

§ 58.1

28 CFR Ch. I (7–1–12 Edition)

APPENDIX A TO PART 58—GUIDELINES FOR REVIEWING APPLICATIONS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FILED UNDER 11 U.S.C. 330

AUTHORITY: 5 U.S.C. 301, 552; 11 U.S.C. 109(h), 111, 521(b), 727(a)(11), 1141(d)(3), 1202; 1302, 1328(g); 28 U.S.C. 509, 510, 586, 589b.

SOURCE: Order No. 921–80, 45 FR 82631, Dec. 16, 1980, unless otherwise noted.

§ 58.1 Authorization to establish panels of private trustees.

(a) Each U.S. Trustee is authorized to establish a panel of private trustees (the “panel”) pursuant to 28 U.S.C. 586(a)(1).

(b) Each U.S. Trustee is authorized, with the approval of the Director, Executive Office for United States Trustees (the “Director”) to increase or decrease the total membership of the panel. In addition, each U.S. Trustee, with the approval of the Director, is authorized to institute a system of rotation of membership or the like to achieve diversity of experience, geographical distribution or other characteristics among the persons on the panel.

[Order No. 921–80, 45 FR 82631, Dec. 16, 1980, as amended at 62 FR 30183, June 2, 1997]

§ 58.2 Authorization to appoint standing trustees.

Each U.S. Trustee is authorized, subject to the approval of the Deputy Attorney General, or his delegate, to appoint and remove one or more standing trustees to serve in cases under chapters 12 and 13 of title 11, U.S. Code.

[Order No. 51 FR 44288, Dec. 9, 1986]

§ 58.3 Qualification for membership on panels of private trustees.

(a) To be eligible for appointment to the panel and to retain eligibility therefor, an individual must possess the qualifications described in paragraph (b) of this section in addition to any other statutory qualifications. A corporation or partnership may qualify as an entity for appointment to the private panel. However, each person who, in the opinion of the U.S. Trustee or of the Director, performs duties as trustee on behalf of a corporation or partnership must individually meet the standards described in paragraph (b) of this section, except that each U.S.

Trustee, with the approval of the Director, shall have the discretion to waive the applicability of paragraph (b)(6) of this section as to any individual in a non-supervisory position. No professional corporation, partnership, or similar entity organized for the practice of law or accounting shall be eligible to serve on the panel.

(b) The qualifications for membership on the panel are as follows:

(1) Possess integrity and good moral character.

(2) Be physically and mentally able to satisfactorily perform a trustee’s duties.

(3) Be courteous and accessible to all parties with reasonable inquiries or comments about a case for which such individual is serving as private trustee.

(4) Be free of prejudices against any individual, entity, or group of individuals or entities which would interfere with unbiased performance of a trustee’s duties.

(5) Not be related by affinity or consanguinity within the degree of first cousin to any employee of the Executive Office for United States Trustees of the Department of Justice, or to any employee of the office of the U.S. Trustee for the district in which he or she is applying.

(6)(i) Be a member in good standing of the bar of the highest court of a state or of the District of Columbia; or

(ii) Be a certified public accountant; or

(iii) Hold a bachelor’s degree from a full four-year course of study (or the equivalent) of an accredited college or university (accredited as described in part II, section III of Handbook X118 promulgated by the U.S. Office of Personnel Management) with a major in a business-related field of study or at least 20 semester-hours of business-related courses; or hold a master’s or doctoral degree in a business-related field of study from a college or university of the type described above; or

(iv) Be a senior law student or candidate for a master’s degree in business administration recommended by the relevant law school or business school dean and working under the direct supervision of:

(A) A member of a law school faculty; or

Department of Justice

§ 58.4

(B) A member of the panel of private trustees; or

(C) A member of a program established by the local bar association to provide clinical experience to students; or

(v) Have equivalent experience as deemed acceptable by the U.S. Trustee.

(7) Be willing to provide reports as required by the U.S. Trustee.

(8) Have submitted an application under oath, in the form prescribed by the Director, to the U.S. Trustee for the District in which appointment is sought: *Provided*, That this provision may be waived by the U.S. Trustee on approval of the Director.

§ 58.4 Qualifications for appointment as standing trustee and fiduciary standards.

(a) As used in this section—

(1) The term *standing trustee* means an individual appointed pursuant to 28 U.S.C. 586(b).

(2) The term *relative* means an individual who is related to the standing trustee as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or an individual whose close association to the standing trustee is the equivalent of a spousal relationship.

(3) The term *financial or ownership interest* excludes ownership of stock in a publicly-traded company if the ownership interest is not controlling.

(4) The word *region* means the geographical area defined in 28 U.S.C. 581.

(b) To be eligible for appointment as a standing trustee, an individual must have the qualifications for membership on a private panel of trustees set forth in §§ 58.3 (b)(1)–(4), (6)–(8). An individual need not be an attorney to be eligible for appointment as a standing trustee. A corporation or partnership may be appointed as standing trustee only with the approval of the Director.

(c) The United States Trustee shall not appoint as a standing trustee any individuals who, at the time of appointment, is:

(1) A relative of another standing trustee in the region in which the standing trustee is to be appointed;

(2) A relative of a standing trustee (in the region in which the standing trustee is to be appointed), who, within the preceding one-year period, died, resigned, or was removed as a standing trustee from a case;

(3) A relative of a bankruptcy judge or a clerk of the bankruptcy court in the region in which the standing trustee is to be appointed;

(4) An employee of the Department of Justice within the preceding one-year period; or

(5) A relative of a United States Trustee or an Assistant United States Trustee, a relative of an employee in any of the offices of the United States Trustee in the region in which the standing trustee is to be appointed, or a relative of an employee in the Executive Office for United States Trustees.

(d) A standing trustee must, at a minimum, adhere to the following fiduciary standards:

(1) *Employment of relatives.* (i) A standing trustee shall not employ a relative of the standing trustee.

(ii) A standing trustee shall also not employ a relative of the United States Trustee or of an Assistant United States Trustee in the region in which the trustee has been appointed or a relative of a bankruptcy court judge or of the clerk of the bankruptcy court in the judicial district in which the trustee has been appointed.

(iii)(A) Paragraphs (d)(1) (i) and (ii) of this section shall not apply to a spouse of a standing trustee who was employed by the standing trustee as of August 1, 1995.

(B) For all other relatives employed by a standing trustee as of August 1, 1995, paragraphs (d)(1) (i) and (ii) of this section shall be fully implemented by October 1, 1998, unless specifically provided below:

(1) The United States Trustee shall have the discretion to grant a written waiver for a period of time not to exceed 2 years upon a written showing by the standing trustee of compelling circumstances that make the continued employment of a relative necessary for a standing trustee's performance of his or her duties and written evidence that