

APPENDIX C

**COURT MANAGEMENT ADVISORY BOARD REPORT
ON HIRING AND PROMOTION IN THE JUDICIAL BRANCH
(OCTOBER 2017)**

**Court Management Advisory Board Report
on Hiring and Promotion in the Judicial Branch**

**Lisa C. Goodheart, Chair
Randy S. Chapman
Kathleen M. Donovan
The Honorable Gail Garinger (ret.)
Richard Johnston
Scott Harshbarger
Allen B. Kachalia
Liam Lowney
The Honorable James F. McHugh (ret.)
Donald Oppenheimer
Denise R. Squillante
Kenneth Turner**

Chief Justice Paula M. Carey, Executive Secretary

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COURT MANAGEMENT ADVISORY BOARD REPORT ON HIRING AND PROMOTION IN THE JUDICIAL BRANCH

I. BACKGROUND

In May, 2010, the Boston Globe published a series of articles describing hiring and promotion practices in the Trial Court's Probation Department. The articles alleged that, although presented internally and externally as the product of merit-based decision-making, the practices were in reality rigged so as to curry legislative favor and funding.

The Supreme Judicial Court reacted swiftly. Working with Robert Mulligan, the Trial Court's Chief Justice for Administration and Management, it suspended the Commissioner of Probation and appointed Paul F. Ware, Esq., a former prosecutor and respected Boston trial lawyer, to investigate and prepare a report on the allegations the articles contained. In November, 2010, Mr. Ware issued a three-hundred page report in which he detailed with exacting specificity events, practices and policies supporting his conclusion that the Probation Department's "hiring and promotion [had] been thoroughly compromised by a systemic rigging of the interview and selection process in favor of candidates who have political or other personal connections."

After a prompt review, the Supreme Judicial Court approved Mr. Ware's report and, among several other things, appointed "a task force to undertake a comprehensive review of the hiring and promotion procedures in the Judicial Branch and to make recommendations designed to ensure a fair system with transparent procedures in which the qualifications of an applicant are the sole criterion in hiring and promotion." Over the ensuing year, the Task Force met on 29 occasions, interviewed numerous Trial Court employees, consulted myriad documents and issued six reports. Five of those reports contained findings and recommendations regarding hiring and promotion practices in specific Trial Court departments and the sixth contained a series of overall findings and a recommended action plan applicable to the Trial Court as a whole.¹

The overall recommendations and action plan were explicitly designed not simply to address deficits in what were then the current hiring and promotion practices but to go beyond remediation and install best HR hiring and promotion practices as a major component of the Trial Court's approach to personnel management. Briefly summarized, the recommendations involved creation of mission statements for each of the Trial Court components, creation of well-defined job descriptions and competencies for all Trial Court positions, routinely enhancing the applicant pool for

¹ The Sixth and final report of the Task Force was issued on December 11, 2011 and is available at <http://archives.lib.state.ma.us/handle/2452/265212>.

all open positions through aggressive outreach, using for all job applicants an objective candidate review that included behaviorally-based interviews and candidate assessments and use of a single, robust applicant tracking system for all Trial Court hiring. In urging adoption of those recommendations, the Task Force also noted the critical role that shared attitudes, values, goals and practices, spoken and unspoken, play in maintenance of a high-performance organization, and urged the Trial Court to adopt, with a sense of urgency, measures designed to cultivate a high-performance culture.

The Supreme Judicial Court accepted the findings and recommendations of each of the reports and urged their prompt implementation. Since then, as a result of legislation enacted in late 2011, the entire management structure of the Trial Court has changed. A Court Administrator appointed by the Supreme Judicial Court now heads the administrative side of the Court and the Chief Justice of the Trial Court, also appointed by the Supreme Judicial Court, heads the judicial side. Each holds a five-year, renewable term. For the past five years, inaugural Court Administrator Harry Spence and inaugural Chief Justice Paula Carey have worked side-by-side to create and implement the management framework that the legislation envisioned. In the process, they, and particularly Court Administrator Spence, have spent considerable time implementing recommendations contained in the Task Force reports.

Six years now have passed since the court reorganization legislation became effective. Court Administrator Spence recently completed his five-year term of service and has retired. To fill his position, the Supreme Judicial Court selected Jonathan S. Williams, an experienced administrator with extensive judicial management experience in North Carolina. The Court Management Advisory Board, several current members of which were also members of the Task Force, therefore decided that it would be helpful to examine and evaluate changes in personnel policies and practices that have occurred since the Task Force reports were written and to report its findings and recommendations in accordance with the Board's statutory mandate to "advise the justices of the supreme judicial court, the chief justice of the trial court, and the court administrator on all matters of judicial reform." G.L. c. 211B, § 6A. What follows are those findings and recommendations.

II. OBJECTIVES AND METHODOLOGY

In conducting its review and making its recommendations, the Board had three primary objectives. Briefly stated, the first was to determine whether the steps taken by the Trial Court adequately addressed the Task Force recommendations. The second was to determine whether those steps are working efficiently and have had the intended effect, including whether those steps have led to the timely filling of open positions with qualified, diverse, talented and motivated employees. Third and finally, the Board sought to determine whether hiring and promotion policies and procedures beyond those the Trial Court already has implemented would help

to create and maintain the multitalented workforce the Trial Court will need in the future to fulfill its mission and retain public confidence. The third objective, therefore, goes beyond the exploration of measures necessary to prevent recurrence of the activities described in Mr. Ware’s report. Instead, it looks to the future and to the high-performance workforce the Trial Court needs and desires to deliver the services the public expects.

To carry out those objectives, a panel of Board members appointed by the Chair (“Panel”)² conducted interviews with Trial Court employees at all levels, particularly those who have a role in the hiring and promotion process. The Panel also reviewed pertinent documents, including the Trial Court’s Personnel Policies and Procedures Manual (“Personnel Manual”)³ which contains the policies and procedures governing all trial Court hiring and promotion. The Panel then prepared a draft report that was discussed, revised and ultimately approved by the entire Board.

The Board is grateful to all those who took the time from their busy schedules to meet and provide the Panel with their observations and recommendations regarding personnel practices. We welcome as well comments on this Final Report.

III. OVERVIEW

From a policy standpoint, the changes the Trial Court has made to hiring and promotion practices that existed in 2011 are an adequate response to the Task Force action plan the Supreme Judicial Court endorsed. Together with other factors, implementation of those changes has created a substantial reduction, if not an elimination, of hiring pressure from public officials, both the pervasive and highly-leveraged pressure that led to the dramatic problems uncovered in the Probation Department and the more subtle pressures that were at one point an environmental backdrop to most Trial Court hiring. That reduction has produced a significant increase in merit-based hiring and promotion accompanied by a substantial improvement in overall employee quality and morale. To be sure, there have been instances in which personnel matters have gone awry and a few of those have

² The panel members were Randy Chapman (who participated as a member of the panel until he was sworn in as an Associate Justice of the Salem District Court toward the end of the Panel’s work), Kate Donovan, Lisa Goodheart, Scott Harshbarger and James McHugh.

³ The Personnel Manual is a compilation of substantive and procedural standards issued by the Court Administrator pursuant to statutory authority and obligation to “establish and promulgate standards for the appointment, performance, promotion, continuing education and removal of all personnel within the trial court, except judges, clerks and registers of probate” G.L. c. 211B, § 8. In establishing those standards, the Court Administrator is advised by the Advisory Committee on Personnel Standards which is composed of the “chief justice of the trial court or his designee; the chief justices of the trial court departments, or their designees; the court administrator or his designee, who shall serve as chair of the committee; the commissioner of probation; and a clerk of the superior court, a clerk of the district court and a register of probate who shall be appointed by the chief justice of the trial court.” *Id.*

commanded public attention. In the main, however, those instances appear to be the result of unique circumstances and are not the product of subverted hiring or promotion systems.

The Trial Court has approximately 6,300 employees including Judges, Clerks and Registers of Probate. Those employees are located in more than 100 locations throughout the Commonwealth. Collectively, they hold 317 different positions and titles, each with its own job description. Changing the Court's hiring and promotion practices, therefore, was and is no small feat. Indeed, the changes reflect effective and sustained leadership both centrally and in courthouses throughout the Commonwealth. Implementation of those changes also reflects a desire by many members of the Trial Court workforce to create and maintain an environment in which provision of high-quality public service is a daily objective.

That said, and without diminishing the importance of what the Trial Court has achieved over the last six years, the Board has identified certain areas in which it believes that specific further improvements are desirable for the creation, maintenance and expansion of the multi-talented, diverse, high-performance workforce the Trial Court needs and seeks. In developing the following findings and recommendations, the Board has found it most useful to look separately at the Office of Court Management ("OCM"), which has direct hiring and oversight responsibility for many Trial Court employees and the offices of appointed or elected Trial Court Clerk-Magistrates ("Clerk"), elected Registers of Probate ("Register") and the Land Court Recorder ("Recorder") who have significant hiring and oversight responsibility for the remainder. A separate look is appropriate because, despite the Legislature's reorganization of Trial Court management, the Trial Court outside of the OCM remains in very real senses a federation rather than a single, fully integrated operating unit, a reality that continues to pose challenges to uniformity, consistency and oversight in court administration and management.

Structurally, this Report begins with a focus on four of the OCM's nine departments. Those Departments were chosen for the reasons described in the next section. The Report contains findings specific to each Department and recommendations that flow from the findings. The findings are based on the Panel's interviews and its review of documents. Because the recommendations flow from the findings they, too, are Department-specific.

The Report then turns to the offices headed by Clerks, Registers and the Recorder. Again it contains a series of findings based on interviews and documents and recommendations that flow from the findings. The number of offices headed by a Clerk or Register is too great to permit specific focus on particular offices, so the findings and recommendations are designed to deal with generalized issues that arose from the Panel's inquiry.

The Report concludes by focusing on the need to prioritize culture, i.e., the shared values, attitudes and goals that pervade every organization and drive organizational behavior to a greater degree than any specific set of policies and procedures ever will. The Task Force made observations about aspects of the Trial Court culture in its final report six years ago. Since then, the culture has evolved in many salutary and important ways and further evolution now should be encouraged.

By design, this Report does not deal with the important subject of career paths and talent development, but is focused more specifically on policies and procedures relating to hiring and promotion within the Trial Court. That design flows from two principal reasons. First, the sense of the Board has been that it is important to conduct a detailed review of the Trial Court's response to the 2011 Task Force recommendations before undertaking an examination of a new, albeit clearly related, topic. Second, and perhaps more importantly, the Trial Court's Strategic Plan 2.0, which was created in 2016, includes "Talent & Career Development" as one of its six key focus areas. The Strategic Plan outlines an overall approach to talent and career development that is organized around eight tactical goals. To achieve those goals, the Court has created an action plan containing concrete steps, responsibilities and deadlines for implementing the goals set out in the Strategic Plan by the end of FY 19. The Board is keenly interested in the success of the action plan, looks forward to following its progress and stands ready to offer its assistance and advice as appropriate, as implementation proceeds. At the same time, however, the Board believes that it is important to let the Trial Court leadership move forward with the process it has created for supporting career paths and managing talent development before the Board begins to voice opinions about the direction or efficacy of that process.

Also by design, the Report does not focus on whether there is racial, ethnic, gender or other discrimination in the hiring and promotion processes, though it does stress repeatedly the need for diversity in those processes and in their results. Once again, that limitation flows from the Board's desire to explore the Task Force reports before exploring areas on which the Task Force made no comment. Moreover, the Board understands that aspects of those issues are now being explored by other organizations and did not think it appropriate to begin inquiries that might interfere with those that were in progress. Nevertheless, the Board is also keenly interested in the outcome of those inquiries and, after reviewing the results, will decide whether and to what extent its own inquiries, findings and recommendations may be helpful.

IV. FINDINGS AND RECOMMENDATIONS

A. OFFICE OF COURT MANAGEMENT

The Trial Court's Office of Court Management consists of the following nine Departments, each headed by a director or, in the case of Probation, the Commissioner:

- Capital Projects Department
- Facilities Management Department
- Fiscal Department
- Human Resources Department
- Judicial Information Services Department
- Probation Department
- Department of Research and Planning
- Security Department
- Support Services Department⁴

The following discussion focuses particularly on the Human Resources, Probation, Security and Information Services Departments. Human Resources has the capacity to play a significant role in all Trial Court hiring, but it operates in a highly complex administrative environment. Probation, with 1,800 employees, is the largest of the Departments. It has made enormous strides in the past six years but also operates in a very complex administrative environment. Security, with 1,000 employees, also has made significant strides but faces challenges in terms of overall staffing. Information Services has some unique issues that merit individualized attention.

a. Human Resources Department

1. Findings

According to its mission statement, "[t]he Human Resources Department partners with management to create and maintain a talented, qualified workforce by recruiting a diverse applicant pool, by facilitating the fair merit-based selection for appointment of the most qualified candidates, by developing appropriate workforce training, by fostering positive management-employee relations, by promptly addressing workplace issues, and by developing performance based measures to ensure the continued excellence of the workforce. The Human Resources

⁴ The Office of Jury Commissioner provides all jurors to all trial sessions throughout the Commonwealth. Nevertheless, it is not a Trial Court Department. Instead, the Office operates under the supervision and control of the Supreme Judicial Court. G.L. c. 234A, § 5. The Supreme Judicial Court also appoints the Jury Commissioner, who is the executive head of the Office. G.L. c. 234A, § 7. Like the reports issued six years ago, this report focuses exclusively on hiring and promotion in Trial Court Departments. Consequently, the Office of Jury Commissioner is not included.

Department will use best practices to ensure that this collaborative effort advances the mission of the Trial Court.”⁵

That mission statement places the HR Department at the very center of Trial Court recruitment, hiring and promotion. The Task Force reports mentioned earlier and the Personnel Manual place it there as well, not simply in an aspirational sense but with the expectation that, like counterparts in the private sector, it would have a major role in recruiting, hiring and promotion throughout the Trial Court.

Nevertheless, many of the OCM directors view HR primarily as an administrative body whose primary function is ensuring that job openings are posted, that applicant resumes are received and sent in timely fashion to departmental hiring managers for their consideration, and that job offers are extended, again in timely fashion, to successful applicants. That view, which is widely (though not universally) shared by hiring managers outside of the OCM, reduces the role of HR Department employees to that of “recruiting administrators.” The requirements of this role differ significantly from, and are lower than, the professional expectations commonly associated throughout private industry with individuals who perform the functions of a “Recruiter.”

While HR personnel can continue to function merely as hiring and recruiting administrators, doing so will likely mean that the talent acquisition process within the Trial Court will remain sub-optimized. In today’s environment, where there is great competition for largely scarce talent, the Trial Court should carefully consider the role HR currently plays versus the role that it could play, if it were brought to industry standards for the talent acquisition function, i.e., the process of recruiting, reviewing, interviewing, hiring and promoting members of the Trial Court workforce.

When used by competitive private sector employers, the Recruiter’s primary function has two components. The first is to aggressively seek and find talented candidates from other organizations who may not even be looking for new positions – these candidates are called “passive” candidates. Secondly, Recruiters develop strategies to “post” positions where active job seekers are most likely to be found – such as job boards like Monster and Career Builder or many specialty sites frequented by job seekers. Recruiters then “screen” for the best candidates who have applied. Recruiters manage their work through an Applicant Tracking System (ATS), a highly configurable automated system that is capable of recording all aspects of the Trial Court recruitment and hiring processes. The ATS also enables workflow and provides transparency to the recruiting process for all open positions.

The Trial Court has deployed an ATS made by one of the leading producers of ATS software. All applicant resumes for open Trial Court positions are captured in that system, as is the progress of each applicant through the hiring process including

⁵ Personnel Manual §1.301: Human Resources Mission Statement.

whether or not the applicant was hired. However, at present, the Trial Court's hiring administrators do not perform active "searches" for passive candidates. Instead, they rely solely on the talent pool created by individuals who respond to job postings with applications filed in the ATS. Consequently, there can be a huge difference in the size and quality of the self-identifying candidate pool for open positions. For some positions, there may be more than 100 applicants who are minimally qualified. For more difficult roles to fill, such as IT roles, there may be none.

ATS technology provides the ability for a first "screen" based on "key words" found in resumes. Based on the appearance of key words specific to the open position, the ATS identifies the candidates who are "minimally qualified" for the role.⁶ Next, the Trial Court's HR personnel review the initial screen done by the ATS of the candidates who are "minimally qualified," based on the information the candidate has provided. HR personnel then make copies of all the information supplied by those candidates and send that information to the hiring manager, regardless of the size of the qualified candidate pool. Additionally, departmental hiring managers – typically the top or other high-level employees in the department where the new employee will work – understand that the screening process takes place in the ATS and many don't trust that this will net the highest quality candidates. Therefore, they may ask to see information about all of the candidates who have applied for a position, which in some cases may be over 100 people. As a result, the Trial Court's HR personnel are very busy but their time is taken up on low value activity, including printing and sending out resumes to hiring managers.

After receipt of the resumes, the departmental hiring manager takes over the process and moves forward by reviewing resumes, interviewing some or all of the candidates, and ultimately making a hiring decision. In discussions with Trial Court leaders, the Panel learned that, at least for personnel hired outside of the OCM, many hiring managers routinely interview more than 25 candidates for non-managerial roles. Once the manager makes a hiring decision, the HR Department is so informed and again, after reviewing the decision as to form, takes charge of the administrative process by creating an offer letter, confirming the acceptance and on-boarding the new hire.

⁶ ATS's have long been used to perform automatic screening of resumes, using key word searches to identify relevant experience, educational qualifications, and other criteria. An ATS is quite capable of doing the "first screen" of an applicant pool, in order to identify all minimally qualified candidates. Efficient recruiting organizations use this functionality widely, and upgrade its search criteria constantly to make it better at identifying the highest qualified candidate profiles. Indeed, it is common practice for recruiters to use the ATS to manage all facets of their work, as these systems provide tracking not only by position, but by each stage of the recruiting process, from initial job posting through offer letters and onboarding. All of the background information (applications, resumes, assessment results) is also kept in the system. The ATS allows for efficiencies in communicating with candidates. Properly configured, the ATS will also allow hiring managers to see the status of their open positions and where each candidate is in the overall hiring process.

The process just described does vary to a considerable degree, depending on the preferences of the particular hiring manager. Some hiring managers partner more closely with HR and may involve them in the hiring decision. Others manage the hiring process without seeking any input or guidance from HR personnel regarding the experience, skill sets and relevant attributes of the applicants they are considering for open positions. As a consequence, the quality of the employees they hire is wholly dependent on their personal judgments and hiring goals, which may or may not fit tightly with overall goals of the Trial Court. In both cases, however, HR's value is sub-optimized. The process could be much more efficient, create a better experience for both applicants and hiring managers, and more reliably ensure that only the *most* qualified candidates become Trial Court employees.

Specifically, HR's role in the recruiting process could be greatly enhanced and brought to a more commonly accepted industry standard, with consequent savings of both time and money. Indeed, most organizations track and understand their "cost per hire," "time to fill open positions" and "candidate and hiring manager satisfaction" and, armed with that data, continually seek improvements in process and efficiency. Currently, such metrics are not widely and systematically tracked and routinely utilized to improve the hiring processes across the Trial Court.

If industry standards and best practices were employed, Recruiters would in appropriate cases search for passive candidates. They would also actively screen for the most qualified candidates who responded to job postings. When appropriate, that active screening could involve live interviews and testing to ensure that the applicant's skills are what the applicant represented them to be. Inexpensive tools that can test for skill level, e.g., proficiency with computer programs such as Excel, PowerPoint or Word, are now available on-line. If language skills are required, tests also exist for verbal and written fluency. Other tests for math and accounting skills, or for such things as detail orientation or customer service aptitude, are available as well. If the Recruiter engaged in any or all of those activities, then he or she would also prepare for the hiring manager a comprehensive written assessment of each candidate or applicant and a ranking of those whom they felt were the best fit for the position and why.

Whether or not the Recruiter performed all of those tasks, the goal would be for the Recruiter actively to interview and assess a diverse array of candidates for an open position and then provide the hiring manager with at least 3 but no more than 8 highly qualified individuals in every case where doing so is consistent with applicable requirements aimed at promoting workforce diversity. Each of those individuals should be someone whom the Recruiter believes, based on his or her knowledge of the hiring manager's vision of the successful candidate profile and the culture of the hiring manager's department or work unit, would be a great fit for the role.

At present, the HR Department consists of twenty positions, one of which is vacant. Of the twenty, four are engaged in "hiring, applicant tracking and onboarding." The

others are engaged in activities that relate to existing employees, although none is routinely or directly involved in the promotion process. Transition to a more value-added role for HR in the recruiting process thus will take some time and training, and perhaps some personnel with different skills. Nevertheless, that transition would be well worth the investment, both in terms of the hours saved in the recruiting process and in terms of ensuring that only a diverse group of objectively evaluated and qualified candidates make it to the hiring manager's desk. With a manageable number of qualified candidates in play, the "time to fill" metric for open positions would likely improve. A more active HR role would likely improve the candidate experience as well.

The Trial Court hires approximately 400 people each year, which, with an effective and more efficient process, could be managed by 3 or 4 professional Recruiters assisted by a few recruiting coordinators. Successful execution of those functions would require Recruiters to have a deep understanding of hiring manager needs, departmental culture and fit. They would also have to develop trusted relationships with the hiring managers they support. That understanding and that relationship are common ingredients of Recruiter success.

In addition to its role in hiring, HR plays a major role in negotiating collective bargaining agreements with the two primary unions that represent Trial Court employees. It also negotiates with the unions regarding appropriate job descriptions for each category of Trial Court employee, a process that has become overwhelmed by the volume of changes produced by automation and other Trial Court advances. The volume of those stale job descriptions can have a serious adverse impact on Court-wide hiring of personnel with the background and talent the Trial Court needs and will continue to need in the near and long term.

The HR Department also has a role in providing advice for graduated discipline and for the conduct of grievance proceedings after discipline has been imposed. In that area, however, two problems are sometimes encountered. The first, and more frequent, is structural. Many supervisors and those whom they supervise are members of the same union. Union and management employees whom the Panel interviewed were in agreement that combining supervisors and supervised in the same union sometimes made day-to-day management more difficult and disciplinary proceedings more difficult still.

The second has to do with those rare cases in which a discharge from employment is warranted. The 2011 court reorganization legislation removed from G.L. c. 211B, § 8, a provision stating that all Trial Court employees, union and non-union, could be discharged only for "cause." In place of that standard, the 2011 legislation provides that employees not covered by collective bargaining agreements containing a "cause" standard can be "removed by the[ir] appointing authority, in accordance with the standards promulgated by the [advisory] committee [on personnel standards] provided, however, that any such removal is not for arbitrary or

capricious reasons and, if the employee so requests, is approved by the committee.” G.L. c. 211B, § 8.

The Court’s Personnel Manual fully adopts that standard for all non-union employees.⁷ Moreover, a recent decision by the Supreme Judicial Court confirms that the “arbitrary and capricious” standard is to be applied in the employment context just as it is in other contexts, and permits discharge unless the discharge decision “lacks any rational explanation that reasonable persons might support.” *Perullo v. Advisory Committee on Personnel Standards*, 476 Mass. 829, 836 (2017), quoting *Doe v. Superintendent of Schools of Stoughton*, 437 Mass. 1, 5 (2002).

Both the revised statute and its recent interpretation by the Supreme Judicial Court are important because the difficulty of discharging employees under the older “cause” standard in effect infused most Trial Court jobs with security akin to life tenure, and led to a practice of moving difficult and sometimes even unfit employees to different courthouses around the state, where they remained until they wore out their welcome and required another transfer. The *Perullo* case itself involved transfers of that sort, and other instances where the practice has been employed, sometimes with disastrous results, have surfaced from time to time, even after the Legislature adopted the “arbitrary and capricious” standard. The durability of the practice and the “for cause” approach to termination is a testament to the power of established organizational culture and the difficulty of making significant changes to it within a relatively short period of time. Nevertheless, the practice of transferring problem employees was difficult to justify even when a “cause” standard governed the employer-employee relationship, and it is completely unjustifiable where the “arbitrary and capricious” standard applies. The Trial Court, acting through the HR Department and otherwise, should no longer tolerate or approve transfers of that sort. Instead, it should emphasize the necessity for managers at all levels to meet serious performance deficiencies promptly and head on, with appropriate internal remedial measures followed by termination if they fail.

2. Recommendations

- a. With the advice of the Advisory Committee on Personnel Standards and in a clear and unequivocal fashion, supported at all Trial Court leadership levels, charge HR with the authority and clearly understood responsibility for implementing, overseeing and enforcing best hiring practices throughout the Trial Court and clearly and unequivocally support HR’s execution of that charge. Those best practices include, but are not necessarily limited to:

⁷ Personnel Manual § 16.800. Union employees are covered by termination provisions of their collective bargaining agreements.

- i. Hiring experienced Recruiters so that HR can play a more active and effective role in recruiting, assessing and hiring the diverse and talented employees the Trial Court needs now and in the future;
 - ii. Using more of the ATS functionality to enable Recruiters to manage the full recruiting process, and also to enable transparent, efficient reporting of candidate applications and dispositions;
 - iii. Reconfiguring application tracking software to make it more user friendly to job applicants and easier for hiring managers to use to access information about their open requisitions;
 - iv. Ensuring that HR undertakes more active personal screening and use of online resources to create a qualified and appropriately diverse candidate pool; and
 - v. Deploying the resources necessary to update and keep current all relevant job descriptions.
- b. Take whatever steps are necessary or appropriate, through collective bargaining or otherwise, to separate supervisors and supervised from the same union.
 - c. Through HR and/or otherwise, implement the training, oversight and other processes needed to end the *de facto* use of the “for cause” standard for discharge, where the “arbitrary and capricious” standard is now the operative rule.
 - d. End the process of transferring difficult or unfit personnel from courthouse to courthouse (or from position to position) as a method of dealing with poor performance, and adopt appropriate procedural measures to ensure that all personnel transfers are made for appropriate reasons, and not as a way of dealing with difficult or unfit employees.

b. Probation Department

1. Findings

Under new and dedicated leadership, the Probation Department has dramatically improved its hiring processes. As far as the Board can determine, Probation hiring is now predominantly merit-based, and it is clear that the pervasive external influences that characterized the Departmental hiring six years ago have dissipated. The promotion process, too, has improved significantly and there, too, the pervasive external influences of the past are no longer present.

Nevertheless, two significant problems remain. The first involves the lack of training for participants in promotion interview panels. Panels assembled by the appointing authority, usually the first justice of the division where the promotional opportunity exists,⁸ generally interview candidates for promotion. The panels typically have three members, two of whom are directly associated with the office in which the opening exists and one of whom is not. But there has been no consistently enforced requirement that all panelists be properly trained in order to participate in interviews, and the resulting conduct of interviews by insufficiently trained panels can lead to flawed and uneven results.

Lack of interview or evaluation training and corresponding flawed results are not phenomena unique to the Trial Court. Indeed, employers of all kinds, public and private, are constantly seeking to ensure that those who make hiring and promotion decisions base those decisions on a clear understanding of relevant job requirements. They also make an effort to understand the “success profiles” for particular positions, based on understanding the relevant backgrounds and skills of incumbents who are high performers in those roles. The challenge faced by all employers is exacerbated by the fact that many managers make hiring and promotion decisions infrequently and without appropriate training, so they are not optimally experienced and skilled at the interview and selection process.

Best practice in this area requires that all decision-makers in the promotion process are trained. Customized training, therefore, should be required of all promotion interview panelists prior to their participation in the process. While this training must be customized, it can be scalable and easily delivered – even on-line. Indeed, HR has developed interview guides and score sheets which, if properly deployed, updated when necessary, explained and used, could greatly enhance the interview and decision-making process. The guides were developed by the HR Department in conjunction with the various appointing authorities. They are designed to get at the core functions of the position and the majority of the questions are framed in a behavior-based framework. Appointing authorities are required to use these guides when conducting the structured oral interview.

Nevertheless, deciding how to score or rate the answers to the questions the guides contain is not an intuitive process in the Probation context or generally. To deal with that problem, many organizations have implemented “hire right” training programs. While the programs may differ in content based on the specifics of the positions being filled, the focus of all such training is to enable hiring managers to select the

⁸ G.L. c. 276, § 83(m) provides: “In any court having 2 or more probation officers, the first justice, subject to the approval of the court administrator and the commissioner of probation, may designate 1 probation officer to serve as chief probation officer and may designate other probation officers to serve as assistant chief probation officers, as the first justice deems necessary for the effective administration of justice.”

candidates who are most predictably going to be successful in a given role. This type of training generally covers the following:

- Understanding the job description and the critical success factors for the role;
- Identifying the “success profile” for the role and the common attributes of high-performing incumbents;
- Learning how to ask the right questions to evaluate whether the candidate fits the success profile;
- If there is an assessment test for the role, learning how to evaluate the candidate’s scores and map those scores to the overall success profile, through an understanding of the scores that are common to high-performing incumbents;
- Identifying conscious and unconscious racial, gender, ethnic and other biases, including learning how to recognize such biases in oneself as well as in others; and
- Enhancing the candidate experience, including learning how to conduct the interview in a way that leaves a positive impression with the candidate, whether or not the candidate is ultimately selected for the position.

Most importantly, any “hire right” training must be endorsed and practiced from the top down. Leadership in the organization must hold itself accountable for best practice decision-making in hiring and promotions, in order to succeed in holding all managers in the organization to the same high standards. Where this is done, however, “hire right” training can yield great benefits.

The second, and more significant, continuing problem with respect to promotions in the Probation Department is that there is still a widespread belief throughout the Department that “who you know” is more important than merit. In part, that belief may be an artifact of a discredited system in which who you knew was not simply a factor in the process; it *was* the process. In part, that belief may result from a continuing reluctance to provide unsuccessful candidates with information about why they were unsuccessful, due to the fear that such feedback may be sought primarily for purposes of commencing and supporting employee grievance proceedings. And in part, that belief may flow from the fact that, by statute, the First Justice of the pertinent division has a primary role in deciding who is promoted. Whatever the causes, the belief is deeply held and deeply corrosive.

To counteract that belief, use of regional “assessment centers” instead of locally assembled interview panels would be enormously helpful, at least until the widespread mistrust of the current process is dispelled. Indeed, the Probation Department, with the assistance of the HR Department, has begun planning for creation and use of assessment centers in connection with promotions and the Board fully supports its decision to do so.

An assessment center is not a place, but rather a standardized method for evaluating behavior most relevant to a particular position based on job-related simulations, interviews and/or tests. In an assessment center, a group of trained and experienced assessors observe candidates for promotion as they perform individual and group activities that simulate activities they would perform in the position they are seeking. The assessors could be chosen in a variety of ways by a variety of Trial Court employees but would not be selected by the local hiring authority, nor would they be employees of the office with which the hiring authority was affiliated. Chosen and operating in that fashion, the assessment panel would have the opportunity to observe all candidates as they perform similar activities. Based on their observations and ranking, they would recommend to the appointing authority a limited number of applicants and the appointing authority would make the promotion from that group. However executed, the overall objective of the assessment center process would be creation of a merit-based subset of the entire applicant pool from which the appointing authority would make the promotion. As a result, all promotion recommendations and decisions would be based in large part on common sets of data unaffected by local loyalties or influences. As a result, use of assessment centers would create consistency in promotions, thereby reducing both grievances of and skepticism about the promotion process. In any event, the use of assessment centers, at least for some period of time, would provide the First Justices responsible for promotions with demonstrably merit-based groups of finalists, and so would be a very helpful step toward building a deep, Department-wide confidence that merit is the essential component of all promotion decisions.

Providing feedback to unsuccessful applicants for promotion, at least to those who request it, would also help to dispel the belief that the “who you know” system continues to operate. If assessment centers are used in connection with all promotions, then the candidate rankings the centers produce would greatly facilitate the feedback process. Providing feedback of that kind will not always be easy and those who provide it should be trained in techniques that will be most helpful to the inquiring applicant before any feedback program is undertaken. Nevertheless, in addition to dispelling notions that discredited systems remain in play, the potential need to provide feedback can help with the promotion decision itself by requiring the hiring manager to think in truly concrete terms about the way he or she will explain the decision to those who were not chosen. Moreover, providing feedback to those who seek it gives them helpful information about their chances for future success and the opportunity to look for employment elsewhere if they conclude that future success is unlikely.

2. Recommendations

- a. Use assessment centers in lieu of locally assembled interview panels in connection with all promotion decisions in the Probation Department at least for the next five years, or until Department personnel are generally convinced that all promotions are merit based.

- b. Authorize HR to play a major role in selecting and providing standardized “hire right” training for all members of interview panels and/or assessment centers.
- c. After appropriate training, provide feedback to unsuccessful applicants for promotion who request it along with any constructive suggestions for improvements needed to enhance their chances for success in future applications.⁹

c. Security Department

1. Findings

There is universal agreement that the quality of training for security personnel – chiefly court officers – has improved dramatically over the last six years. Virtually everyone the Panel interviewed commented favorably on court officer professionalism and the quality of the training they are now receiving, which provides them with the tools necessary to defuse the often explosive situations that can quickly arise in a tension-filled courtroom.

Court officer hiring now is a multi-step process that includes, among other things, an entry exam, physical abilities test, behaviorally based interviews and background inquiries. When hired, the new court officer receives eight weeks of training at a nationally accredited training academy and continuing in-service training designed to help the officer deliver professional court security. Promotions are now the result of the competitive process involving independent screenings.

Two issues remain. The first is that hiring, at least in the view of some, has not kept pace with need, and the shortfall of experienced, well-trained court officers sometimes puts additional strain on those who have been assigned to particular courtrooms and courthouses. The problem appears to be a transient one and the Department appears to be committed to resolving it.

Second, there is no mandatory retirement age for court officers. Moreover, although there is a mechanism for testing a court officer’s physical ability to perform the duties to which he or she is assigned, that mechanism, provided for in the collective bargaining agreement, is available only in “extraordinary circumstances” and is no substitute for routine and periodic assessments of physical stamina and mental

⁹ The need for this type of feedback is most acute in the Probation Department, but it should be available throughout the Trial Court. Perhaps responsibility for providing it could be reposed in the HR Department and perhaps enhancing the requirements for delivering feedback based on periodic performance reviews would reduce the number of feedback requests following unsuccessful applications for promotions, as well as the surprises that the latter type of feedback might contain. Use of properly constructed hiring guides and score sheets by trained interviewers in all hiring and promotion decisions for all Trial Court positions would also greatly enhance the feedback process.

acuity.¹⁰ By way of comparison, all Massachusetts police officers, many of whom perform duties similar to those performed by court officers, are by statute required to take and pass a physical examination at least once every four years.¹¹ The statute does not cover court officers and there is no mechanism for routine review of their physical ability to perform required duties, even though they routinely work in an environment where violence, though infrequent, can suddenly erupt.

2. Recommendations

- a. Hire and train additional, qualified court officers and deploy them as rapidly as possible to the places where they are most needed.
- b. Seek statutory changes or changes to the applicable collective bargaining agreement in order to institute a mandatory retirement program, or a process for periodically assessing an officer's mental and physical ability to perform the requirements of a court officer job, or both.

d. Judicial Information Services Department

1. Findings

Insofar as the Judicial Information Services Department ("JISD") is concerned, the entire hiring process is too slow and the salary structure is too inflexible to produce the caliber and quantity of job applicants that are needed to meet the Trial Court's IT and data management needs. While this critique may be equally relevant in other Trial Court departments, it has a more dramatic effect here. At the moment, and likely for the foreseeable future, talented IT professionals are in extremely high demand in Massachusetts, as they are nationally. In the IT area in particular, the Trial Court salary structure, including both entry-level salaries and periodic step increases, is widely perceived as insufficient to attract the talented personnel the Trial Court needs and will increasingly need in the coming years. In addition, the length of time between an applicant's response to a job posting and final action on that response is frequently so great that the applicant has accepted another job from a different entity before the Trial Court completes processing his or her application.

¹⁰ Section 13.07 of the collective bargaining agreement that governs court officers provides that "[i]n extraordinary circumstances, when the immediate manager . . . [of a court officer] has sufficient reason to believe that [the officer] has a mental or physical incapacity rendering him/her unfit to perform his/her job or which jeopardizes workplace safety or stability, the immediate manager . . . may authorize the removal of such [officer] from the workplace." The agreement provides that removal under those circumstances triggers one or more physical examinations to determine whether a disability exists and interferes with the officer's ability to perform his or her duties safely. Applicants for new court officer positions are now required to pass a physical examination. Periodic physical exams after hiring remain voluntary with an incentive in the form of a stipend provided for those who take and pass them.

¹¹ G.L. c. 31, § 61A.

More broadly, the length of time it takes to make the decision may well create an unfavorable impression of the Trial Court among members of the IT community whom the Trial Court would want to recruit in the future.

That is not to say that the IT professionals currently employed by the Trial Court are substandard. They are not. But most of them are attracted to Trial Court employment for reasons beyond the salary and benefits they receive, which may be just a fraction of what they could receive elsewhere. They are attracted because of their spirit of public service and their desire to participate in the Trial Court's overall mission. Nevertheless, as the Trial Court's needs change and as useful new hardware and software becomes available to meet those needs, there will be times when it would be enormously valuable, if not essential, for the Department to be able to move quickly and flexibly to hire the talented people needed to program, operate, maintain and configure the Trial Court's IT assets.

2. Recommendations

- a. JISD and HR should work together to create time-sensitive goals and processes for filling key IT position vacancies.
- b. The Court Administrator should explore the extent to which the Trial Court can pay key IT professionals the salary and/or provide other benefits, including flex-time, part time, remote working locations, necessary to attract and retain them.
- c. If and to the extent that those salaries and benefits are inconsistent with statewide personnel requirements, the Court Administrator should explore whether those requirements can be modified.
- d. To the extent necessary, HR and the Trial Court's Judicial Institute should develop and subsidize internal and external IT training programs and other advancement opportunities for existing JISD employees.

B. CLERK-MAGISTRATE, REGISTER AND RECORDER OFFICES

1. Findings

In contrast to the departmental directors within the OCM, who are appointed by and report directly to the Court Administrator, the Trial Court Clerks, Registers and the Land Court Recorder are local appointing authorities. Under the Massachusetts Constitution, the voters elect Registers of Probate and Clerks of the Superior Court every six years.¹² Clerks in all other Departments and the Recorder are appointed

¹² Article XIX of the Amendments to the Massachusetts Constitution, as amended, provides: "The legislature shall prescribe, by general law, for the election of sheriffs, registers of probate, [commissioners of insolvency,] and clerks of the courts, by the people of the several counties, and

by the Governor, confirmed by the Governor’s Council and hold office during good behavior with no termination date.¹³ Except for the possibility of removal for bad behavior, theirs are lifetime appointments. That kind of tenure exists nowhere else in the Massachusetts judiciary or elsewhere in the government of the Commonwealth. Among other things, it has led in many cases to a belief that the appointed clerks are accountable to no one.¹⁴

By statute, the Clerks, elected and appointed, Registers and the Recorder “have responsibility for the internal administration of [their] office[s], including personnel, staff services and record keeping”¹⁵ and their authority in that regard was underscored in the 2011 Trial Court Reorganizing legislation.¹⁶

Their authority, though, is not unlimited. As noted earlier, the same reorganizing legislation gave the Court Administrator the power, with the advice of the Advisory Committee on Personnel Standards, to “establish and promulgate standards for the appointment, performance, promotion, continuing education and removal of all personnel within the trial court, except judges, clerks and registers of probate.”¹⁷ The current version of the Trial Court Personnel Manual contains those standards.

The 2011 legislation also provided that “[a]ny appointment that is governed by standards promulgated under the provisions of this section shall forthwith be certified in writing for compliance with such standards to the court administrator. The court administrator shall have the power to reject any such appointment within 14 days after receipt of the certification of compliance by the appointing authority

that district-attorneys shall be chosen by the people of the several districts, for such term of office as the legislature shall prescribe.” G.L. c. 217, § 24 and G.L. 221, § 3 create six-year terms for Registers and Superior Court Clerks, respectively.

¹³ G.L. c. 185, § 6 (Land Court Recorder); G.L. c. 185, § 9 (Housing Court); G.L. c. 218, § 8 (District Courts and Boston Municipal Court); G.L. c. 218, § 58 (Juvenile Court).

¹⁴ That issue was discussed at greater length in the fourth of the Task Force Reports, which was entitled *Action Plan for Hiring and Promotion of Trial Court Administrative Employees* and issued on August 9, 2011.

¹⁵ G.L. c. 185, § 6 (Land Court); G.L. c. 185C, § 8 (Housing Court); G.L. 212, § 14A (Superior Court); G.L. c. 217, § 2 (Probate & Family Court); G.L. c. 218, § 8 (District Court); G.L. c. 218, § 51A (Boston Municipal Court); G.L. c. 218, § 57A (Juvenile Court).

¹⁶ G.L. c. 211B, § 10C, which is part of that legislation, provides that “[t]he general superintendence and administrative authority of the chief justice of the trial court, court administrator, and the chief justices of the respective departments of the trial court and the first justices of particular courts shall not include the authority or power to exercise, supersede, limit, prevent the exercise of or otherwise affect any of the powers, duties and responsibilities of the clerks or registers of probate in any general or special law, including laws authorizing or governing the selection and appointment of personnel, except where expressly authorized.”

¹⁷ G.L. c. 211B, § 8.

but such power to reject any such appointment shall be limited to non-compliance with the standards for appointment.”¹⁸

The reorganizing legislation thus embodies a careful balance between local autonomy and central authority. The local hiring authority has the power to choose the person who is to be hired and promoted but the standards to be followed when he or she does so are the standards the Court Administrator has promulgated. Consequently, the Court Administrator currently has the authority for broad oversight of the hiring and promotion process and the power to implement the recommendations this Report contains.

The standards the Court Administrator has promulgated require every Clerk and Register and the Recorder to file a “job posting request” with the HR Department before attempting to fill any vacant position. The request is reviewed by the director of human resources, the chief financial officer and the Court Administrator or their designees and then approved or disapproved.¹⁹ The HR Department advertises the vacancy and all applications are submitted electronically to it.²⁰ After receiving the applications, the HR Department is required to screen them to determine whether the applicants meet minimum qualifications and then is to send all applications to the appointing authority with its assessment of which do and which do not meet those qualifications.²¹

The Personnel Manual provides that “all applicants meeting the minimum qualifications for a position must be interviewed [unless] the appointing authority determines that interviewing all [of them] would be unduly burdensome.”²² If interviewing all of the applicants would cause an undue burden, then the appointing authority and the HR Department are to work together to develop criteria for determining which of the qualified applicants will be interviewed.²³ The interviews “must include behaviorally-based questions and must be objectively tailored to measure the applicant’s ability to perform the position for which they applied.”²⁴ Panels convened by the appointing authority must conduct the interviews.²⁵ Finally, “[a]pplicants who have not met the position requirements, as determined by the HR

¹⁸ *Id.*

¹⁹ Personnel Manual § 4.201(A).

²⁰ *Id.* §§ 4.201(D), (E); 4.301(A).

²¹ *Id.* §§ 4.301(B), (E).

²² *Id.* § 4.301(F.1).

²³ *Id.*

²⁴ *Id.* § 4.302(A.3).

²⁵ *Id.* § 4.301(A.4).

Department, may not be interviewed unless the appointing authority seeks and receives written permission from the HR Department.”²⁶

Although the Personnel Manual sets out those procedures in a straightforward fashion, it is entirely unclear from the interviews the Panel conducted that they are being followed. Indeed, many of the appointing authorities who were interviewed had different understandings of what applications they were receiving and what the HR Department did before sending the applications to them, including the nature of any screening it performed.

While it appears the requisite interviews are usually conducted by panels, as the Personnel Manual requires, it is not clear how panel members are appointed, whether they have any training in conducting interviews, particularly in the behaviorally based interviews the Manual requires, and the extent to which the panels are diverse. There appears to be no tracking to determine how the panel system is being used or how the panels are composed, trained or instructed. Because no centralized, comprehensive record of the actual interview process is routinely created and systematically maintained,²⁷ it is not possible to know whether all panels in fact refrain from interviewing applicants whom HR has found to be unqualified.

More broadly, attitudes about the role the HR Department should play vary widely among the Clerks and Registers. Some enthusiastically support a role in which the Department screens out applicants who do not meet minimum qualifications. The support of these Clerks and Registers flows from their desire to spend their time interviewing and making judgments about those who have the potential to add value to their workforce. For some, it is also tied to their belief that active screening by the HR Department will help to deflect pressures or criticisms when a particular applicant recommended by a constituent does not receive an interview.

At the other end of the spectrum, a significant number of these appointing authorities share a view that the ideal role for the HR Department is simply to ensure that job postings are broadly disseminated, that applications are gathered in a timely fashion and that they are sent promptly to the appointing authority for all further processing. Those who hold that view believe that the role of the HR Department is to act essentially as a “post office,” and to ensure the speedy and efficient delivery of communications between appointing authorities and applicants, while making no judgments about the content of the communications they move along.

²⁶ *Id.* § 4.301(A.5).

²⁷ The ATS captures the fact of the interview and its results but not the processes that were used to create the interview panels or other aspects of the interview process.

Where promotions are concerned, it appears that most appointing authorities are using panels to interview candidates for promotion and that many of those panels include at least one member who is outside of the organizational unit where the promotion opportunity exists. Again, however, records are not maintained in a comprehensive, systematic fashion to document how those panel members are picked, what training they receive, or what instructions they are given before the interview process begins. As a result, judgments about the quality of a given interview and selection process are difficult to make on an individual or generalized basis, trends are difficult or impossible to spot, and there is little or no basis for making sound judgments about whether, where or what kind of improvements are needed.

The very different ideas about the appropriate role of the HR Department reflect the fundamental lack of a common human resources philosophy throughout the Trial Court. What substitutes for that common understanding is, and must inevitably be, an idiosyncratic approach to identifying the best candidates to fill open positions. Lack of a common understanding also means that the hiring process is more time-consuming and expensive than necessary and that court-wide change in one direction or another is virtually impossible to achieve. Creating a common understanding designed to advance common objectives is critical if the Trial Court is to maintain the synchronous, agile workforce it will surely need as it moves into the future. But creating that understanding will require sustained and thoughtful leadership and repeated demonstrations of the benefits that active HR participation in all aspects of the hiring process can produce at all levels. Among those benefits surely will be the ability to redirect time and resources now consumed in the hiring process to other areas within the Trial Court where they can provide greater benefits.

As noted earlier, success in creating that understanding will also require Recruiters to develop and demonstrate a deep understanding of hiring manager needs, divisional culture and fit. Those Recruiters will also have to cultivate relationships of trust and confidence with the hiring managers they support. That understanding and those relationships are essential ingredients of Recruiter success and hiring manager satisfaction. Necessarily, therefore, HR's changed role should be introduced carefully. In that regard, hiring in the OCM Departments could provide an excellent opportunity to test and refine HR's changed role and function before those changes are applied to hiring in the offices headed by the Clerks, Registers and Recorder.

In the end, the careful balance between the role of the Court Administrator and local hiring managers set out in the 2011 reorganizing legislation reflects compatible goals. The local Clerks and Registers deal with different populations having different problems in different parts of the Commonwealth and they also interact with other local officials who have various expectations and philosophies. For that reason, different interpersonal skills may be in greater demand in one locality than in another, particularly in courts with a high percentage of self-represented litigants.

As recent events have shown, having a court staff that is fundamentally out of tune with the local population it serves can have disastrous results.

At the same time, as demonstrated by Trial Court Strategic Plan 2.0 and the vision of “Justice with Dignity and Speed” that Plan embodies,²⁸ the Trial Court is moving and will continue to move toward more standardized, automated, interconnected processes that will promote a better administrative environment for the swift and certain delivery of justice to all Massachusetts residents. That movement will increasingly require the deployment of common sets of skills for all Trial Court employees who perform similar functions in each and every Massachusetts courthouse. Those common skill sets do not exist today.²⁹ An effective central HR function must play a critical role in assuring that all employees possess the necessary common skills in the future.

2. Recommendations

- a. Implement, as quickly as is consistent with proper preparation, testing and training, the recommendations for the HR Department contained in Section IV(A)(a)(2)(a)1-5 of this Report, i.e., hire and use experienced Recruiters, use the ATS to screen more actively the qualified candidate pool, reconfigure application tracking software to make it more user friendly, ensure that HR undertakes more active personal screening and use of on-line resources, and deploy resources necessary to update and keep current all relevant job descriptions.
- b. Hire and assign Recruiters to particular court divisions so that they can begin to acquire the local knowledge necessary to provide high quality services to the hiring managers with whom they work.
- c. Consider creation of regional recruitment plans and “rolling” application processes so that open positions can be filled quickly from a vetted pool of qualified applicants.
- d. Use updated, current job descriptions as the statewide source for screening criteria statewide.
- e. As recommendations 2a – 2d are implemented and proven, find ways to pilot new recruitment and hiring projects that demonstrate the value that enhanced HR functions can add to local hiring processes

²⁸ Trial Court Strategic Plan 2.0 at 31–33. (October 2016).

²⁹ See Report of the Massachusetts Court Technology Visiting Committee at 3 (Spring 2016).

- f. Require appointing authorities to notify the appropriate Departmental DCA of the composition of interview panel members for prior approval, and participation in interview training.
- g. Provide the Department Administrative Office with the authority to appoint a member of an interview panel if necessary to increase diversity or ensure fairness.
- h. When reduction of the size of a qualified applicant pool is necessary prior to interviews, require appointing authorities to work with the HR Department to select objective and job-related screening criteria, with due regard for diversity considerations, for that purpose.
- i. Direct HR to screen candidates and send only a reasonable number of the most qualified candidates for interview, depending on position.
- j. The Court Administrator, after consulting with the Advisory Committee on Personnel Standards, should revise the Policy and Procedures Manual so that it embodies these recommendations.

C. SYSTEM-WIDE CULTURE

In the final report it issued some six years ago, the Task Force made several observations about the role of an organization's culture in supporting its overall mission and objectives. Those comments included the following:

No strategy for merit-based hiring and promotion, however sound and well-conceived, can succeed unless it is deployed in a supportive culture. By "culture," we mean the shared attitudes, values, goals and practices, spoken and unspoken, that characterize an organization. Sometimes the culture is aligned with a formal statement of goals and values; sometimes it is not. Either way, the impact of culture on how the organization actually behaves cannot be overstated.

....

[For a culture supporting the organization's mission] to flourish, all employees must be united in a common understanding of the organization's purpose. They must have the skills necessary to assess and diagnose their own work and the work of their team in advancing those purposes. They must operate in an environment that supports and encourages development and exercise those skills. And they must be led by managers with the skills and judgment to create and maintain a culture in which those qualities flourish.

Today it can be said with confidence that the culture of the Trial Court largely supports and encourages merit-based hiring and promotion. In many quarters, that was always true. In some, however, it was not. Through sustained effort by many talented and committed Trial Court employees at all levels, those outlying quarters have been substantially reduced.

One aspect of the Trial Court's current culture, though, deserves further comment. Earlier, this Report referred to the Trial Court as a "federation rather than a single, fully integrated operating unit." To some extent, the Court's federated nature is the product of history. Although a single Trial Court, albeit a Trial Court with seven distinct judicial departments, has been in existence for 50 years, several of those departments are more than a century older. To another extent, that federated nature is the product of statutory divisions of responsibilities. And to some extent it is a product of geography.

More durably and more pervasively, though, that culture springs from a state of mind, at many levels, by which employees focus almost exclusively on their immediate operating unit and place in the background, often the deep background, the broader networks to which their unit belongs. That state of mind manifests itself in many ways and across a range of intensities. At its most extreme, it takes the form of ferocious resistance to any centralized role in the way any business, including hiring and promotion, is conducted within a particular operating unit. Milder, though perhaps more widespread, is an uncritical and automatic protection of idiosyncratic approaches to the way certain aspects of Trial Court business are conducted, an approach that leads employees to say "we do it differently here" even when the "it" is a routine and essential function performed in every single courthouse every single day. Milder still is a simple lack of any real sense of personal investment in and commitment to an integrated and comprehensive Trial Court system, of which the unit to which an employee reports to work each day is ultimately just one part.

Given its roots, the culture is understandable. Most of the seven Trial Court Departments perform significantly different work, the complexities of which necessarily resist homogenization with the work performed in other Departments. Statutes dispense, or at least appear to dispense, various kinds of authority and responsibility to a broad array of Trial Court officials in a manner that is not always fully synchronous or systemically consistent. And various units of the Trial Court operate in different communities across the Commonwealth, all of which have their own traditions and particular expectations about the way their local court should carry out its business and provide its services.

At the same time, the Trial Court as a whole is becoming an increasingly interconnected system, and the degree and intensity of that interconnection will continue to increase for the indefinite future. Accordingly, it is essential to develop and nurture a culture of interdependence that coexists with the beneficial aspects of the currently dominant culture of self-reliance and independence. Trial Court

employees need to feel, in a very real way, that many of the tasks they are performing have a direct impact on the work of the Trial Court as a whole. They need to understand that the way they perform those tasks has a direct impact on the quantity and quality of the information available to them and to all of their colleagues statewide, on the resources they are able to obtain and use, and on the quality of the services the Trial Court as a whole, and not simply the particular unit in which they work, is able to provide.

Some steps in that direction already are occurring. For example, cross-training is occurring in some courthouses where different Trial Court Departments hold court sessions so that clerical employees from one Department can help those in another Department when the latter is short-handed. Likewise, court officers are schooled in the needs of different Divisions so they can be deployed flexibly as needs arise. The Talent and Career Development component of Strategic Plan 2.0, referenced earlier, has a section that focuses on cross-training and the implementation plan calls for communicating internally a “panoramic view” of Trial Court operations. Moreover, the Plan itself is the result of an intensive and collaborative effort that involved employees from all areas of the Trial Court.

In many ways, a more pervasive role for the central HR Department in all hiring throughout the Trial Court would facilitate the broader cultural outlook that is both necessary and desirable. The tools to facilitate that greater role already exist. The Court Administrator’s statutory responsibility to promulgate hiring and promotion standards is broad enough to support such an increased role. The OCM could serve as a laboratory for developing Recruiter expertise and demonstrating to other portions of the Trial Court the benefits that reliance on an active and talented group of recruiters can produce. Undoubtedly, some Clerks and Registers would welcome participation in pilot programs designed to test the results of greater central HR involvement in both hiring and the new employee on-boarding process. And though it will take time, those efforts can ultimately change a culture of insularity into a culture of connectedness and mutual support, while maintaining an appropriate focus on local needs and expectations.

V. CONCLUSION

This Report began by recognizing the enormous strides the Trial Court has made over the past six years to improve the statewide hiring and promotion processes. None of the findings or recommendations that followed should undermine or detract from the record of accomplishment the Court Administrator, Department heads, Clerk-Magistrates, Registers of Probate and the Recorder have made during that period. The myriad improvements were not always easy to make and they were sometimes accompanied by strong differences of opinion. The very difficulty of the task, therefore, is a testament to the diligence and energy with which those improvements were pursued. In the end, those improvements, and the effort by so

many at so many levels that it took to make them, underscore a Court-wide agreement that the Court's employees are its greatest asset.

In the main, the findings and recommendations of this report are forward-looking, not remedial in nature. The structure of the Trial Court has changed dramatically over the last six years. The Court's values are succinctly captured by its powerful mission statement: Justice with Dignity and Speed. And, as exemplified by the current Strategic Plan 2.0 and the many court employees who participated in the creation of that Plan, the Court is focusing on creating and maintaining a high-performance environment.

Reflection on the intertwined roles of the HR Department and the Trial Court's numerous appointing authorities produces several conclusions about HR's role in creating and maintaining that environment. First, the central HR Department must play a significant role in hiring of all Trial Court employees. Neither the "post office" model nor anything resembling it will satisfy the needs of the Trial Court as it moves into the future. Second, the Trial Court must build a consensus around that principle. Given the diffuse structure of responsibility for hiring and promotion throughout the Trial Court, the absence of such a consensus will simply lead to wholly unproductive conflicts about roles and authority each time the HR Department seeks to play a greater role in hiring decisions. Third, the HR Department must be empowered to perform the functions described in Section IV(A)(a)(1) of this Report and have the leadership, personnel, talent, energy and desire to do so, and thereby add substantial value to the hiring process. It must also find innovative and effective ways to convince all hiring managers that it can and will do so. All of that will take time, but the effort is essential, for the result will surely be reflected in a stronger hiring and promotion system that works better for all participants and for the residents of the Commonwealth whom the Trial Court serves.