

Department of Justice
Executive Office for United States Trustees

Final Agency Action
Case No. 99-0003

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

[REDACTED], a chapter 13 standing trustee for the United States Bankruptcy Court for the [REDACTED] District of [REDACTED],^{1/} seeks review of a decision by the United States Trustee for Region [REDACTED] to suspend his receipt of new case assignments for ninety (90) days while the United States Trustee reviews the issues surrounding the trustee's failure to disclose allocations and related party transactions by and between the trustee and his law firm, [REDACTED].^{2/} Based upon the record before me, I affirm the United States Trustee's decision.^{3/}

I. Course of this Proceeding

The trustee has been a chapter 13 standing trustee in this District since his appointment in 1991. On September 29, 1999, the United States Trustee notified the trustee that new case assignments would be suspended for ninety days (the "Notice").^{4/} By letter dated October 18, 1999, the trustee filed a request for review with the Director of the Executive Office for United States Trustees (the

^{1/} Hereinafter, for ease of reference, "the trustee."

^{2/} 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.

^{3/} The record in this matter includes the United States Trustee's Notice; the trustee's Request for Review; the United States Trustee's Response; the trustee's Reply; the United States Trustee's Surreply; and documents that accompanied those various submissions.

^{4/} The United States Trustee did not issue an Interim Directive. See 28 C.F.R. 58.6(d) (setting forth the bases for an Interim Directive). Accordingly, the trustee has continued to receive new case assignments while this review has been conducted. See 28 C.F.R. 58.6(c) (providing that a trustee shall continue to receive new case assignments during the review period unless the United States Trustee issues an Interim Directive).

“Request for Review”). On November 1, 1999, the United States Trustee filed her response to the Request for Review (the “Response”). By letter dated November 24, 1999, the trustee supplemented his Request for Review, and asked that I accept it pursuant to 28 C.F.R. 58.6(h)^{5/} (the “Reply”); pursuant to that section I accept that submission and include it in the record. On November 30, 1999, the United States Trustee supplemented her Response (the “Surreply”); I also accept it pursuant to section 58.6(h) and include it in the record.

II. Standard of Review

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).

III. Analysis

Chapter 13 of the Bankruptcy Code makes bankruptcy relief available to individuals with regular income and limited debt. Chapter 13 debtors propose plans to repay their creditors over a three-year period, unless the court, for cause, approves a longer period that cannot exceed five years. The plans must meet certain requirements and must be confirmed by the court. 11 U.S.C. 1322, 1325.

Chapter 13 cases are administered by chapter 13 standing trustees, who are appointed and supervised by United States Trustees and the Department of Justice.^{6/} 28 U.S.C. 586(b). To pay for their compensation and expenses, standing trustees keep a set percentage of the plan payments they receive from the debtors in the cases they administer. 28 U.S.C. 586(e); see also 11 U.S.C. 326(b) (prohibiting courts from awarding compensation or reimbursement of expenses to standing trustees appointed under 28 U.S.C. 586(b)). The Director sets a percentage fee for each standing trustee in consultation with the United States Trustee for the region in which the standing trustee operates. 28 U.S.C. 586(e)(1)(B). The Director also establishes the maximum annual compensation each standing

^{5/} That section provides that “[t]he Director may seek additional information from any party in the manner and to the extent the Director deems appropriate.”

^{6/} A United States Trustee is authorized to appoint one or more standing trustees, subject to the Attorney General's approval, if "the number of cases . . . commenced in a particular region so warrants. . . ." 28 U.S.C. 586(b).

trustee may earn, which the United States Code mandates may not exceed the highest annual rate of basic pay in effect for level V of the Executive Schedule and the comparable cash value of employment benefits, or five percent of receipts, whichever is lower. 28 U.S.C. 586(e)(1)(A) and 586(e)(2)(A).

In a chapter 13 case, a standing trustee's fee may not exceed ten percent of payments received under the plan. 28 U.S.C. 586(e)(1)(B)(i). The funds collected pursuant to the percentage fee can be used only to pay the standing trustee's compensation and "actual, necessary expenses." 28 U.S.C. 586(e)(1). If excess funds are collected, they must be turned over to the United States Trustee System Fund. 28 U.S.C. 586(e)(2).

Therefore, regardless of the number of cases that a standing trustee administers, the trustee's maximum annual compensation cannot exceed the amount fixed by the Director, and the trustee's total amount of compensation and expenses cannot exceed ten percent of total plan payments (or whatever lesser percentage has been fixed by the Attorney General). The legislative history of the Bankruptcy Reform Act of 1978 notes that this system was enacted "to encourage the standing trustees to keep costs low at the risk of reduced compensation." H.R. Rep. No. 595, 95th Cong., 1st Sess. 107 (1977), reprinted in 1978 U.S.C.C.A.N. 6068.

To determine which expenses are actual and necessary, the Department has adopted certain procedures. Before each fiscal year, standing trustees submit proposed budgets with projected revenues and expenses to the United States Trustee in their region. United States Trustee Program employees analyze the budgets and supplemental documents that are submitted and request additional information when appropriate. The Director, in consultation with the appropriate United States Trustee, ultimately determines which expenses appear to be "actual" and "necessary," and establishes the annual compensation for each standing trustee. Once compensation and expenses are determined, the percentage fee for each standing trustee is calculated and memorialized.

Budgets thus play a crucial role in United States Trustees' oversight of standing trustees. Budgets explain how standing trustees will be administering their cases from an operational standpoint, and form the bases for the approval of specific expenses and for establishing their permissible compensation.

The United States Trustee Program also supervises trustees by prohibiting them from using debtors' funds to pay for certain types of prohibited transactions. Principal among these are certain prohibitions against using debtors' funds to employ relatives or engage in contracts with entities that are related to the trustee. On June 2, 1997, the Department of Justice adopted a formal rule to prohibit such related party transactions, subject only to the waivers and exceptions set forth in the rule. 62 Fed. Reg. 30172 (June 7, 1997) (codified at 28 C.F.R. 58.1 and 58.4).

The rule became effective on October 1, 1997 (which was the beginning of the Fiscal Year 1998 Budget) for those standing trustees, including this trustee, who were appointed on or before July

1, 1997.^{7/} 28 C.F.R. 58.4(e). The commentary to the rule made this clear. 62 Fed. Reg. at 30175 (providing that “[w]ith respect to current standing trustees, the rule will not be effective until the first day of the trustees' next fiscal year. That date is October 1, 1997, for standing trustees who serve in chapter 13 cases.”).

The Department adopted this rule based on the Department’s and the United States Trustees’ expertise and experience in supervising standing trustees. 62 Fed. Reg. at 30176. The rule prohibited related-party dealings because the Department had detected a pattern of recurring problems resulting from these practices, including hiring relatives at above market rates, hiring relatives where the United States Trustee could not verify that the relatives performed services, renting office space to trustee operations at above the market rate to cover mortgage payments and taxes, and using bankruptcy trust funds to subsidize other businesses in which trustees were involved. Id. at 30176.

To prevent such problems, the rule prohibits trustees from contracting or allocating expenses with the trustee or with an entity in which the trustee had a financial or ownership interest. 28 C.F.R. 58.4(d)(2)(ii). Recognizing that certain waivers of the prohibition against allocation might be appropriate in limited circumstances, the Department promulgated section 58.4(d)(2)(iii)(B) of the rule. It authorizes a United States Trustee to grant a trustee a waiver to allocate the costs of trustee expenses with a related entity if the trustee establishes three things:

1. the trustee has earned less than maximum compensation during any of the last three fiscal years;
2. the trustee has provided the United States Trustee with an appraisal or other written evidence that the allocation is necessary; and,
3. the allocated cost is at or below market rate for that good or service.^{8/}

28 C.F.R. 58.4(d)(2)(ii)(B)(1). The rule does not allow trustees to seek, or United States Trustees to grant, any waivers for trustees to enter into contractual relationships with related entities; it only

^{7/} It became effective July 2, 1997, for trustees appointed on or after that date. 28 C.F.R. 58.4(e).

^{8/} An example of an allocation would be the sharing of a color copying machine. A trustee might have a financial interest in a law firm that owned such a machine. A trustee operation might not have a regular use for such a machine. If a waiver were sought and approved, the cost of the machine could be apportioned between the firm and the trustee operation if the trustee was not receiving maximum compensation and the trustee provided written evidence establishing that allocation was necessary and the cost was at or below market rate.

authorizes waiver of the separate allocation prohibition. Id.

On June 29, 1998, the trustee in this case sought a waiver of this prohibition so he could allocate office space with his law firm. Response at Ex. 4. The trustee did not seek a waiver for any other purpose and his request specified that the total dollar value of the leasehold waiver request was \$20,600. Id. On September 16, 1998, the United States Trustee granted that waiver request for fiscal year 1999. Response at Ex. 5.

The record in this case also establishes, however, that this trustee submitted budgets for fiscal years 1999 and 2000 to the Department of Justice, which failed to reveal other related party transactions. Although the trustee certified that those budgets were accurate, they were not. In fact, the trustee's budgets failed to disclose that he was paying his law firm for maintenance, equipment and furniture, and employees. The trustee also represented in those budgets that he would not allocate, or had not allocated, any costs between himself and related entities when he had. Finally, the record reveals this trustee engaged in certain prohibited allocations with a related party without seeking or obtaining a waiver.

One area where the trustee failed to submit accurate budgets to the United States Trustee involved the maintenance of the trustee's office space. In 1994, the trustee entered into a month to month Equipment Service Contract and Agreement with his law firm.^{2/} Response at Ex. 10, p. 1 and 4. Pursuant to that contract, the trustee agreed to pay his law firm for "clean[ing] and maintain[ing] all areas of the office and [for] provid[ing] paper supplies to the bathroom." Id.

The trustee submitted his Fiscal Year 1999 Budget (for the period between October 1, 1998 and September 30, 1999) to the United States Trustee on June 24, 1998. Notice at Ex. 2 (proposed budget dated June 24, 1998) and Response at Ex. 4 (same). Item 19 on that budget was entitled "Maintenance." There, the trustee represented that he had previously made payments to himself pursuant to a service agreement, but represented he would not be making similar payments in fiscal year 1999:

	FY 97 Actual	Current FY 98 Full Year	Upcoming FY 99 Budget	Upcoming Percentage Change
19. Maintenance				
A. [trustee's name]-equipment	2,400	600	0	
B. Service contracts on new equipment	0	1,800	1,800	0.0%

^{2/} That agreement is undated. Id. at 4. Although the contract expressly states it was effective October 1, 1994, it includes a provision reducing the annual payment from \$2,400 to \$1,800 effective "10/1/98." Id.

Response at Ex. 4, Item 19. Reasonably read, this budget item implied the trustee previously had a maintenance contract in which he had a personal interest, but that contract had been replaced with “service contracts on new equipment” with an unrelated party sometime in 1998.

On June 30, 1999, the trustee submitted his Fiscal Year 2000 Budget. Response at Ex. 6. In Item 19, entitled Maintenance, the trustee revealed he had paid himself \$1,800 in fiscal year 1999 for maintenance:

	FY 98 Actual	Current FY 99 Full Year	Upcoming FY 00 Budget	Upcoming Percentage Change
19. Maintenance				
A. [trustee’s name]	2,400	1,800	1,800	0.0%

Id.

When the United States Trustee’s staff discovered that the trustee had paid himself \$1,800^{10/} notwithstanding the fact that he had represented in his Fiscal Year 1999 Budget that — unlike the prior years — he would not be making any such payment to himself, the staff asked the trustee to explain the discrepancy. Response at 4. The trustee responded by letter dated August 27, 1999. Response at 4, and Ex. 10 at p 1-2. There, the trustee provided the United States Trustee with the 1994 contract between the trustee and his law firm, pursuant to which he used trustee operation funds to make payments to his law firm in fiscal year 1999.

This is not the only related party transaction the trustee neglected to identify in his Fiscal Year 1999 Budget. His budget also failed to disclose that the trustee intended to pay his law firm \$7,200 a year for the use of a copy machine, a fax machine, a Pitney Bowes mail machine, two typewriters, a conference table, six conference room chairs, five secretarial chairs and cubicles, and an integrated telephone system. Compare Response at 4; and Response at Ex. 4, Item 20 (Fiscal Year 1999 Budget for equipment/furniture rental) with Response at Ex. 10, p. 2 and 3 (August 27, 1999 letter from the trustee disclosing that he was paying his firm \$7,200 for these services); and Response at Ex. 12, p. 1-2 (noting he had been making these payments “for many years.”).

The trustee’s conduct in this regard is most troubling. It is clear from the trustee’s disclosure of maintenance expenses, discussed above, that he knew he had to tell the United States Trustee when he was entering into a contract with himself or a related entity. See Response at Ex. 4, Item 19 (trustee’s express disclosure in his proposed Fiscal Year 1999 Budget that his maintenance contract for fiscal year 1997 and part of 1998 formerly had been with a related entity). Nevertheless, on that same

^{10/} This was in addition to - and not a part of - the \$20,600 he had paid his law firm to lease office space pursuant to the 1999 waiver to lease such space (see Response at Ex. 6, Item 2).

budget, he failed to disclose that he was paying his law firm \$7,200 a year to rent furniture:

	FY 97 Actual	FY 98 Full Year	FY 99 Budget	Percentage Change
20. Equipment/Furniture Rental				
A. Business equipment	12,000	8,400	7,200	-14.3%
21. Equipment/Furniture Purchases				
A. Business equipment	0	1,000	6,500	550%

Id. at Ex. 4, Items 20 and 21.

Fairly read in conjunction with Item 19, which disclosed a contract with a related party, the absence of a similar disclosure in Item 20 reasonably would lead the United States Trustee to conclude that the trustee was renting equipment and furniture from a third party — not that he was renting it from his law firm.

If the trustee intended to allocate equipment and furniture with his law firm, the trustee also should have set that out on the Yearly Allocated Expense Exhibit that formed a part of his budget. Id. at Ex 4, Item IV.^{11/} The trustee submitted this Exhibit to the United States Trustee as part of his budget. However, his Exhibit stated that he was not allocating any expense with any other entity. His Exhibit affirmatively stated that the value of all allocations was \$0.00. Id.

The trustee’s Fiscal Year 1999 Budget had a similar problem regarding the disclosure of the people who were working for the trustee operation. His Fiscal Year 1999 Budget represented that he had used, and would continue to use, only five employees:

III DETAIL OF PERSONNEL EXPENSE (CONTINUED)

	FY 97 Actual	FY 98 Full Year	FY 99 Budget	Percentage Change
Employee #1 J_____ C_____	[redacted]	[redacted]	[redacted]	[redacted]
Employee #2 D__ C_____	[redacted]	[redacted]	[redacted]	[redacted]
Employee #3 N_ B__ (H__ W__ start)	[redacted]	[redacted]	[redacted]	[redacted]
Employee #4 J_____ Z_____	[redacted]	[redacted]	[redacted]	[redacted]
Employee #5 S____ S_____	[redacted]	[redacted]	[redacted]	[redacted]

Response at Exhibit 4, Item III Detail of Personnel Expenses. In section III of the proposed budget, the trustee was asked to supply the name and the position of each employee. Id. For each employee, the trustee had to budget for salary, overtime, bonuses, employer’s contributions, employee benefits,

^{11/} This trustee’s 1999 budget changed this to Item I. Nevertheless, it appears between items III and V in his budget.

average number of hours worked per week and additional information. Id. For each of these categories, the trustee identified only these five employees. Id. The budget form contained space for fifteen employees. Id. The trustee left employee lines six through fifteen blank. Id.

The trustee’s original Fiscal Year 2000 Budget, which he submitted on June 30, 1999, affirmatively represented that the trustee had used only five employees during fiscal year 1999:

III DETAIL OF PERSONNEL EXPENSE (CONTINUED)

	FY 98 Actual	Current FY 99 Full Year	Upcoming FY 00 Budget	Upcoming Percentage Change
Employee #1 J____ C_____	[redacted]	[redacted]	[redacted]	[redacted]
Employee #2 C____H_____	[redacted]	[redacted]	[redacted]	[redacted]
Employee #3 N____ B_____	[redacted]	[redacted]	[redacted]	[redacted]
Employee #4 J____ Z_____	[redacted]	[redacted]	[redacted]	[redacted]
Employee #5 S____ S_____	[redacted]	[redacted]	[redacted]	[redacted]

Response at Ex. 6, Item III Detail of Personnel Expense. In section III of the budget, the trustee was asked to supply the name and position of each employee. Id. For each employee, the trustee had to budget for salary, overtime, bonuses, employer’s contributions, employee benefits, average number of hours worked per week and additional information. Id. For each of these categories, the trustee identified only five employees as having worked for the trustee operation during fiscal year 1999. Id. The budget form contained space for fifteen employees. Id. The trustee left employee lines six through fifteen blank, indicating that no other employees had worked for the trustee operation during fiscal year 1999. Id.

This was inaccurate. After the United States Trustee discovered the trustee’s other unreported related party transactions, the trustee submitted an amended Fiscal Year 1999 budget on September 23, 1999. Response at Ex. 14. In it, the trustee disclosed that eight — rather than five — employees had worked for the trustee operation and had been paid from expense funds. Response at Ex. 14, Item III Detail of Personnel Expense. In addition to the five employees identified in the original 1999 budget, the amended 1999 budget disclosed that E____ G____, A____ B____, and S____ Z____ also had worked for and been paid by the trustee operation during 1999. Id.

On October 4, 1999, the trustee submitted a provisional waiver request to the United States Trustee for budget year 1999. Response at Ex. 19. In it, he revealed that 21 persons actually had worked for the trustee operation in fiscal year 1999. Response at 5, n. 5, and Ex. 19. On October 1, 1999, the trustee submitted another amended Fiscal Year 1999 Budget to the United States Trustee; it stated that 23 people had worked for the trustee operation during fiscal year 1999. Response at 5, n. 5, and Ex. 20, Item III Detail of Personnel Expense. Many of these individuals also worked for the trustee’s law firm. See Response at Exhibit 19 (October 4, 1999 letter from the trustee to the United States Trustee).

Prior to his suspension, the trustee never sought a waiver for the maintenance arrangement, the furniture and equipment charges, or the use of law firm employees. In his Fiscal Year 1999 Budget, the trustee “certif[ied] that the information contained herein is correct.” Response at Ex. 4, certification. He signed the same certification for his Fiscal Year 2000 Budget. Response at Ex. 6, certification. In that certification, he also “certif[ied] that all dealings with related parties, as defined in 28 C.F.R. Part 58.4, have been disclosed.” Id. In both his Fiscal Year 1999 and Fiscal Year 2000 budgets, the trustee affirmatively stated that “[n]o allocated expense are presented for the fiscal year . . . since all expenses will be direct paid. Therefore, no apportionment is required.” Response at Ex. 4, Note 4, and Ex. 6, Note 4.

Based upon this record, I conclude the United States Trustee’s decision to suspend this trustee is a reasonable exercise of discretion and is supported by the record. The law holds bankruptcy trustees to the highest fiduciary standards of loyalty. Meinhard v. Salmon, 249 N.Y. 458, 464, 164 N.E. 545, 546 (1928) (Cardozo, C.J.). In Woods v. City National Bank & Trust Co., 312 U.S. 262, 278, reh’g denied, 312 U.S. 716 (1941), the Supreme Court held that trustees who violated their duty of loyalty are not entitled to compensation for services to the bankruptcy estate regardless of whether the estate had been harmed. Woods, 312 U.S. at 268.

In Mosser v. Darrow, 341 U.S. 267 (1951), the Court stressed the wisdom of preventing trustees from personally profiting from their stewardship of bankruptcy estates:

Equity tolerates in bankruptcy trustees no interest adverse to the trust. This is not because such interests are always corrupt but because they are always corrupting. By its exclusion of the trustee from any personal interest, it seeks to avoid such delicate inquiries as we have here into the conduct of its own appointees by exacting from them forbearance of all opportunities to advance self-interest that might bring the disinterestedness of their administration into question.

Id. at 271-72. These principles remain viable today. See, e.g., United States Trustee v. Bloom (In re Palm Coast, Matanza Shores Ltd. Partnership), 101 F.3d 253, 257-58 (2d Cir. 1996) (applying common law of trusts).

Here, the trustee engaged in several forms of questionable conduct. First, he failed to inform the United States Trustee about the nature and extent of his payments to his law firm. The trustee’s Fiscal Year 1999 Budget reported, for example, that he would no longer be paying a maintenance fee to himself. Response at Ex. 4, Item 19. He made this representation despite the fact that he had a contract with his law firm for such services dating to 1994. Response at Ex. 10, p. 1 and 4. His Fiscal Year 2000 Budget reveals that he paid his law firm \$1,800 in 1999 for maintenance despite representing in his 1999 budget that he no longer was doing so, and despite the fact he never sought to amend his

budget during the time he was making those payments.^{12/} Response at Ex. 6, Item 19, Maintenance.

The trustee's payment of furniture and equipment rental to his law firm also is disturbing. His 1999 waiver request to allocate space with his law firm did not seek permission to pay himself or his law firm for furniture or any other equipment (Response at Ex. 4), and his 1999 Fiscal Year Budget item for furniture and office equipment did not reveal that he intended to make such payments to a related entity. Compare Ex. 4, Item 19 (where the trustee discloses that he had previously made payments to a related entity for maintenance) with Item 20 (where the trustee failed to disclose that he intended to make payments to a related entity for furniture and equipment rental). Moreover, the trustee's Yearly Allocated Expense Exhibit to his budget failed to reflect this allocation; it represented that the total value of all allocations was zero even though the trustee actually was paying \$7,2000 to law firm for the use of law firm furniture and equipment.

Finally, the trustee's characterization of employees, in both his 1999 and 2000 budgets, was inaccurate. The trustee's 1999 budget sought permission to use five specific persons to perform trustee work, and his initial 2000 budget, the correctness of which he certified, represented that only those five persons had performed such services. Response at Exhibit 4, Item III Detail of Personnel Expenses; Response at Ex. 6, Item III Detail of Personnel Expense.

This was not true. Only after the United States Trustee uncovered the trustee's self-dealing in maintenance and furniture and equipment did the trustee seek to amend his 1999 budget to disclose that more persons had worked for the trustee in 1999, without prior disclosure and without permission of the United States Trustee. Even that September 23, 1999 amendment was inaccurate, as it represented that only eight employees had performed work for the trustee operation when over 20 actually did. Response at Ex. 14, Item III Detail of Personnel Expense (eight employees); Response at Ex. 19 (21 employees); Response at Ex. 20, Item III Detail of Personnel Expense (23 employees). The record reveals that most, if not all, of these additional employees also worked at the trustee's law firm. Response at Ex. 19.

^{12/} The trustee sought and received a waiver to pay his law firm \$20,600 per annum in rent. See Response at Ex. 4 (June 29, 1998 waiver request in the amount of \$20,600) and Response at Ex. 5 (September 16, 1998 waiver approval). The trustee's request mentioned maintenance but lumped it with the \$20,600 rent waiver request. He did not disclose that he had a separate contract for maintenance or that he would pay anything above \$20,600 for rent and maintenance. The trustee's Fiscal Year 1999 Budget supports this. Item 2 shows \$20,600 for rent and Item 19 shows nothing to be paid to the trustee for maintenance. Response at Ex. 4, Items 2 and 19. Despite the fact that the trustee never obtained a waiver to pay maintenance to himself and the total sum he sought in his waiver was \$20,600, the trustee's Fiscal Year 2000 Budget disclosed that he had actually paid his law firm the full \$20,600 as rent plus an additional \$1,800 as maintenance. Response at Ex. 6, Items 2 and 19.

The trustee's Reply seeks to justify his failure to accurately report the allocation of employees between his law firm and his trustee operation. Reply at 1-2. The trustee contends the budget item that required him to set out the name, position, salary, compensation and benefits for each person who worked for the trustee operation allowed him to simply identify the number of full time positions at his trustee operation, not the persons' names or whether they also worked for his firm. This is, at best, a tortured reading of the form. The form requires that each person be identified by name - and has lines to fill in the names of at least 15 people. The trustee filled out the form properly for five people, identifying their salaries and benefits, and the hours per week they would work for the trustee operation; he simply ignored the other 16-18 people who also worked for it.^{13/}

This justification also fails to explain why the trustee inaccurately stated on the Yearly Allocated Expense Exhibit to his budget that the total value of all allocations was \$0.00. Response at Ex. 4, Item IV Yearly Allocated Expense Exhibit. Given that the trustee was allocating multiple employees, the trustee's allocation Exhibit should have reflected that. It should not have stated that the total value of allocated costs was nothing.

At a minimum, by the summer of 1999, the trustee knew he had to disclose the names of all the people who actually worked for the trustee operation and the names of all allocated employees. Nevertheless, he represented — incorrectly — on September 23, 1999 that he had used only a total of eight employees — which he again provided by name — at his trustee operation. Response at Ex. 14, Item III Detail of Personnel Expense. Either this representation was untrue or was made with a cavalier disregard for the truth, because in early October the trustee further revealed that over twenty employees had worked for the trustee operation, most of whom were also law firm employees. Response at Ex. 19 and 20. Even here, the trustee could not or would not take the time to accurately inform the United States Trustee how many law firm employees had worked for the trustee operation, inconsistently identifying 21 and 23. Id.

In light of this record, I conclude the United States Trustee's decision to suspend new case assignments to this trustee for ninety days is reasonable. This trustee has deviated significantly from the standards of acceptable professional behavior. His conduct raises serious questions regarding his ability, or his willingness, to make truthful representations to the Department of Justice. It also reveals that he operated in violation of the binding rules of the Department of Justice, rules that are in place to protect the debtors' estates that standing trustees are appointed to serve.

^{13/} Indeed, the trustee listed two people for one position in his 1999 budget, N____ B____ and H____ W____, thus evidencing he knew he had to list everyone who worked at each position and could not use five persons' names as a shorthand way of disclosing that more than twenty persons actually were working at the trustee operation. Response at Exhibit 4, Item III Detail of Personnel Expenses.

United States Trustees are officials of the Department of Justice appointed by the Attorney General to supervise the administration of bankruptcy cases and trustees, and to assist the Attorney General in the discharge of her statutory duties. See 28 U.S.C. 581-589 (specifying the powers of United States Trustees).^{14/} They cannot supervise standing trustees, help approve their budgets, or help establish an appropriate percentage fee, if trustees fail to submit accurate budgets. United States Trustees cannot carry out the important goals underlying the prohibition against related party transactions if trustees engage in prohibited transactions without informing the United States Trustee and without first obtaining a waiver of the rule. In this case, the record reflects this trustee failed to make accurate disclosures to the United States Trustee. The trustee also engaged in prohibited allocations without the benefit of a waiver. Given these facts, it is appropriate to suspend this trustee for ninety days, while the United States Trustee further investigates this trustee's conduct.^{15/}

IV. Conclusion

The decision to suspend this trustee's receipt of new cases for ninety days is an appropriate exercise of the United States Trustee's discretion and is supported by the record. Accordingly, based upon my review of the record, including the written submissions of the United States Trustee and the trustee, I affirm the United States Trustee's decision to suspend the trustee's eligibility for assignment of new cases for a ninety-day period. That suspension shall commence on the date upon which the United States Trustee stops assigning cases to this trustee. The United States Trustee shall notify the trustee in writing of the date of the commencement of this suspension.

^{14/} See also United States Trustee v. Columbia Gas Systems, Inc. (In re Columbia Gas Systems, Inc.), 33 F.3d 294, 296 (3d Cir. 1994)(United States Trustees oversee the bankruptcy process, protect the public interest, and ensure that bankruptcy cases are conducted according to law)(citing H.R. Rep. No. 595, 95th Cong., 2d Sess. 109 (1977)); United States Trustee v. Revco D.S., Inc. (In re Revco D.S., Inc.), 898 F.2d 498, 499 (6th Cir. 1990) (“[t]he United States trustee, an officer of the Executive Branch, represents . . . [the] public interest”).

^{15/} In his Reply, the trustee asks that I not issue this decision until the United States Trustee completes a financial audit of the trustee's operations. I decline that request. This review involves the question whether the United States Trustee acted appropriately in suspending this trustee while the United States Trustee reviews the trustee operation to determine whether additional problems might exist. The record in this case plainly establishes this trustee has failed to make full and fair disclosure to the United States Trustee in the past. An audit will not change these facts; it will simply disclose whether the trustee has engaged in other forms of misconduct. The conduct that produced this suspension is clearly established in the record before me. The trustee has had a full and fair opportunity to present material as part of this review. I have carefully reviewed all the material that the trustee has submitted. Given the record before me, I find that a delay in the issuance of this decision is not warranted.

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

Dated: December 1, 1999

Joseph Patchan
Director
Executive Office for
United States Trustees