



METRO-NORTH RAILROAD ASSISTANT VICE PRESIDENT INFLUENCE IN THE HIRING OF A RELATIVE

Barry L. Kluger
MTA Inspector General
State of New York

INTRODUCTION

Metro-North Railroad (Metro-North) is a subsidiary agency of the Metropolitan Transportation Authority (MTA), a New York State public authority created as a public benefit corporation to serve the transportation needs of the New York metropolitan area. It is the largest agency of its kind in North America. For its part, Metro-North operates a commuter railroad among New York City, Westchester County, and parts of upstate New York and Connecticut.

In June 2012, the Office of the New York State Comptroller (OSC) issued a report entitled “Forensic Audit of Payments to On-Board Service Managers,” reflecting its findings and recommendations regarding the functioning of the Metro-North On-Board Services Unit. Specifically, the purpose of the audit was to determine whether the employees in this unit, a since-disbanded part of the Metro-North Operations Services Department (itself a part of the Operations Department), fulfilled their duties and performed the assigned tasks for which they were paid, which primarily involved riding trains in order to monitor crew performance in areas such as fare collection and passenger safety. The report noted that the unit staff consisted of a supervisor and five on-board service managers, with a total annual cost in compensation, including salaries and fringe benefits, of just over \$830,000.

During the audit, OSC questioned the referral in 2008 by Sherry Herrington, the Metro-North Operations Services Department assistant vice president, of her domestic partner, Stuart Moore, to be hired into the On-Board Services Unit, which was within Herrington’s chain of command. Perceiving a conflict of interest and potential violation of the New York State Public Officers Law, OSC requested the file of Metro-North’s 2009 internal investigation of this hiring. When Metro-North provided only a summary in lieu of the investigative file itself, asserting attorney-client privilege, OSC referred the matters to the Office of the MTA Inspector General as follows:

Given Metro-North’s refusal to provide its actual file on this investigation, and the other findings of this report, we have referred these matters to the MTA Inspector General – an independent agency created by statute to investigate ‘alleged abuses, frauds and service deficiencies’ within the MTA that is granted ‘full and unrestricted access’ to all Metro-North records. We will continue to work cooperatively with the MTA Inspector General.¹

¹ In addition to the this report, which reflects our investigation regarding the hiring of Moore, OIG conducted a separate investigation, pursuant to the OSC referral and consistent with our own powers to uncover abuses and (footnote continues on next page)

During the course of our own investigation, with which Metro-North fully cooperated, OIG interviewed more than 35 present and former employees of Metro-North. Aside from Herrington and Moore, these included top-level executives in the Metro-North Human Resources and Operations departments, as well as the senior vice president for Administration, the general counsel, and the president of Metro-North Railroad. Additionally, the OIG acquired and reviewed more than 1,000 documents, including job posting data, operating procedures, memoranda, emails, and personnel files. Finally, we analyzed the pertinent state laws and agency rules defining applicable requirements and ethical behavior.

Based on the record before us, we conclude that Herrington violated the Metro-North Operating Procedure governing employment of relatives, as well as the broader provisions of the MTA All-Agency Code of Ethics prohibiting nepotism, conflicts of interest, and violations of the public trust. Additionally, it appears to us that Herrington violated corresponding provisions of the New York State Public Officers Law.

service deficiencies, to determine whether the employees of the Metro-North On-Board Services Unit properly performed their jobs. A report of this separate investigation will follow in due course.

THE METRO-NORTH LEGAL DEPARTMENT INVESTIGATION

In response to the Comptroller's forensic audit, but in lieu of turning over documents that Metro-North asserted were protected by the attorney-client privilege, Metro-North Deputy General Counsel Sofia Hubscher provided to the Comptroller her memorandum, dated July 28, 2011, entitled "Summary of the 2009 Metro-North Legal Department Determination that October 2008 Hiring of Stuart Moore to Operations Manager, On-Board Services Position Was Appropriate" (Summary).

The Summary reported the conclusion by Metro-North's original investigating attorney, Carol Sue Barnett (now retired), that "Ms. Herrington had not attempted to influence the hiring process other than by making a referral. . ." The Summary also reported that Barnett made three recommendations: (1) a verbal reprimand for poor judgment in not making clear to the Human Resources Department and her supervisor the nature of her relationship with Moore; (2) a revision to the employment application to require applicants to disclose a domestic partnership or similar relationship;² and (3) a revision to the Employment of Relatives Operating Procedure to require the referring employee to disclose the relationship to Human Resources and to the appropriate supervisor at the time the employee makes the referral.

The Summary further reported that three separate reprimands were issued to Herrington in late 2008 to early 2009: (1) by her supervisor, the senior vice president of the Operations Department; (2) by the then-director of Human Resources; and (3) by the Human Resources vice president. Additionally, the Summary reported that in October 2009, in accord with Barnett's second and third recommendation, "the Employment of Relatives Operating Procedure was revised after a full evaluation of the other MTA agencies' policies."

Notably, though, while the Summary names a number of individuals interviewed by Barnett during the course of her review, it is silent as to whether Herrington was ever interviewed, let alone what she may have said. And while the Summary reports the Legal Department's conclusion that there had been no violation of Metro-North's Employment of Relatives policy/procedure, the Summary is also silent as to whether the Legal Department even considered the applicability and possible violations of the MTA All-Agency Code of Ethics and the New York State Public Officers Law.

When OIG interviewed Hubscher about the Legal Department's original investigation as well as her own more recent follow-up interviews with various individuals, and asked whether it would

² The Employment Application signed by Moore on September 16, 2008 asked the question "Do you have any relatives presently employed by Metro-North?" to which Moore answered "No." While Metro-North (and the MTA) specifically defined the term "relative" to include domestic partners and/or members of the same household, the application did not contain that definition or explain what the application meant by the term "relatives." Thereafter, on October 20, 2008, Moore completed a New Hire Form, which asked for certain Emergency Contact Information, including the full name of her contact, which Moore listed as "Sherry Herrington," and their "relationship," which Moore listed as "Partner."

have been prudent to interview key witnesses like Herrington, she stated in words or substance: “Now that you’re asking me these kinds of questions, it seems like more should have been done. That would have made sense.”

Indeed, when OIG interviewed Howard Permut, president of Metro-North Railroad, he candidly acknowledged that no one picked up the potential violation of either the MTA All-Agency Code of Ethics or the New York State Public Officers Law, and that Metro-North’s General Counsel’s office should have flagged those issues.

George Walker, the former senior vice president of the Operations Department (which includes the Operations Services sub-department), and Herrington’s supervisor, now retired, provided some insight into the initial investigation of Herrington’s role in the hiring of Moore. While Walker told OIG that he had spoken to the vice president of Human Resources and to the former general counsel, and had asked for such investigation, he also told us that the aim of the investigation, at least in his view, was to clear Herrington of wrongdoing so she could eventually replace him after his retirement. Walker stated that both he and Barnett liked Herrington and felt uncomfortable investigating their “cohort.”

THE MTA INSPECTOR GENERAL INVESTIGATION

Public Service Hiring: An Overview

Public sector employment, whether with a public authority or a state agency, is critical to the proper functioning of government. Additionally, in difficult economic times, when the job market is tight, public employment is especially attractive because it provides valuable salaries and excellent benefits, including paid vacations, retirement opportunities, and health insurance.

To ensure that these public servants perform their governmental duties diligently and fairly, including their role in the hiring of others, they are subject to state laws and agency rules defining applicable requirements and ethical behavior. While these laws and rules will be discussed in more detail later in this report, suffice it to say that in 2008, when Moore was hired, the New York State Public Officers Law and the MTA All-Agency Code of Ethics contained applicable provisions prohibiting nepotism, conflicts of interest, and violations of the public trust. For its part, Metro-North (and other MTA constituent agencies), had its own anti-nepotism rule.

Briefly put, these prohibitions were (and still are) generally defined as follows:

Nepotism means participating in any hiring or employment decision involving an individual defined as a relative (e.g. domestic partner) of the public employee, including an individual living in the employee's household.

A conflict of interest means having a financial, personal, or other interest that is or may be at odds with the proper discharge of the employee's duties in the public interest.

A violation of public trust means conduct by employees that gives a reasonable basis for the impression that any person can improperly influence them or unduly enjoy their favor in the performance of their official duties, or that they are affected by the kinship or stature of another.

Metro-North Hiring Procedures and Practices: The Basics

During the course of our investigation, we identified the Metro-North hiring rules in effect in 2008 when Moore applied for the position of On-Board Services Manager.³ Basically, the applicable rules consisted of two Metro-North Operating Procedures: 21-013 (Employment of Relatives) and 21-015 (Job Posting for Management Positions).⁴

³ Some of these practices remain the same while others have been modified or eliminated.

⁴ Operating Procedure 21-013 (Employment of Relatives) is the anti-nepotism rule referenced in the last section. Though briefly mentioned here, it will be discussed in more detail later regarding its anti-nepotism aspects.

Operating Procedure 21-013 provided in pertinent part that “Metro-North Railroad employment decisions shall be made on the basis of merit and qualifications, on a competitive basis and in accordance with Metro-North Railroad’s Equal Employment Opportunity Policy.”

Additionally, Operating Procedure 21-015 established the applicable policy and procedural guidelines, including the following in pertinent part:

- Job openings “will be filled by candidates considered to be the **best qualified.**” (Emphasis added)
- Applications received after the posted application deadline “may not be accepted.”
- If no qualified internal candidates are identified, the position may be filled from applicants outside the railroad.
- The Human Resources Department (HR) sets the recruiting strategy with the Hiring Department, which is the particular Metro-North department with a vacancy to be filled (e.g. Operations Services), and begins the recruitment, selection, testing (if applicable) and interviewing process. HR screens the applications, selects the most suitable candidates and arranges to interview them with the Hiring Department representative.

Naturally, though, these limited written rules were effectively supplemented in practice. Generally speaking, then, the process worked “typically” as follows.

A “hiring cycle” would begin with the identification of a vacancy by the Hiring Department. A job description would be crafted to set out the qualifications for a newly-created position, or the qualifications for an already-existing position would be reviewed and edited as appropriate. HR would then advertise the vacancy through various media, including the Metro-North internet and intranet for external and internal applicants respectively.

Although the written rules authorized HR to create a list of candidates to interview, in practice HR conducted the initial screening and vetting, but delegated to the Hiring Department the authority to pick these candidates. There was no mandated process by which HR narrowed the pool of candidates to transmit to the Hiring Department, but an employment manager at HR described her own personal system of separating all candidates who meet the minimum qualifications into an “A” group, a “B” group, and a “C” group. That manager acknowledged to us that she would place candidates who received a referral into the “A” group, even if their professional experience alone would have warranted only a “B” or “C” placement.

Once the Hiring Department selected the candidates, HR scheduled them for interviews. According to the employment manager, candidates had to be interviewed for a position to be hired for it. The interview panels generally consisted of at least two, but more often three, interviewers: the assigned recruitment specialist (who is from HR) and one or two representatives from the Hiring Department, to be chosen by that department. While the same recruitment specialist attended each of the interviews, the individuals from the Hiring Department might change.

Prior to each interview, the panelists received a packet containing the candidate's resume and a blank score sheet upon which to write notes and a numerical score for each answer.⁵ Answers on the sheets were scored from "1" to "4", with "4" being the highest. Panelists were to write notes and numerical scores contemporaneously with the candidate's responses to questions. After each interview, the interviewers discussed the candidate and compared notes and scores to ensure that the candidate's responses to questions were captured accurately and that the scores were generally consistent throughout the panel. At times, a panelist might change a score if convinced that his or her initial score was not appropriate. In the view of the senior employment manager for HR, discussions of scores should take place directly after the interview and any handwritten changes should be initialed by the interviewer.

Following completion of all interviews, the Hiring Department selected the candidate to be hired and communicated its approval to HR.

Operations Services Department Job Vacancies in 2008

In 2008, the Operations Services Department (OSD), under Herrington, had three job vacancies relevant to this report: On-Board Services Manager (On-Board Manager); Operations Manager – Capital (Capital Manager); and Operations Manager – Stamford (Stamford Manager).

In the competition for On-Board Manager, James Brandt, a long-time employee who had been temporarily filling the On-Board Manager vacancy for nearly two years, scored first; Robert Chu, an external applicant who is the brother of Diana Tucker, then-senior employment manager at HR, scored second; and Moore scored third. Nevertheless, Moore was hired as On-Board Manager. Chu and Brandt were hired as Capital Manager and Stamford Manager respectively, although neither had initially applied nor interviewed for those positions. Given the interconnected manner in which these three positions were filled—and approved by Herrington—we discuss them together below.

The Moore Candidacy and Herrington Recommendation

The vacancy for the On-Board Manager arose in the summer of 2008; the primary responsibilities of this position being riding Metro-North trains to observe train conductors for compliance with various rules and regulations including dress codes, fare collection, announcements, and safety procedures.

After advertising for the position in July 2008, HR received approximately 120 applications, one of which was from Stuart Moore.⁶ At the time she applied, Moore had lived together with Herrington for about 10 years as her domestic partner.

⁵ In 2013, the vice president of HR discontinued the use of numerical scoring on interview evaluation sheets.

⁶ The OSC report concluded that the job qualifications were changed by Metro-North just prior to when it advertised the position on July 30, 2008; that the changes made the qualifications less rigorous; and that the changes were made to enable Moore to meet the qualifications and apply for the job. However, our investigation revealed that the (footnote continues on next page)

According to Moore, she spent most of her career in mortgage underwriting, until the 2008 decline in the real estate market. When she became dissatisfied with her job after the economic downturn, Moore began to look for employment opportunities with Metro-North, based on Herrington's description of the agency as a good place to work and a place with desirable benefits.

Moore and Herrington both asserted that while Herrington explained the On-Board Manager job to Moore and encouraged her to apply for it, Moore first learned of the vacancy through the Metro-North website, not from any discussion with Herrington.⁷ Moore submitted her application electronically to Metro-North, and Herrington told OIG that after this submission she sent an email to Tucker from HR on Moore's behalf:

[T]hat's when I sent the **recommendation** to Diana Tucker, because she [Moore] had submitted it [the application] late in the posting period. Not after the posting period, but late in the posting period. So I wanted to make sure that Tucker got it and could review it.⁸ (Emphasis added.)

The email read:

Diana,

Please watch for an application for Stuart Moore for my On Board Managers job. I know her well and she would be an excellent candidate. Most of her experience is in the mortgage industry with some management experience as an Operations manager. She's very familiar with following policies and procedures, auditing records to ensure completeness, and has strong customer service skills. She would make a great asset to the company. Let me know what you if you [sic] received the resume and what you think. Thanks for your consideration.

Asst. Vice President
Operation Services

While we set out later in detail the applicable state laws and agency rules, we note at this point that Herrington's email raised significant ethical problems.

changes to the job qualifications to which OSC referred actually occurred in or about 2005, when a vacancy was advertised for which Moore did not apply.

⁷ The OSC notes of its interview with Moore in April 2011 state that "[Moore] indicated that she was informed of the opening for the position and was encouraged to apply by her partner." When OIG brought this note to Moore's attention, Moore denied that she had spoken inconsistently, and reiterated that she learned of the vacancy through the Metro-North website, not from Herrington.

⁸ It appears that this emailed recommendation is what OSC characterized as Herrington's "referral" of Moore.

To begin, while Metro-North Operating Procedure 21-013 permits employees to “refer” relatives for employment consideration “with MTA or a constituent agency,” this email was much more than a mere referral. Indeed, Herrington, in what she characterized as a “recommendation,” not only endorsed Moore’s hiring, but called on Tucker to continue the dialogue with Herrington—despite the Operating Procedure’s prohibitions against “involving herself” in the interview and hiring process, using her official position, or otherwise attempting to influence the recruitment and selection process of a relative.

Further, Herrington misled Tucker by saying about Moore only that “I know her well” and not disclosing that Moore was Herrington’s domestic partner. Significantly, the decision by Herrington to withhold that information was purposeful, as evidenced by the following exchange with OIG:

OIG: When you made the recommendation of Stuart to HR or at any other point in the hiring process, setting up interviews, or determining which candidates to interview and to hire, did you ever seek guidance from any of the guidelines, ethical guidelines, or legal department?

SH: I did. I do remember reading our policy at the time . . . And I didn’t see anywhere in the policy at the time that you had to disclose. I may have missed it, but I don’t remember seeing where it said that I had to disclose and I felt disclosing would in and of itself would be influencing the process. I did what I thought was the right thing to do at the time.

According to Tucker, Herrington’s failure to describe more fully her relationship with Moore misled Tucker into believing that no familial relationship existed, which significantly impacted the way in which Tucker handled the referral. Indeed, Tucker stated to OIG that had she known of the relationship at the time of Herrington’s referral, she would have consulted with her supervisor, Shirley Joshua, then-director of HR, and Gregory Bradley, vice president of HR, to discuss Metro-North policy regarding the hiring of relatives and to seek guidance as to how to proceed. Instead, unaware of the relationship, Tucker forwarded Herrington’s email to Dione Christie, then-employment manager at HR, the recruitment specialist assigned to manage the hiring for the On-Board Manager position.

Lastly, while Herrington was right that the Metro-North operating procedure did not explicitly require disclosure of the relationship, although that rule by its terms prohibited Herrington from involving herself in the interviewing or hiring of a relative, the MTA All-Agency Code of Ethics—which is controlling on this issue and which Herrington, as a high ranking Metro-North executive, is certainly charged with knowing—did explicitly state that if a hiring matter arises involving a relative, the employee must advise her supervisor of the relationship and must be recused (i.e. kept out) of any and all discussions relating to the matter. As her email reflects, though, Herrington requested that Tucker respond with her opinion of Moore’s candidacy—a request that is the opposite of a recusal.

Though Herrington claimed to OIG that other than this “recommendation” she recused *herself* from “anything to do with the process” involving the three managerial positions to be filled, we find that claim to be at odds with the facts.

For example, while, Herrington told us that she delegated the handling of these matters to Susan Doering, whose title was senior director of Customer Service and Stations but whom Herrington characterized as her deputy chief, any such delegation would be problematic in its own right since Doering was Herrington’s own direct subordinate, who not only knew Moore, but had actually socialized with Herrington and Moore in their home. For her part, Doering told OIG that she had no recollection of any conversation in which Herrington indicated that she was recusing herself from the process. Herrington also said she told Walker, her own boss, that Moore was interviewing for the On-Board job and that he responded “Good.” According to Walker, however, Herrington told him that Moore was being *hired* by Metro-North, and that if Herrington told him for which position Moore was being hired, he did not catch that.

In any event, though, Herrington continued to involve herself in the hiring process. Indeed, most significantly, it was she who gave final approval to Doering for the filling of these three positions. As Herrington told OIG: “I said move forward with the plan. . . Put these candidates in these three positions.” OIG then asked her to confirm: “[Y]ou approved all the three hirings?” Herrington responded “Ultimately.” And in response to OIG’s inquiry, Herrington provided some telling insight into what looks very much like manipulation of the process:

OIG: Do you think that anyone in the process . . . was of the opinion that it had to turn out a certain way?

SH: Anybody in the process?

OIG: Yes. With somehow of the understanding that this needed to turn out a certain way, where Stuart gets hired, maybe Chu gets hired?

SH: I think that’s what ultimately happened. I don’t know who, certainly wasn’t me, but ultimately, that’s how it turned out, is that the candidates were laid out.

OIG: So what do you think would make somebody reach that conclusion? . . .

SH: Because they wanted to hire the candidate that I recommended and they wanted to hire Robert Chu.

The Effect of a Referral (or Recommendation) by Herrington

Meanwhile, as the HR employment manager and assigned recruitment specialist, Christie received and vetted the applications submitted for the position. She reviewed each candidate’s application to determine if he or she should be placed in her “A” group (the highest), “B” group,

or “C” group. Christie transmitted the names of the grouped candidates to the Operations Services Department for its review and selection of candidates to be interviewed. Christie recalled receiving Herrington’s recommendation email of Moore from Tucker, and stated that she, Christie, was also unaware that Herrington and Moore were domestic partners. Significantly, Christie stated that but for the Herrington connection, Christie would not have placed Moore in the “A” group. As Christie told us “. . . if it’s a referral from Sherry Herrington, I have to include [Moore] . . . [Herrington] is the head of the [department].

Christie also told us that she sent Doering her “A” group containing as many as 50 individuals. From this group Doering passed over all but five, and sent the list of these five names to Christie, including Moore, Brandt and Chu.⁹ For some reason, Christie, in scheduling the interviews, added three other individuals to that list.

As indicated above, Doering, who directed that Moore be interviewed, had attended a number of social gatherings at the home shared by Herrington and Moore. Doering knew Moore personally and knew of her relationship with Herrington. In spite of this, Doering selected Moore to be interviewed, stating she believed Moore to be qualified for the position and it was “the right thing to do.” Significantly, Doering acknowledged to the OIG that she might have “subconsciously” given Moore’s candidacy favored treatment because of her relationship with Herrington.

The Moore Interview

Interviews for the On-Board Manager position were conducted during the first week of September 2008. As noted above, James Brandt received the highest score, Robert Chu was second, and Moore ranked third. There was a dramatic drop-off in scores between the top three-scoring candidates and the remaining five.

Moore was interviewed for the On-Board Manager position by Christie, Ronald Yee, then-operations manager, OSD, supervisor of the On-Board Services Manager Unit,¹⁰ and John Longobardi, then-line superintendent, who reported to Herrington through Doering. While neither Christie nor Yee had previously met Moore or knew of her relationship with Herrington, Longobardi had visited Moore and Herrington in their home. He also knew that Moore and Herrington were domestic partners. Longobardi, who was not initially scheduled to interview Moore, told us that he received a call from Doering on the day of Moore’s interview, instructing him to take her place on the interview panel. Longobardi interviewed Moore and two other candidates that same morning.

⁹ OIG could not determine through its interviews or document review which individual from OSD selected and compiled the list of candidates to be interviewed. That Doering communicated the list to Christie, however, indicates at least that Doering reviewed the list before it was finalized.

¹⁰ Following the OSC audit, the On-Board Service Unit was disbanded, Yee was reassigned to a non-supervisory position, and Moore resigned.

According to Longobardi, Doering told him to participate in Moore's interview in her place because Doering believed that it would be a conflict for her to interview her boss's domestic partner. Longobardi told OIG that he felt "anxiety" as a result of Doering's directive, as he would now also be placed in a position of "interviewing the boss's significant other," and because, like Doering, he had also spent time with Moore and Herrington at their home. Longobardi further stated that because of these circumstances, when he was asked to interview Moore, "it did not sit well" with him. He said that he was placed in a difficult position, but that while he felt uncomfortable, he also felt that he had no other choice but to "go along."

Longobardi said he believed that he was able to evaluate Moore objectively and that because he knew of the relationship, he was especially careful to make a fair evaluation. He added Moore did an excellent job during her interview. When asked if he thought there would have been repercussions had he not given Moore a high score, he answered "tough question, I do as I am told."

Doering conceded that while she had no recollection of withdrawing from Moore's interview panel or asking Longobardi to go in her stead, she may have done so. Indeed, she said that she gave Longobardi a "head's up" that Moore was going to be interviewed, and that she might have asked him to replace her on the interview panel in that same conversation. Doering confirmed to us that she was aware at the time of the interviews that Longobardi knew that Moore was Herrington's domestic partner.

George Walker, the senior vice president, apparently did not know that Doering had told Longobardi to participate on Moore's interview panel in her place. Nevertheless, since Longobardi knew of the relationship between Herrington and Moore, Walker told us emphatically that "Longobardi should never have been on that panel."

Based on the evidence before us, we find that Doering directed Longobardi to interview Moore, and further find that in doing so she demonstrated poor judgment and compromised her subordinate.

Moore Hired as On-Board Manager

On September 10, 2008, two days after Moore was interviewed and with approval from Herrington, Doering sent an email to Christie, copy to Herrington, telling Christie to move forward with Moore's hiring. Christie told us that this email provided sufficient confirmation and immediately proceeded to prepare the required paperwork. On October 20, 2008, Moore began her employment with Metro-North as an On-Board Manager at a salary of \$84,700 per year.

The Chu Candidacy

Chu, retired from the NYPD after 21 years of service and in 2008, for the second time, applied for the On-Board Manager position. Previously, in 2005, with essentially the same credentials as in 2008, he applied and interviewed for the same position, which instead went to an applicant named Maria Kazik. Herrington told OIG that Kazik was her domestic partner for 20 years. That relationship ended in 1998 and Herrington became partners with Moore. Herrington told OIG that she likely recommended Kazik for the position in 2005 and did give final approval to hire her at that time.

Although Chu did not receive an offer in 2005, Christie requested that he submit an Employment Application and other documents for a background check so that he could be considered for any future vacancies in the On-Board Manager position.

Tucker's Role in the Chu Candidacy

Diana Tucker, Chu's sister, who was the senior employment manager for HR at the time of Chu's candidacy in 2008, told OIG that she informed Chu of job opportunities within Metro-North for which she thought he was qualified. She also told us that she helped him write his resume, and did so specifically for the On-Board Manager vacancy in 2008. She explained that to avoid influencing the hiring process for the On-Board Manager position, she recused herself prior to the deadline for applications. Tucker stated that she orally notified Joshua, the HR director and her supervisor, as well as Christie, of her recusal, as there was no official recusal notification form or process in place at that time.

Despite the recusal, Christie told us that after Chu's interview Tucker asked Christie how he performed. Christie said she avoided answering, but believed that Tucker was applying subtle pressure on Christie by inquiring about Tucker's brother's interview. Indeed, Christie said that she felt she had to find Chu a position within the agency, either the On-Board Manager position or something else. As with Doering, we find that by having these discussions with Christie, Tucker exercised poor judgment and compromised her subordinate.

While Tucker said that she did not refer her brother for the position, we find their relationship played a significant, perhaps determinative role in Chu's hiring. In a move reminiscent of what she did with Moore given Herrington's referral, Christie told us that she put Chu in the "A" group based on his relationship, but would have placed him in the "B" group based on his credentials. Doering told us that Christie asked Doering to review Chu's resume and interview him, and that it was from this request that Doering said she learned that Chu was Tucker's brother. Doering acknowledged that she would not have selected Chu to be interviewed but for Christie's specific request that she do so. Christie did not specifically recall asking Doering to interview Chu, but surmised she may have informed Doering of the familial relationship and believed that Doering would know from her "signal" to select him for an interview.

The Chu Interview

Christie, who asked Doering to select Chu to be interviewed, participated in the interview along with Yee and Longobardi. She could not recall whether Chu's relationship to Tucker was discussed among the members of the panel at any time before, during, or after the interview. Christie told us that Chu's relationship to Tucker did not influence her evaluation of Chu, although Tucker was her immediate supervisor, and that she would have had "no qualms" about telling Tucker if she did not think Chu was right for the job.

Be that as it may, we believe that it is inappropriate for a subordinate to interview a supervisor's relative. Nevertheless, just as Longobardi interviewed and evaluated Moore, his supervisor's domestic partner, Christie interviewed and evaluated her supervisor's brother.

Christie's evaluation of Chu was consistent with those of the other interviewers. Indeed, Christie, Yee, and Longobardi all scored Chu's answers exactly the same. Although Chu's score placed him with James Brandt as one of the two top-scoring candidates, he was not hired for the On-Board Manager position, which instead went to Moore. Chu was subsequently offered the, Capital Manager position overseeing construction projects; a position for which, as described below, he was not interviewed, did not apply, and does not appear to have been the best qualified candidate.

Chu Hired as Capital Manager

In spring 2008, prior to the On-Board Manager vacancy, OSD posted an opening for the Capital Manager position. The job posting contained this description:

Oversee, direct and coordinate all assigned Capital Projects in a safe and economically efficient manner while maintaining schedule integrity, and minimizing impact to operating plans and customer service.

Chu, who was then monitoring Metro-North's postings, did not apply.

In late August 2008, Metro-North interviewed five candidates for Capital Manager. Doering told us that the desirable qualities of a candidate for the position included capital, construction, operations,¹¹ or project management experience, and selected a then-current Metro-North employee for the position. That candidate declined the job based on salary. At that point, Doering identified Chu, to use her words, as the "best fit" for Capital Manager. Chu was formally hired by a letter from Christie in mid-October 2008, to start one week later, at a salary of \$85,000.

¹¹ Doering described "operations" as the management of people, scheduling, managing budgets, and investigation of major and minor incidents.

OIG reviewed the resumes and interview notes regarding the candidates who applied for the Capital Manager when it was initially posted, and we find surprising Doering's conclusion that Chu was the best fit. For example, the three top candidates, unlike Chu, all had some form of experience working for Metro-North, whether it was in a construction, engineering or operational capacity.

OIG asked Doering why the second-highest scoring candidate in the original group for the Capital Manager position, a then-current Metro-North employee with railroad experience, was not reconsidered for the position after the selected candidate declined the offer. Doering said she could not recall. Indeed, she said she could not even recall whether any conversation took place regarding the other candidates—which Doering said would be the appropriate and typical course of action. Finally, when we showed Doering the resume of the second-highest ranked candidate, and asked her to compare his qualifications to Chu's, Doering acknowledged that the other candidate's qualifications were superior and more directly relevant to the job of Capital Manager.

Doering defended the decision to hire Chu and reiterated that his prior experience made him the best fit for the position. However, she acknowledged that this view seemed inconsistent with her previous statement that she would not have even granted Chu an interview for the less demanding On-Board Manager position if he were not Tucker's brother.

Further evidencing that Chu's relationship to Tucker was more important than his qualifications, Christie explained to OIG that, for lower-level positions—particularly in OSD—a referral will not only ensure that an employee's relative will be interviewed for a position, it will also ensure that candidate some position within the agency, even if it is not the position for which he or she initially applied. Notably, the Metro-North HR database shows that Chu was entered as an applicant for the Capital Manager position after the deadline for applications expired.

The Brandt Candidacy

James Brandt was hired by Metro-North in 1990, working in various positions over the years. Like Chu, Brandt had originally applied for the On-Board Manager position in 2005, but lost out to Maria Kazik.

The following year, Brandt received a telephone call from Herrington who knew Brandt's father as a train master/conductor in OSD. Herrington asked Brandt if he would be interested in taking "Special Duty" (a form of temporary assignment) as an On-Board Manager (the same position for which he had just lost out to Kazik). Brandt took the job, performed it for almost two years and, encouraged by his supervisor, Yee, who told OIG that Brandt had been an excellent performer in his Special Duty role, in 2008 Brandt applied for the permanent position. Having worked successfully for nearly two years in the very position for which he was now applying, Brandt said he felt confident that he would get the permanent position.

Contrary to Brandt's expectation, Herrington's current domestic partner got the job.

The Brandt Interview and the Changing of His Scores

Brandt was interviewed for the On-Board Manager position during the first week of September by Christie, Yee, and Joseph Kanell, a direct report to Doering. According to our own review of the records, the evaluation of Brandt by the interviewers placed him as the top scorer, with a significant lead over second-place Chu and the other six candidates. Our investigation further revealed, however, that Yee's scores of Brandt were subsequently downgraded (as described below), resulting in a significant narrowing of Brandt's lead over Chu.

Yee told us that after Brandt's interview, and the submission of the score sheets to HR, he was summoned to HR where Christie told him that it appeared he inflated his scores, virtually all "4's," just because Brandt worked for him, and that she pressured him to lower those scores. Yee emphasized to OIG that he rated Brandt so highly because Brandt had done an excellent job for two years in the same position that would now be permanent. Nevertheless, he agreed to change some of his scores in the HR office, but told us that not all of the changes were his. None of the changes to these scores reflected initials or any other identifying marks reflecting who made the change.

Christie asserted that as the lead interviewer it was her responsibility to ensure that the scores accurately reflected the candidate's responses. And it was in that role, she told us, that she challenged Yee to justify giving Brandt all "4's," which she said Yee did not do if he based his scores only on Brandt's performance at the interview, as Christie believed he should, rather than on Brandt's on-the-job performance for Yee. However, Christie said she could no longer recall how all of the scores came to be changed. Because the circumstances of all these changes, and the reasoning behind them, are not clear, we remain concerned that some or all of them may have been the result of tampering or undue pressure.¹²

Brandt Slated as Stamford Manager

Despite Brandt's top ranking in the On-Board Manager interviews, Doering quickly directed Christie to move ahead to hire Moore. Toward the end of September 2008, Doering called Brandt and told him she thought he would be a better fit for the Stamford Manager position. Brandt expressed interest, he told us, fearing that otherwise he might end up with no job at all. Doering then told him to check for the job posting on the Metro-North website and submit his application. Brandt followed Doering's instructions.

Our investigation revealed that in mid-September, at approximately the same time that Doering instructed Christie to proceed to hire Moore as On-Board Manager, Christie, apparently without alerting Brandt, started the background and salary paperwork to hire him as Stamford Manager. Christie told us that she would have taken this action only if she had been appropriately advised

¹² We recall in this regard that HR has since discontinued the use of numerical scoring. See footnote 5.

to do so, but she could not recall who had given her the authorization. In any event, the preliminary work to hire Brandt began at least two weeks before Doering contacted Brandt to discuss the Stamford Manager position and determine whether Brandt was even interested.

But then the plan hit a snag. The Human Resources and Operations Services departments determined that Brandt did not meet the job requirements as posted.

Brandt Does Not Qualify; Job Specifications for Stamford Manager Changed

The job posting for Stamford Manager was first advertised in June 2008, when OSD obtained approval to fill two vacancies for that same title. The posting described the primary responsibility of the job as follows: “Direct the safe, efficient and economical performance of the Operations Services Department in the assigned territories, ensuring that direct reports comply with all Operating, Metro-North and Safety Rules within a District or Line.” Consistent with that responsibility, this first posting included a requirement that all applicants for the position must have completed training on the “Rules of the Operating Department and Air Brake and Train Handling Instructions,” known within Metro-North as the “Book of Rules.”

Brandt had no such training or knowledge of these rules, meaning he did not meet the requirements, and indeed he did not apply for the job. Although Metro-North received 56 applications for this position, we learned that only one of the applicants, a current Metro-North employee already serving in the position through Special Duty, was interviewed and eventually hired. For some reason, despite the existence of two vacancies, OSD only interviewed and hired one candidate.

In late September, then, HR and OSD were faced with a conundrum: Brandt, the top-ranked candidate for the On-Board Manager position now filled by third-ranked Moore, had been slated to be hired as Stamford Manager, a position, it turned out, for which he was categorically unqualified. Consequently, HR and OSD decided to change the job requirements and re-advertise it so that Brandt could qualify. As a result, the job notice no longer contained the requirement that “Book of Rules” training must have been successfully completed in order to apply for the position. Now, the posting required simply that this training be completed within six months of hiring.

Emails obtained by OIG reveal the sequence of events leading up to this change. On September 25, 2008, at approximately the time Brandt recalled first being contacted by Doering about the Stamford Manager position, Herrington sent the following email to Joshua, then HR director:

Hi Shirley,

Just got back from a beautiful vacation in the Smokey Mountains. Sue [Doering] mentioned that you had some questions regarding the assignment of Jamie to the On Board job. Jamie was my custodial foreman in Stamford. My District Managers brought him to my attention

when we were looking to temporarily fill the On Board job. They spoke very highly of him and we were looking to fill these positions with people other than T&E [Train and Engine] and if you remember, make these the entry level position for OSD. Jamie has done an exemplary job and shown the ability to accept higher levels of responsibility, exhibited excellent communication, organizational, and leadership skills. We think he is a prime candidate to move to the next level in an Ops Manager Field level. As you remember, we were supposed to rewrite the Ops Manager's [sic] jobs to open them up to outside candidates and unrestrict [sic] inside candidates from the necessity to have Rules qualifications. I thought that was already done but we are checking. Let me know if you have any other questions. Thanks Shirley.

Four days later, in an email from Herrington to Christie that again belied any claim by Herrington that she had recused herself, Herrington asked Christie for an update regarding the status of the hiring process for the On-Board, Capital, and Stamford Manager positions. With respect to the Stamford Manager position, Christie replied, "Ops Mgr – based on current job description, candidate does not qualify (Jamie Brandt)- will give you a call to discuss..."

One week later, in early October, HR sent an email to OSD, copying Herrington, Doering, Christie and others. The email stated:

Per my e-mail conversation with Sherry [Herrington] language under the Required, Education, Experience & Training section has been revised to read:

Must be qualified on the Metro-North Railroad or a comparable Commuter Railroad Operating Manual of the Operating Department and Roadway Worker Safety Rules and Air Brake and Train Handling instructions. If not qualified, the successful candidate must become qualified within six (6) months from the date of hire. Must be qualified on the physical characteristics of assigned line within six (6) months from date of hire. (emphasis in original)

Please note the attached in your records. If you have questions, please call.

Thanks.

While OIG confirmed that Metro-North did remove the Book of Rules requirement from other Operations Manager job postings so as to widen the pool of qualified candidates, it did not do so for this posting in June 2008, and the circumstances and timing of the October change create at least the appearance that the change was made in some part specifically to provide jobs for

Brandt, Chu, and Moore. Indeed, Herrington essentially conceded that this process had been manipulated, as reflected in the following excerpt from her interview with OIG:

OIG: I'm just going to lay out a scenario, let me know what you think . . . The documents clearly show that on Sept. 10, paperwork and the process had started to hire Stuart for On-Board and to hire James Brandt for Ops Manager same day. And I can show you those documents again; just feel free to ask me. Later I see email communications that James isn't qualified for the Ops Manager position, and then I see an email from you asking for changes. The changes are made, the job's reposted, he re-interviews, and I'm just wondering that at some point, somebody said . . . we wanted James for this position, he doesn't qualify, how can we get him to qualify for this job? How can we get him into this position so that he's not out of a job?

SH: Right.

OIG: Does that . . .

SH: Ring any bells?

OIG: Yes.

SH: That's possible that that concern came up. I don't remember that he wasn't qualified, I just remember, and I can see the email said, obviously, I knew, but that's possible that it got to that point where somehow somebody said, "Uh oh he's not qualified so okay let's figure out how to get him qualified."

OIG: And would that have been kosher, so to speak, in terms of the hire process typically. In other words, figuring out how to get a candidate to fit into a job that they are not technically qualified for?

SH: Probably not. That's probably not kosher.

And when OIG asked Christie about this course of events, her reaction went straight to the point:

Right now I have to be really honest with you. I'm just thinking set-up, set-up, set-up . . . set-up to get James Brandt in.

Brandt Interviewed and Hired for Stamford Manager Position

The Stamford Manager position was re-posted, with the changed job requirements, in October 2008, only after HR had already begun to process the required forms, and obtain the necessary approvals, including salary, to hire Brandt for that position. Although some 15 individuals applied for the re-posted position, only Brandt and one other candidate were interviewed after the re-posting closed. The other, an internal candidate, had applied for the Stamford Manager

position when it was first advertised four months earlier. Both interviews were conducted by Christie and Doering.

OIG requested HR to provide the hiring file for this position, including the score sheets. However, while the file contained the evaluations by Doering and Christie of the other candidate, it did not contain any evaluations of Brandt. The score sheets for the other internal candidate indicate that both Christie and Doering rated him “Unacceptable,” the lowest possible rating. To date, OIG has not been provided with any reason why score sheets reflecting Brandt’s evaluation were not included in the file.

Brandt was formally hired in writing as Stamford Manager in December 2008 at a salary of \$90,478.

ANALYSIS OF APPLICABLE LAWS AND ETHICAL RULES

As an employee of Metro-North, a subsidiary of the MTA, Sherry Herrington is subject to the New York State Public Officers Law (POL), including its restrictions on business and professional activities and its Code of Ethics, enacted as sections 73 and 74 of that law respectively. Additionally, Herrington is subject to the MTA All-Agency Code of Ethics (MTA Code of Ethics), which embodies and expands upon the provisions of the Public Officers Law. Moreover, Herrington is subject to investigation and enforcement by the New York State Joint Commission on Public Ethics (JCOPE) for violations of sections 73 and 74 of the POL. To the extent not inconsistent with the foregoing, Herrington is also subject to Metro-North Operating Procedure Number: 21-013 (Employment of Relatives).

For the reasons that follow, we find that Herrington violated the Metro-North operating procedure governing employment of relatives and with the broader requirements of the MTA All-Agency Code of Ethics prohibiting nepotism, conflicts of interest, and violations of the public trust. Additionally, it appears to us that Herrington also violated corresponding provisions of the New York State Public Officers Law.

MTA Code of Ethics (2007 Edition, in effect in 2008)

Generally

The Introduction to the MTA Code of Ethics provides in pertinent part:

The Metropolitan Transportation Authority provides services to more than eight million customers a day, each one of whom expects a high standard of service. As employees of the MTA, you are entrusted with the duty to provide this high standard of service. The ability to provide a high standard of service is grounded in a strong work ethic, clear corporate policies, and the dedication of a creative work force. The adherence to a strict code of ethics is central to gaining and keeping the trust of our customers. . .

There is only one Code of Ethics for the entire MTA. You are expected to become familiar with this Code, and the various applicable statutes, regulations, professional codes of ethics, and disciplinary rules. (Emphasis added.)

You are expected to read this Code immediately upon receipt. (Emphasis in original.)

Nepotism

Section 1.01 Definitions:

Family Member means any person living in the same household as an MTA Employee, domestic partner, and any person related to the Employee within the third degree of consanguinity or affinity.

Section 8.01 Nepotism:

It is the policy of the MTA agencies to ensure that all job opportunities at MTA Agencies are based on merit and qualifications. Employees are prohibited from participating in any hiring or employment decision relating to a family member. If a hiring or employment matter arises relating to a family member, then the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions relating to the matter. There will be no preferential treatment for family members of current Employees and/or union officials. . . .

MTA Employees should consult with their Agency's Human Resources Department to determine their Agency's policy for avoiding Nepotism. **Any such avoidance of Nepotism policy must be consistent with this Section of the Code.** . . (Emphasis added.)

OIG Analysis:

Herrington violated this MTA rule against nepotism, which prohibits MTA employees from participating in any hiring decisions relating to a family member. Moore qualifies as a family member of Herrington's both because they lived in the same household and because they identified as domestic partners. Rather than notifying her supervisor and being recused from any and all discussions relating to the hiring of Moore, or even actually recusing herself, Herrington initiated such discussions, and actively participated in the plan to hire Brandt, Chu, and Moore, her domestic partner. Most significantly, Herrington gave final approval to hiring all three. As she told OIG: "I said move forward with the plan. . . Put these candidates in these three positions."

Public Officers Law (in effect in 2008):

Nepotism

Section 73(1)(m):

“Relative” of any individual shall mean any person living in the same household as the individual

Section 73(14)(a):

No statewide elected official, state officer or employee . . . may participate in any decision to hire, promote, discipline or discharge a relative for any compensated position at, for or within any state agency, public authority or the legislature.

OIG Analysis:

For the reasons stated above, again most significantly her final approval of the hiring of Moore, with whom she co-habited, for a compensated job at her agency, a New York State public authority, Herrington appears to have violated POL §73(14)(a).

**MTA Code of Ethics / Public Officers Law Code of Ethics
Conflicts of Interest and Public Trust**

In addition to its rules regarding nepotism, the MTA Code of Ethics contains rules regarding conflicts of interest (§4.01) and public trust (§4.02[(a)(c)]). Similarly, the POL contains a rule regarding conflicts of interest and standards for applying it (§74[2][3(f)(h)]), which addresses issues relating to public trust. Given their essential similarity we have grouped and analyzed all of these provisions together below.

MTA Code of Ethics §4.01 Conflicts of Interest

Employees shall not have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is or may be in conflict with the proper discharge of his or her duties. Employees must notify their ethics committee regarding any possible conflict of interest.

MTA Code of Ethics §4.02 Public Trust

(a) Employees shall not engage in a course of conduct that will raise suspicion among the public that they are likely to be engaged in acts that are in violation of the public trust. Employees shall avoid even the appearance that they can be improperly (1) influenced in

the performance of their official duties or (2) induced to violate the public trust or impair their independence of judgment in the exercise of their official duties.

(c) Employees shall not by their conduct give reasonable basis for the impression that any person can improperly influence them or unduly enjoy their favor in the performance of their official duties, or that they are affected by the kinship, rank, position, or influence of any party or person.

Public Officers Law Code of Ethics §74:

(2) Rule with respect to conflicts of interest. No officer or employee of a state agency . . . should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

(3) Standards.

(f) An officer or employee of a state agency . . . should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

(h) An officer or employee of a state agency . . . should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

OIG Analysis:

MTA All-Agency Code of Ethics

Conflict of Interest

Despite the requirement in the Code of Ethics, Herrington apparently did not notify her agency ethics committee regarding her potential conflict of interest. Yet, in making the final decision to hire Moore, her domestic partner, for a job at a public authority, that paid nearly \$85,000 per year, exclusive of benefits, Herrington had a personal and financial interest that was in conflict with the proper discharge of her duties, which duties required her to make that decision involving a public employment opportunity only on the basis of merit and qualifications.

Public Trust

In participating in and giving final approval to a plan that resulted in the hiring of Moore, her domestic partner, for a job that paid nearly \$85,000 per year, exclusive of benefits, for which job

Moore did not appear to be the best qualified, Herrington gave reasonable basis for the impression that Moore unduly enjoyed Herrington's favor, and that Herrington was affected by the kinship of Moore, in the performance of her official duties, which duties required her to make her decision involving a public employment opportunity only on the basis of merit and qualifications.

Public Officers Law Code of Ethics

Conflict of Interest/Trust

For the reasons stated above, most significantly having a personal and financial interest that was in conflict with the proper discharge of her duties, and giving a reasonable basis for the impression that Moore unduly enjoyed Herrington's favor and that Herrington was affected by the kinship of Moore in the performance of Herrington's official duties, Herrington appears to have violated POL §74.

Metro-North Operating Procedure 21-013 (Employment of Relatives) (in effect in 2008)

A. Policy

1. Metro-North Railroad employment decisions shall be made on the basis of merit and qualifications, on a competitive basis and in accordance with Metro-North Railroad's Equal Employment Opportunity Policy. This policy shall not be construed to prohibit two or more relatives from working for or within the same agency.

2. Employees may refer relatives for employment consideration with MTA or a constituent agency, however, they may not use their official position to secure employment or other privileges for relatives. "Relative" is defined as an employee's spouse (including domestic partner). . . .

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6. No employee may involve himself/herself in the interview, hire, promotion or transfer of his/her relative. All employees are prohibited from attempting to influence the recruitment and selection process of relatives as defined in this policy. Employees are not permitted to make employment decisions with respect to their relative(s).

OIG Analysis

Herrington violated this Operating Procedure's restriction on the employment of relatives in several respects. First, she attempted to influence the recruitment and selection process by submitting a recommendation of Moore that actively promoted Moore's candidacy for the position, and requested the then-senior employment manager at HR to discuss her thoughts on

that candidacy with Herrington. Second, she involved herself in the interview and hiring of Moore, her domestic partner, by participating in a plan to hire Moore along with two others. And most significantly, Herrington used her official position to secure employment for Moore by giving her final approval.

REFERRALS TO METRO-NORTH AND JCOPE

As noted earlier, the Office of the New York State Comptroller, during the course of its forensic audit, requested that Metro-North turn over its file regarding Metro-North's 2009 investigation of the hiring of Sherry Herrington's domestic partner, Stuart Moore. Rather than turning over this file, which Metro-North asserted was protected by the attorney-client privilege, Metro-North instead provided the Comptroller with the railroad's 2011 Summary.

The Summary reported the conclusion by Metro-North's original investigating attorney that "Ms. Herrington had not attempted to influence the hiring process other than by making a referral. . ." The Summary also reported that attorney's recommendations that Herrington receive a verbal reprimand for poor judgment in not making clear to the Human Resources Department and her supervisor the nature of her relationship with Moore. The Summary further reported that three separate reprimands were issued to Herrington in late 2008 to early 2009: by her supervisor, by the then-director of HR, and by the HR vice president.

Notably, while the Summary reports the Legal Department's conclusion that there had been no violation of Metro-North's Employment of Relatives policy/procedure, the Summary is silent as to whether the Legal Department even considered the applicability and possible violations of the MTA All-Agency Code of Ethics and the New York State Public Officers Law. Indeed, the current president of Metro-North Railroad candidly acknowledged that no one picked up the potential violation of either the MTA All-Agency Code of Ethics or the New York State Public Officers Law.

Based on our own investigation, including the factual findings and legal analysis reflected above, and given the unduly narrow focus of the Metro-North review, which the agency acknowledged, we now make the following referrals:

1. To Metro-North, for disciplinary review as appropriate in light of the findings of this report, given that Metro-North did not measure Herrington's conduct regarding the hiring of Moore against the applicable requirements and prohibitions of the MTA All-Agency Code of Ethics regarding nepotism, conflicts of interest, and violations of public trust. Metro-North should also conduct such disciplinary review as appropriate in light of the findings of this report, relating to the poor judgment demonstrated by Doering and Tucker regarding their subordinates.
2. To the New York State Joint Commission on Public Ethics (JCOPE), in accordance with its jurisdiction, for such review as it may deem appropriate, given our determination that Herrington's conduct appears to violate provisions of the New York State Public Officers Law relating to nepotism and conflicts of interest.

RECOMMENDATIONS

To help ensure compliance going-forward with the New York State Public Officers Law, the MTA All-Agency Code of Ethics and Metro-North Operating Procedure No. 21-013 (Employment of Relatives), Metro-North must do at least the following:

Recommendation 1:

When a hiring or employment decision arises relating to a "Family Member" or "Relative" of an employee who might otherwise become involved in the hiring process, that employee must be recused in writing, signed by the employee, the employee's supervisor, and the agency ethics officer, and that recusal must be retained in retrievable fashion within the files of Human Resources or other appropriate department.

Metro-North accepted this recommendation.

Recommendation 2:

Metro-North should institute a "conflicts check" to determine whether any Metro-North employee participating on an interview panel has a familial relationship with the candidate to be interviewed or whether any such employee reports to a supervisor who has a familial relationship with the candidate. Human Resources (or other appropriate department) should document each hiring action with a certification that at the relevant time periods, the employees who interviewed and evaluated the applicant were not related to the applicant and did not report to or work with the applicant's relative. That certification, signed by the employee, attesting to the absence of any such relationship and acknowledging the employees' duty to disclose actual or potential violations pursuant to section 1.05 of the MTA Code of Ethics (Duty to Disclose), must be retained in retrievable fashion within the files of Human Resources (or other appropriate department).

Metro-North accepted this recommendation.

Recommendation 3:

Human Resources or other appropriate Metro-North department should justify the hiring of a Metro-North employee's relative in a written memorandum. This memorandum should detail the new employee's relevant skills, credentials, and experience, as well as any other factors establishing that the successful candidate was chosen on the basis of merit and qualifications. This memorandum must be signed by the head of Human Resources (or other appropriate department) and retained in retrievable fashion within that department's files.

Metro-North not only accepted this recommendation but noted that "We think this should apply to all new hires, not just relatives of employees."

The OIG certainly does not object to expanding the scope of the written memorandum to help ensure that the hiring of every new employee is based on merit and qualifications. However, to facilitate the identification and monitoring of the hiring process as it pertains to relatives, that memorandum must also detail any familial relationship between the new employee and any other employee of Metro-North.

Recommendation 4:

Metro-North must promptly commence ongoing training of all individuals, at all levels, who are involved in the hiring process. This training should be designed to help ensure that these individuals fully understand and comply with all applicable requirements and obligations to avoid nepotism, conflicts of interest, and violations of public trust, as well as the Duty to Disclose any actual or potential violations pursuant to the MTA All-Agency Code of Ethics.

Metro-North accepted this recommendation.