

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

**Final Agency Action
Case No. 03-0002**

**Review of the Decision of the United States Trustee
for Region [redacted] Regarding [redacted]**

Chapter 7 trustee [redacted] (hereinafter referred to as “the trustee”), formerly a member of the panel of chapter 7 trustees for the [redacted] District of [redacted], [redacted] Division, opposes the decision by the United States Trustee for Region [redacted]¹ to terminate his appointment to the panel of chapter 7 trustees, effectively terminating any right to receive new cases.² I affirm the United States Trustee’s decision based upon the record before me.

I. Course of this Proceeding

By Notice of Termination (“Notice”) dated April 7, 2003, the United States Trustee terminated the trustee’s appointment to the panel of chapter 7 trustees pursuant to 28 C.F.R. § 58.6(a). That decision was based on deficiencies in the trustee’s performance and his failure to respond to the United States Trustee’s repeated requests and inquiries concerning those deficiencies. Notice at 1. The trustee submitted a letter, dated April 24, 2003, opposing his termination, which I construed as a Request for Review under 28 C.F.R. § 58.6. The United States Trustee submitted a letter dated May 9, 2003, responding to the trustee’s Request for Review (“UST Response”). Thereafter, by letter dated May 30, 2003, the trustee requested that specified statistical information be included in the record to assist him in establishing his allegation of disparate treatment by the Office of the United States Trustee. By letter dated July 9, 2003, I provided all available information that was responsive to the trustee’s May 30, 2003, request and determined that it would be included in the Administrative Record. Thereafter, the trustee submitted a letter dated August 4, 2003, discussing his perspective on the statistical information

^{1/} United States Trustees are officials of the Department of Justice who are appointed by and serve at the pleasure of the Attorney General. 28 U.S.C. § 581(a) and (c). The Director of the Executive Office for United States Trustees is a Department of Justice official who acts under authority delegated by the Attorney General.

^{2/} The trustee had not been eligible to receive new case assignments since January 24, 2002, after he voluntarily agreed to a six-month suspension from the panel. The trustee later received an Inadequate audit on July 24, 2002, from the Office of the Inspector General, Department of Justice (“OIG”), and as a result was not thereafter eligible to receive new case assignments. *See* Handbook for Chapter 7 Trustees (“Handbook”) at 9-25, which is available on the internet at <http://www.usdoj.gov/ust/library/trusteelib.htm>.

provided. The United States Trustee submitted a reply to the trustee's final submission by letter dated August 27, 2003, which was received in this office on August 28, 2003.³

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).

III. Analysis

A. The 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 "monitor the performance of panel members . . . in order 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.

Panel trustees are fiduciaries with wide-ranging responsibilities to effectuate the goals of the particular chapter under which a bankruptcy is filed. As fiduciaries, trustees are held to very high standards of honesty and loyalty. See generally *Woods v. City Nat'l Bank & Trust Co.*, 312 U.S. 262, 278 (1941); *Mosser v. Darrow*, 341 U.S. 267 (1951).

B. The Grounds for the United States Trustee's Decision to Terminate the Trustee

The United States Trustee's decision to terminate the trustee was based, in part, on the fact that the trustee had not responded to repeated requests and inquiries of her office concerning various deficiencies in his performance, including his failure to respond to an audit conducted by the Office of the Inspector General ("OIG Audit") dated July 24, 2002, in which the trustee's operations were determined to be "Inadequate." Notice at 1. As a consequence of the trustee's

³ The Administrative Record in this matter includes the Chapter 7 Handbook, the United States Trustee's Notice of Termination, as well as all correspondence and attachments thereto discussed in this paragraph.

failure to respond, the United States Trustee concluded that the trustee should be terminated because she was unable to ascertain what steps the trustee had taken to correct the various deficiencies identified by either the OIG Audit or her office. *Id.* The United States Trustee articulated five separate grounds for termination, which included the following:

1. failure to safeguard or to account for estate funds and assets;
2. failure to perform duties in a timely and consistently satisfactory manner;
3. failure to cooperate and to comply with the instructions and the policies of the United States Trustee Program;
4. substandard performance of general duties and case management in comparison to other members of the chapter 7 panel or other standing trustees; and
5. failure to file timely, accurate reports, including interim reports, final reports, and final accounts.⁴

C. The Record Supports the United States Trustee’s Decision to Terminate the Trustee

Among their many duties, trustees are required to liquidate the property of an estate and close the case as expeditiously as is compatible with the best interests of all the parties in interest. 11 U.S.C. § 704(1). They are also “accountable for all property received,” 11 U.S.C. § 704(2), and must furnish reports and information about their administration of cases, 11 U.S.C. §§ 704(7) and (8).

In carrying out their supervisory responsibilities, United States Trustees require trustees to provide regular reports on their administration of cases. Currently these reports are required to be filed at least annually or upon request. Handbook, Chapter 9, Section B (“Financial Reporting and Record Keeping”). During the times relevant to the United States Trustee’s decision to terminate, however, trustees were required to report every six months. These reports were referred to as semi-annual reports or 180-day reports. The 180-day reports enable United States Trustees to evaluate all aspects of a trustee's performance to determine whether the trustee is effectively managing estates. These reports also help prevent and detect fraud. Among other things, 180-day reports recount the status of all the trustee's cases and the actions the trustee has taken in administering them. In the reports, a trustee accounts for the property of the estate. Trustees identify the tangible property of the estate they have received from debtors and describe the steps taken to dispose of it. Trustees also identify all cash receipts and disbursements and demonstrate whether bank statements are accurate and have been reconciled.

^{4/} These grounds correspond to those set forth in 28 C.F.R. §§ 58.6(a)(1), (a)(2), (a)(4), (a)(5), and (a)(8).

The 180-day reports consist of Forms 1, 2, and 3, the format for which is available at <http://www.usdoj.gov/ust/library/chapter07/ch7lib.htm>. Form 1 is the Individual Estate Property Record and Report, which accounts for all property listed on the debtor's petition, schedules, and statement of financial affairs, as well as any assets identified by the trustee which were not listed by the debtor. Form 2 is the Cash Receipts and Disbursements Record, which shows all receipts, disbursements, and bank account transfers in each asset case. Form 3 is the Summary Interim Asset Report which lists each case that is either expected to be or declared to be an asset case by the trustee, each case in which the trustee has received funds of the estate, and each case in which a no-asset report has not been filed and 60 days have passed since the initial examination of the debtor at the § 341(a) meeting.

1. The Trustee Failed to File Timely, Accurate Reports, Including Interim Reports, Final Reports

The trustee's 180-day reports were habitually incomplete and inadequate. They also revealed that he was not adequately administering his cases, was not properly recording transactions, and that he had not mastered some of the basic requirements of estate administration. Notice at 11 - 12. As the United States Trustee stated in her Notice: "Your failure to timely submit your semi-annual reports and to correct errors in these reports evidences your inability to satisfy your obligations as a Chapter 7 trustee." Notice at 12.

The mistakes included deficiencies in the preparation of Forms 1, 2, and 3; failing to reconcile bank statements; failing to invest estate funds in a manner that would maximize estate funds; failing to list claims bar dates; failing to account for all property listed on the petition, schedules, and statement of financial affairs; failing to accurately list the value of estate assets; failing to include taxpayer identification numbers; failing to account for receipts; failing to have excess withholding in favor of the Internal Revenue Service credited back to the estate; reporting for improper periods; failing to submit reports for cases in which he was trustee; inaccurate description of case status; knowingly submitting Forms 1 and 2, which he knew did not reconcile with the bank statements; indicating the status of a case as dependant on the settlement of a personal injury action, when the trustee had already abandoned that asset; failing to adequately explain disbursements; and failing to list correct check numbers, and failing to enter checks which had been issued. Notice at Exhibit 4 (August 30, 2000, letter to trustee, annexing Review of Semi-Annual Reports for period ending June 30, 2000); Notice at Exhibit 4 (April 2, 2001, letter to trustee, annexing Review of Semi-Annual Reports for period ending December 31, 2000); Notice at Exhibit 4 (November 13, 2001, letter to trustee, annexing Review of Semi-Annual Reports for period ending June 30, 2001); Exhibit 4 (November 13, 2001, letter to trustee, annexing Review of Semi-Annual Reports for period ending June 30, 2001); Notice at Exhibit 4 (March 27, 2002, letter to trustee, annexing Review of Semi-Annual Reports for period ending December 31, 2001); Notice at Exhibit 4 (April 29, 2002, letter to trustee, annexing Review of Revised Semi-Annual Reports for period ending December 31, 2001); Notice at Exhibit 4 (June 25, 2002, letter to trustee, annexing Review of Second Revised Semi-Annual Reports for period ending December 31, 2001).

The record reveals that the problems identified in the trustee's 180-day reports recurred throughout his tenure. *See, e.g.*, Notice at 13; Notice at Exhibit 4 (April 2, 2001, letter to trustee, noting many reporting deficiencies repeated from last year); Notice at Exhibit 4 (Review of Semi-Annual Reports for period ending June 30, 2001, at 2, noting same Form 3 error previously pointed out); Notice at Exhibit 4 (Review of Revised Semi-Annual Reports for period ending December 31, 2001, at 1, noting that some types of deficiencies listed were previously reported to trustee); Notice at Exhibit 4 (April 29, 2002, letter to trustee noting that deficiencies still contained in revised forms submitted in response to first review of Semi-Annual Reports for period ending December 31, 2001); Notice at Exhibit 5. Further, in addition to failing to submit adequate reports, the trustee was also late in submitting his 180-day reports for the periods ending June 30, 2001, and December 31, 2001. Notice at Exhibit 4 (Review of Semi-Annual Reports for period ending June 30, 2001, at 1); *Id.* (Review of Second Revised Semi-Annual Reports for period ending December 31, 2001, at 1). Finally, the trustee never submitted his 180-day reports for the period ending June 30, 2002. Notice at Exhibit 1 (January 9, 2003, letter to trustee).

In addition to the trustee's failure to file timely and adequate 180-day reports, the trustee also failed to file certain other reports. Specifically, the trustee failed timely to file Trustee Distribution Reports ("TDRs"). Notice at 14; *Id.* at Exhibit 5, letter to trustee dated October 28, 2002, listing eight cases in which TDRs were not timely filed. Indeed, in one instance, the trustee's delay led to the premature issuance of a final decree, which then had to be vacated. Notice at Exhibit 5 (order dated December 20, 2002). The trustee also repeatedly submitted Trustee Final Reports ("TFRs") that contained numerous deficiencies and inaccuracies. Notice at Exhibit 6. Even after the UST provided extensive comments, the trustee would submit revised TFRs that were still deficient. *See, e.g.*, Notice at Exhibit 6 (letters to trustee dated August 10, 2001; September 20, 2001; November 30, 2001; March 15, 2002). The trustee's deficiencies in his 180-day reports, his TFRs, and TDRs were repeatedly noted in his Trustee Performance Reviews throughout his trusteeship, and he was repeatedly given less than "adequate" ratings on the evaluation criteria concerning TDRs and TFRs. Notice, Exhibit 10, Trustee Performance Reviews for period July 1, 2000, to June 30, 2001; for period July 1, 2001, to December 31, 2001; and for period January 1, 2002, to April 30, 2002.

A TFR informs the court, the debtor, the creditors, and the United States Trustee about the assets recovered and the manner in which the trustee proposes to divide them among creditors. It also discloses the compensation a trustee requests. As such, it is an important document, and trustees must timely file accurate and complete reports if an estate is to be administered fairly and efficiently. Similarly, a TFR summarizes all actions taken by the trustee in administering the case and enables the United States Trustee, the court, and all interested parties to assess whether the trustee has properly and completely administered estate property.

The record conclusively demonstrates that the trustee repeatedly failed to submit adequate 180-day reports to the United States Trustee; that two of those reports were submitted late; and, in one instance, the trustee failed entirely to submit the required report. The trustee also filed inaccurate or insufficient TDRs and TFRs. As discussed above, these reports recount the status of the trustee's cases, the actions the trustee has taken in the cases, the trustee's accounting for

estate funds, and many other matters. These reports are extremely valuable supervisory tools. They enable United States Trustees to determine whether trustees are adequately protecting debtors and creditors, effectively managing estates, and detecting fraud. As such, the United States Trustee was justified in her concern that the trustee was repeatedly deficient in filing these reports.

2. The Trustee Failed to Cooperate With Instructions and the Policies of the United States Trustee Program

Compounding the numerous deficiencies in the 180 day-reports, the record in this matter is striking insofar as it evidences the trustee's repeated and consistent failure to respond timely and adequately to deficiencies identified by the United States Trustee. For example, by letter dated August 30, 2000, the United States Trustee transmitted her review of the 180-day reports for the period ending June 30, 2000, ("June 2000 Review") to the trustee. In that letter, the United States Trustee requested that the trustee respond on or before September 22, 2000, to the various deficiencies identified. The trustee did not respond and by letter dated December 6, 2000, the United States Trustee again requested that the trustee respond, this time by December 13, 2000. When the trustee again failed to respond, a meeting to address the June 2000 Review was arranged with the trustee for January 5, 2001. At that meeting, representatives of the United States Trustee discussed with the trustee: 1) his failure to respond timely and adequately to the correspondence from the Office of the United States Trustee; 2) the status of the trustee's pending cases; and 3) general issues concerning his trustee operations. Thereafter, by letter dated February 7, 2001, over five months after the United States Trustee first transmitted the June 2000 Review, the trustee provided a written response.

As is extensively documented in the record, this pattern repeated itself throughout the trustee's tenure. Notice at 10-12; *Id.* Exhibit 4. In addition to the June 2000 Review, the trustee missed deadlines for responding to the United States Trustee's reviews of his 180-day reports for the periods ending December 31, 2000, ("December 2000 Review"); June 30, 2001, ("June 2001 Review"); and December 31, 2001, ("December 2001 Review"). By letter dated January 18, 2002, the United States Trustee expressed her concern with the trustee's repeated delays in responding to the June 2001 Review and suggested that if he could not meet the deadlines for filing responses, he should consider taking himself out of rotation. When the trustee neither responded to the January 18, 2002, letter, nor submitted corrections to the June 2001 Review, representatives of the United States Trustee met with the trustee on January 23, 2002. Following that meeting, the trustee agreed to a six-month suspension from the panel. Notice, Exhibit 4 (letter from trustee dated January 23, 2002).

In June 2002, the OIG conducted an audit of the trustee's operations. The results of the OIG audit are contained in the audit report, which rated the trustee as "inadequate." *See* Notice, Exhibit 2 (OIG Audit Report). The OIG audit found 27 separate deficiencies, including the following:

- * In case [redacted] [redacted], estate settlement funds were commingled in the trustee's law firm account;

- * there was evidence that bank accounts were not reconciled on a routine basis;
- * the trustee did not personally sign all checks;
- * the trustee and his assistant did not maintain unique passwords to the automated data processing system;
- * the trustee's software system did not prevent changes to the date, payer/payee, or amount of a transaction after it has been entered on Form 2;
- * the trustee did not maintain daily back ups for his automated data processing system;
- * the trustee did not maintain a receipts log;
- * estate checks were not always numbered consecutively;
- * the trustee did not maintain a log of control numbers for the blank check stock used;
- * the trustee did not have a tracking system in place for payments that were collected over time; and,
- * in case [redacted] [redacted] the trustee did not timely file Monthly Operating Reports for the period of chapter 7 operations.

Because the trustee received an "inadequate" audit by the OIG, the United States Trustee informed him by letter dated July 25, 2002, that he was suspended from active case rotation. A copy of the OIG Audit Report was also sent to the trustee by a separate July 25, 2002, letter, which set an August 15, 2002, deadline for the trustee to submit a response to the report. On August 15, 2002, the United States Trustee received a letter from the trustee requesting an extension until September 5, 2002, to respond to the OIG Audit Report.

The trustee's consistent refusal or inability to respond to the United States Trustee is further evidenced in a January 9, 2003, letter that the United States Trustee sent the trustee. That letter listed all reports and responses that were then overdue. Notice, Exhibit 1. That letter informed the trustee that he had 1) failed to respond to the review of and to correct the 180-day reports for the period ending December 31, 2001, which he had already revised once, but which were deemed still to be inadequate by the United States Trustee; 2) failed to submit the 180-day reports for the period ending June 30, 2002; 3) failed to respond to the OIG Audit Report; 4) failed to submit TFRs in eight cases; and 5) failed to submit corrected TFRs in three cases. The January 9, 2003, letter set a deadline of January 31, 2003, for the trustee to submit all delinquent reports and responses. By letter dated January 30, 2003, the trustee once again

requested an extension, requesting he be allowed until February 24, 2003, to submit delinquent 180-day reports for the periods ending June 30, 2002, and January 31, 2003. Inexplicably, the trustee did not address the overdue response to the OIG Audit Report, which at that time was almost seven months overdue. The United States Trustee denied the trustee's request for an extension. The trustee never filed the responses and/or reports identified in the United States Trustee's January 9, 2003, letter.

As discussed above, 180-day reports are valuable supervisory tools, as are OIG Audits. They provide mechanisms that enable the United States Trustees to determine whether a trustee is adequately and effectively managing estates. To the extent that deficiencies are detected, a trustee is generally given an opportunity to correct the problems identified and report such corrections to the United States Trustee. Thus, United States Trustees are able to fulfill their mandates to "carefully monitor the performance of panel members . . . in order to determine whether they should be continued in or removed from panel membership." H.R. Rep. No. 595, 95th Cong., 1st Sess. 102 (1977). The trustee, by his repeated and consistent failure to cooperate with the United States Trustee, has made it impossible to ascertain what, if any, corrections the trustee has made to address the numerous deficiencies identified by the United States Trustee and the OIG. Moreover, his failure to submit the 180-day reports for June 2002, make it impossible for the United States Trustee to ascertain what old problems continue to exist, or whether any new ones may have arisen. Under these circumstances, the United States Trustee was fully justified in her decision to terminate the trustee on this ground.

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

The United States Trustee expressed particular concern with the trustee's failure to secure estate property in the [redacted] case. Notice, at 13-14. In that case, following his appointment, the trustee did not physically visit the debtor's premises to secure estate property. The trustee instead relied upon the oral representation of the debtor's counsel that the debtor was no longer operating. The trustee filed a no-asset report and seven months later, after discovering that the debtor was still in operation, was forced to withdraw the no-asset report and have himself appointed as the operating trustee. As noted in the OIG Audit Report, the trustee also delayed the administration of this case by failing either to hire an accountant or file monthly operating reports.

The trustee did not challenge this aspect of the Notice. It is thus uncontroverted that the trustee failed to take proper steps to secure estate property. Such a failure is a clear and serious violation of the trustee's fiduciary obligation to take reasonable care of estate property under his control. *United States ex rel Wiloughby v. Howard*, 302 U.S. 445, 450 (1938). Such a serious breach of the trustee's fiduciary duty is cause for great concern, inasmuch as safeguarding estate is a core responsibility. See 11 U.S.C. §704(2).

4. (a) Substandard Performance of General Duties and Case Management (b) Failure to Perform Duties in a Timely and Consistent Manner

In addition to the deficiencies cited concerning the trustee's 180-day reports, the TFRs, and the TDRs, the trustee was substandard in the administration of his cases. For example, the trustee delayed administering several cases in which he was appointed as successor trustee. The trustee was appointed as successor trustee on January 27, 2000. The Office of the United States Trustee advised the trustee in the January 2000, letter to contact the former trustee to discuss the cases and obtain the case files and bank records. Notwithstanding repeated requests by the Office of the United States Trustee, the trustee took no action to obtain the necessary records. Ultimately, in November 2002, the Office of the United States Trustee contacted the former trustee and discussed the issue of transferring the records to the trustee. Notice at 15-17. The trustee finally reviewed the former trustee's case files over two years after being appointed as successor trustee and discovered the necessary bank records were not contained therein. In the Notice, the United States Trustee stated that there was nothing in the record to indicate that the trustee has, to date, contacted the former trustee's bank in an effort to obtain the records. Notice at 16.

The trustee does briefly address this issue in his Request for Review. Request for Review at 1. He asserts that it is unfair for the United States Trustee to blame him because the former trustee failed to maintain the financial records for her estates. *Id.* The trustee's excuse in this regard misses the point. Even if the former trustee failed to retain bank records, there simply is no excuse for the trustee's failure for over two years to take any affirmative action to obtain the former trustee's files. Moreover, his continued failure to request the necessary financial records from the former trustee's bank demonstrates nothing less than a complete abrogation of his fiduciary duties to the estates.

Another example of the trustee's unjustifiable delay in case administration is evident in the [redacted] case. In that case, the trustee was appointed the operating trustee by an order dated May 10, 2001. He served in that capacity from May 10, 2001, through July 12, 2001. Notice, Exhibit 2 at 20. Despite repeated requests from the United States Trustee, the trustee failed to timely submit operating reports. Indeed, no report was received by the United States Trustee until March 18, 2002. Notice at 17. That operating report was inadequate, however, because it did not provide a separate report for each of the months of May, June, and July 2001. Instead, it consisted of a single report for the period May 11, 2001, to July 13, 2001. Another deficiency in the trustee's administration of this case was his failure to timely seek authorization to hire an accountant. At a June 2001, meeting with representatives of the United States Trustee, the trustee stated his intention to hire an accountant. However, the trustee did not submit an application to employ an accountant until February 20, 2002, on the eve of a status hearing, which was held at the request of the United States Trustee to address why there had been no progress in moving the case along. As correctly noted by the United States Trustee, the trustee's delay in this case evidences his lack of ability to timely administer his cases. Notice at 17.

Finally, the OIG Audit extensively demonstrates that the trustee was substandard in his case administration. The audit identified 27 separate deficiencies in case administration. Notice, Exhibit 2. Among those deficiencies were the following: 1) the trustee commingled estate funds in the trustee's law firm account; 2) there was evidence of failure to reconcile bank accounts; 3) the trustee and his assistant did not maintain unique passwords to the automated data processing system; 4) the trustee's software system did not prevent changes to the date, payer/payee, or amount of a transaction; 5) the trustee did not maintain a receipts log; 6) estate checks were not always numbered consecutively; 7) the trustee did not maintain a log of control numbers for the blank check stock used, and; 8) the trustee did not have a tracking system in place for payments that were collected over time. The OIG Audit also included a finding that "the Trustee's accounting and cash management practices and procedures were inadequate for safeguarding bankruptcy estate funds in accordance with the Handbook for Chapter 7 Trustees as a result of the extensive deficiencies noted in the report. Notice, Exhibit 2, OIG Audit at 3.

It is significant to note that in neither his Request for Review, nor his August 4, 2003, letter did the trustee dispute any of the above-listed findings in the OIG Audit. I have therefore determined that these inadequacies are supported by the record. Consequently, the record contains adequate evidence that the trustee did not adhere to the high accounting and cash management standards that are expected of a fiduciary.⁵ Cash management and accounting are core trustee responsibilities. See 11 U.S.C. § 704(2) (requiring that a trustee be accountable for all estate property received). His performance in this regard was substandard.

The trustee's primary defense to the United States Trustee's Notice is that "the income generated solely as a Chapter 7 Trustee from the [redacted] Panel is inadequate." Request for Review at 1. The trustee asserts that because his chapter 7 income is inadequate, he is unable to hire competent help to assist him. *Id.* The trustee further indicates that had he been given more lucrative appointments as an examiner and/or as trustee in converted cases, as well as dual appointments in different divisions to supplement his income, he would have performed better as a trustee. The trustee concludes that "[t]he ability to comply with the filing requirements is directly linked to the ability to obtain and pay competent staff." Request for Review at 1.

The trustee's primary argument in his Request for Review appears to be that he cannot afford to administer his cases. Such a defense must be rejected out of hand: the trustee's duty to administer his cases properly and to comply with United States Program policies is not dependant on income. *Halbert v. Yousif*, 225 B.R. 336 (E.D. Mich. 1998) (fiduciary duties imposed upon under bankruptcy law do not exist to foster economic vitality but to preserve the integrity of the bankruptcy process).

^{5/} In the trustee's Request for Review, he mentions briefly the OIG's findings that he failed to sign checks personally and failed to have adequate data back up systems. Although I find the trustee's response to these deficiencies inadequate, I have not considered them, as I have concluded that the remaining deficiencies support the United States Trustee's decision to terminate the trustee's panel appointment.

In his August 4, 2003, letter, the trustee noted that, unlike other trustees, he had not been assigned any converted cases, which are assigned pursuant to a blind rotation. He further notes that he was not appointed as a chapter 11 trustee or as an examiner. Finally, he states that he was not given a dual appointment as were four other chapter 7 trustees in the [redacted] division. The trustee asserts that he was treated differently from the other trustees.

I find no evidence of inequitable or otherwise unfair treatment of the trustee in this matter. To the contrary, the United States Trustee appears to have made every effort to assist the trustee in learning the correct procedures for proper case administration. The United States Trustee assigned the trustee a mentor, who was formerly a bankruptcy judge. Notice at 10. The trustee was also invited to attend meetings and continuing education seminars conducted by the Office of the United States Trustee. *Id.* The United States Trustee further asserted in her Notice that the staff of her office and the attorneys assigned to the trustee have always made themselves available to discuss policies and procedures for chapter 7 case administration. *Id.* The trustee did not challenge any of these assertions and I find them credible. Further, as discussed above, the record demonstrates that the United States Trustee repeatedly gave the trustee guidance on proper case administration and held frequent meetings with the trustee to provide him assistance in this regard.

With respect to the trustee's claim that he was excluded from the rotation for converted cases, I find no unfair or inequitable treatment. It is the policy of the United States Trustee Program to "appoint[] panel members to chapter 7 cases on a fair and equitable basis by utilizing a blind rotation system that includes all chapter 7 cases, whether asset or no asset." Handbook at 3.1 ¶ B. The Handbook also indicates, however, that exceptions to the blind rotation system may be warranted where a trustee is either in training, or has been suspended from case assignments. The United States Trustee asserts that the trustee was appointed in July 1999, but that he soon experienced difficulty in administering his cases. August 27, 2003, letter from the United States Trustee to this Office at 2 ("August 27, 2003, letter"). When initially appointed, the trustee was assigned to a half rotation of new chapter 7 cases. In October 2000, the United States Trustee determined that while the trustee should receive a full rotation of new chapter 7 cases, based upon his poor performance, the trustee was not to be assigned to the conversion rotation. August 27, 2003, letter at 2. In light of the deficiencies identified by the United States Trustee in her June 2000 Review and the trustee's failure to be responsive to the United States Trustee's concerns, I find that the decision to keep the trustee off the conversion rotation was justified. Moreover, the trustee was suspended from rotation after January 24, 2002, first voluntarily and then because of the "inadequate" rating of his trustee operations in the OIG Audit Report. After January 24, 2002, he was therefore ineligible for any rotations.

With respect to the trustee's complaint that he was not appointed as a chapter 11 trustee, or appointed as an examiner, or given dual appointments, I find no basis for finding any inequitable treatment. Appointments as a chapter 11 trustee or an examiner are not correlated to membership on the chapter 7 panel.⁶ Moreover, in light of the fact the trustee was first in training, then had performance issues, and was later suspended, he would not have been a viable candidate for such appointments.

Conclusion

Based upon my review of the record, I affirm the United States Trustee's decision to terminate the trustee's membership on the chapter 7 panel.

The foregoing conclusions and decisions constitute final agency action.

Dated: January 21, 2004

Lawrence A. Friedman
Director
Executive Office for United States Trustees

^{6/} The data provided with my July 9, 2003, letter demonstrates that only a small number of chapter 11 appointments went to panel members on either the [redacted] Division or the [redacted], while a far greater number went to persons who were not panel members. August 27, 2003, letter at Exhibit C. With respect to examiners, only one panel trustee received such an appointment. August 27, 2003, letter at Exhibit B.