

MINUTES OF THE OCTOBER 1971 MEETING
OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

The twenty-fourth meeting of the Advisory Committee on Bankruptcy Rules convened in the Conference Room of the Administrative Office of the United States Courts, 725 Madison Place, N. W., Washington, D. C., on Monday, October 25, 1971, and adjourned on Thursday, October 28, 1971. The following were present during the sessions:

Phillip Forman, Chairman, presiding
Edward T. Gignoux
Asa S. Herzog
Charles A. Horsky
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, 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.

Judge Gignoux reported that six revised rules are being presented as a result of the July meeting. Mr. Treister had been unable to attend the meeting and prepared a memorandum raising various questions regarding the Chapter XI rules.

Professor King wrote a memorandum in reply and brought it before the Style Subcommittee meeting October 24. Judge Gignoux further reported that the style subcommittee agreed to Mr. Treister's suggestion to draft an abbreviated set of Chapter XI rules. The Reporter agreed to perform this task for the January 1972 meeting.

Rule 11-108. Schedules, Statement of Affairs and Statement of Executory Contracts

(b) Time Limits. As indicated in his memorandum, Mr. Treister suggested the deletion of, "and a summary of his assets and liabilities," from line 14 because it should not be a necessary condition when the schedules and statement of affairs are not filed with the petition, it would be burdensome and inaccurate when filed in a hurry. He also suggested increasing the time periods on lines 15 and 17 to 15 days and 30 days, respectively. Referee Herzog moved approval of these suggestions and his motion carried.

Rule 11-111. Venue and Transfer.

(a) Proper Venue. Because the previous rule had been unclear whether the venue provisions of the bankruptcy rule are included in case one of the petitions had been filed in bankruptcy rather than Chapter XI, Professor King revised subsections (1) and (2). After reading them, Professor Shanker pointed out that the petition should be filed wherever the case happens to be at the moment and not necessarily in the original district as stated. Professor Kennedy and Professor

King redrafted the subsections again and there was discussion regarding the terms, "is being filed" or "is pending." After further discussion Professor Seligson moved approval of subsection (A) as follows: "a petition commencing a Chapter XI case may be filed by a general partner in a district where a petition under Chapter XI or in bankruptcy is pending by or against a partnership; or." For style reasons, the last phrase was changed to, "in bankruptcy by or against a partnership is pending," and approved.

Rule 11-113. Death or Insanity of Debtor.

Professor King stated he redrafted this rule to incorporate Mr. Treister's suggestion that the rule imply it is more common for the Chapter XI case to be dismissed rather than continued but to provide for its continuance if feasible. Professor Riesenfeld felt this implied that it could not be converted into bankruptcy. He suggested this be covered in the Note. The subdivision was approved.

Combined Rules 11-115 & 11-2A-4. Dismissal or Conversion to Bankruptcy Prior to or After Confirmation of Plan

Professor King stated that since Rule 11-115 dealing with dismissal or conversion to bankruptcy prior to confirmation of a plan and Rule 11-2A-4 dealing with dismissal or conversion to bankruptcy after confirmation of a plan include the same subjects and results, the committee agreed to combine the rules into one and provide that the debtor can have an adjudication upon his own voluntary application.

After reading subdivision (a) Voluntary Dismissal or Conversion to Bankruptcy, Professor Shanker^b was troubled about which application or motions were being discussed. After discussion regarding style, Mr. Treister suggested subsection (2) be changed as follows: "enter an order adjudicating the debtor a bankrupt if he so requests or if he requests dismissal enter an order dismissing the case or adjudicating him a bankrupt," etc. Mr. Nachman felt notice should be given creditors and Professor King suggested adding "after hearing upon notice" to the subsection. Professor Shanker moved approval of these suggestions and his motion carried.

The committee then approved the policy decision of the style subcommittee that even though there is fraud the court should consider which is in the best interest of the creditors either dismissal or adjudication.

Mr. Treister felt there should be explanation in the Note regarding how to dismiss the bankruptcy case.

(b) Dismissal or Conversion to Bankruptcy for Want of Prosecution, Denial or Revocation of Confirmation, Default, or Termination of Plan. Professor King read his draft and Professor Countryman felt it was unnecessary to include the phrase regarding adjudicating the debtor a bankrupt in item (1). After discussion, Referee Herzog suggested they go back to the original version, combine items (1) and (2), and not make any distinction between a 103 and a 104 case. Mr. Treister

agreed stating that if any of the things occur the court shall dismiss the case or adjudicate the debtor a bankrupt whichever may be in the best interest of the creditors. Professor Countryman then pointed out that the statutes are inconsistent. Professor Kennedy questioned their superseding the inconsistent language, and Professor King replied that the bankruptcy rule could go along with the statute and deal with before and after confirmation separately. They redrafted subdivision (b) to give the court three alternatives whether the Chapter XI case was filed in a pending bankruptcy or not so that paragraphs (1) and (2) would be combined. Professor Riesenfeld was concerned that subdivision (a)(2) should refer to the interest of the parties rather than creditors. However, he concluded that in the best interest of the debtor and creditors would be appropriate and his motion to that effect was carried. Professor Shanker made the same motion with regard to subdivision (b) and his motion carried. Mr. Treister then suggested that "after hearing upon notice" be deleted from this draft of subdivision (b) because it is provided for later in the rule. His motion to delete it was carried. After seeing the rule set up as suggested, Mr. Nachman felt the subdivision could be shortened by starting off with "The court shall." Judge Maris then suggested the five "if" clauses be set off numerically. For further clarification Professor Countryman suggested the subdivision begin, "The court shall reopen the case if

necessary," etc. Referee Herzog pointed out that the phrases which are to be redrafted as paragraphs (4) and (5) should be based upon a reservation of jurisdiction. In the third revision of subdivision (b) Professor King turned the order of the language around as suggested, and read it as follows: "The court shall reopen the case if necessary and enter an order, after hearing upon notice, dismissing the case, or adjudicating the debtor a bankrupt if he has not been previously so adjudged, or directing that the bankruptcy case proceed, whichever may be in the interest of the debtor and creditors--(1) for want of prosecution; or (2) if confirmation of a plan is denied; or (3) if confirmation is revoked for fraud and a modified plan is not confirmed pursuant to Rule 11-2A-3(b)(2); or (4) where the court has retained jurisdiction after confirmation of the plan: (A) if the debtor defaults in any of the terms of the plan; or (B) if a plan terminates by reason of the happening of a condition specified therein." Mr. Nachman moved approval of subdivision (b) as redrafted and his motion carried.

(c) Notice to Creditors. Approved as drafted.

(d) Effect of Dismissal. Mr. Treister didn't feel the draft covered presumption and he suggested it be reworded as follows: "Unless the order specifies to the contrary, dismissal of a case under this rule on the ground of fraud is with prejudice and a dismissal on any other ground is without prejudice." Professors Riesenfeld and Shanker were

troubled by the phrase, "of title to all property in the debtor." They felt it was not clear whether it meant all property or the debtor's property. Mr. Treister suggested it be rephrased to read, "of the debtor's title to his property." His motion to approve as modified was carried.

(e) Consent to Adjudication. Mr. Treister pointed out that since this contradicts the previous subdivisions, they should begin this with, "Notwithstanding the foregoing." After a brief discussion, Mr. Nachman moved to approve this modification and his motion carried.

Rule 11-114. Dismissal or Suspension of Case of Debtor
Adjudged Bankrupt in a Foreign Jurisdiction

The Reporter recommended that this be broadened to include other types of insolvency, liquidation and rehabilitation proceedings outside the United States. In order to accomplish this he suggested additional language following "United States" on line 2, "or a court proceeding for the purpose of the rehabilitation of the debtor or the liquidation of his estate has been commenced by or against the debtor in a court of competent jurisdiction without the United States." Professor Riesenfeld felt a phrase should be changed to, "liquidation and rehabilitation of his estate." Mr. Horsky agreed and moved approval as modified. The motion carried. Judge Gignoux pointed out that the title of the rule should also be broadened.

Rule 11-116. Transfer of Case to Chapter X

(a) Application for Transfer; Time. Mr. Treister suggested that the time for the filing of applications to transfer be changed from 60 days to 90 days to allow more time for the Securities and Exchange Commission to get the necessary information. Mr. Nachman moved approval as suggested and his motion carried.

(b) Hearing and Transfer. Since the sentence beginning on line 14 has to do with the continuation of the proceedings after it has been transferred to Chapter X, Mr. Treister felt it should be in the Chapter X rules. Referee Herzog moved to delete the sentence from Chapter XI rules and his motion carried.

(c) Transfer by Debtor. Mr. Treister felt the sentence beginning on line 27 should be deleted from these rules and included in Chapter X for the same reason as stated above. The members agreed. He also felt they should delete the time limits because the debtor should be able to file an application for transfer at any time. There was discussion regarding a termination point and Professor Riesenfeld was worried about what happens to the confirmation. Referee Herzog moved to delete the sentence on lines 21-24 through "the time" and begin a new sentence with, "The debtor may at any time file." His motion carried. Mr. Treister pointed out that the Reporter should rearrange the language of the subdivision.

The next day, the committee considered the redraft. Professor King stated he tried to solve the problem with regard to using an amended petition by providing for the full procedure before a bankruptcy judge who would handle the case so that if he felt it should be transferred to Chapter X it would proceed without the usual preliminary procedures. After discussion, Mr. Treister suggested this be recast by starting out using the term "motion on application" rather than "petition." He suggested they could take care of Professor Seligson's objection in a subparagraph providing that upon the filing of this type of application the court shall fix a time for filing responses so many days before the hearing. He suggested another paragraph could describe the application and set out the reasons why relief under Chapter XI would not be adequate.

Rule 11-201. Appointment of Receiver; Continuance of Trustee or Debtor in Possession

(f) Removal of Trustee for Cause. Professor King stated there was nothing to indicate what the court may do after a trustee is removed as in subdivision (e) referring to the receiver. Mr. Horsky moved to add at the end, "and either appoint a receiver or restore the debtor to possession." His motion carried. Professor Kennedy pointed out that "removal" should be added to the title of the rule and the members agreed.

Rule 11-203. Qualification By Receiver and Disbursing Agent; Indemnity; Bonds; Evidence

The Reporter stated that at the request of the committee he had deleted any reference to blanket bonds because they were inapplicable in Chapter XI cases and deleted the requiring qualification by a debtor in possession.

(b) Indemnification. There was a suggestion to delete the beginning phrase because the style subcommittee felt there should be no distinction to Rule 11-103 or 104 as in the Act. The committee approved the deletion.

Rule 11-205. Employment of Attorneys and Accountants

(a) Conditions of Employment of Attorneys and Accountants.

Based on a suggestion of Mr. Treister and discussion by the style subcommittee, the members agreed to adding, "or creditors' committee" to lines 3 and 6. Professor King stated that the effect would be that the attorney for the creditors' committee must be appointed by court order.

(b) Employment of Attorney or Accountant with Adverse Interest. Mr. Treister felt "or debtor in possession" should be deleted from line 26 because the attorney for the debtor in possession is also the attorney for the debtor and he always has an interest adverse to the estate and it would be odd to ask him to disclose an adverse interest which is apparent. Professor Shanker disagreed that sometimes disclosure has to be made which is not self-evident. The committee agreed to leave it in the rule. Professor Seligson

pointed out that "or creditors' committee" should be added to line 26 and Judge Gignoux suggested the last line be changed to read, "connections of an attorney or accountant employed by him." These modifications were approved.

(c) Employment by a General Creditor. Professor King stated there was a suggestion to delete, "debtor in possession" and substitute "creditors' committee." For clarification, Professor Countryman suggested "in the case" be added to the last line at the end. Mr. Horsky moved approval of these suggestions and his motion carried.

Rule 11-206. Authorization of Trustee, Receiver, or Debtor in Possession to Conduct Business of Debtor

Professor Seligson suggested "and on such conditions" be added after "time" on line 3 to conform the rule to the comparable Chapter X rule.

Rule 11-207. Notice to Creditors and District Director of Internal Revenue

(g) Caption. The suggestion to shorten the rule by deleting everything after "Rule 11-106" on line 54 because it was merely a duplication of what is contained in the rule was approved.

Rule 11-208. Meetings of Creditors

(a) First Meeting. (2) Agenda. Mr. Treister felt "and any adjournments thereof" should be added to line 14. Professor Riesenfeld felt this would be unclear. Professor Kennedy stated it is not referred to in the bankruptcy rules

and suggested the Note say that adjourned meetings are included. The committee agreed.

Professor King stated there was a suggestion to identify the trustee in line 19 by adding, "standby." Referee Herzog moved approval and his motion carried. So that the time for filing a plan could be fixed other than at the first meeting of creditors, there was a suggestion to change "shall" on line 20 to "may." The members agreed.

Rule 11-209. Filing of Plan; Transmission to Creditors

Professor King explained that the rule was being resubmitted to provide for the transmission of copies to the creditors.

(a) Time for Filing Plan. Professor King stated there was a suggestion to add "or within the time fixed by the court" to the end of the first sentence and to delete the second sentence because the form already has the provision included. Professor Shanker stated that the additional phrase implies that the debtor must get the time fixed when he files the petition. Mr. Horsky suggested it be changed to, "or thereafter, but not later than a time fixed by the court." Referee Snedecor moved approval and his motion carried.

(b) Transmission to Creditors; Provision of Copies. Professor King read Mr. Treister's suggested editorial changes, which included deletion of "upon the filing of the plan" from line 8 and the addition of "for a time subsequent to the filing of the plan" after "court" on line 10 and the

substitution of "of the adjourned date" for "thereof" on line 11. He also stated that "adjourned meetings" would be added to the title of the rule and subdivision. Mr. Horsky moved approval and it carried.

Rule 11-212. Voting at Creditors' Meetings

Professor King stated there was a suggestion to add "standby" to "trustee" on line 10 and add "for Standing Trustee and Creditors Committee" to the title to make it clear that this rule is not for voting on the plan. The motion to approve was carried. Mr. Treister requested that the Note not only include a reference to the standby trustee but that the rule does not apply to acceptances of plans. The Reporter agreed.

Rule 11-213. Solicitation and Voting of Proxies

(f) Inapplicability of Rule. Mr. Treister suggested the addition of this new subdivision. Professor King read the language as follows: "This rule does not apply to the solicitation of the acceptance of a plan signed by the owner of a claim, nor to the related proof of claim that does not contain a proxy." The committee approved its addition.

Rule 11-215. Duty of Officer to Keep Records, Make Reports, and Furnish Information

For clarification it was suggested to revise lines 14-16 as follows: "the preceding period and if payments are made to employees, the amounts of deductions for withholding and social security taxes and where such amounts are deposited." Mr. Horsky moved approval and his motion carried.

Rule 11-216. Compensation of Trustees, Receivers, Marshals, Attorneys, and Accountants

(d) Restriction on Sharing of Compensation. Mr. Treister suggested adding "or a petitioning creditor" to line 72 so that it will include an attorney for a petitioning creditor in the event the Chapter XI case had been commenced while the bankruptcy case was pending and that the bankruptcy case had been started by an involuntary petition. Mr. Horsky moved that this change to track the bankruptcy rule be approved. His motion carried.

Rule 11-2A-1. Modification of Plan Before Confirmation

In order to clear up an ambiguity, there was a suggestion to add, "by the requisite majority of creditors" after "plan" on line 1; add "so" after "been" on line 3; and add "who have previously accepted the plan" after "creditor" on line 10. Mr. Nachman moved approval of these modifications and his motion carried.

Rule 11-2A-2. Confirmation of Plan; Deposit; Evidence of Title

Professor King stated that this will be substantially revised and submitted at the January meeting.

Rule 11-2A-3. Modification of Plan After Confirmation; Revocation; Revocation of Confirmation

(a) Modification of Plan After Confirmation. Mr. Treister stated the suggestion to strike "after the filing of the petition and prior to or" from lines 14-15 and the substitution of "the notice of such meeting" for "such notice" on line 17. Professor King stated the effect would be to call a meeting of creditors

after confirmation. Professor Shanker felt something should be added to incorporate the language of the statute which indicates this occurs only where the court retains jurisdiction. The Reporter agreed. Mr. Nachman moved approval of the suggested changes on lines 14-15 and 17, and his motion carried. Professor King read the last sentence with the addition of "by creditors who are provided for in the plan and" after "accepted" on line 19, to make it clear which creditors they are dealing with. Professor Countryman felt the style of the sentence should be changed and Judge Gignoux reworded it as follows: "The court at such meeting, shall confirm the plan as modified if it is accepted in the manner required for confirmation of the original plan by the creditors who are provided for in the plan and affected by such modification." Mr. Nachman moved approval and his motion carried.

(b) Revocation of Confirmation. Professor King stated there was a suggestion to place this in another rule because modification and revocation are sufficiently different. Also the title of the rule would not show a reference to this. This suggestion was approved.

Rule 11-302. Filing Proof of Claim

(e) Time for Filing. Since the statute does not provide what the effect is of an amendment of a claim where the claim may have been filed within the proper time limit, Professor King suggested adding, "including an amendment thereof" to line 72 after "claim." Referee Herzog moved approval and it

carried. He stated a conforming amendment would include the addition of the same phrase after "claim" on line 72 in item (1). Referee Herzog moved approval and his motion carried. Professor King stated the statute is unclear as to determining the amount of a disputed claim which has been listed on the schedule but has been filed by the creditor within 30 days after confirmation. To incorporate this in the rule, item (1) would read, "if scheduled by the debtor as undisputed, not contingent and liquidated, a claim including an amendment thereof may be filed within 30 days after the date of mailing" etc. Mr. Beitelman raised a question concerning a disputed claim. After discussion, Professor Countryman suggested the beginning phrase be changed as follows:

"(1) if not scheduled by the debtor as disputed, contingent, and not liquidated, a claim including an amendment thereof," etc. Mr. Nachman moved approval and the motion carried.

Professor King read a suggestion to add "and a post petition claim allowed to be filed under Rule 11-305" to line 79 after "debtor." Mr. Nachman moved approval and it carried.

Rule 11-303. Filing of Claim by Debtor

Professor King indicated that the style subcommittee recommended this rule track on the bankruptcy rule which limits the debtor to file claims only on behalf of wage claimants and tax authorities. Professor Kennedy read the comparable bankruptcy rule. Mr. Nachman moved approval and it carried.

Rule 11-307. Objection to and Allowance of Claims for Purpose of Distribution; Valuation of Security; Classification of Claims

Professor King stated the style subcommittee recommended deletion of subdivision (e) because regardless of the statute the court does not for practical purposes classify claims because the debtor does so in the plan. The members agreed.

Rule 11-309. Distribution and Surplus Funds

(b) Surplus Funds. Because there had been a question regarding other types of consideration, Professor King re-drafted the subdivision as follows: "Except as provided in Rule 11-310, or as otherwise ordered by the court, the disbursing agent shall return to the debtor or to such other persons as may be designated by the court, any money or other consideration in his possession not distributed under the plan." Professor Riesenfeld was troubled by the word, "consideration," so Professor Seligson suggested the Reporter revise the language to include something about deposit. After discussion, Mr. Nachman moved approval of the revised subdivision and his motion carried. Professor King stated the title would be changed to "Distributions and Undistributed Consideration."

Rule 11-403. Exemptions

Professor King stated he had been directed to revise this rule and the style subcommittee also agreed upon substantial revisions. After discussion the committee approved Mr. Treister's suggestion to provide that a debtor shall claim his exemptions in the schedule of his property but there would be no report or setting aside of the property claimed as exempt or a detailed

procedure as set out in subdivisions (b) through (f). To implement this suggestion, Professor King stated, "Any proceeding to contest such claim is governed by Rule 914" would be added to subdivision (a) and the remaining subdivisions would be deleted. There was discussion whether the reference in the additional sentence should be to part VII, however, the members approved the sentence as read. Professor Riesenfeld was worried that the debtor would not be entitled to his exemption without claiming it. It was decided that this subject required further study.

Rule 11-404. Confirmation as Discharge

Professor King read a revision of subdivision (a) which Mr. Treister suggested, "The order confirming a plan shall contain provisions substantially similar to Official Forms 11-21 and 11-22 concerning the affect of confirmation or for further enforcement of claims against the debtor." There was discussion regarding the possibility of shortening the subdivision, however, Professor Seligson moved approval as suggested and his motion carried.

Rule 11-405. Determination of Dischargeability of a Debt; Judgment on Nondischargeable Debt; Jury Trial

(a)(2) Time for Filing Complaint Under § 17c(2) of the Act; Notice of Time Fixed. Professor King stated that the suggested revision would give the court more flexibility to fix time periods. The members agreed to the changing of "shall" on line 11 to "may" and the striking of lines 14-15 and the addition of "If such an order is made" and the substitution of

"time fixed" for "order" on line 16. Professor Seligson suggested they handle the transitional problems in the Note and the members agreed.

Rule 11-605. Rejection of Executory Contracts

Professor King read the language which had been completely rewritten by the style committee: "Where the debtor or any other party in interest applies to reject an executory contract, (including an unexpired lease) other than as part of the plan, the court shall set a hearing upon notice to the parties to the contract and to such other parties in interest as the court may designate." Professor King explained that the original draft appeared to be substantive whereas this one is procedural. Referee Herzog moved approval and his motion carried.

Form 11-8. Order Appointing Receiver or Disbursing Agent and Fixing the Amount of His Bond

Professor King stated that this form is new and is taken from Bankruptcy Form No. 17. Judge Maris suggested they use the dollar sign rather than spelling out the word dollars. Referee Snedecor moved approval incorporating Judge Maris' suggestion and his motion carried.

Form 11-9. Notice to Receiver or Disbursing Agent of His Appointment

Professor King explained that this form is taken from Bankruptcy Form No. 18. Referee Whitehurst suggested this be changed to require both the disbursing agent and the receiver to notify the court of their acceptance and also change the rule to make it uniform. Referee Herzog felt

this would be unnecessary and he moved approval as written.
His motion carried.

Form No. 11-10. Bond of Receiver or Disbursing Agent

Professor King stated this had been changed merely to include the disbursing agent. Referee Herzog's motion to approve carried.

Form No. 11-11. Order Approving Receiver's or Disbursing Agent's Bond

Professor King stated the same and the form was approved.

Form No. 11-12. Certificate of Retention of Debtor in Possession

Mr. Treister suggested rephrasing the language by starting out with, "The above-named debtor continues in possession of his estate." Mr. Nachman suggested it read, "I hereby certify that _____ of _____ the above-named debtor continues in possession of his estate." Judge Maris pointed out that the first clause in the original draft should be included, possibly at the end. Professor Seligson felt they should refer to this in the form as debtor in possession. Professor Seligson moved approval of the following: "I hereby certify that the above-named debtor continues in possession of his estate as debtor in possession, no trustee in bankruptcy or receiver having been appointed or qualified." His motion carried.

Judge Gignoux stated that since there will not be any exempt reports, Form Nos. 11-13 and 11-14 will be deleted.

Form No. 11-15. Order for First Meeting of Creditors and Related Orders Combined with Notice Thereof and of Automatic Stay

Mr. Treister felt the creditors should be aware that the meeting may be adjourned from time to time and suggested additional language be added to item 1 as follows: "It may be continued or adjourned from time to time by order made in open court without further written notice to creditors." The members agreed to this modification. Judge Maris pointed out that for style purposes, items 1 and 2 should be made into separate sentences by deleting "and." The committee agreed.

In order to conform to the change in Rule 11-405, Professor King suggested that "[if appropriate]" be added to the beginning of item 3. Professor Seligson moved approval and his motion carried.

The committee then approved the suggestion to reverse the phrases in item 4.

Mr. Nachman pointed out that the form should be changed to conform to the term "standby trustee."

Form No. 11-18. Proof of Claim by Debtor

Professor King stated this will be changed to incorporate the bankruptcy form.

Form No. 11-21. Order Confirming Plan Where All Affected Creditors Have Accepted

Professor King stated this form had been approved up to paragraph 2 and the remainder conformed to the Chapter XIII form.

Since the amount of the deposit is set out elsewhere, Mr. Treister suggested the second phrase be changed to, "The deposit required by the plan having been made;" Referee Herzog pointed out that "plan" should be deleted and "Act" should be added. He moved approval of the modification and his motion carried. Professor King stated the next suggestion is that a copy of the plan be attached to the confirmation order with a reference thereto in the form. Professor Shanker felt there is no need to make reference to the date of modification, so Professor King stated the revised language as follows: "The debtor's plan dated, a copy of which is attached hereto, is confirmed." Professor Seligson moved approval and his motion carried.

In item 3, Mr. Treister felt it is incorrect to state that a debtor is released from all dischargeable debts. Therefore, he suggested it read, "Except as otherwise provided or permitted by the plan or this order, the above-named debtor is released from all dischargeable debts; and" Professor Seligson moved approval and it carried. Professor King stated item 2 would become subparagraph (a) and item 3 would become subparagraph (b).

Judge Gignoux stated the rest of the form tracked Chapter XIII. To conform to previous changes, Professor King stated that "if appropriate" should be deleted from subsection (a). Mr. Treister pointed out that § 371 was not necessary and should be deleted. After discussion regarding

some substantive problems, Mr. Nachman moved approval of the modification and the remainder of the rule. His motion carried.

Form No. 11-22. Order Confirming Plan Where Less Than All Affected Creditors Have Accepted

Mr. Treister felt this form should be combined with Form No. 11-21. Professor King and Referee Herzog felt the form was too complicated to be combined. The committee agreed to have two separate forms, and to make comparable changes to Form No. 11-21.

Form No. 11-23. Notice of Order of Confirmation of Plan and Discharge

Professor King stated that this is new because at the last meeting it was decided that the report would not send out notice of the order of confirmation and it was necessary to send something to creditors, particularly with regard to the discharge provisions. He also stated he would incorporate the changes which were made in Form No. 11-21. Referee Herzog moved to add a reference to the date after "plan" to enable the creditors to identify the plan. His motion carried.

CHAPTER X RULES AND FORMS

Rule 10-1-1. Commencement of Corporate Reorganization Case

Professor King stated this rule would be changed to refer to Chapter X case. Professor Shanker was troubled by the term "petition" not used in other Chapter X rules and it was decided that it would be considered by the style subcommittee.

Rule 10-1-2. Reference of Cases; Withdrawal of Reference and Assignment

In order to conform more closely to the Chapter XI rules and straight bankruptcy rules, Professor King suggested adding, "pursuant to Rules 10-1-3, 10-1-4 or 10-1-4A" after "petition" on line 2. Professor Riesenfeld agreed or he preferred to take the reference out of Chapter XI Rule 11-1-2. After discussion, Judge Gignoux moved to delete this reference from Chapter XI and this Chapter X rule would remain as drafted without the reference. His motion carried. Mr. Horsky moved approval of the remainder of the rule and his motion carried.

Rule 10-1-3. Voluntary Petition

Referee Herzog moved to include official forms in Chapter X rules and his motion carried.

(a) Form and Number. Mr. Treister felt the duties of the clerk in this regard should be spelled out somewhere. There was discussion regarding the proper wording to mean the filing of an original and six copies of the petition. Rather than indicate that seven copies be filed, Mr. Horsky moved to approve "an original and six copies." His motion carried. Then he made another motion to provide that the clerk transmit copies of the petition to the District Director of Internal Revenue, the Secretary of the Treasury, and the Securities and Exchange Commission. His motion carried. Professor Seligson and Referee Whitehurst felt the Treasury Department may not want a copy so it was decided to take

that provision out if after checking with the Department that they do not want it. Mr. Treister pointed out there is no provision to state the number of copies of the petition which should go to the referee's office from the clerk's office. Mr. Horsky suggested this distribution be taken care of in the Note and the committee agreed.

(b) Contents. Professor King suggested this be deleted as long as there will be an official form. Judge Maris stated that incorporating the provisions of the statute merely in the form is not really the proper way to amend the statute. However, he did not think anyone would raise any serious objections. Referee Herzog was opposed to the deletion of subdivision (b). He felt these provisions are very basic and should be pointed out. After discussion it was decided that the form would be sufficient and the subdivision would be deleted.

Professor Seligson pointed out that if they are going to incorporate Bankruptcy Rule 507(b) into Chapter X they will have to point out that one copy of the petition should be retained by the clerk because rule 507(b) provides that all copies be transmitted to the referee's office. After discussion it was decided that this would not be necessary because the docket in the clerk's office would be sufficient record of the petition.

(c) Particularity of Allegations. Mr. Horsky suggested this be incorporated into the form. Judge Gignoux moved to

delete subdivision (c) and include it as a Note in the form. His motion carried.

Rule 10-1-4. Involuntary Petition

Professor King suggested the second sentence be changed as follows: "The number of copies and distribution shall be as specified in Rule 10-1-3." Mr. Horsky moved approval and the motion carried.

(b) Participation in Act of Bankruptcy. Professor Seligson felt it was not necessary to refer to the Act in line 8. After discussion, regarding the estoppel, it was voted to substantially incorporate the following language as the beginning of the subdivision: "A creditor may not file or join in a petition alleging facts constituting an act of bankruptcy." Judge Gignoux moved approval of the balance of the subdivision which tracks the bankruptcy rule and it carried. Professor Riesenfeld asked the reporter to consider explaining in the Note the relationship between § 131 (2), (5) and § 3 of the Act that for an act of bankruptcy to be alleged, it is with regard to the date of filing.

(c) Contents and Particularity of Allegations. Professor King stated paragraph (1) should be deleted for the same reason paragraph (1) of Rule 10-1-3 was deleted and the committee agreed. Professor King also suggested that paragraph (2) refer to the act of bankruptcy and put a Note in the form as they did with the voluntary petition. The members agreed to delete as suggested.

(d) Transferor or Transferee of Claims. Approved as written.

(e) Joinder of Petitioners After Filing. Approved as written.

Rule 10-1-4A. Petition in Pending Bankruptcy Case and Stay

(a) Voluntary Petition. Professor King suggested they might want to cover an amended Chapter XI here and Mr. Treister felt this could be taken care of by merely deleting "bankruptcy" Professor Seligson objected stating that this would permit a Chapter X to be filed in a pending Chapter XI case which is inappropriate. Professor Riesenfeld moved that the handling of the conversion from Chapter XI to Chapter X be separate so that the language of (a) will be changed. His motion carried. Judge Gignoux suggested a style change in the last phrase of (a) to incorporate previous changes as follows: "The number of copies and distribution shall be as specified in Rule 10-1-3." The committee agreed.

(b) Involuntary Petition. Approved with the same stylistic change.

(c) Stay. Approved as written.

After further consideration of Rule 10-1-4A, Mr. Treister stated an idea to handle the transfer from Chapter XI to Chapter X by changing Rule 11-116 rather than adopting a separate rule in Chapter X as decided earlier. He stated that if the court decides the case belongs in Chapter X then it should make an order converting the case rather than

requiring someone to amend the petition which would eliminate the need for such a rule in Chapter X. Referee Herzog moved to redraft Rule 11-116 thereby providing for an order of conversion which eliminates consideration of the Rule 10-1-4A amendments. His motion carried. Professor Shanker stated that this may change Rule 10-1-1 because of the way to start a Chapter X case. Professor Riesenfeld requested two drafts to indicate the handling of the conversion both ways.

Rule 10-1-5. Caption of Petition

To provide proper identification of the debtor, Mr. Treister suggested deletion of lines 4-8 and the substitution of "such other names used by it as are necessary to assure adequate identification." Mr. Nachman moved approval and it carried.

Rule 10-1-6. Filing Fees

Professor King suggested the second sentence be deleted and go into the Note. Judge Gignoux moved approval and his motion carried.

Rule 10-1-7. Schedules (Alternative C)

(a) Schedules Required. Mr. Treister felt the beginning should be recast and Professor King suggested the following, "The trustee shall or if the debtor is retained in possession, it shall at the expense of the estate," Because the schedule is to be filed within such time as fixed by the court, Professor King felt "upon approval of the petition" should be deleted from line 4. Also on line 4, Mr. Treister felt

"schedule" should be changed to "list." Professor Countryman pointed out that "its" on line 5 should be changed to "the debtor's creditors." Professor King for information purposes then suggested the following be added at the end, "If the debtor is retained in possession it shall also file an inventory of its property within the time fixed by the court." Referee Snedecor pointed out that they had decided not to have an official form. Professor King stated he would not delete the reference to it on line 7 and include the necessary required information. Professor Seligson moved approval of these modifications and his motion carried. Professor King suggested the title be changed to "List of Creditors and Stockholders; Inventory." The committee agreed.

(b) List of Security Holders or Information in Possession of Another Person. Mr. Treister suggested this be omitted because it is taken care of elsewhere. Professor Seligson felt they should have the reaction of the Securities and Exchange Commission before deleting such rule. The members agreed to defer action on subdivision (b) until Professor Kennedy could obtain the views of the Securities and Exchange Commission.

(c) Impounding of Schedules. There was discussion regarding whether to ascertain the views of the Securities and Exchange Commission, however, it was decided to be unnecessary. Referee Herzog moved approval of paragraph (1) with the deletion of the parentheses thereby including the debtor in possession and his motion carried.

Judge Gignoux moved that the reference to the rules in line 33 be stricken and "Chapter X" be substituted. His motion carried. Professor Seligson moved approval of paragraph (2) as modified and his motion carried.

Rule 10-1-8. Verification of Petitions and Lists

Professor King stated the problem was whether the lists and the inventory should be verified. Mr. Treister replied that this should include "filed by the debtor in possession." Professor King read the rule as modified, "All petitions and amendments thereto and lists and inventories filed by a debtor in possession shall be verified." Mr. Treister's motion carried.

Rule 10-1-9. Amendments of Voluntary Petitions and Lists

Professor Seligson suggested this be recast to reflect the appropriate provisions in 15(a) of the Federal Rules of Civil Procedure. Professor Kennedy stated this should include those things filed by the debtor in possession as set out in the previous rule. It was agreed that the rule would be recast.

Rule 10-1-10. Service of Petition and Process

Professor Shanker questioned the filing of an involuntary petition in a pending bankruptcy case. Professor King stated he could add an additional subdivision to take care of this, however, Referee Herzog pointed out that the clerk could not issue the summons and maybe this could be deleted because of the time to issue. Professor King then suggested the following be added after "court" on line 2, "or if it is filed in

a pending bankruptcy case the referee shall issue the summons." Referee Herzog moved approval and his motion carried.

Rule 10-1-11. Responsive Pleading or Motion

Mr. Treister suggested this might include the contesting of a voluntary petition. There was discussion regarding this subject and whether there should be a right to answer a stockholder. Mr. Treister felt they should postpone approval of a petition until the hearing because it is preliminary and does not serve enough purpose. Professor Seligson pointed out that the only purpose it serves is to appoint a trustee so if it were postponed the rule would have to provide for an early appointment. In recasting the rule, Professor King stated he would draft a subdivision (a) and (b) and would set up special time requirements. Mr. Treister suggested elimination of a need for a motion. Professor Seligson moved approval of the policy revision of the rule to include both voluntary and involuntary petitions as discussed and his motion carried.

Rule 10-1-12. Affirmative Defense of Solvency

Mr. Treister felt this problem rarely occurred in Chapter X and if so, it could be handled by the judge. He moved to delete the rule and his motion carried.

Rule 10-1-13. Examination of Debtor on Issue of Insolvency or Inability to Pay Debts as They Mature

Professor Shanker felt this rule is unnecessary and moved to delete it. Mr. Treister agreed stating that it could cause other problems if the creditor denies the debtor's insolvency. Professor Shanker's motion carried.

Rule 10-1-14. Hearing and Disposition of Petition

(a) Contested Petition. Mr. Treister felt the earliest "possible" time is too strong. Referee Herzog suggested it be changed to "practicable." Judge Gignoux pointed out that the bankruptcy rule stated "possible" and Judge Maris suggested it be changed in both rules. Professor Seligson moved approval and his motion carried.

(b) Petition Amended to Comply with Chapter XI. Professor Shanker suggested this be redrafted to provide for relief under Chapter XI rather than Chapter X. The Reporter agreed.

(c) Default. Professor Seligson stated that "answer" should be substituted for "pleading or other defense" on line 14. After discussion, Referee Herzog moved approval and the motion carried.

(d) Approval. There was discussion regarding the appropriate docket for the entry of approval. Since subdivision (c) requires the order of approval, Professor Shanker moved to delete subdivision (d). His motion carried. Mr. Nachman moved to delete the form and his motion carried.

(d) Award of Costs. There was discussion regarding whether the court should have discretion in all cases. Mr. Horsky moved approval as written and his motion carried.

Rule 10-1-15. Venue and Transfer

(a) Proper Venue. Mr. Treister felt the phrase, "before or after adjudication" did not relate to venue and belonged in Rule 10-1-4A. Judge Maris then suggested the two sentences of paragraph (1) be reversed. Judge Gignoux pointed out that this could be recast to correspond to Chapter XI Rule 11(a)(1). Professor Riesenfeld requested that the Reporter consider referring to the appropriate rule in paragraph (1). The motion to recast this was carried.

(2) Affiliate. Professor King suggested he change this to correspond to the same Chapter XI rule incorporating a reference to a pending bankruptcy case. Mr. Treister moved approval and his motion carried.

(b) Transfer and Dismissal of Cases. Professor Seligson pointed out there could be a misunderstanding in paragraph (1) regarding the notice request in both cases. Mr. Treister suggested the Note take care of this. Professor Seligson moved approval and it carried. There was discussion regarding "without a hearing" in paragraph (2), however, Judge Gignoux moved approval and his motion carried.

(c) Procedure When Petitions Involving Related Debtors Are Filed in Different Courts. Professor King explained that as drafted the rule only covers two Chapter X cases. After discussion it was decided to conform this to the corresponding Chapter XI rule and broaden it by including petitions commencing a Chapter X case and a straight bankruptcy case or a Chapter X case and a Chapter XI case. Mr. Horsky moved approval of the modification and it carried. However, Professor Seligson suggested the Reporters consider drafting one rule possibly in the straight bankruptcy rules to cover all the situations. The members agreed.

(d) Reference of Transferred Cases. Professor King suggested this could also be considered with subdivision (c) in regard to placing it in one rule. The committee agreed.

Rule 10-1-16. Joint Administration of Cases Pending in Same Court

Professor Seligson moved approval as written and his motion carried.

Rule 10-1-17. Dismissal or Suspension of Case of Debtor Adjudged Bankrupt in a Foreign Jurisdiction

This rule which conforms to the comparable Chapter XI rule was approved until consideration of the abbreviated Chapter XI rules.

Rule 10-1-18. Dismissal or Conversion to Bankruptcy Without Confirmation of Plan

(a) Voluntary Dismissal or Conversion to Bankruptcy.
Professor Seligson pointed out that "consent of parties" is

unclear as to whom they are referring. He moved deletion of "petitioner or petitioners or by consent of the parties" and the substitution of "any parties in interest." His motion carried. Judge Gignoux then pointed out that the emphasis appeared unclear, however, Professor Kennedy stated that in order to get the point across the sentence should be stated in the negative. After discussion Professor Seligson suggested the rule begin by stating that except after hearing on a contested petition a case shall not be dismissed or converted to bankruptcy until after hearing upon notice as provided in Rule 10-1-7. Mr. Treister pointed out they should add except, "as provided in subdivision (b) of this rule." Professor Shanker also stated that the exception in Rule 10-1-14 should be included in the beginning phrase. An amended motion was carried and Professor Countryman suggested since there was to be another rule covering dismissal or conversion after confirmation, this should be indicated here. Professor King read the suggested redraft as follows: "Except as provided in Rule 10-1-14 or as provided in subdivision (b) of this rule a case shall not be dismissed or converted to bankruptcy prior to confirmation of a plan until after hearing upon notice as provided in Rule 10-2-2(b)."

There was a suggestion to amend the last two sentences with regard to the filing of lists. The committee agreed to this change, however, Professor Seligson felt the court should have discretion to make other provisions to get copies of the

lists when the debtor fails to file. He moved to rephrase the sentence beginning on line 5 as follows: "To enable the court to give such notice the court by order may provide for the preparation and filing of lists of creditors and stockholders in such manner as may be appropriate." Mr. Treister felt because of the applicability of Rule 10-1-7 the last sentence should be deleted. Professor Seligson included this in his motion and it carried.

(b) Dismissal or Conversion for Want of Prosecution or Denial of Confirmation. Professor King suggested this may be changed to correspond to the Chapter XI rule which was redrafted. Mr. Treister questioned the phrase "for want of prosecution." After discussion it was suggested that the reasons specified in § 236 should be spelled out rather than summarized by using that phrase. Professor King stated it would read, "If no plan is proposed within the time fixed or extended by the court or if no plan proposed or approved by the court and no further time is granted for the proposal of the plan or if no plan approved by the court is accepted within the time fixed or extended by the court or if confirmation of the plan is refused," etc. Professor Countryman pointed out that if this language is adopted only the second sentence in subdivision (a) would be necessary. Professor Seligson felt subdivision (a) should be confined to before approval of a petition. It was agreed to leave (a) as written except that Mr. Treister pointed out the reference to subdivision (b) should be deleted

because it would not be an exception because of a provision in (b) for notice of hearing. Then subdivision (b) was approved.

Rule 10-1-19. Applicability of Rules in Part VII

This rule was approved as written.

Rule 10-2-1. Appointment and Duties of Receivers

(a) Purposes and Term of Receivership. Mr. Treister questioned the limitation on line 8, "only before approval of a petition and." After discussion there was a motion to delete the phrase and it carried. Referee Herzog felt the sentence beginning on line 8 sounded as though an order is required and he felt it should be automatic. Judge Gignoux pointed out that if this were changed they would have to change the bankruptcy rule. Referee Snedecor moved approval as written and his motion carried. Professor Seligson requested the Note explain that there should not be a receiver while there is a trustee. Later in the discussion when Judge Maris pointed out that subdivision (d) would be burdensome after approval of the petition it was decided to include "before approval of the petition." Professor Riesenfeld moved approval as originally written and his motion carried.

(b) Application for Appointment. Approved as written.

(c) Appointment. Mr. Treister felt the opening phrase, "Before approval of a petition" should be deleted so that it does not track the bankruptcy rule. He also felt this should be limited to an involuntary case. Professor King

stated the subdivision would begin, "Where a petition is filed under Rule 10-1-4." Judge Gignoux pointed out that "on the court's own initiative" should be included in the sentence. Professor King stated he would divide the subdivision into two paragraphs dealing with Rule 10-1-4 and one with Rule 10-1-3. Professor Kennedy suggested that in subparagraph (2) they might track the bankruptcy rule with regard to the notice. Professor Seligson moved approval as modified and the motion carried. Later in the discussion Mr. Treister pointed out that even after approval of an involuntary case you should not have an application so subdivision (c)(1) was changed back as follows: "Before approval of a petition is filed under Rule 10-1-4, appointment of a receiver may be made only upon application. Such application may be granted only after hearing upon notice to the debtor and any other parties in interest designated by the court except that a receiver may be appointed without notice if irreparable loss to the estate may otherwise result. An application for appointment of a receiver without notice and any order of appointment made without notice shall state what loss may result and why it would be irreparable." Rather than use a reference to the rule, Mr. Treister suggested the Reporter use a reference to an involuntary petition here and voluntary petition in subparagraph (2). Professor King stated he would substitute, "Where an involuntary petition is filed" for the first line of subparagraph (1). He read

subparagraph (2) as follows, "Where a voluntary petition is filed the court may appoint a receiver on application of any party in interest or on its own initiative. Such appointment shall be made only after notice to such persons as the court may designate unless it clearly appears that notice is impracticable or unnecessary." Mr. Horsky moved approval as modified and his motion carried.

(d) Bond of Applicant. Professor King stated because of the previous changes he would delete, "Before approval of a petition" from the beginning sentence. Mr. Treister was unsure and Professor King stated he would add "under (c)(1) of this rule" to the sentence. Judge Maris pointed out that after approval of the petition, the provisions of the subdivision would be burdensome. Discussion led to changing subdivision (a) to provide that no receiver can be appointed except before approval of a petition so Referee Whitehurst moved approval of subdivision (d) with the deletion of the beginning phrase and the inclusion of the reference to (c)(1). His motion carried.

(e) Eligibility. Since the trustee must be disinterested, there was discussion whether the receiver should also be disinterested. Referee Herzog pointed out that it is sometimes difficult to find a trustee. Mr. Horsky felt the meaning of the rule would be clearer if changed as follows, "Only a person eligible to be a trustee in bankruptcy may be appointed a receiver." Mr. Treister felt adding "in bank-

ruptcy rule 209(d)" would make it even more specific. He moved approval and the motion carried.

(f) Order of Appointment. Mr. Treister felt the second sentence would not be appropriate in a rehabilitation type case. Mr. Horsky moved approval with the deletion of the second sentence and his motion carried. Pursuant to a deletion in subdivision (h), "and shall specify his duties" was added to the first sentence.

(g) Qualification. Approved as written.

(h) Duties. Since the duties had already been set forth in paragraph (a) of the rule, Professor King stated the first sentence could be deleted. Judge Gignoux then indicated that the rule should state that the duties be specified. Professor King suggested subdivision (f) be changed by adding, "and shall specify his duties" to the end of the first sentence. Mr. Horsky moved approval and his motion carried. Referee Herzog pointed out that "debtor" should be added to line 54 because if the case is dismissed there would be neither a trustee nor a debtor in possession, however, he did not press the issue. He then suggested deleting line 52 and adding, "upon termination of his appointment the receiver shall." Professor Riesenfeld suggested combining the two sentences on line 56 and Judge Maris felt the last sentence of subdivision (a) should be the first sentence of this subdivision. Professor King read the modifications as follows: "Termination of Appointment. The appointment of a receiver shall be terminated when the trustee qualifies, the debtor is continued

in possession, or there is no further need for a receiver. Upon termination of his appointment and unless otherwise ordered the receiver shall forthwith turn over to the trustee or debtor in possession all the records and property of the estate in his possession or subject to his control as receiver and file his final report and account within 30 days." Mr. Horsky moved approval and his motion carried. Professor Kennedy suggested "term" be deleted from the title of subdivision (a) because of the change.

Rule 10-2-1A. Appointment of Trustee

(a) Appointment. Professor King read the subdivision deleting language so that the opening phrase is: "Upon the approval of a petition." Referee Herzog pointed out that it is unusual to have a \$1,000,000 to \$3,000,000 case indebtedness not in Chapter XI and he felt the amount on lines 4 and 7 should be increased. Professor Seligson agreed, however, he felt they should continue the debtor in possession which Mr. Treister thought should be deleted. Referee Herzog moved to approve the subdivision as modified using the \$1,000,000 figure. His motion carried. Professor King read the modified language and included, "appoint one or more trustees or" on line 7," for clarification.

(b) Notice to Trustee of His Appointment; Qualification. This subdivision was approved as written.

(c) Eligibility. Approved as written. Professor Kennedy suggested the Note explain that these are not all the reasons.

(d) Removal and Appointment of Additional or Substitute Trustees. In paragraph (3) Mr. Treister felt this should indicate that the additional trustee need not be disinterested. Professor King suggested additional language be added to line 48 as follows: "to assist under the supervision of the disinterested trustee in such operation" etc. However, Professor Riesenfeld questioned the need for an additional trustee at all. Judge Gignoux suggested they merely refer to him by another name. Professor Seligson pointed out that it is difficult to get the proper people to be trustees without changing their title. After discussion, Mr. Treister moved to refrain from using the term, "additional trustee." His motion carried 5-4. After further discussion, Judge Gignoux suggested they consider this matter again at the January meeting because Professor Riesenfeld felt he did not know enough about this to vote and Judge Forman would have voted for the additional trustee making the vote a tie. The meeting adjourned at 5:00 p.m.

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The meeting reconvened at 9:30 a.m. The members resumed consideration of Rule 10-2-1A at paragraph (4). Because of the change in concept, Professor Seligson pointed out that in order to follow the statute which gives the stockholders and creditors an opportunity to say this man is not qualified or not disinterested they will have to provide for notice of the trustee's appointment and notice of the hearing. They

felt it would be unwise to provide for two hearings, so Professor King suggested that the notice of the first meetings include the notice of appointment of a trustee. Referee Herzog felt they should include the possible appointment of a receiver because he does not have to be disinterested and his appointment would be faster than that of a trustee. Then Professor Shanker suggested they send out notice of the nomination for trustee. Professor King stated the language would indicate that upon the filing of a petition the court may appoint a trustee or receiver. After approval of the petition the court shall appoint a trustee or if such indebtedness is less than \$1,000,000 the court may continue the debtor in possession. He also stated that the notice of hearing would include notice of appointment of a trustee, and that these revisions would appear in the agenda rule, the notice rule and subdivision (a) of this rule. Professor Seligson pointed out that the only change from the statute would be that there will not be approval of the petition until after the first meeting.

The discussion then led to the need to expedite proceedings under Chapter X particularly smaller cases. Professor Seligson suggested this be done by discontinuing the interim period after hearing on approval and confirmation, and Mr. Treister suggested to retain the two hearing provisions but limit confirmation or that in certain cases the plan could be submitted without prior approval. Professor Seligson also

pointed out that there should be a time when no further plans could be offered unless for cause shown. Professor King stated he would consider these suggestions when revising the rules.

Professor Seligson then stated the only change in paragraph (4) should be broadening the 30 days' time limit for hearing. In order to reduce the expense of giving notice, Mr. Treister suggested they give people the opportunity to request that notice be given them. Professor Seligson agreed stating that creditors and stockholders would then not get notice in every case. Professor King stated he would add a paragraph to Rule 10-2-2 which would be referred to here. Mr. Nachman questioned the term, "Upon 10 days' notice" stating that in the bankruptcy rule it is, "Upon at least 10 days' notice." Professor King suggested the language read, "Upon at least 10 days' notice to persons who have requested it pursuant to Rule 10-2-2 and to all persons who have appeared in the case, a hearing shall be held" etc. Referee Herzog moved approval as modified and his motion carried.

(e) Removal for Cause. Professor King questioned the necessity for this subdivision, because similar provisions are in paragraph (1) of subdivision (d). Professor Seligson moved to delete subdivision (e). Professor Riesenfeld felt "without cause shown" should be included in paragraph (1) dealing with removal of the trustee. Professor Seligson agreed and his motion carried.

(f) Substitution of Successor. Mr. Horsky suggested this be placed in a more appropriate rule. Referee Snedecor moved approval of the subdivision incorporating Mr. Horsky's suggestion and the motion carried.

Rule 10-2-1B. Trustees for Estates When Joint Administration Ordered

Mr. Nachman questioned the need for clarification of "joint administration." Professor King stated he would expand the Note in this area. Professor Riesenfeld felt this limited the scope of disinterestedness of the trustee. Professor King stated he would expand this in the Note also.

Mr. Horsky stated there was a problem when there is conflict of interest between two estates that would cease a joint administration. After discussion he suggested they add a phrase to make the decision as to whether the estate would be jointly administered reflect on whether there is conflict of interest rather than on the appointment of trustees. He suggested placing the phrase on lines 4-5 at the end of subdivision (a) and deleting the last line. Professor Countryman pointed out that this should be added to Rule 10-1-16. Professor Riesenfeld disagreed stating that the whole concept would be changed. Mr. Horsky moved that Rule 10-1-16(a) be amended by adding "having regard for the protection of creditors and stockholders of the different estates against potential conflicts of interest" to line 3 after "affiliate." His motion carried. He then moved to delete this from subdivision (a) of this rule. In reading

subdivision (a), Professor King added "common or separate" to "trustees" on line 4. Professor Riesenfeld objected stating he wished to track the bankruptcy rule as originally written. Professor Riesenfeld's motion carried.

(b) Separate Accounts. Approved as written.

Rule 10-2-1C. Qualification by Trustee and Receiver

(a) Qualifying Bond or Security. Approved as written.

(b) Blanket Bond, and (c) Qualification by Filing Acceptance. Professor King suggested these be deleted in line with the change in Chapter XI and also because they would not have a blanket bond in Chapter X. Mr. Treister moved to reconsider the blanket bond in Chapter XI. Referee Snedecor moved to include the previous language in Chapter XI and his motion carried.

(d) Amount of Bond and Sufficiency of Surety. Approved as written.

(e) Filing of Bond; Proceeding on Bond. Approved as written.

(f) Evidence of Qualification. Professor King read the subdivision deleting "or of his acceptance" from line 33. Referee Herzog moved approval and his motion carried.

The meeting adjourned at 12:00 p.m.

Next Meeting

The next meeting of the Subcommittee on Style was set for December 18 in New York City. The next meeting of the full committee was set for January 26-29, 1972.

There was discussion regarding the drafting of rules regarding § 77 but the committee felt it would be unlikely that they would need rules on Chapter IX. The further discussion of Chapter IX rules was postponed until the January meeting.