

2. Did the United States Trustee’s decision constitute an appropriate exercise of discretion?

28 C.F.R. § 58.6(i) (specifying the scope of a Director’s review of a United States Trustee’s decision to suspend or terminate a trustee’s eligibility to receive future cases).

In conducting my 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. The Role of the United States Trustee and the Responsibilities of the Chapter 7 Panel Trustee.

1. The Role of the United States Trustee.

United States Trustees work to effectuate the goals of the United States Trustee Program (“USTP” or “Program”). Pursuant to its Mission Statement, available on the Internet at http://www.justice.gov/ust/eo/ust_org/mission.htm (last visited February 3, 2016), “[t]he mission of the United States Trustee Program is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders – debtors, creditors, and the public.” United States Trustees establish, maintain, and supervise panel trustees, within their regions, in cases commenced under the liquidation provisions in chapter 7 of the United States Bankruptcy Code (“Bankruptcy Code”), 28 U.S.C. § 586(a)(1).

United States Trustees “monitor the performance of panel members . . . to determine whether they should be continued in or removed from panel membership or office.” H.R. Rep. No. 95-595, at 102 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6063, 1977 WL 9628. “The United States Trustee is permitted to conduct his own investigation into the existence of facts that should spur the private trustee to action. Such periodic examinations will be necessary for the United States Trustee to exercise effective supervision and make effective evaluation of the performance of the private trustees on the panel.” *Id.* at 6071.

These periodic examinations take the form of field examinations, case administration reviews (“CARs”), and audits of panel members’ activities. *See Handbook for Chapter 7 Panel Trustees*, effective October 1, 2012 (“Chapter 7 Handbook”) at 6-3.⁴ United States Trustee personnel conduct the field examinations and CARs, and independent certified public accountants conduct the audits. *Id.* The field examinations, CARs, and audits are designed to assess trustees’ accounting and case administration activities. *Id.* Generally, a trustee will be advised at least two weeks prior to the time a field examination, CAR, or audit will be performed. *Id.*

⁴ The Chapter 7 Handbook is available on the Justice Department’s Web site at http://www.justice.gov/ust/eo/private_trustee/library/chapter07/docs/ch7hb2012/Handbook_for_Chapter_7_Trustees.pdf (last visited February 3, 2016).

The Chapter 7 Handbook provides that a trustee who receives a finding of “inadequate” in an audit or field examination report will be suspended from active rotation in accordance with the procedures prescribed in 28 C.F.R. § 58.6. Chapter 7 Handbook at 6-3. The Chapter 7 Handbook explains that an “inadequate” conclusion “means that the quality of the trustee’s accounting and cash management practices and procedures is insufficient for safeguarding bankruptcy funds and assets.” Chapter 7 Handbook at 6-3.

2. The Responsibilities of the Chapter 7 Panel Trustee.

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.). Trustees must be both eligible and qualified to serve under 11 U.S.C. § 321 and 28 C.F.R. § 58.3. They are subject to suspension or removal by United States Trustees under the procedures set forth in 28 C.F.R. § 58.6, based upon a non-exhaustive list of fourteen grounds specified in section 58.6(a).

Trustees’ duties are established by statute. 11 U.S.C. § 704. A trustee must “collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest[.]” 11 U.S.C. § 704(a)(1). Additionally, a trustee shall “be accountable for all property received[.]” 11 U.S.C. § 704(a)(2). A trustee must also “investigate the financial affairs of the debtor[.]” 11 U.S.C. § 704(a)(4). Further, a trustee is required to “make a final report and file a final account of the administration of the estate with the court and with the United States trustee[.]” 11 U.S.C. § 704(a)(9).

To properly and effectively fulfill the statutory duty of accountability in 11 U.S.C. § 704(a)(2), trustees must establish and maintain appropriate accounting systems and financial records for their cases. The Program has established a mandatory record keeping and reporting system for this purpose, which consists of three primary records: (1) Individual Estate Property Record and Report (Form 1); (2) Cash Receipts and Disbursements Record (Form 2); and (3) Summary Interim Asset Report (Form 3). Chapter 7 Handbook at 5-1.⁵ Trustees also must retain a Cash Receipts Log to track receipts and verify deposits, a Receivables Ledger to track collections and balances, a Receipt Book to provide receipts, and Bank Reconciliation Reports/Records to track estate accounts. Chapter 7 Handbook at 5-1 to 5-2.

Trustees submit Forms 1, 2, and 3 to United States Trustees in the Trustee Interim Report (“TIR”). Trustees must submit TIRs at least annually. *See General Instructions for Interim Reports (TIRs)*, available at http://www.justice.gov/ust/eo/private_trustee/library/chapter07/docs/ch7hb2012/General_Instructions_for_Interim_Reports_TIRs.pdf (last visited February 3, 2016). The review of TIRs by

⁵ The Program has published detailed supplementary materials to explain the forms and their use at http://www.justice.gov/ust/eo/private_trustee/library/chapter07/index.htm (last visited February 3, 2016).

Program personnel allows United States Trustees to assess the progress of trustees' cases and asset administration and to identify potential issues regarding their record keeping practices.

B. Background Regarding the Trustee's Appointment and Supervision.

The United States Trustee appointed the trustee to the panel of chapter 7 trustees on November 21, 2011. ARR 34. The trustee's most recent TIR covered the period ending March 31, 2014 ("2014 TIR"). ARR 51. On August 13, 2014, the United States Trustee sent the trustee a letter regarding the 2014 TIR ("2014 TIR Letter"). ARR 51-80. This letter summarized the review of the trustee's interim reports for the period, which was performed to comply with statutory requirements, to ensure the completeness and accuracy of the data contained within the trustee's database, and to ensure the appropriate administration of cases. ARR 51. The 2014 TIR letter highlighted those areas of the trustee's operations that required additional attention. *Id.* In the email transmittal of this letter, the Office of the United States Trustee requested a response from the trustee no later than September 5, 2014. ARR 48.

On September 5, 2014, the trustee provided a response to the 2014 TIR Letter, however, it was incomplete and lacked documentation that the identified deficiencies had been corrected as requested. ARR 22-23, 46-84. Thereafter, on several occasions in September and October, the United States Trustee followed up with the trustee. Each time the trustee failed to provide a complete response to the letter. *Id.* On November 19, 2014, the United States Trustee notified the trustee of the scheduling of a field examination of the trustee's operations for the interim period ending November 30, 2014, to commence on December 8, 2014 ("Engagement Letter"). ARR 45; *see also* ARR 85 (email transmittal of the Engagement Letter to the trustee). On several occasions subsequent to that date, the United States Trustee requested that the trustee complete his responses to the 2014 TIR letter prior to the commencement of the field examination. ARR 23, 81, 83. Nevertheless, as of the date of the commencement of the field examination, the United States Trustee still had not received the trustee's complete response to the 2014 TIR Letter. ARR 23.

From December 8, 2014, through December 10, 2014, the United States Trustee conducted a field examination of the trustee's operations for the interim period ending November 30, 2014. ARR 33-34. The field examination was performed by a Bankruptcy Analyst ("Analyst") for the Office of the United States Trustee. ARR 34. The Analyst reviewed the trustee's general operations and tested six selected cases during the examination. *Id.* The Office of the United States Trustee then issued the Field Examination Report on January 14, 2015. ARR 33-44.

The Field Examination Report concluded that the trustee's procedures were inadequate and not in accordance with the Chapter 7 Handbook and sound business practices, based upon thirteen specific findings of deficiency:

1. The trustee does not collect and reduce to money the property of the estate and close the estate as expeditiously as is compatible with the best interests of parties in interest;
2. The trustee does not review his cases on at least a quarterly basis;

3. The trustee does not take control or possession of significant assets as soon as possible;
4. The trustee does not verify that the auctioneer maintains insurance for lost or stolen property, nor does the trustee take appropriate steps to preserve uninsured property;
5. The trustee does not consistently investigate the financial affairs of the debtors;
6. The trustee failed to recognize the conflict of interest and potential criminal implications of his attempt to sell assets to the auctioneer appointed in a case;
7. The trustee is not competent in the preparation and maintenance of the uniform record keeping and reporting system developed by the USTP;
8. The trustee does not prepare bank reconciliations in accordance with the Chapter 7 Handbook;
9. The trustee does not contemporaneously maintain a receipt log to track all incoming receipts;
10. The trustee does not maintain receivables ledgers to track receivable collections and remaining balances;
11. The trustee does not deposit funds as soon as possible after receipt (generally within two business days);
12. The trustee does not properly caption estate bank statements, check stock, and deposits slips; and
13. The trustee has not timely corrected deficiencies reported in his 2014 TIR Letter.

ARR 34-35. The Field Examination Report stated that the trustee's accounting and cash management practices and procedures were insufficient for safeguarding bankruptcy estate funds and assets, and detailed the cases and circumstances in which these deficiencies arose. ARR 34-44.

As a result, the United States Trustee decided to suspend the trustee based on the inadequate finding in the Field Examination Report. ARR 1-3. In a follow-up e-mail dated January 29, 2015, the Assistant United States Trustee for the Office of the United States Trustee ("Assistant United States Trustee") advised the trustee that the duration of the suspension was indefinite. ARR 3. The Assistant United States Trustee further informed the trustee that resumption of case assignments to the trustee would require: (1) implementation of corrective actions; (2) a follow-up visit by the United States Trustee; and (3) approval of the Deputy Director for Field Operations, Executive Office for United States Trustees. ARR 3.

On February 4, 2015, the trustee timely sought review of the suspension on grounds that the procedures for setting up the field examination were not in accordance with the Chapter 7 Handbook, and on the grounds that his accounting, cash management, and auction sale procedures are sufficient and in compliance with the Chapter 7 Handbook. ARR 4-10. The trustee asserts that certain findings in the Field Examination Report are related to matters that occurred in the early stages of his tenure as a panel trustee, and he has taken corrective actions to address those issues. ARR 11. He indicated that he strives to ensure that his practice is in compliance with the Chapter 7 Handbook, and expressed a willingness to take all necessary remedial action required by the United States Trustee to correct the deficiencies in his case management procedures. ARR 11-12.

On February 19, 2015, the United States Trustee timely responded to the Request for Review. Notwithstanding the trustee's arguments and explanation, the Response counters the trustee's assertions with respect to the conduct and findings of the field examination. ARR 19-31. The United States Trustee maintains that the manner in which the field examination was scheduled and conducted complied with the Manual and the Chapter 7 Handbook. ARR 23-24. Further, the Response asserts that the trustee's accounting, record keeping, and internal controls are indeed inadequate because the trustee does not correctly reconcile estate bank accounts, he fails to maintain a contemporaneous receipts log, his estate bank account documents are not adequately captioned, and he does not consistently maintain a receivables ledger to track collections. ARR 24-28. Finally, the United States Trustee contends that the trustee has failed to monitor and control estate professionals by attempting to enter into an agreement to sell estate assets to the auctioneer hired in a case to assess the value of, and sell, those assets, a violation of the Chapter 7 Handbook which may have had criminal consequences had the transaction been consummated. ARR 28-29.

In addition to addressing the trustee's contentions, the United States Trustee further specified the regulatory bases for his decision in the Response. ARR 19-31. According to the Response, the suspension is warranted due to the trustee's:

- Failure to safeguard or to account for estate funds and assets. 28 C.F.R. § 58.6(a)(1);
- Failure to perform duties in a timely and consistently satisfactory manner. 28 C.F.R. § 58.6(a)(2);
- Failure to adequately monitor the work of professionals. 28 C.F.R. § 58.6(a)(7); and
- Failure to file timely and accurate reports. 28 CFR § 58.6(a)(8).

ARR 20-23. The Response asserts that, collectively, the findings in the Field Examination Report demonstrate that the trustee has failed to satisfy the minimum basic fiduciary standards of a trustee and that the trustee's case management is in a state of disarray. ARR 29.

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, based on the trustee's failure to comply with the statutory and regulatory requirements applicable to panel trustees. I further conclude that suspension of the trustee pending fulfillment of the conditions stated in the email addendum to the Notice was an appropriate exercise of the United States Trustee's discretion.

1. Failure to Safeguard or to Account for Estate Funds and Assets, 28 C.F.R. § 58.6(a)(1).

The United States Trustee asserts that the trustee failed to safeguard or to account for estate funds and assets, and points to several instances detailed in the Field Examination Report that support suspension on this ground. ARR 20-21.

Deficient Sale Without Court Authorization. In the case of _____, the trustee agreed that the estate would sell two heavy duty commercial vehicles to the ex-wife of the debtor, and he accepted a \$6,400 check from the ex-wife's counsel (the same attorney who represents the debtor) in late September 2014. ARR 20-21. However, a review of the files by the Analyst revealed that prior to entering into the agreement to sell the vehicles, the trustee failed to investigate the fair market value of the vehicles, seize the vehicles, or confirm that they were covered by a valid insurance policy. ARR 20-21, 36, 38, 39. Additionally, upon reaching the agreement to sell the vehicles and accepting the check, the trustee put the \$6,400 check and the agreement in his trustee file and did not seek authorization for the sale from the U.S. Bankruptcy Court for the _____ District of _____ ("Court") until January 14, 2015. ARR 20. During that approximately four-month period, the vehicles remained in the debtor's possession and the check stayed in the trustee file. ARR 20-21.

Lost, Unrecorded, and Unsecured Check. Similarly, in _____, the trustee received a \$252.54 garnishment check in late September 2012. ARR 21, 41-42. This check was never recorded in the trustee's cash receipts log, was not stored in a secure location, and was not administered in any manner prior to the trustee filing a report of no distribution ("NDR") in the case. *Id.* On December 7, 2014, over two years after receiving the check, the trustee filed the NDR and the case was closed the following day. *Id.* Subsequently, upon the Analyst's request during the field examination, the trustee searched and produced the check, indicating that he "found it" in a file box in his office. *Id.* It appears that the trustee had lost track of this check and forgotten that it was in his possession for more than two years. *Id.*

Delay in Seizing Debtor Account and Obtaining Sale Proceeds. The United States Trustee also highlights the case of _____, as proof of the trustee's repeated failure to safeguard or account for estate funds and assets. ARR 21. In that case, the trustee asserted in documents filed with the Court that approximately \$100,000.00 in cash held in the debtor's bank account had value to the estate (despite being encumbered by a blanket lien). However, the trustee failed to seize the account, and it remained under the control of the debtor's principals for approximately eight months. ARR 21, 36. Further, the trustee did not ensure that proceeds arising from the auction of certain vehicles owned by the estate were turned over to him within 30 days of the sale as required by the Chapter 7 Handbook. ARR 21, 42.⁶ The sale occurred on October 29, 2013, but the receipts were not deposited until January 12, 2014, more than two months later. *Id.*

⁶ Pursuant to the Chapter 7 Handbook, "[a]s a general rule, the auctioneer should immediately turn over auction proceeds to the trustee. In any event, all proceeds must be turned over within thirty days of the auction." Chapter 7 Handbook at 4-23.

I observe that the Field Examination Report also shows numerous other deficiencies in the trustee's practices to safeguard or to account for estate funds and assets in the case, including a delay of more than five months beyond the 30 day period to file a report of sale⁷, and the failure to verify that the auctioneer maintains insurance for lost or stolen property and to take appropriate steps to preserve uninsured property. ARR 38, 44.

Failure to Report Missing Assets. The record discloses that a similar problem pertaining to the trustee's performance in safeguarding and accounting for estate funds and assets was reported by the Analyst in the case of . ARR 43. There, the trustee informed the Analyst that the debtor representative testified at the section 341 meeting⁸ that certain physical assets, listed on Form 1 as having an aggregate value in excess of \$100,000.00, had "vanished" from the business location. *Id.* However, as of the date of the field examination, the trustee had not yet notified the United States Trustee of the reportedly missing assets, filed a police report, or informed the insurance company of the lost or stolen assets. *Id.*

Forms 1, 2, and 3 Errors and Omissions. Additionally, the Field Examination Report details an alarming number of errors on Forms 1, 2, and 3. ARR 39-41.⁹ The Analyst indicated that 18 cases listed on Form 3 provided no disposition code in Column 7. ARR 39. Additionally, five cases listed on ACMS were not listed on Form 3. *Id.* These cases were identified as ; ; and ;

Id. The Analyst noted that in four cases the trustee filed a notice of assets, but did not include the case on Form 3 or prepare a Form 1. *Id.* In , the trustee filed a Notice of Meeting Held and indicated that the status of assets was at that time "undetermined," but he failed to prepare a Form 1 or include the case on Form 3. *Id.*

Troublingly, the Analyst discovered Form 1 preparation errors in each of the six cases selected for review: (column 6 of Form 1 for certain assets has not been updated to show that trustee considers these assets Fully Administered (FA), the assets the trustee does plan to administer have no notes on current status, investigation, or liquidation, and Form 1 and other errors from the previous 2014 TIR review have not been

⁷ The Field Examination Report indicates that the trustee auctioned estate assets on October 29, 2013, but failed to file a report of sale until May 7, 2014. ARR 44. The Chapter 7 Handbook states that "[t]he trustee must ensure that the auctioneer files the report promptly upon completion of the auction. 28 U.S.C. § 586. If the report has not been provided within thirty days after the auction, the trustee must request a copy and ensure that it has been filed with the court and United States Trustee, or as otherwise provided by local rules and practices. 28 U.S.C. § 586." Chapter 7 Handbook at 4-23.

⁸ Pursuant to 11 U.S.C. § 341, the United States Trustee shall convene and preside at a meeting of creditors and any equity security holders, during which the trustee shall orally examine the debtor. 11 U.S.C. § 341.

⁹ The Program has established a mandatory record keeping and reporting system to ensure that trustees establish and maintain appropriate accounting systems and financial records for their cases, which consists of three primary records: (1) Individual Estate Property Record and Report (Form 1); (2) Cash Receipts and Disbursements Record (Form 2); and (3) Summary Interim Asset Report (Form 3). Chapter 7 Handbook at 5-1.

corrected); (trustee erroneously added certain assets to Form 1 as listed assets, rather than unscheduled assets, and Form 1 does not reflect the current status of case administration); (two assets on Form 1 have inadequate descriptions and Form 1 does not indicate the current status of case administration); (discussed above); (Form 1 does not reflect the current status of case administration); and (Form 1 does not indicate the current status of case administration). ARR 39-41.

The findings detailed above raise significant issues and are not exhaustive of the deficiencies in the trustee's performance in safeguarding or accounting for estate funds and assets found by the Analyst and reported in the Field Examination Report. See ARR 34-44. Moreover, as discussed above, the trustee has repeatedly provided incomplete responses to the 2014 TIR Letter, which highlighted areas within the trustee's operations relating to his handling of estate assets and funds that required additional attention. Of note is that, as of the date of the UST Response, the trustee still had not submitted a complete response to the 2014 TIR Letter despite requesting review of the UST's decision to suspend him. ARR 23, 51-80.

In light of the above findings, the Analyst concluded that the trustee's accounting and cash management practices and procedures were insufficient for safeguarding bankruptcy estate funds and assets, and therefore issued a finding of "inadequate." ARR 34. The UST determined, consistent with the Chapter 7 Handbook, that these findings, without adequate response, were sufficient to warrant suspension of the trustee. I agree. The trustee's conduct must be viewed in context. The deficiencies noted in the Field Examination Report occurred against the backdrop of the trustee's failure to adequately address his deficient practices, notwithstanding communication of proper procedures to the trustee in various manners, and notwithstanding the number and nature of deficiencies previously identified for the trustee in the 2014 TIR Letter.

While the trustee asserts that the Analyst's findings were flawed and that his procedures in these and other areas were in compliance with the Chapter 7 Handbook, as I will discuss in detail in Section D, *infra*, the record and the provisions of the Chapter 7 Handbook show to the contrary. I also am mindful that while the Analyst sampled only six cases,¹⁰ a limited number, it is likely that deficiencies similar to those noted in the Field Examination Report are repeated in other cases in the trustee's portfolio. Examining these matters as a whole, it is clear to me that the reliability of the trustee's accounting and cash management practices is not assured and that a determination that the trustee failed to safeguard and account for estate assets and funds is appropriate.

Based on the foregoing, I find that there is ample support in the record for the United States Trustee's determination that the trustee's suspension was warranted under section 58.6(a)(1).

¹⁰ The Chapter 7 Handbook states that an examination is performed by United States Trustee staff for internal use and is not intended to be in conformity with the accounting profession's Statements on Auditing Standards (SAS), generally accepted auditing standards (GAAS), or generally accepted government auditing standards (GAGAS). Chapter 7 Handbook at 6-3 n.14.

2. Failure to Perform Duties in a Timely and Consistently Satisfactory Manner, 28 C.F.R. § 58.6(a)(2).

Pursuant to section 58.6(a)(2), a trustee may be removed or suspended for “[f]ailure to perform duties in a timely and consistently satisfactory manner[.]” In the Response, the United States Trustee chronicles a number of instances demonstrating the trustee’s repeated failure to timely perform his duties in a satisfactory manner. ARR 21-22.

Failure to Promptly Secure and Liquidate Vehicle. In the case of _____, No. 13-33186, the trustee failed to administer an asset in a timely manner. ARR 21. The case was filed in August 2013, and the trustee obtained an order avoiding the lien on a vehicle in November 2013. ARR 21, 36. During a January 2014 meeting, the Acting Assistant United States Trustee urged the trustee to take possession of the vehicle. *Id.* However, as of December 10, 2014, the trustee had not taken steps to secure or liquidate this asset. *Id.* Further, the Field Examination Report indicated that the trustee had not yet verified that the vehicle was insured. ARR 39.

Failure to Track and Close Cases. In the case of _____, the trustee caused the case to remain open with the Court for over a year because he did not accurately track the status of the case in his case management software. ARR 21, 40. On July 23, 2013, the trustee filed an NDR, but after discovering unscheduled assets in the case, on August 20, 2013, he withdrew the NDR and filed a notice that the status of assets was “undetermined.” *Id.* However, the trustee neglected to change the status of the case in his case management software, forgot about the case, and left it open with the Court. *Id.* Upon the Analyst’s discovery of the case during the field examination, the trustee reported that there were no assets to administer, although he had never filed an NDR to close the case with the Court and was unaware that it was still open. *Id.* On December 9, 2014, the trustee filed an NDR to close the case with the Court. ARR 21.

Significantly, in the case of _____, the case remained open with the Court for more than two years while the trustee undertook an investigation into the affairs of several single member limited liability companies (“LLCs”). ARR 21-22, 35-36. The case was filed on May 31, 2012, and the Court held a *sua sponte* hearing on August 26, 2014 to ascertain the status of the case. *Id.* On that date, the trustee filed a status report indicating that he was reviewing the status of several LLCs member-managed by the debtor. During the status hearing, the trustee informed the Court that he was still attempting to obtain the operating agreements for the LLCs. *Id.* The judge admonished the trustee for not yet having obtained the operating agreements. *Id.* The trustee filed an NDR with the Court on December 7, 2014. *Id.* However, during the field examination, the Analyst noted that the trustee’s case file did not contain any agreements or other documentation pertaining to the LLCs. *Id.* Likewise, there was no documentation in the trustee’s file regarding the value of the real property held by the LLCs. *Id.*

These instances fully support the trustee’s suspension under section 58.6(a)(2). They reflect the trustee’s ongoing inability to perform his duties in a timely and consistently satisfactory manner, and to comply with Program requirements. As mentioned above and described more fully in connection with section 58.6(a)(8) below, they are exacerbated by prior

similar conduct, including the trustee's failure, on several occasions, to provide complete responses to the 2014 TIR Letter.

Based on the foregoing, I find that the record supports the United States Trustee's determination that the trustee's suspension was warranted under section 58.6(a)(2).

3. Failure to Adequately Monitor the Work of Professionals, 28 C.F.R. § 58.6(a)(7).

Section 58.6(a)(7) provides that a trustee may also be removed or suspended for “[f]ailure to adequately monitor the work of professionals or others employed by the trustee to assist in the administration of cases[.]” 28 C.F.R. § 58.6(a)(7). In the Response, the United States Trustee shows that the trustee has failed on a number of occasions to ensure that professionals he has employed on behalf of the estate are acting in the best interests of creditors and the estate. ARR 22.

Proposed Sale to Auctioneer. In the previously mentioned case of _____, the trustee attempted to sell most of the assets of the estate to the auctioneer hired to inventory, appraise, and auction those assets. ARR 22, 38. The auctioneer was provided exclusive access to the assets to conduct a valuation. *Id.* Nevertheless, when the original sale failed to materialize, the trustee negotiated an agreement, with the same auctioneer who had performed the appraisal, to purchase the assets from the estate. *Id.* The United States Trustee objected to the trustee's motion to sell the estate assets to the auctioneer. *Id.* The trustee filed a response, explaining that the professional's offer: (i) was made after a previous deal fell through; and (ii) was for an amount greater than any previous offer. ARR 22. The United States Trustee asserted that the trustee's response indicated that he did not comprehend the scope of estate professionals' fiduciary obligations to the estate. *Id.* Further, the United States Trustee argued that the trustee did not comprehend the potential criminal ramifications of this transaction. *Id.* The Court agreed, sustained the United States Trustee's objection, and halted the sale. ARR 22, 38.

Failure to Oversee Attorney. The trustee also retained an attorney in the above case to prosecute certain accounts receivable, preference, and fraudulent conveyance claims. ARR 22, 42-43. The Court approved the trustee's retention of the attorney for the estate on May 29, 2013. *Id.* The Analyst reported that the trustee's estate case file did not contain a current status report for the accounts receivable, and the trustee indicated that he had never requested such a document. *Id.* The Analyst found no indication that the trustee sought, or received, status updates from the estate's attorney on the progress of the claims related to the estate. *Id.* Further, the trustee was unable to explain to the Analyst the nature of the underlying claims or the manner in which he estimated their value. *Id.* The United States Trustee asserts in the Response that the trustee's lack of knowledge about the claims demonstrates that he has failed to exert sufficient control over such claims or oversee the work of the attorney he hired to prosecute them on behalf of the estate. ARR 22.

I conclude that these findings support suspension under section 58.6(a)(7). The matters discussed above are symptomatic of a trustee who does not adequately monitor the work of professionals employed by the trustee. As will be discussed more fully below with regard to the

points raised by the trustee in the Request for Review, the trustee's failure to exercise appropriate supervision over the auctioneer in the _____ case was particularly disturbing, given that it was due, at least in part, to his own misinterpretation of certain provisions of the Chapter 7 Handbook pertaining to his duties as a trustee.

Based on the foregoing, I find that the United States Trustee properly suspended the trustee for failing to fulfill his obligations under section 58.6(a)(7).

4. Failure to File Timely, Accurate Reports, 28 C.F.R. § 58.6(a)(8).

Section 58.6(a)(8) provides that a trustee may be removed or suspended for failure to comply with the obligation to file "timely, accurate reports, including interim reports, final reports, and final accounts." 28 C.F.R. § 58.6(a)(8). In support of suspension under this section, the United States Trustee cites to the trustee's nonperformance with regard to the 2014 TIR Letter. ARR 22-23. Although the United States Trustee issued the 2014 TIR Letter to the trustee on August 13, 2014, with a request for a response no later than September 5, 2014, the trustee had not, as of the date of the Request for Review or the UST Response, provided a complete response or provided documentation demonstrating that he had remedied each of the problems identified in this report. ARR 22-23, 46-84.

The record reflects that the Analyst has repeatedly contacted the trustee in an attempt to elicit a full response to the issues identified in the 2014 TIR Letter. ARR 46-84. Email correspondence between the Analyst and the trustee, and a copy of the 2014 TIR letter containing an exchange of comments between these parties, shows that the trustee submitted incomplete responses to the 2014 TIR letter on September 5, 2014; October 13, 2014; and December 4, 2014. ARR 46-81. Additionally, the Analyst urged the trustee to provide a full response to the 2014 TIR prior to the date the field examination was scheduled to commence. ARR 23, 81, 83. Nevertheless, the trustee had not provided a complete response to the 2014 TIR Letter as of February 19, 2015, the date of the UST Response. ARR 23.

Likewise, I note that the record demonstrates that the trustee submitted incomplete Asset Administration and Internal Control questionnaires on December 1, 2014, the day they were due, in connection with the December 2014 field examination. ARR 82-83, 85. At the request of the Analyst, the trustee submitted revised questionnaires on December 3, 2014, yet five questions still remained unanswered. ARR 81.

The record reveals a worrisome pattern of the trustee failing to perform his statutory and regulatory duties and comply with applicable reporting deadlines. It is unacceptable that the United States Trustee must persistently induce the trustee to perform his legal obligations.

As previously discussed, the trustee also failed to file a timely Report of Sale in _____, and the Field Examination Report described significant inaccuracies on Forms 1, 2, and 3, including reporting errors in each of the six cases selected by the Analyst for review. ARR 39-41, 44. These deficiencies provide additional grounds for the trustee's suspension pursuant to section 58.6(a)(8).

Based on the foregoing, I find that there is support in the record for the United States Trustee's determination that the trustee's suspension was warranted under section 58.6(a)(8).

D. The Trustee's Arguments Against Suspension Are Unpersuasive.

The trustee makes three primary arguments as to why suspension is not warranted. ARR 6-10. First, he contends that the procedures for setting up the field examination were not in accordance with the Chapter 7 Handbook. ARR 6. Second, he argues that the Analyst's overall conclusion that his trustee operations are inadequate is inappropriate because his accounting and cash management practices and procedures are not insufficient and are, in fact, in compliance with the Chapter 7 Handbook. ARR 6-9. Third, he asserts that the potential sale of tangible assets to the auctioneer appointed in the case was in accordance with the Chapter 7 Handbook. ARR 10.

Moreover, the trustee generally maintains that certain identified problems occurred in the early stages of his career as a panel trustee, and he has taken corrective actions to address those issues. ARR 11. He further believes that if he were to provide a detailed explanation of all the findings in the Field Examination Report, his procedures for accounting and cash management may be shown to be sufficient. *Id.* Finally, he states that he strives to ensure that his practice is in compliance with the Chapter 7 Handbook, and expresses a willingness to take all necessary remedial action required by the United States Trustee to correct the deficiencies in his case management procedures. ARR 11-12. However, viewed in connection with the record, the trustee's arguments are not persuasive.

1. The Procedures for Arranging the Field Examination Were in Compliance with the Chapter 7 Handbook.

The trustee argues that the procedures for setting up the field examination were not in accordance with the Chapter 7 Handbook. ARR 6. He asserts that he was not given adequate advance notice of the date of the examination, and was in the process of moving his office when the examination occurred. ARR 4-6. The trustee claims that when the Analyst contacted the trustee about scheduling the field examination, which he indicates was around the first week of December 2014, the trustee informed him that he was in the process of moving his office to a new location, but the Analyst indicated that the examination needed to occur before the holidays. *Id.* The trustee claims that, due to these facts allegedly surrounding the scheduling, he was unable to adjust his schedule to make himself fully available to the Analyst during the examination. ARR 6. He also states that he did not have sufficient time to fully transition into his new office prior to the examination, and therefore remained in his prior office, which was not in a suitable condition to host the Analyst, so that he could provide the Analyst with access to printed materials. ARR 5-6.

a. The Trustee Received Adequate Advance Notice of the Field Examination.

The United States Trustee disputes the facts presented by the trustee pertaining to the timing of the notice of the field examination. In the Response, the United States Trustee

contends that the Analyst initially contacted the trustee and requested to schedule the field examination by email on November 19, 2014, and the parties consensually established the date for the examination to begin. ARR 23-24. In support, the United States Trustee submitted copies of correspondence between USTP personnel and the trustee dated November 19, 2014. ARR 84-85. At 1:27 p.m. on that date, the Analyst sent the trustee an email to initiate a discussion about scheduling a field examination. ARR 84. The United States Trustee indicates that later that day, the Analyst and the trustee had a telephone conversation during which they agreed upon the date of the field examination. ARR 23. The Analyst's Planning Phase Notes reflect that a scheduling phone call occurred on November 19, 2014. ARR 86.

The record then shows that at 2:38 p.m. on November 19, 2014, the Analyst sent another email to the trustee, which referenced a discussion from earlier that day and included three attachments, identified by the Analyst as the Engagement Letter and two questionnaires that were due back by no later than December 1, 2014. ARR 85. The record also contains a copy of the Engagement Letter, also dated November 19, 2014, which was signed by the Assistant United States Trustee. ARR 45. The Engagement Letter notified the trustee that, based on the trustee's communications with the Analyst, a field examination of the trustee's operations would commence on December 8, 2014. *Id.* The United States Trustee notes that these communications establishing the date of the field examination occurred 18 days prior to the date on which the Analyst began the field examination. ARR 23. Thus, the trustee received more notice of the field examination than is required by the Chapter 7 Handbook. ARR 23-24.

Thus, I conclude that the trustee's claims regarding the timing and propriety of the notice of the field examination lack credibility. Based upon the documentation provided by the United States Trustee, I find the trustee's assertion that the procedures for arranging the field examination were not in compliance with the Chapter 7 Handbook are without merit.

b. The Trustee Did Not Express Any Significant Concerns about the Timing of the Examination.

The trustee also argues that although he informed the Analyst that he was in the process of transitioning between office locations, the Analyst insisted on proceeding with the examination in order to complete it before the holidays. ARR 5. The trustee claims that due to the allegedly hurried manner in which the examination was scheduled during his office move, he was not sufficiently prepared for the examination and was unable to make himself wholly available to participate in the examination. ARR 5-6.

The United States Trustee indicates that the trustee did not express any significant concerns about the timing of the examination. ARR 24. If the trustee had communicated with the Analyst about any problems he anticipated arising in relation to his office move, the Analyst would have simply offered alternative dates to commence the field examination. *Id.* Additionally, the United States Trustee contends that the Analyst never stated that the field examination must be completed "before the holidays." *Id.* Rather, the Analyst expressed that he preferred to schedule the field examination as quickly as possible. *Id.*

In light of the above findings concerning the falsity of the trustee's claim that he received insufficient notice of the field examination, I conclude that the United States Trustee's contentions regarding the negotiations to establish a commencement date to be more credible

than those of the trustee. For these reasons, I find that the trustee's participation in the field examination was not unduly inhibited due to conditions imposed by the Analyst.

c. The Trustee Was Not Required to Maintain Access to a Printer or Printed Materials to Assist the Analyst.

The trustee further contends that despite his prior office being in an unacceptable condition to conduct a field examination due to the move, he remained in it while undergoing the examination to comply with the Chapter 7 Handbook and accommodate the Analyst by retaining access to a printer and printed materials. ARR 5. However, the United States Trustee asserts that the trustee was aware in advance of the field examination that the only printed documents the Analyst required were copies of the bank statements from the trustee's estate accounts. ARR 24. The Analyst and the trustee reportedly discussed the trustee's operations during a telephone conversation, during which the trustee disclosed that he maintained a paperless trustee operation with the exception of bank account statements. *Id.* Consistent with the United States Trustee's claim, the Analyst's Planning Phase Notes indicate that during the November 19, 2014, scheduling phone call, the Analyst ascertained that the trustee's file system was fully electronic except for banking records. ARR 86.

Considering the above, I agree with the United States Trustee that it was unnecessary for the trustee to maintain access to a printer and printed materials, other than the bank statements, in order to engage and participate in the field examination process.

2. The Field Examination Report's Conclusion of "Inadequate" Was Appropriate Because the Trustee's Accounting and Cash Management Practices and Procedures Are Insufficient.

The trustee also argues that the Field Examination Report's conclusion that his trustee operations are inadequate is inappropriate. ARR 6-9. He asserts that certain field examination findings are erroneous, and that his accounting and cash management practices and procedures as they relate to his (a) bank account reconciliations, (b) cash receipts log, (c) bank statements, deposit slips, and check stock; and (d) his estate receivables ledger are not insufficient, but rather are in compliance with the Chapter 7 Handbook. *Id.*

a. Bank Account Reconciliations

The trustee disagrees with the Analyst's finding that the trustee does not prepare bank reconciliations in accordance with the Chapter 7 Handbook. ARR 7.

The Chapter 7 Handbook provides that the following procedures must occur with respect to trustee bank account reconciliations:

5) BANK ACCOUNT RECONCILIATIONS

The trustee or an assistant must reconcile all bankruptcy estate accounts before the end of the following month. 28 U.S.C. § 586. A bank reconciliation identifies the account balance per the bank statement and

the account balance per the accounting records (Form 2), as of month end, and identifies the differences, such as deposits or transfers in transit, outstanding checks, NSF checks, service charges, and errors made by the bank or by the trustee. The reconciliation preparer must initial and date each bank reconciliation. The trustee, if not the reconciliation preparer, must review, initial and date the reconciliation reports as noted above. 28 U.S.C. § 586. Additional requirements for bank account reconciliations are provided in the Supplementary Materials.

Chapter 7 Handbook at 5-10.

The trustee described his summary reconciliation procedure upon receipt of the monthly bank statements. ARR 7. According to his summary, the trustee utilizes his case management software to run a reconciliation report, then reviews a printed copy of the report, and compares it to the bank account statements. *Id.* The trustee verifies that the account balances match the balances on the reconciliation reports. *Id.* He retains the reconciliation reports. *Id.* Attached to the Request for Review is a Bank Reconciliation Summary Worksheet generated by the trustee's software, which is stamped and initialed to indicate that the trustee has reviewed it. ARR 13.

In the Response, the United States Trustee observes that the trustee's citation in the Request for Review to the Chapter 7 Handbook is deceptive because it omits the last sentence of the provision, which pertains to additional requirements contained in the Supplementary Materials. ARR 24-25. As noted by the United States Trustee, the Supplementary Materials require a trustee who utilizes reports generated by case management system software to prepare or print a detailed reconciliation if the bank statement balance and Form 2 balance do not match, so that the differences can be itemized and investigated. ARR 25; *see* ARR 91. The Supplementary Materials provide additional procedures regarding the disposition of reconciling items when there are discrepancies between the balances on the bank statements and Form 2. ARR 25; *see* ARR 92.

The United States Trustee asserts that in addition to incorrectly citing the Chapter 7 Handbook, the trustee's procedures are flawed because he fails to perform the detailed reconciliation procedures required therein. ARR 25. The Analyst could not locate evidence in the trustee's files that he performed the detailed reconciliation required by the Supplementary Materials nor evidence that he performed any type of follow-up procedure. ARR 25, 41.

The Bank Reconciliation Summary Worksheet the trustee provided to demonstrate his bank account reconciliation procedures undermines his contention that his practices comply with the applicable requirements. ARR 13, 25. That document reveals a difference of \$17,033 between the bank statement balance and the ledger balance. ARR 13. Thus, the trustee was required to conduct a detailed reconciliation. However, the trustee does not contend, and the record contains no evidence, that such an analysis was performed. Further, the trustee's own description of his bank account reconciliation procedures, discussed above, indicates that his process is deficient because it is limited to checking the bank statement balance against the reconciliation report balance (adjusted ledger balance), rather than the Form 2 balance (ledger balance). ARR 7, 13, 25.

Based on the foregoing, the record shows that the trustee's bank account reconciliation procedures clearly are deficient because he fails to perform detailed reconciliations as required by the Chapter 7 Handbook and the accompanying Supplementary Materials. Additionally, the trustee's assertions on this point reveal that he fails to grasp his responsibilities as trustee. In sum, the trustee has not demonstrated that the Analyst's finding regarding bank account reconciliations is erroneous.

b. Cash Receipts Log.

The trustee next contests the Analyst's finding that the trustee does not contemporaneously maintain a receipt log to track all incoming receipts. ARR 7-8.

The pertinent Chapter 7 Handbook provision provides:

1) CASH RECEIPTS LOG

A cash[□] receipts log must be used to track all incoming receipts (except wire transfers). 28 U.S.C. § 586. This log must be used exclusively for the chapter 7 operation and may not be combined with a law firm or business receipts log. Generally, entries to a cash receipts log are handwritten, preferably in pen. However, a cash receipts log may also be kept electronically if it has programmed controls to prevent the deletion and modification of previously entered data and to prevent the insertion of transactions out of date sequence. Both types of logs must be maintained by the person who opens the mail. Entries are to be made contemporaneously with opening the mail and not at a later time. Receipts for all estates are recorded in the same log. The log must contain columns for the payer, date received[□], case number or name, amount, and remarks.

Chapter 7 Handbook at 5-3.

The trustee explains that within his trustee operation, he personally handles each receipt. ARR 8. Each receipt is logged into his case management software, which is used exclusively for chapter 7 cases. *Id.* At the end of each month, he prints a monthly receipts log, which he reviews against each bank statement wherein a deposit was made in the account. *Id.* To illustrate, the trustee, as an exhibit to his TIR, provides an example of a receipts log, which is stamped as reviewed and initialed by the trustee. ARR 14.

The United States Trustee submits that the trustee's description of his cash receipts log procedures reflects that he does not comprehend the requirement to *contemporaneously* enter receipts into the receipts log. ARR 25-26. The United States Trustee notes that during the field examination, the Analyst found that (i) the trustee failed to enter checks into the receipts log on two occasions, and (ii) the trustee's entries in the receipts log were not contemporaneous with his receipt of the checks on several occasions. *Id.* The Field Examination Report reflects that checks were not entered into the receipts log in _____ and _____, . ARR 26, 41-42. Also, in _____, _____, three out of eleven total receipts took more than six weeks from the date of the respective checks to be entered into the receipts log and deposited to the estate account. ARR 26, 42.

For the above reasons, I find that the trustee has not shown that the Analyst's finding that the trustee does not contemporaneously maintain a receipt log to track all incoming receipts is erroneous.

c. Bank Statements, Deposit Slips, and Check Stock.

The trustee also disputes the Analyst's conclusion that the captioning on the trustee's bank statements, check stock, and deposit slips supports the inadequate finding. ARR 8.

With regard to proper captioning of bank account documents, the Chapter 7 Handbook directs the following:

3) BANK STATEMENTS, DEPOSIT SLIPS, AND CHECK STOCK

All bank statements, deposit slips and checks must contain the following information to clearly identify the account as pertaining to a bankruptcy estate: case number, case name followed by the word "Debtor," trustee's name, followed by the word "Trustee," and the trustee's mailing address. 28 U.S.C. § 586.

Chapter 7 Handbook at 5-9.

While the trustee admits that his deposit slips are not captioned in compliance with the Chapter 7 Handbook, he claims that the deficiency is minor and can be easily remedied. ARR 8. He also states that his bank statements and checks all contain his name followed by the word "Trustee" on each document. *Id.* The trustee indicated that he "is not convinced that the Handbook requires that the address block contain 'Trustee' after his name[.]" although he believes this omission is easily correctable and should not be a basis to find his practices to be inadequate. *Id.* He submitted an example of each of the following documents from his trustee operation: a bank statement, a check, and a deposit slip. ARR 16-18.

The United States Trustee emphasizes that the Chapter 7 Handbook requires all bank statements, deposit slips, and checks to include information to clearly identify the account as pertaining to a bankruptcy estate. ARR 26. Although the main address block on the trustee's bank statements and check stock contain his name, it is not followed by the word "Trustee." ARR 27. The United States Trustee explains that, while the word "trustee" is found elsewhere on each of the trustee's estate banking documents, third parties must search the documents to discover that the trustee is acting in such capacity in the matter. *Id.* The United States Trustee insists that the importance of this issue should not be diminished, as proper captioning on estate banking documents puts third parties on notice that the accounts are estate accounts being administered by a fiduciary. *Id.*

I agree with the United States Trustee. Strict compliance with the Chapter 7 Handbook regarding the captioning of bank statements, deposit slips, and check stock is essential for the protection of all parties interested or involved with an estate. Therefore, I reject the trustee's contention that these deficiencies should not warrant a finding that his practices are inadequate,

particularly when considered in conjunction with the numerous other problems found herein to exist within the trustee's operation.

d. Estate Receivables

The trustee claims that with regard to the one case he is handling in which an accounts receivables ledger was created, he is in full compliance with the Chapter 7 Handbook. ARR 8-9.

The relevant Chapter 7 Handbook provision states:

1) ESTATE RECEIVABLES

- a. A receivables ledger or other tracking mechanism must be maintained for monitoring collections and following up on delinquent payments when multiple payments are being collected (e.g., accounts receivable, notes receivable, installment sales). It may be kept electronically or in paper format. An acceptable receivables ledger identifies the customer or payer, the balance due, amounts collected, and the status of collection efforts. It should reflect a running balance of amounts owed and be updated as payments are received.
- b. If the trustee intends to turn over the receivables to a third party for collection, the initial demand letter must be sent by the trustee. In addition, the trustee must retain a control copy of the receivables turned over and request a periodic status report and accounting of the collection efforts undertaken, monies collected, and remaining balances due. 28 U.S.C. §586.

Chapter 7 Handbook at 5-13.

The trustee reports that in that case, , collection efforts have been turned over to the counsel for the estate, and he regularly receives informal status reports on the collection efforts. ARR 9. The trustee states that, as he informed the Analyst, he has never requested a formal status report from the attorney for the estate, and he has not updated the record of each account receivable since turning the receivables over to counsel, except when payments have been made. *Id.*

The United States Trustee asserts that the trustee's description of his interaction with the estate attorney, along with his admitted failure to update the receivables ledger, demonstrates that he does not consistently maintain a receivables ledger to track collections in accordance with the Chapter 7 Handbook. ARR 27-28. Specifically, the trustee should request a periodic status report and accounting from the attorney undertaking collection efforts on behalf of the estate. *Id.* The trustee has acknowledged that he has not requested a status report or accounting from the estate's counsel, and has not updated the ledger with the status of the collection efforts. *Id.*

The United States Trustee explains that, although the trustee claims that he records payments received on the accounts, the record reflects otherwise. *Id.* In this regard, the Analyst

found that in the _____ case, the receivables ledger had not been updated for over a year. ARR 28, 43, 96-103. The Form 2 showed that payments had been made on two accounts receivable, yet neither of these collections was recorded in the receivables ledger, nor were the amounts owed on the accounts adjusted to reflect the payments. *Id.* The United States Trustee observes that, because the trustee does not receive periodic formal accountings from the estate's attorney, he does not have any system to track collections or balances due, which could result in errors in the ledger not being identified and lead to duplicative collection efforts. ARR 28.

The record supports the findings of the Analyst and the United States Trustee's position. Considering the above facts, I find the trustee's argument that his estate receivables are maintained in compliance with the Chapter 7 Handbook to be without merit.

3. The Trustee Has Failed to Monitor and Control Estate Professionals.

Contrary to the position of the United States Trustee and the ruling of the Court, the trustee asserts that the potential sale of tangible assets to the auctioneer appointed to inventory, appraise, and auction the debtor's assets in _____, was in accordance with the Chapter 7 Handbook. ARR 10.

The applicable Chapter 7 Handbook provision states:

4) SELF-DEALING AND INSIDER TRANSACTIONS

It is a violation of federal criminal law for a trustee to purchase directly or indirectly or otherwise deal in property of the estate for which the trustee serves. 18 U.S.C. § 154.

The trustee may not purchase assets from an estate administered by another trustee. In addition, the trustee may not knowingly sell estate property to another trustee or a professional regularly employed by the trustee, including the auctioneer, a family member of the trustee or professional, or an employee of the trustee or professional.

If the trustee becomes aware of any indications of sales to insiders or of collusion in bidding, the sale must immediately be stopped, and the matter reported to the United States Trustee. 28 U.S.C. § 586.

Chapter 7 Handbook at 2-8.

The trustee's entire argument on this point flows from the premise that the Chapter 7 Handbook permits a trustee to sell assets to a professional hired on behalf of the estate, as long as that professional is not "regularly" employed by the trustee. ARR 10. Because the auctioneer in the _____ case is not employed by the trustee on a recurring basis, and was hired by the trustee in this particular case only, the trustee asserts that the attempted sale was permissible under the Chapter 7 Handbook and had no potential criminal implications. *Id.*

The United States Trustee provides two reasons why the trustee's argument is incorrect: (1) the trustee selectively cites the Chapter 7 Handbook to support his position; and (2) he construes the Chapter 7 Handbook's use of the word "regularly" incorrectly. ARR 28-29. The United States Trustee clarifies that the trustee's Request for Review cites only a portion of the relevant Chapter 7 Handbook provision, conspicuously omitting the first and last sentences of the Self-Dealing and Insider Transactions section quoted above. *Id.* Understood in its entirety, this section of the Chapter 7 Handbook clearly prohibits any insider transactions involving estate property.

This provision unequivocally indicates that there are potential criminal ramifications to the proposed sale of assets to the auctioneer. I note that the first sentence cites to 18 U.S.C. § 154. This statute expressly makes it a Federal crime if "[a] person who, being a *custodian*, trustee, marshal, or other officer of the court. . . knowingly purchases, directly or indirectly, any property of the estate of which the person is such an officer in a case under title 11[.]" 18 U.S.C. § 154 (emphasis added). Within title 11, the meaning of the term "custodian" includes "trustee, receiver, or agent under applicable law, or under a contract, that is ***appointed or authorized to take charge of property of the debtor*** for the purpose of enforcing a lien against such property, or ***for the purpose of general administration of such property for the benefit of the debtor's creditors.***" 11 U.S.C. § 101(11)(C) (emphasis added). Thus, there are potential criminal consequences if a person appointed to take charge of estate property, to enforce a lien or to administer such property for the benefit of creditors, knowingly purchases any property of that estate.

The United States Trustee notes that in addition to highlighting the potential criminal ramifications of a sale of estate property to insiders, the above-cited section of the Chapter 7 Handbook prohibits certain transactions involving estate property, which may not constitute criminal conduct, yet are nevertheless forbidden due to the fiduciary obligations of the parties. ARR 29. Auctioneers are explicitly included among the professionals to whom sales of estate property are prohibited. *Id.* The United States Trustee explains that the auctioneer is an estate professional who should not profit from the estate, but rather maximize the value of the estate. *Id.*

The United States Trustee also contends that the trustee's position is incorrect because he defines "regularly" to mean recurring, and, therefore, the Chapter 7 Handbook only forbids sales to professionals whom a trustee has repeatedly hired. ARR 28-29. The United States Trustee asserts that, as used in the Chapter 7 Handbook, "regularly" means an act performed pursuant to an established rule or law. *Id.* Thus, "regularly employed," in the context of the provision in question, means hired in compliance with 11 U.S.C. § 327(a). *Id.*

I agree with the United States Trustee who concludes that the Chapter 7 Handbook prohibition against sales to insiders applies directly to the facts in the _____ case. The auctioneer was an estate fiduciary with a duty to use his access to and knowledge of the estate assets to ensure that the assets realize the maximum value on behalf of the estate. I further agree with the United States Trustee on the issue of the definition of "regularly" within the applicable Chapter 7 Handbook provision. This construction is consistent with the purpose and scheme of the Bankruptcy Code, as well as 18 U.S.C. § 154. Adopting the definition of "regularly" proposed by the trustee would allow trustees and estate professionals to circumvent their

statutory and regulatory duty to maximize the value of the estate. Moreover, I find it alarming that the trustee persists in his misinterpretation of this important and clearly defined prohibition, despite the ruling of the Court in the _____ case and the United States Trustee's efforts to instruct him in this matter.

Thus, I find the trustee's position that the attempted sale of estate assets to the auctioneer appointed in the case was in accordance with the Chapter 7 Handbook to be decidedly mistaken.

4. The Trustee's Remaining Arguments Are Unavailing.

Finally, the trustee claims that certain issues occurred in the early stages of his career as a panel trustee, and he has taken corrective actions to address those items. ARR 11. He believes that if he were to provide a detailed explanation of all the findings in the Field Examination Report, his procedures for accounting and cash management may be shown to be adequate. *Id.* Lastly, he affirms that he strives to ensure that his practice is in compliance with the Chapter 7 Handbook, and expresses a willingness to take all necessary remedial action required by the United States Trustee to correct the deficiencies in his case management procedures. ARR 11-12.

Even if these representations were true, the record as a whole does not convince me that I should reverse the United States Trustee's suspension decision, because, as discussed below, the trustee's suspension from active rotation of case assignments is required in accordance with the Manual and the Chapter 7 Handbook. Manual at 41; Chapter 7 Handbook at 6-3. The trustee failed to advance a single persuasive argument in the Request for Review with respect to the several Field Examination Report findings that he took the opportunity to address. Therefore, irrespective of the merits of the remaining unanswered findings, the trustee's suspension is warranted.

E. Suspension from the Case Assignments Pending Fulfillment of the Conditions of the Notice Was an Appropriate Exercise of the United States Trustee's Discretion.

In an email dated January 29, 2015, the Assistant United States Trustee advised the trustee that the duration of the suspension is indefinite. ARR 3. The Assistant United States Trustee also informed the trustee that resumption of case assignments to the trustee will require: (1) implementation of corrective actions; (2) a follow-up visit by the United States Trustee; and (3) approval of the Deputy Director, Executive Office for United States Trustees. *Id.*¹¹

I find that an indefinite suspension is reasonable under the circumstances. As discussed above, the Manual and the Chapter 7 Handbook direct that a trustee who receives a finding of "inadequate" in a field examination report will be suspended from active rotation, in accordance

¹¹ The conditions set forth by the Assistant United States Trustee are consistent with the Chapter 7 Handbook, which provides "[i]mplementation of corrective actions, a follow-up visit by the United States Trustee, and the approval of the Deputy Director, Executive Office for United States Trustees, are required for case assignments to resume." Chapter 7 Handbook at 6-3.

with the procedures prescribed in 28 C.F.R. § 58.6. Manual at 41; Chapter 7 Handbook at 6-3. The Chapter 7 Handbook indicates that an “inadequate” conclusion “means that the quality of the trustee’s accounting and cash management practices and procedures is insufficient for safeguarding bankruptcy funds and assets.” Chapter 7 Handbook at 6-3.

As discussed herein, I agree with the Analyst’s conclusion that the trustee’s accounting and cash management practices and procedures are insufficient for safeguarding bankruptcy estate funds and assets, and that the finding of “inadequate” in the Field Examination Report was therefore appropriate. Hence, the trustee’s suspension from active rotation of case assignments is required pursuant to the Manual and the Chapter 7 Handbook. Manual at 41; Chapter 7 Handbook at 6-3. There now remains only the issue of whether the United States Trustee appropriately exercised his discretion in conditioning the trustee’s return to the active rotation in the manner indicated.

I find that the indefinite duration of the suspension was an appropriate exercise of the United States Trustee’s discretion. The performance issues detailed above raise significant questions about the trustee’s knowledge of the statutes, rules, and regulations governing the conduct of chapter 7 panel trustees, and his competence as an estate fiduciary. The indefinite suspension proposed by the United States Trustee may serve the purpose of allowing the trustee a respite from processing new cases while he better acquaints himself with the requirements of the Chapter 7 Handbook, corrects the outstanding problems identified in the 2014 TIR Letter and deficiencies cited in the Field Examination Report, and puts in place procedures to prevent a reoccurrence of those problems.

Moreover, inasmuch as a return to active panel membership will largely be determined by whether the trustee is capable of taking corrective actions to the satisfaction of the United States Trustee and the Deputy Director, Executive Office for United States Trustees, the trustee’s remedial efforts will have a significant bearing on the duration of the suspension.

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 indefinitely suspend the trustee from active case rotation status on the chapter 7 panel for the District of , with his return to rotation strictly conditioned upon (1) implementation of corrective actions; (2) a follow-up visit by the United States Trustee; and (3) approval of the Deputy Director for Field Operations, Executive Office for United States Trustees.

This decision constitutes final agency action in this matter.

Dated: _____

2/26/16



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