR Liaison sent a follow-up to the Law Department Attorney, who had still not responded to his initial inquiry, “to remind you of the item I emailed to you on 1/30.” On February 18, 2009, the Law Department Attorney emailed back, stating that he had discussed the letter with the Corporation Counsel, and he would be forwarding it to the Monitor and Compliance.

On February 25, 2009, the Monitor interviewed the Law Department Attorney regarding a different potential hiring violation. On February 26, 2009, at 10:44 a.m., the DHR Commissioner emailed the DHR Liaison, stating, “can [I] see the letter from [the alderman] you forwarded to [the Law Department Attorney], thanks.” Later that day, the Law Department Attorney sent an email to the Monitor, the Office of Compliance, and the IGO, with a copy to the DHR Commissioner, reporting the letter from the alderman for the first time.

On March 3, an attorney in the Monitor's office questioned the DHR Commissioner about the letter over the phone, and she took notes during the conversation. The DHR Commissioner told the attorney that he saw the alderman's letter on or around January 29, 2009. The beginning of the attorney's contemporaneous notes indicate that the Commissioner said:

First read the letter Close in time to letter date –  
He saw the letter or it  
Saw it close to the date it was sent – ...  
...

(Unchanged from original.) The Commissioner told the Monitor's Office that he forwarded the letter to the DHR Liaison, because the DHR Liaison handled aldermanic issues. He said that he did not think about the letter again until late February 2009 during a conversation about an unrelated matter, when the Law Department Attorney mentioned that he was going to report the letter to the Monitor out of an abundance of caution. When the Monitor's Office attorney asked the Commissioner why it took so long for the letter to be reported, the Commissioner said that he had been unsure as to whether the contact was inappropriate such that it needed to be reported. He also said that he thought the letter fell into a "gray area" and that it was "not clearly covered by the rule" and therefore it was unclear to him whether he was required to report it under any rule.

On March 12, 2009, the Commissioner responded to the concerns raised in the Monitor's March 5 report with a lengthy letter to the Court. With respect to the aldermanic contact, the Commissioner stated that the allegations in the March 5 report were incomplete and misleading because the contact was ultimately reported, and the alderman's request was not granted or considered. The Commissioner described how the alderman's letter was delivered to one of his staff members, who forwarded it to a second staff member, who immediately contacted the Law Department for guidance. The Commissioner also said that the second staff member then followed up with the Law Department and was informed that it would be reporting the contact to the Monitor, which he said occurred a short time later. The letter did not address the issue of when the Commissioner learned of the letter or why he did not report it.

## 2. Interview of the DHR Liaison

The DHR Liaison told IGO investigators that on January 29, 2009, he received the alderman's letter from the DHR Assistant Commissioner, who had received it from the alderman earlier that day, as the DHR Commissioner and the DHR Liaison were unavailable at the time. The Assistant Commissioner told the Liaison that when he took the letter from the alderman, he told the alderman that the contact might have to be reported.

The Liaison said that the next morning, he told the Commissioner about the alderman's letter and what the letter was requesting. The DHR Liaison said that he also commented to the DHR Commissioner that employees in certain bargaining units were able to be put on a layoff list. The Liaison said that the DHR Commissioner instructed him to look into this issue, as well as the issue of whether the letter needed to be reported.

The Liaison said that he then called the Law Department Attorney for advice on whether to report the alderman's letter, and emailed the Law Department Attorney a copy of the letter after his calls were unreturned. The Liaison said he sought the Law Department Attorney's advice because the Law Department Attorney was the attorney for the City on *Shakman*-related issues. The Liaison said that he followed up with the Law Department Attorney by email on February 13, 2009. The Liaison said that sometime during the second or third week of February 2009, the Law Department Attorney responded that he had shared the Liaison's concerns with the Corporation Counsel and that he was going to forward a copy of the letter to the Monitor.

The Liaison said that he contacted the DHR Director of Labor Relations to ask whether the CDPH employee could be placed on the layoff list, and the Director of Labor Relations said that the CDPH employee was not eligible. When the Liaison determined that the employee was not eligible, he informed her that being put on a layoff list was not possible for her.

The Liaison stated that he did not believe he was giving preferential treatment to the CDPH employee, and he did not give the matter special treatment because it came from an alderman. He said that he responded to the inquiry simply because it had been brought to his attention, and he would have given it the same treatment had the request come directly from the CDPH employee or anyone else. The Liaison did not think there was anything wrong with checking as to the feasibility of placing the CDPH employee on a layoff list, since layoffs were something that DHR handled and he had seen other employees afforded the same opportunity. The Liaison also said that he never asked that the CDPH employee actually be placed on a layoff list — he only asked whether it was possible. The Liaison added that he never looked into or discussed the CDPH employee's request regarding a change in work location because it seemed more like a special request, and he did not think it was the type of request that DHR would get involved with.

The Liaison admitted that he did not report the alderman's contact. He stated that in order to determine whether the letter needed to be reported, he sought the Law Department's advice because in his prior years working for the Chicago Public Schools, he always asked the Law Department for guidance when unsure about something. The Liaison said that he was not sure if the alderman's request was improper, which is why he contacted the Law Department Attorney, because he believed at the time that the request would have to be improper to trigger the reporting requirement.

### 3. Interview of the Law Department Attorney

The Law Department Attorney told IGO investigators that he recalled receiving an email from the DHR Liaison forwarding him the alderman's letter and seeking advice on whether it should be reported. He said that it appeared to him that the alderman was trying to affect an employment situation, so he thought it would be appropriate to discuss the request with the Corporation Counsel. The Law Department Attorney said that he consulted the Corporation Counsel because it was the first time he had received a communication like that, and he wanted to make sure he was proceeding appropriately. The Law Department Attorney also said that there were very few matters that would come to his attention that he would not advise the Corporation Counsel about.

The Law Department Attorney stated that he had a brief conversation with the Corporation Counsel about the letter in the course of a meeting on an unrelated matter. The Law Department Attorney did not recall the Corporation Counsel instructing him to report the letter. He said that the gist of the conversation was that he informed her of his belief that it should be reported, and she did not disagree. The Law Department Attorney said that he ultimately decided that the contact should be reported to the Monitor, and he informed the DHR Liaison that he would report it.

The Law Department Attorney acknowledged that there was approximately one month between his receipt of the letter and his reporting it to the Monitor. He said that part of the delay was due to his consulting the Corporation Counsel, and additional delay was due to ongoing personal family health issues at the time. He expressed regret that his personal problems interfered with his ability to act more quickly, but he believed that his decision to consult the Corporation Counsel was sound.

The Law Department Attorney was familiar with the Court Order, including the requirement of reporting contacts by elected officials attempting to effect an employment action. He stated that his knowledge of that ruling could have been the deciding factor in his decision to report the contact to the Monitor. The Law Department Attorney was asked whether or not it was his understanding that any contact by an alderman would automatically be reportable to the Monitor. In response, he said that he could foresee the possibility that in some circumstances, there might be a difference of opinion as to whether a particular set of facts fell within the Court Order. The Law Department Attorney admitted that with respect to the alderman's letter, the Court Order applied.

#### 4. Interview of the DHR Commissioner

In his interview with IGO investigators, the DHR Commissioner said that "the facts as I know them today" were different from the facts he relayed to the Monitor. (DHR Commissioner Interview Tr. at 31: 23-24) In summary, he said that he was completely unaware of the alderman's letter until shortly before the Law Department Attorney reported it (on February 26), and therefore it was not his fault that the letter was not reported sooner.

The DHR Commissioner said that it was not until he read the Monitor's March 5 report that he learned that the alderman had given the letter to the DHR Assistant Commissioner, who had given it to the DHR Liaison, who forwarded it to the Law Department Attorney. The Commissioner said that after learning these facts, he reviewed the email exchange between the DHR Liaison and the Law Department Attorney, including the final February 18 email in which the Law Department Attorney told the DHR Liaison that he would be reporting the contact.

The DHR Commissioner was asked whether he was "aware of the letter" at the time this February 18 email was sent. (Tr. at 34: 5-6) He responded, "No, I thought I was, but I was not." (Tr. at 34: 7) He then proceeded to explain that when he was interviewed by the Monitor's Office on March 3, "I thought I had seen it, you know, I just kind of assumed that maybe I did

see it,” (Tr. at 38: 7-8), even though he subsequently realized that he was not aware of the letter until much later.

He said that sometime after the Law Department Attorney’s email to the Liaison (on February 18), the Law Department Attorney contacted him to ask whether he had seen the letter and whether he had reported it. He told the Law Department Attorney that he had not reported the contact, but he said he did not tell the Law Department Attorney that he had not seen the letter before. He said that the Law Department Attorney subsequently sent a copy to him. He said that “the first that I learned of it [the letter]” was when the Law Department Attorney spoke to him about it and sent a copy to him.<sup>1</sup> (Tr. at 36: 4) The DHR Commissioner said that when the Law Department Attorney contacted him about the letter, he informed the Commissioner that he (the Law Department Attorney) was going to report it, so the Commissioner “just went about ... [his] job and didn’t really think about the letter anymore” until the Monitor’s Office contacted him about it. (Tr. at 36: 11:13)

The DHR Commissioner was asked whether the DHR Liaison ever informed him of the letter or whether the DHR Liaison told him that he (the DHR Liaison) had received the letter from the DHR Assistant Commissioner. The DHR Commissioner answered, “No.” (Tr. at 64: 11) The DHR Commissioner also said that the DHR Liaison never discussed with him the issue of looking into the alderman’s request to put the CDPH employee on the layoff list until the matter came to light in the Monitor’s March 5 report.

The DHR Commissioner stated that when the attorney in the Monitor’s office called him to inquire about the alderman’s letter, he told the attorney that he “*may* have seen the letter” and “*may* have triaged it” to the DHR Liaison because he “assumed” that he had. (Tr. at 37: 17-18) (emphasis added). He said he made this assumption based on how correspondences addressed to him generally ran through his office. He stated that he was answering the Monitor’s Office attorney’s questions under that assumption.

When asked why he responded to the attorney in this way, the DHR Commissioner said that during the conversation, he became “flustered”, and “perhaps to my own detriment was trying to be accommodating to give her answers when I really didn’t have a ... full handle of the facts. And so I just kind of assumed I saw the letter ....” (Tr. at 40: 10; 44: 6-8) The DHR Commissioner also said that the attorney seemed to be accusing him of doing something unlawful, which disconcerted him, and he was preoccupied with telling the attorney that to the best of his knowledge, the CDPH employee did not receive any special treatment.

The DHR Commissioner was also asked about his statements to the Monitor’s Office that it was unclear whether the alderman’s letter had to be reported and that the contact fell into a “gray area.” He acknowledged making these statements to the Monitor’s Office, which he said “probably wasn’t prudent” because he was speaking about events that had transpired before he read the letter. (Tr. at 39: 13)

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<sup>1</sup> A search of the Commissioner’s emails during the relevant time period did not reveal an email from the Law Department Attorney to the Commissioner attaching the letter other than the February 26 email from the Law Department Attorney in which he reported the letter to the Monitor and the Office of Compliance and copied the Commissioner.

The DHR Commissioner said that he now realized that the letter “should have been reported from ... [the DHR Assistant Commissioner] ... and [the DHR Liaison], I mean, those guys should have reported it.” (Tr at 39-40: 24; 1-2) The DHR Commissioner admitted that he should have reported the contact, but said that “I didn’t have the convenience of having seen the letter when it was presented ... because I would like to think, you know, I would have just reported it.” (Tr. at 42: 8-12).

## **B. Regarding Contacts by the City Clerk**

### **I. Background and Documentary Evidence**

In January 2008, the City Clerk attempted to fill two vacant AA III positions in the Clerk’s Office. During the hiring process, the Monitor learned that the employees filling the positions would not be performing tasks consistent with the duties described in the bid announcement for the position. As a result, the hiring process was stopped and the Office of Compliance requested that a reclassification audit be conducted to determine the appropriate job title for the positions. A DHR Analyst was assigned the audit.

In an August 19, 2008 Memorandum to a DHR Assistant Commissioner, the DHR Analyst detailed her analysis and recommendation, which was that the AA III positions (a Grade 12) be downgraded to License Enforcement Aide positions (a Grade 10). On October 30, 2008, the DHR Commissioner sent a letter to the City Clerk informing him of the reclassification audit results.

In a letter dated November 13, 2008, the City Clerk responded. The City Clerk expressed dissatisfaction with how long it took for him to receive a recommendation, and disagreed with the recommendation. He expressed his strong preference that the positions be reclassified to a title similar to that of a Department of Revenue Investigator I (which he thought was a Grade 12 but was actually a Grade 13) or to a City Clerk License Enforcement Aide at Grade 12.

On November 17, 2008, the DHR Commissioner sent an email to one of his Deputy Commissioners stating that “[the City Clerk] is upset regarding a reclass. can we address it and make it happen for him, and if we can’t please let me know what the problems are.” The DHR Analyst was copied on the email.

A memo from the DHR Analyst to the DHR Commissioner also dated November 17, 2008 responded to the City Clerk’s concerns and suggestions and explained why her initial analysis was correct.

Another memo dated December 12, 2008 from the DHR Analyst to the DHR Commissioner indicated that the DHR Analyst had been asked to explore the pros and cons of reclassifying the AA III positions to Revenue Investigator positions. The memo stated that there were no pros, and it listed five cons. The DHR Analyst also created a pros/cons chart further detailing her analysis.

The Monitor's March 5 report states that sometime afterwards, the DHR Commissioner, two top DHR managers, and the DHR Analyst attended a meeting with the City Clerk and his staff regarding the reclassification audit. During this meeting, the DHR Analyst explained the audit findings, but the City Clerk's staff continued to argue for a higher grade for the positions. Ultimately, the DHR Commissioner directed a second analyst to re-audit the title, and he assured the City Clerk that the re-audit would be done quickly.<sup>2</sup>

On January 9, 2009, the City Clerk submitted a Position Description Questionnaire that included broadened duties for the AA III positions. The second analyst evaluated the new information and summarized her findings in a January 30, 2009 memo to a DHR Assistant Commissioner. The second analyst came to the same conclusion and made the same recommendation as the first DHR Analyst. In a letter dated February 20, 2009, the DHR Commissioner conveyed the re-audit results to the City Clerk.

Public information reveals that prior to joining the City in June 2008, the DHR Commissioner had a political relationship with the City Clerk which, while not improper in and of itself, is relevant to the issue of the DHR Commissioner's failure to report contacts from the City Clerk to DHR. Specifically, the Illinois Board of Elections website indicates that the DHR Commissioner was Chairman and Treasurer of the Chicago Latino 100 Political Action Committee, which was formed in 2004 and is still listed as active. (The political action committee filed a report with the ISBE as recently as March 2009, and the DHR Commissioner is still listed as President and Treasurer of the committee.) During the February 2007 Chicago municipal election campaign, the political action committee made contributions totaling \$12,500, including \$2,000 to the current City Clerk del Valle's campaign. Also, a February 15, 2007 press release by the political action committee stated that it had endorsed candidate del Valle for City Clerk among others and was holding a fundraiser for the committee's endorsed candidates.<sup>3</sup>

## 2. Interview of the DHR Analyst

The DHR Analyst recalled the reclassification audit for the AA III positions in the Clerk's Office and said that until the Monitor contacted her, she did not think there was anything noteworthy about it. She said that the Monitor initiated the audit after someone from the Monitor's office attended the interview of one of the AA III candidates.

The conclusion of the DHR Analyst's reclassification analysis was that the AA III title should be downgraded to a position that was at a lower pay grade. The DHR Analyst said that she prepared a letter detailing her analysis for the DHR Commissioner's signature, which was then sent to the City Clerk. The Clerk disagreed with the findings and requested further justification, which she said is common when a reclassification analysis results in a downgrade

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<sup>2</sup> A confidential source in DHR management reported that he/she believed that the Commissioner's statements and actions were an attempt to pressure DHR employees to reach a result that would please the City Clerk and that the multiple memos and the re-audit were out of the ordinary for this situation. The confidential source asked to have his/her identity remain confidential.

<sup>3</sup> To be clear, we do not suggest that this prior political activity was in any way improper.

recommendation. The City Clerk suggested another position at a higher pay grade, which he believed was a better option than the one proposed by the DHR Analyst.

The DHR Analyst said that the DHR Commissioner asked her to make sure that the position suggested by the City Clerk did not change her conclusions. She did so and said she came to the same result. The DHR Commissioner agreed with her findings, and she presented them to the City Clerk and representatives from his office at a meeting.

At this meeting, the Clerk's Office representatives said that the AA III's had been given additional duties, and that while the Clerk's Office was willing to accept the audit results if the process was truly at an end, they believed these additional considerations should be taken into account first. The DHR Analyst said that her response was that she still thought her recommendation was the correct one, but if the additional responsibilities were truly substantial in scope and nature, the position should be re-audited. The City Clerk requested that the re-audit be conducted, and it was conducted by a second DHR analyst.

The DHR Analyst stated that a re-audit cannot be assigned to the original analyst because a re-audit requires a new perspective. She said that she gave the second analyst all of her documents, and she discussed the re-audit with the second analyst after it was completed. From her conversations with the second analyst, the DHR Analyst knew that the second analyst had first discussed the additional AA III duties with the Clerk's Office to determine whether a re-audit was appropriate. Ultimately, the second analyst came to the same conclusion as the DHR Analyst, which was relayed to the City Clerk, who accepted her findings.

When asked whether she ever felt pressure to change her findings, the DHR Analyst said she did not. She said that she had spoken directly with the DHR Commissioner about the audit, and he asked her to explain the audit results. He also asked her why the City Clerk would say that the AA III position was comparable to a Revenue Investigator if that was not true. However, the DHR Analyst said that she did not perceive the question as pressuring. She said that the DHR Commissioner asked a lot of questions about her audit due to his lack of understanding of the audit process because he had minimal experience with it. She also said that it would have been irresponsible of the DHR Commissioner to sign a recommendation for a downgrade without fully understanding the analysis and justification for the recommendation. The DHR Analyst stated that she did not believe the DHR Commissioner gave this audit process any special treatment or that the City Clerk's status as an elected official had any effect on the way he handled it. Rather, it was her opinion that the DHR Commissioner was being overly cautious because, to the best of her knowledge, this audit was the first time the DHR Commissioner had issued a downgrade recommendation and the first time the DHR Commissioner had encountered disagreement from a department head.

The DHR Analyst also said that the Commissioner of DHR is not required to follow analysts' recommendations. She recalled a prior instance when it appeared that a prior Commissioner chose not to follow her recommendation. The DHR Analyst said that even if the DHR Commissioner desired a different result in the City Clerk's case, he would not have to pressure her to change her results because he could simply have changed the recommendation himself or declined to issue it.

### 3. Interview of a DHR High-Level Manager

IGO investigators interviewed a high-level DHR manager (“DHR Manager”), who said that she first became aware of the Clerk’s Office’s AA III reclassification issue when she was asked to attend a meeting with the Clerk’s Office to discuss the reclassification audit recommendation for a downgrade. She recalled that at the meeting, representatives from the Clerk’s Office raised additional AA III duties that had not been considered in the audit and requested that a re-audit be conducted.

The DHR Manager said that she never witnessed the DHR Commissioner expressing an expectation of a specific outcome of the audit. She was aware of conversations during which the DHR Commissioner said that he wanted to look at the audit process thoroughly and wanted a list of pros and cons with respect to following the City Clerk’s title recommendation. She believed that the DHR Commissioner simply wanted to be thoroughly informed about the reclassification process, but he did not know much about it. She said that the conversations never seemed tense or adversarial. The DHR Manager also expressed the view that the City Clerk’s role in the reclassification process was the same as that of any other department head, as opposed to an elected official.

The DHR Manager was aware of the Court Order and said that in hindsight, the City Clerk’s contacts with DHR should have been immediately reported to the Monitor. She assumed that the contacts would have been reported by the time she became involved with the reclassification, which was later in the process.

### 4. Interview of the DHR Commissioner

The DHR Commissioner said that he did not know how the AA III classification audit originated, but he recalled that the result of the audit was a recommendation for a downgrade and that the City Clerk initially disagreed with that result. In preparation for a meeting with the City Clerk and his staff to discuss the audit, the DHR Commissioner requested a substantive analysis of the recommendation so that he would be prepared to defend the audit findings. He stated that he asked his reclassification analyst to explain the reasons for the downgrade recommendation. He said he did so not to pressure her to change the result, but to educate himself about the reclassification process itself, as it was the first time a downgrade recommendation had been challenged by a department head.

During the meeting, the City Clerk requested a re-audit of the classification due to new job duties that had been added to the position. The DHR Commissioner stated that based on the additional job duties, he decided that a re-audit was justified. The results of the re-audit were the same as the original audit, and they were presented to the City Clerk in a subsequent meeting.

The DHR Commissioner stated that he never felt any pressure to change the downgrade recommendation because of the City Clerk’s status as an elected official, nor did he perceive any threat of punishment from the City Clerk. The DHR Commissioner stated that he responded to

the City Clerk the same way he would have responded to any other department head, all of whom frequently contact him for various DHR-related reasons.

The DHR Commissioner said when the City Clerk first contacted him, he viewed the City Clerk as a department head contacting him about a routine matter. The DHR Commissioner acknowledged that the City Clerk is an elected official and said that in retrospect, he should have reported the contact to the Monitor because any contact by an elected official regarding an “operational issue” must be reported.

#### IV. ANALYSIS

##### A. The DHR Commissioner

###### 1. Regarding Contact by the Alderman

The evidence shows that within one day of the alderman’s January 29 letter requesting that DHR take a favorable employment action for a CDPH employee, the DHR Commissioner knew of the alderman’s request. The DHR Assistant Commissioner who first received the letter sent an email to the Commissioner January 29 telling him about the alderman’s request. The next day, the DHR Liaison told the Commissioner about the letter, according to the Liaison’s consistent statements to the Monitor and the IGO, as corroborated by the emails showing that the Liaison was waiting to see the Commissioner on January 30 regarding the alderman’s request. And on March 3, the Commissioner told an attorney with the Monitor’s Office that he had seen the letter “close in time” to the letter’s date.

There can be no question that under the Court Order, the DHR Commissioner needed to report this letter to the Monitor and/or the Office of Compliance, and he failed to do so.

When the Monitor’s Office questioned the Commissioner about this failure to report, he attempted to defend the decision not to report by stating that the letter was “not clearly covered by the rule” and that this was a “gray area.” As the Commissioner now admits, this is not a gray area and the letter is definitely covered by the rule. The Commissioner clearly knew this at the time, as he had conducted training on this very issue for aldermen just a few months earlier.

There was no valid excuse for the Commissioner’s failure to either report the letter directly, or ensure that it was reported directly – without delay. As this case demonstrates, if action is going to be taken in response to an elected official’s request, that action is likely to take place very quickly. Here, the DHR Liaison made a quick inquiry to the relevant staff member. Had he received a different answer, further actions might have resulted. And this is precisely the time at which independent monitoring of the situation is required.

Taking action in response to a contact from an elected official may be appropriate – if the action is being taken on the merits and not because of politics or any form of preferential treatment. But in light of history and context, it is critically important that this situation be monitored in real time by an independent entity. That is precisely the purpose of the cut-and-dried rule promulgated by the Court in the Court Order.

Independent monitoring does not prevent contacts from elected officials. It does not prevent DHR from taking lawful and appropriate actions in response to such contacts. But it does make *improper* actions by DHR or other City officials in this situation less likely, because of the awareness that an independent entity is watching.

We find that the DHR Commissioner's failure to report this letter from an alderman, and his subsequent statement to the Monitor that he had not reported it because it fell in a "gray area," are highly problematic. As the head of DHR and as someone who had actually provided training on this very issue, the DHR Commissioner knew that the Court Order required him to report a contact from an alderman to DHR relating to an individual employment matter. Although the City had originally argued for a more nuanced rule regarding reporting, the Court Order makes it clear that there is no "gray area" when an elected official contacts DHR about an individual employment matter.

Obviously, the DHR Commissioner occupies a critical front-line role in the City system that must ensure legality, compliance, and fairness in all employment matters. For the Commissioner to violate a cut-and-dried Court-imposed rule that he clearly understood, and then to attempt to defend the violation with an argument that is directly inconsistent with that rule, is a serious matter. If this had been the end of the Commissioner's misconduct, we would have recommended a suspension of one to two weeks.

However, the preponderance of the evidence shows that the DHR Commissioner was not truthful in his subsequent interview with IGO investigators, and this makes the problem significantly worse. In his interview, the Commissioner claimed that he was not even aware of the alderman's request until four weeks after the letter was delivered, shortly before it was reported, when he was advised of the letter by the Law Department Attorney. He claimed that he therefore had no responsibility for the failure to report. He said that it was clear to him that the letter should have been reported, but pinned the blame on his subordinates for the failure to report – "those guys should have reported it."

We find that the Commissioner's statements to the IGO investigators are not credible. First, his statements are contradicted by the consistent statements by the DHR Liaison, who told both the Monitor and the IGO that he met with the DHR Commissioner and informed him about the letter shortly after it arrived – a statement that makes sense in light of the obvious potential problems if any commissioner is *not* made aware of a letter from an alderman to the commissioner. In addition, the Liaison's statement about briefing the Commissioner is corroborated by the January 30 emails to the Commissioner from the Liaison and the Commissioner's assistant stating that the Liaison was waiting to see him about an alderman's request.

Second, the Commissioner's statement is contradicted by the January 29 email to him from the Assistant Commissioner, which explicitly informs him of the alderman's request.

Third, the Commissioner's statement is contradicted by his own March 3 statement to the Monitor (which was documented by contemporaneous notes by an attorney in the Monitor's

Office). In his interview with IGO investigators, the Commissioner attempted to downplay his statements to the Monitor, stating that he told the Monitor's Office that he "may have" learned of the letter shortly after it was delivered to DHR. But the Monitor's Office attorney's notes are unequivocal that the Commissioner told her that he saw and read the letter close to the date it was sent.

The Commissioner told IGO investigators that he was mistaken when he spoke to the Monitor's Office because he was flustered, and that during the conversation he was mistakenly "assuming" that he had seen the letter because this would have been standard. Putting aside the fact that this seems unlikely in light of his background as an attorney, had the Commissioner truly been mistaken when he spoke to the Monitor, he quickly would have realized the gravity of his mistake when, two days later, the Monitor reported publicly on his failure to report this aldermanic contact. The natural response from anyone in this situation would have been to correct his statement to the Monitor directly as soon as possible. Yet the DHR Commissioner never called or wrote the Monitor's Office to correct this supposedly mistaken statement.

In addition, a mere five days later he wrote a lengthy letter to the Court in an attempt to rebut the Monitor's report. His letter stressed that the aldermen's letter was eventually reported and that the alderman's request was not granted. But his letter said nothing about when *he* knew about the letter and said nothing that corrected the Monitor's statement that he knew about the letter shortly after its delivery – a correction that almost certainly would have been part of the letter if he had in fact been mistaken at the time he spoke to the Monitor.

Finally, we note that the Commissioner's statement to IGO investigators denying knowledge of the letter is self-serving, and he had an obvious motive to claim a lack of knowledge in light of the Monitor's public criticism of him for knowing about the letter yet failing to report it.<sup>4</sup>

Determining the proper discipline first requires an assessment of the significance of a false statement in this situation. Any false statement to IGO investigators is significant. A false statement by a subject of the investigation in an attempt to falsely create a defense is more significant. Such a false statement by the head of a department is even more significant. And such a false statement by the head of DHR in a matter under court supervision – during the time that the Court and Monitor are considering whether the City has established sufficient safeguards to ensure a lawful and fair process in a future without court supervision – is especially significant.

Determining the proper discipline also requires an assessment of whether the Commissioner's credibility is sufficiently intact to ensure that the City can make firm representations about how DHR will act in the future. The fundamental problem with the

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<sup>4</sup> The Commissioner's February 26 email to the DHR Liaison asking for a copy of the letter does not change our analysis. This email shows that the Commissioner did not have a copy of the letter handy, nothing more, at a moment when the Law Department Attorney was presumably informing the Commissioner that the letter was about to be reported. The email neither weakens nor strengthens the evidence showing that the Commissioner was aware of the letter shortly after it was delivered.

Commissioner's gyrations in this case is that this was a situation that was so easy to handle correctly. The contact from the alderman was straightforward. The Court-imposed rule was clear. The Commissioner unquestionably knew the rule. And reporting the letter would not have prevented DHR from going about its business and handling the CDPH employee's situation on the merits, or even slowed it down in any way. The changing stories and questionable credibility in this situation mean that it will be difficult to have confidence in the future that situations less straightforward than this one will be handled in an honest and appropriate fashion. And given the significance of this position for the integrity of the City's hiring process and compliance with the Hiring Plan, this lack of confidence is a very serious problem for the City.

Based on these two assessments, it is our recommendation that the DHR Commissioner be removed from his position. In our view, this is the appropriate result in light of his misconduct and the importance to the City of ensuring that there are no integrity questions in this area.

## 2. *Regarding Contacts by the City Clerk*

The DHR Commissioner failed to report the contacts from the City Clerk to the Monitor or the Office of Compliance. Because the City Clerk is an elected official, these contacts fall within the language of the Court Order requiring that such contacts be reported. The Commissioner's failure to report these contacts from the City Clerk therefore constitutes a violation of the Court Order.

In terms of the significance of this violation: On the one hand, the City Clerk was clearly acting as a department head, not an elected official, in this situation. On the other hand, the Commissioner's failure to report is significant in light of his prior political relationship with the City Clerk during the February 2007 municipal election campaign when the Commissioner was the head of a political action committee that endorsed and financially supported the Clerk. Knowing of this relationship and therefore of the potential for perceptions of bias in favor of the City Clerk, the DHR Commissioner should have recognized that it was important to advise the Monitor or the Office of Compliance of this matter, despite the fact that the City Clerk was clearly contacting DHR as a department head not as an elected official. (We have found no evidence that the City Clerk in any way asked the DHR Commissioner to give him preferential treatment here.)

In addition, the DHR Commissioner's email implying that he would prefer to give the Clerk what the Clerk wanted ("can we address it and make it happen for him, and if we can't please let me know what the problems are"), his directive that the DHR Analyst write a third memo examining the "pros" of the City Clerk's proposal, and his directive that a second DHR analyst conduct a "re-audit" of the position could reasonably be perceived as an attempt to pressure his subordinates to reach a conclusion favorable to the Clerk. And one manager (a confidential source) reported that he/she did in fact perceive the Commissioner's actions as pressuring. On the other hand, neither analyst wrote a memo favorable to the City Clerk. The DHR Analyst – who was arguably under the most pressure – told IGO investigators that she did not perceive the DHR Commissioner's statements or actions as improper or pressuring, and the DHR Commissioner ultimately denied the Clerk's request. It is clear to the IGO that a DHR

analyst with less self-confidence than the first analyst may have felt pressured to write a memo favorable to the City Clerk, although we do not place much emphasis on this point since this is not what in fact happened.

The DHR Commissioner says that he did not believe that he had to report the City Clerk's contacts on this matter because the City Clerk was acting as a department head not an elected official. While this does not change the fact that the failure to report was a violation of the Court Order, we agree that this diminishes the significance of the violation.

The DHR Commissioner also says that his request for a third memo from the DHR analyst and his calling for a re-audit were not attempts to pressure DHR employees to reach a favorable result for the City Clerk, but were attempts to be deliberate in ensuring that DHR's position was defensible in a situation (reclassification dispute) that was new to him. Although his statements and actions could reasonably be perceived as an attempt to pressure, we have not found evidence that disproves the DHR Commissioner's explanation that he was not attempting to pressure.

Because the DHR Commissioner should have recognized that it was important to advise the Monitor or the Office of Compliance of this matter, since it fell within the plain language of the Court Order and the Commissioner had a prior political relationship with the City Clerk, we believe that some discipline would be appropriate here if this were the DHR Commissioner's only violation of the reporting rule. Because the City Clerk was clearly contacting DHR as a department head not as an elected official, we would have recommended a written reprimand for the Commissioner. In light of our recommendation regarding the first matter, discipline for the second matter can be folded into the discipline for the first matter.

### 3. Clarification of Court Order

In our view, this case shows that some clarification of the Court's rule would be helpful for future situations in which an elected official is effectively acting as a department head when he or she contacts DHR about an employment matter regarding one of their employees. As the prior relationship between the DHR Commissioner and the City Clerk points out, special care must be taken in these situations in light of the elected official's status; but it is also true that these contacts may perhaps be categorized differently than contacts by elected officials about individuals who are not employed in their departments. We therefore recommend that the Office of Compliance and the Monitor consider proposing changes to the rule that would clarify the reporting requirement in this situation.

#### **B. The Law Department Attorney**

While the Law Department Attorney ultimately reported the contact by the alderman, approximately one month passed between his receiving the letter and his reporting it. Although the Court Order does not specify a time period within which aldermanic contacts must be reported, one month is an excessive amount of time. This is especially true in this instance where the request was for action to be taken regarding layoff lists that, if it had been feasible, likely would have required quick action. A timely review by the Monitor and the Office of

Compliance in a case such as this goes to the heart of the behavior which the Court Order seeks to remedy.

Although his explanations for the delay, namely consulting the Corporation Counsel and his personal problems, might excuse some length of time, they do not sufficiently excuse a month-long delay in a very simple reporting matter. The Law Department Attorney described himself as the lead attorney on hiring issues for the City, and he told IGO investigators that he communicates regularly with the Monitor, the Office of Compliance, and the IGO regarding City hiring issues. He also acknowledged familiarity with the Court Order. Thus, it should have been instantly clear to the Law Department Attorney that the letter should have been reported immediately. It would have taken the Law Department Attorney only a couple of minutes to forward notice of the alderman's contact.

In addition, we simply do not understand why the decision about whether to report this letter required deliberation, analysis, or consultation – since we fail to see any downside or cost to emailing the letter to the Monitor and the Office of Compliance. Reporting the letter did not render the letter improper and did not prevent DHR from doing anything. In short, there was no valid reason to avoid reporting the letter – even if the Law Department Attorney erroneously had a doubt in his mind about whether the letter fell under the Court Order.

As the lead hiring attorney for the City, the Law Department Attorney is responsible for giving clear and timely direction to other City departments regarding hiring issues. The DHR Liaison had to follow up with the Law Department Attorney numerous times before receiving a response, which is also unacceptable. While the Law Department Attorney's explanations mitigate his fault to some degree, they do not fully absolve him. Not only did the Law Department Attorney's unresponsiveness slow down the DHR Liaison's reaction time, it would have given someone with bad intentions enough time to commit misconduct.

We believe that this situation requires discipline in the form of a suspension but conclude that a short suspension is appropriate. We recommend that the Law Department Attorney receive a one-day suspension for his delays in reporting the letter and in responding to the DHR Liaison. If the Law Department determines that it cannot impose a suspension that is less than one week under the Fair Labor Standards Act ("FLSA"), even if the Law Department Attorney were to waive any rights under the FLSA, then we recommend that the Law Department Attorney receive a one-week suspension.

### **C. The DHR Assistant Commissioner and the DHR Liaison**

The DHR Assistant Commissioner passed the letter on to the DHR Liaison and told the Commissioner about it, and he says that he raised the issue of whether it should be reported. The DHR Liaison told the DHR Commissioner about the letter and emailed it to the Law Department Attorney to ask whether it needed to be reported – and then followed up with the attorney when he did not hear back. However, neither reported the letter to the Monitor or the Office of Compliance.

Both DHR employees clearly knew the Court-imposed rule (as they had helped trained aldermen about it) and therefore should have immediately reported the contact themselves. While they passed the letter up their chain of command and (in the DHR Liaison's case) to the proper City attorney, they still had an independent obligation to ensure that the letter was actually reported. Once time had passed and the letter had still not been reported, it was their obligation to report the letter themselves, especially since they had helped train on this issue and therefore knew that the reporting rule was clear-cut.

We believe they violated the rule by failing to report but believe that a written reprimand is sufficient disciplinary action in this situation.<sup>5</sup>

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<sup>5</sup> The actions taken by the DHR Liaison with respect to the CDPH employee's request to be laid off had the potential to develop into preferential treatment, but we did not find that the Liaison engaged in preferential treatment toward the employee. The DHR Liaison stated that he contacted the DHR Director of Labor Relations to see whether the employee's request was feasible, not to request that such action be taken. The DHR Director of Labor Relations said that it was his impression that the DHR Liaison was contacting him solely for informational purposes, as he was the go-to person for such matters. Also, the DHR Director of Labor Relations said that he could not grant such a request on his own, as it would require review and approval from multiple entities. Under these circumstances, we found that there was no benefit afforded to the CDPH employee or the alderman. Similarly, we do not find that the DHR Liaison's contacting the CDPH employee constitutes preferential treatment, since she did not receive a benefit from his action — the DHR Liaison simply informed the CDPH employee that she was not eligible to be laid off, which was the inevitable outcome of her request.