

**DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES
FINAL AGENCY ACTION
CASE NO. 05-0004
(Corrected Decision, November 1, 2005)
Redacted**

**Review of the Decision of the United States Trustee
for Region [] Regarding Chapter 7 Trustee []**

[The trustee] a chapter 7 panel trustee for the District of [],¹ seeks review of a decision by the United States Trustee for Region []² suspending his eligibility to receive new case assignments for six months. Based upon the record before me, I modify the United States Trustee's decision to decrease the length of the suspension from six months to four months.³

I. Course of this Proceeding

The trustee has been a member of the chapter 7 panel for over 15 years. By a Notice of Suspension ("Notice") dated August 9, 2005, the United States Trustee informed the trustee that he would be suspended for six months from the active chapter 7 case rotation. Notice at 1. *See also* 28 C.F.R. § 58.6 (Department of Justice procedures governing administrative review). The United States Trustee further determined that the trustee must obtain 12 hours of training on appropriate behavior with diverse groups of people. Notice at 15. After three months and upon successful completion of this training, the trustee would be eligible for a limited assignment of cases. Finally, the United States Trustee stated that any repetition of the conduct described in the Notice would result in an immediate termination of the trustee's appointment. On August 26, 2005, the trustee filed a request for review with the Director of the Executive Office for United States Trustees (the "Request for Review"). The appeal pertained to the suspension only. On September 10, 2005, the United States Trustee filed a response to the Request for Review (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 administrative record in this matter includes the United States Trustee's Notice of Suspension; the trustee's Request for Review; the United States Trustee's Response; the trustee's Supplemental Response; the tapes and transcripts of the § 341 meetings held on October 18, 2004, November 15, 2004, December 20, 2004, January 18, 2005, February 22, 2005, March 21, 2005, April 18, 2005, and June 13 and 20, 2005; the trustee's Performance Reviews from 1997 to present; a collection of letters from the trustee's colleagues attesting to his good character; and a memorandum to [the United States Trustee] from [a United States Trustee staff person] concerning a "Meeting held with [the trustee] on June 5, 2005."

"United States Trustee's Response"). On September 16, 2005, the trustee filed a response to the United States Trustee's Response ("Trustee's Supplemental Response").

II. The United States Trustee's Decision

The United States Trustee sets forth two reasons for suspending the trustee. First, the trustee was not diligent in conducting meetings of creditors pursuant to 11 U.S.C. §§ 341 and 343 (hereinafter the "§ 341 meeting"). In this regard, the United States Trustee noted that at all meetings conducted from October 2004 through April 2005, the trustee asked fewer than half of the 10 questions which must be posed to each debtor at the § 341 meeting, as required by the *Handbook for Chapter 7 Trustees* (hereinafter the "*Handbook*"). Second, the trustee failed to display a proper demeanor to the debtors and to the public during the course of those meetings. Notice at 1. The United States Trustee stated that the trustee's demeanor was improper because it:

1. implied a willingness to misuse his position as trustee,
2. was improper and unprofessional in dealing with female debtors,
3. was insulting toward or hectoring of debtors,
4. involved using improper comments or questions about nationality, and
5. involved inappropriate language.

The United States Trustee noted that the trustee was rated "Inadequate" on these two elements in his most recent Performance Review, covering the period from May 1, 2003, through April 30, 2005 ("2005 Performance Review"). *Id.* The United States Trustee further observed that in his prior Performance Review covering the period May 1, 2001, through April 30, 2003 ("2003 Performance Review"), the trustee had been rated as less than adequate on these same two criteria, and that he was subsequently counseled on more than one occasion on each of these issues by the former Assistant United States Trustee for the district. From this, the United States Trustee expressly concluded that the trustee had deliberately ignored the counseling provided and the related policies of the United States Trustee Program on these issues. The United States Trustee stated the trustee's level of non-compliance was extreme and undermined the integrity of the bankruptcy system.

III. 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).

IV. Analysis

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

United States Trustees supervise chapter 7 panel trustees, 28 U.S.C. § 586(a)(1), and appoint them to individual chapter 7 cases. 11 U.S.C. § 701. The United States Trustees “carefully monitor the performance of panel members . . . in order to determine whether they should be continued in or removed from panel membership.” H.R. Rep. No. 595, 95th Cong., 1st Sess. 102 (1977). “The United States trustee is permitted to conduct his own investigation . . . to exercise effective supervision and make effective evaluation of the performance of the private trustees on the panel.” *Id.* at 110.

Panel trustees are fiduciaries with wide-ranging responsibilities to effectuate the goals of the particular chapter under which a bankruptcy is filed. As fiduciaries, trustees are held to very high standards of conduct. See generally *Woods v. City National Bank & Trust Co.*, 312 U.S. 262, 278 (1941); *Mosser v. Darrow*, 341 U.S. 267 (1951). See also *Meinhard v. Salmon*, 249 N.Y. 458, 464, 164 N.E. 545, 546 (1928) (Cardozo, C.J.).

The goals of the United States Trustee Program include protecting the public interest by ensuring efficiency in the administration of cases and by protecting the integrity of the bankruptcy system. See United States Trustee Program Mission Statement.⁴ In striving to fulfill these goals, United States Trustees are entitled to expect, and indeed should demand, that the trustees under their supervision perform their duties at the high standards that are required of fiduciaries. In furtherance of these goals, United States Trustees and their staffs should notify trustees at the earliest opportunity of any inadequacies in their performance so that any such deficiencies can be resolved promptly.

It is against these very high standards that the United States Trustee’s decision to suspend the trustee’s receipt of new cases for six months must be evaluated. The United States Trustee

⁴ The United States Trustee Program Mission Statement provides as follows:

The United States Trustee Program acts in the public interest to promote the efficiency and to protect and preserve the integrity of the bankruptcy system. It works to secure the just, speedy, and economical resolution of bankruptcy cases; monitors the conduct of parties and takes action to ensure compliance with applicable laws and procedures; identifies and investigates bankruptcy fraud and abuse; and oversees administrative functions in bankruptcy cases.

determined that the trustee's conduct was deficient in two areas. Further, [the United States Trustee] expressly determined that, in light of the prior notice and repeated counseling provided to the trustee on these two issues, his failure to cure these deficiencies was deliberate. The record is evaluated in light of each of these determinations.

B. Trustee's Performance in Conducting Meetings of Creditors

Section 341(a) of the Bankruptcy Code requires the United States Trustee to preside at a meeting of creditors. 11 U.S.C. § 341(a). The § 341 meeting is the forum at which a debtor must appear and, under oath, answer questions regarding the assets and liabilities of the bankruptcy estate. The trustee presides over the § 341(a) meeting as the designee of the United States Trustee. The *Handbook*, at chapter 7, page 5 ("7-5") states that "[t]he trustee should examine the debtor to the extent appropriate to determine the existence of estate assets, transfers, exemptions, prior filings, possible fraud, abuse or other matters." The *Handbook* provides 10 questions, the essence of which must be posed to each debtor. Those 10 questions, some of which have been shortened for ease of reference, are:⁵

1. State your name and current address for the record.
2. Have you read the Bankruptcy Information Sheet provided by the United States Trustee?
3. Did you read and sign the petition, schedules, statements, and related documents you filed with the court?
4. Please provide your picture ID and Social Security number card for review.
5. Are you personally familiar with the information contained in the petition, schedules, statements, and related documents?
6. To the best of your knowledge, is the information contained in the petition, schedules, statements, and related documents true and correct?
7. Are there any errors or omissions to bring to my, or the court's, attention at this time?
8. Are all of your assets identified on the schedules?

⁵ The precise wording of the actual questions/statements, as well as varying formulations, are set forth in Appendix A-1 to the *Handbook*, which can be found in the record at Notice, Exhibit A.

9. Have you listed all of your creditors on the schedules?
10. Have you previously filed bankruptcy?

The United States Trustee reviewed a sample of the trustee's § 341 meetings. The review concentrated on 182 meetings the trustee conducted on February 22, 2005; March 21, 2005, and April 18, 2005. From that review, the United States Trustee determined that the trustee never asked, or rarely asked, seven of the 10 required questions. Notice at 3. The mandatory questions which the United States Trustee determined the trustee did not regularly ask were questions 2, 3, 5, 6, 8, 9, and 10. *Id.* at 3. Further, the Notice listed 19 cases in which the trustee's questioning was so brief and cursory that it was of questionable value. Notice at 4. The United States Trustee concluded that ignoring more than half of the mandated questions was an extraordinary level of non-compliance with the instructions and policies of the United States Trustee. *Id.* The United States Trustee further concluded that the trustee's failure in this regard demonstrated a deliberate and unacceptable pattern of conduct that warranted his suspension pursuant to 28 C.F.R. § 58.6. Notice at 1 - 4.⁶

The United States Trustee also determined that the trustee failed to ensure compliance with the requirement that each debtor produce a photo identification and proof of Social Security number at the § 341 meeting. This requirement is set forth in the *Handbook*, at 7-1. Notice at 4. The United States Trustee stated that a review of the February 22, 2005, transcripts indicate that the trustee failed to require adequate proof of identity. *Id.* at 5 (listing, for example, one instance

⁶ In support of [the United States Trustee's] claim that the trustee's conduct was part of a pattern, the United States Trustee quoted from the 2003 Performance Review under Trustee Duty No. 3: Section 341 of meeting, section C, the whole of which provides as follows:

To evaluate performance in this category, we listened to a sample of recorded 341 meetings. It is not clear from the tapes whether [the trustee] follows the Program's Debtor Identification requirement discussed in the *Handbook for Chapter 7 Trustees*, pages 7-3 and 7-4. At each 341 meeting, trustees are required to note for the record that proof of identity and Social Security number have been provided.

In the meetings reviewed, [the trustee] did not cover the substance of each of the ten required questions listed in *Handbook*, Appendix A-1, and although we will discuss the subject more fully with the trustee, we commend the list to [his] attention. Previously, limited availability of non-federal meeting space in his venue forced him to conduct very abbreviated meetings, but with full day sessions now available, he has the opportunity to make more detailed inquiries. Longer and more complete examinations and a more formal demeanor would add to the sense of importance attached by attorneys and debtors to this process and should ultimately enhance the level of information available to the trustee.

in which the trustee allowed the meeting to proceed without proper documentation). The Notice also lists several examples of the trustee's failure to demonstrate on the record the debtors' compliance with this requirement. *Id.* at 5 - 6. The United States Trustee stated that the trustee had been warned about this deficiency several times in the past. *Id.* The United States Trustee concluded that the trustee's continuing failure to enforce this policy, despite several prior warnings, was unacceptable and warranted his suspension from the chapter 7 panel pursuant to 28 C.F.R. § 58.6. Notice, at 4 - 6.

From a review of a large sample of the tape recordings and transcripts in the record, it is evident that the United States Trustee has assembled a substantial record that supports the conclusion that the trustee failed to pose the majority of the required 10 questions. It also is evident that the trustee, in large part, failed to create an adequate record to establish proof of identity, including the debtors' Social Security numbers.

The trustee denied that he deliberately ignored the counseling and the related policies of the United States Trustee Program concerning his diligence in § 341 meetings. Trustee's Request for Review at 2 - 3. The trustee categorically denied that he ever received any performance review during his 15 years as a trustee. *Id.* He further denied that he ever met with either a United States Trustee or an Assistant United States Trustee to discuss any reviews or that he ever received any written correspondence concerning these reviews. The trustee also denied that counseling had been provided to him, notwithstanding the language in his 2003 Performance Review indicating that such counseling was anticipated concerning his conduct of § 341 meetings. Trustee's Request for Review at 2.⁷ The trustee asserted in this regard that the United States Trustee cannot produce any documentation of any such notification or follow-up and notes. *Id.*

The United States Trustee states that the trustee was provided his 2003 Performance Review and counseled in 2003 and 2004 on the deficiencies concerning his conduct of § 341 meetings. Notice at 2. However, there is no documentation supporting this position. The United States Trustee attached affidavits from a number of Assistant United States Trustees in support of the contention that performance reviews in the Region are typically hand-delivered or sent without cover letters, and that it is United States Trustee Program's policy to provide copies of performance reviews to trustees. United States Trustee's Response at 2. The affidavits provided, however, only evidence the practices of Assistant United States Trustees in the Region, but are not evidence that the trustee received the evaluations. The documents submitted by the United States Trustee do not contain any writing memorializing the counseling alleged to have taken place between the trustee and a member of the United States Trustee's staff.

⁷ See 2003 Performance Review under Trustee Duty No. 3: Section 341 Meeting, Section C ("Detailed Narrative"), which provides: "although we will discuss the subject more fully with the trustee we commend the list to [his] attention . . ."

The United States Trustee submitted several emails from the former Assistant United States Trustee for the office responsible for supervising the trustee that reference conversations with the trustee on the subject of “adding gravity” to § 341 meetings and covering basic questions. United States Trustee’s Response at 4 - 5. These emails are dated from April 11, 2005, to May 16, 2005. They reference such conversations with the trustee, but they do not specify the dates on which they occurred. It is unlikely that those discussions with the trustee occurred much earlier than the beginning of April 2005 and, therefore, they do not support the United States Trustee’s reference to prior counseling either in 2003 or 2004.

The absence of documentation of the transmittal of performance reviews and of the counseling provided to the trustee leaves unsupported one of the reasons articulated by the United States Trustee as justification for the adverse action taken against the trustee. Without this documentation, the record does not support the United States Trustee’s determination that the trustee deliberately ignored Program procedures and private counseling. It is noted, as recognized in the comments to Trustee Duty No. 3 in the 2005 Performance Review, that the trustee made “marked improvement” in his conduct of § 341 meetings during the June 2005 meetings. Because the improvement occurred shortly after the trustee received counseling, an intent can be inferred of an interest toward rehabilitation. Trustee’s Request for Review at 2 - 3.

As the United States Trustee correctly points out, even if the trustee never received any performance review, it is nonetheless true that the *Handbook* plainly sets forth the requirement that every chapter 7 trustee is required to address the specified 10 questions during the course of a § 341 meeting. Similarly, as mentioned above, the *Handbook* also provides specific guidance that debtors must produce a photo identification and proof of Social Security number at the § 341 meeting. *Handbook*, at 7-1. Therefore, even if the trustee did not receive counseling on the deficiencies identified by the United States Trustee, he was nonetheless on notice of the proper standards for conducting a § 341 meeting and should have adhered to them.

The trustee also contends that the United States Trustee’s decision to suspend him was an act of retaliation for a complaint he filed against [the United States Trustee] with the Executive Office for United States Trustees (“EOUST”) and that it was also motivated by age discrimination. Request for Review at 2 - 3. The trustee threatened to file the complaint in response to the appointment of a younger trustee to the district’s chapter 7 panel and the reallocation of cases between the trustee and the recent appointee, which he viewed as a partial suspension. *Id.* In support of the trustee’s contention that this appointment was discriminatorily motivated, he alleged that, at a prior meeting with all five of the panel trustees, the United States Trustee had previously stated that [the United States Trustee] had been concerned about the age of the panel members. *Id.*

In July 2004, the United States Trustee was concerned that the trustees in the district had a significantly higher caseload than any other district in [the] Region. United States Trustee’s Response at 3. [The United States Trustee] was further concerned that some trustees, including the trustee in this matter, were conducting as many as 20 section 341 meetings per hour and hearing 90 cases per day. The United States Trustee wants trustees to conduct meetings at a rate

of about 10 cases per hour or 50 per day, to allow for a thorough questioning of debtors. During this time, the former Assistant United States Trustee resigned his position and another Assistant United States Trustee was asked to manage the office pending the appointment of a permanent replacement. In assessing a reallocation of cases among the five then-current panel members after appointing an additional person to the panel, he estimated that two of the district's trustees, including the trustee in this matter, were appointed to 950 cases per year. He recommended redistributing appointments from veteran trustees to the newly appointed trustee and a current trustee with a low case load, so that each trustee would be appointed to no more than 800 cases per year. *Id.* at Exhibit 7.

When the United States Trustee began implementing this recommendation, the trustee was the first person whose appointments were affected. After the trustee complained to the United States Trustee and the EOUST about this action, the United States Trustee wrote to him, advising that the adjustments to his case appointments were merely the first of several planned moves on the reallocation of appointments. *Id.* at Exhibit 8. The United States Trustee subsequently adjusted appointments to other trustees so that the annual appointments would be no more than 800 cases. United States Trustee's Response at 3 - 4.

I find no evidence of inequitable or otherwise unfair treatment of the trustee in this matter. The trustee appears to make much of a meeting between the United States Trustee, the Assistant United States Trustee managing the office, and himself which he describes as a "settlement meeting." Trustee's Supplemental Response at 2.⁸ That the United States Trustee would be willing to settle the trustee's complaint does not evidence any improper action on [the United States Trustee's] part. Rather, it appears from the record that the trustee merely expedited [the United States Trustee's] reallocation of cases in such a way that the effect on the trustee was minimized and spread among other trustees on the panel. The reallocation of appointments is a common practice to ensure that cases are properly administered. The actions taken by the United States Trustee were reasonable under the circumstances and exhibit no discrimination.

C. Trustee's Failure to Display Proper Temperament

The *Handbook* requires that a "trustee's demeanor toward all parties should be appropriate and professional." Further, a trustee must "display proper temperament in dealing with judges, clerks, attorneys, creditors, debtors, the United States Trustee and the general public." 28 C.F.R. § 58.6(a)(6). The United States Trustee concluded that the trustee's comments and questions during § 341 meetings demonstrated "a seriously unprofessional"

⁸ The trustee also references notes by [a United States Trustee staff person] of the meeting, which have been made part of the record. Nothing in those notes suggests any discriminatory motive on the part of the United States Trustee. Those notes are contained in a memorandum to [the United States Trustee] from [a United States Trustee staff person] concerning a "Meeting held with [the trustee] on June 5, 2005."

demeanor. The Notice provided a series of improper remarks made during § 341 meetings conducted in February, March, and April of 2005 which the United States Trustee concluded supported four negative inferences concerning the trustee's character, as well as additional remarks that involved improper language.

The various categories of improper remarks and examples provided by the United States Trustee are as follows:

1. Conduct Suggesting Trustee's Alleged Willingness to Misuse His Position

[Debtor testifies that she works at the [name of] Inn.] "That's a nice little inn. Can I get a discount down there if I treat you nice?"

[Debtor testifies that she has a 1986 Chrysler New Yorker car.] "It's okay. I am not going to take it." [Debtor responds that the trustee wouldn't want it if he saw it.] "You never know. Some people are so mean to me, I take them anyway."

"You know if you're not nice to me, I can be really bad . . . Really bad. Really, really, really bad."

". . . I'm not always that nice to everybody, so be careful [female debtor]."

[Debtor testifies she packs shoes for a living.] "Did you bring any sneakers here? . . . [Debtor: "I didn't know your shoe size."] "Didn't your attorney tell you you're supposed to."

[Debtor testifies that she works at a café.] "If I come down to you, you won't give me a hotdog?" [Debtor: "I would . . . All right."]

[To a lobsterman.] "Did you bring a box of lobsters in for us today?" [Debtor: "No, but I wish I would have."]

[To a man working in a Chinese restaurant.] "Did you bring any wings in for us to eat? . . . [Debtor says it's too early in the day.] "No seafood lo mein [sic] or anything like that?"

[Debtor testifies she has 800 copies of a CD.] "You going to send me one?" [Debtor: "I guess."]

Notice of Suspension at 6 - 7.

The foregoing comments are open to an interpretation that the trustee might be willing to use his position of authority to provide favorable treatment to debtors who, in turn, are willing to offer favors to him. Some comments suggest the trustee will be “nicer” to those who favor him and “meaner” to those who do not. In others, the trustee appears to be requesting that debtors present him with gifts, such as various types of free food and CDs. The trustee’s prior response to the United States Trustee was that such comments are nothing more than harmless banter, designed to put the debtors at ease in an otherwise stressful situation. Trustee’s Response at 5 - 6. The trustee further states that the United States Trustee has taken things out of context and that he never meant to suggest he would take a bribe. *Id.*

While these statements, without more, do not support a finding that the trustee intended to solicit a bribe, or any other type of favor, nonetheless, such comments are inappropriate and have no place in a quasi-judicial proceeding. As the United States Trustee stated in [the] Notice of Suspension, “[a]lthough you may have been ‘kidding’ . . . Members of the public know that § 341 examinations are serious occasions - they hear each debtor being put under oath.” Notice at 8. Indeed, for many debtors, this meeting may be their only contact with the bankruptcy process. Such comments could be taken seriously by a debtor, regardless of the trustee’s intent. Such comments have no place at § 341 meetings any more than they would at a court hearing.

2. Alleged Unprofessional Conduct in Dealing with Female Debtors

“No sugar daddies on the side buying you any nice things?”

“You think you can suck up to me regularly with a smile?”

“Where’s your [husband]?” [Debtor: “He’s in the parking lot.”]

“Afraid to come in here, ha, ha. You’re on your own.”

“Really cute. The blood had rushed up to her face now, and she’s going - - the blood pressure’s going right through her (inaudible). Attorney’s scrambling. I love this. I live for these moments.”

[To male companion of a female debtor.] “Sometimes when I get nasty with the women, they like to hang onto their husbands a little bit.”

“This the guy who left you? . . . So he’s bailing you out?” [Debtor says no, she’s bailing herself out.] “Oh, yeah. I’m an independent woman, right? I am, hear me now.”

“Why are you smiling? Are you sucking up to me here?”

“You separated? . . . So how late does this Wendy’s stay open?
[Debtor: “Um, I think 12 at night.”] You don’t work that late? . . .
Don’t forget next time I come in.”

[To joint debtors.] “Do you always answer for her? That could be
- - that could be dangerous. . . .Women have a tendency. . . .We
gave them the right to vote, and drive a car, and went to hell.
Honest to God, you can’t answer to anything.”

“Mistake. . . Never marry like that. You know, they’re too mouthy
those American women.”

“You look like a wine drinker.”

“What bar do you hang out in now?” [Debtor: “Pardon me?”]
“What bar do you hang out in now?”

[To joint debtors, question addressed to husband.] “What do they
call those, wife beater t-shirts?”

Notice of Suspension at 8 - 9.

As with the comments set forth in the prior section, the trustee’s intent is irrelevant. The comments are inappropriate and suggest an ulterior, personal motivation. They demean the bankruptcy process and specifically the importance of the meeting of creditors. To paraphrase the United States Trustee,⁹ for example, these comments could be construed as demonstrating:

. . . your willingness to misuse your position as trustee to ask wholly personal questions (“What bar do you hang out at?”) or to make personal and unprofessional observations (“Really cute”; “You look like a wine drinker”) [or] imply that female debtors should “suck up” to you, or that [you may be suggesting that] they may be trading sexual favors for “nice things” (the “sugar daddy” comment). Some comments [could be construed as the] taunting of female debtors (“. . . ha ha. You’re on your own”; “Oh, yeah. I’m an independent woman, right? I am, hear me now”) or, in some sense, celebrating your power over them (“. . . the blood pressure is going right through her”; “I love this”; “I live for these moments”) during § 341 meetings. You [could be understood] to acknowledge that being “nasty with the women” is characteristic of your performance as a chapter 7 trustee.

⁹ The blocked paragraph quotes from the United States Trustee’s Notice of Suspension, except as indicated by the bracketed portions.

Notice of Suspension at 10.

3. Insulting Behavior Toward, or Hectoring of Debtors

[Trustee]: No, I don't need it. I just want to see a picture of you.

Rhonda: Okay. Because it's not (inaudible).

[Trustee]: Says who you are. Should you have some numbers underneath your chin here, or something like that? Wanted numbers, or...

Mark: In the past.

[Trustee]: What do they call those? Wife beater t-shirts, is that what they call them?

Rhonda: Wife beaters, what's that?

Mark: That was in the summer.

Rhonda: Oh, summer.

[Trustee]: Those tank t-shirts. Don't they call those wife beater t-shirts?

Mark: I don't know.

[Trustee]: He's not a wife beater.¹⁰

[Trustee]: Where do you work?

A: (inaudible) Psychiatric Center.

¹⁰ The United States Trustee noted that the debtor later complained about these remarks to the Assistant United States Trustee managing the office. The trustee responded by letter stating that the comments "were made in a lighthearted manner." He nonetheless stated that he deeply regretted if she found the comments "*inappropriate* or offensive." Notice at 10 (quoting Letter from [the trustee] to debtor and her husband dated July 26, 2005) (emphasis in the original). Although I do not find the referenced letter in the record, the trustee does not contest that such a letter existed.

[Trustee]: Are you, like, one of the - - everyone else that doesn't like that place?

A: No, sir. I didn't say that.

[Trustee]: I know you didn't say that. I asked you.

A: No.

[Trustee]: Your job's not in jeopardy... for saying that you don't like the place - - (inaudible) places they don't like.

[Trustee]: What do you do?

A: I am staying with my parents right now. I just started a new job.

[Trustee]: How old are you?

A: 24.

[Trustee]: Do you think you are going to sever that umbilical cord here, soon?

A: Yeah.

[Trustee]: Are you going to continue to mooch off of them?

A: No.

[Trustee]: 18 year old cat. Things [sic] not going to live another day. Martha [name of the cat].

A: She's valuable.

[Trustee]: It says no resale value here. She's valued at \$2. Claimed here as a \$200 exemption. . . .

A: I don't want to lose Martha. She might only have a year left, but I want her.

Notice of Suspension at 10 - 12.

Many of the above-quoted colloquies are very troubling. The first unnecessarily raises the topic of wife-beating to the point where the debtor identified as Rhonda feels compelled to defend Mark by stating he is not a wife beater. The second pushes the debtor to answer a question about her opinion of the psychiatric facility at which she is employed, a question that is irrelevant and one she apparently does not wish to answer. The third accuses the debtor of being a burden to his parents. The fourth challenges the value of a beloved pet. Such personal conversations are patently inappropriate at a § 341 meeting.

4. Alleged Improper Questions or Comments About Nationality

In the § 341s reviewed, the trustee questioned debtors on issues of nationality or made comments about their country of origin:

[To a Chinese man.] “. . . How come your house is in your wife’s name? . . . Is your wife Chinese?”

[To a Filipino woman.] “What’s your nationality?”

[To a Filipino woman.] “This isn’t over there, you know. This is here.”

[To a Filipino woman.] “And you won’t lose your kids. . . . We’re not talking over in the Philippines.”

[To a Filipino woman.] “The [debtors] don’t sound like they’re very Filipino, either.”

[To a Samoan woman.] “I’ve always asked this question because a good friend of mine is from Hawaii. Do you learn to dance early in your life, to dance like they dance? [Debtor: “In Samoa, yes. I used to dance in Samoa.”] “How do you get your hips to move like that?”

Notice at 10 - 12.

With respect to these comments, the United States Trustee stated as follows: “Nationality, ethnicity, and country of origin are never the proper subject of question or comment during a § 341 examination.” Notice at 13. While the mere mention of a person’s nationality is not inherently offensive, the trustee must be aware of remarks that may offend. Further, the trustee responded with several explanations. Trustee’s Response at 8.

With respect to the question concerning whether the debtor’s wife is Chinese, the trustee explained that in his experience Chinese men tend to title their homes in the name of their American wives as a means of hiding assets. *Id.* This response provides no justification

for the inquiry regarding the nationality of the debtor's wife. The trustee next explained that the dialogue concerning the Filipino woman was in response to her expressed concerns that filing bankruptcy might cause her to lose custody of her children. A review of that hearing confirms this account. Finally, with respect to the Somoan woman, the trustee explained that he had a Somoan acquaintance and an interest in their dance. A review of that hearing indicates that the individual involved seemed willing to discuss this topic. However, in light of the trustee's power and position, such personal and gratuitous statements have no place at a § 341 meeting.

5. Use of Inappropriate Language

"Guys wear hats [in here] all the time and it burns my ass."

"How the hell would you know . . ."

"Dumb ass salesmen."

"What the hell did you buy at BankOne for \$31,000?"

"Did you get some crap from Home Depot today, coming here?"

"Not to get goddamned signed order."

"Jesus Christ, you could have saved yourself a couple of grand."

"I'm so goddamn sick of these people."

"Look at me as the mean son of a bitch --"

". . . I'm a mean son of a bitch."

"Am I talking to you?" What the hell is wrong with this group?"

"96 Oldsmobile? US [sic] Trustee hears this tape, I'm going to get fired, sure as hell."

Notice at 13 - 14.

These comments are inappropriate, unprofessional, and offensive. The gratuitous language used by the trustee requires no discussion. It simply does not belong at a § 341 meeting, and the trustee should not have to be counseled as to that fact.

D. Importance of a Trustee's Judgment

Chapter 7 trustees are supervised by the United States Trustee. 28 U.S.C. § 586(a)(1). The case trustees exercise substantial power over the chapter 7 estate, including the authority to collect and liquidate assets. 11 U.S.C. § 704(1). It is axiomatic that a trustee is a fiduciary. As fiduciaries, trustees are held to the highest standards of conduct. *See generally Woods v. City National Bank & Trust Co.*, 312 U.S. 262, 278 (1941); *Mosser v. Darrow*, 341 U.S. 267 (1951). Equally importantly, they must be perceived to be capable of dealing with a wide range of individuals and be perceived to exhibit good judgment and be fair and balanced. Indeed, these attributes are so important that the Department of Justice has promulgated a formal rule conditioning a trustee's appointment upon the possession of those attributes. See 58 C.F.R. § 58.3(b)(3) (a trustee must "[b]e courteous and accessible to all parties") and 58 C.F.R. § 58.3(b)(4) (a trustee must "[b]e free of prejudices against any individual, entity, or group of individuals or entities which would interfere with unbiased performance of a trustee's duties"); *see also* 28 U.S.C. § 586(d) ("The Attorney General shall prescribe by rule . . . qualifications for appointment under subsection (b) of this section to serve as standing trustee").

The United State Trustee noted that the trustee is an important participant in the federal bankruptcy system. [The United State Trustee] observed that the trustee's "job is to assist the United States Department of Justice in protecting the integrity of the bankruptcy system." Notice at 6. [The United States Trustee] further stated that it is critical for the trustee to interact appropriately with other participants in the process, particularly debtors. *Id.* The record demonstrates that the trustee's demeanor has been inconsistent with his obligation to conduct himself in a professional manner that supports the integrity of the bankruptcy system. The trustee's obligations in conducting § 341 meetings are set forth in the *Handbook*, and his demeanor at the § 341 meetings demonstrated bad judgment on his part.¹¹ The questions and statements identified above simply have no place at § 341 meetings. Consequently, the trustee's deficiencies concerning demeanor cannot be excused because they were not addressed previously. The record, however, does not support a finding that the trustee intentionally ignored the United States Trustee's counseling on his deficiencies, and he demonstrated an ability and a desire to improve these deficiencies shortly after they were discussed with him.

¹¹ The trustee offers a collection of letters from various colleagues attesting to his good character. However, this evidence is not persuasive because none of the letters contains any direct evidence of the facts in this matter. Moreover, it is not the trustee's character that justifies the United States Trustee's decision to suspend him, but rather it is his bad judgment in making various inappropriate statements during § 341 meetings as discussed above.

V. Conclusion

In reaching a decision on this matter, I am bound by the applicable standard of review. The Director “shall determine whether the United States Trustee’s decision is supported by the record and the action is an appropriate exercise of the United States Trustee’s discretion.” *See* 28 C.F.R. § 58.6(i). The Director may “adopt, modify or reject the United States Trustee’s decision to suspend or terminate the assignment of future cases to the trustee.” *Id.* There is a sufficient basis in the record to conclude that the trustee has not diligently conducted § 341 meetings. Similarly, there is sufficient evidence to conclude that he has acted inappropriately, displaying egregiously poor judgment in his demeanor during § 341 meetings.

The record is clear that the trustee did not comply with mandated procedures regarding questions to be asked and proof of identity to be produced at a § 341 meeting. Further, he demonstrated egregiously poor judgment in his demeanor during § 341 meetings. The record, however, fails to demonstrate that the trustee was informed of the deficiencies identified by the United States Trustee in her Notice to Suspend prior to late April 2005. Consequently, I modify the United States Trustee’s decision in this matter such that the trustee is suspended from the panel for four months. However, the trustee may return to a limited rotation after three months if he complies with the terms of the training requirements which are not appealed.

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

Dated: November 1, 2005

Clifford J. White III
Acting Director
Executive Office for U.S. Trustees