

unsolicited letter dated January 21, 2015, Mr. _____ offered his support for the trustee, and by an unsolicited letter dated February 27, 2015, Mr. _____ offered his support for the trustee (“Letters of Support”). Accordingly, the administrative record in this matter consists of the Notice, the Request for Review, the UST Response, the Reply, the Recordings, the Transcript of the Recordings, and the Letters of Support.

II. Standard of Review

In conducting this review, I have considered two questions:

1. Does the record support the United States Trustee’s decision to suspend the trustee and to require training?
2. Does the United States Trustee’s decision constitute an appropriate exercise of discretion?

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

In conducting my review, I am authorized to “adopt, modify or reject the United States Trustee’s decision to suspend . . . the assignment of future cases to the trustee.” *Id.*

III. Analysis

A. The Role of the United States Trustee and the Responsibilities of the Chapter 7 Panel Trustee

1. The Role of the United States Trustee

United States Trustees establish, maintain, and supervise panels of chapter 7 trustees for each of their judicial districts; in turn, panel trustees administer cases commenced under the liquidation provisions of chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701, *et seq.* 28 U.S.C. § 586(a)(1) (United States Trustees’ supervision of chapter 7 trustees). The United States Trustee for Region _____ establishes, maintains and supervises panels of chapter 7 trustees in the United States judicial districts for the states of _____ and _____ 28 U.S.C. §§ 581(a)(2), 586(a)(1). United States Trustees “monitor the performance of panel members . . . to determine whether they should be continued in or removed from panel membership or office.” H.R. Rep. No. 95-595, at 102 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6063, 1977 WL 9628 (1977).

United States Trustees “promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders – debtors, creditors, and the public.” *See* http://www.justice.gov/ust/eo/ust_org/mission.htm (*last retrieved March 3, 2016*). In fulfilling

States Trustee suggested any transcription errors. Accordingly, the transcripts are a part of the record in this case (“Transcripts”).

this mission, United States Trustees seek to ensure that the trustees they supervise perform their duties well.

2. The Responsibilities of the Chapter 7 Panel Trustee

Each chapter 7 panel trustee must satisfy the requirements of 28 C.F.R. § 58.3 to be eligible to serve on a panel of chapter 7 trustees. 28 C.F.R. § 58.3 (codifying Justice Department regulations establishing the “[q]ualification for membership on panels of private trustees.”). *See also* 11 U.S.C. § 321 (specifying the requirements a trustee must satisfy in order to be eligible to serve as the trustee in a particular case). Trustees are subject to suspension or removal by United States Trustees under the procedures set forth in 28 C.F.R. § 58.6, based upon a non-exhaustive list of grounds specified in section 58.6(a).

Trustees have a number of statutory responsibilities. 11 U.S.C. § 704. Many of those require a trustee to work with the debtor and the debtor’s counsel. *See* 11 U.S.C. §§ 704(a)(1) (trustee must collect property of the estate from the debtor and third parties); 704(a)(3) (trustee must “ensure that the debtor” complies with the debtor’s responsibility under 11 U.S.C. § 521(a)(2)(B)); 704(a)(4) (trustee must investigate the financial affairs of the debtor). Other provisions require trustees to interact with debtors in specific situations. 11 U.S.C. §§ 704(a)(8) (overseeing a business formerly run by a debtor); 704(a)(10) (addressing domestic support obligations owed by a debtor); 704(a)(11) (involving a debtor who serves as the administrator of an ERISA employee benefit plan); 704(a)(12) (involving a debtor who operates a health care business).

Trustees must be capable of dealing effectively, courteously and honestly with a wide range of individuals. The Department of Justice has promulgated formal rules conditioning a trustee’s appointment upon the possession of such attributes. *See* 28 C.F.R. §§ 58.3(b)(3) and (4). Section 58.3(b)(3) requires a trustee to be “courteous” to all parties. Section 58.3(b)(4) requires a trustee to “[b]e free of prejudices.”

The HANDBOOK FOR CHAPTER 7 TRUSTEES (2012) (“Handbook”),⁴ is a guidance document that the United States Trustee Program (“USTP” or “Program”) provides to all chapter 7 trustees. It discusses “the duties owed by a chapter 7 trustee to the debtors, creditors, other parties in interest.” Handbook, § 1.A at 1-1. The Handbook explains that trustees receive written performance reviews at least every two years. Handbook, § 6.B at 6-2. Those performance reviews evaluate “[t]he trustee’s conduct” “including [the trustee’s] dealing[s] with debtors.” *Id.*

Trustees may be suspended or terminated if they “[f]ail[]to display proper temperament in dealing with . . . debtors.” 28 C.F.R. § 58.6(a)(6).

⁴ The Handbook is available online at http://www.justice.gov/ust/ea/private_trustee/library/chapter07/index.htm (last retrieved March 3, 2016).

a. The Responsibility of the Chapter 7 Panel Trustee to Examine Debtors at 11 U.S.C. § 341 Meetings of Creditors

One of a chapter 7 trustee's responsibilities is conducting a meeting of creditors in every case. 11 U.S.C. §§ 341, 343; Handbook, § 3.D.1 at 3-4. The meeting of creditors is an official forum. The debtor is statutorily obligated to appear and answer under oath questions from the trustee, creditors, and other parties in interest regarding the estate. 11 U.S.C. § 343. The trustee is the presiding officer at the meeting of creditors in the role of designee of the United States Trustee. Handbook, § 3.D.1 at 3-4.

A trustee must conduct the meeting in an orderly, yet flexible manner, and pose a wide range of questions about the debtor's financial affairs and conduct. The trustee's demeanor toward all parties must be appropriate and professional. Handbook, § 3.D.9 at 3-7 (*citing* 28 C.F.R. § 58.3, 28 U.S.C. § 586).

b. The Responsibility of the Chapter 7 Panel Trustee to Comply with the Language Access Program

It has long been the policy of the United States to make federal services available to persons who possess limited English proficiency. *See* Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (2000). This ensures governmental activities, such as section 341 meetings of creditors, "do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations." *Id.*

In conformity with the Executive Order, the USTP issued its current Language Assistance Plan in October 2011 ("Plan"). The Plan is available online on the USTP's website at http://www.justice.gov/ust/eo/public_affairs/lep/index.htm (*last retrieved March 3, 2016*). The Plan requires chapter 7 panel trustees to notify people who possess limited English proficiency that they may take advantage of free telephonic interpreter services offered by the Program "for participation at creditors' meetings or of their ability to choose to secure the assistance of a qualified interpreter of their choice, at their expense." *Id.*

The Handbook informs all chapter 7 trustees of their obligations to follow the Plan. The Handbook states that debtors whose proficiency in English is limited have a right to an interpreter to assist them participate at their section 341 meeting of creditors. Handbook, § 3.D.6 at 3.6. The trustee is required to advise debtors who possess limited English proficiency ("LEP") that they may use telephonic interpreter services offered by the Department of Justice at no cost during the meeting. *Id.* The trustee should also inform debtors that they may alternatively choose their own interpreter to assist them at their own expense. *Id.* Additionally, a trustee may not allow a debtor who possesses limited English proficiency to use family members, friends, the debtor's attorney or the attorney's employees, unless telephonic service at the meeting site cannot reach the interpreter service. *Id.* Nor may the trustee act as an interpreter. *Id.*

The United States Trustee's staff conducted training for chapter 7 trustees about their duty to make language interpreters available to debtors with limited English proficiency. Notice at 3. And the trustee readily acknowledges his duty to comply with this policy. Request for Review at 3 (acknowledging that "a strict interpretation of the LAP Policy

may have required Mr. [redacted] to immediately cease any and all questions until he could arrange for an official interpreter.”).

B. Grounds for the United States Trustee’s Decision to Suspend the Trustee and Require Training

As set forth more fully below, the UST suspended the trustee for one year and required him to take training based upon:

- (1) the trustee’s unprofessional, discourteous, overly aggressive, and inappropriate treatment of debtor [redacted], Case No. [redacted] (the “ [redacted] Case”), based, in large part, on [redacted] limited English proficiency;
- (2) the trustee’s failure to follow the Program’s policy and guidance regarding the use of Plan interpreters during the Section 341(a) meeting in the [redacted] Case; and,
- (3) the trustee’s failure to follow Program policy and guidance regarding professionalism and the proper conduct of Section 341(a) meetings in the [redacted] Case, in the case of [redacted] and [redacted], Case No. [redacted] (the “ [redacted] Case”), held on July 16, 2014, and in the case of [redacted], Case No. 1 [redacted] (the “ [redacted] Case”), held on April 30, 2014.

Notice at 1.

C. The Record Supports the United States Trustee’s Decision to Suspend the Trustee

The record supports the United States Trustee’s decision to suspend the trustee and require training.⁵ The United States Trustee specifically relied upon three of the grounds for cause to suspend or terminate that are identified in 28 C.F.R. § 58.6(a):

- (4) Failure to cooperate and to comply with orders, instructions and policies of the court, bankruptcy clerk and the United States Trustee;
- (6) Failure to display proper temperament in dealing with judges, clerks, attorneys, creditors, debtors, the United States Trustee and the general public; and
- (10) Failure to attend in person or appropriately conduct the 11 U.S.C. 341(a) meeting of creditors

⁵ The trustee is “ready, willing and able to complete a diversity and sensitivity training course to insure that this could and would never happen again.” Request for Review at 8. As the trustee does not contest this aspect of the United States Trustee’s Notice, this decision will not address it separately. The bases for upholding the trustee’s one-year suspension also establish the need for this training.

Procedures for Suspension and Removal of Panel Trustees and Standing Trustees, 28 C.F.R §§ 58.6(a)(4), (6) and (10).

1. The Trustee’s Conduct During the Section 341 Meetings Support the Suspension

A trustee must be “courteous” to all parties, 28 C.F.R. § 58.3(b)(3), and “free of prejudices,” 28 C.F.R. § 58.3(b)(4). A trustee’s bi-annual performance review specifically evaluates “[t]he trustee’s conduct” “including [the trustee’s] dealing[s] with debtors.” Handbook, § 6.B at 6-2. A trustee is on notice that he may be suspended or terminated if he does not “display proper temperament in dealing with . . . debtors.” 28 C.F.R. § 58.6(a)(6). The trustee dealt inappropriately with Ms. [redacted] and his temperament was improper.

Trustees “often are the only person a debtor sees as a representative of the [bankruptcy] system.” 62 Fed. Reg. at 51,748. The typical chapter 7 debtor never goes to court. The section 341 meeting room is his or her only encounter with the federal system.

a. The Section 341 Meeting

The United States Trustee has alleged that the trustee’s unprofessional, discourteous, overly aggressive, and inappropriate treatment of debtor [redacted] based, in large part, on Ms.

[redacted] limited English proficiency and the trustee’s aggressive and unprofessional conduct during the [redacted] meeting of creditors, supports his decision to suspend the trustee. Notice at 1, 4-6. I find that the record supports this conclusion.

Ms. [redacted] works for [redacted] Services, Inc. doing cleaning, and had been employed by [redacted] for about one year at the time she sought bankruptcy relief.⁶ [redacted] Docket #1 (debtor’s petition and schedules). Ms. [redacted] earned \$8,442.00 in 2013 and \$1,993.90 in the first three months of 2014. *Id.* She received \$13,867 in unemployment income in 2012 but had no earnings. *Id.*

Ms. [redacted] does not own a home. *Id.* She does not own a car. *Id.* Her personal property is worth \$2,830.00; it includes a \$30.00 checking account and furniture worth \$2,000.00. *Id.* Her only other asset is her interest in a class action lawsuit for injuries she sustained as a result of the [redacted] *Id.* She owes her creditors \$37,346.00. *Id.*

Ms. [redacted] financial situation led her to seek bankruptcy relief on June 18, 2014. *Id.* At the time of filing, Ms. [redacted] was earning a gross monthly income of \$884.43 from [redacted] for her cleaning work. *Id.* Her son-in-law was helping her by giving her an additional \$400 per month. *Id.* Mr. [redacted] of the Law Office of [redacted] was her bankruptcy attorney. *Id.*

Ms. [redacted] meeting of creditors took place on July 16, 2014. There was a recess in the middle of it, and the two parts have been separately transcribed as the “first call” and the “second

⁶ This information describes her financial situation at the time she filed her bankruptcy petition.

call.” Ms. _____ appeared at the meeting of creditors with attorney _____, who was appearing in lieu of Mr. _____.

At the start of the meeting, Ms. _____ requested a Spanish interpreter for Ms. _____ Trans. at 19:17-20.⁷ The trustee did not call an interpreter service, which would have provided over-the-phone assistance at Department of Justice expense. Rather, the trustee took Ms. _____ social security card and ID, and after reviewing them stated, “You’re an American citizen but you don’t speak English? Didn’t you have to take an English proficiency test to become a citizen? So why can’t you answer the questions in English? I’m asking.” _____ 1 Trans. at 2:4-13.⁸ Ms. _____ then reiterated that “She doesn’t understand your questions.” *Id.* at 2:14-15. The trustee then again asked Ms. _____, now in a louder voice, “Did you take an English proficiency test in order to become an American citizen? Yes or no? You have to answer, ma’am, verbally.” *Id.* at 2:16-19. When Ms. _____ repeated that Ms. _____ did not understand English, the trustee asked “How is that possible.” *Id.* at 3:3.

In total, the trustee persisted in asking Ms. _____ nine questions in English, but Ms. _____ did not respond, and her attorney repeatedly explained that Ms. _____ did not speak English. *Id.* at 2:4-4:8. At that point, the trustee used a “friend” of Ms. _____ to act as an interpreter. *Id.* at 4:7-5:8. Through her friend, the trustee again asked Ms. _____ how she passed the English proficiency test to become a citizen. *Id.* at 4:6. After an exchange in Spanish between Ms. _____ and the friend, the friend responded that “she practiced the questions.” *Id.* at 4:10-12. After learning that the debtor had been a citizen for ten years, the trustee asked “And in the next ten years, you never learned any English?” *Id.* at 4:18-19.

The trustee then tried to continue the meeting to another date, insisting that he wanted to know how Ms. _____ could sign papers under penalty of perjury when she did not speak or read English. *Id.* at 5:5-8. When Ms. _____ objected that the trustee could not refuse to conduct a meeting because a debtor does not speak English, the trustee responded “Yes, I can.” *Id.* at 7:5. When Ms. _____ continued to object to postponing the examination, and Ms. _____ friend said she could interpret, the trustee relented and said he would give Ms. _____ a “second call” later that day, but he wanted to know how these documents could be prepared if Ms. _____ did not understand or read English. *Id.* at 7:24-8:10.

When the trustee reconvened Ms. _____ meeting of creditors later that day, he did not immediately call the interpreter service. Instead, he noted the appearance of Ms. _____ friend and resumed addressing _____ English proficiency, using the friend as an interpreter. He asked, “Ms. _____, you’re a naturalized citizen but counsel tells me you don’t understand any English or very little English? Which is it? Ask her in Spanish. And then we’ll get her an interpreter.” _____ 2 Trans., at 3:1-5. Ms. _____ friend responded, she speaks “a little bit,” and the trustee said, “I want to ask you this, because it seems crazy. How did you pass the

⁷ The trustee called the _____ case before switching to a new track on the recorder. Thus, the first five lines of the meeting of creditors appear on the transcript from the _____ meeting, which immediately preceded the meeting. The _____ meeting transcript is cited as _____ Trans. at ____.

⁸ The first meeting transcript is cited as “_____ 1 Trans. at ____” and the second meeting transcript as “_____ 2 Trans. at ____.”

English proficiency test ten years ago.” *Id.* at 3:7-11. Ms. _____ friend responded that she memorized the questions. *Id.* at 3:14.

The trustee did not then call the interpreter service. Instead he stated he would call the interpreter after asking some preliminary questions about how her bankruptcy papers were prepared. *Id.* at 3:24 - 4:3. The trustee then asked Ms. _____ to whom she provided the information at Mr. _____ office. *Id.* at 4:7, 8. Ms. _____ responded that she gave it to her friend who was translating for her now and her friend gave the information to Mr. _____. *Id.* at 4:11-13. The trustee asked who posed the questions to Ms. _____ in Mr. _____ office; the friend responded that she did. *Id.* at 4:14-17. The trustee then asked multiple questions of Ms. _____ friend about how the process worked in the lawyer’s office. *Id.* at 4:18-5:22.

In the second session, the trustee posed a total of seven additional questions to Ms. _____ through her friend. *Id.* at 2:4-6:9. The trustee then instructed his associate, who is named _____, to “[g]et an interpreter.” *Id.* at 6:9-10.

During the trustee’s questioning of Ms. _____ through the interpreter, the trustee continued to question Ms. _____ about her inability to speak English. He asked whether she understood what she is signing when she does her tax returns, because they are in English. “I’m serious. I’m very serious when I ask you that question.”⁹ *Id.* at 10:12-18. During the meeting, the trustee accused Ms. _____ of understanding one of his questions and said:

THE TRUSTEE: I’ll tell you right now. I have a very difficult time thinking that she’s a credible -- that she’s a naturalized citizen, took an English proficiency test, and claims she understands no English . . . and she’s been here for ten years . . . So her credibility to me is very, very low.

Id. at 13:3-7.

The trustee eventually asked about her class action lawsuit. During this questioning, the trustee would repeatedly ask a question, and before the interpreter had finished translating, would ask another. *Id.* at 17:17-21:1. Ms. _____ testified that she had performed cleaning work in the month after _____ and became sick. *Id.* at 17:25-19:13. The trustee, who initially thought she was suing _____, called her lawsuit a “travesty” and when he understood that she was suing a former employer, said, “Because _____ knocked down the _____, you’re suing an ex-employer?” *Id.* at 17:8-14. He concluded this part of the meeting saying, “I got a whole room full of people who probably deserve discharges. I’m not going to waste more of their time.” *Id.* at 21:2-4.

During his final set of questions, when the debtor mentioned that she had traveled to _____, _____, the trustee’s associate, interjected “Geez.” *Id.* at 21:22. The trustee then proceeded to ask how long she was there, but didn’t let her answer because he asked additional questions after that. He then pushed again on that question. Ms. _____ finally answered that she had been there 15 days because her mother and father had died. *Id.* at 22:12-13.

⁹ Ms. _____ answered that she used a bilingual person to help her file her tax returns.

At that point, Ms. _____ began to cry and cried throughout the remainder of the examination. *Id.* at 22:9 (“Debtor starts crying.”); 22:11 (“Crying.”); 22:18 (“Crying throughout.”).

After the interpreter disconnected, *id.* at 23:5, the trustee gave Ms. _____ some instructions and terminated the section 341 meeting of creditors.¹⁰ *Id.* at 24:13.

Ms. _____ received a discharge of her debts on October 14, 2014. *Docket #12.* Her case was closed on the same day. *Docket #12.*

The trustee dealt inappropriately with Ms. _____ and his temperament was improper. Ms. _____ bankruptcy case was a simple one. She owned few assets. She disclosed her assets in her petition and schedules, including her membership in a class-action lawsuit that she may not have fully understood.¹¹ *See* _____ 2 Trans. at 17:17-20:17. The trustee never engaged in a formal investigation, something he could have done through a Fed. R. Bankr. P. 2004 examination. The trustee never brought an action against her. He allowed Ms. _____ to promptly receive a discharge of her debts without objection.

The trustee’s language and his tone were harsh, accusatory, demeaning and inappropriate throughout his examination of Ms. _____. He continually asked her about or commented on Ms. _____ inability to speak English. *See* _____ 1 Trans. and _____ 2 Trans. He persisted even though Ms. _____ attorney and Ms. _____ friend both confirmed for the trustee that Ms. _____ did not speak English. _____ 1 Trans. at 2:14-15 (attorney); *id.* at 3:20-21 (attorney); *id.* at 3:10 (attorney); *id.* at 3:13 (attorney); *id.* at 4:20-21 (friend). Additionally, rather than acknowledging Ms. _____ for explaining this, he scolded her, saying “don’t interfere.” *Id.* at 3:14-19.

The trustee did not show the debtor even a modicum of respect:

- He called one of her answers “crazy.” _____ 2 Trans. at 3:9.
- He questioned her credibility on two occasions. *Id.* at 13:5 (questioning Ms. _____ credibility); _____ 2 Trans. at 13:12-13 (trustee reiterating that “her credibility, to me, is very, very low.”).

¹⁰ At no point during the examination did the trustee explain that he was wearing a hearing aid, that he was hard of hearing or that he might be speaking loudly inadvertently. He never apologized for the tone or strength of his voice.

¹¹ The trustee incorrectly states in his Request for Review that the class action had been brought against her current employer, _____. Request for Review at 3 (arguing she had “a _____ class action due to her employment as a cleaner for _____ Services, Inc.”). The class action involved injuries sustained cleaning in the _____ Docket #1, _____ 2 Trans. 17:17-20:17. She started working for _____ only one year before filing for bankruptcy relief in 2014. _____ Docket #1, _____ 2 Trans. at 10:9-11 (testifying “I work for a new company, _____”); *id.* at 23:7-8 (trustee stating on the record that “she’s been with [sic] since July of 2013”).

- He made it clear that her case was not worth his time. *Id.* at 21:2-4 (telling the debtor “I got a whole room of people who probably deserve discharges. I’m not going to waste more of their time” with you.”).
- The trustee accused her of making a joke against the system. *Id.* at 18:11-25 (trustee believing that the debtor was suing _____ and responding in an inappropriate fashion).

While discussing her membership in a class action law lawsuit, the trustee cut off the debtor’s attempted responsive answer four times. *Id.* It would take the debtor many additional attempts before she was able to communicate that she was suing a former employer. *Id.* at 19.1-201:11. When Ms. _____ described her suit, the trustee announced that she was committing a “travesty,” a conclusion based upon his incorrect understanding that she was suing the city.¹² It was particularly inappropriate to criticize the lawsuit because it was property of the debtor’s estate. 11 U.S.C. § 541(a). That meant the proceeds would have been given to the trustee to distribute among Ms. _____ creditors. As the trustee grudgingly acknowledges, his conduct here fell short. Request for Review at 1, 8.

The trustee was assisted at his section 341 meetings by _____. More than once during the _____ meeting, the trustee failed to admonish _____ for his inappropriate conduct.¹³ When he found himself displeased, _____ would inappropriately respond “Geez.” _____ 2 Trans. at 14:18. When, for example, Ms. _____ mentioned a recent trip to _____, _____ again interjected “Geez.” *Id.* at 21:19-22. Even if _____ spoke this with no intent to disparage Ms. _____ place of national origin, it was wholly inappropriate. Again, the trustee did not admonish _____ or apologize to Ms. _____.

The meeting terminated with Ms. _____ “crying throughout” the trustee’s final questions. *Id.* at 22:19. It ended abruptly and without customary courtesies from the trustee or from _____. They simply issued instructions to Ms. _____ attorney, with _____ telling her “Just give us the information on that” and the trustee redundantly ordering that she “Get the information.” *Id.* at 24:11-13.

Not only was the trustee’s conduct inappropriate, it was also ineffective. The purpose of a meeting of creditors is to gather facts. After asking question after question about the debtor’s lawsuit, the trustee told Ms. _____ to send him a copy of the complaint. In fact, Mr. _____ volunteered to “get [the trustee] a copy of the - - of the complaint, the class action.” _____ 2 Trans. at 19:24-25. Rather than reserving further questions until after he had an opportunity to review it, the trustee continued to ask questions and make rude comments, calling the suit a “travesty.” *Id.* at 20:1-25. There was nothing to justify the trustee’s conduct. A debtor cannot dissipate a pending lawsuit, particularly a class action involving many parties, and controlled by class action counsel. The trustee had time to review the complaint and, if necessary, to ask Ms. _____

¹² *Id.* at 20:8-9.

¹³ It appears that the trustee’s associate, _____, may have contributed to the trustee’s misconduct in all three of these meetings. The trustee may wish to consider whether _____ should attend meetings of creditors. The suspension will enable the trustee to carefully evaluate this question.

additional questions. She had readily disclosed the lawsuit in her bankruptcy papers. Docket #1.

The trustee's questionable conduct during the meeting was constant. This is not a case involving a trustee who made one rude or inappropriate remark. *See* 62 Fed. Reg. at 51,748 (explaining that "multiple instances of discourtesy also might justify suspension or termination"). This is a case where the trustee was repeatedly unprofessional, discourteous, overly aggressive and inappropriate in his treatment of the debtor.

Suspension is particularly justified here, because the trustee's conduct occurred in the section 341 meeting room. As the trustee explains in his Request for Review, his actions occurred in a "crowded meeting room occupied by approximately 50 or more debtors plus their attorneys." Request for Review at 4. The time and place of the trustee's actions aggravate his misconduct, and buttress my conclusion that the suspension constitutes an appropriate exercise of the United States Trustee's discretion. 28 C.F.R. § 58.6(i).

During the examination, the trustee also questioned both Ms. friend and Ms. . As the trustee recognizes, however, there are reasons to refrain from asking non-debtors questions on the record at a meeting of creditors.¹⁴ *See* Trans. at 6:6-7, 11-12 (trustee instructing the debtor's non-debtor husband not to answer questions because he is "not under oath" and the trustee must "get the answers from" the debtor). Nonetheless, the trustee repeatedly broke his own rule. He asked Ms. questions. *See, e.g., 1 Trans* at 5:19-6:4. He asked Ms. friend questions. *See, e.g., 2 Trans* at 4:14-5:22.

The trustee argues that his discourteous, overly aggressive, and improper treatment during the examination should be excused on multiple grounds: it was "hot" that day,¹⁵ the room was "crowded,"¹⁶ and he was "frustrate[d]."¹⁷ He characterizes himself as "dogged." Request for Review at 2. He suggests that his "aggressive" treatment of the debtor was nothing more than the trustee "asking follow-up questions." *Id.* at 4. According to the trustee, he "was not being 'aggressive,' but merely being thorough." *Id.* After reviewing the record, including the transcript, I am not persuaded by these explanations.

I similarly reject the trustee's after the fact characterizations of the conduct of Ms. and Ms. . Regarding the debtor, he argues that the Handbook provides that "**Uncooperative or recalcitrant debtors** (*emphasis in the trustee's Request for Review*) may be reminded of their duty to cooperate with the trustee in the administration of the case." Request for Review at 2. He then brands Ms. a recalcitrant witness, thereby justifying his conduct at her meeting of creditors:

¹⁴ When a trustee wishes to examine a third party, the trustee may seek authorization under Fed. R. Bankr. P. 2004 to conduct a Rule 2004 examination.

¹⁵ Request for Review at 8.

¹⁶ *Id.*

¹⁷ *Id.*

Mr. [redacted] was not being "aggressive" but was merely being thorough, which any good trustee exercising his or her fiduciary duty must be. The tone of someone's voice can be misinterpreted, but the crucial fact in this [redacted] case cannot be denied - Mr. [redacted] was encountering an "uncooperative or recalcitrant" debtor. The debtor [redacted] embodied the definition of recalcitrant.

Id. at 4.

I reject the trustee's attempt to blame Ms. [redacted] for three reasons. First, the Handbook authorizes a trustee only to "remind" a "recalcitrant" debtor to be "cooperative." It does not authorize the trustee to conduct a Section 341 meeting in the manner that the transcript shows the trustee conducted Ms. [redacted] meeting of creditors. Second, Ms. [redacted] was not recalcitrant.¹⁸ The transcript reflects that Ms. [redacted] did her best to answer the trustee's questions and ignore the trustee's inappropriate conduct, and that of his associate. Her petition and schedules were professionally prepared and comprehensive. [redacted] Docket #1. A recalcitrant debtor would have hidden the lawsuit, which is the type of an asset that can often be difficult for a trustee to uncover. She did the opposite. She disclosed it in her bankruptcy papers and testified about it, her counsel promised to give the trustee a copy of the complaint, and the debtor offered the trustee additional information about the identity of class action counsel. This is not recalcitrance. Third, there was no reason to believe that this class-action lawsuit was particularly valuable. None of the trustee's questions went to value. Nor did he ask Ms. [redacted] in any detail about her alleged injuries.¹⁹

I find that the trustee's attempt in his Request for Review to blame the debtor for his misconduct supports, rather than undercuts, the United States Trustee's decision to suspend him. The trustee treated Ms. [redacted] improperly. Although he expressed carefully cabined remorse at the beginning and end of his Request, he impugns Ms. [redacted] in the middle. This indicates to me that the trustee cannot correctly identify a recalcitrant debtor and that the trustee would benefit from the suspension period to study the record and take affirmative steps to improve his conduct. The trustee is free during this period to go beyond the training directed by the United States Trustee.

The trustee suggests "merely listening to the audiotapes" can leave a misimpression, a point he mentions several times. Request for Review at 2, 3, 4. But the transcript reveals that his questions and comments, whether spoken softly or loudly, were wholly inappropriate and contrary to the Program's policy.

¹⁸ "Recalcitrant" is defined as "1: obstinately defiant of authority or restraint resisting authority or control; not obedient or compliant; refractory[;] 2.a: difficult to manage or operate[;] b: not responsive to treatment [;] c: RESISTANT (example omitted)." *Recalcitrant Definition*, MERRIAM WEBSTER.COM, <http://www.merriam-webster.com> (last visited March 1, 2015).

¹⁹ The lawsuit, which was property of the estate, apparently had no value. On September 26, 2014, the trustee "report[ed] [to the court] . . . that I have made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law." [redacted] Docket.

In rendering my decision, I have carefully reviewed and considered a supporting affidavit provided by the trustee and executed by an attorney, (no relation to the debtor), that the attorney executed more than two months after the meeting of creditors, and which is attached as Exhibit 1 to the trustee's Request for Review ("Aff."). I also have reviewed and considered the letters submitted by Ms. and Mr. , which are attached as part of Composite Exhibit 4 to the United States Trustee's Notice, as well as the trustee's response to the letters, which are also attached as a part of Composite Exhibit 4. Ms. and Mr. wrote their letters on the same day as Ms. meeting of creditors took place, and more than two months before the affidavit. Those letters paint a vastly different picture.

I conclude that the affiant's recollection is less reliable than the statements contained in the letters that Ms. and Mr. wrote two months earlier. Indeed, it was the publication of an article almost six weeks that led attorney to contact the trustee:

Subsequently after attending the [July 16, 2014] section 341(a) meeting of my client, I read the article of the and felt as though the article did not coincide with the events of that day.

Aff. ¶12. Given that it was an article written 40 days after the examination that led the attorney to contact the trustee, *see* Aff. ¶13, I find the more contemporaneous evidence – the recording of the meeting of creditors and the and letters – to be more credible than the affidavit.²⁰

Nor can the affiant's recollection change the trustee's recorded words, which establish that the trustee's conduct was inappropriate in a number of ways. I reject the trustee's suggestion that the recording is not the best evidence of what happened. While it does lack visual cues, the recording reveals that the trustee acted unprofessionally and inappropriately in this case. Moreover, the attorney affidavit accompanying the Request for Review does not state whether that attorney heard both calls of the meeting or just the second. The affidavit also does not reveal whether the attorney had reviewed the debtor's petition and schedules. Having reviewed the schedules and listened to the audio recording, I cannot agree with the conclusions drawn in the affidavit.

²⁰ In addition, the attorney affidavit does not address major issues, including (a) the trustee's conduct during the meeting of creditors, and (b) the trustee's failure to comply with Justice Department policy concerning language interpreters. I have also received an unsolicited letter dated January 15, 2015, from an attorney, Mr. . Mr. describes the trustee as being "brusk" on occasion (sic) and notes the trustee was brusque at the meeting, which the attorney attended. Letter of Support at 1. But, he shares his view that the trustee's conduct was appropriate given Ms. responses. *Id.* I reject that conclusion, which is not consistent with the Recording or the Transcript. Additionally, like the attorney affidavit, the letter does not address the other aspects of the trustee's conduct that were identified in the Notice. And, I find it to be less reliable, as it was written roughly six months after Ms. meeting of creditors. I also received a February 27, 2015 letter from Mr. . Mr. states that he saw the trustee do nothing wrong during an unnamed debtor's meeting of creditors, which occurred on July 16, 2014. Letter of Support at 1. The letter is conclusory. It only addresses one unspecified debtor's meeting, and does not address the specific issues raised by the United States Trustee's Notice.

The trustee also argues that Ms. [redacted] presence presented a “difficult scenario” for the trustee. Request for Review at 2-3. The record does not support this contention. This case presented one issue, whether the class action lawsuit had value for the estate, if the trustee concluded he needed additional information about it in order to ask informed questions, the trustee could have adjourned the meeting without asking any questions. The trustee did not find that necessary or appropriate. Under no circumstance did Mr. [redacted] absence justify the trustee badgering and embarrassing Ms. [redacted] and Ms. [redacted].

The trustee next argues that he did nothing wrong in questioning Ms. [redacted] credibility when she appeared to understand a question in English. He argues that such a fact was “[c]ertainly” relevant to Ms. [redacted] credibility and affected his administration of the case. *Id.* at 3. This argument is unpersuasive. That she may have understood some English was irrelevant. This meeting was not about Ms. [redacted] English language skills. It was about her financial situation. Moreover, under the mandatory limited English proficiency policy, debtors who understand some English, but have a limited ability to read, write, speak, or understand English, are still entitled to an interpreter. Handbook, § 3.D.6 at 3-6. *See also* Plan ¶ 4.0.1 (“*Limited English Proficient (LEP)* – Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English.”).

The trustee also argues that when he began to ask about the class action lawsuit, he “honestly believed” he was encountering an uncooperative or recalcitrant debtor. *Id.* As previously mentioned, nothing in the testimony would lead a reasonable person to this conclusion. The trustee’s expectation that this debtor would have a sophisticated understanding of a class action lawsuit in which she was but one member was unrealistic. The trustee is correct that he had a duty to ask questions about this asset. But he was wrong to pursue it in an unprofessional manner contrary to established requirements. His conduct of the meeting was unprofessional, inappropriate, and ineffective.

b. The Section 341 Meeting

The United States Trustee has alleged that the trustee’s aggressive and unprofessional conduct during the [redacted] meeting of creditors supports his decision to suspend the trustee. Notice at 1, 4, 6-7. I find that the record supports this conclusion.

Mr. [redacted] is a letter carrier with the United States Postal Service. Docket #1 (petition and schedules). Ms. [redacted], his wife, is a self-employed part-time babysitter. *Id.* Their adult son lives with them. *Id.* The family owns a 1997 Nissan Altima with 150,000 miles. *Id.* It is worth \$675.00. *Id.* Ms. [redacted] leases a 2014 Hyundai Elantra. *Id.* They own a home, which they valued as being worth \$537,500, which is encumbered by a \$508,891.87 mortgage. *Id.* Their other principal asset is Mr. [redacted] 401(k) plan, which is worth slightly more than \$200,000. *Id.*

Mr. and Ms. [redacted] jointly sought chapter 7 relief on June 18, 2014. *Id.* Mr. [redacted] was their bankruptcy attorney. *Id.* The trustee conducted their section 341 meeting of creditors on July 17, 2014. [redacted] Docket. Although it was continued until August 27, it appears no continued meeting was ever held. *Id.*

Ms. acted as counsel for Mr. and Mrs. at their meeting of creditors. Trans. at 2:1-7. After swearing in the debtors and reviewing their identification, the trustee asked whether either of the debtors had previously filed for bankruptcy. *Id.* at 3:19-20. Ms. testified she had filed a chapter 7 case thirteen years ago and had received a discharge of her debts. *Id.* at 3:21 -4:6.

The trustee then asked about the history of home ownership. *Id.* at 4:18-21. Ms. testified that she and her husband sold a residence in 2001 and bought a new home in 2001 or 2002. *Id.* at 4:22-5:19. She then testified that only Mr. held the deeds to both properties. *Id.* at 5:10-16. When the trustee asked what they paid for their current house, Ms. began to answer. The trustee interrupted her, saying: “How about I ask the guy whose name is on the deed? Wouldn’t it make more sense?” *Id.* at 6:4-7. When Mr. responded that Ms. was more knowledgeable about the transactions, the trustee asked Mr. : “How did you have the ability to put a house in your name, if you have no financial abilities?” *Id.* at 6:17-25.

The trustee continued to ask Mr. questions about the house, without allowing the debtors an opportunity to answer. For example, when the trustee asked how the mortgage on their current home was so high when the debtors paid \$300,000 for the house, Ms. started to explain, but was immediately cut off by the trustee who, in a stern voice, said, “How much did you refinance for? This is your second bankruptcy. You know the system. And now you're back again for both of you to not pay your creditors.” *Id.* at 11:6-9.

The trustee then asked the debtors for all the mortgages, all the refinance papers, and the deed. *Id.* at 11:22 - 12:1. When Ms. testified that they had recently negotiated a modification with HSBC, the trustee asked why HSBC was not listed on the debtor’s schedules.²¹ *Id.* at 13:12-22. When the debtors’ attorney mentioned that Chase held a mortgage on the property, the trustee responded that Chase was not listed either [note: it was]. *Id.* at 14:14-15. The trustee then became more combative, stating, “Show me where, under oath, under penalty of perjury, HSBC is listed.” *Id.* at 14:18-19.

At the end of the meeting, the trustee said, “So, your testimony under oath is that even though you paid 300 for the house and you now owe 508, you didn’t take any money out of the house?” *Id.* at 16:17-20. When Ms. responded, “no,” the trustee interjected, “Do you understand how crazy that sounds?” *Id.* at 16:21-23. When Ms. later tried to explain, *id.* at 18:5-16, the trustee responded, “Ma’am, ma’am, do me a favor, don’t dig yourself a deeper hole.” *Id.* at 18:17-18. When Ms. responded that she was not, the trustee stated, “Oh, yes you are, because what you are saying can’t be truthful. Okay? It can’t be. It’s illogical.” *Id.* at 18:21-19:2.

The trustee then announced that has was going to refer the case “upstairs” for “a mortgage fraud investigation” and that Mrs. should change her attitude because “you've

²¹ HSBC was listed. Docket #1.

taken advantage of the system once. I don't know if we're going to let you do it again. You're through. See you next time.”²² *Id.* at 19:6-16.

Two months later, Mr. and Ms. _____ received a discharge of their unsecured debts.

Docket #12. The trustee never brought an action against them alleging any sort of fraudulent activity, and he did not file a complaint under 11 U.S.C. § 727(c) seeking to deny them a discharge of their debts. _____ Docket. Nor did anyone else. *Id.* Their bankruptcy case closed on September 18, 2014. *Id.*

The record demonstrates that the trustee acted inappropriately in the _____ examination in ways similar to his conduct of the _____ examination. First, he interrupted the debtors' answers. The trustee began the _____ examination by interrupting Mr. _____ answer to his first question. _____ Trans. at 2:21-23. He continued to interrupt throughout. *See id.* at 6:3-4; 6:9-10; 6:12-13; 6:19-20; 6:23-24; 7:18-19; 8:9-10; 10:2-3; 10:15-16; 11:5-6; 12:7-8; 12:22-23; 17:8-9; 17:17-18. Although give and take is a natural byproduct of examination, the trustee's interruptions were excessive, occasionally rude, and even counterproductive.

Second, as in the _____ examination, the trustee repeatedly made rude or inappropriate statements to or about Mr. and Ms. _____. When, for example, Ms. _____ attempted to answer his question about their home—which was unsurprising, as she had answered the immediately preceding question—the trustee interrupted her and rudely interjected: “How about I ask the guy whose -- the name is on the deed?” *Id.* at 6:1-5. There was no reason to speak so harshly to Ms. _____. Nor was it appropriate for the trustee to refer to Mr. _____ as “the guy.” *Id.*

As the _____ examination continued, the trustee's responses became less civil. *See, e.g., id.* at 9:23 (“Oh, really?”); *id.* at 16:22-23 (“Do you understand how crazy that sounds?”); *id.* at 18:2-3 (“So we have one false statement under oath.”);²³ *id.* at 18:17-18 (“Do me a favor. Don't dig yourself a deeper hole.”); *id.* at 18:22 (“what you're saying can't be truthful.”); *id.* at 19:2 (“It's illogical.”). The trustee's allegations arose from the debtors' discussion of their assets and their indebtedness. Despite telling them they were untruthful, the trustee did not bring a suit alleging the debtors had committed fraud, and he did not file a complaint under 11 U.S.C. § 727(c) seeking to deny them a discharge of their debts. *See* 11 U.S.C. § 727(c) (the trustee may object to the debtors receiving a discharge); _____ Docket (no objection by the trustee). Nor did anyone else. _____ Docket. Instead, Mr. and Ms. _____ received a discharge of their unsecured debts on September 18, 2014. _____ Docket #12.

Third, as he did during Ms. _____ examination, the trustee unfairly accused Ms. _____ of a lack of respect. The trustee accused Ms. _____ of making a joke out of the system. _____ 2 Trans. at 18:11-25. He accused Ms. _____ of the same thing. _____ Trans. at 6:2-14. At the end of the examination, the trustee unfairly criticized Ms. _____ for having lawfully

²² At no point during the examination did the trustee explain that he was wearing a hearing aid, that he was hard of hearing or that he might be speaking loudly inadvertently. He never apologized for the tone or strength of his voice.

²³ The trustee should not have hurled charges of perjury against the debtors. The purpose of a meeting of creditors is to gather information not make accusations that may not be true.

sought bankruptcy relief thirteen years ago: “You've taken advantage of the system once. I don't know if we're going to let you do it again.” *Id.* at 19:10-15. The trustee’s statement that she had taken advantage of the system 13 years earlier was an unsupported assertion. He cited no evidence to support his charge that the debtor had taken advantage of the system in her prior filing.

The trustee argues that his conduct was appropriate throughout the meeting. He states that the fact that the house was purchased only in Mr. _____ name “obviously” raised “serious questions” about their intent 12 or 13 years earlier. Ms. _____, however, had just gone through her own bankruptcy case back then, which would likely have meant her credit rating was inferior to her husband’s at the time. Moreover, the trustee had no reason to be concerned about the _____ intent in purchasing a house 12 or 13 years earlier. Their “intent” would have no impact on administration of their current bankruptcy case. If the trustee believed he needed information about the purchase of the house and any refinances or loan modifications, he could have requested the documents (which he did) and asked the person who knew the information. He did not need to criticize and belittle them.

The trustee argues that referring to a mortgage fraud investigation was understandable given the illogical facts. Nothing in the facts, however, indicated mortgage fraud. Even if the debtors had testified incorrectly about whether they received money back in one of their refinances, that conduct would not indicate they had committed mortgage fraud. If the trustee believed he needed additional information about their refinances, he could request the documents (as he did) without inappropriately threatening them with a fraud investigation. As in the case, the trustee’s conduct of the meeting was unprofessional, inappropriate, and ineffective.

c. The _____ Section 341 Meeting

The United States Trustee also alleged that the trustee’s aggressive and unprofessional conduct during the _____ meeting of creditors supports his decision to suspend the trustee. Notice at 1, 4, 7-8. I find that the record supports this conclusion.

Ms. _____ was a pro-se debtor who filed multiple sets of schedules. _____ Docket #1, #15. She asserted that she owned no real property and had less than \$10,000.00 worth of personal property. *Id.* She also listed three personal injury claims and a claim of succession to a rent-stabilized lease, all of which she valued at \$0. *Id.* She listed debts of \$12,352.00. *Id.* She asserted she was an actress whose only income was from social security and food stamps. *Id.* Ms. _____ disclosed on her bankruptcy petition that she had filed a prior case in _____, which had been dismissed. *Id.*

At Ms. _____ April 30, 2014 meeting of creditors, the trustee asked whether she had previously sought bankruptcy relief.²⁴ _____ Trans. at 4:19-20. Ms. _____ said she had filed one in 2009, she “believe[d].” *Id.* at 4:21 - 5:3. The trustee told her that he needed to know whether it was dismissed “with prejudice or without.” *Id.* at 6:14-16. Ms. _____ said she did not know. Mr. _____, who was accompanying Ms.

²⁴ Ms. _____ meeting of creditors had been postponed several times at her request.

, asked the trustee what document he would like to see in order to obtain an answer to the trustee's question. *Id.* at 6:17-18.

Ms. responded at this point that she was feeling ill and was taking pain medication because she had undergone a root canal the day before, and it was making her groggy. *Id.* at 7:1-5. The trustee then stated as follows,

THE TRUSTEE: This is a jurisdiction issue. It has nothing to do with your memory. If the dismissal was with prejudice, you can't file again in You can only file once every eight years.

Id. at 7:9-14. Ms. then testified that the dismissal was without prejudice. *Id.* 7:15-16. The trustee immediately questioned her veracity because she had testified a minute earlier that she wasn't thinking or feeling very well. *Id.* at 7:17-22. Ms. then testified that she would get the documents he needed as soon as possible, but that she had not known he would need them at this meeting. *Id.* at 8:6-9.

The trustee continued to question the debtor. At that point, Ms. began to cry. *Id.* at 9:5. The trustee then stopped directing substantive questions to Ms. and inquired about entering into a stipulation to extend deadlines to object to her discharge. The trustee asked Mr. whether he remembered the first stipulation that his wife had signed in the case. *Id.* at 9:23-24. Mr. responded that he did, and that he had it with him. *Id.* at 9:25-10:1. The trustee then asked Ms. to sign a new stipulation so the discharge deadline would not expire before she was fully questioned, and he told her that he would reset the meeting of creditors to May. *Id.* at 10:12-13.

The trustee then added, "but understand, when you come back here in May, this is the third time. There are a lot of questions that have to be answered." *Id.* at 10:15-17. Ms. then asked him not to yell at her. *Id.* at 10:18-19. When he responded that he was not yelling, he was being civil, she responded, "Don't speak to me like that, please." *Id.* at 10:22-25. Mr. then stated the trustee was being "loud and aggressive." *Id.* at 11:1-2. , the trustee's associate, then said "[t]his has become ridiculous," and the trustee responded "[t]his is absolutely ridiculous." *Id.* at 11:7-11.

Ms. then stated "[p]lease, don't yell at me. Please." *Id.* at 11:16-17. She then began to cry once more. *Id.* at 11:21. The trustee then noted that Ms. had left the room. *Id.* at 11:24-25.

The trustee then began examining Ms. husband, who is not a debtor and was not under oath. The trustee asked him "[a]re you a disbarred attorney?" *Id.* at 12:13-14. Mr. responded "[n]o." After returning, Ms. asked the trustee and his assistant on three occasions to stop asking her husband questions. *Id.* at 12:17, 12:20, 13:5-6. Ms. then began crying again. *Id.* at 13:10.

The trustee asked Mr. a series of additional questions about Ms. prior case, as well as legal questions about bankruptcy law. *Id.* at 15:12-21. The

trustee ended his questioning by telling Mr. [redacted] “you’re not going to be much help” at the renewed meeting of creditors, which he was scheduling for May.²⁵ *Id.* at 15:22-23.

The Court transferred her case to the United States Bankruptcy Court for the District of [redacted]. Docket #s 101-104.

From the beginning of the [redacted] examination, the trustee was brusque. After asking the debtor for a copy of an order in a prior bankruptcy case, the trustee said “[g]et me a copy of it.” Trans. at 5:21. At this point, the debtor informed the trustee she was taking “pain” medication because she had undergone a two-and-a-half hour root canal the day before. *Id.* at 6:22-247:2. Rather than ask the debtor whether she was capable of testifying, the trustee moved ahead with the examination. Very shortly after the start of the examination, the debtor and her husband were accusing the trustee of yelling at the debtor. And soon, Ms. [redacted], like Ms. [redacted], was crying. *Id.* at 9:5 (“Crying.”), 11:6 (“Crying.”); 11:21 (“Crying.”); 13:10 (“Crying.”).

Debtors have a duty to testify at their meeting of creditors. 11 U.S.C. § 343 (“The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title.”). If the trustee thought Ms. [redacted] was using her tears as a subterfuge, he had the right to move for the dismissal of her case on the ground of “unreasonable delay by the debtor that is prejudicial to creditors.” 11 U.S.C. § 707(a). Attacking and mocking the debtor and her husband was not an acceptable substitute.

The trustee’s conduct in the [redacted] examination mirrored his conduct in the [redacted] and [redacted] examinations. The record supports the United States Trustee’s conclusion that the trustee was “unprofessional, discourteous, overly aggressive and improper [in his] treatment” of these debtors. The trustee repeatedly violated his duty to treat debtors courteously and his questioning was wholly ineffective. Given this record, the United States Trustee acted well within his discretion by suspending this trustee for a period of one year.

2. The Trustee’s Non-Compliance with the Language Access Program Supports the Suspension

The United States Trustee has alleged that the trustee’s failure to follow the policy and guidance regarding the use of Plan interpreters in the [redacted] case supports his decision to suspend the trustee. Notice at 1, 3-6. I find that the record supports this conclusion.

As previously mentioned, a trustee is required to follow Program policy when conducting a meeting involving debtors who possess LEP. 28 C.F.R. § 58.6(a)(4); Handbook, § 3.D.6 at 3-6; Plan. Federal agencies provide free translating services for people who possess LEP. Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (2000). To implement the Executive Order, the Department of Justice issued compliance standards to agencies “to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not

²⁵ At no point during the examination did the trustee explain that he was wearing a hearing aid, that he was hard of hearing or that he might be speaking loudly inadvertently. He never apologized for the tone or strength of his voice.

discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations.” *Id.*

Consistent with the Executive Order and the DOJ compliance standards, the Program established the Plan to provide language assistance services to debtors at meetings of creditors. Under the Plan, the trustee must “advise LEP individuals of free telephone and interpreter services offered by the Program for the purposes of the meeting” Handbook, § 3.D.6, at 3-6.

The trustee appropriately concedes he is bound to follow these policies. Request for Review at 3, 5. The trustee nonetheless violated the policy in two fundamental ways:

- He failed to promptly call an interpreter; and
- He used a family friend to interpret.²⁶

First, the trustee failed to promptly call an interpreter. At the start of the 341 meeting, Ms. requested a Spanish interpreter for Ms. Trans. at 19:17-20. The trustee did not comply with the request. *Id.* When Ms. asked for an interpreter, the trustee should have called the interpreter service. The trustee should not have asked Ms. any questions without the interpreter, nor should he have repeatedly questioned Ms. about her proficiency.

Rather than following policy and promptly obtaining an interpreter, the trustee asked the debtor 17 more questions before requesting an interpreter. 1 Trans. at 2:7 – 5:2; 2 Trans. at 3:4-6:8-11. He did so even though the debtor did not answer questions that he posed in English. 1 Trans at 2:7 – 4:8. Time after time, the examination transcript establishes that his questions in English were met with “no audible response.” *Id.* at 2:9; 2:12; 2:20; 3:24. The trustee also disregarded her counsel’s repeated explanations that Ms. did not speak English. *Id.* at 2:14-15; 2:22-23; 3:1-2; 3:4-5.

Completely without justification, the trustee tried to end Ms. examination because she could not speak English. *Id.* at 6:8-19. It was only because Ms. repeatedly demanded that Ms. be allowed to testify through an interpreter that the examination was halted only temporarily. *Id.* at 6:8-7:25 (trustee agreeing to holding a second examination that day, which he termed a “second call”).

But, when the examination resumed, the trustee did not call an interpreter. 2 Trans. at 2:1-6:17. Instead, the trustee had Ms. friend, who spoke Spanish, ask Ms. questions, which the friend was expected to interpret.

The trustee’s Request for Review seeks to minimize his mistake. While conceding that a “strict interpretation” of the requirement required him to promptly call the interpreter, he defends his conduct because he called the interpreter immediately after “it became clear [to him] that he

²⁶ The trustee also violated the policy by failing to inform Ms. that she could use her own interpreter at her own expense. Handbook, § 3.D.6 at 3-6.

was dealing with a person with limited English proficiency.” Request for Review at 3. The trustee’s assertion that he violated only a strict interpretation of the policy is akin to arguing that he had committed only a technical violation. That is not so. He likely embarrassed Ms. _____, confused her, and made it more difficult to obtain useful information at the examination. His error was significant and it is troubling that he fails to recognize this.

The voluntary nature of the trustee’s violation is established by the fact that once Ms. _____ requested an interpreter, the trustee conducted more than eight minutes of the meeting before calling one. During that time, the trustee was aware the debtor was not able to answer questions posed in English. *See* _____ 1 Trans. at 2:25 (trustee stating: “[s]he won’t answer a question. Any question.”); 4:5 (trustee recognizing the debtor spoke “[n]o English.”). This decision was improper and violated Program policy. It justifies his suspension.

Second, the trustee violated Program policy by using Ms. _____ friend as an interpreter. Handbook, § 3.D.6, at 3-6. The policy squarely prohibits using friends to interpret. The reasons for this can be easily understood. Friends may slant an answer. Friends are not professionally trained and may make mistakes. The debtor is under oath, 11 U.S.C. § 343, and potentially subject to a criminal perjury charge or a denial of discharge of her debts under 11 U.S.C. § 727(a)(4)(A), if she answers wrongly. Due to considerations such as these, Program policy requires trustees to use trained interpreters and not use friends.

The trustee willfully violated this prohibition. The trustee had the debtor’s friend, Ms. _____, interpret a number of his questions. *See, e.g.*, _____ 1 Trans. at 4:22-5:2; _____ 2 Trans. at 2:1-6:16. This independent violation of the LEP policy also justifies the trustee’s suspension.

3. The Trustee’s Other Arguments against Suspension Are Unpersuasive

The trustee makes two principal additional arguments: (a) that he has been a successful trustee for a long time, and (b) he has received good periodic reviews from the Office of the United States Trustee. Request for Review at 1, 2, 8. I have weighed the trustee’s work as a panel trustee. I have also reviewed his recent periodic reviews. Neither changes my conclusion with respect to the trustee’s conduct at these hearings. First, 28 C.F.R. § 58.6 applies equally to all trustees. Mere length of service cannot justify misconduct by a senior trustee that would lead to administrative action against a less-experienced trustee. Every trustee must be courteous to debtors and follow mandatory procedures. Those are the standards against which all trustees’ actions must be judged. This is what the United States Trustee has done in this case. Second, the trustee’s conduct here, mistreating three sets of debtors in a very public forum, and violating mandatory language assistance requirements in two distinct ways, might well have supported a termination rather than a suspension. It is hoped that, with training, the trustee will perform appropriately when he returns to the panel.²⁷

²⁷ The trustee suggests without proof that a one-year suspension will have an unduly harsh economic impact upon his operations, but that cannot be the standard for determining whether conduct merits a suspension. Rather, the trustee’s conduct must be evaluated. That has occurred in this case and his conduct merits this suspension.

The trustee suggests that his prior evaluations make clear that he appropriately conducts meetings of creditors. Request for Review at 1, 8; Reply at 1-2. In his Reply, the trustee quotes one sentence from his evaluation for the period of January 1, 2009 to December 31, 2010:

The Office of the United States Trustee reviewed the recordings in these three cases and determined that the root of the problems was Mr. H____'s lack of preparation for routine questions.

Reply at 2. But the evaluation goes on to state that:

However, it appeared from the recordings that the Trustee did, at times, become frustrated with the Debtors' and Mr. H____'s lack of information. Accordingly, a Trial Attorney met with the Trustee and reminded him of the importance of maintaining a professional demeanor at all times, even when faced with difficult debtors or counsel. In the eighteen months since this complaint was lodged, there have been no additional complaints against the Trustee. The United States Trustee has observed numerous meetings of creditors conducted by the Trustee during that time, both in person and by recording, and found that the Trustee's tone is professional and that he addresses debtors, counsel and other parties present courteously.

UST Response, Exh. 1. at Trustee Duty No. 14.

Thus, the United States Trustee was sufficiently concerned about this trustee's "professional demeanor" in the case that a Program attorney met with the trustee specifically to "remind him of the importance of maintaining a professional demeanor at all times." The trustee's conduct in the _____, _____ and _____ was worse, and these debtors were not being difficult, and the counsel in two, Ms. _____, was more than fair. Thus, his conduct in the case mentioned in his evaluation presaged what happened here. It is comforting that he was courteous when United States Trustee personnel were in attendance and when they reviewed a selected number of recordings of other examinations. Had that not been the case, the relief imposed in this proceeding could have been more sweeping.

The trustee also alleges throughout his Request for Review that he spoke loudly because he wears hearing aids. But, that does not excuse his discourtesy, his overly aggressive conduct or his inappropriate treatment of these debtors. Notice at 1. Indeed, the record does not establish that the trustee spoke in a loud voice due to a hearing deficiency. Not once during the examinations—even when asked not to yell—did the trustee suggest that he was speaking loudly due to any hearing deficiency. Thus, the record does not establish this is why the trustee yelled at debtors. Even if it did, the words he spoke justify a suspension regardless of their volume. He was unfair, at times almost cruel. A hearing deficiency is insufficient to excuse the remarks and conduct at these hearings.

At the end of the day, the trustee seeks to excuse his discourteous, overly aggressive, and improper treatment of Ms. _____ and the others, on a myriad of grounds. Request for Review at 8. In his view, he "was not being 'aggressive,' but merely being thorough." *Id.* I do not interpret the record that way. No trustee should treat debtors as these debtors were treated, in a

public forum, by the trustee who is representative of the bankruptcy system. Here, the trustee's actions were sufficiently egregious to warrant a one-year suspension. The trustee's behavior was inexcusable. He violated both Departmental policy and the trustee's obligation to treat others with courtesy.

IV. Conclusion

Based upon my review of the record, and for all of the foregoing reasons, I affirm the United States Trustee's decision to suspend the trustee from active case rotation status on the chapter 7 panel for the _____ and _____ Districts of _____ for one year, with his return to rotation conditioned upon the completion of at least ten hours of diversity and sensitivity training.

This decision constitutes final agency action in this matter.

Dated: 3.4.16



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