

**Department of Justice
Executive Office for United States Trustees**

**Final Agency Action
Case No. 2009-0001**

**Review of the Decision of the
United States Trustee for Region
Regarding**

chapter 7 panel trustee in (the “trustee”), seeks review of a decision by the United States Trustee for Region not to renew his appointment. Based upon the record before me, I affirm the United States Trustee’s decision.^{1/}

I. Course of this Proceeding

The trustee has been on the panel of chapter 7 trustees for since . By Notice of Termination dated July 9, 2009, (“Notice of Termination” or “Notice”), the United States Trustee terminated the trustee’s appointment to the panel of chapter 7 trustees upon expiration of his current term on July 30, 2009.^{2/} The United States Trustee determined that the trustee failed to adequately perform his duties under 28 C.F.R. § 58.6(a)(1)-(6), and (10).

On July 27, 2009, the trustee submitted to the Director of the Executive Office for United States Trustees a letter requesting review of the Notice and asking for an additional 15 days in which to provide information in support of his request. By letter dated July 31, 2009, the Director granted an extension up through and including August 15, 2009. On August 13, 2009, the trustee supplemented his initial request for review (collectively, both request for review letters are referred to as the “Request for Review”). On August 27, 2009, the United States Trustee responded to the Request for Review (“UST Response”).

^{1/} The administrative record in this matter consists of: (1) the United States Trustee’s July 9, 2009, Notice of Termination and Exhibits 1-37; (2) the trustee’s July 27, 2009, and August 13, 2009, letters requesting review of the United States Trustee’s Notice of Termination, with one unnumbered exhibit; and (3) the United States Trustee’s August 27, 2009, response to the trustee’s request for review and Exhibits 38-44. Pursuant to 28 C.F.R. § 58.6(h), also included are public dockets of the cases discussed herein that are maintained by the bankruptcy court, to the extent they are not included in the exhibits submitted by the United States Trustee.

^{2/} Pursuant to 28 C.F.R. § 58.6(c), the effect of the United States Trustee’s decision has been stayed pending the trustee’s timely request for administrative review, which was submitted initially by letter dated July 27, 2009.

II. Standard of Review

In conducting this review, I must consider two factors:

1. Did the United States Trustee's decision constitute an appropriate exercise of discretion?
2. Was the United States Trustee's decision supported by the record?

See 28 C.F.R. § 58.6(i) (specifying the scope of the Director's review).

I may "adopt, modify or reject the United States Trustee's decision to suspend or terminate the assignment of future cases to the trustee." Id.

III. Analysis

A. Duties of the United States Trustee and Panel Trustee

United States Trustees supervise panel trustees, 28 U.S.C. § 586(a)(1), and appoint them to individual chapter 7 cases. 11 U.S.C. § 701. The United States Trustees "carefully monitor the performance of panel members . . . to determine whether they should be continued in or removed from panel membership." H.R. Rep. No. 595, 95th Cong., 1st Sess. 102, 101 (1977). Under the law, "[t]he United States Trustee is permitted to conduct his own investigation . . . to exercise effective supervision and make effective evaluation of the performance of the private trustees on the panel." Id. at 110.

Chapter 7 panel trustees are fiduciaries responsible for administering cases filed under chapter 7 of the Bankruptcy Code. As fiduciaries, trustees are held to high standards of conduct. See generally Mosser v. Darrow, 341 U.S. 267, 271 (1951); Woods v. City Nat'l Bank & Trust Co., 312 U.S. 262, 278 (1941). See also Meinhard v. Salmon, 249 N.Y. 458, 464, 164 N.E. 545, 546 (1928) (Cardozo, C.J.).

The United States Trustees effectuate the goals of the United States Trustee Program, which include protecting the public interest by ensuring efficient administration of cases and by protecting the integrity of the bankruptcy system. See United States Trustee Program's Mission Statement.^{3/} In striving to fulfill these goals, United States Trustees expect that trustees under

^{3/} The United States Trustee Program's Mission Statement provides as follows:

The United States Trustee Program acts in the public interest to promote the efficiency and to protect and preserve the integrity of the bankruptcy system. It works to secure the just, speedy, and economical resolution of bankruptcy cases; monitors the conduct of parties and takes action to ensure compliance with applicable laws and procedures; identifies and investigates bankruptcy fraud and abuse; and oversees administrative functions in bankruptcy cases to promote and defend the integrity of the federal bankruptcy system.

their supervision perform their duties at the standards required of fiduciaries. The United States Trustee's decision not to reappoint the trustee to the panel are assessed against these standards.

B. Prior Performance Reviews, Audits, and Examinations Involving the Trustee

The record reflects that the office of the United States Trustee conducted its most recent formal performance review of the trustee in June 2009. Notice at Exhibit 2. That review, which covered the period July 1, 2007 through June 30, 2009, rated the trustee's performance overall as inadequate with specific elements rated as follows:

- a. Inadequate:
 - “Section 341 Meetings”
 - “Securing Estate Property”
 - “Trustee Interim Reports and Operating Chapter 7 Reports”
 - “Case Progress”
 - “Response to Audits”
 - “Response to United States Trustee”

- b. Adequate, Except for:
 - “No Distribution Reports”
 - “Trustee Final Reports and Trustee Distribution Reports”
 - “Legal Administration”
 - “Banking”
 - “Distributions to Creditors”
 - “Investigation of and Response to Bankruptcy Fraud and Abuse”

- c. Adequate:
 - “Bonding”
 - “Response to Public Complaints”
 - “Retention and Compensation of Professionals”

Id. The performance review concluded that the trustee failed to: follow proper procedures in handling debtor identity issues; restrict access to his security controls; close cases on a timely basis; document his reconciliation of bank statements; adequately disburse monies to unsecured creditors in comparison to other panel trustees in the district; and timely respond to requests made by the office of the United States Trustee. Id.

The record also reflects that, in January 2009, Tronconi Segarra & Associates LLP (“TSA”) conducted an audit (“2009 audit report”) of the trustee's operations on behalf of the United States Department of Justice. Notice at Exhibit 5. The audit encompassed the following aspects of the trustee's operations:

- asset administration and case progress;
- receipts and disbursements;
- segregation of duties;
- banking; and
- computer operations and file maintenance.

Id. The audit concluded that the trustee failed to: timely value multiple assets in three separate cases being administered by the trustee; document his reconciliation of bank statements; and restrict access to his security controls. Id.

Finally, the record reflects that a field examination of the trustee’s operations was issued by the office of the United States Trustee on September 16, 2004. Notice at Exhibit 33. The objectives of that examination were:

- “to determine if the trustee maintains appropriate systems to adequately monitor asset administration and case progress, and promptly collect, protect and administer estate funds and property, in keeping with the Trustee’s fiduciary duties, and in accordance with the Handbook [for Chapter 7 Trustees], the Bankruptcy Code, local rules, and sound business practices;”
- “to determine if the Trustee has established appropriate procedures and internal controls to safeguard estate funds and property, ensure the integrity of financial record keeping and reporting, and discourage employee theft, in accordance with the Handbook [for Chapter 7 Trustees] and sound business practices;” and
- “to verify that the Trustee’s systems, procedures, and controls are operating effectively.”

Id. The examination concluded that the trustee failed to: document his basis for the valuation of nineteen separate assets subsequently abandoned by the Trustee, and how, if at all, those assets were encumbered; document his reconciliation of bank statements; and restrict access to his security controls. Id.

C. The Record Supports the United States Trustee’s Decision Not to Renew the Trustee’s Appointment

1. Failure to Safeguard or to Account for Estate Funds and Assets

In the Notice, the United States Trustee alleges that the trustee failed to safeguard or account for estate funds and assets. Notice at 2-3. This allegation can be divided into three categories: asset investigation, valuation, and administration; safeguarding assets; and reconciliation of estate bank accounts.

Asset Investigation, Valuation, and Administration

The United States Trustee alleges that the trustee was presented with information regarding potential assets, but he failed to investigate, value, and administer those assets in at least two bankruptcy cases. Id. at 2. In _____ prior to filing his bankruptcy petition, the debtor obtained title to two parcels of real property through litigation and judgment. The losing party appealed the judgment and the debtor was defending the appeal at the time he filed for bankruptcy. At the meeting of creditors held pursuant to 11 U.S.C. § 341(a), the debtor stated to the trustee his belief that at least one of the properties may have been unencumbered. Rather than investigate the merits of the appeal and determine what, if any, value the property might have to the estate, the trustee filed a Report of No Distribution (“NDR”) the same day as the meeting of creditors.

In the second case, _____, the United States Trustee alleges that the trustee failed to pursue possible preferential transfers totaling \$13,000; failed to challenge a claimed homestead exemption on real estate the debtors admitted they had never lived in; and failed to administer non-exempt assets including a 2005 Chevy Tahoe with \$9,000 in equity, a residential unimproved lot with \$11,000 in equity, and a joint interest with their son in real estate in which the debtors’ equity interest was valued at \$25,000. Notice at 2. According to the United States Trustee, the trustee filed an NDR in the case with no apparent attempt to investigate or administer these potential assets for the benefit of creditors. Id. Based on an analysis by his office, the United States Trustee believes that, after allowing for all exemptions and for the cost of asset liquidation, there was approximately \$49,000 in assets available, which would have allowed for a 100 percent distribution to unsecured creditors in the case. UST Response at 3.

In the Request for Review, with regard to the _____ case, the trustee states that his review of the deeds for the two parcels of real property at issue indicated that there was little or no equity in the property. Request for Review at 1. He also states that he continues to monitor and confer with counsel regarding the state court appeal action. Id. As to the _____ case, the trustee states that he determined there were little or no funds available for distribution to creditors after allowing for all available exemptions and the cost of liquidation. In both cases, the trustee cites the depressed real estate market as a factor to be considered. Id.

Based upon my review of the record, I find support for the United States Trustee’s allegations that the trustee failed to investigate, value, and properly administer assets in both the _____ and _____ cases. While the Handbook for Chapter 7 Trustees (“Handbook”) provides that “[a] trustee should abandon any estate property that is burdensome or of inconsequential value to the estate,” it also requires that a trustee “be able to justify the decision to abandon the estate property.” Handbook at Ch. 8, Section D. Here, the trustee failed to provide sufficient justification for his abandonment of potential assets in _____ and only minimal justification for his abandonment of assets in _____. Further, though he states in his response regarding _____ that he continues to monitor the status of and confer with counsel in the state court case, that action serves no purpose. Local Bankruptcy Rule 6007-1 in the _____ provides that, if no objections are filed within 30 days of the trustee filing an NDR, all assets are deemed abandoned. See _____ L.B.R. 6007-1, available at _____

http://www.uscourts.gov/fpweb/local_rules_online.htm. After the trustee filed the NDR and 30 days passed, he abandoned any claims the estate might have had to the assets.^{4/}

Finally, the record reflects that the trustee's abandonment of potential estate assets – either without documenting his basis for valuation, or without documenting verification of existing liens and/or the perfection of security interests – has been cited as a deficiency in the past. The report of a UST field examination dated September 16, 2004 (“2004 field exam report”), cites failure to document the basis for valuation in each of the eight cases tested, and failure to document verification of existing liens and/or perfection of security interests in four of the eight cases tested. Notice at Exhibit 33.

Safeguarding Assets

The United States Trustee alleges that the trustee failed to properly secure his case management software. In addition to himself, the trustee has allowed full access to the case management software, including the ability to change passwords and settings, to another individual in his office. TSA identified this security violation in its 2009 audit report.^{5/} Notice at 2. The 2004 field exam report also noted this security violation and, at that time, the trustee assured the United States Trustee that the violation would be rectified.

In the Request for Review, the trustee admits that his law partner had access to his case management software, and was able to change passwords and settings. Request for Review at 1-2. The trustee asserts, however, that TSA approved the law partner's access to the system. *Id.*

Based upon my review, I find that the record supports the United States Trustee's allegations. In prescribing standards of conduct for chapter 7 trustees related to computer record keeping procedures and internal controls, the Handbook instructs that “[t]he ability to set up and change passwords and access settings should be limited to the trustee.” Handbook at Ch. 9, Section D.9. The trustee readily admits that his law partner had full access. Further, the record reflects that securing case management software has been an ongoing issue, first identified in the 2004 field exam report and then again in the 2009 audit report. Notice at Exhibit 2. It was also noted as an issue in the trustee's performance review for the period July 1, 2007, to June 30, 2009 (“2009 performance review”).

Despite the trustee's claim that TSA approved full access to the case management system by the trustee's law partner, there is nothing in the 2009 audit report to suggest that the auditor

^{4/} The trustee's explanation in the Request for Review would seem to demonstrate his lack of understanding of the ramifications of Local Bankruptcy Rule 6007-1.

^{5/} The audit by TSA was conducted in November 2008 and the audit report was issued on January 14, 2009. The trustee received an “adequate, except for” rating. The following three deficiencies were noted: previously reported weaknesses were not corrected; bank reconciliations were not prepared for accounts with reconciling items at month's end; and there were errors on Bankruptcy Official Forms 1, 2, and 3.

approved the trustee's procedure.^{6/} Instead, TSA specifically notes that "[t]he trustee and a representative from the case management software company should be the only individuals having such access." Notice at Exhibit 5. Moreover, in the trustee's response to the 2004 field exam report, the trustee does not challenge the finding regarding the unauthorized access and, in fact, advises the United States Trustee that he would meet with his law partner "to insure that only [I] will have access to the security controls." Notice at Exhibit 31. It is clear that the trustee has not taken appropriate steps to correct the security violation.

Reconciliation of Estate Bank Statements

The United States Trustee alleges that the trustee failed to properly reconcile estate bank statements in Notice at 2-3. In that case, a wage claimant complained to the United States Trustee in November 2007, that several months after he cashed a distribution check, he received notice from the trustee that the check was outstanding and that, if he did not cash it, he would forfeit his money to the bankruptcy clerk. Notice at 2. The United States Trustee notes that a review of the trustee's files related to the case during a January 2008 office visit uncovered that the trustee had not properly reconciled the bank statements. Notice at 2-3. Had that reconciliation been done, the United States Trustee contends that the trustee would have known that the check had, in fact, been cashed. Id.

The trustee argues in his Request for Review that his letter to the wage claimant was "merely an inquiry," did not include any forfeiture language, and was cashed on or about the same day that a stop payment was issued. Request for Review at 2. He also states that there were several hundred checks issued in the case and "this was the first and only time over a period of twenty years that an event such as this occurred." Id.

Based upon my review of the record, I find support for the United States Trustee's allegation. The Bankruptcy Code requires a trustee to account for all property received. 11 U.S.C. § 704(a)(2). Bank account reconciliation is a key component of this duty. The Handbook clearly states that a trustee is required to "[r]eview, date, and initial the monthly bank account reconciliations in accordance with the guidelines provided in Appendix J . . . [f]or reconciliations prepared by a staff member, the trustee's initials and the date should appear on the summary account reconciliation and on a sample of individual account reconciliations." Handbook at Ch. 9, Section 1. It is clear that the trustee is not carrying out this duty.

I find irrelevant the trustee's argument that he did not use the term "forfeited" in his letter to the claimant. The claimant clearly indicates his understanding from the trustee's correspondence that, if he did not cash the check, it would be "remitted to" the court. The claimant goes on to say, "[s]omething is not right, the court system has some bad information, or someone is not doing their job." Notice at Exhibit 22. What is relevant here is that the claimant had already cashed the check. According to the claimant, he received the check in July and

^{6/} Even if TSA had approved such a deviation from procedure, it did so without authority. See 28 U.S.C. § 586 (United States Trustees supervise trustees). There is nothing in the record to indicate that the United States Trustee authorized the trustee's procedure.

cashed it. Notice at Exhibit 22. Though it is not clear exactly when he cashed the check, given the tone of the claimant's letter, it is reasonable to suspect that it was well before receipt of the trustee's letter. The January 2008 office visit report supports that if the trustee had reconciled his bank statements in the case, the letter would not have been sent in error. Notice at Exhibit 20.

I also find that the record refutes the trustee's contention that this was an isolated event. While there is no way of knowing whether the trustee has sent such letters in error before, the record supports that the trustee has failed to conduct bank account reconciliations. Such failures are noted both in the 2004 field exam report and in the 2009 audit report (Notice at Exhibit 33 and Exhibit 5, respectively), as well as in the trustee's 2009 performance review (Notice at Exhibit 2). The trustee did not dispute the 2004 field exam report finding and, according to the United States Trustee, has failed to respond to the United States Trustee's request for a written response to the 2009 audit report. UST Response at 9.

Conclusion

I find that the record supports the United States Trustee's determination that the trustee has failed to safeguard and to account for estate funds and assets as required by the Bankruptcy Code and by 28 C.F.R. § 58.6(a)(1).

2. Failure to Perform Duties in a Timely and Consistently Satisfactory Manner

The United States Trustee alleges that the trustee failed to, in a timely and consistently satisfactory manner, respond to the United States Trustee's requests for information, and to expeditiously manage, administer, and close cases. Notice at 3-4. These two issues are addressed separately below.²⁷

²⁷ In addition to the allegations discussed in this section, the United States Trustee sets out several other examples of the trustee's failure to perform his duties in a timely and consistently satisfactory manner. First, in August 2000, he indicates that his staff requested information from the trustee three times in _____ and the trustee failed to provide it. As a result, the United States Trustee alleges that staff of the United States Trustee's office had to complete the Bankruptcy Official Form 4 on behalf of the trustee. Notice at 3. The United States Trustee relies on an internal memorandum to the file in support of this allegation. Notice at Exhibit 34. The trustee contends in his Request for Review that he did not receive the memorandum to the file and does not recall the incident. Request for Review at 2. The United States Trustee acknowledges that there would be no reason for the trustee to have been provided a copy of an internal memorandum. UST Response at 6. The United States Trustee also refers to a poor performance evaluation conducted of the trustee in 1999 while he was serving as chapter 12 trustee. Notice at 3.

I have excluded these items from this review since it appears the trustee did not have appropriate notice of the problem identified in _____ and the 1999 performance appraisal is dated and is not related to performance as a chapter 7 panel trustee.

Untimely Responses to Requests for Information

The United States Trustee identifies several instances in which he alleges that he requested information or a specific response from the trustee and he either received no response or the response was late. Specifically, he alleges that the trustee's response to deficiencies identified in the trustee's most recent Trustee Interim Report ("TIR") were untimely. Notice at 3. The trustee's initial response was more than a month late, and the trustee did not respond to a follow-up letter from the office of the United States Trustee dated March 3, 2009, until July 2, 2009. Notice at 3. The United States Trustee also cites to the trustee's failure to respond to deficiencies noted in the 2009 audit report, despite repeated requests. Notice at 3.

In the Request for Review, with regard to the delay in responding to the TIR, the trustee states that he had verbal communications with the Bankruptcy Analyst in the United States Trustee's office that he believed responded to the office's concerns about the TIR. Request for Review at 2. He also notes that he advised the Bankruptcy Analyst that a written response to one of the inquiries was inadvertently filed by a temporary secretary, apparently without ever being sent. *Id.* The trustee does not address the allegation that he failed to respond to deficiencies noted in the 2009 audit report in his Request for Review.

Based on my review of the record, I find support for the United States Trustee's allegations that the trustee's response to requests for information were untimely. With regard to the delay in responding to the TIR, the trustee's Request for Review does not provide any documentation, such as contemporaneous notes to the file, verifying his conversations with staff from the office of the United States Trustee. Even granting that these conversations took place, it remains of concern that the trustee would consider verbal responses to written findings sufficient, especially given the seriousness of the findings and their relevance to the trustee's ability to carry out his duties in a timely manner. In addition, the trustee's admission that "a response to one of [the] inquiries was inadvertently placed back in the file" demonstrates that, at some point, he believed that a written response was appropriate.

In the response that the trustee ultimately sent on July 2, 2009, he acknowledges that he did not verify that the written response was actually sent by his support staff. Notice at Exhibit 37. Such due diligence would have been necessary given that the trustee was employing a temporary replacement for his secretary. *Id.* The trustee is a fiduciary. In this capacity, he bears the responsibility for supervising staff, including temporary support staff, and assuring that

Further, the United States Trustee references comments regarding which have already been addressed in Section III.B.1 of this decision. Accordingly, I find it unnecessary to address those again here. Finally, the United States Trustee cites the trustee's failure to file claims on behalf of Schedule F creditors and the trustee's voluntary suspension to concentrate on closing old cases referenced in Section V of the Notice. The discussion of this matter is covered in Section III.B.4 and Section III.B.5 of this decision.

staff competently carry out assigned tasks. The trustee's failure to ascertain that a timely response was sent does not excuse the untimely reply.^{8/}

As to the trustee's lack of response to the 2009 audit report, in accordance with the Handbook, when an external audit is conducted, the trustee must provide a written response to the United States Trustee within 45 days of the date of the written report. Handbook at Ch. 9, Section E. The record demonstrates that the trustee received a copy of the external audit, with a cover letter dated January 20, 2009, from the Assistant United States Trustee that specifically requested a written response to address reasons why the noted exceptions occurred and what processes or procedures the trustee would institute to prevent future deficiencies. Notice at Exhibit 5. Given that the trustee chose to ignore this portion of the Notice in his Request for Review, and there is no record of his response to the audit report, the trustee's untimeliness with respect to this allegation is considered conceded.

Finally, I note that the trustee's lack of responsiveness to the United States Trustee was one of the performance review factors for which he received an "inadequate" rating in his 2009 performance review. Notice at Exhibit 2.

Untimely Case Administration and Closure

The United States Trustee alleges that the trustee has not timely administered and closed cases. Notice at 3. In support of this allegation, he refers to the following documents:

- (a) A July 18, 2006, letter to the trustee, in which the Assistant United States Trustee expressed concern about nine "old" cases as of June 30, 2006, and noted that the trustee's caseload was comprised of nearly 10 percent old cases (Notice at Exhibit 30.);^{9/}
- (b) A July 20, 2006, letter from the trustee to the Assistant United States Trustee that identified seven old cases, provided an explanation for the delay in closing them, and offered a projected schedule for closing each one (apparently a response to item a above, although it addressed only cases that were filed in 2001 or earlier) (Notice at Exhibit 29);
- (c) A May 22, 2007, letter to the trustee from the United States Trustee requesting an explanation as to why thirteen chapter 7 asset cases – five of which appear to be

^{8/} Though not cited as a basis of the United States Trustee's termination, I note that failure to adequately monitor the work of professionals or others employed by a trustee to assist in the administration of cases is adequate grounds for termination. See 28 C.F.R. § 58.6(a)(7).

^{9/} In this letter, the Assistant United States Trustee stated: "I strongly encourage you to make every reasonable effort to close your 'old' cases as quickly as possible and work on your other inventory of cases . . . [W]e are always ready, willing and able to send in our analysts or paralegals to help refine your system for handling your inventory of cases." Notice at Exhibit 30.

old cases pending from between 1999 and 2003 – assigned to the trustee remained open (Notice at Exhibit 25); and

- (d) The signature page to the trustee’s performance review for the period July 1, 2005, through June 30, 2007, which notes that the trustee “needs to work more cases [and] move them more quickly through the system” (Notice at Exhibit 23).

In the Request for Review, the trustee states that his letter of July 20, 2006, sets forth his reasons for the delay in seven cases. He points out that all but one of those seven cases – has been closed, and he indicates that the case remains open for the same reasons identified in his July 20, 2006, letter. Request for Review at 2.

Based upon my review, I find that the record supports the United States Trustee’s allegation that the trustee has failed to timely administer and close cases. The trustee has a statutory duty to close an estate as “expeditiously” as possible while acting in the best interest of the estate. 11 U.S.C. § 704(a)(1). Case closing delays can have multiple negative effects, including reducing the return to creditors, lessening the public’s confidence in the bankruptcy system, increasing a trustee’s risk of liability, and raising the cost of case administration.

The record shows that the trustee failed to provide adequate explanation for continued administration of his old cases. For example, in the document identified above as item (a), the Assistant United States Trustee expressed concern about the trustee’s old cases and provided a list of eleven asset cases assigned to the trustee, nine of which were old. (Notice at Exhibit 30). In the document identified above as item (b), the trustee only addressed seven of those nine old cases, and failed to provide adequate justification for his continued administration of four of those seven cases. (Notice at Exhibit 29). It is impossible to ascertain whether there were adequate reasons for any continuing delays.^{10/} In addition, with regard to the trustee provides no update to his July 2006 explanation for the case remaining open five years after it was assigned to him.

In my review of the record, I note that on May 22, 2007, the trustee agreed to a voluntary suspension of the assignment of future cases from June 2007 to August 2007 to devote efforts to closing his old asset cases. Notice at Exhibit 24. I also note that, in the trustee’s 2009 performance review – which covered the period of July 1, 2007, through June 30, 2009 – the trustee was evaluated as “inadequate” for the performance review factor of case progress, and one of the overall comments regarding the trustee was that he “needs to . . . present a more serious and determined attitude in evaluating, investigating, and pursuing his case administration and management functions.” Notice at Exhibit 2. In the detailed narrative discussion of the

^{10/} One of the cases the trustee states is now closed –
– did not close until June 11, 2009. The case remained open for eleven years despite repeated requests from the court that the trustee resolve the case. There is a discussion of this case in Section III.B.4 of this decision.

trustee's case progress performance factor, the reviewer noted that the case of _____ remained open one-and-a-half years after the trustee received funds and four months after the trustee allegedly assured the United States Trustee that the case would be closed. Id. I note that, as of the July 9, 2009, issuance of the Notice of Termination, the trustee still had not filed a final report.

Conclusion

I find that the record supports the United States Trustee's determination that the trustee has failed to perform his duties in a timely and consistently satisfactory manner as required by the Bankruptcy Code and 28 C.F.R. § 58.6(a)(2).

3. Failure to Comply with the Provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules of Court

In the Notice, the United States Trustee alleges that the trustee failed to comply with the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, and local rules of court, and he refers to comments under two sections of the Notice – Section IV (regarding the trustee's failure to cooperate and comply with orders of the court concerning the closing of cases and court appearances) and Section VI (relating to _____).

In Section IV of the Notice, the United States Trustee alleges that in two cases – _____ and _____ the trustee failed to cooperate and comply with court orders concerning the closing of cases and court appearances. Notice at 4-6. Lack of compliance with a court order does not fall within the ambit of 28 C.F.R. § 58.6(a)(3); therefore, I will evaluate the United States trustee's allegations in these two cases in Section III.B.4 below.

In Section VI of the Notice, the United States Trustee alleges the trustee failed to follow Handbook procedures for handling an error in a debtor's social security number that was identified during the debtor's section 341 meeting of creditors. A lack of compliance with the Handbook in the handling of this matter is not the same thing as a lack of compliance with a rule of court under 28 C.F.R. § 58.6(a)(3), a provision on which the United States Trustee's allegation in Section III.B.6 of this decision relies as one of the bases for termination. I will, therefore, evaluate the United States Trustee's allegation in the _____ matter in Section III.B.6 below.

Based on the record as presented, I find that there is insufficient information to find that the trustee has failed to comply with provisions of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, or local rules of court.

4. Failure to Cooperate and Comply with Orders, Instructions, and Policies of the Court, the Bankruptcy Clerk, or the United States Trustee

The United States Trustee alleges that the trustee has repeatedly failed to cooperate and comply with orders, instructions, and policies of the court, the bankruptcy clerk, and the United States Trustee. Notice at 4. The United States Trustee provides examples of instances in which

the trustee failed to cooperate or comply with each group – the court, the bankruptcy clerk, and the United States Trustee – so the allegations have been grouped accordingly.

Orders, Instructions, and Policies of the Court

The United States Trustee alleges that the trustee failed to comply with orders and instructions issued by the bankruptcy judge in _____ and in _____ Notice at 4-6.

The United States Trustee dedicates nearly two pages of his ten-page Notice to summarizing the trustee’s lack of responsiveness to various court orders in the _____ case, including at least one show cause order, two orders to close the case, one order to file documents, two orders to file a status report, and two orders to appear and explain a failure to meet a deadline.^{11/} In sum, the United States Trustee alleges that the trustee “completely failed to administer the case in a timely, efficient or well-organized manner” during the eleven years that the case was open. *Id.* at 5.

The United States Trustee alleges similar failures by the trustee in _____. On March 27, 1998, the court ordered the trustee to show cause why he should not be sanctioned for failure to appear after he failed to comply with an earlier order directing him to appear and show cause why the case should not be closed. Notice at 6 and Exhibit 36.

In the Request for Review, the trustee contends that many of the assertions in the Notice relating to the _____ case are not correct, and suggests that the case was “a highly complicated case involving several hundred thousand dollars with numerous tax issues, pension fund issues, and a companion case brought in the U.S. District Court [that] caused a significant delay in closing [the] case.” Request for Review at 3. The trustee did not identify what assertions were incorrect, nor did he dispute that he failed to timely comply with numerous court orders in the case. As to _____ the trustee contends that the court routinely entered show cause orders, and that he has “no independent recollection of failing to appear,” but that any failure to do so “would have been for a valid reason.” Request for Review at 3. The trustee suggests that the United States Trustee’s description of _____ was “just another example of misrepresenting a failure to cooperate with orders of the Court.” Request for Review at 3.

A review of the _____ docket reflects that the petition was filed on August 6, 1998, and the case was not closed until June 11, 2009. The docket also confirms that the court issued numerous orders directing the trustee to show cause why the case should not be closed or to file

^{11/} Ultimately, the court entered an order removing the trustee. The trustee moved to vacate the court’s removal order. On May 22, 2007, the court held a hearing at which it vacated its removal order. At a meeting following the hearing with the trustee and the Assistant United States Trustee, the court complained about the trustee’s overall performance as a trustee. Subsequent to that meeting and notwithstanding the vacated order, the trustee agreed to a voluntary suspension for a two-month period in order to focus on administering and closing old cases.

status reports, documents, or close the case. The docket also reflects that the trustee either failed to meet, or was late in meeting, deadlines of the court on at least four occasions.

Additionally, a review of the docket in _____ shows that the initial order for the trustee to appear and show cause why the case had not been closed came nearly two years after the order discharging the debtors. This would suggest that the court's issuance of the show cause order was not routine, as the trustee suggests.

Based upon my review of the record, I find support for the United States Trustee's allegations. A trustee must be able to perform the duties set forth in 11 U.S.C. § 704. In carrying out these duties, the trustee must communicate and respond competently to the court regarding the administration of cases assigned to him. In _____ notwithstanding that the order of removal was vacated because the trustee agreed to a voluntary suspension, the court initially determined that the trustee needed to be removed from the case because he failed to comply with earlier orders. Additionally, my review finds that the trustee failed to comply with at least one order of the court in _____ although given the dated nature of the conduct, I find that the deficient nature of the conduct is entitled to less weight than the conduct that took place more recently in _____

Orders, Instructions, and Policies of the Bankruptcy Clerk

The United States Trustee alleges that the trustee failed to comply with orders, instructions, and policies of the bankruptcy clerk in _____. In this case, the United States Trustee asserts that the debtor failed to appear at the section 341 meeting scheduled for February 20, 2009. The debtor's attorney filed a motion to continue the meeting on February 25, 2009, which the court granted. In the meantime, despite the fact that the 341 meeting had not been conducted, on February 23, 2009, the trustee filed an NDR in the case. On February 26, 2009, the court docketed a request for the trustee to withdraw the NDR. The United States Trustee alleges that, on March 9, 2009, the bankruptcy clerk called the trustee to request the withdrawal since it had not yet been done and the trustee assured the clerk that the NDR would be withdrawn. The following day, the clerk notified the United States Trustee that the trustee was not cooperating with the court's request. The NDR was not withdrawn until March 27, 2009. Notice at 7 and Exhibit 4.

In his Request for Review, the trustee admits that his secretary filed the NDR in error, and that "for some reason" she did not withdraw it after he asked her to do so. Request for Review at 4. He states that his "inadvertent failure to promptly file a withdrawal" should not be construed as "not cooperating" with the bankruptcy clerk. Id.

Based upon my review, I find that the record supports the United States Trustee's allegations. The docket in _____ clearly demonstrates that the court requested withdrawal of the NDR on February 26, 2009, and the NDR was not withdrawn by the trustee until more than a month later, on March 27, 2009. Further, in his Request for Review, the trustee does not contest the facts as alleged by the United States Trustee. His only contention is that his actions were not deliberate. While it may be the case that the trustee's failure to comply was inadvertent, inadvertence does not justify or redeem delinquency in responding to the court's requests. The

trustee is an officer of the court and, as such, must at all times be responsive to requests of the court, particularly as to the procedurally correct administration of cases. Additionally, as noted previously in this decision, the trustee is a fiduciary with responsibility for supervising his staff and assuring that work is competently completed.^{12/} The trustee's failure to verify that his staff, whom he admits had already committed an error by filing the NDR, withdrew the NDR as requested by the court is unacceptable.

Compliance with Orders, Instructions, and Policies of the United States Trustee

The United States Trustee alleges that the trustee failed to comply with orders, instructions, and policies of the United States Trustee on numerous occasions. Notice at 4, 6-7. In addition to a general statement that the trustee is frequently late or fails to comply with his office's requests for documents, the United States Trustee specifically alleges that:^{13/}

- In _____, the trustee did not adjourn a meeting of creditors as requested by staff of the United States Trustee so that they could get documents in the case and review them. Instead, the trustee held and concluded the meeting and filed an NDR in the case. Request for Review at 6 and Exhibit 21.
- In _____, the trustee failed to respond to requests from the United States Trustee for documentation and evidence of the trustee's investigation into assets of questionable value and liens of questionable validity. Request for Review at 6-7 and Exhibit 2.
- In _____, the clerk inadvertently closed the case before the trustee filed an NDR. On request of the United States Trustee, the court reopened the case and staff of the United States Trustee's office contacted the trustee in late June 2008, and the trustee indicated he would file the NDR. The trustee did not file the NDR until February 2, 2009. Notice at 7 and Exhibit 11.

^{12/} As I noted in Section III.B.2 above, failure to adequately monitor the work of professionals or others employed by a trustee to assist in the administration of cases is adequate grounds in itself for termination. See 28 C.F.R. § 58.6(a)(7).

^{13/} In addition to the cases cited in this section, the United States Trustee cites to concerns regarding the trustee's: (1) failure to provide a written response to the 2009 audit report; (2) failure to follow procedures in the handling of section 341 meetings of creditors, discussed in Section VI of the Notice; and (3) failure to supply documentation in the case of _____ discussed in Section II of the Notice. Notice at 4 and 6. Regarding the trustee's failure to respond to the 2009 audit report, this issue was previously addressed in Section III.B.2 above. Accordingly, I find it unnecessary to repeat here. Issues regarding the handling of section 341 meetings of creditors is deferred until Section III.B.6 of this decision. With regard to _____ those concerns will not be addressed for the reasons cited in Footnote 7 of this decision.

- In _____ the trustee filed his TDR on July 3, 2008, but failed to supply the United States Trustee with canceled checks and bank statements. It took repeated requests over approximately nine months before the trustee provided them and the TDR was approved. Notice at 7 and Exhibits 2 and 14.
- In _____ and _____ the trustee held in excess of \$50,000 cash in regular money market accounts for more than two years instead of interest bearing accounts, even after repeated requests from the United States Trustee to move the funds. Notice at 7 and Exhibit 2. Additionally, in _____ previously discussed in Section III.B.4, the trustee held estate funds of more than \$97,000 in non-interest bearing accounts for approximately six months despite a reminder by the United States Trustee to consider moving the funds to interest bearing accounts. Notice at 7 and Exhibit 2.

The United States Trustee also alleges that, contrary to the Handbook, on one occasion, the trustee used another panel trustee to substitute for him at a section 341 meeting without obtaining permission from or formally notifying the United States Trustee of the substitution.

In his Request for Review, the trustee contends that he receives numerous requests from the office of the United States Trustee each week and that his secretary scans several hundred documents for review. Any delays generally are due to delays in receiving documents from debtors' counsel or because the paralegal in the United States Trustee's office requests documents from his secretary rather than directly from him. He also provides the following case-specific comments:^{14/}

- In _____ the trustee contends that he reviewed documents provided by the United States Trustee and determined there was little or no equity in the property in question. He states he confirmed this fact with a real estate agent/appraiser and provided the information to the United States Trustee's office on more than one occasion. Request for Review at 3.
- In _____ the docket sheet reflects that the trustee reported on April 8, 2008, that the section 341 meeting of creditors had been held and the "asset status is undetermined at this time." Request for Review at 4 and Exhibit 11. The trustee states he was reviewing a potential claim at the time, although he subsequently determined the case to be a no-asset case. While the trustee has no recollection of the alleged conversation with the United States Trustee's paralegal, he believes he would have only advised that it probably was a no-asset case and that he would probably be filing an NDR in the future. Request for Review at 4.

^{14/} The trustee did not address the allegations made by the United States Trustee with respect to the _____ case, so those facts as presented by the United States Trustee are considered conceded.

- In _____ the trustee contends that both the original canceled checks and bank statements, as well as subsequent copies of those items, were in the possession of the United States Trustee. Id.
- In _____ and _____ the trustee indicates that the estate would have realized only minimal money had estate funds been invested in a higher-interest bearing account. Further, in _____ the funds were held in a non-interest bearing account in order to have a finite number from which to prepare required tax returns. The trustee contends that there was an inordinate delay in the acceptance of the returns, which delayed the distribution of funds. Id.

Finally, the trustee contends that on the few occasions when he has used another trustee as a substitute for 341 meetings, he has notified the United States Trustee and provided the name of the substitute. Request for Review at 3.

Based on my review, I find that the record supports the United States Trustee's allegations. One of the core responsibilities of the United States Trustee is to supervise the panel of private trustees. Beyond formal reporting requirements, United States Trustees expect that trustees will be responsive to requests for information or assistance. The evidence establishes a pattern of less than responsive behavior by the trustee, which the trustee fails to refute with any contrary evidence.

Conclusion

I find that the record supports the United States Trustee's determination that the trustee failed to comply with orders, instructions, and policies of the court, the bankruptcy clerk, and the United States Trustee pursuant to 28 C.F.R. § 58.6(a)(4).

5. Substandard Performance of General Duties and Case Management in Comparison to Other Members of the Chapter 7 Panel of Trustees

The United States Trustee alleges that the trustee's performance of general duties and case management is substandard compared to other members of the chapter 7 panel. Notice at 7-8. In support of this allegation, he contends that, from July 1, 2008, to June 30, 2009, the trustee closed only two cases. In those two cases, the trustee distributed only 9.7 percent of estate assets to unsecured creditors (as compared to the _____ office distribution percentage of 50.2 percent), while his law firm received 43.3 percent of disbursements (as compared to the _____ office law firm distribution percentage of 13.7 percent). Notice at 7. The United States Trustee further alleges that the trustee's average receipts per case are "well below" the average of the _____ office, and that the trustee failed to file claims on behalf of Schedule F creditors in three cases.

In his Request for Review, the trustee acknowledges that he closed only two asset cases in the one-year period referenced by the United States Trustee, which he asserts is the reason for the low distribution percentage. Request for Review at 4. He contends that if the comparison had been conducted for the period of July 1, 2007, to June 30, 2008, when he closed a large number

of cases, the percentage variation would have been “dramatically different.” *Id.* As to the issue of his attorneys’ fees and commissions, he notes that all fees and commissions were approved by the court without objection by the United States Trustee. *Id.* Finally, the trustee argues in his Request for Review that he understands that other trustees have been criticized for filing claims on behalf of unsecured creditors where they did not have first-hand information from the creditor as to the validity of the claim and, therefore, his practice was to notify creditors and attempt to have them file claims on their own behalf. Request for Review at 5.

Based on a review of the record, there is insufficient information to conclude that the trustee did not prioritize payments to creditors as compared to other members of the chapter 7 panel. The United States Trustee’s reliance on two closed cases using distribution data from only one year is not persuasive. The United States Trustee Program has collected distribution statistics for chapter 7 trustees since 1994. In fact, in the UST Response, the United States Trustee provides information on distribution statistics from calendar years 2006 and 2007 that suggest that the trustee’s distributions in those years was near or better than the average for the office. Response at Exhibits 41 and 42. The United States Trustee did not provide distribution statistics for the trustee and his peers for a statistically significant period of time to enable me to properly evaluate this allegation.

I also find that the record does not conclusively support the United States Trustee’s allegation that the trustee’s average receipts per case is substandard compared to other members of the chapter 7 panel and other standing trustees. While it is of serious concern that the trustee closed only two cases during an entire year, the sample size that the United States Trustee relied upon is not persuasive.

Finally, as to the United States Trustee’s allegation that the trustee is not filing claims on behalf of Schedule F creditors, I do not find the United States Trustee’s argument convincing. The Handbook is silent on the issue and, though 11 U.S.C. § 501(c) and Fed. R. Bankr. P. 3004 give trustees the ability to file proofs of claim on behalf of creditors in certain circumstances, it is appropriate for trustees to exercise caution when they have no personal knowledge about the validity of a creditors’ claims. Further, trustees must ensure that similarly situated creditors receive equal treatment so filing a proof of claim on behalf of one creditor may be inappropriate. Additionally, the United States Trustee did not allege that the trustee’s actions with respect to these cases were substandard compared to other members of the chapter 7 panel and other standing trustees.

Conclusion

I find that the record does not support the United States Trustee’s determination that the trustee exhibited substandard performance in his general duties and case management in comparison to other members of the chapter 7 panel pursuant to 28 C.F.R. § 58.6(a)(5).

6. Failure to Attend in Person or Appropriately Conduct the 11 U.S.C. § 341(a) Meeting of Creditors

The United States Trustee alleges that the trustee failed to properly handle an issue relating to an incorrect social security number on a petition, did not appropriately conduct section 341 meetings of creditors, and held an inappropriate discussion in the presence of debtor's attorneys and debtors by questioning the validity of a panel trustee's ability to administer an oath under law. Notice at 8-9. Specifically, the United States Trustee alleges that:^{15/}

- In the trustee was unaware of appropriate procedures relating to the identification of an incorrect social security number on a joint petition and he failed to report the error to the United States Trustee. Notice at 8. In support of his allegation, the United States Trustee provided a memorandum to the file dated August 22, 2008, in which a member of his staff recounted the conduct of the trustee at the debtors' section 341 meeting of creditors after the trustee learned that one of the debtors' social security numbers did not match the section 341 meeting notice. The staff member indicates that the trustee was not aware that he could not conclude the meeting until the debtors' attorney filed an amended Form 21, "seemed confused as to how to adjourn the meeting and to what date," and was unable to respond to questions by debtors' counsel and a creditor as to whether they needed to appear again. Notice at Exhibit 10.
- On August 8, 2008, the trustee initiated a conversation with another panel trustee in the section 341 meeting room, in the presence of debtors' attorneys and debtors, in which he opined that a trustee may not have the authority under law to place a debtor under oath because he was not a notary public and suggested it may be a good defense to perjury charges brought against a debtor. Notice at 8 and Exhibits 12 and 13.
- On December 12, 2008, the trustee was one hour late to his "1:00 docket" and offered a less than adequate explanation. Notice at 8 and Exhibit 7.
- In the trustee conducted the meeting of creditors without having reviewed documents supplied by the debtor. Notice at 9 and Exhibit 16.
- On June 6, 2008, and on June 5, 2009, staff of the United States Trustee observed section 341 meetings of creditors conducted by the trustee. On June 6, 2008, the trustee failed to ask six of the ten mandatory questions set out in the Handbook; gave a "sparse" opening statement; did not include a warning that debtors would be sworn in and testimony taken under penalty of perjury; and generally was disorganized and unprepared. On June 5, 2009, the trustee failed to ask five of the

^{15/} The United States Trustee also refers to comments under Section VII of the Notice regarding attempts to limit questioning by United States Trustee personnel at section 341 meetings. This allegation is addressed later in Section III.B.7 of this decision.

mandatory questions, did not include a warning that testimony was taken under penalty of perjury, and, in one case, allowed a debtor to present a Sam's Club membership card as an acceptable form of identification. Notice at 8 and Exhibit 3.

In his Request for Review, the trustee responds to each allegation as follows:

- In _____ the trustee suggests that this was the first time in several years he had seen an error in a social security number, and he recalls only that there was confusion as to whether both debtors needed to reappear for a subsequent meeting of creditors. He did not report the matter to the United States Trustee because a paralegal from that office was in attendance at the meeting. Request for Review at 5.
- With respect to the conversation that took place regarding whether a trustee was authorized to administer an oath, the trustee asserts that the conversation was primarily with another attorney, not another panel trustee; that it was initiated by a debtor's attorney; and that it was a private conversation not in the presence of debtors. He states that he confirmed with the attorney with whom the conversation took place that the attorney never contacted the office of the United States Trustee to report the incident. The trustee also spoke with a panel trustee who was a party to the conversation, who indicated that he understood it was a private conversation and it was "unlikely that any debtors overheard it or would have understood the conversation had they overheard it." Request for Review at 5-6.
- The trustee does not address the allegation that he was late to the December 12, 2008, section 341 meeting of creditors.
- As to _____ the trustee states that the United States Trustee's paralegal is "incorrect" that he did not review the document.
- As to his questioning at section 341 meetings, the trustee asserts that he asks "each and every debtor" whether they read the petition and understand it before they sign it and whether they read and understand the bankruptcy information sheet. Request for Review at 5. He also suggests that certain questions may not be asked if he believes he has other evidence in the record that provides the answer. For instance, he states that he may not ask "debtors who are clearly above the age of fifty-five" whether there is a domestic support obligation. Finally, the trustee states that he has "no idea what [the paralegal] means by 'disorganization'" and contends that the fact that he has few follow-up questions of debtors is because he "probably had carefully reviewed all documents and the Petition."

Based upon my review of the record, I do not find support for the United States Trustee's allegation with regard to _____ The Handbook requires that at the meeting of creditors,

the trustee must obtain proof of the debtor's social security number. Handbook, Ch. 7, Section A. If the social security number does not match the notice of the section 341 meeting, the trustee must, among other things, continue the meeting and instruct the debtor to correct any social security number discrepancies by filing "an amended verified statement (Official Form 21) with the correct full social security number to the clerk, with notice of the correct number to all creditors, the United States Trustee, and the trustee," consistent with 11 U.S.C. § 342 and Fed. R. Bankr. P. 1009. Id. The United States Trustee did not provide a transcript or recording of the meeting in question, and I find that the record is inconclusive regarding the actual events. Moreover, the United States Trustee did not provide a copy of the internal memorandum to the trustee or issue any written communication to alert the trustee to his concerns.

Second, as to the conversation regarding a trustee's ability to administer the oath in the I find the record does not support the United States Trustee's allegation that this statement evidences a failure to appropriately conduct 341 meetings. The United States Trustee submitted a letter, dated August 8, 2008, reprimanding the trustee for making the statement and requesting a response. Notice at Exhibit 13. The United States Trustee also submitted the trustee's response, dated August 13, 2008, in which the trustee apologized for any "embarrassment or criticism" to the office of the United States Trustee as a consequence of his statement. Notice at Exhibit 12. The trustee may have exercised poor judgment, but he did not make the statement during the section 341 meeting. I find that the statement does not bear directly on the trustee's ability to appropriately conduct a section 341 meeting.

Notwithstanding the foregoing, the Bankruptcy Code explicitly provides the United States Trustee with the authority to administer the oath to examine a debtor in a section 341 meeting. See 11 U.S.C. § 343. The Handbook provides that a trustee is "the presiding officer at the § 341(a) meeting as designee of the United States Trustee." Handbook at Ch. 7. The Handbook also explicitly provides, "[Federal Rule of Bankruptcy Procedure] 2003(b) states that the presiding officer has the authority to administer oaths. There is no requirement that the trustee must be a notary or bring a notary to the meeting to administer the oath." Handbook at Ch. 7, Section A. Thus, I find that the trustee's statement not only indicates a lack of understanding regarding his duties, but raises the question of his authority to any member of the public who may have heard him. The record reflects that the trustee made the statement near debtors and their attorneys. I conclude that the trustee demonstrated poor judgment and the incident indicates a failure to comply with the orders, instructions, and policies of the United States Trustee.^{16/}

Third, based upon my review of the record, I find that the trustee was an hour late for his section 341 meetings on December 12, 2008, as alleged. However, I do not find that the trustee has a pattern of arriving late for his calendars. The United States Trustee submitted a memorandum to the file to support his allegation, but it does not appear that he brought his concerns to the trustee's attention. Notice at Exhibit 7. Additionally, I find that the United

^{16/} Though the United States Trustee did not cite this matter as a basis for his decision, I note that failure to cooperate and comply with the orders, instructions, and policies of the United States Trustee is adequate grounds for termination. See 28 C.F.R. § 58.6(a)(4) and the discussion in Section III.B.4 of this decision.

States Trustee's conclusion that the trustee's explanation was inadequate or implausible is subjective and difficult to evaluate. According to the United States Trustee's memorandum to the file, the trustee attributed his tardiness to car trouble and a dead cell phone battery, whereas the trustee's staff reported that they believed he was in court. Notice at Exhibit 7. The United States Trustee did not explain why he found this explanation inadequate or implausible. Regarding the inconsistency in explanations, it is plausible that the trustee's staff believed he was in court. In any event, I find that the alleged tardiness and the explanations for it on this singular occasion do not bear on the trustee's ability to appropriately conduct 341 meetings.

Fourth, with regard to the United States Trustee's allegations as to I do not find support for the United States Trustee's allegation. The United States Trustee submitted an electronic mail message from his staff member to the trustee, dated June 23, 2008, in which the staff member asked the trustee to provide the debtors' vehicle titles, bank statements, and tax returns at the trustee's "earliest convenience." Notice at Exhibit 16. The message contains a handwritten note stating that the trustee did not receive the documents until the section 341 meeting, but held the meeting "anyway." *Id.* The United States Trustee's allegation is inconclusive. While the trustee did not provide evidence that he reviewed the documents, there is not conclusive evidence that he did not at the section 341 meeting. In addition, he had authority to follow up on any outstanding questions by adjourning the meeting (Fed. R. Bankr. P. 2003(e)), requesting an examination (Fed. R. Bankr. P. 2004), or requiring them to cooperate as necessary (11 U.S.C. § 521).

Finally, with regard to the United States Trustee allegation that the trustee failed to ask all of the mandatory questions at the section 341 meeting of creditors, I find there is sufficient information in the record to support the allegation. The United States Trustee provides two contemporaneous memoranda to the file completed by the staff person who attended the meetings. Notice at Exhibits 3 and 18. Additionally, he provides the trustee's June 2009 performance review, covering the period of July 1, 2007, through June 30, 2009, which found the trustee's performance in section 341 meetings to be "inadequate." Notice at Exhibit 2. The trustee does not contest that he does not always ask all of the questions required at section 341 meetings. Instead, he states that he asks debtors whether they have read and understood their petition and the bankruptcy information sheet he provides them, as well as other "pertinent" questions. Request for Review at 5. However, he admits he does not ask debtors aged fifty-five or older whether they have domestic support obligations and relies on the written record to find answers to other required questions. *Id.* I am concerned that the trustee does not ask required questions if he believes the information is included in the written record. The Handbook explicitly provides: "These statements/questions are required. The trustee shall ensure the debtor answers the substance of each of the questions on the record." Handbook at Appendix A, Footnote 1.

Conclusion

I find that the record supports the United States Trustee's conclusion, with respect to the trustee's failure to ask mandatory questions, that the trustee has failed to properly conduct section 341 meetings of creditors pursuant to 28 C.F.R. § 58.6(a)(10).

7. Failure to Display Proper Temperament in Dealing with Judges, Clerks, Attorneys, Creditors, Debtors, the United States Trustee and the General Public

The United States Trustee alleges that the trustee failed to display proper temperament in dealing with judges and the United States Trustee. Notice at 9. The United States Trustee alleges that the Trustee was informed, in a performance evaluation dated June 11, 2007, to improve his relationship with _____ a bankruptcy judge in the _____

^{17/} The Trustee does not respond to this allegation. Based upon my review of the record, I do not find support for the United States Trustee's allegation that the Trustee displayed an improper temperament towards Judge _____. The handwritten performance evaluation note provided by the United States Trustee does not provide any details referencing the Trustee's temperament towards Judge _____ only a statement that the Trustee improve his "relationship" with the judge. Exhibit 23. This is not a sufficient basis to find that the Trustee's temperament towards the judge was improper.

The United States Trustee also alleges that the trustee, on March 16, 2007, "repeatedly" attempted to limit questioning of a debtor by a member of his staff at a section 341 meeting, and was otherwise uncooperative. Notice at 9. In support of this allegation, he submitted a letter, dated March 19, 2007, advising the trustee that he is expected to provide as much time as necessary for staff of the office of the United States Trustee to finish their line of questioning. Notice at Exhibit 28. The United States Trustee also alleges that the trustee was informed in his evaluation of June 11, 2007, that the trustee needed to improve his relationship with the office of the United States Trustee and the court. Notice at 9 and Exhibit 23.

In his Request for Review, the trustee indicates that he did "encourage" the United States Trustee's paralegal to limit his questioning at the section 341 meetings because it was causing the "docket to run late." Request for Review at 6. However, he suggests that this was a "single attempt to limit questioning." *Id.* He also states that upon receipt of the letter from the United States Trustee instructing him not to do so, he has not attempted to limit questioning by any representative of the United States Trustee at 341 meetings. *Id.* The trustee did not respond to the United States Trustee's assertion that he needed to improve his relationship with the court and the office of the United States Trustee.

Based upon my review of the record, I do not find support for the United States Trustee's allegation that the trustee's isolated instance of limiting questioning by a staff member of the office of the United States Trustee shows that the trustee's temperament towards the United States Trustee was improper. Further, the comment on the trustee's 2007 evaluation stating that the trustee should improve his "relationship" with the judge is an insufficient basis to find that

^{17/} The United States Trustee also references his allegations with respect to the Trustee's failure to comply with orders, instructions, and policies of the court with respect to Judge _____ and Judge _____ in the _____ and _____ cases, respectively. Those allegations have already been addressed in Section III.B.3 of this discussion and will not again be addressed here.

the trustee has a less than adequate relationship with the court or otherwise acted improperly. Notice at Exhibit 23.

Conclusion

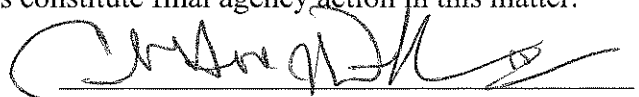
I find that the record does not support the United States Trustee's determination that the trustee failed to display proper temperament in dealing with either judges or the United States Trustee pursuant to 28 C.F.R. § 58.6(a)(6).

IV. Conclusion

Based upon my review of the record, I find that the trustee has failed to adequately perform his duties under 28 C.F.R. § 58.6(a)(1), (2), (4), and (10), and I affirm the United States Trustee's decision to terminate the trustee's appointment to the chapter 7 panel.

The foregoing conclusions and decisions constitute final agency action in this matter.

Dated: March 17, 2010



Clifford J. White III
Director
Executive Office for United States Trustees