

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

**Final Agency Action  
Case No. 2011-02**

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

[ ] a chapter 7 panel trustee (“trustee”) for the [ ] seeks review of a decision by the United States Trustee for Region [ ] (“United States Trustee”)<sup>1/</sup> to suspend the assignment of new cases to the trustee for a period of six months. Based upon the record before me, I affirm the United States Trustee’s decision.

**I. COURSE OF THIS PROCEEDING**

Since December 1990, the trustee has served on the panel of chapter 7 trustees for the [ ]. By Notice of Suspension dated March 10, 2011 (“Notice”), the United States Trustee suspended him from active chapter 7 rotation in the [ ] based upon “broad-based performance failures” raised in a March 1, 2011, Report of Field Examination and Case Administrative Review (“FE/CAR Report”). Notice at 1.

On March 30, 2011, the trustee requested a review the United States Trustee’s decision to suspend (“Request for Review”). On April 14, 2011, the United States Trustee submitted a response to the trustee’s Request for Review (“Response”). On April 26, 2011, the trustee submitted a Reply to the United States Trustee’s Response (“Reply”). Subsequently, on May 3, 2011, the United States Trustee submitted a Sur-Reply to the trustee’s Reply (“Sur-Reply”).

Accordingly, the administrative record in this matter consists of: (1) the Notice and exhibits; (2) the Request for Review and five volumes of exhibits; (3) the Response and exhibits;<sup>2/</sup> (4) the Reply and exhibits; and (5) the Sur-Reply.

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<sup>1/</sup> United States Trustees are officials of the Department of Justice who are appointed by the Attorney General. 28 U.S.C. § 581(a)-(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.

<sup>2/</sup> The Response comprises a five-page cover letter from the United States Trustee and a ninety-six page memorandum entitled “Reply of United States Trustee to Response of [ ] to Report of UST Case Administrative Review and Field Examination of Chapter 7 Panel Trustee.” For ease of reference, the letter and memorandum are collectively referred to as the “Response,” with pages consecutively numbered from 1-101 for purposes of citation.

## II. STANDARD OF REVIEW

In conducting this review, I must consider two factors:

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

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 . . . the assignment of future cases to the trustee." *Id.*

## III. ANALYSIS

### A. Duties of the United States Trustee and Panel Trustee

United States Trustees work to effectuate the goals of the United States Trustee Program ("USTP"), which are to protect the public interest by ensuring efficiency in the administration of cases and to protect the integrity of the bankruptcy system.<sup>3/</sup> United States Trustees supervise panel trustees in cases commenced under chapter 7 of the United States Bankruptcy Code, 28 U.S.C. § 586(a)(1), and appoint them to specific chapter 7 cases. 11 U.S.C. § 701. 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. 95-595, at 102 (1977). "The 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 with wide-ranging responsibilities to implement the goals of 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 (1951); *Woods v. City National 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.).

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<sup>3/</sup> The United States Trustee Program's detailed 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.

Because debtors and creditors cannot choose their trustee, and because the trustee is a fiduciary charged with protecting the interests of all estate beneficiaries, a trustee must be both eligible and qualified to serve as trustee under 11 U.S.C. § 321 and 28 C.F.R. § 58.3, respectively. A trustee is subject to suspension or removal by the United States Trustee under the procedures set forth in 28 C.F.R. § 58.6, based upon a non-exhaustive list of fourteen grounds set forth in 28 C.F.R. § 58.6(a).

#### **B. Grounds for the United States Trustee's Decision to Suspend the Trustee**

The Notice sets forth eight grounds for the trustee's suspension. Notice at 1-3. According to the Notice, the trustee's suspension was based upon the following deficiencies noted in the FE/CAR Report:

- substandard case management,
- inadequate supervision of hired professionals,
- lack of knowledge concerning asset cases,
- inadequate understanding of substantive bankruptcy and non-bankruptcy law,
- undue delays in obtaining court approval for various actions,
- failure to safeguard estate property,
- failure to meet statutory responsibilities regarding domestic support orders, and
- unprofessional behavior at section 341 meetings.

Notice at 1-2. According to the United States Trustee, these deficiencies warranted the trustee's suspension under 28 C.F.R. § 58.6(a). Id. at 1.<sup>4/</sup>

According to the Notice, many of the issues raised by the FE/CAR Report relate to issues noted in the trustee's 2004 and 2006 performance reviews, and to prior findings which led to the United States Trustee's issuance of a Notice of Non-Reappointment to the trustee on October 22, 2007. Notice at 1. According to the Notice, "notwithstanding the prior identification of these issues" and notwithstanding the October 2007 Notice of Non-Reappointment, the trustee has not undertaken "appropriate remedial measures or changed [] office management procedures in a manner designed to bring about performance improvement." Id. at 2.

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<sup>4/</sup> The United States Trustee also notes that the reasons underlying a trustee's suspension "may include, but are in no way limited" to the enumerated grounds. See 28 C.F.R. § 58.6(a).

The Notice further states that, in considering the suspension, the United States Trustee took into account “the inadequate finding under the FE component of the [FE/CAR] Report, the near decade-long persistence of the problems identified in the [FE/CAR] Report, the nature of the performance deficiencies[,]” and the failure of a pending termination of appointment to bring about improvement.<sup>5/</sup> Notice at 2.

The Notice conditions the trustee’s reappointment and return to new case rotation in six months upon completion of the following:

- (1) reading (and certifying that he has read) the United States Trustee Program Chapter 7 Trustee Handbook, with particular attention to chapters 6, 7, 8, and 9 (concerning a trustee’s duties, the section 341 meeting, case administration, and financial policies, procedures, and reporting requirements);
- (2) attending new trustee training at the National Advocacy Center (if offered) and National Association of Bankruptcy Trustees seminars;<sup>6/</sup>
- (3) ensuring timely filing of TDRs;
- (4) working with a mentor trustee to develop strategies to assist in case progress and professional supervision;
- (5) obtaining professional assistance from the mentor to move to a paperless office environment and invest in new technology as appropriate;
- (6) ensuring appropriate training of staff in all job aspects; and
- (7) furnishing the field office with any and all written standard operating procedures currently utilized in the trustee’s operations.

Notice at 2-3. The Notice also reserves the United States Trustee’s right to perform an additional field examination or case administrative review before returning the trustee to active rotation.

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<sup>5/</sup> The Notice explains at footnote 2 that the United States Trustee determined that suspension rather than termination was warranted because of observed improvements in the area of referrals to field offices of instances of suspected fraud and abuse, and in responses to inquiries from the [ ] office of the United States Trustee (“[ ] office”).

<sup>6/</sup> No new trustee training is currently scheduled at the National Advocacy Center through Fiscal Year 2012. However, on May 4, 2011, the National Bankruptcy Training Institute conducted via video teleconference (“VTC”) a three-hour trustee training course, which addressed several key areas, including section 341 meetings, identification of estate assets, and managing a private trustee’s office. That training course is scheduled to be available soon on DVD.

**C. The Record Supports the United States Trustee’s Decision to Suspend the Trustee and the Decision Was an Appropriate Exercise of Discretion**

As set forth more fully below, I conclude that the record supports the United States Trustee’s decision to suspend the trustee for a period of six months pending fulfillment of the conditions of the Notice, and that the suspension was an appropriate exercise of the United States Trustee’s discretion.

**1. The Notice is Supported by the Report of Field Examination and Case Administrative Review.**

The Notice arose out of the findings of the FE/CAR Report.<sup>7/</sup> The field examination and case administrative review (“FE/CAR”) were conducted at my request, due to the lengthy period of time which had passed without a formal assessment or evaluation of the trustee’s work by the [redacted] office. FE/CAR Report at 35 and see Administrative Decision 07-0004. Its specific purpose was to assess whether the trustee’s procedures for asset administration and case progress, protection of estate assets and funds, and financial record-keeping and reporting were “adequate and in accordance with applicable bankruptcy law, the Handbook for Chapter 7 Trustees . . . and sound business practices.” Id. at 1.<sup>8/</sup>

The FE/CAR Report concluded that there were “broad-based deficiencies” in the trustee’s performance and rated the trustee’s performance “inadequate.” FE/CAR Report at 35. According to the FE/CAR Report, many of the trustee’s performance deficiencies “go to the core of how the Trustee functions as a fiduciary,” including the deficiencies implicating the trustee’s substantive knowledge, the trustee’s record-keeping practices, the trustee’s approach to safeguarding estate assets, and the trustee’s hiring and supervision of the professionals who assist him in carrying out his statutory responsibilities. Id.

According to the United States Trustee Program’s Handbook for Chapter 7 Trustees Effective July 1, 2002 (with January 1, 2005, technical amendments) (“Chapter 7 Handbook”), an “inadequate” finding means that the quality of a trustee’s accounting and cash management practices and procedures is not adequate for the safeguarding of bankruptcy estate funds[.]”

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<sup>7/</sup> The Request for Review incorporates both the FE/CAR Report and the trustee’s response to the report. Request for Review at Volume III, Exhibit V, pp. 65-73. The Response incorporates the FE/CAR Report, the trustee’s response to the FE/CAR Report, and also the United States Trustee’s reply to the trustee’s response. For ease of reference, citations in this opinion are to the Response with respect to the trustee’s response to the FE/CAR Report and the United States Trustee’s reply to the trustee’s response.

<sup>8/</sup> The trustee’s Request for Review of the Notice also seems to request a review of the FE/CAR itself. Request for Review at 1. However, neither 28 C.F.R. § 58.6 nor the Handbook for Chapter 7 Trustees provide for the review or appeal of a field examination or case administrative review. 28 C.F.R. § 58.6(b) provides a right of review only as to a decision to suspend.

Chapter 7 Handbook at 9-27. The Chapter 7 Handbook states that “[i]f an inadequate . . . examination conclusion is issued, the trustee will be suspended from the active rotation for receiving new cases in accordance with the procedures described in 28 C.F.R. § 58.6.” *Id.* Thus, as a threshold matter, the United States Trustee’s issuance of a Notice under 28 C.F.R § 58.6 was appropriate.

The trustee argues that the suspension based upon the FE/CAR is unwarranted because: (1) the FE/CAR did not adhere to government accounting standards, (2) the FE/CAR raised only one carry-over issue from November 2007, and (3) the suspension was unfairly severe and will result in harsh economic impact upon the trustee. Request for Review at 2-3. Each of these arguments will be considered below in turn.

## **2. The FE/CAR Report Is Not Subject to Government Auditing Standards.**

The trustee argues that the findings of the FE/CAR Report should be disregarded and cannot support a suspension because the FE/CAR did not adhere to Government Auditing Standards (“GAGAS”).<sup>2/</sup> Request for Review at 2. The trustee further argues that the field review personnel lacked the organizational independence required by GAGAS, and failed to utilize methodology, such as random sampling, required by GAGAS. Reply at 2; Volume III of Request for Review at 1-5.

However, as the United States Trustee correctly points out, the FE/CAR is not subject to GAGAS. According to the Chapter 7 Handbook, although audits performed by the Department of Justice’s Office of the Inspector General or by independent certified public accountants are subject to GAGAS, examinations and reviews performed by United States Trustee personnel for internal use specifically “*are not* intended to be in conformity with the accounting profession’s Statements on Auditing Standards (SAS), generally accepted auditing standards (GAAS), or GAGAS.” (Emphasis supplied). *See* Chapter 7 Handbook at 9-27, § E, fn. 12; Response at 1.

The FE/CAR Report shows that the FE/CAR was conducted by USTP Bankruptcy Analyst [redacted] USTP Bankruptcy Analyst [redacted] and Assistant United States Trustee [redacted] (“the examiners”). FE/CAR Report at 3; Response at 2, fn. 1. Based upon policy set forth in the Chapter 7 Handbook and based upon the record, I find that the FE/CAR was clearly an internal examination and review rather than an audit, that it is not subject to GAGAS, and that the FE/CAR Report may properly serve as a basis upon which to support a suspension.

The trustee also argues that the examiners lacked the requisite education, skills, or experience required by GAGAS to conduct a FE/CAR. Reply at 1. While I reject the applicability of GAGAS to the FE/CAR, I agree that the education, skill, and experience level of the examiners is material to the quality of the FE/CAR. In this regard, I find that each of the examiners has ample

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<sup>2/</sup> The trustee uses the acronym “GAS” to refer to Government Auditing Standards instead of the more common acronym of “GAGAS,” which is referenced in the standards themselves and in the Chapter 7 Handbook.

education, skill, and experience to evaluate matters concerning bankruptcy and trustee oversight, and that the record lends no credence to the trustee's argument. As noted by the United States Trustee, [redacted] is a bankruptcy analyst with more than 23 years experience with the USTP, [redacted] is a bankruptcy analyst and specialist in trustee oversight issues with more than 10 years of experience with the USTP, and [redacted] joined the USTP in September 2009 with more than 20 years of experience in representing chapter 7 bankruptcy trustees. Response at 7. With respect to computerized systems, two of the examiners have for many years regularly reviewed trustee computer operations. Additionally, all of the examiners have been involved in the oversight of auction sales, including one of the examiners having actively participated in at least 50 chapter 7 cases involving in person and online vehicle auctions. Id.

The trustee further asserts that the examiners lacked the requisite professionalism based on two main allegations. First, the trustee alleges that one of the examiners was "unnecessarily disrespectful" to the trustee and his staff, citing in support a disparaging comment reportedly made by an examiner outside the trustee's hearing that the trustee's administrator was "one of the worst trustee administrators" the examiner had ever encountered. Volume III of Request for Review at 6. Second, the trustee asserts that the examiner made an additional statement within the trustee's personal hearing to the effect that the United States Trustee's office is not a "friend." Id. The trustee asserts that these statements reflect an unduly adversarial nature that lead to subjective findings and "numerous" errors of fact. Id.

The United States Trustee counters these arguments with a declaration under penalty of perjury of the concerned examiner, who denies making the alleged derogatory comment. Response at "Declaration" Tab, pp. 4-5, ¶ 6. The United States Trustee also presents the declarations of all three examiners recounting the larger context in which the "friend" remark was made. Id. p. 2, ¶ 8; p. 4, ¶¶ 4-5; p. 7-8, ¶ 9. These declarations, which I find credible, indicate that the remark was made during the exit conference at the conclusion of the FE/CAR, as follows:

During the exit conference, we were discussing the relationships that a trustee needs to cultivate with his hired professionals, [and] [redacted] did not appear to be listening closely to my remarks, but instead continued to stress his points and speak over my comments. In order to redirect his attention . . . [redacted] told [redacted] to please listen closely. He then said something to the effect that the purpose of the conference was not to befriend anyone, that it is often said by trustees that the UST is not a friend, but was more akin to a regulator and you can't always be their friend.

Id. at p. 2, ¶ 8 (Declaration of [redacted]).

While I in no way condone disparaging comments or unprofessional conduct of any kind, the record does not support the trustee's claim that the examiners lacked professionalism. The best evidence of that professionalism is the FE/CAR Report itself, which I find is a thorough and businesslike work product, devoid of personal comment. Further, the "friend" comment, when considered in the context supplied by the United States Trustee, was a correct statement of the

regulatory relationship that exists between the United States Trustee and the trustees he supervises. Finally, the disparaging comment alleged to have been made by one of the examiners is second-hand information and is outweighed by the concerned examiner's declaration under penalty of perjury, which I find credible, stating that he made no such comment. Id. at p. 4-5, ¶ 6.

Finally, the reasons for the trustee's disagreement with a United States Trustee's decision are required by 28 C.F.R. § 58.6(f) to be fully described in the trustee's Request for Review. Nonetheless, the trustee asserts for the first time in his Reply that the FE/CAR should be disregarded in its entirety because the FE/CAR Report was not issued within the thirty-day time frame after the exit conference as required by the Chapter 7 Handbook, but rather after seven and a half months. Reply at 2.

In response, the United States Trustee argues that the thirty-day time frame in the Chapter 7 Handbook is not mandatory. Sur-Reply at 4, and see Chapter 7 Handbook at 9-27 ("A written report on the results of the . . . examination is issued usually within 30 days of the exit conference."). Although I am troubled by the delay here, I am mindful that the FE/CAR Report is detailed and comprehensive in scope, FE/CAR Report at 1-2; that it examined in-depth twenty-four asset cases and four no-asset cases, FE/CAR Report at 3-4; yielded a thirty-six page report supplemented by over 100 exhibits; and represented a substantial commitment of time and resources on the part of the [redacted] office. For these reasons, and additionally because the issuance of a report within thirty days is not a mandatory requirement of the Chapter 7 Handbook, I find that the FE/CAR Report properly may be considered in conjunction with the Notice.

### **3. The Notice Is Supported by Carryover Issues and Newly Identified Performance Deficiencies.**

Next, the trustee asserts that the FE/CAR Report identified only one of the performance criticisms raised in his October 2007 Notice of Non-reappointment as a continuing performance problem – "Supervision of Professionals." Request for Review at 2. According to the trustee, the FE/CAR Report raised no concerns regarding (a) un-administered assets; (b) misappropriation of funds; (c) conflicts of interest; or (d) excess number of aged cases. Id. The trustee argues that if the findings of the FE/CAR are to be regarded, they show that his performance in four of five prior problem areas has improved. Nonetheless, he concedes that the FE/CAR Report correctly identified a continuing problem in the area of supervision of professionals, and he disputes a "majority" of the FE/CAR Report's trustee performance criticisms as "subjective, misleading and immaterial[.]" and as challenging his "reasonable business judgment[.]" or as pertaining to "non-critical issues." Id.

The United States Trustee responds that, notwithstanding the trustee's efforts to "downplay" the FE/CAR Report's findings, the issues identified in the FE/CAR Report in the area of supervision of professionals and substandard case management are "central to his trusteeship" and of "major significance to the resources that must be allocated" by the [redacted] office to monitor the trustee's work. Response at 3. The United States Trustee also asserts that the October 2007 non-renewal notice observed that, for three prior evaluation periods, similar comments had been made regarding the "[t]rustee's excessive dependence on his counsel, his failure to monitor



his professionals closely, and his unfamiliarity with case details,” all of which were cited as continuing deficiencies in the FE/CAR Report. Id. at 3-4.

According to the United States Trustee, the FE/CAR Report’s findings of failure to safeguard assets by recording lis pendens notices or abandoning over-encumbered estate property are “carryover issues” because they relate to supervision of professionals and to a lack of familiarity with case details. Response at 4. The United States Trustee concedes that the issues pertaining to failure to comply with applicable bankruptcy law and Chapter 7 Handbook requirements for domestic support orders, or to the conduct of section 341 meetings, may only tangentially relate to prior performance issues. He asserts, however, that “both ‘carryover issues’ and any newly identified performance deficiencies and problems identified in the [FE/CAR] support the suspension decision.” Id.

I agree with the United States Trustee that deficiencies pertaining to failure to safeguard assets do relate to previously identified weaknesses, and that issues newly identified in the FE/CAR Report may properly serve as a basis for a suspension if supported by the record.

In support of the grounds for suspension, the United States Trustee relies upon findings of specific performance deficiencies in the FE/CAR Report. Although the United States Trustee did not tie each of the grounds in the Notice to particular findings in the FE/CAR Report, a review of the FE/CAR Report, as well as the comments interposed by the trustee in response to the FE/CAR Report, indicates that the grounds for suspension cited in the Notice are fully supported by the record.

The United States Trustee premises the suspension upon the trustee’s substandard case management performance. Notice at 1. Under 28 C.F.R. § 58.6(a)(5), a trustee properly may be suspended from the case rotation – or removed altogether – for the “substandard performance of general duties and case management in comparison to other members of the chapter 7 panel or other standing trustees[.]” As set forth more fully below, the variety of deficiencies chronicled in the FE/CAR Report, including inadequate supervision of hired professionals, lack of knowledge concerning asset cases, inadequate understanding of substantive bankruptcy and nonbankruptcy law, undue delay in obtaining court approval for various actions, failure to safeguard estate property, failure to meet statutory responsibilities regarding domestic support orders, and unprofessional behavior at section 341 meetings indicate that the suspension was an appropriate response to the findings of the FE/CAR Report.

a. Inadequate Supervision of Professionals

A particularly pervasive criticism of the FE/CAR Report is the trustee’s failure to adequately supervise professionals. Under 28 C.F.R. § 58.6(a)(7), a trustee may be suspended or removed for “[f]ailure to adequately monitor the work of professionals or others employed by the trustee to assist in the administration of cases[.]” The FE/CAR Report specifically raises this deficiency as an issue in at least eleven of the twenty-eight cases examined: [redacted] Case

No. [redacted] Case No. [redacted] Case No. [redacted] Case No. [redacted] Case No. [redacted] Case No. [redacted] Case No. [redacted]

[redacted] Case No. [redacted]; [redacted] Case No. [redacted]  
[redacted] Case No. [redacted]; [redacted] Case No. [redacted]; and [redacted]  
Case No. [redacted]

Specifically, according to the FE/CAR Report, time records indicate that trustee's counsel was working on the [redacted] case and billing on the estate eight months prior to the trustee's submission of an employment application to the court. FE/CAR Report at 7. Similarly, in [redacted] as well as in [redacted] and [redacted] the trustee failed to file a motion and obtain court approval to employ paraprofessionals prior to the performance of services for the estate and, in [redacted] prior to payment from the estate. *Id.* at 6, 11, and 13, respectively. Likewise, in [redacted] although counsel had commenced work at least three month's prior, the trustee failed to supervise and ensure counsel's timely filing of an employment application as counsel for the estate. *Id.* at 15. Further, at the time of the FE/CAR, the trustee had no record of billing statements for counsel's services in the [redacted] case for the prior seven months, thus limiting his ability to monitor and review counsel's services. *Id.*

In [redacted] the trustee's counsel prepared an application to employ a professional with terms that were inexplicably "inconsistent with and contrary to" the trustee's counsel's proposed order authorizing the employment. FE/CAR Report at 18. In [redacted] the trustee's counsel did not file a motion seeking court approval of a sale of property until sixty-two days after the receipt of settlement funds, and then the sale motion was continued five times and ultimately withdrawn. *Id.* at 10.

In [redacted], the trustee and his professionals failed to conduct discovery upon learning facts pertaining to a possible fraudulent transfer cause of action, nor did the trustee file such an action and a lis pendens to safeguard estate property. FE/CAR Report at 21. In [redacted] [redacted] the trustee and his professionals failed to file a lis pendens, and failed to serve all creditors with adequate notice of the terms of a proposed settlement. *Id.* at 22-23. In [redacted] the trustee's professionals delayed performing follow up collection activities for a period of eight months after a default in a settlement case. *Id.* at 24. In [redacted] the trustee and his professionals performed no activity in the case for fourteen months, waiting until just before expiration of the two-year limitations period to file three lawsuits which did not bring any funds into the estate and rendered it administratively insolvent. *Id.* at 25. In [redacted] the trustee allowed an auctioneer to hold estate funds in a non-interest bearing account out of the trustee's control for a period of thirty-two days. *Id.* at 26.

Although the trustee offers some rebuttal to the FE/CAR Report's findings, the sheer number of instances cited, with troubling instances of lax supervision in nearly half of the cases examined, persuades me that the United States Trustee's decision to suspend the trustee for a period of six months is supported by the record as an appropriate exercise of discretion.

b. Lack of Knowledge Concerning the Trustee's Asset Cases.

The Notice also cited the trustee's "lack of knowledge of . . . asset cases" as a particular aspect of the trustee's "substandard performance of general duties and case management" under

28 C.F.R. § 58.6(a)(5). Notice at 1. According to the FE/CAR Report, “[p]articularly troubling to the examiners was the Trustee’s apparent and repeated lack of command of factual information necessary to answer basic questions concerning case administration.” FE/CAR Report at 5. Further,

[f]requently, during the course of the three-day field review, the Trustee furnished responses that proved erroneous. Often, the Trustee’s electronic and paper files were inadequate to refresh his recollection about his open asset cases to enable him to answer the examiner’s questions. At times, to respond to questions, the Trustee needed to call other professionals employed by the estate for case information . . .

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The lack of familiarity with case details, the Trustee’s excessive reliance on other professionals, and the Trustee’s failure to appreciate the high degree of care expected of him as an estate fiduciary were not simply isolated instances but instead were characteristic of many of the cases reviewed during the CAR/FE.

Id.

The trustee does not offer a general rebuttal to the FE/CAR Report’s overall conclusion of a lack of familiarity with case details, but does offer some explanation in response to specific assertions in the report. In [redacted] Case No. [redacted], the FE/CAR Report noted that the trustee’s sale motion and sworn declaration referred to a sale price of \$8,500 for property which actually sold for \$8,000, and that the trustee lacked information to explain the contradictions and needed to contact his professionals for details. FE/CAR Report at 8-9. The trustee explains that the original offer for the property had been for \$8,500, and states that he filed a Notice of Errata with the court correcting that error, without charge to the estate. Response at 17-18.

With respect to the issue of files that were inadequate to refresh the trustee’s recollection, the FE/CAR Report states that in [redacted] Case No. [redacted], the Notice of Sale informing creditors of the public auction of certain property reflected a sale date of December 21, 2008, the trustee’s Form 1 evidenced a sale date of March 31, 2009, and the auctioneer’s report reflected a date of April 11, 2009. FE/CAR Report at 19. The trustee’s case file lacked any information to indicate why or for what business reason the sale was apparently conducted on a date other than on the date for which creditors received notice. Id. at 20. In [redacted] Case No. [redacted], “[t]he trustee’s case files and records failed to document the actions hired professionals took” and the files did not explain an eight month delay and lack of follow-up collection efforts in the case. Id. at 24.

In [redacted], Case No. [redacted], a 2005 case involving the administration and, ultimately, after a period of two years, the liquidation of real property, the trustee’s files did not

reveal the existence of property insurance. FE/CAR Report at 27. Moreover, when the examiners questioned the trustee concerning the existence, extent, or cost of the insurance, he only offered speculation that there was coverage because it would have been included in the mortgage or “force placed” by the mortgage company. Id.

The FE/CAR Report noted that the trustee had no written procedures with respect to paper or electronic file-keeping, although the trustee stated that the office was making the transition to a “paperless” environment. FE/CAR Report at 29. “Frequently, the Trustee responded that he might be able to locate relevant e-mails on his personal computer.” Id. However, the emails were not sorted and stored electronically in specific case files, and the trustee’s case administrator did not have access to all e-mails. Id.

In response to the FE/CAR Report’s concerns in [redacted] the trustee states that he was “absolutely aware” that the actual auction was conducted on April 11, 2009, and states that the trustee’s records reflect that date. Response at 44. According to the trustee, “the [Form] 1 narrative should have read that the auctioneer was in the midst (not mist) [sic] of preparing for the auction and completing the sale of the personal property.” Id.

In response to concerns raised in [redacted], the trustee provides a summary including three email contacts indicating communication with his counsel concerning the default, but no evidence of regular status reports or specific plans of follow-up. The three emails spanned a period of five months and began about nine months prior to the issuance of a default judgment. Response at 64.

In response to the concerns in [redacted] the trustee was able to produce documentation showing that he had inquired about liability and property homeowner’s insurance for the realty and received a response from the debtor’s former spouse. Response at 74-75.

In response to the concerns regarding inadequate paper and electronic files, the trustee sets forth a detailed paper filing scheme followed by the office and explains that the office is in transition to the electronic case file system and that the audit took place before the transition to the paperless office occurred. Response at 77-79. Despite the transition, the trustee maintains that the case records and documents necessary to the FE/CAR were provided to the examiners “within a reasonable period of time.” Id. at 79.

Having reviewed the evidence of record, I am not persuaded that the trustee is completely unable to track his systems or that his electronic filekeeping is inordinately behind. However, these specifically chronicled filing lapses, in combination with the other deficiencies raised by the FE/CAR Report, lead me to conclude that the suspension is appropriate.

c. Inadequate Understanding of Substantive Bankruptcy and Non-bankruptcy Law.

The Notice next references the trustee’s inadequate understanding of substantive bankruptcy and non-bankruptcy law. Notice at 1. Such understanding is critical because, under 28 C.F.R. § 58.6(a)(3), “[f]ailure to comply with the provisions of the Code, the Bankruptcy Rules,

and local rules of court” is proper grounds for the suspension or removal of a trustee. Understanding substantive law is the first step necessary for compliance.

A review of the FE/CAR Report shows that in [ ] Case No. [ ] the trustee failed to appreciate that the debtor’s daughter, a proposed purchaser of personal property of the debtor, was an insider whose status was required to be disclosed in a sale motion. FE/CAR Report at 9. In [ ] Case No. [ ], the trustee sought through a cash disbursement motion to employ a paraprofessional who had already completed services for the estate approximately one year earlier. The language used in the motion created the misleading impression that services were to be performed in the future. *Id.* at 11. In [ ], Case No. [ ] the trustee’s motion for sale of the debtor’s real property did not disclose the existence of constructive trust claims made against the property by the debtor’s family members. *Id.* at 16. In the same case, the trustee collected rent from the debtor’s tenant without seeking authorization to operate a business in compliance with Bankruptcy Code section 721 and local rules of practice, which require such authorization after a period of thirty days. *Id.* at 17-18. In [ ] Case No. [ ], the trustee failed to understand that certain facts disclosed at the outset of the case warranted either the immediate commencement of discovery or the immediate filing of a routine fraudulent transfer complaint. *Id.* at 21.

In response to the FE/CAR Report’s findings, in [ ] the trustee offers a convoluted explanation as to the misunderstanding surrounding the relationship of the actual buyer to the debtor; however, he does not address the now erroneous representations he made to the examiners that the daughter of the debtor was the buyer and his failure at that time to recognize her insider status. Response at 21. In [ ], the trustee admits to a learning curve that engendered “several errors in preparing and filing the [ ] pleadings.” *Id.* at 28. In [ ] the trustee does not address the collection of tenant rents, but seems to assert that the existence of the constructive trust claims need not have been disclosed because the claims were not asserted once the family obtained legal representation and commenced settlement discussions concerning the property. The trustee also provides a letter from [ ] counsel expressing satisfaction with the trustee’s efforts and communications. *Id.* at 38-39. As to [ ] the trustee explains that discovery was had once the trustee retained a law firm and that the debtor and his aunt were slow in responding to requests for information, making the legal positions of the parties and the basis for an adversary proceeding somewhat difficult to ascertain. The trustee states that he did not file an adversary proceeding until it appeared that the parties would not reach an amicable resolution of the dispute. *Id.* at 54.

Reviewing the evidence of record, I find that the examples of departure from applicable bankruptcy law and local rules of court are not, on the whole, adequately explained or rebutted by the trustee. For this reason, the record supports the United States Trustee’s decision to suspend the trustee and the suspension was an appropriate exercise of the United States Trustee’s discretion.

d. Undue Delay in Obtaining Court Approval for Various Actions

An additional ground the United States Trustee cites for the suspension was the trustee’s alleged undue delay in the administration of cases. Notice at 1. Under 28 C.F.R. § 58.6(a)(2), a

trustee may be removed or suspended for “[f]ailure to perform duties in a timely and consistently satisfactory manner[.]”

According to the FE/CAR Report, out of twenty-eight total cases examined, nearly a dozen evidenced unwarranted delays in administration. In [redacted] Case No. [redacted] a sale motion was continued five times, over a period of approximately five months, and ultimately withdrawn. FE/CAR Report at 10. In [redacted] Case No. [redacted] the trustee waited over a year before seeking court approval for employment of a property appraiser who had already performed work for the estate. *Id.* at 11. Similarly, in [redacted] Case No. [redacted] the trustee failed for three months to file, or to ensure that an attorney employment application was filed, although the attorney had already commenced work. *Id.* at 15-16. In [redacted] Case No. [redacted] despite identifying a need for a Rule 2004 examination and hiring an attorney, the trustee sought no court order for permission to conduct an examination for a period of two years. *Id.* at 21.

Similar delays were exhibited in other cases. See [redacted] Case No. [redacted] (three year period of inactivity); [redacted] Case No. [redacted] (eight month period of inactivity despite defaulted settlement payments); [redacted] Case No. [redacted] (fourteen-month period of inactivity after attorney hired to file complaints for preferences and unauthorized post-petition transfers); [redacted] Case No. [redacted] [redacted] Case No. [redacted] and [redacted] Case No. [redacted] (failure to timely submit TDR); and [redacted] Case No. [redacted] (court approval for auction fees never obtained). FE/CAR Report at 24-26.

In response to the FE/CAR Report’s observations, the trustee fails to address the delay in the [redacted] sale motion and the [redacted] and [redacted] employment authorizations, Response at 23-24, 27-28, and 37-39, respectively. Further, the trustee attributes delays in [redacted] to the debtor’s slow responses to requests for production and attempts to ascertain and resolve the parties’ legal positions through discussions. *Id.* at 54-55. In [redacted] the trustee offers an explanation that the TDR was tardy because a check to a creditor was returned twice for a bad address. However, he does not explain the four month delay between when the check was voided and when it was reissued to the creditor at the correct address. *Id.* at 68-69. In [redacted] the trustee admits that a proper order for auction fees was not obtained and promises to prepare and upload an order. *Id.* at 71.

With respect to the remaining cases, the trustee either disputes that there was undue delay, or offers an explanation for the delay. [redacted] the trustee chronicles a good deal of activity not revealed by the case docket or by Form 1. Response at 62. As to [redacted], the trustee chronicles some email correspondence evidencing his activity, culled from time records and case administration documents that the examiners did not request to see. *Id.* at 64. Similarly, in [redacted] the trustee chronicles fifteen separate time entries and emails from eight of the fourteen months in which the FE/CAR Report had found inactivity. *Id.* at 66-67. In [redacted] the trustee chronicles activity that explains why the TDR was submitted close to the deadline. *Id.* at 69.

While the evidence of record is somewhat mixed on the issue of the trustee’s delays in obtaining court orders, in over half of the cases, the delay is acknowledged. On the remaining

cases, the trustee's rebuttal evidence is not entirely persuasive that the cases were well and promptly administered. In conjunction with the other deficiencies cited in the FE/CAR Report, I find that the weight of the record supports the United States Trustee's decision to suspend the trustee, and the suspension was an appropriate exercise of the United States Trustee's discretion.

e. Failures to Safeguard Estate Property.

The Notice also cites the trustee's failure to safeguard estate property as a basis for the suspension. Notice at 1. Under 28 C.F.R. § 58.6(a)(1), the "[f]ailure to safeguard or to account for estate funds and assets" is a proper ground for suspension or removal of a trustee.

According to the FE/CAR Report, and as previously discussed at page 10, the trustee failed to safeguard estate property in [redacted] Case No. [redacted], by failing to file a fraudulent transfer complaint and lis pendens notice immediately upon discovery of underlying facts suggesting the need for such action. FE/CAR Report at 21. According to the FE/CAR Report, the trustee delayed taking action for two years, and by the time the trustee filed the fraudulent transfer action, three days prior to the expiration of a two-year limitations period, the property had been sold. *Id.* Additionally, in [redacted] Case No. [redacted] the trustee filed a lawsuit that affected title to real property believed to have equity for the estate, yet failed timely to file and record a lis pendens against the property, and was not candid with the United States Trustee when questioned about the facts concerning the filing of the lis pendens. *Id.* at 22-23. Finally, in [redacted] Case No. [redacted], the trustee received credible information concerning a fraudulent transfer of real property and possible criminal activity, and yet did not file a fraudulent transfer action or lis pendens for four weeks. *Id.* at 23.

With respect to the [redacted] case, the trustee responds that the debtor's interest in the property and ability to prevail in the action was not clear, and explains the lapse of time as partially attributable to discovery delays and a desire to amicably resolve the action. Response at 54-55. Yet, the trustee does not deny the essential facts or the timing set forth in the FE/CAR Report. With respect to [redacted] the trustee admits that the lis pendens was not timely filed and that the subject property was sold while the complaint was pending, further stating that this was "an oversight and not an established pattern of conduct or behavior." *Id.* at 57. Additionally, the trustee notes that counsel later determined that the estate actually had no equity in the property. *Id.* With respect to [redacted] the trustee chronicles the many actions he took in order to prepare to file the adversary proceeding and lis pendens, but does not deny the timing of the filing, and he states that in the future he will attempt to more expeditiously file adversary actions and record lis pendens. *Id.* at 59-60.

These three separate instances of failure to record lis pendens, out of a relatively small sample of cases, are troubling, particularly when measured against the high fiduciary standards to which trustees are held. Having reviewed the record and the responses of the trustee, I find that these deficiencies further support the United States Trustee's decision to suspend the trustee from active rotation for a period of six months and that the suspension was a proper exercise of the United States Trustee's discretion.

f. Failure to Meet Statutory Responsibilities Regarding Domestic Support Orders.

The Notice references concerns regarding the trustee's fulfillment of statutory responsibilities related to Domestic Support Orders (DSOs). Notice at 2. Execution of responsibilities relating to DSOs is not explicitly mentioned in the regulations concerning the suspension and removal of trustees. However, 28 C.F.R. § 58.6(a) specifically states that the grounds for a suspension "may include, but are in no way limited to" the fourteen grounds enumerated in the regulation.

According to the FE/CAR Report, the trustee's written policies and procedures with respect to DSOs do not track the requirements of the Chapter 7 Handbook as to the issuance of required notices and the verification of debtor information. This deficiency led to inadequate execution of the trustee's statutory responsibilities with respect to DSOs. FE/CAR Report at 32-33. According to the FE/CAR Report, a review of [redacted] Case No. [redacted] demonstrated that the trustee did not comply with his own DSO procedures, resulting in issuance of the required statutory notice almost five months after the section 341(a) meeting and two months after the bankruptcy case was closed. The FE/CAR Report also documents the trustee's failure to request necessary supplemental address information. *Id.* at 33-34. Further review revealed that the deficiencies in the [redacted] case were emblematic of a more widespread problem of deficiencies with DSOs throughout the trustee's case docket, including a finding that "[i]n many instances, letters were sent years after cases were closed and discharges granted." *Id.* at 34.

The trustee responds that the information the examiners reviewed with respect to DSOs was generated and printed out from an electronic filing system which defaults to the current date when printing, rather than showing the actual date on which letter notices were mailed out. Response at 97. The trustee contends this problem could have contributed to an erroneous interpretation of the dates on which they were actually issued. After consulting with the software provider, the trustee indicates that his office now can generate an electronic report of the dates of issuance. *Id.* However, the United States Trustee found the electronic report that the trustee subsequently generated to be suspect, noting that six of the listed cases showed the mailing of letters to the claimant and the department of Child Support Services on the same date that the bankruptcy petition was filed. *Id.* at 98.

Additionally, "[t]here were several cases where the trustee sent out his notice letter three days before the discharge letter and in every instance several months after the 341(a) meeting of creditors." Response at 98. According to the United States Trustee, the trustee "was aware of his upcoming [FE/CAR] on July 12, 2010, and his Grid reflects that almost one year of DSO notices were sent out days before the impending examination." *Id.* at 100.

The trustee concedes that his heavy caseload (at times of more 130 or more cases per day), and hectic time schedule did result in the acceptance of DSO forms "without reviewing them at the time of the [section 341] hearing." Response at 97. The trustee acknowledges that this lapse in practice made it difficult and time consuming for his staff to obtain or correct missing and inaccurate information, and that he needs to improve his practices to ensure that a debtor's DSO



form is fully and correctly filled out and the first and second notices timely issued with the proper information. Id. at 98. The trustee states that he will alter his procedures to ensure that an assistant performs a DSO review at the section 341 hearing while the trustee does the questioning of debtors to ensure proper information and follow up. Id.

I find that the record indicates that the trustee has admitted the documented failures in performing his obligations in the area of DSOs and, while his pledge of future improvement in this area is appropriate and laudable, these deficiencies, when considered against the background of other deficiencies noted in the FE/CAR Report, demonstrate that the trustee's suspension was warranted and that its six-month duration, with special direction to the trustee to review his obligations relating to DSOs, was an appropriate exercise of the United States Trustee's discretion.

g. Unprofessional Behavior at Section 341 Meetings.

The Notice was further based upon the United States Trustee's concern about instances of unprofessional behavior described in the FE/CAR Report pertaining to the manner in which the trustee conducted section 341(a) meetings. Notice at 2. The regulations governing United States Trustees provide that a decision to suspend a trustee may be grounded upon the failure to display proper temperament in dealing with judges, clerks, attorneys, creditors, debtors, the United States Trustee and the general public[.]” 28 C.F.R. § 58.6(a)(6). Additionally, and while not cited in the Notice, 28 C.F.R. § 58.6(a)(10) provides that a suspension may be grounded upon a failure to “appropriately conduct the 11 U.S.C. § 341(a) meeting of creditors[.]”

According to the FE/CAR Report, in at least three cases, the trustee exhibited inappropriate and unprofessional behavior at the section 341 meeting. FE/CAR Report at 30-31. In addition, in at least ten cases, the trustee failed to ask critical questions required by the Chapter 7 Handbook. Id. at 31. Specifically, the FE/CAR Report states that in [redacted] Case No. [redacted] the trustee told the debtor she had committed a bankruptcy crime and made follow-up comments that could be interpreted as a threat to coerce the return of estate property. Id. at 30. In [redacted], Case No. [redacted], the trustee insensitively stated that he “did not want to get” the illness of a debtor with a disabling medical condition, and he misstated the name of the debtor's illness. Id. In In re [redacted], Case No. [redacted] the trustee recited the debtor's private phone number into the record, gave legal advice to the debtor concerning a bankruptcy petitioner fee, and held out the prospect of financial gain in what could have been interpreted as an effort to obtain the debtor's cooperative testimony on the issue. Id. at 30-31.

In [redacted] the trustee concedes that he made the statements concerning the bankruptcy crime and the return of property, and states that he will refrain from such remarks in the future. Response at 86-87. In [redacted] the trustee concedes making the remark about the debtor's medical condition but explains that it was intended as an acknowledgment of the devastating nature of the debtor's illness, and he posits that the technical name for the disease “would have been difficult for any non-medical person to pronounce.” Id. at 88. In [redacted] the trustee acknowledged publicly reciting a private telephone number and states that in the future he will ask the debtor to write the telephone number down. Id. Finally, the trustee acknowledged dispensing legal advice to the debtor, but states that in the future he will refrain from such comments. Id. at 89.

With respect to the failure to ask questions required by the Chapter 7 Handbook, the FE/CAR Report shows that upon review of the first ten meetings conducted by the trustee on his August 5, 2010, calendar, the examiners found that in each of the ten meetings the trustee failed to expressly ask debtors about their schedules, statements of financial affairs, and related documents; failed to ask debtors whether they were personally familiar with the documents filed; and failed to ask whether the signatures on the documents were their true, actual signatures – all contrary to the requirements of the Chapter 7 Handbook and possibly undermining the future evidentiary value of the testimony. FE/CAR Report at 31, fn. 30 (citing cases), and 32.

In response to these criticisms, the trustee explains that he often rephrases some of the required questions so as to obtain maximum information from the debtors. Response at 91-92. However, the trustee fails to address the actual deficiency noted in the FE/CAR Report – the complete failure to ask three particular questions – except to state that in the future he will adhere to the required and literal language of the questions. Id. at 94.

Considering the evidence of record, I find that the trustee's inappropriate comments and his repeated failure to ask three standard questions at section 341 meetings are undisputed. Together with the other deficiencies noted in the FE/CAR Report, they support for the need for a suspension from the case rotation in order to permit the trustee time to familiarize himself with Chapter 7 Handbook standards and to improve his conduct of section 341 meetings. I urge the trustee to utilize the time afforded by the suspension to read chapter 7 of the Chapter 7 Handbook and bring his questioning and interactions at section 341 meetings into harmony with applicable procedures. I commend the trustee for his clearly expressed intention to adhere to such procedures in future section 341 meetings.

Taking all of the above into consideration, I find that the record supports the existence of a variety of performance deficiencies of a nature significant enough to warrant the trustee's suspension under the applicable regulations, and I conclude that the United States Trustee's decision to remove the trustee from the case rotation for a period of six months was an appropriate exercise of discretion.

#### **4. Suspension from the Case Rotation for a Six Month Period Was an Appropriate Exercise of the Trustee's Discretion.**

Finally, the trustee argues that his six-month suspension for performance deficiencies is unfairly severe when compared to the treatment of other members of the panel of trustees whose performance was similarly deficient. Request for Review at 2. Specifically, the trustee alleges that one panel trustee was not suspended by the United States Trustee after failing to record notice of a pending bankruptcy, resulting in the sale of the debtor's residence without the trustee's knowledge during administration of the estate. Id. According to the trustee, another panel member with a large number of aged cases was placed on a half-rotation of cases for a period of six months. Id. In the trustee's view, there were no similarly "critical issues" with his performance and the imposition of the suspension is inequitable. Id. In addition, the trustee argues that the suspension will have an unduly harsh economic impact upon his ongoing trustee practice. Id. at 2-3.

In response, the United States Trustee asserts that the trustee is not in a position to know the full extent of actions taken by the United States Trustee with respect to the trustee who had failed to record the notice of a pending bankruptcy. Response at 2. The United States Trustee notes that the subject trustee was required to resign from the case, and that the United States Trustee appointed a new trustee to assert claims against the trustee which were later resolved in a court-approved settlement. Id. The United States Trustee also notes that a performance evaluation of the other trustee is in process and that appropriate remedial measures remain under consideration. Id. at 2-3.

With respect to allegations of unfairness when compared to the United States Trustee's action relating to aged cases, the United States Trustee asserts that the trustee's six-month suspension decision was based upon a broad array of performance deficiencies, persistent over time, and directly related to the FE/CAR Report with an inadequate finding that warranted suspension pursuant to the Chapter 7 Handbook. Consequently, this matter is not analogous to that involving a half-rotation decision based upon the existence of aged cases. Response at 3. According to the United States Trustee, each separate situation must be assessed individually, "with corrective action tailored, as appropriate, to the facts of each case and the nature of the trustee's conduct." Id.

Because no disciplinary action has yet been taken with respect to the trustee who failed to record a notice of bankruptcy, I find that it is speculative to compare the suspension in this instance with any action that may be taken by the United States Trustee in the future. With respect to the half-rotation decision reached for the trustee with the aged cases, I find that the number and persistence of the deficiencies set out in the Notice and discussion above are not sufficiently analogous to the single issue of aged cases to persuade me that the action taken here is inequitable by contrast.

Moreover, with respect to the trustee's contention that the suspension will have an unduly harsh economic impact upon his operations, I find that the economic effect of a suspension are inevitable. Such consequences are not the proper basis on which to determine the propriety of the suspension. Rather, the proper measure of corrective action is whether it is tailored to the trustee's conduct and, in the case of a suspension, whether it will foster improvement of the deficiencies upon which it is based. Under the circumstances, in view of the trustee's erroneous contention that the issues raised in the FE/CAR Report are not "critical issues," I find that a suspension of six months is appropriate and is a meaningful period of time within which the trustee can take corrective action and improve his performance as a fiduciary exercising the highest degree of care with respect to his duties.

Based upon the seriousness of the FE/CAR Report's findings, and the ample factual support for the findings in the record, I conclude that the United States Trustee's decision to suspend the trustee for a period of six months, with a return to the rotation upon fulfillment of the

conditions set forth in the Notice,<sup>2/</sup> was warranted and was an appropriate exercise of the United States Trustee's discretion.

#### IV. CONCLUSION

Based upon my review of the record, and for all of the foregoing reasons, I affirm the United States Trustee's decision to suspend the trustee from active case rotation status on the chapter 7 panel for the [redacted] for a period of six months, with his return to rotation conditioned upon the completion of the items set forth in the United States Trustee's Notice.

This decision constitutes final agency action in this matter.

Dated: 6/29/11



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

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<sup>2/</sup> Because no new trustee training is currently scheduled at the National Advocacy Center through Fiscal Year 2012, the training condition set forth in the Notice may be satisfied by viewing at the United States Trustee's Office a DVD of the National Bankruptcy Training Institute's three-hour trustee training course. Following the video, a United States Trustee Program employee will be available to discuss the course materials and answer any relevant questions.