

MINUTES OF THE JANUARY 1972 MEETING  
OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

The twenty-fifth meeting of the Advisory Committee on Bankruptcy Rules convened in the 6th Floor Conference Room of the Administrative Office of the United States Courts, 811 Vermont Avenue, N. W., Washington, D. C., on Wednesday, January 26, 1972, and adjourned on Saturday, January 29, 1972. The following members were present during the sessions:

Phillip Forman, Chairman, presiding  
Edward T. Gignoux  
Asa S. Herzog  
Charles A. Horsky  
G. Stanley Joslin  
Norman H. Nachman  
Stefan A. Riesenfeld  
Charles Seligson  
Morris G. Shanker  
Estes Snedecor  
George M. Treister  
Elmore Whitehurst  
Frank R. Kennedy  
Vern Countryman  
Lawrence P. King

Others attending all or part of the sessions were Judge Albert B. Maris, Chairman of the standing Committee on Rules of Practice and Procedure, Professor James Wm. Moore, member of the standing Committee, Mr. William E. Foley, Deputy Director of the Administrative Office of the United States Courts, and Messrs. Royal E. Jackson and Thomas A. Beitelman, Jr., members of the Bankruptcy Division.

Professor King called the committee's attention to his memorandum of December 1, 1971 covering revised rules in Part II and IIA. He pointed out that the revised rule is dated 12-1-71 appearing before the original rule dated 1-1-71. He also called attention to the suggestions for changes in various policy matters made at the last meeting.

Rule 10-2-1D. Limitation on Appointment of Receivers and Trustees.

Professor King stated that this rule was taken from the straight bankruptcy rules. Mr. Nachman felt the apportionment of trustees is not as important in Chapter X cases and Referee Herzog moved to eliminate the rule. His motion carried.

Rule 10-2-1E. Employment of Attorneys and Accountants

Professor King felt the main question is whether this rule should be the same as other chapters in the Act.

(a) Conditions of Employment of Attorneys and Accountants.

Mr. Nachman disliked the terminology "in conducting the case" on lines 13 and 15-16. The committee agreed that the phrase is unnecessary and should be deleted. There was discussion as to whether the attorney for the trustee should have to be disinterested as distinguished from having no adverse interest. Professor Seligson expressed a desire to include

a clause that representing a creditor or stockholder does not constitute disinterestedness in finding an attorney. Professor King suggested ending the sentence on line 14 at "Rule 10-2-1A(c)" and adding, "Representation of a creditor or stockholder other than in the Chapter X proceedings shall not in itself be deemed to affect the disinterestedness of an attorney." Professor Riesenfeld pointed out that "shall not in itself be deemed" should be changed to "need not be deemed" and Professor Seligson moved approval. The motion carried. Mr. Nachman emphasized the need for clarification and uniformity of use in the Note. Professor Seligson particularly wanted the Note to emphasize ineligibility by reason of adverse interest. Judge Maris suggested that "pursuant to" beginning on line 13 be changed to "as required by Rule 10-2-1A(c)." Judge Gignoux pointed out that the reference should be to (c)(2) and the committee agreed that the style subcommittee should review the language.

Mr. Horsky then pointed out that the sentence on lines 16-17 wrongly refers to a disinterested accountant and attorney. Judge Gignoux suggested the sentence on lines 13-18 might be restructured into three separate sentences, however, Mr. Treister felt it would be easier to simply refer to

Bankruptcy Rule 215(a) and add that an attorney shall be disinterested. Professor Seligson was troubled by the phrase "for a specified purpose" because it could mean anything. Mr. Nachman pointed out that the retainer of the attorney should be limited to litigation and Professor King suggested going back to the language, "in conducting the case" which is the language of the statute and explaining the meaning in the Note. The committee agreed in principle thereby leaving the language of the rule to the Reporter and the style subcommittee as well as incorporating the last sentence of subdivision (a) into the previous sentences.

(b) Employment of Attorney or Accountant with Adverse Interest. Mr. Treister expressed a need to expand this subdivision to cover disinterestedness. His motion to add a clause to line 32 and change the caption was carried.

(c) Employment of Attorney or Accountant on Salary. Referee Herzog moved approval and the motion carried.

(d) Employment of Trustee or Receiver as Attorney or Accountant. After a brief discussion as to its appropriateness, Judge Gignoux moved approval and the motion carried.

(e) Services Rendered by Member or Associate of Attorney or Accountant. Mr. Horsky moved approval and the motion carried.

Rule 10-2-1F. Authorization of Receiver, Trustee, or Debtor in Possession to Conduct Business of Debtor (12-1-71 draft)

Professor Seligson suggested adding, "and manage the property" to line 2 after "business." After discussion, his motion carried and the committee agreed to add the same to the straight bankruptcy rules and to the Chapter XI rules.

Rule 10-2-1G. Duty of Trustee and Debtor in Possession to Investigate, Make Reports, and Furnish Information, and Prepare Plans; Examiners

(a) Trustee. Professor King read the subdivision stating to change "schedules" to "list" in accordance with a decision reached at the last meeting. Also, "proceeding" on line 18 should be "case." Referee Herzog felt the "15th of each month" was impracticable, and he suggested it be changed to the 25th, however, Professor Seligson objected stating it was unrealistic. Professor King suggested that clause (3) be redrafted as follows, "filed with the clerk within the time fixed by the court periodic reports and summaries of the operation of the business which shall include a statement of receipts and disbursements and such other information as may be required by the court." Mr. Horsky moved approval and the motion carried. Judge Gignoux pointed out that "filed with the clerk" on line 7 should be "filed with the court" and the committee agreed.

Professor Seligson pointed out that the report required under clause (2) could not be up-to-date. Referee Herzog felt it is a burden to put the report in writing. Professor Riesenfeld noted that the trustee should be prepared to submit a written report and Professor King suggested the following revision, "unless otherwise ordered, report at the meeting provided for in Rule 10-2-3, which shall include a summary of his operation of the business and management of the property." Mr. Horsky moved approval subject to amendments by the style subcommittee.

It was agreed that "if the court so directs, forthwith," should be deleted from the beginning of clause (4). Clause (5) was approved with the deletion of "directs" in line 20 and the substitution of "authorize." Professor Joslin requested that this be explained in the Note.

After discussion, clause (6) was approved as drafted. However, Professor Kennedy was troubled by the language, "and any other matter relevant to the case or to the formulation of a plan" and this was referred to the style committee.

Professor Seligson was concerned that the judge should be able to control the statements which go to the creditors as indicated in clause (7) so Mr. Horsky suggested "or a summary"

be added after "copies" on line 26. The committee agreed to this change as well as adding "s" to "investigation" on line 26.

Professor Seligson was also concerned about publication in clause (8), however, Mr. Treister suggested the addition of "plans or" on line 31 before "suggestions" and the deletion of "or proposals in the form of a plan" on line 32. The committee agreed. Professor Seligson pointed out that they should conform subdivision (b)(1) to this change. Clause (9) was approved.

While considering clause (10), Judge Gignoux suggested the phrases, "file a report" or "file a report with the clerk" should be made uniform. Professor Seligson moved approval of the clause with the addition of "make" on line 38 and the motion carried.

Professor King felt "the extent to which the plan has been consummated" was unnecessary and recommended deletion from lines 41-42 of clause (11). Mr. Treister and Professor Seligson felt they should add something to the effect that after consummation of a plan, he should file an application for a final decree when everything had been done that the court must do. Professor Riesenfeld suggested "showing that the plan has been consummated and" be added after "decree."

Mr.

Mr. Nachman moved approval subject to a clarification of language by the Reporter.

(b) Debtor in Possession. There was discussion regarding the term, "examiner" however the subdivision was approved with the addition of "as specified in rule 10-2-1A(c)(2)" after "person" on line 54 and a change in the caption.

Rule 10-2-2. Notices to Creditors, Stockholders, and District Director of Internal Revenue

(a) Notice of First Meeting of Creditors and Stockholders.

The members agreed to the first suggested title for subdivision (a) because it is consistent with previous decisions. Referee Herzog stated his preference for 30 days' notice rather than 20 days' notice because of the detailed report required by the trustee. The members agreed. Professor Seligson pointed out that "court" on line 3 of subdivision (a) and line 13 of subdivision (b) should be stricken and "trustee, debtor in possession or examiner" should be added. His motion to this effect was carried. Mr. Nachman pointed out a need to extend the time for giving notice. Referee Herzog then moved to change "10 days' notice" to "20 days' notice by mail" and add, "hearing on the" before "retention" on line 15. The motion carried. Clause (2) was approved using a reference to Rule 10-2A-3 only. The committee agreed to Mr. Treister's



suggested addition of "other than in the ordinary court of business" to line 20 after "property"

Clause (4) was approved as written. In clause (5), Professor Riesenfeld moved to change "and" to "or." The motion carried. Referee Herzog moved adoption of clause (6) using the phrase, "substitute plans" rather than "substitutes." The motion carried. Professor Riesenfeld suggested adding, "of compensation and reimbursement of expenses" after "allowances" in clause (7). The motion carried. It was also agreed that "and reimbursement of expenses" be added after "compensation" on line 30.

(c) Other Notices to All Creditors and Parties in Interest.

Professor Seligson made a motion to strike "court" on line 33 and add, "trustee, receiver, or debtor in possession." His motion carried. Referee Whitehurst pointed out that there should be a reference to Rule 10-3-2E and Professor King suggested adding, "(4) of the time for filing proofs of claims and interests of stockholders pursuant to Rule 10-3-2E." Professor Seligson moved approval of subdivision (c) as amended and his motion carried. Judge Gignoux felt the beginning terminology of clauses (1), (2), (3) and (4) should be made consistent and the Reporter agreed. Professor Riesenfeld asked the Reporter to consider adding "any order" to line 35.

(d) Limitation on Notices to Creditors and Stockholders.

Mr. Nachman expressed a desire for clarification of the meaning of "appear" possibly by reference in the Note. Referee Whitehurst suggested this problem could be solved by striking, "who have appeared in the case, or" from lines 42-43 thus causing those who want to be notified to so inform the court or leaving it to the court's discretion. Professor Joslin made a motion to add "and (c)" to line 41, however, the motion lost. There was also a motion to add "notice at a time fixed for accepting plan" to subdivision (c), which lost.

After discussion, Professor Seligson came to the conclusion that because the notice of a hearing on confirmation does not add anything to the duties of the trustee it should be given in every case and the only problem is whether or not there should be a mandatory notice of the hearing on approval. After further discussion the members concluded that there should be provision for a notice on both hearings on approval and confirmation. Professor Seligson moved to add to line 41 of subdivision (d) words to the effect that the court may direct that notices required by subdivision (b) other than the notice required under clauses (4) and (6) of paragraph (b) of this rule be mailed, etc. The motion carried subject to changes by the style subcommittee.

The meeting adjourned at 5:00 p.m.

The meeting reconvened on Thursday, January 27 at 9:30 a.m. and the committee resumed discussion of subdivision (d). After reading clause (2) Professor Seligson expressed his feeling that creditors and stockholders should get notices whether or not a committee has been authorized. His motion to strike clause (2) was carried.

(e) Addresses of Notices. Approved as written.

(f) Notices to the United States. Referee Whitehurst felt the notices should go to the U. S. Attorney and the Departments concerned as in the bankruptcy rules. After discussion Professor Seligson moved to incorporate the straight bankruptcy rule and in addition provide for notice to the Secretary of the Treasury whenever the lists or other papers filed disclose that the United States is a creditor or stockholder. The motion carried and the Reporter was directed to draft appropriate language.

(g) Notice by Publication. Approved as written.

(h) Caption. After reading this subdivision, Professor King read Rule 10-1-5 as modified to which it refers. Referee Herzog moved approval and the motion carried.

Professor Shanker inquired if there is a rule to indicate when you start counting time periods. Professor Kennedy indicated that it is in a note to the bankruptcy rule. Professor

Seligson felt it is important to know that if you have the notice in the mail you have satisfied the requirement, therefore, this should be incorporated into a rule rather than a note. He moved approval of a rule to take care of the notice. The motion carried and Professor Kennedy was directed to investigate the other matter regarding service.

Rule 10-2-3. Meeting of Creditors and Stockholders

(a) First Meeting. (1) Date and Place. In light of the change in Rule 10-2-2A, Professor Moore stated that the 30-day period set out here is meaningless. Referee Herzog's motion to change lines 3-4 to a 40 to 70-day period was carried, however, Mr. Treister pointed out that it was not consistent with other rules. He suggested the language be changed to read, "not more than 90 days." Referee Herzog moved to reconsider and adopt Mr. Treister's suggested revision. The motion carried. Professor Seligson was troubled by the word, "postpone" in line 9. He moved to approve Professor King's suggested language, "the court may delay fixing the date of such meeting." The motion carried. A question arose whether this language meant to delay fixing or to delay the date. It was decided to leave this to the style subcommittee.

(2) Agenda. Professor Seligson felt they should not hold a meeting if the petition has not been approved. His views opened up a discussion of whether there should be a hearing to decide if the petition would be allowed before calling a meeting. It was decided to include § 141 into Rule 10-1-14 on approval of the petition and this rule would include only the specific matters with regard to the trustee's report, the hearing on any objections to the retention of the trustee or to the debtor in possession and a general clause to transact the business. Professor King read suggested language as follows, "At the first meeting of creditors and stockholders, the bankruptcy judge shall preside over the transaction of business at such meeting including the examination of the debtor, shall determine objections to the retention of the trustee or trustees or continuing the debtor in possession, appoint a trustee or trustees if none has previously been appointed and the debtor is not continued in possession and fix a date for the hearing of objections thereto and hear the trustee's report if any." The members agreed subject to approval by the style subcommittee.

Based on the above change that the date set for the first meeting should be tied into the approval of the petition rather than the filing of it, "filing" on line 4 of clause (1) was deleted and "approval" was inserted.

(b) Special Meetings. Professor Seligson felt this was unnecessary because the creditors cannot take action and moved to strike it. The motion carried.

Rule 10-2-4. Submission of Plan or Report

Professor King stated that the rules dealing with the plan would be moved to another part of the set.

(a) Time for Submission of Plan or Report. Mr. Treister pointed out that the court should not fix the time until after the trustee has reported on his investigation and then the time fixed should be subsequent to the time for submitting suggestions. Professor Seligson felt these suggestions could be amplified in the Note. Mr. Treister suggested subdivision (a) should be deleted and the time for submission should be left to the judge's discretion. The members agreed.

As indicated in the statute, Professor Seligson pointed out that there should be provision for suggestions for plans as well as plans submitted by others. Professor King suggested this be added to the two rules on submission and approval. After discussion, he indicated that subdivision (a) would have provision which permits other parties to suggest plans or suggestions for the formulation of plans to the trustee; (b) would have a provision that the trustee

would be required to file a plan within the time fixed by the court, and other parties could file a plan at or before the conclusion of the hearing on approval of the trustee's plan or report, and for cause shown the court could allow the filing of a plan by one of these parties after the conclusion of that hearing and before confirmation. Professor Seligson moved approval and the motion carried.

(2) Where Debtor Retained in Possession. Mr. Treister did not agree that the stockholder should be able to propose a plan only when the debtor is insolvent. Referee Snedecor moved deletion of "if the debtor is not found to be insolvent," and the motion carried.

(c) Form of Plan. Professor Seligson moved that "amendment or modification" be added after "plan" on line 21 and the motion carried.

Rule 10-2-4A. Approval of Plan by Court. (1-1-71 draft)

(a) Hearing on Plan and Objections Thereto. Judge Maris felt they should spell out the report to which the rule refers. Professor King suggested adding, "of the reasons why a plan cannot be formulated" after "trustee" on line 3. Mr. Nachman pointed out that "submission" should be changed to "the filing" to conform to the statutory language. Referee Herzog moved approval and it carried.

(b) Submission of Plan to Securities and Exchange Commission.

Mr. Treister pointed out that under the procedure outlined here, no one has an opportunity to be heard on the Securities and Exchange Commission's report. It was suggested that the last clause in subsection (1) be the first clause followed by, "and may." The committee agreed.

(c) Approval of Plan. Referee Herzog suggested the procedure indicated should be more logical. Professor King suggested adding, "the court shall resume the hearing provided for in subdivision (a) of this rule and rule on approval of the plan or plans," to line 23. Mr. Treister felt lines 23-25 should be stricken and the members agreed to both changes. Judge Maris pointed out that this subdivision is keyed to cases going to the SEC and another sentence may be needed regarding cases not sent to the SEC.

(d) Transmission and Notice to Affected Creditors and Stockholders. Professor Seligson suggested striking, "pursuant to subdivision (c) of this rule." Professor Riesenfeld pointed out that "and" on line 33 should be changed to "or." Professor King redrafted (2), "the opinion of the court, if any, approving the plan, or a summary of such opinion approved by the court." There was discussion regarding the mailing of a portion or all of the information to the creditors and



stockholders. Mr. Nachman felt the same information should go to all and suggested that the SEC submit a report and a summary. Professor Seligson moved that if a report is submitted by the SEC it should also make a summary. His motion carried. Professor King explained that, "and a summary thereof" would be added to line 12 of subdivision (b) after "advisory report"; line 16 after "if any"; and line 18 of subdivision (c) after "report." Mr. Treister suggested the court be given discretion to send a summary of the plan rather than a plan and summary thereof, and if only a summary is sent the creditors should be advised as to how they may obtain a copy of the complete plan. To implement these suggestions Professor King stated "and" would be changed to "or" in (1), (2), and (3) and a new sentence would be added at the end of (d) as follows: "If only a summary of the plan is mailed, any creditor or stockholder may obtain a copy of the plan. Mr. Horsky then pointed out that the rule as drafted indicated it is up to the trustee or debtor in possession to decide whether it will be a summary or a plan and he stated his preference that the court should have this discretion. Mr. Horsky then moved that the rule be redrafted to indicate that unless the court otherwise directs, summaries of the plan, opinion, or

Securities and Exchange Commission report shall be sent out. Professor Riesenfeld preferred to add, "as directed by the court" after "shall mail" at the beginning in line 30. Mr. Horsky did not accept Professor Riesenfeld's amendment.

Professor Riesenfeld's substitute motion lost. Mr. Horsky's motion to change the thrust of subdivision (d) to mail the summaries of the plan, opinion or report and add a sentence at the end that the plan, opinion or report in full go out to the creditors and stockholders in substitution of summaries or in addition to them was carried in substance.

(e) Public Utility Corporations. Rather than describe an intrastate public utility corporation, Judge Gignoux felt the subdivision should speak in terms of regulatory jurisdiction. Mr. Horsky pointed out that they should track the language of the statute and Referee Snedecor so moved. The motion to change this language on line 51 carried.

(f) Objections After Approval. The January 1, 1971 draft, which does not prevent creditors from objecting at the time of confirmation, was approved.

Rule 10-2-5. Examination

(a) Examination on Application. Approved as written.

(b) Examination by Trustee or Examiner. The Reporter pointed out that this is somewhat of a duplication of another

rule. Mr. Treister suggested striking the last sentence and adding "or examiner" to the first sentence. The motion carried.

(c) Court to Preside. Professor Kennedy stated that "court" should be changed to "bankruptcy judge." The members agreed. Professor Seligson felt this subdivision should be stricken, however, Referee Whitehurst moved approval and it carried.

(d) Scope of Examination. There was discussion as to the necessity of including "only" on line 14. Mr. Nachman stated there would be no limitation if "only" were stricken. Mr. Treister moved approval of the subdivision as written and his motion carried.

(e) Place of Examination. Approved as written.

(f) Compelling Attendance for Examination and Production of Documentary Evidence. Professor Seligson was troubled by the phrase, "compelled by the use of a subpoena" and suggested using "compelled in accordance with the provisions of." This motion carried and a similar change was authorized for the straight bankruptcy rule and Chapter XI. Professor Riesenfeld preferred "for a hearing or trial" to be placed before "may be compelled" on line 27 and this stylistic change was left to the Reporter.

(g) Mileage. Professor King stated that "court" in line 32 should be "bankruptcy judge." The subdivision was approved.

Rule 10-2-6. Apprehension and Removal of Debtor to Compel Attendance for Examination

(a) Order to Compel Attendance for Examination. Judge Gignoux pointed out that "and bail" should be stricken from the caption. The members agreed. Mr. Treister suggested limiting this rule to a definition of debtor to include officers and directors and to a reference to the bankruptcy rule. Professor Shanker indicated that the decision to abbreviate the rules was separate. Professor Seligson moved approval in substance and the motion carried. Mr. Treister suggested that the Reporter formulate a rule on classification of plan to fit in here and the members agreed.

Adjournment at 5:00 p.m.

The meeting reconvened on January 28, 1972 at 9:30 a.m.

Rule 10-2-7. Acceptance or Rejection of Plans

(a) Time for Acceptance or Rejection. Mr. Treister suggested adding, "proof of claim or interest." Professor Seligson felt the subdivision was not clear. Mr. Nachman questioned whether the time fixed had to be prior to the date fixed by the court and Professor King redrafted the

sentence as follows: "Any creditor or stockholder filing a proof of claim or interest may file with the court his acceptance of the plan or plans within the time fixed by the court pursuant to Rule 10-2-4A(c)." Judge Gignoux pointed out that the subdivision should be limited to only those creditors and stockholders affected by the plan or plans in order to conform to Rule 10-2-4A. After discussion Mr. Nachman suggested adding this phrase to the last sentence of the subdivision. His motion to approve the last sentence, "Such a creditor or stockholder affected by the plan or plans who fails to file an acceptance within the time prescribed, shall be deemed to have rejected the plan or plans," was carried. His motion also included the elimination of "affected" in subdivision (c) of Rule 10-2-4A.

(b) Form of Acceptance. Professor Riesenfeld questioned "except that" in the second sentence. Professor King suggested those words be replaced by "and." Professor King also suggested the committee may want to change "shall" in line 15 to "may." Professor Seligson was concerned that the stockholder would not indicate his preference and a problem would arise. After discussion, Mr. Treister moved that "shall" be changed to "may" and the motion carried. The members also agreed to Mr. Nachman's suggested deletion of "to creditors and stockholders" in line 11 because this was obvious by the reference to Rule 10-2-4A(d).

(c) Acceptance by Partially Secured Creditor. Approved as written.

Rule 10-2-8. Solicitation and Voting of Proxies

Mr. Treister felt subdivision (a), (b), and (c)(1) were unnecessary because you cannot solicit acceptances in Chapter X without previous court consent or approval of a plan. The committee agreed to strike everything up to subdivision (c)(2) thereby including only the portion of the rule pertaining to Chapter X. There was discussion regarding the requirement of the court's consent after approval of the plan in subdivision (c)(2) and whether this should apply to solicitation and rejection of acceptances. It was agreed that it should not. Referee Herzog moved approval and the motion carried.

(d) Data Required. Mr. Nachman felt all this information need not be supplied by a person representing only one creditor. Mr. Treister agreed and suggested they limit the subdivision to more than one creditor or stockholder. Mr. Horsky suggested that line 59 be moved up to the end of line 57 for style purposes. He made a motion to approve the subdivision as modified and his motion carried.

(e) Enforcement of Rule. Mr. Treister suggested "application" on line 66 be changed to "motion." Professor King

pointed out that "or voting of a proxy" should be deleted and Mr. Horsky stated "the solicitation" on the same line 69 should be "any solicitation." Professor Seligson disliked the use of the word, "invalidate" in clause (4). Referee Herzog suggested it be changed to "may disregard." Mr. Horsky made a motion to approve the subdivision as modified and it carried. Professor Riesenfeld disapproved of the use of the word, "may" in all clauses except (3). Professor King preferred to leave "shall not" in clause (3) and Judge Maris pointed out that it disagrees with the first sentence. Referee Whitehurst made a motion to change "shall not" to "may refuse to" and "until" to "unless" in clause (3). His motion carried. Professor Countryman pointed out that the caption is too narrow and suggested the Reporter keep this in mind when revising the captions of Rule 10-2-8.

Rule 10-2-19. Compensation of Trustees, Receivers, Marshals, Attorneys, Accountants, and Parties in Interest

(a) Application for Compensation. Professor Kennedy suggested the caption be broadened by the addition of, "and Reimbursement." Referee Herzog moved to strike, "verified" from line 3 and his motion carried. Judge Gignoux felt this should not be limited to a party and should conform to the Bankruptcy Act, so he suggested rephrasing lines 1-3, "A

person seeking compensation or reimbursement of expenses shall file with the court an application, etc." He also suggested limiting clause (2) to, "the amounts requested," and the committee agreed. Professor Seligson felt "on his behalf" should be stricken from line 26. Professor Riesenfeld questioned the purpose of clause (3) and Mr. Horsky replied that it is to make current the statement filed pursuant to Rule 10-2-8(d), however, he disliked the language. Professor King suggested it be changed as follows: "any changes in the matters covered by the statement filed pursuant to Rule 10-2-8(d)." He further changed it, "Any changes in the facts set forth in the statement filed pursuant to Rule 10-2-8(d)." Mr. Horsky suggested the Reporter add language in Rule 10-2-8(d) to keep this information up-to-date. Professor King suggested "any material changes in the statement filed pursuant to this subdivision shall be promptly reported to the court" be added at the end of subdivision (d) of Rule 10-2-8. Mr. Horsky moved approval as suggested with the deletion of clause (3) of Rule 10-2-19 and the motion carried.

Mr. Horsky suggested adding the language of the first sentence of Section 249 of the Act to clause (4). Professor King stated it would read as follows: "The application would include a statement showing the claims against or stock of the



debtor if any in which a beneficial interest direct or indirect has been acquired or transferred by the applicant for his account after the commencement of the case." Mr. Horsky moved deletion of the present clause (4) and the substitution of the language previously stated. His motion carried. Mr. Horsky also moved to include language of the second sentence of the Act in a separate subdivision of this rule and his motion carried.

(b) Disclosure of Arrangements Regarding Compensation by Attorney for Debtor. There was discussion regarding Mr. Treister's opposition to the first meeting phrase, however, Referee Herzog moved approval as written and his motion carried. Professor Joslin requested that the Reporter consider substituting another word for "Arrangements" in the caption.

(c) Factors in Allowing Compensation. Referee Herzog felt the phrase "as to the conservation of the estate" was not the proper language for Chapter X. Professor King suggested striking the last two lines which include the phrase and adding "in the case" at the end of line 48. Professor Countryman suggested they include language directly from § 243. After discussion Mr. Horsky stated that "entitled thereto" on line 45 seemed to imply that there was another rule. He felt the rule should be conclusive and that the note could explain that the

statute would be superseded. However, Professor Riesenfeld moved that something be added to the rule which is equivalent to the last sentence of the statute. Mr. Horsky expanded the motion by suggesting that the premise on which the rule was originally drafted be rejected and the Reporter incorporate into the rule everything desirable out of the statute so that the statute could later be eliminated. Their motions to redraft all of subdivision (c) carried.

(d) Restriction on Sharing of Compensation. Mr. Horsky made a motion to approve the subdivision and the motion carried. Professor Riesenfeld requested that the Reporter check to see that the phrase on line 76, "may hold invalid" is consistent with the phrase on line 82 of Rule 10-2-8, "may disregard."

Rule 10-2-19A. Hearing on Applications for Compensation

Even though the language beginning on line 9 came from the statute Mr. Treister felt it was wrong because stockholders would be interested in a superseded bankruptcy case. Mr. Horsky suggested new language be added at the beginning of the rule covering any superseded case. Professor King suggested: "The court shall fix a time of hearing applications for allowances for services rendered or reimbursement in the Chapter X case or any other case or proceeding superseded thereby. Notice

of such hearing shall be given to the applicants, the trustee," etc. Mr. Horsky moved approval and the motion carried. Professor Seligson disliked the term, "does not participate" in the next sentence beginning on line 5. Mr. Treister suggested it be replaced by, "has no interest in the reorganized debtor." Professor Riesenfeld suggested the beginning phrase of that sentence, "Notwithstanding the preceding sentence" be deleted. Mr. Horsky moved approval of the sentence beginning on line 5 as modified and the motion carried. Professor Countryman pointed out that the last sentence should be placed in another rule. Mr. Treister moved to strike the sentence beginning on line 9 and to include the last sentence in the bankruptcy rules in a place with what happens after a Chapter X case is converted to straight bankruptcy. The motion carried.

Rule 10-2-20. Examination of Debtor's Transactions With His Attorney

(a) Payment or Transfer to Attorney in Contemplation of Bankruptcy or Reorganization. Judge Maris questioned whether "debtor in possession" should be included on line 3. Mr. Treister suggested they add, "by any party in interest." Referee Whitehurst therefore moved to strike, "the trustee, the debtor in possession, or any creditor or stockholder" and substitute Mr. Treister's language. The motion carried. The committee agreed to approve the remainder of the subdivision.

(b) Payment or Transfer to Attorney or Agreement Therefor, After Case Initiated. Mr. Treister pointed out that any payment or agreement after the petition without court order would be illegal and he moved to strike the subdivision. His motion carried.

(c) Invalidation of Unreasonable Payment or Transfer. Professor King stated that "Obligation" should be deleted from the caption and the last phrase beginning on line 25 should be deleted. Mr. Treister pointed out that because of the deletion of subdivision (b), "this rule" should be added to line 21 in place of, "subdivision (a) or (b) of this rule." He also stated that "under subdivision (a) or (b)" should be deleted from line 24. Referee Herzog moved adoption as amended and the motion carried.

(d) Recovery of Excessive Payment or Transfer. Professor King stated that "the trustee or other party in interest" should be stricken and "a party in interest" should be substituted. Mr. Treister stated that if this is to be governed by Part VII of the Bankruptcy Rules, it would be a complaint and not a motion. Professor Kennedy pointed out that any action to recover money under the bankruptcy rules is an adversary proceeding. Professor King felt this rule should not be defined as an adversary proceeding. After discussion

Referee Herzog moved to redraft this to provide that there be a single proceeding to reexamine fees with authority of the bankruptcy judge when he finds an excessive fee to direct the entry of judgment and it be treated as a contested and not adversary proceeding. Professor Shanker was against this because he felt the court would be made a litigant. After further discussion Professor King explained that the motion would leave subdivision (a) starting with, "Upon motion," would include the deletion of subdivision (d), and include a sentence in (b) or Part IX that the court may enter a judgment in favor of the estate in the amount of any excess found to have been paid or transferred. Professor Kennedy stated he would change Rule 701 which authorizes this as an adversary proceeding and show this subdivision as an exception. The motion carried.

Rule 10-2A-1. Modification of Plan Before or After Confirmation

In order to correspond to the previous rule change, Professor King stated that lines 2 and 3 should be deleted. Mr. Treister felt the rule was not clear as to who could modify a plan. Professor Seligson stated that as the rule reads no one except the person submitting the plan could file a modification before the hearing. Mr. Horsky suggested the

addition of a reference to the rule which says that at the hearing anyone can file a plan or modification thereof.

Professor King drafted language taken from Rule 10-2-4A as follows: "At the hearing on approval or within such time as the court may allow any party in interest may file amendments to the plans or substitute plans therefor." After discussion Referee Herzog moved deletion of "or the plan may be modified by the court on its own initiative," and his motion carried. There was discussion regarding solicitation of the modification of an acceptance. Mr. Treister questioned this practice and suggested deletion of, "who has not in writing accepted it." Professor Seligson felt that after approval of the original plan solicitation should be permitted. If this practice is going to be allowed, Mr. Treister suggested adding, "with the consent of the judge." Professor Countryman suggested, "No acceptance of such a modification can be solicited without the approval of the court until modification is approved by the court," be added on line 21 after "initiative." Professor Kennedy shortened the sentence to, "No acceptance of such a modification can be solicited before its approval without the consent of the court," and Professor Seligson moved approval. The motion carried.

Referee Herzog moved approval of the next sentence changing "not" to "materially and inadversely" on line 11. His motion carried. Professor King read the next sentence adding "so" before "affect" on line 15 and placing a period after "modified" on line 21, making two sentences. Mr. Treister suggested placing the sentence beginning on line 24 up to line 14, changing the order of the other language and adding a sentence which states that after approval of the plan the Securities and Exchange Commission shall be given an opportunity to file a supplementary advisory report before the hearing. After discussion regarding the reference to the supplementary report of the Securities and Exchange Commission, Mr. Treister pointed out that this would speed up the processing. Based on the suggestions of Mr. Treister, Professor King redrafted the language of Rule 10-2A-1 and read it when the meeting reconvened Saturday, January 29, as follows:

No acceptance of such a modification may be solicited before its approval without the consent of the court. If the court finds that the proposed modification does not materially and adversely affect the interest of any creditor or stockholder who has not in writing accepted it, the court may approve the modification and it shall be deemed accepted by all creditors and stockholders who have previously accepted the plan. If the court finds that the proposed modification

does so affect the interest of any creditor or stockholder who has not in writing accepted it, the court shall (1) fix a date for a hearing to consider the approval of such modification, (2) enter an order that any creditor or stockholder who accepted the plan and who fails to file with the court within such reasonable time as shall be fixed in the order a written rejection of the modification, shall be deemed to have accepted the plan as modified, (3) order the mailing of notice of such order and the date fixed for the hearing on approval accompanied by a copy of the proposed modification to creditors, stockholders and other parties in interest at least 20 days before the date fixed for filing rejections of the modification, (4) transmit at least 20 days before the date fixed for the hearing on approval a copy of the proposed modification to the Securities and Exchange Commission with notice that the Securities and Exchange Commission may file a supplementary advisory report at or before the hearing on approval of the modification. The requirements of Rule 10-2A-2 with respect to confirmation of plan shall apply to the proposed modification.

Referee Whitehurst moved approval of the suggested language subject to further approval by the Subcommittee on Style. The motion carried. Mr. Treister pointed out that the last sentence beginning on line 28 was inappropriate and Professor Riesenfeld moved to delete it. The motion carried.



Rule 10-2A-2. Confirmation of Plan

Professor King stated that because they had eliminated approval in some cases, lines 3, 4, and 5 should be deleted. Mr. Nachman suggested the addition of "promptly" after "mailed or delivered" to make the rule clearer. There was discussion as to whether objections should be filed in writing or not and whether "shall" should be changed to "may." Professor Seligson moved that they require the filing of objections within a stated period unless the court in given situations extends the time. The motion carried. Professor Shanker questioned whether stating that copies go to the trustee or debtor in possession might limit the distribution even though the statute indicates that such other persons as the court may designate shall receive copies. Professor Seligson suggested the language in the rule be redrafted to indicate that copies shall be mailed or delivered to the trustee, debtor in possession and such other persons who have been designated by the court to receive notice of steps taken in the proceedings, because this would require an order in advance. The members agreed that the Reporter would redraft the rule. Professor Riesenfeld felt this should go in the notice rule. During the discussion of this, Professor Kennedy stated the subject of intervention was also included in Rule 207 and he asked

for suggestions regarding the first sentence. Mr. Treister replied that the difference between intervention and the right to be heard should be clearer. It was decided to leave this to the Reporters.

(2) Hearing. Mr. Treister felt the conditions listed here and in Chapter XI should not be spelled out in detail. Mr. Nachman suggested they be explained in the Note and only the important one be listed. Referee Herzog moved adoption of paragraph (2) with the deletion of everything after "plan" on line 11. He then accepted Mr. Treister's suggested amendment to add "whether or not any objections are timely filed." Professor King read the suggested modification as follows: "Whether or not any objections are timely filed the court shall hold a hearing on notice to the debtor, creditors, and stockholders, and other parties in interest and rule on confirmation of the plan." The motion to approve the above language and an explanatory note was approved.

(3) Acceptances. Mr. Treister felt this was in the wrong place and should be moved to the rule on acceptances. He felt it should be permissible to set the date for confirmation at the same time the date is set for acceptances. Professor King then suggested they include in the rule on approval that the court shall fix a time within which the creditors and stockholders may accept any approved plan or plans and may fix a

date for the hearing on confirmation and the next subdivision would indicate the notice which goes out would include the date fixed for the hearing on confirmation. Going back to the confirmation rule, he stated he would include a reference to acceptances. After discussion, Judge Maris pointed out that according to the first sentence of this rule the court can disqualify a claim but they actually mean to say that he may be disqualified from voting. Therefore, Professor King suggested adding, "For the purposes of determining." Then Referee Herzog stated that the last sentence of the rule should stay in the rule on acceptances. After further discussion Mr. Nachman moved that the first sentence of paragraph (3) be moved to Rule 10-2-7 on acceptances and the second sentence remain and be redrafted. His motion carried.

(b) Order of Confirmation. The members felt that "within 30 days after entry of the order" was too much of a limitation and Judge Maris suggested they strike those words and add "promptly." Referee Herzog moved approval of the modification provided the Note would indicate that the time to appeal runs from the entry of the order regardless of when the notice is received. His motion carried.

Rule 10-2A-3. Dismissal or Conversion to Bankruptcy Prior to or After Confirmation of Plan

(a) Dismissal or Conversion to Bankruptcy. Professor King recommended that paragraph (1) be eliminated because they will have in the rule on approval of a petition and filing answers, the opportunity to move to vacate an approval. Referee Herzog made a motion to strike paragraph (1) and his motion carried.

Mr. Treister felt "and no further time is granted for the proposal of other plans" should be added to paragraph (5). Professor Seligson pointed out the use of "refused" in the statute, however, Professor King stated that "denied" is used throughout the rules. Professor Countryman suggested that paragraph (5) be changed further by striking, "of the plan." Referee Herzog moved approval as modified and his motion carried. Mr. Treister suggested "or substantially consummated" be deleted from paragraph (6) and the members agreed.

(b) Notice Required for Dismissal or Conversion to Bankruptcy. Professor Seligson pointed out that the rule is wrong in stating that the court gives notice. Mr. Treister questioned whether notice should be required to be given to creditors before dismissal or conversion to bankruptcy. After

discussion Judge Maris suggested that subdivision (a) refer to Rule 10-2-2(b) and that subdivision (b) be deleted. Referee Herzog moved approval of the suggestion and his motion carried. Professor Kennedy felt conversion to Chapter XI should be an option in subdivision (a). Professor King suggested adding, "or with the consent of the debtor directing that the case proceed under Chapter XI of the Act," be added to line 6. Mr. Treister felt "whichever may be in the interest of the creditors and stockholders" on lines 6-7 might cause conflict. Referee Herzog suggested it be changed to read, "in the best interest of the estate" and moved approval of subdivision (a) as modified. His motion carried. Professor Riesenfeld disagreed stating that it should be in the public interest. The Reporter agreed to go over the subdivision.

(c) Notice to Creditors. Professor King read the subdivision including, "of dismissal" after "order" on line 27. Professor Seligson agreed that "and stockholders" should be added but he disliked the limitation of "within 30 days!" Referee Herzog suggested "promptly" be substituted and he moved approval as modified. His motion carried. Professor Joslin requested that the Note explain "promptly."

(d) Effect of Dismissal. Mr. Treister felt the first sentence was unnecessary in Chapter X. Referee Herzog moved for elimination of the sentence and approval of the second sentence. His motion carried.

Rule 10-2A-4. Effect of Conversion to Bankruptcy

Professor King stated this would be included in straight bankruptcy and he recommended deletion. The committee agreed.

The meeting adjourned at 12:00.

Next Meeting

The Subcommittee on Style agreed to meet in New York City on the dates of February 25-27, 1972. Provided funds are available, May 17-20 or June 21-24, 1972 were set for the dates of the full committee meeting in Washington, D.C. Otherwise, a meeting will be held on September 13-16, 1972.