

the Court concurs with the Trustee, and disqualifies Woner Glenn from continued representation of Eugene Shore in this bankruptcy case and any related proceedings in this Court.

I. JURISDICTION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a "core" proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A).

II. FACTUAL BACKGROUND.

On October 22, 2003, Woner Glenn, a law firm with a respected reputation for its work before this Court, filed a petition under Chapter 11 on behalf of Debtor Shore. In conjunction with the filing of these petitions, Woner Glenn also filed an Application for Employment of Attorneys for Debtor. The application included language indicating both Woner Glenn had no interest adverse to Shore in any of the matters upon which its attorneys were to be engaged, and that it was a disinterested party, as defined in 11 U.S.C. § 101(14). Those points were reiterated in both affidavits accompanying the fee application. The affidavits further stated that an inquiry was made by discussing potential conflicts with Shore, and both affiants acknowledged they had a "continuing duty to disclose any subsequently discovered adverse interests or change in disinterestedness."

At the time of the filing of the petition and these affidavits, there existed the following facts, most of which were unknown to the Court, but which were known by Debtor and, which should have been, and one assumes were, known, by Woner Glenn:

1. In March 1998, Debtor Eugene Shore ("Debtor Shore"), NorthShore Farms, LLC, South Shore Farms, LLC, and Mid-Management Group, LLC entered into a Kansas partnership agreement in the name of Western Production Company (Western). North Shore Farms'

members were Debtor Shore and Teresa Boyd, his daughter. South Shore's members were Debtor Shore and his son, Randall Shore. Mid-Management's members were Randal Shore and Teresa Boyd.

2. Debtor Shore is married to Janet Shore, and has at least two children, Randall and Teresa Boyd (Shore). Janet Shore "may have an interest" in North Shore Farms, LLC, South Shore Farms, LLC, and Mid-Management Group, LLC.²
3. Debtor Shore entered into an agreement with Western whereby he leased significant real and personal property (farm equipment) to Western, which entity would then farm land owned by Debtor Shore and others, in exchange for payment of lease payments on the land being farmed. Annual rent is in the approximate amount of \$179,000. Western owes Debtor Shore anywhere from \$250,000 to \$500,000 for pre and post-petition rents.
4. Although Debtor Shore was given almost a month's additional time to file schedules, the Court was unable to find the Western debt disclosed. The only "account receivable" originally listed in Schedule B is one for CRP checks in the amount of \$15,000. At some point Debtor amended Schedule B, removing the CRP account receivable and inserting a debt from Carl Johnson (pasture land) of "less than \$1,000," but did not add the Western debt. Even in the recently amended Disclosure Statement, the amount of the debt owed by Western to Debtor is not fully disclosed.

²See Dissolution Agreement of Western Production, Exhibit X to Amended Disclosure Statement filed May 10, 2004. The copy provided to the Court does not have all required signatures, so it is unknown whether that Agreement is, in fact, effective.

Soon after the filing of the petition, the following additional facts came to light, again, most of which were not disclosed to this Court by supplemental affidavits of attorneys of Woner Glenn:

1. On December 30, 2003, two months after the filing of the petition, Randall Shore, Debtor's son and one of the members of one of the LLCs with an interest in Western, sued Debtor Shore, his father, and Western, among others, in state court, seeking repayment of \$28,000 for lease payments owed on land he individually owns in Stanton County, Kansas.
2. On or about January 20, 2004, Woner Glenn entered an appearance for Western, a company who owed Debtor Shore, as much as \$500,000 at that time, filing an answer on Western's behalf. Woner Glenn subsequently, on January 23, 2004, filed an Answer on behalf of Western to a cross claim by another party, and has answered written discovery served on Western in February 2004. Accordingly, Woner Glenn has undertaken work in excess of merely "attempts to get the actions stayed" against Debtor Shore, as alleged in their pleadings.
3. Notwithstanding Woner Glenn's representation, in separate state court proceedings, of a major debtor of Debtor Shore, Woner Glenn did not abide by their admitted "continuing duty to disclose any subsequently discovered adverse interests or change in disinterestedness" by filing supplemental affidavits after this representation began.
4. Western also owes money to Janet Shore, as a result of agreements whereby it would farm her land, and pay her rents for use of the land. Because Debtor Shore claims a 50% interest in Western, as a general partner, Debtor Shore, upon the ultimate dissolution of

Western, will be a debtor of Janet Shore in the event Western does not have sufficient assets to pay its debts. It has been represented to the Court in sworn testimony that Western is, in fact, insolvent, and cannot pay all its debts.

5. Western did have assets at the time of the filing of this bankruptcy.
6. Equitable Life sued Eugene and Janet Shore in Stanton County, pre-petition, and obtained a judgment against them. Equitable then obtained, against Janet Shore, an Order to Appear for Hearing in Aid of Execution. Janet Shore is not a debtor in bankruptcy.
7. Janet Shore owns assets separate and apart from Debtor Shore, as well as jointly owning many assets with him. Some of the land that she owns, individually, includes land generically described in Disclosure Statement attachments as the NW 21-27-41, SW 34-27-41 and SW 21-27-41.
8. Notwithstanding the ownership of individual assets by Janet Shore that could potentially satisfy at least a part of Debtor Shore's joint debts, Woner Glenn filed a Motion to Quash the collection hearing on behalf of Janet Shore on or about March 10, 2004.

III. ISSUES

The question raised is whether Woner Glenn's dual representation of Debtor, his wife, and Western creates a conflict so serious as to require this Court to now disqualify it from future representation of Debtor. A related question is whether the proposed rejection of the lease with Western absolves Woner Glenn of any conflict.

IV. ARGUMENT

Woner Glenn essentially argues that the apparent conflicts arising out of its representation of Debtor, Western, and Janet Shore, caused by the creditor-debtor relationships between those parties, are more theoretical than real. This is based on testimony of Debtor Shore to the effect that “I am Western Productions and Western Productions is me.” Woner Glenn argues that the interests of the parties, as they attempt to reorganize, are not truly adversarial, and thus the Court need not concern itself with the conflict. Finally, in its most recent brief, it argues that the conflicts that did exist are now moot due to very recent post-petition decisions to not only dissolve Western Production, but to also reject Debtor’s lease with Western Production.

A. Standards under § 327 and Rule 2014

Debtor has the authority to hire an attorney, under certain conditions, pursuant to 11 U.S.C. § 327.³ This section provides, in pertinent part, as follows:

Employment of professional persons.

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys ... or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

....

(c) In a case under chapter 7, 12 or 11 of this title, a person is not disqualified for employment under this section *solely* because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.⁴

Section 327's conflict of interest provisions are supplemented by Federal Rule of Bankruptcy Procedure 2014, which creates a disclosure requirement to enforce the disinterestedness standard. Rule 2014 dictates

³All statutory references are to the Bankruptcy Code, 11 U.S.C. § 101, et seq., unless otherwise specified.

⁴Emphasis added.

the manner in which the debtor in possession actually requests the employment of an attorney or other professional under § 327.⁵ Rule 2014(a) states

“An order approving the employment of attorneys ... or other professionals pursuant to § 327 ... shall be made only on application of the trustee or committee.... The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, [or] any other party in interest.... The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office fo the United States trustee.”

The purpose of Rule 2014 is to provide the Court (and the United States Trustee) with information to determine whether the professional's retention is in the best interests of the estate,⁶ and to maintain the integrity of the bankruptcy system.⁷

An applicant under § 327(a) has the burden of establishing, by that application and accompanying affidavit, that its chosen professional is qualified. Using this analysis, the Court also notes that a debtor's choice of counsel is entitled to great deference.⁸ The Tenth Circuit has strictly interpreted counsel's duty

⁵This section is applied to debtors in possession under § 1107(a).

⁶*In re Leslie Fay Cos., Inc.*, 175 B.R. 525, 533 (Bankr. S.D.N.Y.1994).

⁷See *In re Envirodyne Indus., Inc.*, 150 B.R. 1008, 1021 (Bankr. N.D. Ill.1993).

⁸See, *In re Enron Corp.*, 2002 WL 32034346, *4 (Bankr. S.D.N.Y.) (citing *Board of Educ. v. Nyquist*, 590 F.2d 1241, 1246 (2d Cir.1979) (“[D]isqualification has an immediate adverse effect on the client by separating him from counsel of his choice”); *A.V. by Versace, Inc. v. Gianni Versace. S.p.A.*, 160 F. Supp. 2d 657, 662-63 (S.D.N.Y. 2001) (“Disqualification, however, is a ‘drastic measure’ that is viewed with disfavor because it impinges on a party’s right to employ the counsel of its choice.”); *Universal City Studios, Inc. v. Reimerdes*, 98 F. Supp. 2d 449, 455 (S.D.N.Y. 2000) (“Disqualification also deprives a client of counsel of its choice”); *In re Caldor, Inc.*, 193 B.R. 165, 170 (Bankr. S.D.N.Y. 1996) (“Public policy favors permitting parties to retain professionals of their choice.”)).

under Section 327(a) and Rule 2014(a) to disclose actual, as well as potential, conflicts of interest.⁹ The duty to disclose any conflict continues throughout counsel's representation of the debtor-in-possession.¹⁰ When applying to serve as counsel for a debtor, an attorney is required to fully and candidly disclose all relationships with the debtor, creditors, or any other party in interest in order that the Court may properly evaluate the application and determine whether the attorney is disinterested.¹¹ “Rule 2014(a) leaves an attorney with no discretion to choose what connections are relevant or trivial to a § 327(a) analysis and should or should not be disclosed. No matter how trivial a connection appears to the professional seeking employment, it must be disclosed.”¹²

In making the decision whether an attorney should be employed, the Court must review not only the Bankruptcy Code section cited above, but must also be cognizant of the requirements of the Kansas Rules of Professional Conduct and the Code of Professional Responsibility approved by the Judicial Conference of the United States. These rules speak of an attorney's ethical obligation to the court and, although they are not dispositive when determining conflicts in representation in this Court, they are helpful in the analysis. These rules, as a general matter, prohibit conflicts of interest in representation, require

⁹*Interwest Business Equipment, Inc. v. United States Trustee (In re Interwest Business Equipment, Inc.)*, 23 F.3d 311, 317 (10th Cir. 1994); *In re Smitty's Truck Stop*, 210 B.R.844, 849-50 (10th Cir. 1995)

¹⁰11 U.S.C. § 328(c); *In re Smitty's Truck Stop*, 210 B.R. at 849; *Hansen, Jones & Leta, P.C. v. Segal*, 220 B.R. 434, 456 (D. Utah 1988).

¹¹Fed. R. Bankr. P. 2014(a).

¹²*In re Envirodyne Industries, Inc.*, 150 B.R. at 1021.

loyalty and confidentiality on the part of the attorney to each client, and seek to avoid even the appearance of impropriety.

The Tenth Circuit in *Interwest* explained the reasons why counsel to a debtor in possession must meet the high standards of undivided loyalty, by quoting from the case of *In re McKinney Ranch Assoc.*¹³

“It is the duty of counsel for the debtor in possession to survey the landscape in search of property of the estate, defenses to claims, preferential transfers, fraudulent conveyances and other causes of action that may yield a recovery to the estate. The jaundiced eye and scowling mien that counsel for the debtor is required to cast upon everyone in sight will likely not fall upon the party with whom he has a potential conflict....”¹⁴

The policy behind disqualification for representing potentially conflicting interests provides the key to its extent. The jaundiced eye and scowling mien of counsel for the debtor should fall upon all who have done business with the debtor recently enough to be potential targets for the recovery of assets of the estate. The representation of any such party disqualifies counsel from representing a debtor.”¹⁵

It is this high standard of undivided loyalty that the Court must use to analyze this motion.

B. Actual conflict of interest/interestedness

At the time the applications for employment were filed herein, there was a total failure of Woner Glenn to disclose its relationships with Western and Janet Shore. The Court hopes that is because Woner Glenn was not yet then representing these parties. But in any event, the evidence is now clear that within two months of the application for employment, Woner Glenn was, in fact, representing clients with whom Debtor clearly has an economically adverse relationship.

¹³62 B.R. 249 (Bankr. C.D. Cal. 1986)

¹⁴*Id.* at 254.

¹⁵*Id.* at 255 (*footnote omitted*).

These relationships create an actual conflict of interest, and Woner Glenn has thus been placed in the position of trying to determine whether to represent the interests of Debtor Shore, or the interests of Western and Janet Shore, when they conflict. For example, Debtor Shore originally propounded a plan whereby the lease with Western, for which Western has not paid lease payments for well over a year, would continue. Debtor also filed a motion to obtain secured credit, whereby the money received would go to Western to plant crops, notwithstanding that Western has not paid Shore for the use of his land on which those crops are to be planted, for well over a year.

If Western later did not pay the lease payments, the effect of that arrangement would be that Debtor Shore's creditors would ultimately receive his 50% interest in the partnership assets from Western (assuming Western decided to pay anything to its partners in a given year, as opposed to using the money to buy equipment, pay other creditors, etc.). Under that scenario, if Western chose not to pay the \$179,000 lease payment, but instead to distribute that money, received from the crops planted on Shore's land, to its partners, Eugene Shore's creditors would receive one-half of \$179,000, or \$89,500, as a result of his 50% interest in Western, rather than the full \$179,000 lease payment to which they would be entitled. Insiders—his children—would get the other 50%. Woner Glenn would clearly have a conflict in deciding what to recommend to its clients under these circumstances. Woner Glenn would have to decide whether to recommend its client in this bankruptcy, Debtor Shore, sue its other client, Western, to enforce the lease, so that Debtor Shore's creditors would receive the full \$179,000 to which the estate was entitled. Woner Glenn would also be given the choice of declining to sue Western on behalf of Shore, thus allowing the children of his other client, Janet Shore, to retain the 50% interest.

Apparently finally recognizing the actual conflict of interest, Woner Glenn has now filed, on behalf of Debtor Shore, an Amended Plan that calls for the rejection of the lease with Western. Woner Glenn contends the intent to reject the lease contained in that plan somehow moots its actual conflict. The plan, however, as do all plans, reserves to Debtor the right to “amend, supplement or otherwise modify the Plan at any time prior to the Date of Confirmation.” Therefore, the decision to reject the lease, is not “official” at this point, and cannot cure this actual conflict of interest. In addition, the decision to reject the lease, which on its face seems appropriate financially, since Western has not paid lease payments for some time, is a decision one would have thought Woner Glenn would have recommended to Debtor Shore at the time of the filing of the initial plan, if his interests were truly the only ones being served. But by the time the initial plan was filed, Woner Glenn was representing Western and Janet Shore, which possibly explains why Woner Glenn filed a plan calling for the retention of a lease that has been in default for well over a year.¹⁶

Another example of an actual conflict centers around Woner Glenn’s representation of Janet Shore. Equitable Life obtained a judgment against both Debtor and Janet Shore. Equitable then attempted to learn the whereabouts of Janet Shore’s assets, at a hearing in aid of execution, so it could attempt to collect a judgment for which Eugene and Janet Shore have joint and several liability. Had Equitable been successful in finding assets of Janet Shore, and executing against them, resulting in a reduction of the ultimate claim

¹⁶And even though the plan calls for rejection of the lease (upon confirmation, one presumes), the Court understands Western presently has or soon will have a crop in place on Debtor’s land. Again, if at harvest Western does not pay Shore for the lease, Woner Glenn would be faced with a decision whether, in representing a fiduciary to Debtor Shore’s creditors, it should sue Western, its client. Although Shore claims he “is” Western, that ignores the legal reality that others own 50% of Western.

Equitable has against Debtor Shore, Equitable would have a lower claim against the estate, which would inure to the benefit of the rest of Debtor Shore's creditors. But Woner Glenn entered its appearance on behalf of Janet Shore, attempting (apparently successfully) to prevent Equitable from learning the whereabouts of Janet Shore's individual assets that could have been collected. Quashing that hearing could thus result in Debtor Shore's liability not being reduced by amounts that could have been collected against property owned by his wife.¹⁷

Janet Shore has, for whatever reason, determined not to file a petition in bankruptcy and subject her individual assets to creditor scrutiny and potential liquidation. Woner Glenn, possibly because of its dual representation of Janet and Eugene, has now propounded a plan that prevents creditors who have the right to collect against Janet and Eugene, jointly, from ever pursuing her individual assets for amounts that may never be paid in his Chapter 11 plan, including interest on unsecured claims.¹⁸ This provision has been included in the Amended Plan, despite the previously expressed concerns of creditors about that provision in the original plan. Accordingly, Debtor Shore, through Woner Glenn, continues to protect a co-debtor who has her own assets, at the possible expense of receiving plan objections because of that protection.

¹⁷Woner Glenn argues that its entry of appearances in the state court proceedings was done merely to preserve the stay for Shore, and to seek "co-debtor" protection. The Court has no issue with Woner Glenn entering an appearance for Debtor, Eugene Shore, in those cases; the problem arose when it also entered an appearance for a creditor (Janet Shore) and a major debtor (Western) of Debtor Shore, and when it chose not to disclose those connections to this Court. Further, the attempts to quash the aid in execution hearing against Janet Shore went far beyond protecting the Eugene Shore's bankruptcy estate, since the evidence shows that Janet Shore has individually owned assets, the collection of which by Equitable would not have impaired the estate, and in fact, may have assisted the estate by reducing the debt against it. Thus, Woner Glenn's action does not protect the estate; it potentially jeopardizes it.

¹⁸See Article VII(6).

Because the person who is being protected is also being represented by Woner Glenn outside of bankruptcy, this is another example of an actual conflict of interest.

Janet Shore is also a creditor of Western, and if Western is in fact liquidated, and there are insufficient assets to pay all creditors, which Debtor Shore alleges, Western will have to decide whether to pay Janet Shore, or whether to pay Debtor Shore, for their respective leases. Since Woner Glenn represents all three of these parties, a clear conflict arises as to who will negotiate for each of them to insure that they receive appropriate legal advice on the respective merits of their claims. Accordingly, even if Western is liquidated, and the lease actually rejected, the conflict does not disappear.

The Court believes that an attorney who represents both the debtor and also a creditor that results in an actual conflict, as noted above, and who also represents a major debtor of that debtor (here, Western), by definition represents an interest adverse to the estate. The Court finds an actual conflict that qualifies Woner Glenn as an "interested" party within the scope of § 101(14)(E) and thus subject to disqualification pursuant to § 327(a). This disqualification is mandated because the conflict is actual with this debtor, not hypothetical or theoretical.¹⁹

It would be an impossible task for Woner Glenn to undertake this multiple representation and recommend decisions for one of its clients that would not be at the expense of another. The firm has already been put in a position to do that, as can be seen in the very significant change in strategy that has

¹⁹Woner Glenn cites two cases not assigned to this judge where there may be interrelated debtor entities being represented by one counsel. In neither of those cases has a fee order yet been entered, and in neither case has the U.S. Trustee, or the Unsecured Creditor's Committee, objected to employment. Although a court need not wait for an objection, and may *sua sponte* reject employment when § 327 standards are not met, failure of any party to object further distinguishes these cases.

recently taken place since the issue of its disqualification was raised. For example, Debtor testified before Judge Somers that he was not going to reject the lease with Western, and declined to explain why. A few weeks later, and within two weeks after the hearing on the disqualification motion, Debtor Shore suddenly propounded a plan calling for the rejection of the lease. Secondly, only a month ago, Debtor Shore sought an extension of credit so that he could put money in Western's hands to farm his own land. Now, Woner Glenn has suddenly drafted the paperwork to dissolve Western, one presumes after fully advising Western on the advantages and disadvantages of doing so.

Woner Glenn further impliedly argues that since all creditors are going to be paid 100% in this case, that the Court should simply overlook the conflict, because the conflict won't adversely impact the creditors. This is alleged notwithstanding the fact that the most recently filed plan discloses that various classes of creditors are, in fact, impaired, and, some are not being paid interest on their claims. Thus, all claimants are not being paid in full.

The argument that, basically, everything is going to turn out alright, and the Court should not disqualify Woner Glenn because it will merely delay confirmation, is further belied by the facts to date. Debtor Shore drew no fewer than nine objections to his original Disclosure Statement and/or Plan,²⁰ and the Unsecured Creditors' Committee has filed a Motion to Appoint a Chapter 11 Trustee.²¹ Debtor Shore also warns that he has or will file Adversary Proceedings against two major creditors, Western Kansas Bancshares and Tri-Rotor. Further, the allegation that Western and Debtor Shore do not truly have

²⁰Objections were filed by Deere and Company (No. 78), Equitable Life Assurance Society (Nos. 81, 94 and 95), US Trustee (No. 82), Grant County Implement, Inc. (No. 86), Johnson State Bank (No. 87), and the Unsecured Creditors' Committee (Nos. 88 and 89).

²¹See Doc. No. 90 filed March 18, 2004.

conflicting interests, and that the bankruptcy will proceed apace, is refuted by the fact that one of the other interest holders in Western, Shore's own son, felt it necessary to bring suit in state court against Western and Shore since the filing of this case.

This Court could not ignore the actual conflict and connections between Woner Glenn and its three clients even if "everything was going to turn out alright." It certainly cannot when it is abundantly clear that the fact of those interlocking interests is partly the cause of the distrust and dissension that appears to exist among the creditors and the trustee in this case. This Court finds that these interlocking interests can only be served by utilizing separate counsel who can fairly and fully advise each party as to its rights and responsibilities.²²

Debtors in Chapter 11 proceedings serve as fiduciaries of their creditors, and the creditors must be able to trust that the Debtor, and his counsel, will be guided by a desire and a need to do all that is necessary to enhance the recovery of assets for the creditors. The inability to fulfill the role of independent professional on behalf of the fiduciary of the estate constitutes an impermissible conflict.²³

Since Woner Glenn has very recently—since the filing of this bankruptcy—served as counsel for Western and for Janet Shore, it is highly unlikely that Debtor Shore's creditors will be able to trust that he and his present counsel will be guided by that required desire to enhance recovery for them. The objections by the Trustee and the Unsecured Creditors' Committee reflect this distrust. This distrust is only

²²See *In re Green Street*, 132 B.R. 460, 462 (Bankr. D. Utah 1991) (citing *In re Kuykendahl Place Associates, Ltd.*, 112 B.R. 847 (Bankr. S.D. Tx. 1989) and *In re Amdura Corp.*, 121 B.R. 862 (Bankr. D. Colo. 1990)).

²³*In re Interwest*, 23 F.3d at 315, n.9.

compounded by receipt of an amended plan that continues to protect Woner Glenn's other clients, at the expense of Shore's non-insider creditors.

C. Failure to supplement disclosures

Even if the Court found that there was no actual conflict of interest requiring disqualification, the Court is very troubled by Woner Glenn's decision not to amend their Rule 2014 affidavits once it decided to undertake the representation of one of Debtor Shore's largest debtors—Western—and of Debtor's wife. By December 2003 or January 2004, when Woner Glenn made the decision to enter its appearance on behalf of both Western and Debtor in an action brought by Debtor's own son, it should have been patently clear that, at a minimum, the Court would perceive this dual representation as problematic, and that it would need to be explained in detail.

Nevertheless, Woner Glenn has steadfastly declined and refused to amend its affidavits, and, in its many pleadings on this issue, has never favored the Court with an explanation why it believes disclosure of this information was unnecessary. Furthermore, Judge Somers expressly reminded Woner Glenn at a hearing held March 29, 2004 of its continuing duty to amend its disclosures if there were changes in circumstances, or they became aware that there were potential conflicts of which any court would wish to be informed. This was after the date of the Trustee's instant objection to Woner Glenn's continued employment, which clearly articulated the issue. The law firm was given until March 31, 2004 to amend its application for employment. Notwithstanding that invitation, Woner Glenn has persisted in its belief that such disclosure was unnecessary, and has made no such amendment. This failure to recognize a conflict, which this Court has now found is, in fact, an actual conflict, buttresses the Court's decision to disqualify Woner Glenn from further representation of the Debtor.

A professional must disclose all facts that bear on his or her disinterestedness and cannot usurp the court's functions by selectively incorporating materials the professional deems important, and omitting other

key information. The better practice for Rule 2014 disclosure is to err, if at all, on the side of over-disclosure. The Court finds that Woner Glenn's failure to amend its affidavits to disclose relevant connections once it entered appearances for Western and Janet Shore, even absent the finding of an actual conflict, is an independent basis for its disqualification from the case.²⁴

V. CONCLUSION

This decision is unfortunate, because Debtor Shore and his creditors will suffer, as new counsel will have to quickly learn the case so that reorganization attempts can proceed. That said, however, the Court must balance the client's right to freely choose its representation and judicial efficiency against the public's confidence in the judicial system and the need of the profession to preserve the highest ethical standards.²⁵ Under the facts of this case, the latter considerations trump the former.

IT IS, THEREFORE, ORDERED, that the Trustee's Objection to Application of Employment of Woner, Glenn, Reeder, Girard & Riordan, P.A., which this Court has treated as a Motion to Disqualify, is sustained, and Woner Glenn is disqualified from further representation of this Debtor in this Court.

IT IS SO ORDERED this ____ day of May, 2004.

JANICE MILLER KARLIN
United States Bankruptcy Judge
District of Kansas

CERTIFICATE OF MAILING

²⁴*See In re Leslie Fay Cos., Inc.*, 175 B.R. at 533.

²⁵*Trone v. Smith*, 621 F.2d 994 (9th Cir. 1980).

The undersigned certifies that copies of the **ORDER GRANTING UNITED STATES TRUSTEE'S OBJECTION TO CONTINUED EMPLOYMENT OF WONER, GLENN, REEDER, GIRARD & RIORDAN, PA** was deposited in the United States mail, prepaid on this _____ day of May, 2004, to the following:

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