MINUTES OF THE FEBRUARY 1967 MEETING OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

The twelfth meeting of the Advisory Committee on Bankruptcy Rules convened in the Supreme Court Building on Wednesday, February 15, 1967, at 10:04 a.m. and adjourned on Saturday, February 18, 1967, at 1:00 p.m. The following members were present during the sessions:

Phillip Forman, Chairman (unable to attend Friday and Saturday)
Edward T. Gignoux
Asa S. Herzog
G. Stanley Joslin
Norman H. Nachman (unable to attend Wednesday)
Stefan A. Riesenfeld
Charles Seligson
Roy M. Shelbourne
Estes Snedecor
George M. Treister
Elmore Whitehurst
Frank R. Kennedy, Reporter
Morris G. Shanker, Assistant to the Reporter

Edwin L. Covey, Esq., was unable to attend. Others attending were Messrs. Royal E. Jackson and Berkeley Wright, members of the Bankruptcy Division of the Administrative Office of the United States Courts.

Judge Forman called the meeting to order, and minutes of the last meeting were approved. Judge Forman stated that the Style Subcommittee had met on January 20, 21, and 22, and that the results of that meeting would show up from time to time during the present meeting.

Agenda Item 1: Drafts for the Shelf

Professor Kennedy said he wished to call to the Committee's attention some changes in the drafts recommended for the shelf which went beyond routine word changes and which had evolved out of the discussions at the January meeting of the Style Subcommittee in New York.

PROPOSED BANKRUPTCY RULE 1.7.2 - SERVICE OF PETITION AND PROCESS

Professor Kennedy called attention to the fourth sentence of the draft dated 1-22-67: "If service cannot be made as provided in the preceding sentence, it may be made by mailing the summons and complaint to the last known address, if any, and by at least one publication thereof, as the court may direct." He stated that there had been added a safeguard in this provision authorizing publication, namely, the requirement for mailing the summons and complaint to the last known address. Judge Gignoux pointed out that the wording should be "summons and petition", and the reporter agreed. Professor Seligson asked who determines whether service cannot be made as provided in the preceding sentence. Professor Kennedy supposed that if somebody tried to use the method and it could be shown by the bankrupt that he could be served personally, then the bankrupt would have a good defense. Professor Seligson suggested this wording: "Service may be made on approval by the court by mailing the summons and petition to the last known address, if any, and by at least one publication thereof." Upon being told that "as the court may direct" would be eliminated, Mr. Treister said that "as the court may direct" told how many times to publish, what newspaper, etc.; "on approval by the court" had to do with general mode of publication. He thought "as the court may direct" should be left in. Judge Snedecor suggested putting in "as the court may direct" instead of "approval by the court" after the word "made" in third line of the sentence, and eliminating the phrase at the end.

Judge Gignoux asked if the wording in the third line of the sentence should not be "a copy of the petition". Professor Kennedy would be inclined to take "copy of" out of the third sentence rather than to conform to it by adding the words in the fourth. Judge Shelbourne pointed out that the Federal Civil Rules refer to "a copy of". Judge Gignoux said he thought it would be better to leave "a copy of" in both places, since the Civil Rules do refer to them. It was agreed by the majority that the wording should be left in. [See further action on this rule, infra.]

PROPOSED BANKRUPTCY RULE 1.10 - VENUE AND TRANSFER

Professor Kennedy pointed out that in Paragraph (b)(2) of the draft dated 1-22-67 there is an additional sentence at the end, "Notwithstanding the foregoing, the court may without a hearing retain a case filed in a wrong district if no objection is raised." He said that its purpose was to negate the implication that the court might not retain a case filed in

a wrong district even though nobody raised any objection. He also pointed out that the sentence regarding the burden of proof, which was in the rule as approved at the last meeting, had been taken out and would be put in the Note. The Subcommittee had decided that it ought not to be in the rule, because it only covered part of the problem and raised questions about other situations not covered.

PROPOSED BANKRUPTCY RULE 7.12 - DEFENSES AND OBJECTIONS

Professor Kennedy called attention to the addition of the words, "or within the United States at a place more than 1000 miles from the place of issuance of the summons", in the second sentence. In connection with this new restriction, he read proposed Bankruptcy Rule 7.4(j). There was a short discussion of the varying circumstances regarding time fixed by the court. Mr. Treister suggested that the second sentence of Rule 7.12 might read: "The court shall prescribe the time . . . ." He said that would make Bankruptcy Rule 7.4(j) unnecessary. Professor Riesenfeld felt that Bankruptcy Rule 7.12 should be looked at once again with regard to drafting. This was to be done by the reporter. Judge Forman asked if Bankruptcy Rule 7.4(j) was to be eliminated. Professor Kennedy replied that he was inclined to agree with Mr. Treister that it could be and that a Note could serve the purpose.

PROPOSED BANKRUPTCY RULE 7.82 - TRANSFER OF ADVERSARY PROCEEDING

Professor Kennedy explained that the last half of the second sentence had heretofore been put in the Note, but the Subcommittee on Style agreed that it should be put back into the text. After a discussion as to style, Professor Kennedy urged that the Committee pass on with the understanding that he is open for all suggestions. All were in agreement as to leaving the last half of the second sentence in the text.

PROPOSED BANKRUPTCY RULE 9.11 - SIGNING AND VERIFICATION OF PLEADINGS AND OTHER PAPERS

(b) Verification.

Professor Kennedy said that Mr. Treister had suggested that the Committee ought to consider whether all verification requirements should not be eliminated except possibly those applicable to the petition, the schedules, the statement of affairs, and amendments thereof. He called to the Committee's

attention some of the criminal provisions of the U. S. Code that might be brought to bear against somebody who falsifies without swearing. He stated that 18 U.S.C. § 152 makes it a crime for anybody knowingly and fraudulently to make a false oath or account in or in relation to any bankruptcy proceeding, or knowingly and fraudulently to present any false claim for proof against the estate of a bankrupt, or for anybody who, after filing a bankruptcy proceeding or in contemplation thereof, knowingly and fraudulently falsifies or makes a false entry in any document affecting or relating to the property or affairs of a bankrupt. He also quoted 18 U.S.C. § 1001. Professor Kennedy suggested that these provisions be kept in mind when the Committee came to the affidavit requirements. He stated that, whatever decisions are reached with regard to the suggestion received, the text of Bankruptcy Rule 9.11 would not be changed, but that the Note might be changed, depending on what is done with the rules listed in the Note.

PROPOSED BANKRUPTCY RULE 1.3 - INVOLUNTARY PETITION

(d) Transferor or Transferee of Claim.

Professor Kennedy suggested the Committee turn to Rule 1.3(d) as the only instance of the adoption of an affidavit requirement inconsistent with Mr. Treister's suggestion. Mr. Treister said he would include only the first sentence and let the rest of it go. Professor Kennedy stated that Mr. Nachman felt that the second sentence is an important safeguard. Professor Seligson asked if it was not the purpose of the second sentence to enable the bankrupt to determine whether he should or should not challenge the qualification of a petitioner. Mr. Treister replied that in the first place the involuntary petition has to be verified, so the creditor has to sign under oath that he is a creditor possessing the basic qualifications. There was a discussion on "transferor" and "transferee". Professor Seligson said there was a need for the second sentence. Mr. Treister moved that the second sentence of Rule 1.3(d) be stricken. Mr. Whitehurst seconded. The motion was lost on a vote of 3 to 7.

Judge Herzog moved that the word "affidavit" in the second sentence be changed to "signed statement". Judge Gignoux seconded. The Committee unanimously approved a revision of lines 8-11 in the draft of Rule 1.3(d) dated 7-19-66 to read as follows:

"the transfer, and a signed statement setting forth the consideration for and terms of the transfer and that the claim was not transferred for the purpose of commencing a bankruptcy case."

At this point, Judge Snedecor asked to go back to Bankruptcy Rule 1.7.2. He said he did not think that publication of the petition should be required - just the summons. Also, he thought that "copies of" should be left out with regard to the petition, because the originals were always there. Professor Kennedy said he would like it resolved whether the Committee really wanted to require publication of both the summons and the petition. He read Title 28, U.S.C., § 1655. Mr. Treister moved that the proposed bankruptcy rule be worded to conform to that in § 1655. After further discussion, Professor Seligson moved, and Judge Gignoux seconded, that "order" be utilized in 1.7.2 with regard to publication rather than "summons". There was unanimous approval. Judge Snedecor voted positively but said he still liked "summons". Professor Kennedy read the approved language of the fourth sentence of proposed Bankruptcy Rule 1.7.2 as: "If service cannot be made as provided in the preceding sentence, it may be made as the court may order by mailing the summons and a copy of the petition to the last known address, if any, and by at least one publication of the court's order." After hearing a discussion concerning publication of the order, Judge Forman stated that there would be a Note referring to the order and an adaptation thereof for notice purposes.

Agenda Item 2: BANKRUPTCY RULE 7.4 - SERVICE OF SUMMONS, COMPLAINT, AND NOTICE OF TRIAL

(d) Service by Publication.

Professor Kennedy read the first sentence of the draft dated 1-23-67 and made a few comments. Judge Gignoux pointed out that in all of the rest of 7.4 the language used is "a copy of the summons, complaint, and notice". It was then agreed to insert "copies thereof" after the word "mailing" in line 4 of the first sentence of 7.4(d). Professor Seligson suggested adding "such" before the word "publication" in line 5. Mr. Treister returned to proposed Rule 1.7.2 and proposed this wording: "If service cannot be made as provided in the preceding sentence, it may be made as the court may direct by mailing the summons and a copy of the petition to the last known address, if any, and by at least one publication." Judge Gignoux suggested, "and by such publication as the court may direct." In light of

the fact that the original summons is not mailed, the suggestion was made to use the wording, "copies of the summons and petition". Judge Whitehurst moved that the language in 7.4(d) be made parallel with the language regarding publication in 1.7.2 and that the number of times of publication be left to the discretion of the court. Judge Forman stated that a Note would say that the minimum number of publication is one. No vote was taken on Judge Whitehurst's motion, as there was further discussion on the number of publications. Professor Seligson felt that the requirement of one publication should be in the text of the rules rather than in a Note, and Judge Whitehurst concurred. Judge Gignoux suggested that a vote be taken on the one publication requirement in both places [1.7.2 and 7.4(d)] and then to let the reporter draft appropriate language. A vote was taken and a majority voted in the affirmative.

There was a discussion on having a separate rule on designation of newspapers. Judge Herzog asked whether, if there were going to be such a rule, it would be possible to say therein, "Wherever publication is provided under this rule, it will mean that such publication shall be at least once and in such newspaper designated, etc." Such a provision would cut short all of the other rules on publication. Professor Kennedy said that the Subcommittee on Style thought that publication should be confined to two kinds of cases: (1) where the last known address is within this state and (2) where there is property of the defendant subject to the court's jurisdiction. He pointed out that the reference in 7.4(d) to (2)(B) of subdivision (f) ran into trouble because of a subsequent change in the drafting of 7.4(f) so that paragraph (2) thereof deals only with a person in a foreign country, and it was intended to permit publication where the defendant may be in another part of the United States. He gave the rephrasing of the second sentence of 7.4(d) as: "Service may be made under this subdivision only (A) on a party whose last known address is a place within the United States in which the court is held or (B) on a party to an adversary proceeding to determine (or protect) the rights in property in the custody of the court."

Professor Riesenfeld asked who has the authority to designate the newspapers which would carry the publications. Professor Kennedy said that the matter of whether the judge should be free to designate in each case or whether there should be a rule requiring these designations to be made by local rule had not been resolved. Professor Joslin said he thought that the court was being vested with the discretion to decide almost everything about the notice, including where it should be published, except that there must be at least one publication.

Judge Whitehurst thought the designation should be left to the judicial officer handling the case. Professor Kennedy stated that section 28 of the Act, in effect, requires publication in a previously designated newspaper in the county in which the bankrupt resides or the major part of his property is situated. He asked if it was thought that a rule is needed that includes these minimal requirements regarding designated publications.

Professor Joslin moved that the second sentence of 7.4(d) be eliminated. After extensive discussion, Mr. Treister said he would be inclined to eliminate clause (A), i.e., to service by publication only in those cases with respect to property in custody of the court. Professor Joslin then changed his motion from elimination of the second sentence of 7.4(d) to leaving it in but striking out the words, "the state in which the court is held" and substituting "the United States". Professor Kennedy pointed out that the issue before the Committee then was whether there could be service by publication on any party anywhere throughout the United States without limitation. The motion was lost by a vote of 3 to 4.

Mr. Treister proposed that service by publication be authorized only (1) when a party cannot be served any other way and (2) the action is to determine rights of property within the custody of the court. Judge Whitehurst seconded the motion. Professor Seligson said he would be opposed to elimination of service when it could be made under state law. Mr. Treister said that he had been under a misapprehension, because the Committee had not incorporated the same state law as the Federal Rules of Civil Procedure do. Professor Seligson said he did not think the trustee should be deprived of any provision of state law regarding service. Mr. Treister pointed out that the bankruptcy rules pick up all of FRCP 4(d). Professor Seligson asked what part of FRCP 4(e) was being excluded from the bankruptcy rules. Professor Kennedy replied that FRCP 4(e) deals with anybody who is not an inhabitant of or found within the state, where he can be served under state law or federal law. He stated that state law or federal law was not being picked up in the bankruptcy rules as a result of a Committee decision based upon warnings received from Professor Moore, who said that the Committee certainly would not want to pick up some of the provisions of 28 U.S.C. § 1655. Professor Seligson did not see why one should be able to start a suit in a U.S. district court by serving a man in accordance with FRCP 4(e) and not be able to start an action in the bankruptcy court by serving in the same way. Professor

Kennedy replied that FRCP 4(e) drags in a lot of stuff about which the Committee does not know very much. Judge Gignoux wanted to know what FRCP 4(e) does that FRCP 4(d)(7) does not. There was further discussion of the provisions of those rules.

The meeting adjourned for lunch at 1:05 p.m. and was resumed at 2:00 p.m.

Professor Kennedy stated that during lunch two different matters were discussed. One of them was a sentence that would read: "If a party cannot be served as provided in subdivision (b), (c), or (i) of this rule, the summons, complaint, and notice of trial may be served as provided in Rule 4(e) of the Federal Rules of Civil Procedure for service of the summons, notice, or order in lieu thereof." Another sentence would say: "If a party to an adversary proceeding to determine (or protect) rights in property in the custody of the court cannot be served as provided in subdivision (b), (c), or (i) of this rule, the court may order summons, complaint, and notice of trial to be served by mailing copies thereof to the party's last known address and by at least one publication in such manner and form as the court may direct." Professor Seligson moved that the language read by Professor Kennedy be adopted. Judge Snedecor seconded.

Before vote was taken on Rule 7.4(d), there was a short discussion. Professor Shanker said that Rule 4(e) of the Federal Rules of Civil Procedure deals only with publication for people outside the state, whereas the Bankruptcy Rules might want publication for a person within the state. Professor Seligson said he thought that Rule 4(d)(7) of Federal Rules of Civil Procedure would take care of that. Professor Shanker said that if that was so, it was all right; he was just raising the question. Professor Kennedy felt that the bankruptcy rules did not need an "inside-the-state" provision anymore than the Federal Civil Rules do. There was general agreement on that point.

Judge Gignoux stated that Rule 4(e) of the Federal Rules of Civil Procedure, as he understood it, provides the means by which you can serve a party who is not within the state and it supplements 4(d) only with respect to such parties; that Rule 4(d) of the Federal Rules of Civil Procedure applies only to service within the state. Judge Gignoux felt that if that was true, and if the Committee wanted to have a comparable provision in the Bankruptcy Rules, there should be a rule which is not directly related to publication but which provides for a method of serving a party not an inhabitant of or found within the state.

Since under the Bankruptcy Rules extra-territorial service is permitted, he questioned whether a rule like Rule 4(e) of the Federal Rules of Civil Procedure is needed at all. Professor Kennedy replied that in talking about a case where service could not be made under subdivision (b) or (c) or (i), then service would be allowed as provided by Civil Rule 4(e). Judge Gignoux said that the only two situations which the Committee wanted to cover were (1) where property is in custody of the bankruptcy court and (2) in a quasi rem proceeding where the partner who was to be served owns property within the state. After a short discussion, a vote was taken on incorporation of Civil Rule 4(e) into the Bankruptcy Rules and on the principles of the proposed sentences for subdivision (d) as read by Professor Kennedy. There was unanimous approval of both proposals, subject to drafting revisions.

(f) Territorial Limits of Effective Service.

Professor Kennedy read the draft of subdivision (f) dated 1-23-67. Professor Seligson said he thought that the wording of the second line should be "under subdivision (b), (c), or (d)(1) of this rule", as that would take care of the service under FRCP 4(e) of the person outside the state but within the United States. When asked if reference to subdivision (i) was necessary in subdivision (f)(1), Professor Kennedy replied that it was not, because subdivision (f)(2) only tells when you can serve in a foreign country and (i) deals with mode of service. At this point he read (C) of (f)(2) as providing service "on any person whenever service in a foreign country is authorized." Judge Gignoux questioned the need for the parenthetical language at all. After discussion, it was unanimously agreed that the language could come out. Professor Kennedy stated that 7.4(f) now reads:

"(f) Territorial Limits of Effective Service.

"(1) Summons, complaint, and notice of trial may be served anywhere within the United States. 'United States' as used in this subdivision includes the Commonwealth of Puerto Rico and the territories and possessions to which the Act is or may hereafter be applicable.

"(2) Summons, complaint, and notice of trial may be served in a foreign country (A) on the bankrupt, any person required to perform the duties of a bankrupt, any general partner of an adjudicated partnership, or any attorney who is a party to a transaction subject to examination under § 60d of the Act, or (B) on any party to an adversary proceeding

to determine (or protect) rights in property in the custody of the court, or (C) on any person whenever service in a foreign country is authorized by a federal or state law referred to in Rule 4(e) of the Federal Rules of Civil Procedure."

Professor Riesenfeld suggested the addition of "and associated countries" after the word "possessions" in the last line, and it was agreeable to all to have that addition.

Agenda Item No. 3: - BANKRUPTCY RULE 2.21 - EXAMINATION

(a) Examination on Application.

Mr. Treister would like subdivision (a) of this rule cast in the form that would not require a written application at all but would just allow the court to cause people to appear for examination. If he could not get that much, he would like to have recognition of a local rule saying that the application need not be in writing and that the order might be in the form of a subpoena instead of an additional order. Judge Herzog felt that the practice suggested by Mr. Treister would lead to an abuse of process, and that there ought to be some formality in requiring someone to appear for examination. Professor Kennedy proposed the deletion of the parentheses in the draft dated 12-20-66 and incorporation of the wording therein. Judge Herzog moved for the adoption of the rule. Judge Whitehurst was in agreement, because he said he would like a written order of the court to back him up in case he had to cite anyone for contempt. Mr. Treister asked if it could be argued that the subpoena is the order itself. Professor Kennedy replied that when "written order" is used, it means something more than just the subpoena. Mr. Treister felt that this matter should be spelled out in order to avoid any ambiguity. He said the alternative would be to leave the parenthetical phrase out and say in the Note that there need be no written order other than the subpoena. There was a general discussion concerning the abuse which would be prevalent if it were allowed, absent an application, for anyone in the courtroom to be called to the witness stand.

Judge Gignoux suggested that the first sentence of 2.21(a) read: "Upon application of any party in interest, the court may permit the examination of any person before the court." The second sentence, excluding the parenthetical phrase, would remain as is, and a third sentence which might be added would

be: "The attendance of any such person may be compelled by the use of a subpoena as provided in Rule 45 [of the Federal Rules of Civil Procedure]." Judge Snedecor moved that the proposed language be adopted. Approval was unanimous.

There was extensive discussion on examinations, ancillary and adversary proceedings, and depositions. Professor Kennedy said he thought that the Committee had to resolve whether it wanted the deposition practice to be available even though there was no adversary proceeding. Mr. Treister said that the FRCP deposition rule permits depositions before the action is filed in a very limited category of cases. He assumed that the Committee would want to keep that limitation. He felt that it would be very hard to apply the rule at all unless there was an adversary proceeding going. He said that if depositions were going to be permitted with no adversary proceeding going and with no statement of the issue, then the rule does not fit very well.

Professor Seligson asked if the Committee agreed that, in 2.21(a), the examination must be before the court. Professor Kennedy replied that that seemed to be the issue before the Committee. Following a discussion concerning examinations before the court, Mr. Treister said he did not think that elimination of or retention of "before the court" was really going to reach the problem. Professor Kennedy said that if the Committee should proceed as he planned, there would not be any overriding or superseding of the Second Circuit. The plan is to restrict depositions to adversary proceedings and examinations under 2.21(a) to those before the court. All were in agreement. As to language to be adopted, Judge Gignoux said that there should be reference to Bankruptcy Rule 9.45 rather than to FRCP 45. Professor Kennedy agreed.

(c) Scope of Examination.

Professor Kennedy read the draft of subdivision (c) dated 12-20-66. Judge Whitehurst moved for its adoption with the word "relevant" left in the last sentence. There was extensive discussion on the meaning of "transactions". As to the second sentence, Professor Joslin would like to have reference to federal law eliminated. Mr. Treister suggested that the wording be, "Despite any marital relations privilege to the contrary, a spouse of the bankrupt may be examined concerning . . . ." Professor Kennedy said he would handle the wording. He read the following language for the second

sentence of 2.21(c): "The spouse of a bankrupt may be examined concerning such spouse's actions affecting the estate with or for the bankrupt or to which the spouse is a party, any marital relations privilege to the contrary notwithstanding." After a few suggestions as to language changes, Professor Kennedy said that what he had at that time was: "Notwithstanding any marital relations privilege, the spouse of the bankrupt may be examined concerning such spouse's transactions with or for the bankrupt or any other actions of the spouse affecting the estate." Professor Riesenfeld moved for the adoption of this version. A majority favored this proposal. Judge Shelbourne was opposed, as he felt that the spouse should not be required to testify.

(g) Service of Order for Examination.

It was decided that the second sentence of subdivision (g) is not needed. After hearing various suggestions, Professor Kennedy said that the first sentence now read: "An order to attend for examination may be served on the bankrupt anywhere in the same manner as a paper may be served on a party under Bankruptcy Rule 7.5." Mr. Treister asked if Professor Kennedy thought that the new sentence added to 2.21(a) belongs there or in 2.21(g). Professor Kennedy said that if the sentence were moved, the title of (g) would have to be changed. Mr. Treister suggested: "(g) Compelling Attendance for Examination." Professor Seligson pointed out that Bankruptcy Rule 9.45 was being brought in, but that Rule 2.21 was dealing with attendance only. He wanted to know about incorporation of reference to the production of documents. He thought this subject matter should be included. Professor Kennedy read 2.21(g) as: "(g) Compelling Attendance for Examination and Production of Documentary Evidence. An order to attend for examination and to produce documentary evidence may be served on the bankrupt anywhere in the same manner as a paper may be served on a party under Bankruptcy Rule 7.5. The attendance of any person for examination and the production of documentary evidence may be compelled by use of subpoena as provided in Bankruptcy Rule 9.45." Professor Seligson said that it should be made clear that the bankruptcy rule meant the 100-mile limitation and that the words "for hearing or trial" should be added at the end of 2.21(g). Judge Gignoux said that under the language of the first sentence, the court might say that the subpoena can be served anywhere in the world without regard to the 100-mile limitation. Professor Kennedy said the word could come out, because an earlier suggestion was that "Territorial Limits" be included in the title

of the subdivision had been abandoned. He agreed to take "anywhere" out and to put in a Note that there are no territorial limits on service of an order on a bankrupt. Professor Kennedy read the language as proposed to be adopted as: "(g) Compelling Attendance for Examination and Production of Documentary Evidence. An order to attend for examination and to produce documentary evidence may be served on the bankrupt in the same manner as a paper may be served on a party under Bankruptcy Rule 7.5. The attendance of any person for examination and production of documentary evidence may be compelled by the use of subpoena as provided in Bankruptcy Rule 9.45 for hearing or trial." Professor Seligson moved for the adoption of 2.21(g) as read. Approval was unanimous.

Agenda Item 4: PROPOSED BANKRUPTCY RULE 9.45 - SUBPOENA

Professor Kennedy read what had been approved at the last meeting [page 27 of the Minutes of the October 1966 Meeting]. Mr. Treister suggested that subpoenas should be issued by the bankruptcy judge - not the clerk of the court. He said the wording could be: "shall be issued by the bankruptcy judge or in his name by a clerk." After much discussion, Judge Gignoux asked whether the subpoena issued by the clerk in the referee's office was considered to be an order of the referee or an order of the district court. He thought it was important to cover that point, because the contempt problems would be different. Professor Seligson moved that the reporter's language containing the incorporation of the addition of the subpoena to be issued in the name of or under the authority of, whichever is more appropriate, the bankruptcy judge. The motion was not finished as Professor Seligson was not sure of wording.

The meeting was adjourned at 5:30 p.m. and was resumed on Thursday at 9:00 a.m.

Professor Kennedy read 9.45 as now proposed: "Rule 45 of the Federal Rules of Civil Procedure applies in bankruptcy cases except that subpoenas may be issued in the name or under the authority of the bankruptcy judge and need not be under the seal of the court." He suggested "shall" rather than "may". Judge Herzog moved for that substitution. There were no objections to the rule as proposed.

Professor Joslin suggested that there be a Note stating that anytime "judge" appears in the Rules of Federal Civil Procedure and the rule is incorporated in the bankruptcy rules, it means "bankruptcy judge". Professor Kennedy thought this might be a wise thing and a safeguard, and he would put it in Rule 9.1.2.

2.21(e) Mileage for Bankrupt.

Professor Kennedy said that he had decided that probably the proviso of § 41a of the Bankruptcy Act ought to be incorporated in this subdivision, somewhat as follows: "A person other than a bankrupt shall not be required to attend an examination before a bankruptcy judge unless his lawful mileage and fee for one day's attendance shall be first paid or tendered to him." He felt this was a better place for the proposition than in a rule on contempt. The second sentence of 2.21(e) would be the present wording and the subdivision then would be entitled "Mileage". He said he would define "bankrupt" for the purposes of all the rules in Part 2. There were no objections to Professor Kennedy's proposal, and it was thereby adopted.

Agenda Item 5: PROPOSED BANKRUPTCY RULE 2.21.1 - APPREHENSION, REMOVAL, AND RELEASE OF BANKRUPT

(a) Warrant and Bail to Compel Attendance for Examination.

There was extensive discussion of the need for a verified application. Judge Herzog moved for approval of the proposed requirement of a verified application. Professor Joslin seconded. There was unanimous approval.

Professor Kennedy said that he favored omitting the parenthetical sentence, because it contemplated that there would be a hearing without any notice before the bankruptcy judge himself. Judge Whitehurst suggested: "If, after hearing, the court finds the allegations to be true and that it is necessary, the court may thereupon examine him or cause him to be examined or shall fix conditions including bail for insuring his attendance for further examination to commence within ten days." Judge Herzog said the language should be "and/or shall fix conditions . . . .", as he did not want there to be mutually exclusive alternatives. Judge Whitehurst did not object.

Professor Kennedy said that the Committee, at the last meeting, felt that the parenthetical sentence was desirable. Mr. Nachman stated that if the Committee was going to authorize that the bankrupt be apprehended and brought before the bankruptcy judge, the judge should not be precluded from trying to get some essential facts to establish the basis for the emergency, which he might act on later. Professor Kennedy said that Mr. Nachman met the point which he had raised. Judge Herzog moved that the parentheses be removed and the language therein be retained. There was unanimous approval. Judge Herzog also moved that the parentheses in the last sentence be removed and the language therein be retained. There was no objection.

Mr. Treister asked what "it is necessary" referred to in the last sentence of the subdivision. Professor Kennedy replied that it means that conditions shall be fixed only when "it is necessary" to insure further attendance. Mr. Treister felt that the meaning was not clear and suggested that, to clarify the meaning, the words "the allegations to be true and" should come out. There was further discussion of the exact meaning of the last sentence of 2.21.1(a). Professor Kennedy read § 3146 of the Bail Reform Act and explained that "it is necessary" has reference to the need to have the bankrupt for further examination and to have conditions to assure his attendance.

There was a lengthy discussion about the time within which the bankrupt could be examined. Mr. Treister suggested that language to the effect of "as quickly as possible" be inserted. Professor Kennedy read this draft: "The court shall thereupon examine him or cause him to be examined as soon as possible, but in any event, the examination shall be commenced within 10 days following his apprehension." Professor Riesenfeld felt that language concerning the hearing should come before that concerning the examination. Professor Kennedy felt that perhaps Professor Riesenfeld's suggestion and Mr. Treister's idea could be met by having the language read: "If after hearing the court finds the allegations to be true, the court shall thereupon examine him or cause him to be examined as soon as possible, but in any event, the examination shall be commenced within 10 days following the apprehension. If it is necessary, the court shall fix conditions for insuring his attendance for further examination and for his obedience to all lawful orders made in reference thereto." Judge Forman

said that seemed to be the sense of the Committee, and the drafting would be left to the reporter.

Judge Whitehurst suggested that some provision be put in the rules with regards to the payment of the expenses of the marshal involved in issuing the warrant and removing these men. He thought it ought to be done just as expenses are borne by the Department of Justice in criminal cases. Otherwise, it ought to be made clear that the bankruptcy estate or the attorney who files the application has got to bear it. Judge Gignoux questioned whether this suggestion came under practice and procedure. Professor Kennedy felt that it was a procedural proposal, but he questioned whether the Committee ought to do this or whether it should not be done by the Judicial Conference or Congress. Title 28, U.S.C., § 1911 and § 48b of the Bankruptcy Act were given as references to show that the marshals could be paid without the bankruptcy rules having to say anything about it.

Professor Joslin suggested the use of the words "abscond or conceal himself" in lieu of "about to leave the district in which he resides or has his principal place of business" in subdivision (a). After a short discussion on the meaning of "abscond", Professor Kennedy suggested the substitution of "the bankrupt intends to avoid examination." Judge Herzog felt the language should be left as proposed originally. Judge Whitehurst moved that the words "about to leave the district in which he resides or has his principal place of business" be stricken and that in lieu thereof, the following be inserted: "about to leave the United States". Professor Joslin moved that Professor Kennedy's suggestion for substituting "the bankrupt intends to avoid examination" be adopted. Mr. Treister felt that the suggested language was too broad. After a short discussion, a vote was taken on the suggested phraseology, "about to leave his residence or principal place of business to avoid examination." A majority approved this language.

(b) Removal.

Professor Kennedy read the proposed subdivision of the draft dated 1-22-67 and said that it was based on the scheme of FRCrP 40. Professor Seligson doubted that the words "under the Act or" are necessary. Professor Kennedy said that he would take note of the suggestion and, when the contempt rule was reached, attempt to correlate that rule with this one.

Mr. Treister asked if Professor Kennedy recommended that the parenthetical clauses stay in. Professor Kennedy replied affirmatively. There was a short discussion on whether or not the bankrupt should be brought before the commissioner. Judge Gignoux suggested that instead of spelling it out in the first paragraph, it should just state that the bankrupt may be apprehended in accordance with the provisions of FRCrP 40. There was extensive discussion on the provisions of the Criminal Rule. Professor Kennedy said that there was much in that rule which he felt should not be in this bankruptcy rule. Judge Gignoux withdrew his suggestion. Professor Seligson moved that it be left to the bankruptcy judge to decide on the removal question. This proposal was approved unanimously.

Professor Kennedy said that his general inclination was now to take out the parenthetical words. Professor Joslin asked if the rule could be written without use of the words "apprehend" or "warrant". He suggested in lieu of those words that "take custody of the bankrupt" and "order" be used. Professor Kennedy said that he would be glad to try these substitutions unless any of the Committee members felt otherwise.

Judge Gignoux asked whether under clause (1) the wording should be that "the bankrupt shall be brought forthwith before the nearest court of bankruptcy." Mr. Nachman said the language in this clause was rather ambiguous. Professor Kennedy said that he would put in a comma after the word "state" in the first sentence, and it was agreed that that would be helpful. Mr. Nachman said, however, in support of Judge Gignoux's point, he wondered if clause (1) should not be left as it was (without comma) so that if the bankrupt were apprehended at a place less than 100 miles from the place of the issuance of the warrant, he would be brought before the issuing court; if more than 100 miles, regardless of whether or not in the same state, he should be brought before the closest bankruptcy judge. Professor Kennedy said this would call for reconstruction of (1) and (2). Judge Gignoux stated that he just wanted (1) to be parallel with FRCrP 40(a). There was further discussion, and Professor Kennedy thought perhaps the rule could say: "If apprehended less than 100 miles from the place of issue of the warrant, the bankrupt shall be taken before the court that issued the warrant. If apprehended at a place 100 miles or more from the place of issue of the warrant, the bankrupt shall be taken without unnecessary delay before the nearest bankruptcy judge." Professor Seligson moved

that this language be adopted. Mr. Nachman seconded. This motion was approved unanimously. Mr. Treister pointed out that the introductory paragraph would have to be reworded. Professor Kennedy said he would have to tamper with it.

Judge Snedecor thought that Professor Joslin's suggestion to use "order" for "warrant" and to avoid the use of the words "apprehension" or "arrest" should be considered. There was unanimous approval of Professor Joslin's suggestion. Professor Kennedy asked if the rest of the language of (2) was all right and said that he would take out the parenthetical language contained within the last four lines. There were no objections. Professor Kennedy focused attention on subdivision (3) and said that he thought it was unnecessary. Judge Gignoux moved for the elimination of subdivision (3). The deletion was approved unanimously.

Professor Riesenfeld stated at this point that he thought that the problem of the required certified number of copies of the order of removal should be taken care of. Professor Kennedy said that he would work it out.

(c) Conditions of Release.

Professor Kennedy read the draft of the proposed subdivision dated 1-22-67 and materials listed in the cross-references (Bankruptcy Act § 10a and 18 U.S.C. § 3146). He thought perhaps he should state more conditions for which the court should have regard. Mr. Treister suggested that Title 18, U.S.C., § 3146, would have to be referred to for other purposes, and perhaps it might be said that the factors within that section should be taken into consideration. After a short discussion, it was agreed that the text of subdivision (c) should contain a reference to the guidelines of Title 18, U.S.C., § 3146(a) and (b), and the drafting was left to the reporter.

(d) Release from Imprisonment to Testify or Perform Duties Under Act.

Mr. Treister suggested the wording at the end should be "under the Act" since the Act is really the authority for imposing all duties. Judge Gignoux suggested the wording would be: "The court may issue a writ of habeas corpus to bring the bankrupt before the court for examination." Professor Joslin felt that "habeas corpus" is not necessary and he suggested:

"The court upon application may order a bankrupt who is under arrest or imprisoned to be produced before the court for examination." Professor Riesenfeld said the word "release" is incorrect, because the person is not really released; he is just transferred from one type of custody to the other. After another short discussion, Professor Kennedy suggested this wording: "The court may order a bankrupt who is under arrest or imprisoned to be produced before the court for examination or to testify or to perform any other duty imposed upon him under the Act." Mr. Treister moved that "habeas corpus" be retained. Judge Gignoux seconded. The vote was favorable, 10 to 2. Professor Kennedy read the approved language as: "The court may issue a writ of habeas corpus to being the bankrupt before the court for examination or to testify before the court, or to perform any other duty imposed upon him under the Act." Professor Riesenfeld moved that the title be: "Habeas Corpus to Testify or Perform Other Duties Under the Act." Judge Whitehurst seconded. There was unanimous approval. [See later action.]

Professor Kennedy then asked if the Committee wanted to pursue the possibility of enabling the court to order persons other than the bankrupt to appear before the court for examination or to testify. Mr. Nachman said he thought it was worth looking into. The majority felt the same way. Thus, Professor Kennedy was to do some research.

After a tangential discussion on witnesses and contempt, Professor Kennedy explained that the language last approved would not go under Bankruptcy Rule 2.21 but would be a new rule. Mr. Treister suggested that the sentence start out with "The bankruptcy judge", and Professor Kennedy agreed to that. Mr. Treister also suggested that the second "before the court" should be stricken. All agreed. There was a very short discussion of the caption and it was agreed to have it read: "Habeas Corpus for Performance of Duties Under the Act".

(e) Definition of Bankrupt.

Professor Kennedy thought this rule should also not be a part of 2.21.1 but should be a separate rule, such as Bankruptcy Rule 2.50, to make the definition of "bankrupt" general applicable under Part II. Mr. Treister suggested the insertion of "controlling" before the word "stockholders". Mr. Nachman would rather leave it up to the judgment of the referees and leave the wording the way the reporter proposed it. Professor Seligson would leave it as the reporter has it.

Mr. Treister wanted the wording to be: "For the purpose of this rule, if a bankrupt is a corporation, 'bankrupt' includes its officers, members of its board of directors or trustees or of a similar controlling body, or any person in control." Professor Joslin thought that "controlling stockholders" should be included, because the meaning of "a controlling stockholder" is different from "a person in control". Professor Seligson moved for the adoption of subdivision (e) with the words "a controlling" used instead of "its" in the 4th line and the singularizing of the words "stockholders" and "members". Professor Riesenfeld wanted the word "other" before "person" in the 4th line. Professor Seligson agreed to that, and Professor Kennedy said he would add "other" before "person" in the last line also. Professor Kennedy said he planned to make this definition applicable to Rules 2.21 and 2.21.1 and any other rule which deals with testimony or examination. He asked if the Committee wanted the definition to be applicable in those circumstances where the bankrupt is released to perform a duty under the Act. The consensus was negative.

At this time, Judge Forman explained that he had to leave early, and he turned the meeting over to Judge Gignoux.

After adjournment for lunch at 1:05 p.m., the meeting was resumed at 2:00 p.m.

PROPOSED BANKRUPTCY RULE 4.30. RELEASE OF BANKRUPT FROM ARREST OR IMPRISONMENT FOR DEBT.

Professor Kennedy gave background for this proposed rule. Mr. Nachman asked, absent the first parenthetical sentence, what the purpose of the rule would be. Professor Kennedy replied that the main purpose is to indicate that by the abolition of General Order 30 it was not intended to take away the possibility of issuance of habeas corpus by a bankruptcy court. Mr. Treister thought that the Committee should not have the rule at all. He would not want to adopt a rule that would be contrary to the policy of 28 U.S.C. § 2254; if any rule were to be adopted, it should start off, "Subject to the provisions of 28 U.S.C. § 2254, ..." After further discussion, Mr. Treister moved that General Order 30 be repealed, that no rule be enacted in substitution for it, and that in the Note to the repealing action it be explained that the Committee is not attempting to change the substantive law. Mr. Nachman seconded. The motion was carried on a vote of 5 to 4.

Agenda Item 6: PROPOSED BANKRUPTCY RULE 4.5 - STAYS OF ACTIONS AGAINST BANKRUPT.

Professor Kennedy read proposed Rule 4.5. Mr. Treister expressed the opinion that these rules as a single group are the most important ones, as a practical matter, that the Committee is going to adopt. The rule which he prefers would be limited to a stay of actions on claims which are scheduled, and it would be an automatic stay only as to scheduled claims other than those which fall under Sections 1, 5, and 6 of Section 17 of the Bankruptcy Act. The stay would remain in effect perpetually, unless the bankrupt lost his right to a discharge or the enjoined party got the stay vacated through application to the bankruptcy court. The burden of proof would then be on the bankrupt to justify the continuance of the stay and the secured party would only have to make a prima facie showing that the claim would be nondischargeable. This provision would be an attempt to meet the contention that the determination of nondischargeability is being shifted from the federal court to the state court. If a prima facie showing is made in the federal court, then the state court is the one that makes the final determination. The discussion therefor applied to in personam cases. Mr. Treister proposed the insertion of "scheduled" in (a); adoption of Alternative 2 for (b); and elimination of (c) and (d). Judge Snedecor was very much in favor of the automatic stay if it is within the rule making power. Professor Kennedy replied that Civil Rule 23 is a good example of how far rule making can go. Professor Shanker said that if the Committee felt that it could go as far as had been proposed, the Committee should go the whole way and set up a rule which effectively gives the bankruptcy court full power to make all determinations about the dischargeability questions.

Professor Riesenfeld said that one could envisage a rule providing for a stay as a matter of law, i.e., that a petition would operate as an automatic stay and that any action to lift the interdict would be up to the state courts. The proposal that the automatic stay must be handled by the bankruptcy court, if there is any question, would be jurisdictional. The question of an automatic stay if it would be left for the state courts to decide upon would not seem to be a matter of jurisdiction but would be a matter of substantive law.

Mr. Treister moved the Committee adopt a rule along the lines of the proposed Bankruptcy Rule 4.5, which would provide for an automatic stay of state court proceedings in the circumstances indicated. Judge Snedecor seconded the motion. Professor Kennedy felt that it was a questionable thing to provide for an automatic stay, particularly one that continues on indefinitely subject to vacation only if the creditor comes into the bankruptcy court. After a short discussion as to state practice with regard to automatic stays, a vote was taken on Mr. Treister's motion. Eight favored the motion, and one "refrained" from voting. Professor Kennedy said he would try to redraft a procedural rule which would have the effect of an automatic stay.

After a recess, Professor Kennedy read this new draft of 4.5(a): "The filing of a petition commencing a bankruptcy case shall stay any action pending or thereafter commenced against the bankrupt or the enforcement of any judgment against him if the action is founded on a scheduled debt other than one not dischargeable under clause (1), (5), or (6) of Section 17(a) of the Act." Mr. Nachman could see no reason why the debt should be scheduled. Mr. Treister replied that unscheduled debts are not dischargeable and that it is not desired to stay actions on nondischargeable claims. During a lengthy discussion, Professor Riesenfeld said he thought the rule should be broadened but confined to natural persons. Judge Whitehurst did not think there ought to be an automatic stay prior to adjudication. There was a short discussion on Professor Riesenfeld's suggestion of confining the rule to natural persons. All agreed to limit it to natural persons. Professor Seligson moved that the stay be effective upon the filing of a petition in voluntary cases but only upon adjudication in involuntary cases. Professor Riesenfeld seconded. The motion was carried, 8 to 1.

Judge Herzog moved that the stay apply to actions found upon provable debts. Professor Seligson seconded. There was unanimous approval for the last three lines of 4.5(a) to read: "if the action is founded on a provable debt other than one not dischargeable under clause (1), (5), or (6) of section 17a of the Act." Mr. Treister felt that the word "unsecured" should be left in also, because Rule 4.5 does not deal with secured claims at all, although secured claims are provable claims. It was not intended, he said, by this rule to stay an action to enforce a lien on property. Judge Herzog moved that the word "provable" be changed to "unsecured provable". Judge Whitehurst seconded. This motion passed, 8 to 1. Professor Kennedy asked if the Committee thought that the parenthetical words "or the enforcement of any judgment against him" are necessary. Judge Snedecor moved that the language in parentheses be retained. Professor Joslin seconded. There was unanimous approval.

(b) Duration of Stay.

Professor Kennedy read Alternative #2 for subdivision (b) and stated that the words, "if an adjudication is made", would be taken out of the 4th line. Professor Seligson did not feel that the language in the first three lines was quite clear in its reference to stays being vacated except as limited under subdivision (e). It was suggested and agreed that the words "or modified" should be added in the first sentence after the word "vacated". Mr. Treister suggested the following wording:

"Unless vacated or modified by the court under subdivision (d) or (e) of this rule, the stay shall continue until dismissal of the case or until the bankrupt is denied his discharge or the bankrupt waives or otherwise loses his right to a discharge." Professor Joslin moved that the wording be adopted. There was unanimous approval.

(c) Action on Unscheduled Claim.

Professor Kennedy read proposed subdivision (c). Mr. Treister felt that the last three lines should come out. After a short discussion on improperly filed schedules, Judge Herzog moved the deletion of the last three lines. Professor Riesenfeld was for the deletion of the "unless" clause, but he felt that "properly" should be inserted before "scheduled". Professor Kennedy said he would go along with the word "duly" which had been suggested, but he felt that that, too, was not necessary. Professor Riesenfeld said he would be satisfied with "duly scheduled". Judge Whitehurst moved that the word "duly" be inserted before "scheduled". Professor Riesenfeld seconded. The motion was lost, 2 to 7.

After extensive discussion between Professor Riesenfeld and Mr. Treister, vote was taken on the motion to delete the "unless" clause [the last three lines of the subdivision]. This motion passed unanimously. Professor Riesenfeld suggested the word "terminate" for the words "not operate", and Professor Kennedy felt that would be all right. Judge Snedecor said he wished it could be arranged to include the word "unscheduled", because later on when the schedule is amended, the debt would be a scheduled debt. Professor Kennedy said that as Judge Snedecor had pointed out, schedules were amended quite frequently, and if the word "terminate" is used rather than "not operate", some people would be left out, and that would be unfortunate. It was decided to use "not operate".

After further discussion, Judge Snedecor moved that the proposed wording be: "Notwithstanding subdivision (b) the stay authorized by this rule shall not operate as against a creditor whose debt has not been scheduled within 30 days on or before the date set for the first meeting of creditors." Professor Riesenfeld said that the proposed wording changed everything which had been determined thus far. He thought the Committee had determined that the stay should operate against a creditor until the date of filing, and that it should operate between the filing and the nonscheduling. Mr. Treister said that the point just made was a good one. The stay would operate until the schedule is filed in any event, and if a

claim is omitted from the schedule when first filed, an action thereon would still not be reinstated unless the claim is not scheduled before the first meeting of creditors. Mr. Treister then suggested that the wording be: "Notwithstanding subdivision (b) the stay authorized by this rule shall terminate at the time of the first meeting of creditors as against any creditor whose debt has not been scheduled by that time." After further discussion and agreement by Judge Snedecor for change in his proposed language, Judge Gignoux read the following proposed language: "Notwithstanding subdivision (b) the stay authorized by this rule shall terminate 30 days after the first date set for the first meeting of creditors as against any creditor whose debt has not been scheduled by that time." Judge Snedecor moved that the language be adopted. Judge Whitehurst seconded. There was unanimous approval.

Mr. Treister suggested a few changes in the opening language in subdivision (b) such as "Unless vacated under subdivision (d) or except as terminated or modified under subdivision (c) or (e)." Professor Kennedy said that he would consider that language.

(d) Vacation of Stay.

Mr. Treister moved that subdivision (d) be deleted. Judge Snedecor seconded. The motion was lost, 3 to 6.

The meeting was adjourned at 5:02 p.m. and was resumed on Friday at 9:30 a.m.

(e) Relief from Stay.

Professor Kennedy read subdivision (e). Mr. Nachman suggested the wording, "For good cause shown after hearing this stay may be terminated by the court." After discussion, vote was taken on this reading of the subdivision: "Upon a motion filed by a creditor against whom a stay provided by this rule is effective, the court after hearing may for good cause shown terminate or annul the stay as to such creditor," and the remaining proposed language to be put into a Note, which would say that it constitutes "good cause shown". This proposal was favored unanimously. At this point, it was agreed to revoke subdivision (d).

Discussion ensued on the need to have a provision that it is not intended to take away authority already in existence. Mr. Nachman moved approval of this language: "Nothing in this rule precludes the issuance of, or relief from, any stay, injunction, or restraining order upon the application of any party in interest when otherwise warranted." Judge Shelbourne seconded. This motion was unanimously approved.

(f) Lien Enforcement Proceedings After Discharge.

There was considerable discussion on this subdivision, and it was agreed that it should be eliminated.

PROPOSED BANKRUPTCY RULE 6.5 - STAYS (OR ORDERS) PROTECTING ESTATE

(a) Stay Against Lien Enforcement Proceedings.

Professor Kennedy read subdivision (a) and made a few language changes as he went along. It was suggested that "adjudication of a bankrupt" be used in lieu of "filing of a petition". However, this was not acceptable. After a very lengthy discussion which led to several changes of the draft, Judge Whitehurst moved that the language, as amended, be adopted. It was seconded. It was unanimously carried to have Rule 6.5(a) read as follows: "The filing of a petition shall stay (1) any proceeding or act to enforce a lien against property of the estate in the custody of the court commenced after bankruptcy or (2) any proceeding to enforce a lien against the property of the bankrupt obtained within four months before bankruptcy by attachment, judgment, levy, or other legal or equitable process or proceedings." There was to be a Note explaining the scope of the rule, including, its applicability to the enforcement of security interests as well as other funds of liens and to enforcement commenced before bankruptcy.

(b) Duration of Stay.

Professor Kennedy read alternative drafts of subdivision (b). Judge Snedecor moved that the first alternative be adopted. Judge Whitehurst seconded the motion. It was unanimously favored. After an extended discussion, this proposed language was read: "Unless terminated or modified under subdivision (c) of this rule, the stay provided hereby shall continue until the case is dismissed or closed or until the court approves the trustee's setting apart as exempt, abandoning or transferring the property subject to the lien." The principles contained therein were approved by the majority, and the reporter is to draft appropriate language.

(c) Relief from Stay.

Professor Kennedy read subdivision (c). Professor Seligson moved that Rule 6.5(c) be amended to include notice to be given to petitioning creditors if there is no receiver or trustee. Mr. Nachman seconded. The suggestion was unanimously approved. It was also suggested that the words "and what efforts have been made to give notice" be added after "thereon" in the sixth line. Judge Snedecor moved that (c) be adopted as amended. Mr. Nachman seconded. It was unanimously approved. Subdivision (c) as so adopted read as follows: "A person against whom a stay provided by this rule is effective may move for relief from its operation. Unless it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result before notice can be served and a hearing held thereon, what efforts have been made to give notice,and the reasons supporting the movant's claim that notice should not be required, notice of the motion shall be served on the receiver or trustee or,if there is no trustee, on the petitioning creditors, and a hearing thereon held as promptly as possible. The court may continue, terminate, or modify the stay on such terms as may be appropriate under the circumstances."

(d) Injunctive Orders to Preserve Status Quo.

Professor Kennedy read subdivision (d). There was extensive discussion. Professor Seligson moved for the adoption of the rule proposed [one parallel to Bankruptcy Rule 4.5(e)] and the elimination of the originally proposed subdivision (d). Judge Snedecor seconded. There was unanimous approval.

PROPOSED BANKRUPTCY RULE 7.65 - INJUNCTIONS

Professor Kennedy read the proposed rule and FRCP 65(b) and (c). After a short discussion, Professor Shanker proposed that the reference to subdivision (b) of FRCP 65 be eliminated. There was considerable discussion as to why it is desirable to have compliance with subdivision (b), and Mr. Treister moved that this proposed rule be approved with the proposed amendment of elimination of the reference to subdivision (b) of FRCP 65 and that the reporter consider the impact of this action on Bankruptcy Rule 7.1. Mr. Nachman seconded. There was unanimous approval.

CIVIL RULE 65 - INJUNCTIONS

Professor Kennedy read his Note concerning this rule. Mr. Treister moved that the proposed amendment to Civil Rule 65 not be recommended to the Civil Rules Committee. Professor Riesenfeld seconded. After discussion, the proposal was approved unanimously. Professor Riesenfeld did not feel that the Bankruptcy Committee should make recommendations to another Committee.

Agenda Item 7: PROPOSED BANKRUPTCY RULE 4.10 - APPLICATION FOR DISCHARGE

After suggestions had been received, the proposed rule was revised to read: "The adjudication of any natural person, except a corporation or a partnership, shall constitute an application for a discharge. Any bankrupt other than a natural person may file an application for a discharge in the court in which the case is pending within six months after its adjudication." Judge Whitehurst moved for approval of the proposed rule. Mr. Nachman seconded. The rule was approved unanimously

PROPOSED BANKRUPTCY RULE 4.11 - WAIVER OF DISCHARGE

(a) Waiver by Failure to Apply.

It was moved and seconded that this subdivision be eliminated from Rule 4.11, this subject matter being covered in Rule 4.10. The motion was unanimously approved.

(b) Express Waiver.

Because original subdivision (a) was eliminated, this subdivision was relettered. After discussion, Mr. Nachman moved for the approval of this subdivision in the following terms: "Any bankrupt may waive his right to a discharge by a writing filed with the court." Judge Snedecor seconded. The motion was approved unanimously.

The meeting adjourned for lunch at 1:00 p.m. and resumed at 1:55 p.m.

(c) Waiver by Default.

After extensive discussion, Professor Seligson moved and Judge Herzog seconded the motion that this subdivision be put into Bankruptcy Rule 4.12 with the following wording: "A complaint objecting to a bankrupt's discharge under this rule may, at any time before discharge is granted, file a complaint objecting to his discharge on the ground that the

bankrupt waived his right thereto under section 14e of the Act."

PROPOSED BANKRUPTCY RULE 4.12 - COMPLAINT OBJECTING TO DISCHARGE

Mr. Treister moved that Rule 4.12(a) be approved as amended by the reporter. Professor Seligson seconded. The subdivision was approved unanimously to read as follows: "The court shall make an order fixing a time for the filing of a complaint objecting to the bankrupt's discharge. The time shall be not less than 30 days after the first date set for the first meeting of creditors." It was agreed that the substance of the first sentence of the draft of 1-17-67 should be incorporated in a Note.

(b) Notice of Time for Filing Objection.

After a short discussion, Judge Herzog moved that subdivision (b) be approved as amended. The motion, duly seconded, was passed unanimously. As approved the subdivision reads: "The court shall give at least 30 days' notice by mail of the time fixed for filing a complaint to object to the bankrupt's discharge to (1) the creditors in the manner prescribed by Bankruptcy Rule 2.10; (2) the trustee, if any, and his attorney, if any, at their respective addresses as filed with the court; and (3) the United States attorney of the judicial district in which the case is pending."

(c) Extension of Time.

Judge Herzog moved for approval of subdivision (c), and Judge Whitehurst seconded. The Committee approved unanimously the subdivision as proposed by the reporter.

(d) Opposition by Trustee.

Professor Riesenfeld moved for the deletion of subdivision (d). The motion, duly seconded, passed unanimously.

(e) Opposition by United States Attorney.

Mr. Treister suggested that subdivision (e) be eliminated On a motion by Judge Herzog, seconded by Judge Whitehurst, the deletion was unanimously approved. It was agreed that this action was not to be taken as one favoring deletion of section 14d of the Act.

PROPOSED BANKRUPTCY RULE 4.13 - HEARING ON COMPLAINT OBJECTING TO DISCHARGE

(a) Applicability of Rules for Adversary Proceedings.

Judge Whitehurst suggested that subdivision (a) be deleted and a Note appended to Rule 4.12(a) containing the substance of this subdivision. There were no objections.

(b) Burden of Proof.

There was an extended discussion of this proposed subdivision. Mr. Treister moved that the draft of October 22, 1966, with certain amendments be approved. Judge Herzog seconded. The motion was lost on a vote of 5 to 4. Professor Riesenfeld moved that it be the sense of the Committee that the Bankruptcy Rules include no provision for burden of proof but that section 14c's last sentence should be repealed in order to permit the courts to work out a solution case by case. Mr. Treister seconded the motion. The motion was lost on a vote of 3 to 6. It was agreed that final action on this subdivision would be deferred in order for the reporter to make further analysis.

A proposal by Referee Seidman to withhold discharge until at least six months after bankruptcy and the filing of an affidavit of compliance with the Act was read by the reporter. After discussion the proposal was not approved.

PROPOSED BANKRUPTCY RULE 4.14 - NOTICE OF FAILURE TO OBTAIN DISCHARGE

Professor Kennedy read the draft of the proposed rule dated 12-31-65. After a short discussion, Mr. Treister moved that the subdivision be amended to read: "If there is a waiver of discharge, or if an order is entered denying or revoking a discharge, the court shall, within thirty days after the waiver or the entry of the order, give notice thereof to the creditors in the manner provided by Bankruptcy Rule 2.10." Professor Joslin seconded. There was unanimous approval of the rule as amended. It was agreed that the Note should clarify the point that the notice is not required when a corporation or partnership fails to apply for a discharge.

PROPOSED BANKRUPTCY RULE 4.15 - REVOCATION OF DISCHARGE

Mr. Treister moved that there be no rule on revocation. This motion was seconded by Mr. Nachman. After a short discussion, Bankruptcy Rule 4.15 was deleted by a vote of 7 to 2.

Agenda Item 8: PROPOSED BANKRUPTCY RULE 4.1 - EXEMPTIONS

(a) Application for Exemptions.

Professor Kennedy read subdivision (a). It was moved and seconded that it be approved in the following form: "A bankrupt shall file a claim for his exemptions in the schedule of his property required to be filed by Bankruptcy Rule 1.7." Approval was unanimous.

(b) Trustee's Duty.

It was felt that 5 days was too short a period for the filing of the trustee's report, and it was agreed that the time should be changed to 15 days. The language "receiving notice of his appointment" was considered to be rather vague, and it was agreeable to all that the language be changed to read "trustee's receipt of notice of his appointment". Mr. Treister pointed out that the last sentence of the subdivision should refer to Bankruptcy Rule 9.6(b) rather than to FRCP 6(b). This was agreed to. Judge Herzog moved that subdivision (b) as amended be approved. Judge Whitehurst seconded the motion. Approval was unanimous.

(c) Complaint Objecting to Bankrupt's Claim to Exemptions.

Professor Kennedy said that according to the scheme of this rule, the trustee is the initiator of an adversary proceeding when he does not go along with the bankrupt's claim. Judge Whitehurst moved that the policy of the Committee be that subsection (c) of 4.1 be omitted and that subsection (d) be amended to provide that the bankrupt or any creditor may file a complaint objecting to the report of the trustee setting apart the bankrupt's exemptions. Thereupon trial would be had upon each of those claims. Professor Joslin seconded. After a discussion concerning the generality of the exemptions claimed by bankrupts and the need for scrutiny by trustees, vote was taken on Judge Whitehurst's motion. The motion was approved 6 to 3. Subdivision (c) was thereby deleted, and subdivision (d) was amended by the addition of the words

"The bankrupt and" at the beginning of the first sentence. Because there seemed to be some misunderstanding as to what had just been passed, Judge Shelbourne moved that there be a reconsideration of the motion. On the second vote, the motion passed 5 to 4. Further discussion ensued. Judge Gignoux said that if he understood the motion just passed, the bankrupt would file a claim for exemptions; the trustee would examine that claim and then would file the report with the court in which he would set forth the exemptions allowed and the exemptions disallowed. Then if the bankrupt felt that the trustee acted improperly in disallowing any exemptions, he would file a complaint objecting to the trustee's report. A creditor who felt the trustee acted improperly in allowing an exemption would file a complaint objecting to the trustee's report. If any such complaint was filed, the trustee would file an answer to that complaint, and a hearing would be held by the referee to determine what the legal rights were. Judge Gignoux noted that under Judge Whitehurst's motion there would be three papers - the trustee's report, the bankrupt's complaint, and the trustee's answer. The reporter's proposal contemplated that the trustee would file a report and a complaint, and the bankrupt would file an answer. Judge Snedecor suggested cutting out the report of the trustee and proposed the following provision: "The bankrupt shall be entitled to the exemptions claimed unless the trustee or a creditor, within 15 days after the trustee's appointment, files a complaint objecting to such items as may not be allowable under law." Judge Whitehurst and Professor Joslin withdrew their proposal to permit consideration of Judge Snedecor's alternative. Judge Snedecor said that what he wanted to do was to eliminate the duty of the trustee to make a report and to provide that the bankrupt shall be entitled to exemptions claimed unless the trustee or a creditor within 15 or 20 days after the appointment of the trustee files a complaint objecting to such items as may not be allowable under law. Professor Seligson felt that the time limit for the trustee to object should be 15 days and the time limit for the creditors should be 25 days. Judge Snedecor's proposal was approved by a vote of 6 to 3. The reporter was to undertake the drafting and report on it the next morning.

The meeting adjourned at 5:05 p.m. and resumed on Saturday at 9:20 a.m.

Professor Kennedy read his redraft of the rule on exemptions as follow:

"(a) Application. The bankrupt shall file a claim for his exemptions in the schedule of his property required to be filed by Bankruptcy Rule 1.7.

"(b) Allowance When No Objection. The court shall enter an order allowing the exemptions which have been duly claimed by the bankrupt and to which no objection is filed under subdivision (c).

"(c) Complaint Objecting to Exemptions. A complaint objecting to the bankrupt's claim to an exemption may be filed by the trustee not later than 15 days after the trustee receives notice of his appointment or by a creditor not later than 20 days after the first date set for the first meeting of creditors."

Professor Kennedy said that the amendment rule allows an amendment of schedules as well as other things. He felt that if the Committee wanted 4.1, the rule on amendments would have to be changed. He had drafted an additional paragraph for Rule 4.1 as follows:

"Amendment of Claim of Exemption. If the bankrupt amends the schedule of his property to claim an additional exemption after the trustee is appointed, the court shall allow the exemption so claimed if no complaint objecting thereto is filed by the trustee within 15 days after he receives notice of the amendment or, if no trustee is appointed, by any creditor within 20 days after notice of the amendment is mailed to creditors."

Mr. Nachman questioned whether it was difficult to settle these problems in the traditional manner rather than in an adversary proceeding. He suggested that objections to exemptions not be determined in an adversary proceeding, and that the bankruptcy rule preserve the present practice. Mr. Treister felt that it would cause a lot of trouble for the bankrupt to start the proceeding, and that it was much better to have the trustee start the proceeding. Judge Snedecor liked the idea of having the trustee bring up the point and making it adversary. Mr. Nachman contemplated that the trustee would file a report; anyone who objected would file an objection to that report; and that would formulate the issue. It would not be a formal adversary proceeding,

although the referee could, in his discretion, apply the adversary rules. A vote was taken on Judge Snedecor's motion that 4.1 be revised to read substantially as drafted by Professor Kennedy overnight. Judge Whitehurst seconded. The motion was lost by a vote of 2 to 6, one member not voting.

Mr. Nachman moved that the matter of exemptions which was being considered under Rule 4.1 not be classified as an adversary proceeding, that reference thereto be removed from Bankruptcy Rule 7.1, but that when a referee believes it appropriate in the administration of a case for objections to a claim for exemptions to be determined in an adversary proceeding, he may order the adversary rules to be applied. Judge Herzog seconded. Mr. Nachman stated that he would like to add to his motion that if no objections are filed by the trustee or a creditor, the court shall have the responsibility of either examining into claim of exemptions or seeing that somebody does. At Professor Seligson's suggestion a vote was taken first on the motion that the matter of exemptions not be treated as an adversary proceeding within Rule 7.1 but as a contested matter. The motion passed by a vote of 8 to 1, Mr. Treister being the objector. Judge Gignoux stated that the effect of the passed motion was the elimination of (5) in Bankruptcy Rule 7.1.

Mr. Nachman restated the second half of his motion as follows: That the bankrupt should claim his exemptions; the trustee should examine the bankrupt's claim and file a report setting forth those items which he allows as exempt and those which he disallows as not exempt; that anyone objecting should file an objection to the report within a period of days, to be discussed later; that, in the event such an objection is filed, the court should hold a hearing to determine the objection; and that if no one does object, the court should have the responsibility to examine the exemptions and to determine whether they were properly allowed. After considerable discussion on the motion, the procedure contemplated by the motion was approved by a majority vote, subject to the reporter's redrafting and resubmitting the rule for further discussion. Professor Kennedy said it was his understanding that the last issue of the motion would not be put to a vote at this time, but that he was to draft something which the Committee could either reject, adopt, or modify. Mr. Treister moved that if it should appear to the referee on examination that the allowance of an exemption might be questionable, he should appoint someone else to represent the creditors' interests in whatever mode of proceeding is adopted to resolve the controversy. Mr. Nachman seconded. The proposal was favored unanimously. After a short discussion, it was decided that the reporter should also draft a burden-of-proof rule.

Agenda Item 9: PROPOSED BANKRUPTCY RULE 1.4 - PARTNERSHIP BANKRUPTCY

(a) Voluntary Petition.

Professor Kennedy read subdivision (a) of the draft of the proposed rule dated October 20, 1966, and offered a few amendments. Judge Gignoux did not think that the last sentence was needed, and Professor Kennedy agreed. After a short discussion, the proposal was that the wording read: "A voluntary petition may be filed by all the general partners on behalf of the partnership. Any general partner may join therein on his own behalf." These sentences were approved. Mr. Treister said he did not think there should be a concept of a joint petition. He moved that subsection (a) be deleted. Professor Joslin seconded. Professor Riesenfeld felt that something should be said about the voluntary petition of a partner. Mr. Treister replied that Bankruptcy Rule 1.2 covers every kind of a bankrupt. Professor Kennedy said that maybe it was necessary to say something about voluntary petitions being filed only by the general partners. Mr. Treister amended his motion to have (a) read as follows: "A voluntary petition may be filed by all the general partners on behalf of the partnership." It was seconded and unanimously carried.

(b) Partner's Petition Against Partnership.

Professor Kennedy read and made a few amendments to his proposed language. Judge Whitehurst wanted "(or alleged general partner)" after the word "partner" in the last sentence. There was no objection. Professor Riesenfeld moved for approval of subdivision (b). Judge Snedecor seconded. There was unanimous approval of 1.4(b) which reads as follows:
"(b) Partner's Petition Against Partnership. A petition may be filed by fewer than all the general partners to have a partnership adjudged bankrupt under § 5(b) of the Act. A petition filed under this subdivision shall be in triplicate, but if more than one general partner does not join in the petition, an additional copy for each such partner shall be filed. The petition for adjudication of the partnership may be contested by any general partner (or alleged general partner) who is not a petitioner."

At this point, Professor Kennedy returned to proposed Bankruptcy Rule 1.7.2 and said that he would like to change "partnership petition" in the second sentence to read "petition against a partnership". Mr. Treister suggested that "not joining therein" should be changed to "who are not petitioners". The reporter agreed. Professor Riesenfeld suggested the word "partner's" before "petition". There were no objections to the amendments, and the second sentence of Rule 1.7.2 now reads: "Upon the filing of a partner's petition against the partnership under Bankruptcy Rule 1.4(b), the clerk shall forthwith issue a summons for service upon all general partners who are not petitioners."

PROPOSED BANKRUPTCY RULE 1.8 - RESPONSIVE PLEADING OR MOTION

Professor Kennedy wished also to amend the first sentence of Bankruptcy Rule 1.8 by changing the words "not joining in the petition" in the fourth line, to "who is not a petitioner." There was no objection.

[The following does not refer to Bankruptcy Rule 1.8.]

Mr. Treister suggested a Note to 1.4(a) pointing out that if a partner wants to be adjudicated a bankrupt, he should file a separate petition. Professor Kennedy agreed.

Professor Riesenfeld moved that the reporter find out what can be done to prevent the requirement of two or three filing fees when community property is involved. It was seconded. The motion passed 6 to 2. Mr. Treister suggested as a substitute for Professor Riesenfeld's motion, which Professor Riesenfeld accepted, that it be the sense of the Committee that there should be one filing fee for husband and wife. After a short discussion between Mr. Nachman and Professor Riesenfeld, Judge Gignoux said that he understood that it was the feeling of the Committee that the Administrative Office should be asked to give the Committee the benefit of its views on whether only one filing fee should be required of husband and wife. This motion was unanimously favored.

(c) Involuntary Petition by Creditors.

Professor Kennedy read a draft of the subdivision and offered amendments to the proposed wording. Following a general discussion on joint petitions, Judge Gignoux stated the proposal was to have subdivision (c) read as follows: "An involuntary petition may be filed by a creditor or creditors against a partnership." Mr. Treister felt that the last sentence is needed. However, he just wanted to provide that each partner should receive a copy of the petition; that each one must be served. Following a short discussion, Mr. Nachman moved that the last sentence be retained and the service provision left in as the reporter had it. Judge Shelbourne seconded. There was unanimous approval.

Professor Seligson said that he was troubled about the delay which would be caused if each partner has to be served. Mr. Nachman wished to reconsider his earlier motion upon which a vote had been taken. He would like to have the

service provision come out of the last sentence in Rule 1.4(c) and to have the language read as follows: "An involuntary petition may be filed by a creditor or creditors against a partnership. A petition filed under this subdivision shall be in triplicate, with an additional copy for each general partner." Professor Seligson moved that the last sentence read: "A petition filed under this subdivision shall be in triplicate." Mr. Treister seconded the motion. Professor Kennedy said that he did not think that the sentence, "A petition filed under this subdivision shall be in triplicate.",is needed, since the general rule about triplicate involuntary petitions applies. Something could be said about delivery or mailing of copies not otherwise served. Judge Gignoux stated that the proposal was that subdivision (c) read: "An involuntary petition may be filed by a creditor or creditors against a partnership", and that a sentence be drafted by the reporter providing in substance that a copy of any such petition is to be mailed or delivered by the attorney for the petitioning creditors to the general partner who has not been served. The motion was unanimously approved.

PROPOSED BANKRUPTCY RULE 1.5 - FILING FEES

Professor Kennedy read the proposed rule. Judge Whitehurst moved that it be approved. Judge Shelbourne seconded. There was unanimous approval.

PROPOSED BANKRUPTCY RULE 1.5.8 - PAYMENT OF FILING FEES IN INSTALLMENTS

Professor Joslin moved that Rule 1.5.8 be deleted. Judge Snedecor seconded. Professor Joslin felt that the payment of fees by installments causes paper work which costs more than the fees. There was a general discussion out of which came an agreement to table this proposal [Professor Joslin withdrew his motion.], and the reporter was instructed to ask Mr. Jackson for the views of the Administrative Office on this proposal with figures of fees, the report to be given at the June meeting. Judge Snedecor moved that Rule 1.5.8 be approved subject to inclusion in (d) of dismissal without prejudice. It was seconded. The motion carried by a vote of 8 to 1. Professor Joslin dissented.

PROPOSED BANKRUPTCY RULE 1.7 - SCHEDULES AND STATEMENT OF AFFAIRS

(a) Schedules and Statement Required.

Judge Snedecor moved that subdivision (a) be approved. Mr. Nachman seconded. Approval was unanimous.

(b) Time Limits.

Professor Kennedy read subdivision (b). After a discussion concerning the filing of petitions and schedules, Judge Whitehurst moved that the clerk be permitted, upon authorization of the court, to accept a petition without a schedule, statement of affairs, or a list of the bankrupt's creditors and their addresses, subject to proper hedges so far as prompt filing of a list of creditors and addresses is concerned so that the administration of the case may proceed without delay. Professor Seligson seconded. The motion was lost, 2 to 6, 1 not voting. Judge Herzog moved that subdivision (b) as presented by the reporter be approved. Judge Shelbourne seconded. There was discussion on the wording in the last sentence. Professor Kennedy explained that when he drafted this subdivision he intended only one extension of time for the filing of the schedules and the statement of affairs. He said that if the Committee desired the extension to be renewable and there is a construction of 39(c) it could be cited in the Note without any change in the language. Judge Gignoux suggested that the language in the last sentence was quite ambiguous. Professor Kennedy stated that the Committee wanted to enable the renewal if request is made before the expiration - not after the time has passed - and he said he could draft the rule with that modification. There was unanimous approval of (b) with the modification. A Note will point out that Rule 9.6(b) applies to this as to other subdivisions.

(c) Partnership and Partners.

Professor Kennedy read subdivision (c). Judge Gignoux asked if it was the sentiment of the Committee that the non-adjudicated general partner should file a schedule of his property and debts rather than simply an accounting. Mr. Treister said he would move to that effect; that he would want to make it very clear that the partner by doing this is not submitting himself to adjudication; and that he liked the idea of furnishing the information in the schedules.

Professor Seligson moved that rather than "an accounting," "a statement of his assets and liabilities" should be filed. This motion was unanimously carried.

Professor Riesenfeld wanted the words "than prescribed in this subdivision" used in lieu of "hereinbefore" in the last sentence of subdivision (b). Professor Kennedy agreed to the change in wording. [Further discussion of this matter came later in meeting.] Professor Seligson, returning to subdivision (c), asked which general partner has the obligation under the first sentence. He moved to have the wording changed from "a general partner" to "the general partners". Mr. Nachman seconded. The motion carried, with one dissenting vote. The reporter was to prepare a Note to say that although all of the general partners have the duty to prepare and file, one may sign on behalf of all. Professor Seligson pointed out that the phrase, "whether or not a petition is filed by or against him", in the second sentence, is not really what the Committee wants. Professor Kennedy agreed that what was really meant is "Every general partner not adjudicated". Professor Seligson moved approval of the second sentence as modified by the reporter. Mr. Treister seconded. There was unanimous approval to have the second sentence read: "Every general partner not adjudicated shall file a statement of assets and liabilities with the trustee of the partnership within ten days after adjudication of the partnership."

There was further discussion on subdivision (b). Mr. Treister said that a semi-involuntary petition, when less than all the general partners file against the partnership, is more like an involuntary petition than it is like a voluntary petition. Accordingly the rule about submitting a list of creditors applicable to involuntary bankruptcy should apply to partnerships adjudicated on partners' petitions. Professor Kennedy thought the problem could be solved by having the language read: "Except as otherwise provided herein, the schedules and statement shall be filed with the petition by a voluntary bankrupt or within ten days after adjudication by an involuntary bankrupt or by a partnership adjudicated under . . . ." He said that he understood that the petition against a partnership by a partner is to be treated in the same way that an involuntary petition is treated. He is to draft language to that effect and submit it at the next meeting.

(d) Preparation of Schedules on Default by Bankrupt.

Professor Kennedy read subdivision (c). Following a discussion with regard to persons who might be required to prepare the documents, Mr. Treister suggested that the wording be: ". . . the court may order any of these documents to be prepared or cause to be prepared and filed by the receiver, trustee, a petitioning creditor, or other party in interest." Professor Kennedy said the wording would have to be: ". . . the court may order the receiver, trustee, a petitioning creditor or any other party in interest to prepare or cause to be prepared and filed any of these documents within such time as the court shall fix in the order." He suggested that his original language be retained and that a Note be included stating that it is, of course, understood that the receiver, trustee, or petitioning creditor, may seek to obtain authorization for any needed assistance. Mr. Treister moved that it be handled in the manner suggested by Professor Kennedy. Judge Snedecor seconded the motion, and it was unanimously approved. Mr. Nachman suggested that the wording of the initial clause might be: "If the schedules or statement are not prepared and filed as required by this rule, the court may order . . . ." There were a few suggestions for minor changes. Professor Kennedy read the following language for subdivision (d): "If the schedules or statement is not prepared and filed as required by this rule, the court may order any of these papers to be prepared and filed by the receiver, trustee, a petitioning creditor, or other party in interest within such time as the court shall fix." Professor Riesenfeld moved that the subdivision as modified be approved. Mr. Nachman seconded. The motion was unanimously favored.

PROPOSED BANKRUPTCY RULE 1.8.1 - AMENDMENTS OF PAPERS

Professor Kennedy read the draft of proposed Rule 1.8.1 dated 2-14-67. He said that "against partnerships" was to be added in line 2 of subdivision (b), after the second "petitions". There was a general discussion. The reporter agreed to try and find another word to use instead of "require", in the second sentence of subdivision (a), and Professor Riesenfeld said that would satisfy him, as he did not particularly like the idea of "require". Professor Kennedy said that a Note will indicate some of the guides as

to what controls with respect to effects of amendments. Mr. Treister moved that the rule be approved. The motion was seconded. There was majority approval, Professor Riesenfeld abstained from voting, and Judge Snedecor dissented.

PROPOSED BANKRUPTCY RULE 1.40 - ALLOWANCES TO ATTORNEYS FOR PETITIONING CREDITORS

Professor Kennedy read the proposed rule and the Note thereto. Professor Joslin moved that the rule be deleted. Mr. Treister seconded. There was unanimous approval for deletion of Rule 1.40.

PROPOSED BANKRUPTCY RULE 1.50 - DISMISSAL

Professor Kennedy read the draft of Rule 1.50. It was the sense of the Committee that, before determining the policy question of giving notice, the Reporter will check with Mr. Jackson of the Administrative Office to get its views. The question is whether notice of dismissal for failure to pay filing fees or costs should be given to creditors. Mr. Treister moved that "(under oath)" in the sixth line be deleted. Mr. Nachman seconded. Approval was unanimous. Judge Herzog moved that the rule be approved, subject to the reservation with respect to the last sentence. Mr. Nachman seconded. There was unanimous approval.

It was announced that the next meeting will be held on Wednesday, Thursday, Friday, and Saturday, June 21, 22, 23, and 24, 1967.

The meeting was adjourned at 1:00 p.m.