UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

In the Matter of

Carbo Co.,
Debtor.

Case No. 94-2094-C
Chapter 1l

DISQUALIFICATION AS PRESIDING JUDGE

Hearing was held on October 17, 1994. The following appearances were entered: Thomas L. Flynn for the Debtor-in-Possession; Peter S. Cannon and John R. Cox for the Boiks Family Trust; John Waters for the United States Trustee; John P. Sullivan for Norwest Bank Iowa, N.A.; Donald F. Neiman for the Committee of Unsecured Creditors; and, Richard K. Updegraff for George Heller, Jr.

The Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code on August 22, 1994. This petition was filed under the signature of Terry Nagelvoort as Chairman, and was filed without schedules and supporting documents.

The Statement of Financial Affairs filed on September 16, 1994, reveals that Ms. Brenda Keenan, Webster City, Iowa, is the secretary of debtor corporation. I have known Ms. Brenda Keenan and her family for many years. My family and I visit with her mother in her home in Webster City several times a month. On occasion Ms. Keenan is present in her mother's home when these visits occur.

The disqualification of a United States Judicial Officer is governed by 28 U.S.C. § 455 and Fed.R.Bankr.P. 5004. Pursuant to 28 U.S.C. § 455, a "judge is to take into consideration all circumstances both public and private and determine if a reasonable,

uninvolved observer would question the judge's impartiality." Gilbert v. City of Little Rock. Ark., 722 F.2d 1390, 1399 (8th Cir. 1983).

Balanced against this is the precept that "there is as much obligation on the part of the judge not to recuse himself when there is no occasion for so doing as there is to recuse himself when such an occasion exists." Walker v. Bishop, 408 F.2d 1378, 1382 (8th Cir. 1969). "A federal judge has the duty to sit where not disqualified which is equally as strong as the duty to not sit where disqualified." Laird v. Tatum, 409 U.S. 824, 837, 93 S.Ct. 7, 14-15, 34 L.Ed.2d 50 (1972) (memorandum on recusal by Rehnquist, J.).

The standard for recusal under § 455(a) is an objective one. In re Hale, 980 F.2d 1176, 1178 (8th Cir. 1992). The goal of the judicial disqualification statute is to foster the appearance of impartiality. Potashnick v. Port City Constr. Co., 609 F.2d 1101, 1111(5th Cir. 1980), cert. denied, 449 U.S. 820, 101 S.Ct. 78, 66 L.Ed.2d 22 (1980).

After much consideration, the Court concludes that under the circumstances in this case, the "average person" would doubt my impartiality in handling matters involving the rights of a corporation in which Ms. Keenan is an officer. Even if the subject matter of this litigation was never discussed during my visits to Ms. Keenan's mother's home, the ''average person'' would consider our close social relationship and would doubt my ability to act with disinterest and aloofness in deciding the issues, especially if the issue of the credibility of Ms. Keenan arose.

Accordingly, I must disqualify myself from presiding over the proceedings arising in this case.

IT IS SO ORDERED.

Dated this 20th day of October, 1994.

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Russell J. Hill, Judge
U.S. Bankruptcy Court