

Ethics Officer Conference
Rutan Process
 April 2016

History of the Rutan Decision

- ▶ Rutan v. Republican Party of Illinois 497 U.S. 62 (1990)
 - Supreme Court held that:
 - Hiring, promotion, transfer and recall may not be based on party affiliation or support, except for positions where political support or affiliation is an appropriate requirement.
 - Hiring must be based on the merits and qualifications of the candidate(s).

Rutan decision was an extension of two earlier cases that dealt with the firing of public employees.

Elrod v. Burns 427 U.S. 347 (1976)

Supreme Court held that:
 Firing of low level employees due to lack of political support violated those employees' First Amendment right to free association.
 Recognized consideration of political support as permitted for policymaking and confidential positions.

Branti v. Finkel 445 U.S. 507 (1980)

Supreme Court refined exemptions from Elrod and held that:
 Consideration of political affiliation or support is permitted for all positions for which it is an "appropriate requirement" for effective performance.
 Such positions include some, but not all, that involve policymaking, confidentiality and spokesperson duties.

CMS Contact for Inquiries

- › Wendy Butler
- › (217) 785-1941

- › Director of Governmental Affairs
- › Central Management Services
- › Wm. G. Stratton Building, Floor 7, Rm 702
- › Springfield, Illinois 62706

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Issuance of Administrative Orders

- › Since the Rutan decision, 4 Administrative Orders have been issued to:
 - Set forth and reaffirm policies and procedures to:
 - Designate CMS as the authority for determining the Rutan status of each position;
 - Establish the Structured Interview Process; and
 - Require documentation of the Employment Decision.
 - Extend the policies to cover dismissal, demotion, discipline, and denial of consideration for a raise or promotion.
 - To ensure compliance and defensibility.

Reference: Administrative Orders #1 & 2 (1990), Administrative Order #1 (1991) and Administrative Order #2 (2009).

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Administrative Order #2 (2009)

- › New and important provisions included:
 - Posting of each Rutan Covered position on work.illinois.gov.
 - CMS must grade each application for a classification in the order received and shall not grade any application out of order.
 - Blind grading and blind eligible lists
 - Multiple interviewer panels unless a single interviewer is approved by the Director of CMS

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Determination of Rutan Status

- › CMS is responsible for determining the Rutan status for all of Code and non-Code positions and PSCs.
- › When a position should be submitted for Rutan review:
 - Establishing new positions in titles shown on the Not Always Covered by Rutan listing.
 - Clarifying positions currently determined to be Exempt from Rutan.
 - Positions previously determined to be covered by Rutan that the agency has clarified and would like to be re-evaluated for possible exemption from Rutan.

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When is a CMS Rutan review not necessary?

- › A CMS Rutan review is not necessary for:
 - Establishing positions included in titles shown on the Always Covered by Rutan listing.
 - Clarifying positions previously reviewed and determined to be covered by Rutan.

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When should an agency request a Rutan review?

- › Immediately upon establishing or clarifying a position (as discussed in previous slides) and/or prior to initiating any steps towards filling a position, including posting.
- › Reminder: Completion of annual employee evaluations, in part, requires review of job duties. Clarifications should be processed as needed to ensure the job description reflects an employee's current duties.
- › Important: Several Rutan-related cases have been won based, in part, on the presence of an accurate, up-to-date job description. See Riley v. Blagojevich, 425 F.3d 357 (7th Cir. 2005)
- › Any questions regarding Rutan reviews or whether a review is necessary may be directed to CMS Division of Technical Services at 217-524-8773.

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Structured Interview Process

- › Established in Administrative Order #2 (1990) and clarified by Administrative Order #2 (2009)
- › For all Rutan covered positions:
 - The agency must use uniform, job-related criteria and interview questions;
 - The responses to such questions must be evaluated by reference to the requirements for the particular position; and
 - Such evaluation must be thoroughly documented and must demonstrate the basis on which the selection was made.
- › Agencies may receive requests for accommodation in the interview process. Most of these are routine. However, consult with CMS on requests that have potential to adversely affect the process.

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Structured Interview Process

- › Administrative Order #2 (2009) directed and/or reaffirmed the following policies regarding the Structured Interview Process:
 - Any agency employee who participates in the interview of a candidate must be an up-to-date Rutan certified interviewer.
 - Exception: Technical Expert – a non-certified member of an interview panel functioning in a technical expert capacity. Does not count as member of multiple-interviewer panel.
 - May ask specific technical follow-up questions to clarify a response and assist the certified interviewers in understanding technical responses
 - May not participate in the evaluation and scoring process

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Structured Interview Process

- Each Rutan interviewer must successfully complete the Rutan Refresher Course and be recertified at least once every 3 years. It is the agency's responsibility to ensure that its Rutan interviewers have up-to-date certification.
- Agencies shall utilize multi-member interviewer panels to provide greater input and reduce the risk of improper influence in hiring.
 - Exceptions to multi-member interviewer panels must receive CMS approval in advance.
 - Only currently Rutan-certified interviewers count toward a multiple-member interview panel.

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7 Steps of the Structured Interview Process

1. Determine the hiring criteria.
2. Define the hiring criteria.
3. Assign weights to the hiring criteria.
4. Develop the structured questions.
5. Conduct the structured interviews.
6. Evaluate the candidates.
7. Justify/document the employment decision.

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7 Steps of the Structured Interview Process cont'd

- › The hiring criteria and structured questions should be based on the current duties. Prior to posting:
 - Review the current job description and discuss with supervisors to ensure it reflects all current job duties
 - Clarify, if necessary
 - Submit for Rutan review, if required
- › Administrative Order #2 (2009) requires that interview hiring criteria and structured questionnaires shall be developed prior to posting.
- › While many positions are filled through collective bargaining provisions, it is often impossible to accurately predict which positions may reach "other means" and require a Rutan interview process. As such, we strongly advise that previously used hiring criteria and interview questionnaires be re-reviewed prior to posting to ensure continued accuracy.

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Rutan Documentation

- › The hiring agency must maintain chronological files for each position filled. See Administrative Order #2 (1990) and Administrative Order #2 (2009).
- › Candidate Evaluation Form - The CEF is the tool used to document and evaluate the candidate's responses against the weighted hiring criteria, not against other candidates. One is completed for each candidate.
- › Employment Decision Form - The EDF is the tool that documents the reason(s) for employing the selected candidate and provides summary comments comparing the selected candidate with others who were interviewed for the specific position.

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Employment Decision Liabilities

- › The Employment Decision Form:
 - Contains an Affidavit stating: "I certify that the hiring criteria and questions related to this employment decision were developed prior to initiating the candidate interview process. Furthermore, I understand that the hiring decisions documented on this form have not been decided on the basis of political party affiliation, support or lack thereof."
 - Is signed and attested to by the Agency Head or Designee.
 - The agency head remains liable for decisions delegated to a designee.
 - Consequences for violating any part of the Rutan hiring process include Personal and Professional liabilities and may result in discipline up to and including discharge/dismissal.
 - It is important to recall that the Rutan process protects Constitutional rights!
 - The Administration is firmly committed to the Rutan principles and directs any employee aware of a Rutan violation to report such violation to the OIG.

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Required documentation

- › Serves several important functions:
 - Fulfills documentation requirements
 - Substantiates interviewer comments
 - Provides a means of comparison
 - Supports selection decision
 - Provides detail for reference
 - Serves as your defense in Court

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Other Hiring Considerations

- › Compliance with Rutan-related policies and procedures does not replace other hiring policies or considerations.
- › Regardless of a position's Rutan status, *if applicable*, the following must be adhered to:
 - Absolute Veterans' Preference
 - Provisions of a collective bargaining agreement
 - Preference for Illinois residents
 - Provisions of the Personnel Code

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Other Agency/Position Requirements

- › Certain positions may have additional requirements to be evaluated outside of the scope of the structured interview process:
 - Required background checks;
 - Required drug testing; and/or
 - Conditions of Employment (may be asked at time of interview but should not be weighted or scored):
 - Work availability (e.g., evening hours, weekends, overtime, required travel)
 - Professional license/Drivers license
- › These and other bona fide requirements may, in certain circumstances, be used as rationale for bypassing and/or disqualifying otherwise acceptable candidates. Agencies need to document the rationale if hiring out of rank order.

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Purpose and Policy

- The Rutan decision simply means that unless a position is determined by CMS to be Rutan-exempt, politics cannot be considered.
- The Rutan procedures are designed to provide maximum legal protection and defensibility. It is in your best interest to follow the process.
- From Administrative Order #2(1990): "It is not the intent of this directive to mandate a single, specific set of personnel policies and procedures applicable to all agencies and all personnel transactions. Nor is it the intent of this directive to mandate agency employment decisions, but to provide a consistent, fair and objective basis to assure compliance with Rutan as well as the employment of fully qualified persons."

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Recap

- › The Rutan hiring process is designed to ensure compliance with U.S. Supreme Court decisions, avoid violating individuals' Constitutional rights and to provide necessary legal documentation.
- › The process is designed to elicit the best candidate for the position based on pre-established, job-related hiring criteria and interview questions.
- › There are permissible flexibilities inherent in the process to allow agencies to create the structured interview process necessary to select the most qualified candidate for the position given the agency's operating needs and business necessity and the specific job-related requirements of a particular position.
- › Violations of the Rutan process can result in personal and professional liability.
- › At any point in the process, preferably as early on in the process as possible, any questions regarding policy, procedures and/or agency/position specific requirements may be addressed to CMS Bureau of Personnel.

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Contact Information

- › CMS Bureau of Personnel: 217-524-8773
- › CMS Training: 217-558-4847
- › CMS Legal-Personnel: 217-782-9669

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Questions?

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**State of Illinois
Office of the Governor
Springfield 62706
July 17, 1990**

James R. Thompson
Governor

Administrative Order
Number 1 (1990)

**DIRECTIVE TO STATE AGENCIES
REGARDING PERSONNEL PRACTICES**

As you know, on Thursday, June 21, 1990, the United States Supreme Court issued its decision in Rutan v. Republican Party of Illinois, in which the Court held that promotion, transfer, recall and hiring decisions involving nonpolicymaking employees may not be decided on the basis of party affiliation and support. It has been the policy and practice of this administration to fill positions in the state only with individuals who are qualified for their positions. This will continue to be our policy.

We are reviewing the Supreme Court's decision with our attorneys to determine what actions we will take in the Rutan lawsuit in light of the Supreme Court's opinion. As part of our review of the decision, we set forth the following preliminary policies and procedures to ensure that all personnel decisions made by state agencies under the control of the Governor are in full compliance with the Supreme Court's decision:

1. All hiring and other personnel decisions shall be based on the merit and qualifications of the candidates. Where the selection of a candidate is made pursuant to an interview process, the agency must use uniform, job-related criteria and interview questions; the responses to such questions must be evaluated by reference to the requirements for the particular position and such evaluation must be thoroughly documented and must demonstrate the basis on which the selection was made.
2. No hiring or other personnel decisions - including promotions, transfers or recalls from layoff - may be decided on the basis of the candidate's party affiliation or support. Where practical the agency shall interview all qualified candidates on the eligibility list for the position being filled.

In instances where it is not practical to do so, the method used by the agency for determining the individual candidates to be interviewed for a particular position shall be based on factors related to the merits of the individual applicants, length of time on the list, random selection or any other reasonable and impartial standard.

3. No investigation shall be performed into a candidate's political affiliation, including his or her voting record, financial support, and/or willingness to work for or donate to any political party. This information shall not be reviewed or considered at any point in the employment process.
4. In making personnel decisions, agencies may consider recommendations and referrals from any sources, including elected officials or representatives of any political party. However, referrals or recommendations may be considered only if they relate to the job qualifications of the particular candidate. The political affiliation of the candidate or of the elected official or party representative who provides the recommendation or referral may not be considered in making personnel decisions.

* * * * *

Please ensure that all officials and employees in your agency immediately become familiar with the terms of this order, and that they take all necessary steps to see that it is implemented. We will advise you as to any further changes in our personnel practices based upon our continuing review of the Supreme Court's decision. Thank you for your full cooperation.

**State of Illinois
Office of the Governor
Springfield 62706
October 1 1990**

James R. Thompson
Governor

Administrative Order
Number 2 (1990)

**DIRECTIVE TO STATE AGENCIES
GUIDELINES FOR INTERVIEWING JOB CANDIDATES**

The following employment policies and procedures regarding the interview process are intended to provide additional guidance and clarification to state agencies with respect to the following directive taken from the Governor's Administrative Order, Number 1, dated July 17, 1990.

- "1. All hiring and other personnel decisions shall be based on the merit and qualifications of the candidates. Where the selection of a candidate is made pursuant to an interview process, the agency must use uniform, job-related criteria and interview questions; the responses to such questions must be evaluated by reference to the requirements for the particular position and such evaluation must be thoroughly documented and must demonstrate the basis on which the selection was made."

This Directive contains principles which will assist agencies in assuring that their personnel policies and procedures relating to interviewing and selecting candidates for employment, promotion or other personnel transaction are in compliance with the requirements of the Rutan decision. Adherence to these principles will also result in the production of documentation necessary to defend against any claims that may arise under this ruling.

It is not the intent of this directive to mandate a single, specific set of personnel policies and procedures applicable to all agencies and all personnel transactions. Nor is it the intent of this directive to mandate agency employment decisions, but to provide a consistent, fair and objective basis to assure compliance with Rutan as well as the employment of fully qualified persons.

Other employment policies such as Veterans Appointment Preference, Affirmative Action, and bargaining agreements will not be replaced by these policies and procedures. Additional screening requirements that the agency may impose prior to placing an individual on the payroll, promoting, transferring, or recalling an employee (e.g., background check, drug testing, residency) or other employment policies will not be restricted so long as they are not inconsistent with the procedures described herein. In addition, these policies and procedures address only the interview process, and do not apply where other types of selection devices are used.

I. SCOPE

A. Positions for which Principles are Relevant

The employment policies and procedures described in the following sections should be followed for all positions not specifically exempted from Rutan. A preliminary listing of those positions which, due to their policymaking or confidential nature, are clearly exempted from Rutan, will be published within the next two weeks. There will be many more positions which are not clearly exempt or non-exempt. Cataloguing and reviewing all these positions will be a time consuming effort which is too extensive to be undertaken in the time remaining to this administration. However, agencies wishing to make a determination regarding a particular position which is not included in this initial listing of exempted positions may submit the appropriate materials to CMS. In consultant with Ernst and Young and Jenner and Block, CMS will determine whether or not such a position is exempted from the requirements of the Rutan decision. In the absence of a determination that a position is exempted, this memorandum will apply to all positions.

B. Personnel Actions for which Principles are Relevant

The following principles apply to all employment decisions concerning individuals who are currently candidates to be interviewed for employment by the State or who are current State employees who are to be interviewed for promotion, transfer, or recall from layoff. Note that when the remainder of this document mentions "hiring" that this pertains to the interview activities involving both the hire of new employees and the promotion, transfer, or recall of current employees.

II. OBJECTIVES

Within the framework established by the Governor's directive, the State is committed to an interview process which will:

- Base employee selection on a candidate's ability to perform effectively on the job;
- Provide equal opportunity for State employment to all qualified job candidates;
- Prohibit the basing of employment, promotion, transfer, and recall decisions on partisan affiliation or support;
- Provide the hiring agency with maximum lawful discretion in making selection decisions; and
- Adequately document all employment, promotion, transfer and recall decisions.

III. THE INTERVIEW PROCESS

A. Approach

Following is a summary of minimum steps which should be part of an interview process to ensure compliance with the principles of the Governor's aforementioned Order. A summary of these steps is explained more fully below:

- Document and file hiring criteria for each position to be filled before conducting the interview, regardless of location:
 - Define and document major position responsibilities;
 - Define required knowledge, skills, abilities, and personal characteristics essential for competent performance in the job; and
 - Determine the relative weight of each hiring criterion.
- Develop a standardized interview questionnaire for each position to be filled to gather pertinent information about the candidate's knowledge, skill, abilities, and personal characteristics.
- Conduct a structured employment interview using a standardized interview questionnaire and note pertinent responses from the candidates that can be compared and evaluated in a consistent manner.
- Evaluate each candidate interviewed:
 - Rate the completed interview questionnaire;
 - Score each hiring criterion and note on an evaluation form;
 - Determine each candidate's overall score based on all hiring criteria; and
 - Rank all candidates interviewed by overall score.
- Document the interview process for all candidates interviewed.
- Document the employment decision.

- Maintain a chronological file of all interview questionnaires, evaluation and employment decision forms for each position when interviews were conducted.

B. Establish the Hiring Criteria

The reliability of a structured employment interview in screening qualified candidates is based on the identification of pre-established criteria for successful job performance which are required for entry into the position. Hiring criteria include major position responsibilities, knowledge, skills, abilities, and personal characteristics. As a general rule, the larger the number of qualified candidates, and/or additional identical positions to be filled, the higher the level of standardization required to assure the objectivity of the actual interviews.

The following approach to the development of hiring criteria assures that the criteria will be job-related, specific to the particular position, and essential to acceptable job performance. It is important to remember that hiring criteria which have not been pre-established should not be used as justification for the employment decision.

1. Define major position responsibilities. As a first step, this information should be obtained from existing job descriptions and class specifications. However, it is important to review this information with current job incumbents and/or the supervisor to assure its accuracy with respect to the specific position being filled. This step should produce up to ten major duties which serve as the primary areas of inquiry during the interview as well as the basis for identifying the knowledge, skills, abilities, and personal characteristics required to perform each major duty, and the subsequent development of specific interview questions. These duties should reflect the position as it is documented by the existing position description, not how it could be changed or improved.
2. Define required knowledge, skills, and abilities ("KSAs") and personal characteristics. Job-related KSAs and personal characteristics are derived from the position's major duties by focusing on such questions as "What would a candidate need to know to perform this duty?", "Can the required knowledge be obtained through formalized training or must it be learned through experience?", and "What types of behaviors are demonstrated by current incumbents who successfully perform this duty?". Once identified, the task of developing interview questions which are clearly and demonstrably job-related is greatly simplified.

To the extent that the position's major duties, required KSAs and personal characteristics are too broadly defined, the agency may have difficulty developing questions as well as differentiating, and subsequently selecting, between qualified candidates. Conversely, being too specific may cause well qualified candidates to be eliminated from consideration. In summary, the hiring authority must be actively involved in the definition of a position's hiring criteria.

3. Weight to each hiring criteria. These weights should reflect the relative importance of each criteria to acceptable job performance.
4. Document the hiring criteria on a Candidate Evaluation Form. The hiring criteria for each position must be documented prior to the conduct of any interviews.

C. Develop the Interview Questionnaire

The interview questionnaire will be used to assess all candidates who are being interviewed for a particular position. Interview questions derived from the identified KSA's and personal characteristics should also, to the extent possible, reference the position's major duties.

1. Common types of hiring criteria and the development of related interview questions are briefly summarized as follows:

- a. Knowledge and Experience - Assess whether the candidate has the required level of job knowledge that is both essential to job performance and constitutes the minimum which must be known prior to entering the position. Determine the extent to which the candidate has, in fact, ever performed the major duties of the position for which s/he is applying. These questions should deal with the more technical aspects of the position, or basic knowledge that is essential to enable the candidate to learn the job within the allotted probationary timeframe. Since this level of detailed information may be difficult to ascertain from the candidate's application, such questions are critical for those technically oriented positions where very specific skill and/or experience is required. During the actual interview, it is appropriate for the interviewer to probe further, as necessary, to evaluate the candidate's quality and level of experience. Concise, detailed notes should support any subsequent reliance on prior experience as a means of differentiating between candidates who would otherwise appear to be substantially equal.
 - b. Education, Training, and Special Skills - Determine if the candidate has the necessary education, training, and special skills to learn and/or perform the major duties as required. Ask about any specific coursework, training programs, and special skills which are considered desirable for the position.
 - c. Ability - Evaluate whether the candidate possesses the level of ability required to effectively perform the major duties. Abilities, and their relative importance, generally vary substantially based upon the nature and level of the position. The most commonly required abilities include problem-solving, oral/written communications, leadership, and interpersonal relations.
 - d. Personal Characteristics - To the extent possible, the simple noting of "impressions" by the interviewer should be avoided. It is, however, appropriate to ask candidates to demonstrate their application of the required personal characteristics in terms of specific job-related behaviors.
 - e. Willingness - For those positions with few or only very basic minimum requirements, as well as for jobs with some unpleasant or monotonous working conditions, the hiring authority/interviewer should prepare questions regarding the candidate's understanding of, and willingness to perform the major duties. The outlining and detailed disclosure of duties and working conditions in this context will serve as a realistic job preview for the candidate and may aid in self-selection.
2. Review interview questions. The following guidelines should be used in the development and evaluation of specific interview questions:
- a. Questions should be accurate, complete and easily understood. The need to clarify questions during the interview for certain candidates reduces standardization.
 - b. Questions must be clearly and strictly job-related, and must be directly linked to the position's major duties.
 - c. Questions must focus on the KSAs and personal characteristics necessary to perform the job at entry.
 - d. Questions should reflect, as nearly as possible, the content of the specific position for which the candidate is being interviewed.
 - e. To increase job-relatedness, questions should be stated in terms of sample position duties, and should be designed to elicit information on job-related behaviors.
 - f. Questions should be geared to the appropriate complexity level of the job.
 - g. Questions must be carefully reviewed to eliminate any possible accusation of partisan affiliation or support.

D. Conduct the Interview

1. Interview Obligations. Whatever the actual design of the interview, the interviewer must not ask any questions concerning political affiliation (or any question which could be construed as such). Politically-related topics that are to be avoided include:

- Political affiliation;
- Political contributions;
- Political sponsorship or recommendation and

In addition, it must be made clear to the interviewer that, if the candidate volunteers non-job-related information about political topics, s/he should be interrupted and the interviewer should be directed toward other topics.

2. Following is a basic agenda for conducting the structured employment interview.
 - a. Put the candidate at ease and build rapport.
 - b. Explain the purpose of the interview.
 - c. Provide a brief description of the position and important organization characteristics.
 - d. Ask the pre-established interview questions contained in the questionnaire and take notes on the candidate's response to each question, allowing the applicant to organize his/her own experiences, and to speak with spontaneity to reveal relevant information. The interviewer should probe for expansion and clarification of candidate responses to obtain adequate information for the evaluation of the candidate and, ultimately, the employment decision.
 - e. After you have completed the questionnaire, inform the candidate when the decision will be made, and ask whether s/he has any questions.

E. Additional Candidate Evaluation Criteria

The hiring authority will often use other evaluation methods in addition to personal interviews. Examination of performance records for current employees and work sample tests and job or community service related references would be examples of other legitimate screening devices.

F. Rating the Candidate

The agency must have standardized procedures in place to rank all candidates interviewed for a particular position based upon the pre-established hiring criteria, interview questionnaire and scoring of the candidate's responses to each question. By ranking candidates agencies are provided one measure to further distinguish between equally qualified candidates.

It is important to note that there is no requirement for agencies to hire in rank order or to hire a particular candidate. It is not the intent of the preceding policies and procedures to mandate agency employment decisions, but to provide a consistent, fair, and objective basis to assure compliance with Rutan as well as the employment of fully qualified employees.

IV. DOCUMENTATION OF EMPLOYMENT DECISIONS

Adequate documentation of employment decisions is a critical component of the Rutan compliance program. Although there is some latitude in other aspects of the previously described employment policies and procedures, agencies must strictly adhere to their requirements for documentation of all employment decisions.

A. Documenting the Interview Process

The hiring authority is required to provide the following documentation on each candidate interviewed:

1. An interview questionnaire which briefly summarizes the candidate's responses and assigns a rating for each question.
2. A candidate evaluation form including comments reflecting the hiring authority's assessment of the candidate's qualifications against each criteria.

In some cases, it may not be necessary to evaluate the candidate against all of the hiring criteria. If, for example, prior work experience or basic skills are unacceptable, the hiring authority may decide that further evaluation of the candidate would be pointless. In such cases, documentation needs to be provided only for those criteria against which the candidate was evaluated.

B. Documenting and Filing the Employment Decision

The hiring authority must complete an employment decision form prior to the extension of the employment offer, that provides, at a minimum, the following information:

1. The candidate to be hired and the position number being filled.
2. Justification for the decision to hire the selected candidate. This justification must clearly explain the reason(s) for hiring the selected candidate and provide a general statement comparing the selected candidate with others who were interviewed. To be considered appropriate, this justification must be job-related. In addition, where the candidate selected is one who did not receive the highest score, the justification should be sufficiently well documented so as to be subject to verification and allow inferences to be drawn as to why one candidate was selected over another.
3. The date the form was completed.
4. The agency must maintain an up-to-date, chronological file of employment decision forms as well as the candidate evaluation forms and completed interview questionnaires for all interviews conducted. In addition, a copy of the position description and major responsibilities must be included for each filled position. Each file must be labeled by the position number, title, and date of the employment decision.

ABC6/175

**State of Illinois
Office of the Governor
Springfield 62706
January 31, 1991**

Jim Edgar
Governor

Administrative Order
Number 1 (1991)

PERSONNEL POLICIES DIRECTIVE

On June 21, 1990, the United States Supreme Court ruled for the first time, in the case of Rutan v. the Republican Party of Illinois, that decisions to hire, promote, transfer or recall from layoff employees of public bodies could not be made on the basis of such employees' political affiliation or support. The exception for policy making or confidential employees or spokespersons established in earlier cases also applies to the Rutan ruling.

I hereby commit myself and all appointees, officials and employees in my Administration to fully comply with this ruling and all other, relevant constitutional provisions, laws and United States Supreme Court decisions.

Specifically, I order that the following principles be adhered to:

1. No employee may be dismissed from a non-exempt* state position on the basis of political affiliation or support.
2. No employee may be demoted, denied consideration for a raise or promotion, or disciplined on the basis of political affiliation or support.

Furthermore, I hereby affirm and adopt the provisions of Administrative Order #1 (1990), which state in pertinent part the following.

3. All hiring and other personnel decisions affecting non-exempt individuals shall be based on the merit and qualifications of the candidates. Where the selection of a candidate is made pursuant to an interview process, the agency must use uniform, job-related criteria and interview process; the responses to such questions must be evaluated by reference to the requirements for the particular position and such evaluation must be thoroughly documented and must demonstrate the basis on which the selection was made.
4. No hiring or other personnel decisions - including promotions, transfers or recalls from layoff - may be decided on the basis of the candidate's party affiliation or support. Where practical the agency shall interview all qualified candidates on the eligibility list for the position being filled.
5. In instances where it is not practical to do so, the method used by the agency for determining the individual candidates to be interviewed for a particular position shall be based on factors related to the merits of the individual applicants, length of time on the list, random selection or any other reasonable and impartial standard.
6. No investigation shall be performed into a candidate's political affiliation, including his or her voting record, financial support, and/or willingness to work for or donate to any political party. This information shall not be reviewed or considered at any point in the employment process.
7. In making personnel decisions, agencies may consider recommendations and referrals from any source, including elected officials or representatives of any political party. However, referrals or recommendations may be considered only if they relate to the job qualifications of the particular candidate. The political affiliation of the candidate or of the elected official or party representative who provides the recommendation or referral may not be considered in making personnel decisions.

Additionally, I hereby affirm and adopt Administrative Order #2 (1990) which establishes guidelines for development of job criteria, interview questionnaires, for objectively rating candidates, and for documenting selection decisions. Administrative Order #2 is attached hereto and made a part of this order.

I further order that:

8. The Department of Central Management Services shall be responsible for developing and implementing such rules, policies, guidelines and manuals, including the training manual already prepared in conjunction with the management consulting firm of Ernst and Young, as are necessary or appropriate to ensure that the personnel policies and procedures of all agencies, boards, and commissions under my jurisdiction comply with the requirements of this Administrative Order and generally with all applicable constitutional provisions, laws and United States Supreme Court rulings concerning personnel matters, as well as with all other requirements of State law and regulations and budgetary and fiscal guidelines. The Department shall also be responsible for coordinating information about agency hiring and other employment data with the Bureau of the Budget and assisting with the administration of any budget or fiscal policies or guidelines issued by the Bureau.
9. Whether a position is exempt from the requirements of Rutan and other relevant United States Supreme Court cases shall be determined by the Department of Central Management Services in consultation with the Office of Counsel to the Governor, and such recognized experts or advisors as may be retained by that Department. Any personnel transactions for which there is a question as to whether the position is exempt from Rutan should be submitted to the Department of Central Management Services for determination in accordance with this consultation process.
10. The Department of Central Management Services shall notify the initiating agency and the Director of Executive Employment and Labor Relations in the Office of the Governor of any positions that have been determined to be exempt by that Department under Rutan.
11. The requirements of this Administrative Order and rules, policies, guidelines and manuals issued hereunder shall supersede any procedures which may still be in effect pursuant to Executive Order #5 (1980) which is revoked.
12. The procedures set forth in this Administrative Order apply to all personnel transactions of agencies, boards, and commissions subject to my control or direction whether or not the position affected by the personnel transaction in question is under the jurisdiction of the Personnel Code.

*As used in this Order, "non-exempt" refers to an employee who is not exempt from the requirements of Rutan and has no relevance to whether such employee is or is not exempt from the Illinois Personnel Code.



OFFICE OF THE GOVERNOR

JRTC, 100 W. RANDOLPH, SUITE 16-100
CHICAGO, ILLINOIS 60601

PAT QUINN
GOVERNOR

Administrative Order
Number 2 (2009)
December 10, 2009

DIRECTIVE TO STATE AGENCIES, UPDATING GUIDELINES FOR COMPLIANCE WITH THE *RUTAN* DECISION

This Administration is firmly committed to adhering to the principles articulated in the United States Supreme Court decision, *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990) ("*Rutan*"), and its progeny, as well as Administrative Order No. 1 (1990), No. 2 (1990), and No. 1 (1991) (collectively, the "Prior Administrative Orders"), all of which prohibit consideration of political affiliation or support (or lack thereof) in connection with hiring, promotion, transfer, or recall from layoff, with respect to employment positions covered by the *Rutan* decision ("*Rutan*-covered positions").¹

It is the intent of this Directive (i) to provide guidance and clarification with respect to certain aspects of the Prior Administrative Orders, all of which are hereby affirmed and shall remain in effect, and (ii) to announce certain new guidelines and procedures relating to personnel transactions for *Rutan*-covered positions. It is not the intent of this Directive to mandate a single, specific set of personnel procedures to be used in connection with every single personnel transaction or to limit the ability of agencies, boards, and commissions to impose job-related requirements and procedures (e.g., background checks, drug testing, residency requirements, job-related driver's license requirements), in addition to those set forth below, prior to making an offer of employment, so long as they are not inconsistent with any policies or procedures described herein, or any applicable laws. Instead, through the guidelines and procedures set forth below, this Directive seeks to ensure that applicable decision-making processes comply with *Rutan* and rely upon politically neutral, merit-based criteria.

I. Scope

This Directive shall apply to all personnel transactions relating to *Rutan*-covered positions of State agencies, boards, and commissions under the jurisdiction of the Office of the Governor ("OOG"), whether or not the positions affected by the personnel transactions in question are under the jurisdiction of the Personnel Code and Rules. That is, this Directive applies to both "code" and "non-code" positions under the jurisdiction of the OOG.

¹ As used in this Directive, "*Rutan*-covered" refers to an employment position that is subject to the requirements of *Rutan*.

In the event of a conflict between this Directive and the requirements of a collective bargaining agreement, the collective bargaining agreement shall govern. In the event of a conflict between this Directive and any policies or procedures relating to employment positions or personnel transactions that are set by statute (e.g., the Veteran Preference set forth in 20 ILCS 415/8b.7), the policies and procedures set by statute shall govern.

II. Employment Applications

A. Submission of Applications

1. The Bureau of Personnel in the Department of Central Management Services ("CMS") has served and shall continue to serve as the central point of intake for all employment applications under the jurisdiction of the Personnel Code and Rules ("coded classifications").
2. Each *Rutan*-covered position shall be posted on the Work 4 Illinois website, <<http://www.work.illinois.gov>>, which can be accessed from home or through public access computers at most public libraries or State offices.
3. Any employee of an agency, board, or commission under the jurisdiction of the OOG who receives a personnel request, referral, or recommendation for a *Rutan*-covered position shall refer the person making the request, referral, or recommendation to CMS Governmental Affairs for disposition.

B. Grading of Applications

1. For coded classifications under the jurisdiction of the OOG, subject to any time limitation on when applications will be accepted and how long an application can remain active, CMS personnel shall grade each application for a classification in the order in which the application has been received and shall not grade any application out of order. Subject to the limitations, above, all other classifications under the jurisdiction of the OOG, but not under the jurisdiction of the Personnel Code and Rules ("non-code positions") shall be graded in the order received by the employing agency, board, or commission.
2. Each application shall have the name of the applicant and any references or any other personally identifiable information redacted so that the grading can be done on a blind basis. CMS personnel shall perform any necessary credential verification in a manner that preserves the integrity of the blind grading process. As soon as practicable, CMS will move towards a fully automated system.

3. The grader shall employ objective, merit-based criteria in his or her grading of applications. Grading shall be free from all political considerations.
4. All documents and data regarding applications for *Rutan*-covered positions shall be available for regular auditing.

C. Creation of Eligibility Lists

In creating an open competitive eligible list, to be utilized by an agency for an open *Rutan*-covered position, CMS shall redact the names of the applicants and other personally identifiable information so that the selection of candidates for an interview pool can be done on a blind basis.

D. Job Descriptions

Job descriptions shall be reviewed and, if necessary, updated prior to any *Rutan*-covered posting, to reflect current duties, responsibilities, and requirements.

III. The Interview, Evaluation, and Selection Process

Administrative Order No. 2 (1990) contains detailed procedures and guidelines for conducting applicant interviews for *Rutan*-covered positions in a manner intended to ensure compliance with *Rutan*. This Directive reaffirms the applicability of the interview, evaluation, and selection guidelines set forth in Administrative Order No. 2 (1990) and supplements that Order with the following additional procedures and guidelines:

A. Training of Interviewers

1. CMS and other State agencies, boards, and commissions have training programs to orient agency employees responsible for making personnel decisions to the State's *Rutan* hiring procedures and corresponding interview and selection methods ("*Rutan* training"). *Rutan* training and certification has proven to be an effective component of the State's *Rutan* compliance program. The current website to register for CMS's *Rutan* training is <http://www.state.il.us/cms/2_servicese_educ>.
2. Any agency employee who participates in the interview of a candidate for a *Rutan*-covered position must have successfully completed *Rutan* training. A non-certified member of an interview panel may only function in a technical expert capacity; he or she may ask specific technical follow-up questions to clarify a response and assist the certified interviewers in

understanding technical responses given by the interviewee, but he or she may not participate in the evaluation and scoring process.

3. As soon as practicable, but no later than six months after the date of this Directive, CMS shall develop a Refresher Course for re-certification of *Rutan* interviewers. The Refresher Course may be offered online or in any other appropriate format. The Refresher Course for interviewers shall review key elements of the State's *Rutan* compliance program, offer updates as to changes or enhancements in compliance policies and practices, and include an evaluative component to ensure that those taking the Refresher Course continue to have an appropriate knowledge of compliance guidelines and procedures. Once the Refresher Course is implemented, each *Rutan* interviewer must successfully complete the Refresher Course and be re-certified at least once every 3 years.

B. Interview Panels

1. *Rutan* interviewers must make their assessments of candidates based upon their responses to a pre-determined and uniform set of job description-related questions that are developed prior to posting and posed during the interview (as outlined in Administrative Order No. 2 (1990)), in an atmosphere where interviewers are free of advance knowledge of candidates and of outside influences. *Rutan* interviewers must be insulated from any attempts to sway their assessments or hinder their objectivity. No interview panel should include, either as interviewers or as technical advisors, any person who is related to, or otherwise would have a conflict of interest in connection with evaluating, any of the applicants for the position.
2. Since multi-member interviewer panels provide greater input and reduce the risk of improper influence in the hiring process for *Rutan*-covered positions, agencies shall utilize such panels rather than single interviewers in the interview and evaluation process. Members of the interview panel must remain consistent throughout the course of the interview process for a position. A technical advisor who has not completed training to be a certified *Rutan* interviewer shall not be considered a member of an interview panel for purposes of determining the numerical composition of the panel. Under limited circumstances, the Director of CMS or his or her designee may approve the use of single interviewers for *Rutan* interviews and evaluations, but only after the director of the requesting agency provides written justification for the use of a single interviewer.

- C. Interview, Evaluation, and Selection of Candidates
1. Administrative Order No. 2 (1990) contains appropriate guidelines for the interview and evaluation of candidates, and it is hereby affirmed. In addition to those guidelines, the following guidelines shall also apply to the interview and evaluation process for all *Rutan*-covered positions.
 2. To the extent practicable, the agency shall interview all reachable applicants. In situations where it is not practical to interview all reachable applicants, the agency shall use a standardized method to select the names of candidates to interview for a position. Such a method shall be based on: (i) factors related to the merits of the individual applicants, (ii) random selection, or (iii) any other reasonable, impartial, and legally compliant standard. In the event that an agency uses a method other than random selection, however, it shall create a written record, specifically identifying the alternative selection method used and the justification for its use.
 3. Prior to commencing interviews for a *Rutan*-covered position, the interview panel shall ensure that the Hiring Criteria and Interview Questionnaire agreed upon for the interviews and developed prior to posting are preserved and made a part of the *Rutan* file for that position. *Rutan* files must be maintained separately from employee personnel files.
 4. Copies of the Interview Questionnaire, which shall include the interviewer(s) summary(ies) of a candidate's responses to each question and the weighted score assigned by the interviewer(s) thereto, shall be placed in the *Rutan* file and preserved.
 5. A Candidate Evaluation Form, reflecting the interview assessments of the candidate's qualifications against each criterion for the position at issue, should be preserved for each candidate interviewed and made a part of the *Rutan* file for the position. Each member of the interview panel shall sign and date the form and certify that the evaluation was not based on political party affiliation or support (or lack thereof).
 6. The Employment Decision Form for the position shall be preserved and made a part of the *Rutan* file for the position. The form shall include a written justification for the agency's decision as to the candidate chosen to be hired for the position. The agency director or his/her designee shall sign and date the form and certify that the employment decision was not based on political party affiliation or support (or lack thereof).

7. In the event that an agency decides to cancel an opening rather than hire any of the interviewed candidates, a written justification for the cancellation decision shall be included in the *Rutan* file.
- D. Retention of Records
1. Each agency shall maintain *Rutan* files for each job position number in chronological order, so that hiring decisions can be audited.
 2. *Rutan* files shall be maintained for a period of three years from the date of the employment decision or in accordance with agency record retention policies, whichever is longer, at which time the files shall be transferred to the State Records Center for disposition in accordance with the State Records Act, 5 ILCS 160/1 *et seq.*

IV. Savings Clause

Nothing in this Directive shall be construed to contravene the terms of any collective bargaining agreement or any State or federal law.

V. No New Rights Created

Nothing in this Directive is intended to create any new right or benefit, substantive or procedural, enforceable at law by a party against the State of Illinois, its agencies, boards, commissions, officers, or employees, or any person.

VI. Severability

If any provision of this Directive is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

VII. Effective Date

This Directive shall become effective immediately.

Unless otherwise noted, to the extent any new requirements in this Directive are not already fully in place, the responsible State agencies, boards, and commissions under the jurisdiction of the OOG shall have 120 days to become fully compliant.

A handwritten signature in black ink that reads "Pat Quinn". The signature is written in a cursive, flowing style.

Governor Pat Quinn



**Office of Executive
Inspector General
for the Agencies of
the Illinois Governor**

www.inspectorgeneral.illinois.gov

1

**OEIG
Division of Hiring and
Employment Monitoring**

2

OEIG Jurisdiction

“[T]o investigate allegations of fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, malfeasance, or violations of this Act or violations of other related laws and rules.” 5 ILCS 430/20-10(c).

3

OEIG Investigative Work – Hiring or Employment Matters

- 130 completed investigations
- 25 founded reports
 - Published reports include OEIG Case Nos. 10-00790, 11-00952, and 11-01567

4

OEIG Investigative Work – Allegations or Findings

- Improper political considerations
- Conflicts of interest
- Failure to meet qualifications
- Falsified application materials

5

EIG Duties

“...review hiring and employment files of each State agency within the Executive Inspector General’s jurisdiction to ensure compliance with *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), and with all applicable employment laws.”
5 ILCS 430/20-20(9).

6

**Authorities Governing Hiring and
Employment**

- State Law and Administrative Code
- Executive and Administrative Orders
- CMS Interview and Selection Criteria and
Techniques Manual(s)
- Collective Bargaining Agreements
- Agency Policies

7

**OEIG Division of Hiring and
Employment Monitoring
(HEM)**

- Staffing
- Functions
- Procedures
- Reporting

8
