

**COOK COUNTY BOARD OF ETHICS**  
69 West Washington, Suite 3040  
Chicago, Illinois 60602

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IN THE MATTER OF	)	
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Karen A. Yarbrough, Recorder	)	Case No. 2013 I 0001
Cook County Recorder of Deeds	)	
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**NOTICE OF DETERMINATION**

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On May 1 2013, the Cook County Board of Ethics (“Board”) received a written complaint alleging that Cook County Recorder of Deeds Karen A. Yarbrough (“Recorder Yarbrough”) violated the anti-nepotism provision of the Cook County Ethics Ordinance (“Ethics Ordinance”) by hiring her niece to work as an attorney in the Office of the Cook County Recorder of Deeds (“CCRD”). Based on this complaint, the Board undertook an investigation of the allegations and now finds that Recorder Yarbrough did violate Section 2-582(a) of the Ethics Ordinance by employing a relative in an agency over which Recorder Yarbrough exercises authority, supervision and control.

That finding, however, is less remarkable than its result. In the nearly 18 months since the Board opened this matter, Recorder Yarbrough’s niece has not only left the County’s payroll, but Recorder Yarbrough has committed herself and CCRD to written revisions of CCRD’s *Shakman*-monitored Personnel Policy and Procedures Manual (“Manual”) to include an express prohibition on the hiring or supervising of relatives. In light of Recorder Yarbrough’s commendable progress on this issue and other mitigating circumstances, the Board exercises its authority to not issue additional fines or sanctions.

INVESTIGATION SUMMARY

An investigation directed by the Board found evidence of the following:

On May 1, 2013, Cook County Independent Inspector General (“OIIG”) Patrick M. Blanchard submitted a copy of OIIG Summary Report IIG13-0045 to the Board, alleging, *inter alia*, that Recorder Yarbrough had hired her niece, Chloè Pedersen (née Woodard), as CCRD Labor Counsel. On May 10, 2013, the Board issued a Notice of Investigation to Recorder Yarbrough, informing her of the alleged violation of the Ethics Ordinance, and requesting her assistance and cooperation with the Board’s investigation. On May 31, 2013, Recorder Yarbrough, who at the time was being represented before the Board by Ms. Pedersen, refused to participate in the investigation. Ltr. of C. Pedersen to K. Foxx (May 31, 2013).

Nonetheless, the Board confirmed that Ms. Pedersen was Recorder Yarbrough’s niece. A Lexis Comprehensive Person Report indicates an association between Ms. Pedersen and her mother, Denise Williams. A similar report on Denise Williams traces Denise to Recorder

Yarbrough's father, Donald Williams. While there is the potential for error in the algorithm that Lexis uses to generate potential relatives and associates from common addresses and other shared entries in various public records, Recorder Yarbrough's subsequent counsel (initially Edmund Michalowski and later James Gleffe) allayed any concern of mistaken identity by confirming the familial relationship between Recorder Yarbrough and Ms. Pedersen.

The Board's investigation also confirmed that Ms. Pedersen was employed by CCRD during a time period when Recorder Yarbrough controlled the agency. Records from the Comptroller's Office indicate that Ms. Pedersen became a County employee in the legal Division of CCRD on December 2, 2012. Ms. Pedersen was employed in this capacity for 454 days until her separation from service on February 28, 2014. Records from the Bureau of Human Resources indicate that Ms. Pedersen served as Labor Counsel and later Chief Legal Counsel to the CCRD. Recorder Yarbrough was sworn into office in December 2012 after being elected Recorder of Deeds in November 2012.

After learning that Ms. Pedersen was no longer in Recorder Yarbrough's employ, the Board offered Recorder Yarbrough the opportunity to reconsider her initial non-cooperative stance. Through new counsel (Mr. Gleffe), Recorder Yarbrough represented to the Board in a letter dated September 22, 2014, that prior to hiring Ms. Pederson, CCRD sought the legal opinion of the Cook County State's Attorney's Office ("CCSAO") to assess if the hire was permissible under existing law. In 2012, CCSAO provided a verbal opinion to Recorder Yarbrough that this Board had no jurisdiction over CCRD and the Ethics Ordinance did not apply to her as a separately elected County officer.

In addition, per Mr. Gleffe's September 22, 2014 letter, Recorder Yarbrough confirmed that Ms. Pedersen was hired in December 2012 on the basis of CCSAO's advice. Recorder Yarbrough further elucidated that Ms. Pederson's employment attracted scrutiny from the OIG and this Board, and so Ms. Pedersen chose to leave CCRD in February 2014. Finally, Recorder Yarbrough "committed that she will not hire any relatives for employment at CCRD." Ltr. of J. Gleffe to R. Hakim (Sept. 22, 2014).

Mr. Gleffe appeared on Recorder Yarbrough's behalf at the Board's September 24, 2014 meeting to answer questions from the Board regarding the circumstances of Ms. Pedersen's employment and Recorder Yarbrough's proposal to not hire relatives going forward. On October 23, 2014, Mr. Gleffe provided the Board with a letter on behalf of Recorder Yarbrough addressing issues the Board raised as concerns, including a clarification that Recorder Yarbrough's commitment to not employ her own relatives at CCRD "extends to all CCRD staff." Ltr. of J. Gleffe to R. Hakim (Oct. 23, 2014). Mr. Gleffe also stated that "[b]ased on the comments and feedback of the Board, CCRD is currently in the process of updating the CCRD Ethics Policy to include [written] provisions that prohibit the hiring of, or contracting with relatives." *Id.* In addition, Recorder Yarbrough proposed requiring each person participating in a hiring decision at CCRD to certify that he or she is not a relative of the applicant. Mr. Gleffe explained that because CCRD's *Shakman* Compliance Administrator ("RCA") must review any changes, updating the Manual to reflect this new commitment could take some time, but Recorder Yarbrough would submit the proposed policy changes to the RCA within the next 10 days.

## DISCUSSION

The Ethics Ordinance prohibits County officials from “participat[ing] in a hiring decision,” “employ[ing] or advocat[ing] for employment” on behalf of “any person who is a relative of said official” with respect to “any agency over which such official . . . exercises authority, supervision or control.” Cook County Code of Ordinances (“County Code”), § 2-582(a). Relatives include, for the purpose of this provision, an official’s niece. *Id.* at § 2-582(f). As the Board has explained in previous Section 2-582 cases:

[the anti-nepotism provision of the Ethics Ordinance] was enacted because the hiring and or employing of family members as County employees undermines the public trust. Rather than promote an open and transparent governmental hiring process, this conduct promotes the opposite, a closed and opaque process. The Board finds that allowing this conduct to proceed unchecked and unchallenged bestows an unfair advantage onto those with familial connections, and that this conduct is in direct contravention of the letter and spirit of the Cook County Ethics Ordinance which this Board has been entrusted to enforce by the Cook County Board of Commissioners.

Board of Ethics Notice of Determination (“Bd.E Not.”), 11 I 0001(I), \*2 (June 20, 2012).

In this case, there is no dispute of fact as to whether Recorder Yarbrough has exercised authority, supervision and control over CCRD since being sworn in as the Cook County Recorder of Deeds in December 2012. Further, the Board’s investigation leaves no doubt that Ms. Pedersen was employed by CCRD during Recorder Yarbrough’s term of office and that Ms. Pedersen was (and is) Recorder Yarbrough’s relative. As such, the Board determines that Recorder Yarbrough violated Section 2-582(a) of the Ethics Ordinance by employing Ms. Pedersen in CCRD from December 2, 2012 to February 28, 2014.

In rendering this determination, the Board is not impugning the service that Ms. Pedersen rendered the County during her term of public employment. The Board has no evidence before it that would lead it to believe that Ms. Pedersen was anything other than a diligent and dedicated public servant while at CCRD, but the prohibition against County officials, appointees and employees hiring their relatives is strict. While it is true that nepotism typically bestows an unearned advantage on those with familial connections, the Ethics Ordinance does not provide an exception for exceptionally well qualified individuals. Nor, in the absence of a scienter requirement, does it excuse County officials who may have hired a relative on the basis of erroneous legal advice.

Instead the requirements of the Ethics Ordinance are absolute and universal. No County official, appointee or employee may hire a relative into his or her County agency. Any transgression of this simple and plain prohibition is a violation of the law.

Recorder Yarbrough does not contest any of the facts that form the basis of the Board’s determination here, but has nonetheless moved for a finding of no violation on the basis of the length of the Board’s investigation into this violation. An investigation by the Board begins with a written complaint. Cook County Board of Ethics Amended Rules and Regulations (“Bd. E.”),

Rule (“R.”) 5.1. The Board’s Rules instruct the Executive Director to determine within thirty days of receipt whether there is reasonable cause for an investigation. Bd.E.R. 5.10(A). If the Executive Director believes there is cause to proceed, the Board’s Rules state that “[a]n Investigation of an alleged violation of the Ethics Ordinance shall be completed no later than one (1) year from the date the Investigation was initiated.” Bd.E.R. 5.3. “The Board may extend the one (1) year time limit for completion of the Investigation when there is good cause show[n] to warrant such an extension.” *Id.*

Here, the Board received a written allegation from the OIIG that Recorder Yarbrough had violated the Ethics Ordinance on May 1, 2013. Within 30 days, then-Executive Director MaryNic Foster determined that there was reasonable cause to initiate an investigation and issued a Notice of Investigation to Recorder Yarbrough on May 10, 2013. However, the Board did not receive the Report of Investigation in this matter until September 17, 2014. Recorder Yarbrough’s reliance on what she characterizes as a four-month delay in completing the investigation, however, is misplaced.

As this Board has explained previously, “Rule 5.3 sets out the Board’s expectations for its staff with respect to the scope and timeline of any pending investigation; it does not create a statute of repose or substantive right for litigants to a resolution of matters pending before the Board by a date certain.” Bd.E Not., 12 I 0001, \*3 (April 16, 2014). Moreover, the one-year target the Board has established for its staff assumes that an investigation respondent has complied with his or her obligation under the Ethics Ordinance to cooperate with the Executive Director in that investigation. *See* County Code, § 591(7) (“The executive director shall investigate alleged violations of this article. County agencies, employees and officials shall cooperate with the Board and the executive director. Information necessary to any investigation shall be made available to the Executive Director upon written request.”). Recorder Yarbrough declined to participate in this investigation until after the Executive Director submitted his Report of Investigation recommending that this Board find a violation of the Ethics Ordinance. Recorder Yarbrough cannot now gain the advantage of a delay that is of her own creation.<sup>1</sup> Such a delay is certainly good cause for an extension of time to complete an investigation under Rule 5.3.

#### RECOMMENDATION

The Board has the authority to assess fines up to \$5,000 per violation of Section 2-582. *See* County Code, § 2-602(d). However, the Board has determined that such penalties are unnecessary in this case.

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<sup>1</sup> Recorder Yarbrough’s reliance on *McElroy v. Cook County*, 281 Ill. App. 3d 1038 (1st Dist. 1996) (cited in Ltr. of J. Gleffe to R. Hakim (Oct. 28, 2014)) is similarly misplaced. Even if Rule 5.3 were more than an internal directive, Recorder Yarbrough would have to show that she was denied the opportunity to be heard and that the delay in completing the investigation prejudiced her defense in order to have a viable due process argument. *See Cooper v. Dept. of Children & Family Servs.*, 234 Ill. App. 3d 474, 486 (4th Dist. 1992). Recorder Yarbrough has done (and can do) neither. She was offered repeated opportunities over the months of this investigation to participate, and her counsel has not even theorized an injury to Recorder Yarbrough arising from the Executive Director submitting his report to this Board in September instead of May.

The injury to the public trust is not ongoing. Ms. Pedersen is no longer a County employee. Whether on her own initiative or at Recorder Yarbrough's suggestion, the evidence before the Board is that Ms. Pedersen moved on in response to this investigation (and others) so as to not distract CCRD from its efforts to better serve the public. In addition, although CCSAO's erroneous pre-hiring advice does not excuse Recorder Yarbrough's violation of the Ethics Ordinance, that Recorder Yarbrough sought it out demonstrates that she was attempting to conform her conduct to the law before deciding to hire Ms. Pedersen.<sup>2</sup>

More importantly, the injury to the public trust is unlikely to reoccur. Recorder Yarbrough has committed to adopting a written anti-nepotism policy for inclusion in CCRD's *Shakman*-monitored personnel manual. This policy closely mirrors Section 2-582 of the Ethics Ordinance and prohibits individuals in CCRD from employing or contracting with their relatives. While sanctions are sometimes necessary to punish nonconformity with the law, the true aim of the Board's enforcement of the Ethics Ordinance is to encourage County officials, appointees and employees to conduct themselves in an ethical and lawful manner. By internalizing a policy that prevents both herself and her supervisees from hiring their relatives into CCRD on a going forward basis, Recorder Yarbrough has provided, albeit somewhat belatedly, a model response to an ethics complaint.

The Board offers its assistance to Recorder Yarbrough in following through with her commitment to present the draft proposals included in Mr. Gleffe's October 23, 2014 letter to the RCA within the next 10 days. *See* Ltr. of J. Gleffe to R. Hakim, Exhs A-B (Oct. 23, 2014). Pursuant to Section 2-591(9) of the Ethics Ordinance, the Board requests only that CCRD provide this Board with written confirmation that these (or substantially similar) proposed amendments were submitted to the RCA for review within 30 days of receipt of this notice.

In the spirit of the newly opened lines of communication between this Board and CCRD, it would be remiss to conclude without noting one remaining point of disagreement between the Board and Recorder Yarbrough. Prior to assuming a more cooperative stance, Recorder Yarbrough initially refused to participate in this investigation on the belief that the Ethics Ordinance did not apply to her as a separately elected County official. *See* Ltr. of C. Pedersen to K. Foxx (May 31, 2013). She later refined her position to be that she was beyond the jurisdiction of the Ethics Ordinance with respect to at least Section 2-582 – an instance in which the County's ethics rules are more stringent than their state analogs. *See* Ltr. of D. Gallagher to K. Yarbrough (July 14, 2014) (citing the State Officials and Employee Ethics Act, 5 ILCS 430/70-5). And today, although she is taking meaningful action towards prohibiting nepotism in CCRD, Recorder Yarbrough continues to reserve the right to contest the Board's jurisdiction to enforce the Ethics Ordinance with respect to her office. Ltr. of J. Gleffe to R. Hakim (Sept. 22, 2014). While the Board hopes that self-enforcement of the proposed anti-nepotism policy within CCRD will, as a practical matter, obviate the need to do so, this Board stands ready to enforce Section

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<sup>2</sup> Going forward, the Board invites Recorder Yarbrough to seek advisory opinions from this Board on any matters pertaining to the Ethics Ordinance. *See* County Code, § 591(10). While the opinions of CCSAO regarding the Ethics Ordinance are interesting, it is the opinion of the administrative agency charged with enforcing a particular ordinance that takes precedence in the eyes of a reviewing court. *See, e.g., Bonaguro v. County Officers Electoral Board*, 158 Ill.2d 391, 399 (1994).

2-582 (and every other provision of the Ethics Ordinance) with respect to all County officials, appointees and employees, including those in CCRD.

The argument that the Ethics Ordinance does not apply to separately elected County officials is fallacious. The Ethics Ordinance by its own terms applies to all “officials” where that term is defined to include any elected or appointed “County official” without regards to compensation. County Code, §§ 2-562, 2-561. Per the 1970 Illinois Constitution, the Recorder of Deeds is a county official. 1970 Ill. Const., Art. VII, § 4(c).

The argument that broad application of the Ethics Ordinance to separately elected County officials is somehow unconstitutional is similarly misguided. The Illinois Constitution provides that all County officials, including separately elected County officials, “shall have those duties, powers and functions provided by law *and those provided by county ordinance.*” 1970 Ill. Const., Art. VII, § 4(d) (emphasis supplied). The clear intent of section 4(d) is that County officials are required to adhere to both State laws and County ordinances simultaneously, without the former necessarily pre-empting the latter.

Although some aspect of a County official’s job may be governed by state law, this does not forever place every action that the County official takes outside of the jurisdiction of County government. To the contrary, state law expressly provides that while “[n]o county board may alter the duties, powers and functions of county officers that are specifically imposed by law,” a county board, “*may . . . impose additional duties, powers and functions upon county officers.*” 55 ILCS 5/5-1087 (emphasis supplied). As Illinois courts increasingly recognize, *see, e.g., Blanchard v. Berrios*, 2013 CH 14300, \*10 (Circuit Court of Cook County, Jan. 15, 2014) (rejecting the argument that complying with the Independent Inspector General’s Ordinance would unconstitutionally diminish the power of a separately elected County official because the Circuit Court “cannot say that investigating fraud or waste in Cook County government is beyond the scope of the home rule power granted to the County”), enacting ethics rules in an attempt to increase ethical behavior by its public officials, and to ensure that the public funds of a County are spent in an ethical manner, falls squarely within the very broad general power of a home-rule county “to regulate for the protection of the public health, safety, morals and welfare.” Ill. Const., Art. VII, § 6(a) (1970). Compliance with the Ethics Ordinance is a constitutional additional duty imposed on separately elected County officials.

As such, while the Board will make every effort to ensure the success of a credible and enforceable internal ethics policy at CCRD, the Board will not ignore a subsequent complaint of unethical activity in any County agency. The Board is deeply encouraged by the newly opened lines of communication between itself and CCRD. It is the Board’s hope that these lines of communication will remain open to resolve future complaints under the Ethics Ordinance more expeditiously.

#### CONCLUSION

For the forgoing reasons, with respect to the above-captioned matter, the Board of Ethics concludes that Recorder Yarbrough VIOLATED Section 2-582 of the Ethics Ordinance. The Board of Ethics declines to issue any fines or additional sanctions but has requested notification when CCRD’s proposed written anti-nepotism policy is submitted to the RCA for review and

inclusion in the CCRD Manual within 30 days of receipt of this notice. Any request for reconsideration of this determination must also be made within 30 days of receipt of this notice.

October 29, 2014

So ordered  
COOK COUNTY BOARD OF ETHICS

A handwritten signature in cursive script, appearing to read "Roseann Oliver", written above a horizontal line.

Roseann Oliver  
Chairperson