

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

The twenty-sixth 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, June 21, 1972, and adjourned on Saturday, June 24, 1972.

The following members were present during the sessions:

Phillip Forman, Chairman, presiding
Asa S. Herzog
Charles A. Horsky
Norman H. Nachman
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 Mr. Thomas A. Beitelman, Jr., a members of the Bankruptcy Division.

The meeting opened with a discussion of whether to accept the shortened set of Chapter XI rules and forms or the unabbreviated set. Professor Seligson expressed his desire that Chapter XI be self-contained and not abbreviated. Judge Forman stated that the Style Subcommittee recommended

approval of the abbreviated version. Referee Herzog felt the advantage of having a compact set outweighed the unabbreviated. Mr. Nachman pointed out that the lawyers using Chapter XI are more sophisticated than those using straight bankruptcy rules and there would be no problems. Referee Herzog moved adoption of the shortened version and his motion carried.

Professor King called attention to the new numbering of the shortened Chapter XI rules and forms including the elimination of the various parts. The committee then proceeded to consider certain rules which had not been reviewed.

Rule 11-2. Meanings of Words in the Bankruptcy Rules When
Applicable in a Chapter XI Case

Professor King stated this is new because of the shortened set of Chapter XI rules. Mr. Horsky moved approval and his motion carried.

Rule 11-4. Chapter XI Cases Commenced Under Another Chapter
of the Act

Professor King stated this rule is also new. In order that the language track the statute, Mr. Nachman moved to insert "originally" on line 3 after "have been." His motion carried.

Rule 11-15. Conversion to Chapter X

(c) Form of Application; Answer. Mr. Treister suggested a stylistic change on line 12. He felt "why relief under the Act would not be adequate" should be substituted for "why adequate relief cannot be obtained." The committee agreed.

Rule 11-28. Solicitation and Voting of Proxies

Professor King stated that the Style Subcommittee felt more money is usually involved in Chapter XI and \$1,000 would be a more appropriate figure. Referee Herzog moved approval and his motion carried.

Rule 11-38. Deposit; Confirmation of Plan; Evidence of Title

(a) Deposit. Professor King stated this had been changed to refer to the designation as disbursing agent, the receiver, or trustee for clarification. He stated that clause (B) was changed to make clear the distinction between priority creditors and others. Referee Herzog moved approval of subdivision (a) and his motion carried.

(b) Waiver. Referee Whitehurst questioned whether it should be specified that the waiver be in writing. Mr. Horsky stated that "filed with the court" meant in writing, however, for clarification he suggested adding, "a waiver and" after "setting forth" on line 20. Mr. Treister pointed out that in other rules "in writing" is not specified and he moved approval of Mr. Horsky's suggestion. The motion carried.

(c) Objections to Confirmation. Mr. Nachman questioned if this is limited or if objections could be served on anyone else. Professor King answered and agreed to state in the Note that the court can require objections to be served on other persons. The committee agreed.

(d) Hearing on Confirmation. Mr. Treister felt the Note should explain that this is not a hearing on objections and

that they just get a notice of hearing on confirmation. He also stated that the notice rule to which this refers suggests they are going to get a notice of the hearing on objections. To clear this up, Professor King stated he would delete "and any objections thereto" from line 13 of Rule 11-24. Referee Herzog felt "and the last day to file objections thereto" should be substituted. Professor Countryman pointed out that there would be notice only if the court fixes an earlier date and Professor King suggested a new clause (5) be added as follows, "the time for filing objections to confirmation;". Referee Herzog moved approval and his motion carried.

Going back to the discussion on Rule 11-38, Mr. Nachman disliked the word "occur" and it was suggested that it be changed to "held." Mr. Nachman moved approval and it carried.

Mr. Treister questioned the unrealistic requirement of the statute that the court must satisfy itself that there are no grounds for objections to discharge if no complaint has been filed. After discussion Mr. Treister suggested they add the following language: "If no objection is timely filed under subdivision (c) the court may find without taking proof that the debtor has not committed any act or failed to perform any duty which would be a bar to the discharge of a bankrupt and that the proposal and its acceptance are in good faith and have not been made or procured by any means or promises or acts forbidden by the Act." Mr. Horsky moved approval and it carried for inclusion at the end of subdivision (d).

(e) Order of Confirmation. Mr. Horsky moved approval and his motion carried.

Rule 11-39. Modification of Plan Before Confirmation

Professor King at the direction of the Subcommittee on Style called attention to the part of § 364 which permits a creditor in his original acceptance to reject any later modification. He stated there is no provision for this in the rule and a creditor who has accepted a plan would have to specifically reject any subsequent modification. The Style Subcommittee approved the rule as written. Referee Whitehurst moved approval of their recommendation and it carried. Professor King stated he would explain this in the Note.

Rule 11-42. Dismissal or Conversion to Bankruptcy Prior to or After Confirmation of Plan

(b) Dismissal or Conversion to Bankruptcy for Want of Prosecution, Denial or Revocation of Confirmation, Default, or Termination of Plan. Mr. Treister suggested adding a new clause which causes dismissal or Chapter XI or conversion to bankruptcy as follows: "(2) for failure to comply with an order made under Rule 11-20(d) for indemnification; or." Professor Seligson was troubled by whether notice should be given to creditors other than as specified in subdivision (c). Mr. Treister felt this should be flexible. After discussion, Professor King suggested they stick to clause (2) of Rule 11-24(a) and not require a 10-day notice to all creditors for the hearing on dismissal under Rule 11-42 and in Rule 11-42(b) state "after hearing upon such notice as the court may direct."

The committee discussed rephrasing the first sentence in subdivision (b) because the phrase seemed to modify everything. Referee Herzog suggested deleting the phrase and adding the language suggested by Professor King. Professor King felt the introductory phrase should be included at the end. He rephrased lines 16-17 as follows, "The court shall enter an order after hearing upon such notice as it may direct," etc. He indicated there would be a new paragraph (2) as suggested and the last sentence would read, "The court may reopen the case if necessary for the purpose of entering an order under this subdivision." Referee Herzog moved approval of the above modifications including the deletion of clause (2) in Rule 11-24 and his motion carried.

Rule 11-53. Appraisal and Sale of Property; Compensation and Eligibility of Appraisers and Auctioneers

(a) Appraiser: Appointment and Duties. Professor King stated the rule is new and the Committee on Style had suggested inclusion in the matter on appraisal, provisions of Sections 333 and 313(2) of the Act. After reading subdivision (a), Referee Herzog expressed his feeling that the court should be able to act on its own motion. Professor Countryman suggested lines 1 and 2 be deleted and the paragraph begin with, "The court may appoint." Mr. Treister suggested combining the two sentences of the subdivision and Professor Seligson felt "inventory" was unnecessary and should be deleted. Mr. Horsky moved approval of the subdivision as modified and it carried. As requested the Reporter stated he would include

in the Note that the application could be made by any party in interest or on the court's own motion.

(b) Sale of property. Professor King read a new introductory phrase to conform to the previous change as follows: "The court may upon such notice as it may direct." Professor Seligson moved approval and his motion carried.

(c) Compensation and Eligibility of Auctioneers and Appraisers. Referee Herzog moved approval and his motion carried.

Rule 11-59. Courts of Bankruptcy; Officers and Personnel;
Their Duties

Approved as written.

Rule 11-60. Adversary Proceedings

Mr. Treister questioned the reference in relation to Rule 11-41 and suggested that "application" be changed to "complaint." He also suggested adding, "The procedure shall be governed by Part VII of the bankruptcy rules," to line 6 of Rule 11-41. Referee Herzog moved approval of the modifications and his motion carried. Mr. Horsky then moved approval of Rule 11-60 and his motion carried.

Rule 11-61. Appeal to District Court

Mr. Treister felt this language was difficult to understand and he suggested it be changed to, "except that the second sentence of Rule 802(c) shall read as follows:". He moved approval as suggested and his motion carried.

Rule 11-62. General Provisions

Approved as written.

Form No. 11-F18. Order Confirming Plan

Professor King explained that this is a combination of two previous forms. Mr. Nachman felt the phrases should be reversed in item 1. to include the one more commonly used first. Professor Seligson moved approval and his motion carried. With regard to item 2. Mr. Nachman pointed out that "dated" under A. should be "filed on" as in line 3. Professor Seligson moved approval as modified and his motion carried.

Professor King stated the next item on the agenda included matters discussed at the Style Subcommittee meeting with respect to the bankruptcy rules.

Rule 11-6. Original Petition

Professor King stated the suggestion was to delete, "with the clerk" on line 4 because Rule 509 would pick up this requirement. Professor Seligson moved approval as modified and it carried.

Rule 11-7. Petition in Pending Bankruptcy Case

Because of the deletion in Rule 11-6, Mr. Treister felt the Note to this rule should explain why this type of petition should be filed with the referee. Professor King stated he would add language to the Note.

Rule 11-9. Caption on Petition

Professor King stated there had been discussion with regard to Bankruptcy Rule 106 to which this refers, that it should include setting forth in the caption any other names

under which debts were incurred. After discussion Professor Seligson moved approval of Rule 11-9 as stated. His motion carried.

Mr. Treister then moved that the draft of Chapter XI Rules be transmitted to the printer and his motion carried.

CHAPTER X RULES

Professor King stated that the Style Subcommittee went over the balance of the Chapter X rules which the full committee did not finish at the last meeting. He then revised the entire set of rules in light of suggestions which the Committee made and suggestions made by the Style Subcommittee. Therefore he suggested starting with the first rule and going through the remainder consecutively.

Rule 10-1. Scope of Chapter X Rules and Forms

Professor King stated this is new and follows the scope rules of Chapter XI and Chapter XIII. There was discussion as to whether this should cover ancillary proceedings. Referee Herzog felt "including related proceedings" was unnecessary and moved that it be deleted. Mr. Treister felt "in Chapter X cases" on line 2 was unnecessary and suggested its deletion. Professor Seligson moved approval as modified and his motion carried. He also moved to approve the same changes in Chapters I to VII, Chapter XI, and Chapter XIII. His motion carried.

Rule 10-100. Meanings of Words in the Bankruptcy Rules When
Applicable in a Chapter X Case

It was suggested that this be renumbered 10-2 and the Committee approved it. Professor Countryman pointed out that "in proceedings therein" was unnecessary. Professor Seligson felt "in Chapter X cases" should be moved in line 2 to appear after "applicable." Professor Shanker pointed out that "shall include" should be changed to "means" to conform to the other language. Referee Herzog moved approval of these modifications here and in the other Chapters. His motion carried.

Rule 10-101. Commencement of Chapter X Case

Mr. Nachman pointed out that "by a person seeking relief" should be deleted and his motion to do so was carried. Professor Seligson preferred the sentence to read, "A Chapter X case is commenced by the filing of a petition with the court seeking relief under Chapter X of the Act" and his motion carried. It was also approved that the Chapter XI rule correspond to this one.

Rule 10-102. Chapter X Cases Commenced under Another Chapter
of the Act

Professor King called attention to the addition of "originally" to line 3 before "commenced" in Chapter XI and suggested the same change be made here for conformity. The members agreed.

Rule 10-104. Voluntary Petition and Stay

Professor King stated this had been combined with another rule dealing with a petition in a pending bankruptcy case. Mr. Treister raised a question with regard to the venue rule that has a relationship to this rule. He felt "may" should be

changed to "shall" in Rule 10-114 since the Chapter X case has to be filed when there is a pending bankruptcy case. He suggested the Note indicate that the proper venue for a petition in a pending bankruptcy case is described in Rule 10-114. Professor King pointed out that in Chapter XI the language is "shall be filed," and the language "with the clerk" had been deleted. He suggested the same changes here. Professor Shanker raised the question if the petition could be filed with a clerk in the bankruptcy office. Since a petition is filed with the referee in a pending case he pointed out the inconvenience caused by having to get it to the clerk in order to transmit the copies elsewhere when in different cities. To broaden this, Mr. Treister suggested they provide that the court transmit these copies. Referee Whitchurst pointed out that the problem occurs when the petition is filed in a pending bankruptcy case because it has to be filed with the referee. Professor Countryman suggested the language on line 6 read, "the clerk, or when the petition is filed in a pending bankruptcy case, the court shall transmit," etc. Professor Seligson moved approval and his motion carried. Professor King raised the same question with respect to Rule 11-7 and it was decided to incorporate the same idea in the Note.

Rule 10-105. Involuntary Petition and Stay

(a) Form and Number. Professor King stated a previous rule had been eliminated by the inclusion of the second sentence of this subdivision regarding a pending bankruptcy case. Mr. Nachman

pointed out they should include a reference to the venue rule in the Note as in the previous rule.

(b) Participation in Act of Bankruptcy. Professor Seligson raised a question as to whether there should be any estoppel on creditors serving as petitioning creditors in Chapter X. The Committee agreed that nothing should be said in the rule because they felt it is inappropriate in Chapter X. Mr. Treister moved to strike subdivision (b). His motion carried.

(c) Transferor or Transferee of Claims. Mr. Treister suggested a reference to Bankruptcy Rule 104(d) be substituted for lines 19 through 26. His motion to that effect carried.

(d) Joinder of Petitioners after Filing. Professor King stated the first phrase, "Subject to subdivision (b) of this rule" should be eliminated. The Committee approved the subdivision as modified.

(e) Stay. Approved as written.

Rule 10-108. List of Creditors and Stockholders; Inventory

Mr. Treister called attention to the provision in Rule 10-110 for filing amendments in the same number as required here for the original, however, the number is not specified. Professor Seligson suggested they indicate in the Note that it means one copy unless otherwise specified by the court. His suggestion was approved by the Committee.

Rule 10-110. Amendments of Voluntary Petitions, Lists, and Inventories

(a) Voluntary Petitions. Professor King explained that this had been revised to incorporate Civil Rule 15(a) and to

separate voluntary petitions from the lists and inventories which had been in one subdivision. The subdivision was approved.

Rule 10-111. Service of Petition and Process

Mr. Treister felt the sentence on lines 9-13 should be eliminated as unnecessary because one should be able to service a Chapter X corporation. His motion to delete this language was approved. Professor Seligson moved approval of the remainder of the rule and it carried.

Rule 10-112. Responsive Pleadings

(a) Time for Filing Answer. (1) By Debtor. Mr. Treister suggested elimination of the language after "summons" on line 4 in relation to the previous change in Rule 10-111. Professor Seligson moved approval of the suggestion and it carried.

(2) By Other Parties. Mr. Treister felt "Except as provided in Chapter XI Rule 11-15(c)" should be deleted because it deals with an application to convert while this rule deals with an answer to a petition. Professor Seligson suggested the Note refer to Rule 11-15(c) and his motion carried.

(b) Contents of Answer. Professor King explained that the first sentence was added as a result of a suggestion at a earlier meeting. The subdivision was approved.

(c) Other Responsive Pleadings. Approval as written.

Rule 10-113. Disposition of Petition; Preliminary Approval; Hearing

(a) Voluntary Petition. Professor King stated this had been rewritten to provide for the preliminary approval of a petition. Mr. Nachman moved approval and his motion carried.

(b) Involuntary Petition. Mr. Treister pointed out that there is no allowance for the fact that a creditor might answer within the time allowed for the debtor to answer. Professor King suggested the subdivision be rephrased as follows, "If an answer to an involuntary petition is not filed within the time provided by Rule 10-112(a)(1)." Professor Seligson felt this implied that the time within which the creditor has to file is changed. To make this clear Referee Herzog suggested adding to Professor King's language, "and if no other party in interest has filed an answer within such time." Professor Seligson moved approval of the additional language and it carried.

The meeting adjourned at 5:00 p.m.

On June 22, 1972 the Committee reconvened at 9:30 a.m.

(c) Hearing. Mr. Treister suggested a revision of the language as follows: "If no timely answer is filed the court may nevertheless hold a hearing upon such notice as it may direct before approving or dismissing a petition pursuant to subdivision (a) or (b) of this rule. Referee Whitehurst moved approval as suggested and it carried. Referee Herzog moved approval of subparagraph (2) with "the court" on line 23 changed to "it." His motion carried.

(d) Conversion to Chapter XI. Mr. Treister felt this subdivision could be drafted as a separate rule. Referee Herzog felt it would be important to retain in subdivisions (a) and (b) that if the court finds that adequate relief could be obtained under Chapter XI the petition may be amended. Professor King

suggested the new rule follow Rule 10-116 and begin, "Whenever." Mr. Treister pointed out that the reference to dismissing the petition should be deleted and subdivisions (a) and (b) should be amended to provide for dismissing the case. Mr. Nachman moved approval of these modifications and it carried. There was discussion whether to have a time limitation here, however, Mr. Treister moved that there not be one and his motion carried.

(e) Award of Costs. Professor King stated "petition" should be changed to "case" to correspond to the previous rule change and Professor Seligson suggested the opening phrase be, "When a case commenced by the filing of an involuntary petition is dismissed pursuant to this rule." After discussion regarding a reference to Rule 10-105, Professor Seligson moved approval as read and the motion carried.

Rule 10-114. Venue and Transfer

(a) Proper Venue. (1) Debtor. Professor King stated this had been rewritten to parallel the comparable Chapter XI rule. Mr. Treister pointed out that in order to provide that the petition is filed in the pending bankruptcy case rather than the court, the language should be revised. After discussion, Mr. Treister moved that the last sentence read, "If a bankruptcy case is pending, the petition shall be filed with the court in which that case is pending." Judge Maris then suggested they include in that sentence a reference to the debtor's pending bankruptcy case. Mr. Treister agreed. Judge Maris asked if this should be mandatory or if it is possible that a situation

could occur where it would be better to file it in another district. Professor King stated that could be accomplished by filing it in the same district and then requesting a transfer. Mr. Treister's motion carried and Professor King stated he would change subdivision (a) of Chapter XI Rule 11-113. In order to include Professor Seligson's suggestion that it be filed in the same proceeding, Mr. Treister suggested they add a sentence to Rule 10-104(a). Mr. Treister and Professors Countryman and King revised the second sentence of that rule as follows: "If a bankruptcy case is pending by or against the debtor, any petition under this rule shall be filed therein and may be filed before or after adjudication." Professor Seligson moved approval of this change and it carried. Professor King stated the same change would be made in the second sentence of Rule 10-105 and the Committee agreed. They also agreed to a similar change in Rule 11-7.

(2) Affiliate. Professor Seligson moved approval and the motion carried.

Rule 10-115. Joint Administration of Cases Pending in Same Court

(a) Cases Involving 2 or More Related Debtors. Mr. Treister felt the "having regard" language was awkward. Professor King suggested reversing the phrases as follows: "If 2 or more petitions are pending in the same court by or against a debtor and an affiliate, the court may order a joint administration of the estate. Before making such order, the court shall give due consideration to the protection of creditors and stockholders," etc. Professor Seligson moved approval and it carried.

Rule 10-116. Dismissal or Suspension of Case of Debtor
Adjudged Bankrupt or Whose Estate is Undergoing Liquidation
or Rehabilitation in a Foreign Jurisdiction

Since the bankruptcy rule dealing with this subject is being broadened, Mr. Treister suggested deleting the language on lines 1-10 and substituting, "Bankruptcy Rule 119 applies in Chapter X cases." Mr. Treister moved his suggestion and the motion carried.

Rule 10-118. Applicability of Rules in Part VII

Professor King stated the suggestion had been made to incorporate the bankruptcy rules in this rule by reference in the title and in line 3. Mr. Nachman moved approval and the motion carried. Mr. Treister pointed out that the language, "or proceedings to vacate an approval" is included in the previous phrase and if left in is misleading. Mr. Treister suggested they indicate in the Note that the contested petition could be voluntary or involuntary and there should be a reference to the rule on amendments to a voluntary petition. The motion to approve it as modified was carried.

Rule 10-201. Appointment and Duties of Receivers

(a) Purposes of Receivership. Mr. Treister moved to delete, "subject to the provisions of this rule" from lines 1-2 and place it after "petition" on line 3. His motion carried. Mr. Treister then pointed out that "when no trustee has qualified," on line 7 should be stricken here even though it is in the straight bankruptcy rule. It was also suggested that the caption be changed to "When Receiver May Be Appointed." The members agreed to these changes.

(c) Appointment. Professor King stated there was a suggestion to change "any" on line 15 to "such" and Professor Seligson pointed out that "Such" at the beginning of that sentence should also be changed to "The." These modifications were approved.

Rule 10-202. Appointment of Trustee

(a) Appointment. Professor King called attention to the fact that this subdivision had been rewritten pursuant to changes made at an earlier meeting. Mr. Treister suggested striking the first sentence with reference to a receiver and changing "such" on line 3 to "a." His motion carried.

(d) Removal and Appointment of Addition or Substitute Trustees. Mr. Treister stated that the phrase, "without or upon cause shown" suggests arbitrariness and felt it should be deleted. His motion to that effect was carried. Mr. Treister also suggested "as specified in subdivision (a) of this rule" be moved up to line 34 after "debtor." Referee Herzog moved approval of this suggestion and the motion carried. There was much debate regarding rewording item (3) and retaining the concept of an additional trustee or finding another name for the additional trustee. Referee Herzog and Professor Seligson felt they should retain the word "additional trustee" and limit this man to one who need not be disinterested. Referee Herzog suggested they continue to use the language of § 157 of the Act. They felt it necessary to retain the "additional trustee" title to persuade a corporate officer to continue in his position.

Mr. Treister felt the man could retain this post without the title nor mention of it in the rule. Mr. Nachman then moved to delete the reference by eliminating item (3). His motion carried with much disagreement from Referee Herzog and Professor Seligson. To conform with this change, Professor King stated that the reference to the additional trustee in item (1) should also be deleted. Mr. Nachman suggested the caption read, "Appointment of Co-trustees or Substitute Trustees; Removal; Hearing." Mr. Treister moved approval of subdivision (d) as modified and his motion carried. He felt the Reporter should explain in the Note the relationship with § 356 of the Act and the fact that a so-called manager could be employed but not with the title of trustee. Professor Seligson felt the number of days on line 44 should be changed from "30 days" to "60 days" if not "90 days." After a brief discussion, Professor Seligson moved to change this to "90 days" and his motion carried. He also requested that it be provided that there can be no extension.

Rule 10-203. Trustees for Estates When Joint Administration Ordered

(a) Appointment of Trustees for Estates Being Jointly Administered. Professor King suggested they might add language comparable to the new language of Rule 10-115(a) to which this subdivision refers. Rather than track the additional sentence in Rule 115(a), Professor Seligson pointed out that this situation is a little different because here it has already been decided that there will be a joint administration and the

question is whether there will be one or more common trustees. After a discussion regarding the exact wording, Mr. Nachman moved approval of the following language to be substituted for lines 6-8: "A common trustee shall not be appointed unless the court is satisfied that parties in interest in the estate will not be prejudice or appear to be prejudice by conflicts of interest of the trustee." His motion carried.

(b) Separate Accounts. Adopted.

Rule 10-204. Qualification by Trustee and Receiver

Professor King stated that "of the surety" should be added after "sufficiency" on line 9 of subdivision (b).

Rule 10-205. Substitution of Successor Receiver or Trustee

As decided at a previous meeting, Professor King stated this rule was taken out of a subdivision of Rule 202. Mr. Treister questioned how the rule would apply if the co-trustee is already a party and Professor King stated it would not apply at all. Professor Seligson pointed out that his successor is the person to whom they are referring. Mr. Treister moved deletion of "co-trustee or" from line 3 and his motion carried.

Rule 10-206. Employment of Attorneys and Accountants (Alternative A)

Professor King stated this alternative incorporates the bankruptcy rule by reference and Alternative B sets out the rule in full. Mr. Treister pointed out that disinterestedness is not relevant to the accountant and it is not necessary to provide for this here. Mr. Treister drafted the following new language:

"Bankruptcy Rule 215 applies to the employment in Chapter X cases of attorneys and accountants by a trustee, receiver and debtor in possession. In addition, an attorney appointed to represent a trustee shall be disinterested as specified in Rule 10-202(c)(2). Representation of a creditor or stockholder other than in the Chapter X case need not be deemed to affect the disinterestedness of an attorney. Notwithstanding the foregoing the court may when it is in the best interests of the estate, authorize the employment for special purposes set out in the order of an attorney who is not disinterested including an attorney who has been appointed by the debtor provided that such attorney represents or holds no interest adverse to the estate and the matters upon which he is to be engaged."

Referee Herzog stated this took care of the problem regarding the disinterested attorney. Professor Seligson felt the term "special purposes" was too flexible and could mean anything. It was pointed out that this draft did not pick up the phrase on line 9, "other than to represent the trustee in conducting the case." Professor Seligson moved approval of Mr. Treister's draft incorporating the above phrase after "court" on line 9. His motion carried.

Professor King stated the paragraph captioned (2) would become subdivision (b), Employment of Attorney with Adverse Interest. Mr. Treister felt "material fact bearing on the grounds of his disinterestedness" should be added to line 18.

Professor Kennedy pointed out a discrepancy between (a) and (b). Professor King stated he could change subdivision (a) to provide for reference to the specific subdivision of Rule 215 to conform to subdivision (b) of this rule. However, Judge Maris pointed out that subdivision (b) of Alternative B was clearer. Upon turning to that draft, Mr. Treister again suggested a change for clarification in the disclosure of the fact bearing on the question of his disinterestedness. Professor Seligson then stated that the beginning phrase, "If without disclosure" modifies everything and should be changed. Mr. Treister felt it would be better to approach this by dealing with what happens if an attorney is not disinterested or fails to disclose a fact relating to the effect of disinterestedness to the estate by reference to the bankruptcy. This would be short because you would not have to restate all these things. To incorporate this suggestion, Professor King went back to Alternative A as follows:

Any attorney who was not disinterested as required by subdivision (a) of this rule or fails to disclose any material facts on the question of his disinterestedness may be denied the allowance of compensation or reimbursement of expenses or both and any allowance to the trustee may also be denied if it shall appear that he failed to make diligent inquiries into the connections of such attorney. Professor Seligson moved approval and his motion carried. This Alternative A as modified was approved.

Rule 10-215 Notices to Creditors, Stockholders, and United States
a Notice of First Meeting of Creditors and Stockholders.

Professor King stated this includes the fact that the debtor is

being included in possession if that is the case and Mr. Treister stated it should be deleted since the court may revise this decision. Also, it could be placed at the end of the subdivision as follows: "or if permitted by Rule 10-202 that the debtor may be continued in possession." Professor Seligson did not agree to saying that the debtor may be continued in possession because when the notice goes out he is either in possession or someone else has been appointed. As an alternative, Mr. Treister suggested lines 6-10 be deleted and the sentence on line 5 be changed to, "Such notice shall conform substantially to Official Form 10-7." Professor Seligson moved approval of subdivision (a) as modified and his motion carried.

(b) Twenty-Day Notice to All Creditors and Parties in Interest. Professor King stated that the notice on the hearing on approval of the plan and the notice of the hearing on confirmation had been deleted and placed in separate rules dealing with the specific subject.

(c) Other Notices to All Creditors and Parties in Interest. Professor King stated certain important items had been added. Mr. Treister pointed out that the hearing on and approval of a plan or any modification thereof in item (2) should be separate and reference should be made to the appropriate rule, as in the other items. Professor Countryman called attention to another notice in Rule 10-307 which should be cross-referenced here. Mr. Nachman moved approval as modified and it carried.

(f) Notices to the United States. Professor King stated this had been changed to conform to the bankruptcy rule where debt is owed the United States. To conform with the style of items (1) and (2), Mr. Nachman suggested that (3) begin with "to the United States attorney." Judge Maris then suggested that an item (4) be added. This subdivision was approved as modified.

(g) Effective Date of Notice. The Committee agreed to add a new subdivision (g) which tracks a Chapter XI rule providing that, "Notice by mail is complete upon mailing."

(h) Orders Designating Matter of Notices. As suggested at the last meeting, Professor King stated that the notice provision in § 207 of the Act was incorporated in this rule. Professor Seligson moved approval and his motion carried.

Rule 10-210. Standing to Be Heard; Intervention

Professor King stated this rule is new and incorporates the provisions of § 206 and § 208 of the Act.

(a) Standing. Mr. Nachman moved to delete "for cause shown" however, Professor Moore felt this would not accomplish anything. Mr. Treister then made a substitute motion to recast item (2) to conform with item (1) by deleting, "The court may, for cause shown, permit" and adding, "shall have the right to" after "debtor" on line 7. Mr. Treister's motion carried.

(b) Intervention. There was discussion regarding the deletion of this subdivision because they felt it did not serve any purpose, however, it was pointed out that they should provide

for intervention by someone who is not technically a party in interest. Mr. Treister felt "other than one specified in subdivision (a) of this rule" should be deleted and the subdivision should read, "The court may for cause shown permit any person to intervene generally" etc. Mr. Nachman felt substituting "any person" for "party in interest" involving intervention is too broad. Professor Countryman then suggested substitution of "interested person." Mr. Treister agreed to this amendment and moved approval of the subdivision as modified.

(c) Securities and Exchange Commission. Mr. Treister pointed out that "or file a notice of appeal in any such case" is not necessary. Professor Seligson noticed that the reference to subdivision (a) is incorrect and should be deleted. He also indicated that this is broader than the statute and implies intervention. Mr. Treister felt that "notice of appearance" should be called an "intervention." Upon suggestions from Professor Seligson and Mr. Treister the new language was approved as follows: "The Securities and Exchange Commission may or, if requested by the court, shall intervene in a Chapter X case. Upon the filing of a notice of intervention, the Commission shall be deemed a party in interest, except that it may not appeal from any order of court."

Rule 10-211. Meeting of Creditors and Stockholders

(a) First Meeting. Because of the notice rule, Mr. Treister felt "less than 30 nor" should be added to line 3. Referee Herzog moved approval of the subdivision as modified. The motion carried.

(b) Agenda. For clarification, Mr. Treister suggested adding number to each phrase or adding "shall" in the appropriate place on lines 15, 17, and 18. He also suggested deleting the references to "first" in subdivisions (a) and (b) because there are no other meetings. The new title of subdivision (a) became "Date and Place." Professor Seligson moved approval with the incorporation of item (1) through (4) rather than phrases beginning with "shall" and his motion carried. Then for clarification it was agreed to add "to the retention of such trustee or trustees" in place of "thereto" under item (3). Also, Professor Shanker felt "shall determine" on line 14 should be changed to "shall consider" to prevent the meeting from being open until the issue is decided. The Committee agreed. Mr. Treister pointed out that "hear" on line 18 could be changed and Professor Seligson suggested the substitution of "receive." The members agreed.

Rule 10-212. Examination

Professor King stated Alternative A stating the rule in its entirety has originally been approved, however, he prepared Alternative B which is an incorporation of the bankruptcy rule by reference, and is shorter. Mr. Treister suggested a revision of subdivision (d) as follows: "Bankruptcy Rule 205(d) applies in Chapter X cases except that the examination may also relate to," etc. However it was decided that this subject is too important to abbreviate and Professor Seligson moved approval

of subdivision (a) of Alternative A. His motion carried. Professor Seligson also moved approval of subdivisions (b) and (c) of Alternative A and it carried. Mr. Treister suggested deletion of "only" on line 13 of subdivision (d). Professor Seligson moved approval as modified. He also moved approval of subdivision (e) and his motion carried.

(f) Place of Examination. Mr. Treister felt language on lines 30-32 should be replaced by, "to attend an examination at a place without the state of his residence unless such place is within 100 miles of his residence." Professor Seligson pointed out that it should conform to the language of the bankruptcy rule by stating that it should be 100 miles from the place of hearing. There was discussion whether to include the broader definition of "debtor" in line 29 and it was agreed to state, "a director or officer of the debtor or stockholder." Judge Maris pointed out it should be comparable in the other subdivisions. Professor Seligson felt subdivision (f) cut back the power of the court and should be expanded. After much discussion it was decided to delete lines 29-32 and rephrase the first part of the subdivision as follows: "Notwithstanding Bankruptcy Rule 916 the court may for cause shown and upon such terms as it may impose authorize the debtor (as defined) to be examined under subdivision (a) or (b) of this rule at any place," etc. However, Professor Seligson stated he wanted to authorize the bankruptcy judge to issue a subpoena which may be served anywhere in the United States directing him to appear at a place for examination

not more than 100 miles, etc. and to provide that the bankruptcy judge may direct another officer to preside if the examination is held other than in a regular place of holding court. In order to accomplish the latter part of the suggestion, Mr. Freister suggested subdivision (c) be changed to include the following sentence, "If the examination is held at a place other than in a regular place for holding court in the district the bankruptcy judge may designate any other person authorized to administer oaths and preside at any examination." Judge Maris pointed out they should use the term, "office" and for style purposes he suggested adding the second sentence as an exception as follows: "except that if the examination is held at a place other than in a regular place in which the bankruptcy judge customarily holds court the judge may designate any officer who can administer oaths under Bankruptcy Rule 912(a) to preside." Professor Seligson moved approval of subdivision (c) as modified and his motion was carried.

In turning back to subdivision (f), Professor Shanker pointed out the language as revised to state that the debtor may be examined anywhere, implies that a witness cannot. To take care of this Mr. Freister suggested they delete the reference to Rule 912 and include, "without issuing a subpoena." Professor Shanker then suggested changing the caption to "Place of Examination of Debtor." Professor Seligson moved approval as modified and his motion was carried.

(g) Mileage. Professor King stated he expanded the definition of "debtor" on lines 33 and 37. Professor Seligson moved approval as modified and his motion carried.

Rule 10-213. Apprehension and Removal of Debtor to Compel Attendance for Examination

Professor King stated this rule had been previously approved (Alternative A), however, he called attention to Alternative B which is a shortened version and merely incorporates the bankruptcy rule. In discussing the shortened version, Mr. Treister suggested they add a phrase spelling out the definition, "officers, directors," etc. as in the prior rule. Mr. Nachman moved approval of Alternative B as modified and his motion carried. The Committee also approved a similar rule to be added to the Chapter XI rules.

Rule 10-214. Compensation of Trustees, Receivers, Marshals, Attorneys, Accountants, and Parties in Interest

(a) Application for Compensation and Reimbursement. Professor King stated clause (3) had been changed as a result of a decision at the previous meeting. Rather than incorporate § 249 of the Act by reference, he stated that he was instructed to spell out its provisions. Mr. Treister pointed out that the references in line 9 to Rule 10-101 and 105 are unnecessary because they are the only rules dealing with filing. To shorten the subdivision, he also suggested adding after "petition" on line 9, "and the application shall otherwise comply with Bankruptcy Rule 219(a)." Mr. Treister also suggested doing away with the concept of the marshal and shortening subdivisions (b) and (d) by reference to

the appropriate bankruptcy rule. Professor Shanker felt the use of cross-reference is burdensome. Professor Seligson preferred to have everything in the rule because of its importance. Mr. Nachman then moved approval of the rule in its entirety and his motion carried. After discussion it was decided that the only necessary change was the deletion of the reference to Rule 10-104 and 105 and the substitution of "commencing a case under the Act" on line 9.

(b) Disclosure of Arrangements Regarding Compensation by Attorney for Debtor. Professor King stated this subdivision has been approved previously.

(c) Factors in Allowing Compensation. Professor King explained that Alternative (1) contains a more general provision with regard to the facts to be considered by the court, that is, services beneficial in the administration of the estate and the provisions of (2) are more specific. They decided to follow Alternative (2). Professor Countryman felt the first phrase should be deleted and Professor Seligson suggested they start out by providing that those officially charged with the duty of administering the estate should be paid if their services are necessary and those not charged with this duty should be paid if their services are beneficial and not duplicated, and if the services are beneficial to the plan. Professor Shanker felt they should be paid regardless. The Committee agreed to beginning the sentence with, "Reasonable compensation for necessary services and reimbursement of necessary expenses." They also agreed to adding,

"and such other persons as may be duly authorized to assist the trustee, receiver, or debtor in possession" to the end of the first sentence. Referee Herzog suggested the second sentence be made subdivision (b). Professor King felt the third sentence should be a part of that subdivision and "or to refusal of confirmation of a plan" be included. After discussion Professor Seligson suggested a policy question be decided. Mr. Nachman made a motion that any creditor, stockholder, or attorney who contributes to a plan that is approved shall be entitled to compensation without regard to whether the plan is confirmed or not. His motion carried. In order to express this view in the second sentence, Professor King suggested the language on lines 73 through 75 be changed to, "for services which contribute to a plan which is approved whether or not accepted or confirmed." There was a brief discussion of whether one who renders administrative duties should be paid if they are beneficial. Professor Snatker moved that any person doing work necessary for the administration of the estate who is not authorized by the court to do so shall not be entitled to fees and his motion carried. Judge Maris suggested "and such other persons as may be duly authorized to assist the trustee, receiver or debtor in possession" be added to line 70. The members agreed. Professor Seligson felt the last sentence was unnecessary and suggested the language on lines 73 through 85 be redrafted as subdivision (b). Professor King suggested "Reasonable compensation and reimbursement of expenses may be allowed by the court for services which contributed

to a plan which is approved whether or not confirmed, for services which contribute to confirmation of a plan, or in opposing a plan, confirmation of which has been refused." The Committee agreed, however, it was suggested that Professor King change the language according to the policy decided.

(2) Superseded Case. Professor Seligson felt the references to the specific rules were not clear and Mr. Treister suggested they be made to Chapter X and Chapter XI. He also felt the reference to "marshal" here and in all the bankruptcy rules should be deleted and his motion carried with the stipulation that Professor Kennedy research the possibility of this deletion causing too much trouble in the straight bankruptcy rules. Referee Herzog then moved approval of the subsection with the insertion of "debtor in possession."

(3) Attorney or Accountant. Referee Herzog moved approval and his motion carried.

(4) Denial of Allowances. Referee Whitehurst felt "without the approval of the court" was ambiguous at the end of line 109 and suggested it be placed after "has" on line 105. Professor Seligson moved approval and his motion carried.

(5) Dismissal or Conversion to Bankruptcy. There was discussion of whether the last phrase should be here or placed in the bankruptcy rules. Referee Herzog moved approval of item (5) with the deletion of "and shall make provision for the payment thereof." His motion carried.

Rule 10-215. Hearing on Application for Compensation and Reimbursement

Mr. Treister suggested "of expenses" be added after "reimbursement" on line 2 and "the plan" on line 9 be changed to "a plan." The Committee agreed.

Rule 10-216. Examination of Debtor's Transactions with His Attorney

Professor King explained that subdivision (b) of Bankruptcy Rule 220 from which this rule was taken is not included because it is inapplicable. Mr. Nachman moved approval of the two remaining subdivisions and his motion carried.

Rule 10-301. Formulation and Filing of Plan

(a) Suggestions for Plan. Mr. Nachman pointed out a problem as to who should fix the time according to the reference to Rule 208(a). Professor Seligson suggested adding "by him" meaning the trustee on line 26 of that rule and his motion carried. A motion to approve subdivision (a) was approved.

(b) Filing of Plan. Judge Maris felt subparagraph (3) could be eliminated if the provisions that the court shall fix the time for filing be stated first. Mr. Treister suggested this subdivision begin, "The court shall fix a time for the trustee, debtor in possession or examiner to file a plan or report of reasons why a plan cannot be formulated" and leave out the provision that the time can be extended for cause. Professor King stated to accomplish this, subdivision (b) would deal with the fixing of time and subdivision (c) would deal with

the filing of a plan. New subdivision (c) would include the same first and last sentences of subdivision (b)(1), however, the second sentence would be changed to read, "At any time during the hearing held pursuant to Rule 10-303, the debtor, any creditor or stockholder or indenture trustee may file a plan," as suggested by Professor Seligson. Mr. Treister felt it is not sensible if anyone could file a plan after the trustee has filed his plan or the reasons why he could not and Professor Seligson disagreed stating that this would interfere with the concept of Chapter X. After discussion it was agreed that Professor King would draft an alternative form to this rule which would provide that a time would be fixed within which the trustee should file a plan or report of reasons why a plan could not be filed and after a plan or report is filed and before a hearing is held thereon, then parties in interest may file their plans.

It was suggested to begin subparagraph (2) of new subdivision (c) in the same manner as subparagraph (1) only inserting the terms "debtor in possession or examiner." However, Professor Seligson pointed out that in Rule 10-208(b) the debtor in possession may not be directed to file a plan. Professor Countryman suggested making the provision in Rule 10-208(b) mandatory so that this rule would be consistent. To accomplish this he suggested adding "and such other duties specified in subdivision (a)" to line 13 of Rule 10-208(b) and the Committee agreed.

Professor King suggested the second sentence be changed as follows, "A plan or plans may also be filed by any creditor, stockholder, or indenture trustee at any time before the conclusion of the hearing held pursuant to Rule 10-303." Professor Seligson then pointed out that the trustee has nothing to do with the last sentence of subparagraph (1) and therefore, "not approved by the trustee" should be deleted. The members agreed.

(d) Form of Plan. Approved by the Committee.

Rule 302. Classification of Claims; Valuation of Security

(a) Classification of Claims. Professor King stated that as decided earlier, "to such persons" should be stricken from line 3. Mr. Treister moved approval and his motion carried.

(b) Valuation of Security. Professor King stated that the first alternative relates more closely to the statute and the second to the comparable Chapter XIII rule. Mr. Treister stated he preferred the first alternative because whether or not the secured creditor files a proof of claim it may be necessary to make the valuation. He suggested line 10 be replaced by "any party in interest." After a brief discussion the Committee revised the first alternative as follows: "For the purposes of classification under subdivision (a) of this rule of claims which may be secured in whole or in part the court shall, if necessary, upon application of any party in interest hold a hearing upon such notice as the court may direct to determine the value of the security and classify the claim as unsecured

to the extent it is enforceable for any excess of the claim over such value."

Rule 10-303. Approval of Plan by Court

(a) Hearing on Plan and Objections Thereto. Mr. Treister suggested striking "finds" on line 8 and substituting "orders." Mr. Nachman felt "therefore" on line 8 was unnecessary and should be stricken. Since "finds" was replaced by "orders," Referee Herzog felt "is to" on line 9 should be stricken. He also pointed out that "advisory" on line 12 was not needed. The members approved subdivision (a) as modified.

(b) Submission of Plan to Securities and Exchange Commission. Mr. Treister felt this could be shortened. Professor King suggested striking the first phrase because its provisions are already in subdivision (a). Mr. Treister felt it would be clearer to begin the first sentence by referring to the debtor. Referee Herzog suggested the second sentence be revised as follows: "If the indebtedness is less than \$3,000,000, the court may submit any such plans." He moved approval of subsection (1) as modified and his motion carried. Professor King read subsection (2) stating a suggestion had been made moving "of the commission" from line 27 up to line 26 after "report." Mr. Treister felt these subsections go together and should not be divided. The members agreed.

(c) Approval of Plan. Professor King read suggested revised language, however, Professor Seligson raised a question regarding when the court can rule. To clarify this, Mr. Treister suggested adding, "or thereafter." Professor Seligson moved approval of

the following revised subdivision: "The court shall rule on approval of the plan or plans at the hearing provided for under subdivision (a) of this rule or thereafter unless there was a submission to the Securities and Exchange Commission pursuant to subdivision (b) of this rule. If there was such a submission the court shall resume the hearing and rule on approval after the filing of the commission's report, on notification to the court by the commission that no report will be filed or expiration of the time fixed for the filing of such report, whichever first occurs." His motion carried.

(d) Date for confirmation of the plan. Professor King read the suggested revised language as follows: "Upon approval of the plan or plans the court shall fix a time within which creditors and stockholders may accept such plan or plans," etc. Referee Herzog moved approval and his motion carried.

(e) Transmission and Notice to Affected Creditors and Stockholders. Mr. Nachman pointed out that in order to be more explicit, "plan or plans" should be stated throughout the rule, therefore, "approving the plan" on line 46 was changed to, "approval of a plan or plans." Mr. Treister felt "prepared by the Commission" was unnecessary and should be stricken. Mr. Nachman felt item (5) should be changed to, "such other information as the court may direct." Mr. Nachman felt "as provided in this rule" should be stricken and "of this subdivision" added to the end of the sentence on line 57. Mr. Treister then suggested that "debentures" be added to the list in the last sentence.

Professor Kennedy suggested line 59 read, "holders of stocks, bonds, debentures, notes and other securities," etc. Mr. Treister moved approval of subdivision (e) as modified and the motion carried.

(f) Limitation on Solicitation. At the suggestion of Mr. Treister, Professor King drafted this new subdivision as follows: "No person shall solicit any acceptance of a plan or plans before approval and transmission thereof except as provided in Rule 10-304." The members agreed.

(g) Public Utility Corporation. Mr. Treister moved approval and his motion carried.

(h) Objections After Approval. Mr. Treister felt this was not broad enough and suggested adding, "any parties in interest including the Securities and Exchange Commission." The motion to approve was carried.

Rule 10-304. Solicitation of Acceptances; Representation of Creditors and Stockholders

(a) Solicitation. Mr. Treister felt this subdivision should become Rule 10-304 and the following sentence should be added at the end, "Rule 10-305(c) applies to any violation of this rule." He moved approval of his suggestion and the motion carried. Professor King explained that subdivisions (b) and (c) should be placed in Part II. Mr. Treister stated that since the Committee had eliminated "verification" throughout the rules, "verified" on line 11 should be stricken. His motion to this effect was approved. Referee Herzog felt "signed" should be

added in its place and the members agreed. Professor King questioned whether line 21 was grammatically correct. It was suggested to delete, "formed."

(b) Form of Acceptance. (c) Acceptance by Partially Secured Creditor. Professor King read these subdivisions stating they had previously been approved.

(d) Disqualification of Acceptances. Professor King read two alternatives. Mr. Treister felt the following language is more accurate, "any acceptance or rejection of a plan or modification of a plan if such acceptance or rejection." Professor Seligson felt "acquisition of the claim or stock" at the end of the subdivision was unclear so Professor King suggested adding, "by such creditor or stockholder." Professor Seligson moved approval and his motion carried.

Rule 10-305. Acceptance or Rejection of Plans

(a) Time for Acceptance or Rejection. Professor King pointed out that they should substitute the language previously approved regarding the holders of stock, etc. It was suggested that line 3 read, "any stockholder or creditor who is a security holder of record." In order to permit the possibility of doing away with the necessity of filing claims and using the list prepared by the trustee for all purposes, Professor King suggested "and any creditor whose claim is so listed as undisputed, not contingent and liquidated as to amount" be added to line 3 after "Rule 10-108." To take care of the situation regarding the filing of an allowance of these claims or interests Professor King suggested the

last sentence be redrafted as follows: "Any creditor or stockholder who files a proof of claim or interest before the order of approval becomes final and whose claim or interest is allowed but who fails to file an acceptance within the time prescribed for acceptance, shall be deemed to have rejected the plan or plans." He further stated that with respect to the failure to file an acceptance there would only be a rejection for those claims which have been filed and allowed. Mr. Treister suggested they discuss the possibility of counting only those who filed a written acceptance or rejection, however, Professor Seligson felt this issue was too important to consider until the full Committee was in attendance and it was agreed to postpone this until the next meeting. In the meantime, Referee Herzog moved approval of subdivision (a) as modified, until the next meeting. His motion carried.

Rule 10-306. Modification of Plan Before or After Confirmation

Mr. Treister felt the title should be changed to, "Modification of Plan Before or After Approval" and it should be divided into two subdivisions; (a) Modification prior to approval of plan and (b) Modification after approval of plan. Professor Seligson felt that creditors should not have to accept or reject a plan before approval. During the discussion of this objection, Mr. Treister stated he preferred there be a combined meeting on approval and confirmation. In other words, he felt that after the court has approved the plan and there is a modification there should be a faster modification of the plan. Professor

Seligson replied that in order to do this the notice should go only to those affected. It was decided to defer these decisions until the next meeting. The discussion then led to whether confirmation after modification should be brought into this rule. It was suggested that subsections (1)-(3) of subdivision (d) of Rule 10-309 relating to modification be moved to Rule 10-306 at the end and be known as subdivision (c). The Committee agreed.

Rule 10-307. Confirmation of Plan

(a)(2) Hearing. Mr. Treister suggested striking the first sentence to line 12 and beginning it as follows: "The court shall hold a hearing to rule on the confirmation of the plan." Also, "whether or not any objections are timely filed" would come after "Rule 10-209" on line 15. Mr. Treister also felt "and rule on confirmation of the plan" should be deleted. Referee Herzog moved approval and his motion carried. Mr. Treister stated that the Note should explain the change in procedure from the statute.

Rule 10-308. Dismissal or Conversion to Bankruptcy After Approval of the Petition

Professor Kim stated that the rule had been placed on the shelf.

Rule 10-309. Participation and Distribution Under Plan; Consummation of Plan

(a) Bar Date for Participation in Distribution. Mr. Treister suggested the subdivision be redrafted beginning after "plan"

on line 5 as follows, "enter an order upon such notice to all affected parties as it may direct fixing a time not less than 5 years after the final decree closing the estate within which such action shall be taken. Persons who have not within such time presented or surrendered their securities," etc. Professor Seligson moved approval and his motion carried.

(b) Deposit and Distribution. It was suggested by Mr. Treister that this subdivision be placed in Part IV in relation to rules dealing with distribution. The members agreed.

The Committee had previously agreed to placing subsections (1) through (3) of subdivision (d) into Rule 10-306.

The meeting adjourned at 12:00 Noon.