

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

The twenty-second meeting of the Advisory Committee on Bankruptcy Rules convened in Room 22C of the Supreme Court Building, Washington, D. C., on Wednesday, March 3, 1971, and adjourned on Saturday, March 6, 1971. The following members were present during the sessions:

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

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. Thomas A. Beitelman, Jr. and H. Kent Presson, members of the Bankruptcy Division.

Judge Forman called the members attention to the first item on the agenda which included Professor Countryman's memoranda of February 9, 10, and 11, 1970. The only change was in Rule 201-8 as indicated in the minutes of the November 1970 meeting.

Joint Petitions for Husband and Wife

Professor Countryman stated that out of the 38 replies from the survey of 62 referees who had 100 or more Chapter XIII cases pending on June 30, 1969, 22 responded that they favored a joint petition. Their reason was the advantage of savings in duplication of the petition and accompanying papers, and savings in debtor's attorney's fees. Referee Herzog pointed out that as long as there are two filing fees there would not be much saving in joint petitions, therefore, he moved to adhere to separate petitions. He also stated that it would be difficult if their assets were different. Professor Countryman indicated the joint petition would add pages to the financial statement but would not be as long as two statements. Judge Gignoux pointed out that in most cases the debts are small and there are few assets. After further discussion, Professor Countryman suggested it be permissive to file joint petitions and change Rule 13-1-17 to say that, "If a joint petition or separate petitions by husband and wife are pending in the same court, the court may order a separate or joint administration of the estate, etc." Referee Herzog's motion that separate petitions must be filed in Chapter XIII cases was lost based on Judge Forman's vote against it to break the tie of a 4-4 vote. Mr. Horsky suggested redrafting Rule 13-1-17 along the lines discussed and the members agreed.

Rule 13-1-17. Joint Administration of Proceedings of
Husband and Wife

Professor Countryman drafted a subdivision (a) as follows:

"Joint Petitions. A husband and wife eligible to file separate petitions may file a joint petition pursuant to Rule 13-1-3 or, if either is a bankrupt or both are bankrupts in a pending bankruptcy case or cases, pursuant to Rule 13-1-4." He stated the only complication would arise when one or both are already in the straight bankruptcy proceedings. Then he would say, if one or both are in the straight bankruptcy proceeding, you can file your joint Chapter XIII petition in that pending bankruptcy case. If they are in different courts, the Note to Rule 13-1-4 should indicate that it could be filed in either of the pending cases. Professor Kennedy felt this rule contemplates that a wife who is not a wage earner herself cannot file, and Judge Gignoux suggested it might be desirable to have a family unit even though the wife is not a wage earner. Because of this discussion, Judge Gignoux felt the members should approve subdivision (a) in principle and Professor Countryman could redraft it. They agreed.

Based on the discussion that it should be permissive as to whether there would be a joint petition and the court should have discretion as to whether there would be a joint administration, whether there is a joint or separate petition, Professor Countryman suggested amending the first phrase in subdivision (b) as follows: If a joint petition is filed or if separate petitions by a husband and wife are pending, etc. Professor Seligson moved approval and the motion carried.

Form No. 13-4. Financial Statement (memo of Feb. 8, 1971)

Professor Countryman stated he sent to the Chapter XIII referees a suggested combined schedule and statement of affairs called Financial Statement. Of the 38 responses, 37 favored the idea of a combined document, 10 preferred a simpler one, and 27 thought the information it called for was needed.

After reviewing the form the members agreed to the following changes (including the caption):

Chapter XIII Statement

1. Name and residence. Mr. Treister felt that, "e. Where else have you resided during the last three years?" was unnecessary and the members agreed to Referee Herzog's motion to delete it.

2. Occupation and income. Professor Riesenfeld pointed out that the bankrupt could have two jobs at the same time, therefore, "or employers" was added to the end of "b" and "or occupations" was added to "a." Also, "or them" was added to the end of "c." Mr. Horsky suggested the parenthesized sentence in "d" be changed to read, "If so, state nature and length of each such employment." The members agreed. Mr. Horsky felt the term "engaged in any business" under "e" would not be clear and he suggested changing it to, "Have you operated your own business," etc. Mr. Treister then suggested deleting "e" and adding "or self-employed" to "d." Professor Riesenfeld felt "self-employed" would not be understood by some, therefore, it was changed to read, "Have you been employed by anyone else

or operated your own business during the past three years?" The members agreed. However, Professor Kennedy pointed out that a question regarding partnership might be added as it is in the bankruptcy form. Then Mr. Presson informed the members that a separate question regarding self-employment would be helpful from a standpoint of statistics as well as added information to the referee. In order to deal with these two points, Judge Forman suggested "e" not be deleted and changed to read, "Have you operated your own business in partnership or otherwise during the past 3 years. If so, give the particulars," etc. The members agreed that all this information is needed and they left it to Professor Countryman to determine whether one or two questions is appropriate. The members approved "f" and "g" as drafted. Mr. Treister felt "h" was unnecessary and should be deleted, however, Referee Herzog pointed out that the referee should be aware of certain deductions which should not have to be made. Mr. Treister then suggested combining (1), (2), and (3) regarding taxes under "h" and the members agreed, thereby approving the inclusion of "h." The committee then approved "i" and "j" as drafted. Mr. Horsky moved to eliminate, "If so, explain," from "k" and the motion carried. Mr. Treister felt "calendar year" should be specified in (1) rather than during the last year. The members agreed to changing (1) to read, "What was the amount of your gross income during the last calendar year," thereby specifying the gross income.

Because of the changes in (1), Professor Countryman suggested the deletion of "m" as long as (1) could state the exclusion of the spouse's income. The members agreed.

3. Family status. The committee approved "a" as drafted and deleted "b" and "c." Mr. Horsky suggested changing former "e" now "c" to read, "List all dependents not listed in "a" and "b" above," and striking, "Spouse." The members agreed. Professor Countryman suggested conforming former "f" under 3. Family status to "h" under 2. Occupation and income, and it was agreed. In order to conform former "g" to 2. Professor Countryman suggested, "If married and not separated, what was the amount of your spouse's gross income for the last calendar year?" The members agreed. Because "m" under item 2. was deleted, it was agreed that "h" should also be eliminated. Professor Countryman suggested former "i" be reworded as follows, "If married and not separated and this is not a joint petition, is your spouse filing a separate petition under the Act?" The members agreed, assuming Professor Countryman would change the language so that it contemplates either a petition filed or one planned to be filed, and add a phrase to specify whether it is in Chapter XIII or other provision of the Act.

4. Budget. When Mr. Nachman questioned how average was arrived at, Professor Countryman suggested adding "future" to monthly income in "a" and the members approved. They also agreed to rephrasing "future" in "b" to read, "Give estimated

future monthly expenses of family," etc. Referee Herzog felt books should be added as an item under "b" therefore, Professor Countryman suggested amending (6) as follows, "Newspaper, periodicals and books (including school books)." Mr. Nachman suggested the deletion of item (10) Barber and beauty shop. Mr. Treister suggested an additional item after (14) as follows, "Payment for support of dependents not living at home." Professor Countryman amended subsection "c" by adding "future" to "monthly expenses." All the above changes in 4. Budget were approved by the committee.

5. Payment of attorney. Approved as written.

6. Tax refunds. Approved as written.

7. Bank accounts. The members agreed to the addition of savings and loan account as suggested by Mr. Treister. They also approved the addition of safe deposit boxes as suggested by Referee Whitehurst, and Professor Countryman agreed to rephrase the sentence to include these items.

8. Prior bankruptcy. Approved as written.

9. Suits, executions, and attachments. Mr. Treister felt "a" should be confined to foreclosure proceedings and Professor Countryman suggested it be changed to read, "Is any of your property including real estate involved in a foreclosure proceeding in or out of court? (If so identify the property and the person foreclosing)" The members approved "a." Judge Gignoux suggested "or income" be added to "b" and the members agreed. Mr. Treister suggested the caption be changed to,

"Foreclosure, executions, and attachments" and the members agreed.

10. Repossessions and returns. Professor Riesenfeld felt this should be expanded and Professor Countryman suggested the addition of, "or seized by" and the members approved.

11. Debts. Mr. Nachman suggested the heading of the second column be changed to, "Consideration or basis for debt." Mr. Treister felt the term "collateral" in the last column was not clear, so Professor Countryman suggested the caption be changed to read, "Description of collateral [include year and make of auto]." These two changes were approved by the committee. They also decided that the question of a financial statement involving a joint petition be left to the reporter.

Messrs. Nachman and Horsky questioned the use of the terms, priority and unsecured. Professor Countryman explained that "b" included those at the suggestion of referees who felt if this was not included priority debts such as taxes would not be included. Mr. Treister suggested striking those terms and stating, "List all other debts, including taxes." Mr. Presson pointed out that attorney's fees should be included and Professor Seligson stated that tort claims also should be included. Professor Countryman rephrased "b" as follows, "List all other debts, liquidated or unliquidated, including taxes, attorney's fees and tort claims." The members agreed. The committee also approved a change in the second heading to read, "Consideration of basis for debt" in order to conform to "a."

Mr. Treister felt it would only be necessary to list the secured debts under "c." Professor Countryman suggested dropping "c" and "b" to include the amount of each installment, installment period, and delinquency, if any. The members agreed.

12. Co-Debtors. The committee approved "a" as written, as well as "b" and "c."

14. Property of Debtor. The members decided to change the third column under "a" to read, "Value (without deduction for any mortgage or other secured claim)" and the fourth column to read, "Name of mortgagee or other secured creditor."

In view of the discussion regarding "b" Mr. Horsky moved that the reporter redraft this to avoid duplication with the idea of listing assets and liabilities separately and combining the exemption plan with the listing of assets. The members approved. Referee Whitehurst as well as other referees who were questioned felt that it should be indicated who assisted in the preparation of the statement except in the case of an attorney, however, Mr. Nachman pointed out that this could be brought out orally and he moved to delete the question. His motion carried.

Rule 13-1-7. Filing Fees (memo of Jan. 21, 1971)
Forms 13-2 and 13-3

Professor Countryman stated this rule was changed at the last meeting in order that the rule conform to the bankruptcy rule, except in requiring the debtor's application to state that he has paid no money to his attorney for services in

connection either with a Chapter XIII case or any pending bankruptcy case. Messrs. Treister and Horsky pointed out that lines 12 and 13 and item 2 of Form No. 13-2 (Application to Pay Filing Fees in Installments) did not include the possibility that the debtor is unable to pay the filing fee. Professor Countryman then rephrased the language, "The application shall state that the applicant is unable to pay the filing fees except in installment," etc. He suggested the form be changed to read, "2. Applicant is unable to Pay \$.....[or all] of the filing fees except in installments." Mr. Horsky felt "unless otherwise directed by the court" should be deleted as unnecessary. The members approved all the above changes.

Professor Countryman read Form No. 13-3, Order Permitting Payment of Filing Fees in Installments, and Referee Herzog moved its approval. The motion carried.

Rule 13-1-20. Dismissal or Conversion to Bankruptcy Without Confirmation of Plan

Professor Countryman stated that since approval of the rule at the last meeting he added a second sentence to subdivision (d). Referee Whitehurst moved approval of the sentence with the addition of "conclusive" and the motion carried.

Form No. 13-8 Consent to Adjudication.

Mr. Horsky, on the recommendation of Professor Countryman moved to eliminate this form and the motion carried. Then Referee Whitehurst moved to eliminate "written" from subdivision (a)(2) of the rule. Mr. Treister and Professor Seligson felt

the right to request written consent was very important and should not be eliminated. The motion lost.

Rule 13-2-1. Appointment and Qualification of Trustees.

Judge Gignoux pointed out the problem of appointing trustees by referees in different divisional localities under the same district. Mr. Horsky moved that "in each district, by majority vote," in lines 4 and 5 be stricken and explained in the Note. The motion carried.

Professor Countryman indicated that there had been a previous suggestion that the standing trustee be referred to as an official trustee, however, he did not recommend that change. He pointed out that they are official regardless and it would sound redundant in subdivision (a)(2) when discussing the performance of his official duties. Mr. Horsky moved to strike "(official)" from Rule 13-2-1, thereby not incorporating it in the rule and the motion carried.

Mr. Treister felt they should indicate that if there is a standing trustee, he automatically handles every case unless the court directs otherwise. Professor Countryman felt it was not clear how to divide the cases when there is more than one trustee. Mr. Horsky suggested "in any case for cause shown" be added to line 18 of subdivision (b)(1). Judge Gignoux pointed out that this would avoid the referee at the first meeting having to order the appointment of a standing trustee. Mr. Horsky also moved that line 6 under subdivision (a)(1) be amended by the addition of "to whom all Chapter XIII cases

shall be assigned without further order," in order to take care of the conflict where there are two standing trustees. The motion carried.

"Enter an order designating him" on line 66 of subdivision (f) was amended to read, "the court may certify that he has been designated the trustee in a particular case." This change was approved when Referee Whitehurst pointed out that "is hereby designated trustee" in Form No. 13-11 was wrong because the trustee could have already been designated before it was necessary to record his bond. Professor Countryman suggested changing, "A certified copy of such order," on line 67 to, "Such a certification or a certified copy of the order approving the bond" etc. The members approved this change. In order to correspond Form No. 13-11 to these changes, the committee agreed that Professor Countryman would revise it in the form of a certificate.

Forms 13-9 and 13-10 were approved as written.

Rule 13-2-2. Notices to Creditors and District Director of Internal Revenue

Subdivisions (a) and (c) were approved as written. Subdivision (b) was deferred until consideration of the other rules to which it refers.

Rule 13-2-3. Meetings of Creditors

Professor Countryman indicated that the second clause of the first sentence had been expanded to authorize postponement of the first meeting if there is "an appeal from

or a motion to vacate an order entered under that rule."

Mr. Horsky moved approval and the motion carried.

Professor Countryman read lines 15 through 18 which he redrafted as requested at the last meeting. Mr. Horsky moved approval of subdivisions (a) and (2), and the motion carried.

Form No. 13-12 Order for First Meeting of Creditors Combined with Notice Thereof and of Automatic Stay

Referee Whitehurst felt item 3 was too broad and should be stated, "all creditors who fail to do so shall be deemed to have waived their security for purposes of the Chapter XIII proceedings," in the event that the case goes back to bankruptcy.

Rule 13-3-2 Filing Proof of Claim

(e) Time for Filing. (1) Secured Claims. Judge Gignoux pointed out that it may not be clear what "purposes of the Chapter XIII case" means. He suggested changing it to "purposes of voting and distribution." Professor Seligson disagreed stating that it should be for all purposes whether or not there is an adjudication. Referee Herzog felt the rule should only deal with a secured creditor who is not in possession otherwise you might imply that you could seize the property and bring it back into the estate. The members then discussed whether they should distinguish between unsecured or secured. Judge Gignoux felt the only thing that could be dealt with in the rule is to say that the claim of a creditor who does not file a secured claim in time but attempts to file later, would be received as an unsecured claim for voting or distribution

purposes. After further discussion Professor Countryman suggested, "for purposes of voting and distribution in the Chapter XIII case" be added on line 83 at the end of the subdivision. Judge Gignoux moved approval and it carried. He then moved to change line 82, however, at the suggestion of Professor Riesenfeld and Mr. Treister his motion was amended to include, "shall not be treated as a secured creditor for purposes," etc. Professor Seligson pointed out that the rule did not take care of the question of collateral other than for the purposes of voting and distribution. Action was deferred until consideration of Rule 13-4-1.

Form No. 13-12 Order for First Meeting of Creditors Combined with Notice Thereof and of Automatic Stay

Professor King pointed out that the changes in the corresponding rule might result in the secured creditor being encouraged to come in and file his claim early thus permitting an early formulation of the plan. Also, if the creditor does not file he will not be in the position of a secured creditor to veto the plan. However, Mr. Nachman felt the rule might encourage unscrupulous secured creditors to stay away from the Chapter XIII proceedings. Judge Gignoux made a motion to approve the changes in paragraph 3 of the form based on the changes in Rule 13-3-2 as follows: "all such creditors who fail to do so will not be treated as secured creditors for purposes of voting and distribution in the Chapter XIII case." The motion carried.

After a brief discussion, paragraph 4 of the form was approved. The first paragraph under paragraph 5 was approved. Referee Herzog felt the use of the phrase "all creditors" in the second paragraph was an invitation. Referee Whitehurst moved to change "all" to "the" and the motion carried.

Professor Kennedy questioned the use of the term "referee" at the bottom of the form. In order to conform to the bankruptcy forms, Judge Gignoux made a motion to change this to "Bankruptcy Judge" and the motion carried. It was agreed that where the signature of the Bankruptcy Judge is required in the bankruptcy forms, all corresponding Chapter XIII forms would also use this term. The last paragraph was approved.

Mr. Treister pointed out that in the corresponding bankruptcy form the numbered paragraphs contain orders and the unnumbered ones contain instructional information whereas this form is not consistent. Professor Riesenfeld moved that the format be changed to correspond to the bankruptcy form and the motion carried.

Rule 13-2-4 Filing of Plan (memo of Jan. 21, 1971)

Mr. Horsky questioned how one knows if the petition and the plan are filed at the same time and Mr. Treister felt the introductory phrase was unnecessary. Mr. Horsky moved approval of the rule with the deletion of, "by the debtor" in line 3, "of the filing of the petition" in line 4, and the addition of "thereafter." He also moved that the introductory phrase, "At the time of filing of the plan," in subdivision (b) be deleted and his motion carried.

Rule 13-2-5 Submission of Plan to Creditors

Professor Riesenfeld pointed out that the language in subdivision (a) seemed to indicate that the plan may be submitted to the creditor after the time for filing with the court has expired. After discussion regarding rephrasing, the members agreed to delete subdivision (a) based on the language now in Rule 13-2-6. Professor Riesenfeld suggested that Professor Countryman consider changing the title of the rule based on the changes. Mr. Treister pointed out that this appears to overrule § 652 of the statute which states that it is only the creditor who files a claim who will be counted. Professor Countryman stated he would explain this in the Note. Mr. Treister suggested changing line 11 to, "any creditor who has not filed a written acceptance or rejection." The members agreed.

Form 13-5 Chapter XIII Plan

Referee Herzog pointed out that the form does not mention wages. Professor Kennedy felt the plan should indicate that the debtor is only obliged to commit his wages and earnings and not his property. Therefore, Professor Countryman suggested the following be added to the beginning: "The future earnings of the debtor are submitted to the supervision and control of the court and the debtor or the debtor's employer shall pay to the trustee the sum of \$_____." Judge Gignoux moved approval and the motion carried, therefore the entire form was approved.

Rule 13-3-7 Objections to and Allowance of Claims for Purpose of Distribution; Valuation of Security (memo of Jan. 21, 1971)

(c) Objections to Allowance. Professor Countryman called the members attention to the use of "objector" rather than "trustee" in line 16 which had been changed at the last meeting. Professor King pointed out that the word "objector" opens itself up to an ambiguity that some creditor may do it. Referee Herzog suggested the sentence on line 16 be changed to, "If an objection to a claim is joined with a demand for relief," etc. His motion was carried.

(d) Secured Claims. Professor Countryman called attention to the addition of the phrase, "to the extent it is enforceable" in line 224 which was added at the last meeting. He had been requested to explain this in the Note and after reading it, Judge Gignoux moved that it be approved and his motion carried. Professor Countryman also called attention to the previous sentence in the Note which he added. He pointed out a decision by the Eastern District of Michigan that a partially secured creditor cannot be separated. The members decided to disregard reference to the case inasmuch as the decision may be overruled on a pending appeal.

Rule 13-2A-1 Modification of Plan Before Confirmation (memo of Jan. 21, 1971)

Rule 13-2A-2 Confirmation of Plan; Payment Order; Evidence of Title (memo of Jan. 21, 1971)

(a) Confirmation of Plan.

(b) Payment Order. Professor Countryman stated that he wanted the sentence beginning on line 17 to mean that you can enjoin the employer from discharging the employee and suggested the language be changed as follows. "Such an order directed to an employer may be enforced or implemented by," etc. Another way of explaining this, Professor Countryman stated, would be in the Note rather than the rule. Professor Joslin felt it should be spelled out in the rule that the bankruptcy court has this power.

Mr. Nachman felt the beginning phrase, "If a plan is confirmed" was unnecessary and the reporter agreed.

(c) Evidence of Title. Professor Countryman explained the "conclusive" was added at the beginning of line 23 to conform this rule to Rule 13-2-1. Mr. Horsky moved approval as modified and the motion carried.

Rule 13-2-19 Compensation of Trustees, Attorneys and Accountants (memo of Jan. 21, 1971)

(a) Application for Compensation. As a result of discussion at the last meeting, Professor Countryman indicated that subdivision (a)(1) had been redrafted. Mr. Treister pointed out because of Rule 13-2-15 dealing with appointment of attorneys and accountants, the fact that subsection (2) on attorneys and accountants is the same in the bankruptcy rules, and that there is relatively slight application in Chapter XIII, this Rule 13-2-19 should merely be handled by a reference to the bankruptcy rule. He made a motion that Rule 13-2-19 merely state that attorneys and accountants' compensation is governed by the applicable bankruptcy rule, as long as there remains a restriction on fee sharing by standing trustee. The motion carried.

(c) Factors in Allowing Compensation, (2) Trustee. Professor Countryman pointed out the modifications in the subsection regarding deletion of reference to limitations on the compensation of the trustee was a result of the last committee meeting. Mr. Horsky moved approval and the motion carried.

Rule 13-2-20 Examination of Debtor's Transactions with His Attorney (memo of Oct. 15, 1970)

(a) Payment or Transfer to Attorney in Contemplation of Bankruptcy or Chapter XIII case. Professor Countryman pointed out that this subdivision differed from the bankruptcy rule in allowing the creditor to make the motion. Mr. Nachman felt

that since the trustee has this right, the creditor should not. He moved to strike, "or any creditor" from line 3 and the motion carried.

(b) Payment or Transfer to Attorney, or Agreement Therefor, after Case Initiated. Referee Herzog moved approval of this subdivision with the deletion of "or any creditor" on line 10 and the motion carried.

(c) Invalidation of Unreasonable Payment, Transfer or Obligation. Referee Herzog moved approval and the motion carried.

(d) Recovery of Excessive Payment or Transfer. Professor Countryman stated this tracks on the bankruptcy rule. Referee Herzog moved approval and the motion carried.

Rule 13-2-21 Removal of Trustee: Substitution of Successor

(a) Removal, (1) Standing Trustees. Professor Countryman stated this differs from the bankruptcy rule in the treatment of the standing trustee. Judge Gignoux felt it might be feasible to remove a standing trustee from one particular case but not entirely from his appointment. He suggested deletion of subsection (1) and changing subsection (2) to read: "On application of any party in interest or on the court's own initiative and after hearing on notice, the court may remove the trustee from a particular case for cause." However, Professor Countryman suggested incorporating removal of the trustee under Rule 13-2-1 regarding appointment, and amending the last phrase of subsection (2) as follows: "the court may

remove a trustee from a case for cause." Mr. Horsky moved approval of subdivision (a) with the deletion of subsection (1), and (2) modified as suggested by Professor Countryman. The motion carried. Mr. Nachman suggested the Note explain that the rule refers to the standing trustee and any other trustee. The members agreed.

(b) Substitution of Successor. Professor Countryman stated that this tracks on the bankruptcy rule. Referee Whitehurst moved approval and the motion carried.

Rule 13-2A-3 Modification of Plan After Confirmation;
Revocation of Confirmation (Oct. 15, 1970 memo)

(a) Modification of Plan after Confirmation. Referee Herzog felt "[if the plan so provided]" on line 3 should be deleted because it is no longer compulsory to have it in the plan. The members agreed. Referee Whitehurst stated this subdivision should also deal with the situation where the debtor might want the plan modified as to whether the payment order is served on his employer or whether he wants to bring in the payments. Professor Countryman suggested this be taken care of by the addition of, "or otherwise modify the payment order" on line 7. The members agreed.

Referee Herzog pointed out that the first line in subdivision (a) seemed to mean only an extension plan. Therefore, Professor Countryman suggested deleting, "a plan providing for" so that the first sentence begins, "At any time during a period of extension," etc. However, the members felt this could mean

anything so they agreed to defer approval until it was redrafted. The next day, after subdivision (b) was redrafted, Mr. Treister moved approved of subdivision (a) as modified and his motion carried. They also agreed that the Note should explain what is meant by "or otherwise modify the payment order" to switch it from the employer to the debtor or vice versa.

(b) Revocation of Confirmation. After reading subdivision (b) as redrafted, Professor Countryman explained the difference. Under the original draft, if the court found the debtor guilty of the fraud the only thing it could do would be to adjudicate him a bankrupt. However, under this draft the court could do this or it might be in the interest of creditors to modify the plan. Referee Whitehurst felt "reinstate" on line 15 should be changed to "reopen" in order to conform to other sections and Professor Countryman agreed. Mr. Treister stated the rule should tie into the statutory authority and Professor Countryman then suggested deleting the present paragraph and inserting, "If the court revokes revocation of a plan pursuant to § 671 of the Act:". Referee Herzog then pointed out that it should read, "pursuant to the Act" thereby letting the court decide which section. Mr. Horsky noticed this would not indicate how to handle an application for revocation so Mr. Treister suggested adding, "pursuant to the Act" after line 11 and deleting lines 12 through 14. Then Professor Countryman restated lines 15 through 18 as follows: "Where such an application is filed

the court shall reopen the case if necessary and conduct the hearing on notice to all parties in interest. If the confirmation is revoked:". Mr. Horsky pointed out that paragraphs (1) and (2) should be modified. Mr. Treister suggested paragraph (1) read, "And if authorized by the Act, the court may dispose of the case pursuant to paragraph (2) of subdivision (a) of Rule 13-2A-4; or" thereby deleting lines 19 through 20. Under paragraph (2), Mr. Nachman pointed out that on line 24, "accept" should be changed to "receive" because "accept" seemed to mean approved. Mr. Nachman moved approval as modified and the motion carried.

Rule 13-2A-4 Dismissal or Conversion to Bankruptcy After Confirmation of Plan (memo of Feb. 3, 1971)

(a) Voluntary Dismissal or Conversion to Bankruptcy After Confirmation; Dismissal or Conversion for Default or Upon Revocation of Confirmation or Termination of Plan. After Professor Countryman read the subdivision, Mr. Treister questioned what happens where this was filed in a pending bankruptcy case then a confirmation is revoked by fraud. Professor Countryman suggested it be handled by making paragraph (2) cover cases where confirmation has been revoked by fraud regardless of whether a Chapter XIII petition was filed. Professor Countryman then read the following modifications: Deletion of "(1) or is revoked for fraud not chargeable to the debtor under Rule 13-2A-3(b)(2)" on lines 8-9 because of the amendments to Rule 13-2A-3; inserting "reopen" in place of

"reinstate" on line 12; striking line 15 and making paragraph (2) now paragraph (1), "If confirmation has been revoked for fraud chargeable to the debtor under Rule 13-2A-3(b), may enter an order adjudicating the debtor a bankrupt"; changing paragraph (1) to paragraph (2), "in any other case in which the petition was filed pursuant to Rule 13-1-4, shall enter an order directing that the bankruptcy case proceed"; and adding "shall" before "enter" on lines 20 and 21 in paragraph (3). Referee Herzog moved approval of subdivision (a) as modified and the motion carried.

(b) Notice to Creditors. In reading the subdivision, Professor Countryman stated he would reverse the phrases on lines 24 and 25 because they had been reversed in the previous subdivision. Mr. Treister suggested adding, "by the court" on line 25 after "shall be given." Mr. Horsky moved approval and the motion carried.

(c) Effect of Dismissal. Professor Countryman stated this follows the corresponding provision in the bankruptcy rules. Mr. Horsky moved approval and the motion carried.

Rule 13-2A-5 Effect of Conversion to Bankruptcy

(a) Where Petition Filed in Pending Bankruptcy Case.
When reading the subdivision, Professor Countryman added, "or adjudicating the debtor a bankrupt" at the end on line 4. After reading paragraph (1), Mr. Treister pointed out that a Chapter XIII statement should be sufficient unless the court specifically orders that the schedules be filed. Professor Countryman suggested the addition of "if ordered by the court"

after "they shall" on line 6 and changing "by the court" on line 7 to "in the order." Mr. Treister moved approval and the motion carried.

Professor Countryman suggested that paragraph (2) might be deleted as substantive. Mr. Horsky made a motion to that effect and it carried.

After reading paragraph (3), Mr. Horsky suggested combining it with paragraph (4). Mr. Treister suggested that the first meeting of creditors be the date you direct bankruptcy proceedings whether the time has expired or not. However, to conform to the language of the Act, Professor Countryman suggested deleting paragraph (3), changing paragraph (4) to (2), and adding a reference to Bankruptcy Rule 3-2(e) on line 24. Referee Herzog objected to eliminating paragraph (3) because it sets out the time prescribed for filing. Professor Countryman pointed out that the time would be covered by the reference to Bankruptcy Rule 3-2(e). Mr. Treister moved approval of paragraph (4) as amended to become paragraph (2) and the motion carried.

Rather than specifying in the Note, Mr. Treister suggested adding a new paragraph stating, "All claims filed in the Chapter XIII case shall be deemed to be filed in the bankruptcy case." Referee Herzog moved adoption of new paragraph (3) and the motion carried.

Professor Countryman read new paragraph (4) which was previously paragraph (5). Referee Herzog moved approval and the motion carried.

(b) Where Original Petition Filed Under Chapter XIII.

After discussion concerning subdivision (a) Professor Countryman suggested combining subdivisions (a) and (b) for simplicity. The members agreed.

(The meeting adjourned at 5:15)

Friday, March 5, 1971

Rule 13-3-1 Proof of Claim (memo of Oct. 15, 1970)

Professor Countryman stated the language in lines 4-5 differed from the comparable bankruptcy rule. Professor Riesenfeld felt "applicable law" on line 5 was not clear and should be more specific as in the Act. Mr. Treister preferred the term forbidden charges as used in the rule to the term "usury" in the Act and moved approval of lines 1-5 of the rule. His motion carried.

Mr. Horsky moved to strike the parentheses in line 7 thereby retaining the language, "or by his duly authorized agent," and the motion carried.

Form 13-16 Proof of Claim

Professor Countryman read items 1 through 10 of the form stating that it tracks the bankruptcy rule except for the language in brackets. Professor King pointed out there was no indication for the situation where security interest has been perfected otherwise than by filing such as the purchase money or possession. He suggested adding, "If the security interest has been perfected, if by filing or recording indicate the office or offices, if otherwise so state." In

order to simplify this Professor Countryman suggested they state, "indicate any office or offices in which security interest has been filed or recorded." Then Professor Riesenfeld suggested this last sentence of item 10 be modified to read, "If security interest has been perfected by filing or recording indicate office or offices."

Judge Gignoux pointed out that the official form does not correspond to the rule. He felt the form should be limited to the type of claim upon which they are dealing. Referee Herzog suggested, "If the claim does not include interest, finance or other charges, so state" to the end of item 4. After discussion, Mr. Treister suggested item 4 read, "Itemize any interest, finance, or other charges and state basis for its computation." In order that the creditor have an opportunity to deal with the problem, Professor Countryman suggested, "and set forth any other consideration relative to legality" be added to Mr. Treister's suggested language. Professor Riesenfeld suggested "inclusion" be added before "computation." Professor Countryman suggested the following sentence read, "The claim does not include any such charge." Mr. Treister felt "other" was ambiguous and suggested the sentence read, "All charges in addition to the principle of the debt must be itemized." Referee Herzog then suggested the Reporter redraft item 4 based on subdivision (a) of the rule and the previous discussion. The members agreed.

Professor Countryman read item 11 stating it tracked the bankruptcy rule. After reading item 12, Mr. Treister pointed out that it did not conform to the change in the corresponding rule. Professor Riesenfeld suggested the caption be changed to, "Proof of Claim, Acceptance or Rejection of Plan." The members approved Form 13-16 based on these changes and suggested redrafting by the Reporter.

Rule 13-3-1. Proof of Claim

(c) Evidentiary Effect. Approved as drafted.

Rule 13-3-2 Filing Proof of Claim

Professor Countryman read subdivisions (a) through (d). The Committee approved them as drafted. Professor Countryman then read subdivision (e) pointing out that paragraph (1) had been redrafted earlier in the meeting. Judge Maris suggested changing the use of "insane" on line 92 in paragraph (B). Mr. Horsky moved that it be changed to "mentally incompetent," and that Rule 13-3-1 be approved as modified. His motion carried.

Rule 13-3-3 Filing Claims by Debtor or Trustee

Mr. Treister pointed out that the way in which the rule was worded, if the debtor filed the proof of claim for the creditor, the debtor has to set forth the facts showing that it does not contain any provisional charge. After discussion Professor Countryman suggested adding the following sentence, "The creditor may thereafter amend the claim as filed and

may include in his amendment an acceptance or rejection of the plan." Mr. Treister felt the phrase in Professor Countryman's suggestion, "and may include an acceptance or rejection" was not needed. Mr. Nachman pointed out that the rule should indicate the time limit in which to file the claim and Professor Countryman changed his suggested sentence as follows, "The creditor may thereafter file an amended claim pursuant to Rules 13-3-1 and 13-3-2." He explained that the phrase regarding acceptance or rejection was not necessary because the debtor or the trustee cannot file his claim until the date set for the first meeting of creditors and by that time the creditor will have accepted the plan or will be deemed to have rejected it. Professor Countryman asked what if the debtor files his claim on the last day for filing claims. Mr. Treister pointed out that the purpose is not to allow an amendment after the 6-month period, therefore, the rule should state that it is pursuant to and within the time specified. Professor Seligson disliked the use of "amendment" stating it could be confusing. Judge Maris then suggested the sentence be changed to read, "The creditor may nonetheless file a claim pursuant to Rules 13-3-1 and 13-3-2 and if he does so his filing shall supersede the filing by the debtor or the trustee." Professor Kennedy stated "claim" should be explained by using the term, "proof of claim." Judge Maris felt this sentence could raise a doubt as to which paper. Professor Countryman restated the ending phrase, "which proof shall supersede the

proof by the debtor or the trustee." Based on Mr. Treister's suggestions, Professor Countryman read an amendment to line 5, "Such proof of claim shall not be counted in determining the number and amount of claims of a creditor whose acceptance is required for confirmation." Mr. Horsky moved approval of this sentence as well as the last sentence, "The creditor may nonetheless file a proof of claim pursuant to Rules 13-3-1 and 13-3-2, which proof shall supersede the proof filed by the debtor or trustee." Judge Maris suggested adding "when filed" after "which proof" and Mr. Horsky accepted the amendment to his motion which carried. Mr. Nachman suggested the Note explain elimination of the use of the word "amended."

Rule 13-3-4. Claim by Surety for Debtor

Mr. Horsky felt the rule should include a reference to Rules 13-3-1 and 13-3-2. Professor Countryman suggested "pursuant to Rules 13-3-1 and 13-3-2" be added to line 5 after "proof of claim." Mr. Horsky moved approval of the rule as modified and the motion carried.

Rule 13-3-5 Post-Petition Claims

Professor Countryman explained that the rule has no counterpart in the bankruptcy rules and subdivisions (a) and (b) are based on § 680 of the Act. Mr. Nachman questioned the authority for subdivision (c) and Professor Countryman replied that it was the practice of a number of referees who justify this by the fact that they are not limited under the

definition of claims in § 606. Mr. Treister felt the rule was substantive but especially subdivisions (a) and (b). He further added that the rule should not deal with post-petition claims. Mr. Nachman agreed that this rule could be limited to a rule for description purposes only. Professor King suggested including this in the rule on modification, permitting a modification where claims are incurred after the filing of the petition, which claims may properly come under the plan. After discussion, Mr. Nachman moved to retain subdivisions (a), (b), and (c) with a redrafting of the language. He based this on previous decisions of the Committee to retain rules which appeared to be substantive. His motion to approve the rule in principle was carried.

Professor Countryman read subdivision (c). Mr. Nachman questioned the phrase, "for property or services necessary to enable him to perform under the plan." Judge Maris felt it should be more specific and Judge Forman suggested it be specified in the Note. The members agreed that the Note should also cover administration expenses. There was further discussion of subdivisions (a) and (b), however, Mr. Horsky moved their approval and his motion carried.

Rule 13-3-6 Withdrawal of Claim

Approved as drafted.

Rule 13-3-8 Reconsideration of Claims

Approved as drafted.

Rule 13-3-9 Priority Payments and Dividends

(a) Priorities. (1) First Payment. After discussion as to whether this subdivision was substantive, Mr. Horsky moved approval and his motion carried 5-4. Referee Herzog moved approval of paragraphs (1) and (2) and it carried.

(b) Small Dividends. Mr. Treister felt they did not need a rule on this kind of dividend in Chapter XIII. Professor Countryman suggested that this paragraph read, "Dividends not distributed because of such rule or order shall accumulate and shall be paid not later than the final dividend." He also suggested striking the last sentence. Referee Herzog moved approval as modified and his motion carried.

After the suggestion of Mr. Treister to strike the last sentence of Rule 13-3-10 on Unclaimed Money, Professor Countryman drafted a new subdivision (c) to Rule 13-3-9, "Surplus Funds. Except as provided in Rule 13-3-10, any funds remaining in the estate on consumation of the plan shall be returned to the debtor." Also, "Surplus Funds" was added to the title of the rule. Mr. Horsky moved approval of these suggestions and his motion carried.

Rule 13-3-10 Unclaimed Money

Based on the changes in Rule 13-3-9, Mr. Horsky moved approval of the deletion of the last sentence and the modification of the title to, "Funds." His motion carried.

Rule 13-4-1 Petition as Automatic Stay of Actions Against Debtor (Jan. 15, 1971 memo)

(a) Stay of Actions. Professor Countryman explained the changes in the subdivision and Mr. Treister pointed out that it does the same as the bankruptcy rule except with respect to secured claims it does not require collateral to be in the custody of the court. Mr. Horsky moved approval and the motion carried.

(b) Duration of Stay. Professor Countryman explained the addition of "condition by the court" on line 9. He stated that Professor Seligson and Mr. Nachman were concerned about the fact that the effect of this stay is simply to keep the creditor away from his collateral until the case is terminated, however, if it gets terminated without his being paid off he then no longer is stayed from going against his collateral. Mr. Treister questioned why the stay should last a longer time here than in straight bankruptcy, and felt they should conform the bankruptcy rule to this rule.

Mr. Treister stated he would be satisfied if the rule meant that when the proceeding ended, to the extent that the rule meant that a bankruptcy discharge does not cover a secured claim the secured creditor could reach his collateral if it was of any value to him and it was available, however,

he felt the rule suggested the contrary result because of the rules which follow and have to do with relief from stays. He further stated that there is strong implication that the secured creditor has to get his collateral back. To solve this, Professor Countryman suggested adding, "by a creditor who has timely filed his claim" to subdivision (d). He also suggested they should do the same with subdivision (c). Mr. Treister then pointed out that the ending phrase to subdivision (c), "or who has not filed his claim by that time," was wrong. Professor Countryman suggested the only necessary changes in subdivision (c) were "or" in the phrase on line 19 to "and," in addition to changing "financial" statement to "Chapter XIII" statement.

Professor Countryman suggested adding, "who has timely filed his claim" to line 28 of subdivision (e). Professor Kennedy raised a question about the creditor who is secured by real estate. Mr. Treister felt this rule would force a number of people involved in real estate cases to file under Chapter XIII who have never filed before. He therefore suggested this be dealt with in a separate subdivision. However, Professor Countryman preferred to add, "or who is secured by real estate" to his previous suggested language in line 22 of subdivision (d) and line 28 in subdivision (e). The motion carried.

Mr. Horsky moved approval of subdivision (c) with the following modifications: Deletion of "Notwithstanding subdivision (b)" and striking "or" and adding "and" on line 19. Professor Riesenfeld stated that it should be made clear in the Note that a creditor who is secured by real estate is subject to the benefit of automatic annulment under subdivision (c), in order to let the title companies know where they stand. The motion of Mr. Horsky carried.

(e) Ex Parte Relief from Stay. Mr. Treister pointed out that "provided by this rule" on line 30 should be moved up to line 28. Mr. Horsky moved approval of subdivision (e) with the modification suggested by Mr. Treister and the addition of the reporter's language on line 28, "who has timely filed his claim or who is secured by an interest in real estate." The motion carried.

(f) Availability of Other Relief. Professor Countryman stated this subdivision tracks on the bankruptcy rule. Mr. Treister felt the stay should be explained in the Note. Mr. Nachman moved approval and the motion carried. However, Mr. Treister then pointed out that the phrase, "or relief from the stay" could be construed to give the creditor who did not file his claim on time standing to reclaim the collateral because there is no equity in it and because of other rules of law. He further stated that he felt this rule could hurt them more than help them. Professor Riesenfeld moved to reconsider the subdivision and delete it. The motion carried.

Rule 13-4-2 Duties of Debtor (Feb. 3, 1971 memo)

Mr. Treister stated he did not think they should have to specify a way of objecting to discharge in this rule. After discussion, Professor Countryman suggested they tentatively delete from lines 5-6, "and upon a complaint objecting to his discharge." The members agreed. Mr. Treister felt Item (3) was wrong because in most cases the debtor does not file a financial statement pursuant to Rule 13-1-3. Professor Countryman suggested they leave it in unless they decide to delete his rule on recording. Otherwise, depending upon the duties of trustees, it could be rewritten. Mr. Nachman moved approval of this rule based on the conditions specified and his motion carried.

Rule 13-4-3 Exemptions

Professor Countryman explained the difference in the bankruptcy rule and after discussion, Professor Joslin moved approval of subdivision (a) through (d). His motion carried. Referee Whitehurst moved approval of (e) and his motion carried.

Rule 13-4-4 Grant or Denial of Discharge (Jan. 15, 1971 memo)

Professor Countryman stated that the rules under the January 15, 1971 memorandum follow the assumption that the dischargeability law applies to Chapter XIII. Referee Herzog moved approval of this assumption and it carried. Professor Countryman stated the question was whether § 14c applies to the granting of a discharge under either or both § 660 or 661. The members considered Alternative A which assumes that § 14c is not applicable and no hearing is required when a discharge is granted under § 660. That alternative also assumes that an opportunity for objection and hearing is required when a discharge is

sought under Section 661 by a defaulting debtor. Mr. Treister felt they should have the opportunity to object to the § 661 discharge. Professor Countryman suggested adding "and to creditors if a complaint objecting to discharges has been filed" to the end of line 27 and deleting item (1), "a complaint objecting to discharge has been filed." In addition, Mr. Treister suggested striking lines 27 and 28, and adding, "that the debtor is entitled to a discharge under § 661." Judge Gignoux moved approval of subdivision (a) as far as "unless" on line 30. In discussing items (1) through (3), Referee Herzog pointed out that you cannot complete payments until the filing fees have been paid. Mr. Horsky stated that if the requirements specified in item (2) are completed that would include payment of the filing fees, therefore (3) could be deleted here and in subdivision (a). Referee Whitehurst and Mr. Treister explained that item (2) should not be mandatory and should be deleted, therefore, Mr. Horsky moved approval of subdivisions (a) and (b) as modified and the motion carried. After discussion, Mr. Horsky moved approval of paragraph (3) and his motion carried.

After redrafting Official Form 13-19, "and upon expiration of the time fixed under Rule 13-4-9 for filing a complaint to determine the dischargeability of debts," was deleted from subdivision (a) of this rule. Also, "times" on line 24 of subdivision (b)(2) was made singular and "for filing a complaint to determine the dischargeability of debts" was deleted from line 25. Mr. Treister raised a point that if 14(c) grounds

are available the rules would allow the court to raise the 14(c) grounds on its own motion because if there has been no complaint filed, the court has to be satisfied that the debtor is entitled to a discharge. Professor Countryman agreed, stating he would redraft the subdivision. Subdivisions (c), (d), and (e) were approved.

(c) Order of Discharge. (Alternative A of Form 13-19)

In reading the form Professor Countryman deleted the last three lines of the first paragraph because of previous decisions. Mr. Treister suggested adding "by this court" to item (d) of No. 4. Referee Herzog pointed out that No. 2 is deceiving, and Mr. Treister felt the specificity is not very helpful. Regarding No. 3, Mr. Treister stated that the simplification is not enough savings to justify the burden of making the discharge orders routine. Professor Countryman felt there would not be many items to list because there would not be a great number of applications to determine dischargeability. Referee Herzog pointed out in No. 4 the fact that the debts are alleged to be excepted from discharge does not make them null and void. Therefore, Professor Countryman suggested rewording subdivision (b) to add, "not listed in paragraph 3" after "debts."

In discussing whether to adopt this form, Mr. Treister felt the style of the bankruptcy form would be much simpler to fill out. Professor Countryman, however, preferred Alternative A, stating that the bankruptcy form tells the debts which are not discharged and this is not the needed information.

After further discussion, Mr. Horsky moved to approve the principle of Form 13-19 (Alternative A) and his motion lost. Referee Herzog then moved to approve a form similar to Bankruptcy Form 24 with applicable changes pertaining to Chapter XIII. Professor Countryman urged the members to vote against this motion in order to save (b) and (c) of Item No. 4 of Alternative A because the only thing which has to be filled in is the date on which the original petition was filed. He further stated that this would save his scheme that the court does not rule on dischargeability until the time fixed for filing applications to determine dischargeability has expired and the court can at least state in the discharge whenever a creditor shows up and says he is not covered by the discharge because of § 17(2), (4), and (8), it is too late for him to say this. Referee Herzog stated that Item No. 3 was deleted and (b) of Item No. 4 still disturbed him. He suggested it be reworded as follows, "debts alleged to be discharged under clauses (2) and (4) of § 17a of the Act as to which complaint has not been timely filed." The members felt this should be redrafted. Mr. Treister pointed out that the drafting could be simplified by eliminating the expiration of time for filing complaints.

(Adjournment at 5:15 p.m.)

Reconvene, Saturday, March 6, 1971

Professor Countryman explained the redrafted form with the deletion of Items 2 and 3, making Item 4 now Item 2. Section 660 and 661 was added to subdivision (a). Subdivision (b) was changed as follows: "unless determined by order of court to be nondischargeable, all debts alleged to be excepted from discharge under clauses (2) and (4) of Section 17a of the Act." Subdivision (c) was changed as follows: "unless determined by order of court to be nondischargeable, all debts alleged to be excepted from discharge under clause (8) of § 17a of the Act except those debts," etc. "By this court" was added to subdivision (a). In order that Item 2 of the form read smoother, Mr. Nachman suggested Professor Countryman reword the subdivisions so that they all start with "debts." Professor Riesenfeld suggested subdivisions (b) and (c) start, "unless heretofore (or after) determined." Mr. Horsky moved approval of the form as amended and it carried.

Rule 13-4-5 Waiver of Discharge

Approved as drafted.

Rule 13-4-6 Implied Waiver of Discharge

Professor Countryman recommended deletion of the rule based on the action taken on Rule 13-4-4. After discussion, Mr. Horsky moved deletion of the rule and it carried.

Rule 13-4-8 Notice of Nondischarge

In light of the changes in Rule 13-4-5, Professor Countryman suggested deleting, "or deeming the right thereto to have been waived," from lines 2 and 3. Referee Herzog moved approval as modified and the motion carried.

Rule 13-4-9 Determination of Dischargeability of a Debt; Judgment on Nondischargeable Debt; Jury Trial

(a) Proceeding to Determine Dischargeability. There was discussion as to clearing up in the Note, the ambiguity of "any creditor" in subsection (1), however, the members agreed to approve subdivision (a) as written.

(b) Claim and Demand for Judgment on Nondischargeable Debt. Professor Countryman stated this tracks on the bankruptcy rule except for the addition of, "if his claim has not yet been reduced to judgment" and the substitution of "shall" for "may." There was discussion regarding this subdivision, however, Referee Herzog moved approval and it carried.

(c) Jury Trial. Mr. Horsky moved approval as written and the motion carried.

(d) Applicability of Part VII of Bankruptcy Rules. Mr. Horsky moved approval as written and the motion carried.

Professor Kennedy asked the members to discuss a problem in the bankruptcy rules. He asked what happens when a complaint is filed then the court determines there is to be no discharge. What should the court do regarding this pending complaint seeking a judgment. After discussion, the members agreed that this could be taken care of in a Note.

Minutes of November 18-20, 1970 Meeting

Since the last meeting, Professor Kennedy redrafted various rules because of changes indicated by the Dischargeability bill. He called the members attention to Subdivision (e) of Rule 401. Since there is a subdivision for relief from stay he felt they did not need a special provision terminating the stay therefore he deleted old subdivision (e). Professor Kennedy stated that the members of the Style subcommittee agreed. Judge Gignoux moved approval and his motion carried.

Next meeting of the Advisory Committee on Bankruptcy Rules

Since the June 9-12, 1971 meeting was cancelled, July 7-10, 1971 was set for the next meeting. The dates for the following meetings were set as follows: October 25-28, 1971 and January 26-29, 1972.

Rule 13-6-2 Duty of Trustee to Give Notice of Proceeding

Mr. Treister stated his views that the rule is not needed because the assets are not comparable to those of straight bankruptcy. Or, he suggested changing "shall" in line 4 to "may." Professor Countryman suggested deletion of subdivisions (a) and (b). Mr. Horsky moved the deletion of Rule 13-6-2 because the only significant part of it (line 4) is covered by statute. His motion carried.

Rule 13-6-3 Burden of Proof as to Validity of Post-Petition Transfer (Oct. 15, 1970 memo)

Approved as written.

Rule 13-6-4 Accounting by Prior Custodian of Property of the Estate

Professor Countryman suggested the addition of "or debtor" on line 5 as indicated and the addition of "bankruptcy" after "court" on line 6 to avoid confusion with any other other. Mr. Horsky moved approval as modified and his motion carried.

Rule 13-6-5 Money of the Estate: Deposit and Disbursement

Approved as drafted.

Rule 13-6-7 Rejection of Executory Contracts

Referee Herzog moved approval leaving in the parenthetical phrase "including unexpired leases" and his motion carried. The rule was approved as written.

Rule 13-6-8 Abandonment of Property (Feb. 3, 1970 memo)

Referee Whitehurst felt this might cause too much work so he suggested that they let it be done without notice to creditors unless the court finds that for cause shown, the notice should be sent. Professor Countryman suggested the rule be reworded as follows, "The trustee may, upon approval by the court after hearing, with notice to creditors if the court so directs, abandon any property if it is burdensome or has no net realizable value." Referee Whitehurst moved approval as modified and his motion carried. After discussion of Rule 13-6-9 Mr. Horsky pointed out that the words, "after hearing upon such notice as the court may direct" should be substituted in Professor Countryman's suggested language. The members agreed.

Rule 13-6-9 Redemption of Property From Lien or Sale
(memo of Oct. 15, 1970)

Professor Countryman and Professor Kennedy discussed coordinating the bankruptcy rule and this rule regarding the description of foreclosure. Mr. Nachman pointed out there may be a situation whereby a debtor institutes such a procedure. Mr. Horsky moved that the foreclosure phrase be coordinated and "or debtor" be added to the rule. His motion carried.

Rule 13-6-10 Prosecution and Defense of Proceedings by Trustee

Approved as written. Professor Seligson suggested additional explanation in the Note and Professor Countryman agreed.

Rule 13-6-11 Preservation of Voidable Transfer (Feb. 3, 1971 memo)

Mr. Horsky moved approval subject to the ultimate decision as to whether the bankruptcy rule would be incorporated separately or by reference here. His motion carried.

Rule 13-6-12 Proceedings to Avoid Indemnifying Lien or Transfer to Surety (Oct. 15, 1970 memo)

Approved as written.

Rule 13-6-13 Representation and Appearances; Powers of Attorney
(Feb. 3, 1971 memo)

Professor Countryman stated they need only consider subdivision (c), Power of Attorney. Mr. Horsky moved approval and his motion carried.

Form 13-20 Power of Attorney

Mr. Horsky moved approval and his motion carried.

Rule 13-9-13 Habeas Corpus

Professor Countryman stated he was asking the committee to reconsider subdivision (b) of this rule. Referee Whitehurst felt consideration should be deferred until all the members were present.

Rule 13-9-19 Compromise and Arbitration

In reading the rule, Professor Countryman deleted, "unless the court upon cause shown" and lines 3 and 4, and substituted, "upon such notice as the court may direct" after "hearing" on line 2 based on previous changes. Mr. Horsky moved approval of subdivision (a) as amended and subdivision (b). His motion carried.

(meeting adjourned at 11:45 p.m.)