

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

**Final Agency Action
Case No. 07-0002**

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

[], a chapter 7 panel trustee ("trustee"), seeks review of a decision by the United States Trustee for Region [] to terminate the trustee's appointment to the [] Division of the [] panel of chapter 7 trustees. Based upon the record before me, I affirm the United States Trustee's decision.

I. Course of this Proceeding

The trustee has served as a member of the panel of chapter 7 trustees for the [] Division of the District of [] since April []. On May 15, 2007, the United States Trustee issued a notice ("notice") informing the trustee that her appointment to the panel would be terminated effective immediately.^{1/} The notice sets forth the following grounds for the United States Trustee's decision:

1. The trustee's failure to timely administer cases, based on the findings of a field examination conducted in May 2006 and four case administration reviews conducted between June 2006 and March 2007 (Notice at 1).
2. The trustee's failure to safeguard estate assets, based on the findings of four case administration reviews conducted between June 2006 and March 2007 (*Id.* at 2).
3. The trustee's failure to respond to the United States Trustee and other parties in interest in a timely manner (*Id.* at 3).
4. The following actions before courts or state licensing agencies that call the trustee's competence and financial responsibility into question: (i) a state proceeding against the trustee for unpaid taxes; (ii) a series of disciplinary complaints against the trustee pending before the [] State Bar based on the trustee's conduct in cases where she was retained as an attorney by another chapter 7 trustee; and (iii) a suspension of the trustee's law license, from which she was subsequently reinstated, based on her failure to pay bar dues (*Id.*).

^{1/} Under the terms of the notice, the effect of the United States Trustee's decision has been stayed pending the trustee's timely request for administrative review. See 28 C.F.R. § 58.6(c).

5. The trustee's failure to timely file final reports and final accounts (*Id.*).
6. The trustee's failure to comply with statutes of limitations and court-imposed deadlines, and her advancement of frivolous arguments and misleading statements to the court (*Id.* at 3-4).

By letter dated May 31, 2007 ("trustee response"), the trustee requested administrative review of the United States Trustee's decision.^{2/} The United States Trustee filed a reply to the trustee response on June 14, 2007 ("UST reply"). On July 16, 2007, the trustee filed a supplemental memorandum responding to the notice ("trustee supplemental response").^{3/} In

^{2/} Pursuant to 28 C.F.R. § 58.6, a trustee who seeks to contest a decision of the United States Trustee to terminate or suspend the trustee is required to file a response "fully describ[ing] why the trustee disagrees with the United States Trustee's decision" within 20 days of the United States Trustee's decision. 28 C.F.R. § 58.6(f). In this case, the trustee's initial request for review did not address cogently any of the factual allegations raised by the notice of termination, but instead enclosed nearly a thousand pages of documents with little to no explanation of what relevance, if any, those documents had to the allegations of the notice of termination. Notwithstanding the disorganized and non-responsive nature of the trustee's initial submission, the UST reply elaborated on the notice by responding to several arguments that the trustee had raised in correspondence to the United States Trustee that predated the notice of termination, and which the trustee had included as part of the packet of documents attached to her perfunctory request for review. Although 28 C.F.R. § 58.6 contains no provision for the trustee to supplement the record beyond her initial request for review, on July 2, 2007, the Director unilaterally authorized the trustee to file a supplemental substantive memorandum addressing the specific allegations raised in the notice. Although all of the voluminous exhibits submitted in connection with this proceeding have been reviewed, it is not the Director's role to mine the source materials submitted by the trustee for additional arguments not raised by the trustee. Consequently, for purposes of this review, the Director will consider only those arguments cogently set forth by the trustee in the memoranda accompanying her response and supplemental response. Conversely, the Director's review of the United States Trustee's decision is limited to those grounds stated in the initial notice of termination. To the extent that the United States Trustee has raised additional arguments in the UST reply that were not raised in the notice, such arguments also will not be considered.

^{3/} The first page of the supplemental trustee response contains the following statement: "This is a DRAFT to be sent 'overnight' with the Exhibits (an "@" symbol means I still need to look up the Exhibit number) - a more completed version of the letter may be e-mailed to both [the United States Trustee and the Director] by the July 17, 2007, deadline." The July 16, 2007, submission appears to be incomplete, with placeholders not only for exhibit cites, but also for entire sections of the trustee's argument. *See, e.g.,* Trustee supplemental response at 11-12 (blank placeholders and notes in place of a response to paragraphs 11 through 13 of the notice). The submission of incomplete pleadings is not helpful to the Director's review, and under normal circumstances such self-styled "drafts" would be disregarded entirely. In this case, however, the

addition, in response to a request by the Director for clarification on certain matters, the United States Trustee submitted additional materials on August 24, 2007, and the trustee submitted additional materials on August 29, 2007, and September 6, 2007. The foregoing submissions constitute the record for this review.

II. Standard of Review

In conducting this review, I 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).

I may “adopt, modify or reject the United States Trustee’s decision to suspend or terminate the assignment of future cases to the trustee.” *Id.*

28 C.F.R. § 58.6(a) sets forth a list of 14 nonexhaustive factors that may be considered by the United States Trustee in suspending or terminating the assignment of a panel trustee. For purposes of the present review, the following grounds for suspension or termination are relevant to the allegations contained in the notice:

- (1) Failure to safeguard or to account for estate funds and assets;
- (2) Failure to perform duties in a timely and consistently satisfactory manner;
- (3) Failure to comply with the provisions of the Code, the Bankruptcy Rules, and local rules of court;
- (4) Failure to cooperate and to comply with orders, instructions and policies of the court, the bankruptcy clerk or the United States Trustee;
- (5) Substandard performance of general duties and case management in comparison to other members of the chapter 7 panel or other standing trustees;
- ...
- (11) Action by or pending before a court or a state licensing agency which calls the trustee’s competence, financial responsibility or trustworthiness into question.

trustee does not appear to have sent any revised version of her supplemental response to the Director. As a result, the trustee’s incomplete July 16, 2007, supplemental response will be treated as the final version of her response for purposes of this decision.

III. Analysis

A. Duties of the United States Trustee and Panel Trustee

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

Panel trustees are fiduciaries with wide-ranging responsibilities to effectuate 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.).

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’s 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 high standards that the United States Trustee’s decision to remove the trustee from the active chapter 7 case rotation must be assessed.

B. Prior Reviews of the Trustee and Voluntary Suspension

The trustee was issued her first performance review on [REDACTED], approximately 20 months after she was appointed to the chapter 7 panel. That review resulted in a rating of “adequate” for each of the 14 applicable categories for which the trustee was

^{4/} The United States Trustee Program’s 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.

reviewed. *See* Trustee Performance Review for July 1, 2004 - June 30, 2005 (attached as an unnumbered exhibit to the trustee response).

On April 11, 2006, the United States Trustee wrote to the trustee to express “grave concern” with the trustee’s performance, based on complaints from parties in interest received by the United States Trustee as well as the observations of United States Trustee staff. (UST reply, Exhibit F). Among the specific grounds for concern outlined in the United States Trustee’s April 11, 2006, letter were: (i) several complaints from parties in bankruptcy cases and the trustee’s clients concerning her lack of responsiveness; (ii) 16 cases in which the trustee erroneously or prematurely closed cases; (iii) four cases in which the trustee missed the statute of limitations while acting as the attorney for another chapter 7 trustee; and (iv) various allegations regarding the trustee’s personal financial situation. The United States Trustee accordingly requested that the trustee agree to a voluntary suspension in order to allow her to catch up on case administration issues, train staff, and focus on closing cases. The trustee initially declined the request.

On July 26, 2006, the United States Trustee issued a Field Examination Report of the trustee for the period ending February 28, 2006, based on a field examination conducted at the trustee’s office between May 15 and May 18, 2006 (“FER”). (Trustee supplemental response, attached an exhibit designated as pages “337 [redacted]” through “345 [redacted]”) Among other deficiencies, the FER concluded that the trustee maintained no documented system of case progress review, and recommended that the trustee establish procedures to provide paper or electronic evidence that all cases were being reviewed at least quarterly. *Id.* at 4. The FER also identified various errors in asset and case administration in the 10 cases examined by the United States Trustee, including a failure to obtain an order employing special counsel, a failure to file a report of sale, a failure to obtain a court order authorizing the purchase of insurance, and errors in scheduling and accounting for the debtor’s assets. *Id.* at 4-6.

On September 11, 2006, the trustee responded to the FER. (Trustee supplemental response, attached an exhibit designated as pages “347 [redacted]” through “357 [redacted]”) In pertinent part, the trustee acknowledged that she previously had not systematically documented her review of files, but was implementing procedures to record her periodic case reviews. The trustee did not dispute the case administration errors identified by the United States Trustee, but described the errors either as matters that had “slipped through the cracks” due to an increase in the trustee’s workload in late 2005, or that resulted from the trustee’s misunderstanding of certain chapter 7 trustee procedures and requirements.

During the interim, on August 4, 2006, the United States Trustee issued to the trustee the report of a case administration review conducted on June 20, 2006 (CAR1) (UST reply, Exhibit G). Among other findings, CAR1 concluded that the trustee had taken either no action or inadequate action to administer assets in 10 of the 20 cases selected for review. In addition, CAR1 found that the trustee had not instituted adequate procedures for reviewing case progress, and warned that failure to do so might result in suspension. Based on these findings, CAR1 stated that the United States Trustee would conduct a followup case administration review in

August 2006 relating to the trustee's implementation of appropriate case administration review procedures, recovery of assets, and timely closing of cases.

On September 15, 2006, the United States Trustee issued to the trustee the report of a second case administration review conducted on August 17, 2006 (CAR2) (UST reply, Exhibit G). CAR2 found that the trustee's administration of assets had been deficient in 25 of the 60 cases reviewed. CAR2 further found that the trustee continued to lack effective case progress review procedures and failed to adequately monitor filing deadlines in the cases for which she acted as attorney. Finally, CAR2 found that the trustee had failed to avail herself of training opportunities made available to her by the United States Trustee Program. Based on these findings, CAR2 stated that a followup case administration review would be conducted in September 2006. CAR2 further noted that if no significant progress was observed in the September 2006 case administrative review, the United States Trustee would take action to suspend the trustee from the active chapter 7 rotation.

On October 6, 2006, the United States Trustee issued to the trustee the report of a third case administration review conducted on September 28, 2006 (CAR3) (UST reply, Exhibit G). CAR3 concluded that the trustee continued to show serious deficiencies in documenting case progress. In addition, CAR3 determined that in the majority of cases reviewed, there were significant delays in case administration and closure. Finally, CAR3 noted that the trustee had 274 cases currently designated as "unknown asset," as compared to an average of 35 unknown asset cases for other [redacted] trustees.

On October 11, 2006, following a meeting with the United States Trustee, the trustee executed a request for a voluntary suspension from the chapter 7 panel. As a result of these discussions, and in connection with the United States Trustee's decision not to institute a formal enforcement action against the trustee at that time, on or about October 16, 2006, the trustee agreed to a set of eleven conditions to be met during the term of her suspension. See email from [redacted] to the trustee, dated October 16, 2006 (attached as an unnumbered exhibit to the trustee response). Pursuant to these conditions, the trustee agreed to, among other things: (i) avail herself of trustee training opportunities, including the next available chapter 7 trustee training at the National Bankruptcy Training Institute in Columbia, South Carolina; (ii) develop a system for reviewing case administration progress and documenting her review; (iii) develop a system for calendaring deadlines and ensuring that pleadings are filed well before the applicable deadlines; (iv) work on administering her existing cases, including filing final reports, filing no asset reports, and reviewing cases currently designated as "unknown asset;" and (v) develop procedures to respond to all party inquiries within 24 business hours of each party's initial contact to the trustee's office.^{2/}

^{2/} Although the United States Trustee does not expressly rely on the October 11, 2006, agreement as a basis for termination of the trustee, the record reflects that at least some of the conditions agreed to by the trustee have not been met. For example, the trustee admits that she has failed to attend NBTI training as required under the October 11, 2006, agreement. (Trustee's 9/6/07 response at 8). In addition, although the trustee agreed to implement procedures to correct the administrative deficiencies in her practice discovered by the UST, the record of her post-

On January 3, 2007, the trustee was issued her performance review for the period July 1, 2005, through June 30, 2006 (attached as an unnumbered exhibit to the trustee response). The trustee's overall rating for this period was "inadequate." In particular, the performance review rated the trustee's performance as inadequate in, among others, the following areas:

- The trustee received a rating of "adequate, except for" under "prepares and files appropriate reports of no distribution." (Duty No. 1). The performance review based this rating on the fact that the trustee inadvertently closed approximately 15 cases that she had identified as asset cases without administering all assets.
- The trustee was given a rating of "inadequate" for the timeliness, accuracy, and completeness of her TFRs and TDRs (Duty No. 2). In particular, the performance review found that the trustee had a very large inventory of open cases and that she unreasonably delayed in closing her cases after case administration was concluded.
- The trustee was given a rating of "inadequate" for effectiveness in securing and protecting estate property (Duty No. 4). The review noted the trustee's large number of "unknown asset" cases, and also noted a case in which the trustee, acting as her own attorney, failed to file several adversary complaints to recover preferences or avoid transfers prior to expiration of the statute of limitations.
- The trustee was given a rating of "inadequate" with regard to expeditiously administering and closing cases (Duty No. 7). This finding was based on the trustee's delay in submitting final reports and the absence of a system for monitoring deadlines and following up on enforcement actions in her asset cases.
- The trustee was given an overall rating of "inadequate" for her responses to United States Trustee requests (Duty No. 12). In particular, the trustee was given a rating of "adequate, except for" in respect of the nature of her responses to UST requests and her response to UST enforcement actions, and a rating of "inadequate" for attendance at UST training classes and meetings. These findings were based on the trustee's late and incomplete responses to the United States Trustee's requests for information and her continued failure to attend the training requested by the United States Trustee.
- The trustee was given a rating of "inadequate" for her response to public complaints (Duty No. 14). The review noted the numerous complaints the United States Trustee had received about the trustee's lack of responsiveness to inquiries from parties in interest.

suspension case administration review, as discussed more fully below, strongly suggests that these procedures were either not implemented or were not effective.

On April 13, 2007, the United States Trustee notified the trustee in writing that she was considering terminating the trustee from the chapter 7 panel, based on, among other factors, the trustee's lack of progress in addressing the deficiencies identified at the October 16, 2006, meeting (attached as an unnumbered exhibit to the trustee response). The United States Trustee's April 13, 2007, letter also noted the trustee's failure to pay state taxes and her performance as attorney in other bankruptcy cases as grounds for the possible termination.^{6/}

On April 30, 2007, the United States Trustee issued to the trustee the report of a fourth case administration review conducted on March 22, 2007 (the CAR 4)^{7/} (UST reply, Exhibit G). The CAR4 concluded that the trustee was deficient in administering estate assets in 6 out of the 11 cases reviewed. In respect of certain cases that had previously been reviewed as part of CAR3, CAR4 determined that estate assets had still not been fully administered, and that immediate action by the trustee was necessary.

On May 9, 2007, the trustee's voluntary suspension was ended at the trustee's request.

C. Grounds for the United States Trustee's Non-Renewal of Appointment

1. Failure to timely administer cases.

With the exception of her first performance review of December 23, 2005, each performance review and case administration review that has been conducted of the trustee since her appointment has revealed significant delays in the trustee's administration of cases. As noted, a stated purpose of the trustee's voluntary suspension was to allow her time to bring her existing case load up to date and to implement improved case management systems to correct the case administration delays the trustee was then experiencing. In addition, each of the performance reviews and case administration reviews issued to the trustee since August 2006 have stated that the trustee's untimely administration of cases was a serious cause for concern that could lead to the termination of her appointment if not corrected.

Based on the findings of CAR4, which was conducted on March 22, 2007, several months after the trustee stopped receiving new cases, it appears that the trustee was unable to

^{6/} For purposes of this review, I need not consider the issues regarding the trustee's failure to pay state taxes and her performance as attorney in other bankruptcy cases which the United States Trustee asserts call the trustee's competence and financial responsibility into question. Because the other findings amply support the United States Trustee's suspension decision, I do not address these matters.

^{7/} The record reflects that between CAR3 and CAR4, an additional case administration review was conducted of the trustee on November 28, 2006. However, for reasons not clearly explained in the record, no report of the November 28, 2006, case administration review was prepared until May 29, 2007, by which time the United States Trustee had already issued the notice of termination to the trustee. Accordingly, the findings of the November 28, 2006, CAR will not be considered for purposes of this administrative review.

correct these deficiencies during the period of her suspension. In particular, CAR4 determined that, in addition to ongoing problems with certain cases that had been previously reviewed, more than half of the 11 new cases selected for review were not being timely administered. (Notice at 3). Of these, the following cases appear to involve the most serious deficiencies:

- In [] case no. [] the case was filed on February 23, 2005. The assets of the estate included the debtor's nonexempt equity in a truck and a trailer. On December 6, 2005, the trustee filed a notice of intent to sell the trailer and, on December 8, 2005, the notice was stricken for reasons not clearly explained by the trustee. As of the time of CAR4, more than two years after the case was filed, these assets had not been administered.
- In [] case no. [] the case was filed on May 4, 2005. The nonexempt assets of the estate included the debtor's right to a 2005 tax refund. The trustee sent letters to the debtor on August 29, 2005, and January 16, 2006, instructing the debtor to forward the tax refunds to the trustee, but did not take any further action. The trustee subsequently learned that both the 2005 refund and a 2006 refund had been received and spent by the debtor. The trustee states that in April 2007 she began accepting periodic payments from the debtor to compensate the estate for the misappropriation of this asset. However, it does not appear that the trustee has sought or obtained any court order memorializing this arrangement.
- In [] case no. [] the trustee had not yet taken action to compel the debtor to file tax returns. This case had been pending for approximately 20 months as of the time of CAR4.
- In [] case no. [] the last receipts were deposited by the trustee seven months before CAR 4, but no final report had yet been filed as of the time of CAR4.
- In [] case no. [] the case was filed March 30, 2005. As of the time of CAR4, the trustee's file notes indicated that she was still investigating whether to require debtor to file 2000-2004 tax returns; however, the trustee had taken no action in the case since 2005.
- In [] case no. [] the last receipts were deposited by the trustee seven months before CAR4, but no final report had yet been filed as of the time of CAR4.
- In [] case no. [] the last receipts were deposited by the trustee 17 months before the CAR4 review, but no final report had yet been filed. The trustee apparently filed the final report in this case after the CAR4 review, but before the CAR4 report was issued.

The trustee offers several explanations and defenses for her inactivity in these cases, but does not appear to contest the basic factual allegations of the notice. First, the trustee states that subsequent to CAR4, distribution orders were signed in the [redacted] and [redacted] cases, and the [redacted] case was converted to a no-asset case. The trustee reports that in the [redacted] case, the potential tax asset will be abandoned and a final report would be filed shortly.

I agree that the trustee's subsequent efforts to close the cases identified in CAR4 are a welcome development. The trustee does not explain, however, why these cases could not have been closed prior to CAR4. Moreover, considering the feedback received by the trustee in her earlier reviews, which repeatedly emphasized her need to develop systems to ensure the timely administration of cases, the trustee's failure to take any action on these cases until they were identified as being deficiently administered in CAR4 is of significant concern.

With respect to [redacted] the trustee states that her liquidator took possession of the assets in December 2006, liquidated the assets in January 2007, and that subsequent delays have been due to a "titling problem," the details of which are not disclosed by the trustee. (Trustee supplemental response at 10). The trustee also states that she is preparing a motion to approve the sale of the assets *nunc pro tunc*. (*Id.* at 9). In any event, the [redacted] case did not appear to have yet been resolved by the time the trustee filed her supplemental response. The trustee suggests that the delay in administering the assets in [redacted] was caused, at least initially, by problems that the trustee experienced in managing her workload in late 2005 and early 2006.^{8/} Finally, the trustee asserts that when the [redacted] case is eventually closed, creditors will receive a higher-than-average distribution of their claims.

Unlike the other cases discussed, [redacted] appears to be a case where, prior to CAR4, the trustee attempted to move forward the administration of this older case during the period of her suspension. However, given the extremely fragmentary and non-detailed nature of the trustee's response regarding this case, as well as the fact that the case has apparently still not closed, it is impossible to evaluate whether these efforts were adequate. Moreover, although the trustee provides few details about the matter, the fact that she is now seeking retroactive approval of a sale of an asset to which the estate may not have had title raises other serious questions about her administration of the [redacted] case. Finally, it is irrelevant that the ultimate outcome in this case may be a higher-than-average distribution to creditors. As the United States Trustee points out (and as the trustee does not dispute), motor vehicles, such as the collateral in [redacted] decline rapidly in value over time. As such, it is apparently undisputed that a timely liquidation of these assets in 2005 would have obtained a greater value for creditors than the value which will eventually be obtained, and that there is therefore a strong likelihood that creditors have been prejudiced by the trustee's untimely administration of the [redacted] estate.

^{8/} The trustee appears to have experienced substantial problems in managing her case load following the surge in chapter 7 filings that occurred in late 2005, shortly before amendments to the Bankruptcy Code went into effect. As discussed, a principal purpose of the trustee's voluntary suspension in 2006 was to allow her to reduce the backlog in the cases she was administering.

Lastly, in an apparent reference to the [redacted] case, the trustee defends her inaction on the grounds that during the surge in bankruptcy filings in late 2005, she adopted a “business style” under which she and the debtors had a “mutual agreement” whereby both the debtors and the trustee would be “understanding” of each other’s delays. In addition, the trustee states that “it is my policy to avoid Turnover Motions if possible because it just changes the relationship between me and the Debtor to one that is more adversarial and that is not how I run my business effectively.” (Trustee supplemental response at 10). As such, the trustee complains that by criticizing her “business style” regarding turnover, the United States Trustee is “forcing me to change my management style, etc.” and “is essentially dictating how much money I can make in my business and making business decisions for me on how to run my office.” (*Id.*).

The trustee’s response is troubling on a number of levels. As a fiduciary of the estate, the trustee is under a duty to pursue all assets and expeditiously administer cases. The trustee does not have discretion to depart from these duties according to her own judgment of “how much money [she] can make in her business,” and the United States Trustee has not overstepped her bounds in attempting to require the trustee to abide by these duties. Moreover, if the trustee’s case load in late 2005 had truly reached unmanageable levels, she was obligated to advise the United States Trustee of that fact and should have limited her intake of new cases accordingly, instead of unilaterally subjecting her cases to delays. Finally, the trustee fails to acknowledge that in the [redacted] case her failure to file a turnover action has caused actual harm to creditors. Had she taken action to recover these funds in 2005, when the tax refund was paid, or in 2006, when a second tax refund was paid, she presumably could have distributed those funds to creditors. Because of her agreement to accept installment payments instead, creditors of the [redacted] estate are being forced to endure unnecessary delay and are also being exposed to a risk of default that would not have existed had the trustee filed a timely turnover action. Finally, given the apparent misconduct of the debtor in [redacted] it is troubling that the trustee does not discuss whether additional relief against the debtor was pursued, or alternatively, her reasons for not seeking such relief.

Accordingly, upon consideration of the facts identified in the notice and the trustee’s explanations of her actions set forth in her response and supplemental response, I find that the record supports the United States Trustee’s determination that the trustee has failed to timely administer cases.

2. Failure to safeguard estate assets.

The notice identifies two cases in which the trustee is alleged to have failed to safeguard estate assets. The first of those cases is [redacted] discussed above. For the reasons stated in the previous discussion of that case, I find that the record supports the United States Trustee’s determination that the trustee failed to safeguard assets in [redacted]

In the second case identified by the United States Trustee, [redacted] case no. [redacted] the trustee allowed a company collecting funds owed to the estate to make payments directly to the debtor, rather than to the trustee, between April 2005 through April 2007. (Notice at 3). The trustee does not dispute the facts as stated by the United States Trustee, but offers

three arguments in her own defense. First, the trustee suggests that the misdirection of payment was the fault of the escrow company handling the payments, which failed to follow her instructions regarding the direction of payments. (Trustee supplemental response at 10). At the same time, the trustee admits that she did not discover the misdirection of the payments until April 12, 2007. Second, the trustee argues that no actual harm has occurred because the debtor eventually remitted the improperly received payments to the trustee. (*Id.*) Finally, the trustee appears to suggest that the [redacted] case is an example of “unequal treatment” by the United States Trustee, on the grounds that the United States Trustee allegedly encouraged the debtor to file a motion to compel the trustee to abandon certain property in April 2007. (*Id.*)

None of these arguments rebut the conclusion that the trustee failed to safeguard the assets of the estate in [redacted]. Even accepting the fact that the misdirection of the payment receivable was due in the first instance to an error by the escrow company, it remained the responsibility of the trustee to monitor this matter and ensure that the escrow company performed according to her instructions. Moreover, having arranged for a stream of payments to be made to the estate, it is inexcusable that the trustee failed to notice for nearly two years that no payments were actually being made. The trustee’s inaction deprived the estate from any interest that these funds would have accumulated had they been timely deposited, and also placed the estate at an unacceptable risk of loss. Finally, the trustee fails to identify any facts in the record to substantiate her apparent contention that the United States Trustee’s investigation of the [redacted] case was motivated by bias. The trustee also fails to offer any argument as to how such alleged “unequal treatment” would excuse her own improper administration of the [redacted] case.

Accordingly, I find that the record supports the United States Trustee’s determination that the trustee has failed to safeguard assets in both [redacted] and [redacted].

3. Failure to respond to the U.S. Trustee and other parties in interest in a timely manner.

The notice alleges generally that the trustee has failed to timely respond to requests for information from debtors, counsel, creditors, and parties in interest. (Notice at 3). The trustee’s lack of responsiveness previously was one of the matters for which she received an “inadequate” rating in her 2005-2006 performance review, and the trustee was required to develop procedures to respond to all party inquiries promptly under the terms of her voluntary suspension.

With respect to this issue, the factual record has been insufficiently developed by both the trustee and the United States Trustee. The trustee appears to have ignored this portion of the notice entirely in her response, while the notice itself fails to identify any specific complaints in which the trustee allegedly failed to communicate with parties in interest. Three such incidents are discussed in the United States Trustee’s supplemental response; however, in each case, it appears that these complaints were brought to the United States Trustee’s attention after the

notice was filed.^{2/} Because my review is limited to the reasonableness of the United States Trustee's termination decision as of the time such a decision was made, I am precluded from taking these complaints into consideration.

The United States Trustee's supplemental reply also identifies two incidents during the trustee's voluntary suspension in which she failed to timely respond to the United States Trustee's requests for information. None of these incidents, however, were mentioned or alluded to in the initial notice. Finally, the United States Trustee's supplemental reply includes a 13 page exhibit listing various complaints received against the trustee since the beginning of her appointment. In addition to the fact that such complaints should have been identified as part of the initial notice, and not in a subsequent reply to the trustee's request for review, the chart fails to identify with specificity which complaints, if any, were found to have merit. Moreover, because the chart does not clearly indicate when various complaints were received or when the conduct in question was alleged to have occurred, the chart does not shed light on the issue of whether the trustee was able to improve her responsiveness during the period of her suspension.

Accordingly, while the sheer volume of complaints against the trustee and the trustee's lack of a cogent response on this issue are both causes for significant concern, I conclude that the record is insufficient to support the United States Trustee's determination regarding the trustee's lack of responsiveness.

4. Failure to timely file final reports and final accounts.

The United States Trustee identifies three cases in which the trustee failed to file a timely final report: [redacted] case no. [redacted] (20 month delay from time of last receipt to submission of final report); [redacted] case no. [redacted] (19 month delay); and [redacted] which is discussed above. (Notice at 3.) As noted, the trustee's most recent performance review and the case administration reviews each identified persistent problems with the trustee's failure to timely close cases, and the trustee was advised that a failure to correct the problem could lead to her termination.

In her response, the trustee questions the accuracy of the dates mentioned by the United States Trustee, but points to no supporting information to contradict the United States Trustee's calculations. (Trustee supplemental response at 11). The trustee otherwise does not explain her failure to timely close cases.

The United States Trustee's criticism of the trustee's administration of the [redacted] case was previously addressed under the heading of "failure to timely administer cases" above. With

^{2/} Specifically, the United States Trustee relies on: (i) a complaint in connection with [redacted] case no. [redacted] which was received by the United States Trustee on May 17, 2007, two days after the notice was filed; (ii) the debtor's testimony in a hearing in [redacted], which occurred on June 6, 2007; and (iii) a complaint received by the United States Trustee at an unspecified date in May 2007 relating to [redacted] case no. [redacted] (UST supplemental response at 13-14).

respect to the remaining cases, a review of the applicable dockets and respective final reports indicate that, in [redacted] certain funds were received and deposited by the trustee on November 16, 2006, and a final report was filed on December 15, 2006. In [redacted] the debtors filed amended schedules on May 5, 2006, and the trustee's final report was filed on July 21, 2006. Although the dockets of these cases indicate that these cases experienced unexplained delays in administration, such delays appear to have occurred primarily before the period of the trustee's voluntary suspension and are therefore not indicative of whether the trustee has continued to experience problems since her suspension. As a result, I find that the record supports the United States Trustee's determination with respect to the [redacted] case, but does not support the United States Trustee's determination with respect to the [redacted] and [redacted] cases.

5. Failure to comply with orders of the court and the provisions of the Code, the Bankruptcy Rules, and local rules of court.

Lastly, the United States Trustee lists the following incidents in which the trustee allegedly failed to comply with court orders and rules:

- In [redacted] case no. [redacted] [redacted] case no. [redacted] and [redacted] [redacted] the trustee was criticized by the bankruptcy judge for her handling of certain contested matters and for raising arguments that the court found to lack merit. (UST supplemental response at 4).
- In [redacted] case no. [redacted] a case in which the trustee served as both chapter 7 trustee and as attorney for the estate, the trustee is alleged to have missed a statute of limitations for filing an avoidance action. (*Id.*)
- In [redacted] case no. [redacted], [redacted] case no. [redacted] and [redacted] case no. [redacted] [redacted] the trustee is alleged to have missed statutes of limitations in cases in which she served as attorney for another chapter 7 trustee. (*Id.*)
- In [redacted] case no. [redacted] the trustee is alleged to have missed the statute of limitations for the filing of an objection to discharge. (*Id.*)
- In [redacted] case no. [redacted] the trustee is alleged to have filed a response to an objection to her fees on the day of the hearing in violation of a local rule. (*Id.*)
- In [redacted] and [redacted], the trustee is alleged to have made false and misleading statements in court. (*Id.*)^{10/} According to the United States Trustee's reply, the alleged misrepresentation in [redacted] relates to the date on which the

^{10/} The United States Trustee's reply contains several additional examples of cases in which the trustee allegedly failed to meet deadlines or ignored court orders. For the reasons explained previously, however, the Director is unable to consider any grounds for termination not raised in the initial notice.

trustee received certain notices, in which her testimony was contradicted by the court's record of electronic service.

With respect to the first of these items, although it is troubling that the court found it necessary to criticize the trustee's arguments in [] and [] the record does not indicate that the trustee was sanctioned for raising such arguments, and there is no indication that she violated any court rule or order by doing so. Accordingly, absent additional circumstances, the fact that the trustee may have advanced an unsuccessful argument in court is not, standing alone, a basis for termination.

The trustee does not contest that she filed avoidance actions after the running of the statute of limitations in []. The trustee attributes this failure to both conflicting advice that she received from her counsel as well as various computer problems she experienced at the time such complaints were due to be filed. (*Id.* 5). Neither of these circumstances, however, excuse the trustee's ultimate responsibility to ensure that her pleadings are filed within applicable deadlines. Moreover, the trustee also is not excused by the fact that a statute of limitations is a waiveable defense. Even if a defendant chooses not to rely on this defense, the mere fact that the trustee created a possible defense to the estate's claims as a result of her inaction placed the estate at an unacceptable risk of loss.

The trustee's pleadings do not contain any substantive response to the remaining allegations raised by the United States Trustee. Accordingly, those allegations are uncontested. Based on this, I find that the record supports the United States Trustee's determination that the trustee has failed to comply with court rules and deadlines.

6. The trustee's remaining arguments.

The trustee raises a series of additional arguments that do not appear directed at any particular allegation in the notice. First, the trustee argues that no action should be taken on her termination until the existing version of 28 C.F.R. § 58.6 is replaced by a new regulation regarding trustee termination. The trustee appears to base this argument on a contention that recent bankruptcy legislation "was meant to extend my rights as a Trustee regarding Termination procedures but, because the Regulations meant to provide me with those increased 'due process' protections are not yet promulgated, and I am being forced to proceed under old Regulations that clearly state Trustees have no 'due process' rights . . . I feel my rights are likely being violated in this process." (Trustee supplemental response at 1). The trustee does not, however, identify the additional due process which she alleges she is being denied, nor does she identify what new "rights," if any, she expects to receive under a future version of 28 C.F.R. § 58.6. Moreover, as the trustee concedes, the existing 28 C.F.R. § 58.6 remains in effect, and the trustee has received all of the rights and protections available to a trustee under that section.

The trustee also complains that the United States Trustee's investigation and termination of her is the result of "unequal treatment" compared to the United States Trustee's handling of other panel trustees. (Trustee supplemental response at 5). The trustee also appears to complain of what she apparently regards as an excessive number of field and case administration

examinations in 2006 and 2007. (Trustee supplemental response at 9). The trustee's statutory obligations as a chapter 7 trustee, however, are unaffected by whether those obligations are being met by other trustees. Moreover, the United States Trustee has a continuing duty to monitor the performance of a panel trustee, particularly when each successive review reveals continuing inadequacies that the trustee has been unable to correct.

The trustee also appears to attribute her performance problems to a lack of training or guidance by the United States Trustee. (Trustee response at 1-2). Contrary to the trustee's assertions, I find that in her various formal and informal performance reviews, the trustee received extensive and specific guidance from the United States Trustee prior to her termination of the areas in which her performance was deficient. In addition, I find that the trustee herself has not fully availed herself of the training opportunities recommended to her, particularly as reflected by her persistent failure to attend the NBTI training despite her assurances otherwise to the United States Trustee.

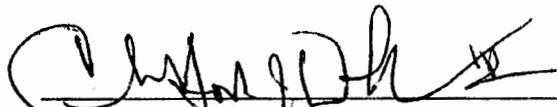
Finally, the trustee raises a number of allegations concerning the ethics and impartiality of certain employees of the office of the United States Trustee. (Trustee supplemental response at 3-4). To the extent that the trustee suggests that she is being singled out, or that this termination proceeding was commenced in bad faith, I note that the objective evidence of performance inadequacies assembled by the United States Trustee is overwhelming. Accordingly, I find no reason to infer, as the trustee apparently suggests, that this proceeding has been motivated by anything other than the objective record of the trustee's performance. To the extent that the trustee believes that other ethical violations have been committed by employees of the United States Trustee Program, I find that such allegations have no bearing on the issue of whether the trustee's termination is supported by the record, and as such these allegations appear to raise matters beyond the scope of this decision. Therefore, I find the trustee's remaining arguments to be without merit.

* * * * *

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

Dated: _____

12/4/07



Clifford J. White III

Director

Executive Office for United States Trustees