

Department of Justice
Executive Office for United States Trustees

Final Agency Action
Case No. 97-0001

Review of the Decision of the
United States Trustee for [REDACTED]
Regarding [REDACTED]

[REDACTED] seeks review by the Director of the Executive Office for United States Trustees of a decision by the United States Trustee for Region [REDACTED] not to reappoint her to the panel of chapter 7 trustees for the United States Bankruptcy Court for the Eastern District of [REDACTED] when her appointment expired on November 19, 1997.^{1/} Based upon the record before me,^{2/} I conclude that the United States Trustee has not yet reached a final decision whether [REDACTED] should continue as a member of the chapter 7 panel. Accordingly, [REDACTED] should remain on panel while that decision is being made. If the United States Trustee ultimately determines that [REDACTED] should not remain on the chapter 7 panel the United States Trustee should, at that time, issue a notice to that effect which complies with the requirements of 28 C.F.R. 58.6. [REDACTED] will then have the opportunity to obtain review of that decision under the provisions of 28 C.F.R. 58.6.

I. Factual Background

On August 15, 1997, the United States Trustee notified [REDACTED] that she would be placed on panel inactive status effective August 30. This did not remove [REDACTED] from the panel of chapter 7 trustees. Rather, it suspended new case assignments to her during the time she

^{1/} United States Trustees are Justice Department officials appointed by, and who 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 Justice Department official who acts under authority delegated by the Attorney General. Panel trustees, such as [REDACTED], serve under appointments that generally have a term not to exceed one year.

^{2/} The record in this matter includes the United States Trustee's notice of non-renewal; [REDACTED]'s request for review; the United States Trustee's response; and documents that accompany those submissions. It also includes material that Director sought and obtained from the parties.

remained on inactive status.^{3/} The August 15 notice explained that [REDACTED] had failed to rectify previously disclosed deficiencies. The record reflects that the United States Trustee's office had previously identified a number of problems to [REDACTED] in a series of meetings and correspondences. [REDACTED] acknowledged the existence of some of the problems but contested the validity of others.

Subsequent to August 15, the United States Trustee worked with [REDACTED] in an effort to improve her performance. The record reflects [REDACTED] took steps to attempt to rectify those areas in which her performance was deemed deficient.

On November 12, 1997, the United States Trustee issued an evaluation of [REDACTED]. The evaluation concluded that [REDACTED] needed to improve her performance in a number of specified areas. These included: (1) the timeliness, accuracy and completeness of her trustee final reports; (2) the appropriateness and accuracy of her objections to creditors' claims and her proposed distributions to creditors; (3) her management of section 341 meetings of creditors; (4) her effectiveness in securing and protecting estate property, her compliance with bankruptcy laws and procedures, her timeliness in filing pleadings and in serving those pleadings; (5) the timeliness, accuracy and completeness of her 180 day reports; (6) her effectiveness and efficiency in collecting and liquidating estate assets and in collecting receivables, filing preference actions, and in recovering the maximum amount possible for the benefit of creditors; (7) the timely closure of her cases; (8) her preparation of bank reconciliations for estate accounts and her follow-up on problem bank statements; (9) her diligence in objecting to debtors' attempts to obtain discharge of their debts when a discharge was not warranted; and, (10) responding to inquiries from the public and parties in interest and to requests of the United States Trustee.

The evaluation made clear, however, that the United States Trustee had not reached a final conclusion whether [REDACTED] would be able to rectify these problems or whether she ultimately would be able to function as an effective member of the panel of chapter 7 trustees for the Eastern District of [REDACTED]. Indeed, her November 12 evaluation affirmatively stated that "a reappointment to the panel will be issued when [[REDACTED]'s] performance indicates progress in case administration and closure."

Eight days later, on November 20, 1997, the United States Trustee notified [REDACTED] that she was not being reappointed to the panel of chapter 7 trustees. The record before me reveals, however, that the United States Trustee had not, and still has not, decided whether [REDACTED] should be a panel member. On December 3, 1997, the United States Trustee met with [REDACTED] to discuss how she could improve her performance and begin receiving new cases. At that time, [REDACTED] submitted a Work Plan to the United States Trustee, which described the procedures she devised to improve her administration of bankruptcy cases.

^{3/} [REDACTED] did not seek administrative review of that decision.

The United States Trustee reviewed that plan. On December 8, 1997, her Assistant United States Trustee wrote [REDACTED]. In that letter, the Assistant informed [REDACTED] that “additional time is needed to indicate the type of progress necessary to begin assigning cases to you again as an active panel member.”

II. Analysis

In conducting this review, the Director must consider two factors:

1. Did the United States Trustee’s decision constitute an appropriate exercise of discretion; and,
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).

Although the United States Trustee issued a notice of non-renewal on November 20, 1997, the record establishes that the United States Trustee has not yet decided whether [REDACTED] should remain on the chapter 7 panel. Indeed, the Assistant United States Trustee’s December 8 letter expressly noted that the United States Trustee would begin reassigning cases to [REDACTED] if the region’s ongoing review indicated that [REDACTED] had corrected her performance problems.

Thus the record is clear that the United States Trustee has not yet determined whether [REDACTED] should be a member of the chapter 7 panel. Accordingly, [REDACTED] should be returned to panel inactive status. Of course, the United States Trustee is free to place her on active status at any time.

The United States Trustee has acted prudently and wisely in her supervision of [REDACTED]. The United States Trustee has provided [REDACTED] with specific information about the problems [REDACTED] has experienced as a trustee. The regional staff has spent considerable time meeting with [REDACTED] in an effort to help her improve her performance. The region has given [REDACTED] substantial time in which to improve her performance. It has reduced her caseload so she can focus her attention upon rectifying areas that need improvement. In turn, the record reveals that [REDACTED] is working to rectify the inadequacies identified by the United States Trustee.

It is unclear, at this time, whether those attempts will be successful. If the United States Trustee ultimately determines that [REDACTED] should not be retained as a member of the chapter 7 panel, then the United States Trustee must, at that time, issue a notice of non-renewal that complies with 28 C.F.R. 58.6(a). That notice must identify each reason for the decision. It should do so with specificity — as to each articulated basis. That notice must attach or refer to all documents that support the United States Trustee’s decision. In the event the United States

Trustee ultimately issues such a notice, [REDACTED] may obtain administrative review of it if she complies with the requirements of 28 C.F.R. 58.6, including the time deadline for seeking review specified in subsection (b) and the requirements set forth in subsection (f).^{4/}

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

Dated:

January 12, 1998

Joseph Patchan
Director
Executive Office for
United States Trustees

^{4/} On August 30 [REDACTED] was placed on inactive status. Although she has chosen not to seek review of that supervisory action, it would be appropriate for the region to reach a final decision regarding her status on the panel as expeditiously as possible, consistent with the region's wise decision to afford [REDACTED] the opportunity to attempt to rectify her performance problems.