MINUTES OF THE DECEMBER 1968 MEETING OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

The seventeenth meeting of the Advisory Committee on Bankruptcy Rules convened in the Supreme Court Building on Wednesday, December 4, 1968, at 9:30 a.m. and adjourned on Saturday, December 7, at 12:00 Noon. The following members were present during the sessions:

Honorable Phillip Forman, Chairman
Edward T. Gignoux (absent on Wednesday)
G. Stanley Joslin
Stefan A. Riesenfeld
Charles Seligson
Roy M. Shelbourne
Estes Snedecor
George M. Treister
Elmore Whitehurst
Frank R. Kennedy, Reporter
Lawrence P. King, Associate Reporter

Referee Herzog was unable to attend due to illness. Mr. Nachman was absent because of the flu. Others attending all or part of the sessions were Judge Albert B. Maris, Chairman of the standing Committee on Rules of Practice and Procedure; Mr. Royal E. Jackson, Chief of the Division of Bankruptcy of the Administrative Office of the United States Courts. Charles A. Horsky, Esquire, of Covington and Burling, was welcomed on Friday, December 6, as a new member. Judge Forman announced Edwin L. Covey, Esquire, was no longer a member.

It was recognized by the Chairman that upon his appointment as Chief of the newly created Bankruptcy Division of the Administrative Office of the United States Courts in 1942, Mr. Covey ardently advocated the passage of the Act of Congress which abolished the unhealthy fee practice for the compensation of referees in bankruptcy and placed them on a salary basis and which became law effective July 1, 1947. Thereby the administration of bankruptcy was brought under the control of the Administrative Office of the United States Courts subject to the general direction of the Judicial Conference of the United States. During the two decades of service until his resignation as Chief of the Bankruptcy Division in 1962 he implemented the Act with a remarkably

high degree of competence and wisdom. The annual number of bankruptcy petitions in that time increased from 10,000 to 150,000 and the escalation continues. The demand for facilities to handle the tremendous expansion of caseload has been met successfully through the system inaugurated largely by Mr. Covey. Through it there has been an ever more efficient administration of cases and a notable improvement in service by the bankruptcy courts. Outstanding among his many other contributions Mr. Covey was responsible for the proposal of a National Seminar Program for Referees designed to bring about uniformity of practice and procedure in the administration of bankruptcy. This has been developed to an inestimable fruition.

Mr. Covey was appointed to membership on the Committee in January of 1963 and acted as its able consultant prior thereto. His membership on the Committee has furnished a vehicle for continuation of his sagacious counsel. It was moved that Mr. Covey's resignation be recorded with the utmost regret and that it be the sense of the Committee that in his positions of consultant and member his wealth of experience both at the national and local levels, his awareness of the absolute necessity for economy and expedition, and his sensitivity to the demands of probity in bankruptcy administration, combined to make him a fundamental asset of the Committee which will be sorely missed. The motion was duly seconded and unanimously passed.

The first item on the agenda was the Drafts for the Shelf. The first draft for the shelf was Rule 2.10, Notices to Creditors. Professor Kennedy called the attention of the committee members to the last paragraph of the Note which accompanied Rule 2.10, and in particular to the reference therein to issuance of notice from a computer center. It was the consensus that the last paragraph was sufficient to accompany the Rule. Professor Riesenfeld questioned when the 10-day time limit on notices would begin. The reporter answered it was from the date of mailing. Professor Riesenfeld suggested a sentence be put into the note to that effect.

This was agreed to by the members. Professor Seligson asked if an affidavit was sent by the computing center to the court that the notice had been mailed. Mr. Jackson answered that a certificate of mailing was prepared for the referee. Professor Seligson asked what the procedure was if the person to be notified stated that he had not received notice in the mail. Judge Forman asked if Mr. Jackson would do some further checking as to the actual procedure in such cases. Mr. Jackson stated that there were three different centers which served notices, but that he would find out the procedures of each center.

Mr. Jackson thereafter brought in the information he had found about mailing of notices. He stated at the present time the notices produced by the computer centers are sent to the referees' offices for mailing; therefore, nothing has been changed for the present. However, in February 1969, Electronic Processing, Inc., in Kansas City, Kansas, will start mailing notices from the centers and then will supply the referees' offices with a certificate of mailing which includes a list of the names and addresses of all the creditors who received notices. The debtor's attorney will get a copy of the certificate with the list. At the present time in Lexington, Kentucky, the referee sends out the notices and produces his own certificates.

Professor Kennedy then called everyone's attention to the third page of the November 9, 1968, memorandum, "Drafts for the Shelf: 7th Packet". He stated the question he was raising was whether anything was needed in Rule 2.9 to refer to notice when given under a court authorization without explicit sanction in the rules. It was decided it was too fine a point. After further discussion, the consensus was to leave the rule as drafted. Professor Kennedy stated he had no comment on Rules 5.11, 5.33, or 5.48.

RULE 6.2. Duty of Trustee or Receiver to Give Notice of Bankruptcy to Third Persons. The reporter stated that at the suggestion of the Subcommittee on Style he had compressed two sentences in a previous draft of subdivision (a) of this rule into one.

Professor Seligson asked if recording by a receiver was mandatory. The reporter responded "yes". Then, Professor Seligson asked which of the two [receiver or trustee] had the duty. The reporter agreed the sentence structure was awkward. Professor Seligson stated that if the receiver discharged his obligation, then the trustee had no obligation. He wanted to rephrase the opening sentence of subsection (a) to read "As soon as possible after his qualification a receiver, if any, ~~or the trustee~~ shall record a certified copy of the petition without schedules or the order of adjudication, if any, or, if no receiver then the trustee . . . ." The reporter stated that was the way the old wording read. Professor Seligson stated the sentence lost clarity when read as it was presented in the deskbooks. Professor Riesenfeld moved the old language be put back into the rule. Professor Joslin stated he liked the rule as redrafted by the Subcommittee on Style, i.e., as it appeared in the deskbooks, since, if a "receiver" is not appointed, he won't file anything anyway. The reporter read the old version. Professor Seligson stated the old version was clearer. He seconded Professor Riesenfeld's motion. It was carried.

Professor Riesenfeld questioned the appropriateness of the draft of subdivision (a) when filing is done in a central location as in the state of Hawaii. He noted that the rule requires recordation "in every county where the bankrupt has an interest in real property", but there may not be a recording office located in the specific county. Professor Kennedy stated the "mandatory duty" was now imposed by § 47c of the Bankruptcy Act, and the only new thing that Rule 6.2 made mandatory was that "the receiver shall . . . ." After discussion of the variations in recording systems throughout the country, Professor Kennedy stated he would check further with regard to the applicability of Rule 6.2 in jurisdictions where special recording arrangements prevail.

The reporter then read subdivision (b) Personal Property. The same problem arose as to whether the duty was on the receiver or the trustee under subdivision (b) as in subdivision (a). Judge Maris suggested insertion of "if a receiver has not done so" in the first sentence of the subdivision. The placing of the suggested phrase was left to the reporter.

RULE 7.62. Stay of Proceedings to Enforce a Judgment. The reporter suggested the members turn to the memorandum of November 9, 1968. He further stated this rule had been approved by both the Advisory Committee and the Subcommittee on Style. Professor Kennedy said Professor Shanker was unhappy about the blanket incorporation of Rule 62 into Rule 7.62. He felt the rule should be qualified by protecting certain orders of the bankruptcy courts against the automatic stay provided in Federal Rule of Civil Procedure 62(a) and against the supersedeas which an appellant can claim as of right under Rule 62(d). Professor Kennedy stated he had set out the views of Professor Shanker in the memorandum of November 9 and also some abstracts of cases. Section 39(c) of the Bankruptcy Act gives the referee discretion as to stays on appeals from his court to the district court. The automatic stay under Rule 62(a) is ten days. The appellee can have longer under Rule 62(d) if he files a supersedeas bond. The consensus was that Rule 7.62 should be approved as drafted.

RULE 8.20. When Appeal Bond to be Given by Trustee of Receiver. Professor Kennedy stated this rule abrogates Section 25b of the Bankruptcy Act. He further stated that, depending on what the committee decided on Rule 8.1 Appeal to District Court, a reference to Rule 8.1 might be desirous in the second sentence of subdivision (a) Bond for Costs. The reporter read subdivision (b) Supersedeas Bond and stated that the committee had just adopted a rule which incorporated Rule 62(c) of the Federal Rules of Civil Procedure with reference to adversary proceedings. His question was whether a reference should now be made to Bankruptcy Rule 7.62. It was decided the note should set out the point.

Referee Whitehurst questioned "shall" in line 1. He felt it should be "may", because "shall" conveyed an implication that the court has to incur expenses. The reporter agreed with him. Line 1 was changed to read: "A trustee or receiver may be . . . ."

The reporter stated this rule was drafted with particular reference to federal courts. He went on to say the general assumption has been that when a complaint is filed in a state court, that state's rules apply. He asked the committee if it thought the practices of the state court should be brought out in the Note. Mr. Treister wondered if

it would be an appropriate rule to try and regulate what happens in a state court. He then moved, as a matter of policy, that the rules not attempt to regulate the trustee in giving a bond in a state proceeding. Professor Joslin wondered if it could be left as it was. He stated it then left room for expansion. Professor Joslin wanted to guard against any misunderstanding of the "court" as being only a "bankruptcy court". He wanted something to be in the Note to this effect. There was a second to the motion of Mr. Treister. The motion was carried. Professor Seligson asked if he had a clear interpretation of the motion: if the assets are sufficient, then the trustee can not appeal until the creditors put the money up. It was agreed.

Mr. Treister questioned the cross reference at the end of Rule 8.20(b). The reporter stated he had taken it out.

Professor Kennedy stated that completed Item (1) of the Agenda. The drafts now go to the shelf not to be reviewed again, except Rule 6.2, which is the rule that had reference to recording. Professor Kennedy then suggested going over to Item (3) instead of Item (2) because of Judge Gignoux's absence. The reporter stated Judge Gignoux had ideas on Rule 5.38, which was under Item (2). This was agreed to.

RULE 5.50. Compensation of Trustees, Receivers, Marshals, Attorneys, and Accountants. The memorandum of November 7, 1968, dealt with Rule 5.50. Professor Kennedy stated the minutes of the previous meeting showed much interest of the committee with respect to subdivision (d), Restriction on Sharing of Compensation. Subparagraph (3) on the second page of the memorandum of November 7, 1968, stated "The last two sentences of the Rule as approved at the last meeting . . . have been combined into a single sentence." There was a short discussion of whether "may" or "shall" should be used in the last sentence of the rule. There was a motion to retain "may". It was carried.

Professor Seligson brought up "of a member of his firm" which appeared in line 71 of the Rule. He stated the compensation was received by the firm, not just a partner of the firm. He then proposed that it read: "from sharing in the compensation received by his firm or by any other member thereof." There was no objection to the proposal.

The attention of the members was then drawn to the fifth paragraph of the Note accompanying Rule 5.50, which referred to the problem of compensating multiple trustees and multiple receivers. The reporter also brought up the question of whether compensation of more than one attorney for the receiver or the trustee should be dealt with in the rule. Professor Seligson felt nothing should be done about the attorneys. He stated this as a motion. Referee Whitehurst agreed and seconded the motion. It was carried. After noting that the only situations involving more than one trustee or receiver would be when one is removed or dies, Professor Seligson then moved the disapproval of the proposed paragraph set out at the top of the second page of the Memorandum of November 7, 1968. The motion was carried.

Examples were given by various members of the committee of large law firms hiring "outside help" to do paper work, etc. This was decided not to be covered by the proposal just disapproved. The "outside help" is paid by the firm. Professor Seligson moved that the rules include a provision permitting an attorney for a trustee or receiver who wants "outside help" to retain that help without the necessity of a court order in advance, provided the court does not reimburse the attorney for more than the cost of the help. The motion was lost. Because the motion was lost, Professor Kennedy suggested revising the rules which have reference to attorney fees. Professor Seligson suggested adding "and firm" wherever "attorney" appears in the rules. There was a motion to include in Rule 9.1 a definition of attorneys and accountants to include firms. Professor Seligson seconded the motion. It was carried. Professor Kennedy read section 48e of the Bankruptcy Act and stated he felt it unnecessary for the rules to incorporate it. The subject matter is covered in the last paragraph of the Note accompanying Rule 5.50.

The next item on the agenda was the Memorandum of November 8, 1968, entitled Fees, Charges, and Expenses. The first section entitled Expenses of Trustees, Receivers, and Marshals was discussed. The reporter stated the first paragraph pointed out that nothing more was needed to be said about §62a(1) of the Bankruptcy Act. This section deals with expenses of officers other than referees. He then stated General Order 19, Accounts of Marshals, could be deleted as being obsolete. Judge Snedecor moved the acceptance of the recommendations of the first section of the memorandum. The motion was carried.

General Order 10 was then read by the reporter. Professor Kennedy suggested doing nothing with this general order. Mr. Jackson stated the Bankruptcy Division was under a requirement of the Appropriations Committee to ask the court to establish a charge so that the electronic equipment would eventually be paid for. The reporter stated the proposed charge should be left to the Judicial Conference. Professor Seligson suggested leaving this matter to local rules and to the Judicial Conference. Mr. Jackson stated that was the present practice. It was then moved the subject matter of this section of the memorandum be left to the Judicial Conference. The motion was carried.

Fees and Expenses of Referees was next discussed. The reporter read this section. Referee Whitehurst moved the reporter's recommendations be adopted. The motion was carried. Compensation and Expenses of Clerks followed. The reporter read this section. It was decided §§ 51 and 52 should be dropped from the Bankruptcy Act.

RULE 9.60. Relief from Judgment or Order. The reporter stated there were two versions of Rule 9.60. The committee had discussed both alternatives and had approved Alternative II by a vote of 4 to 3. The policy of the committee on such a close vote by less than a full committee is to re-examine the rule. The reporter pointed out the conflict that had developed over the applicability of Rule 60b of the Federal Rules of Civil Procedure in bankruptcy cases. He felt the basic question was whether the bankruptcy judge should be limited to the one-year limitation imposed on the availability of relief for reasons (1), (2) and (3) by the second sentence of Rule 60b. All the other grounds for relief under this rule are not subject to the one-year limitation. Alternative II incorporated suggestions of Mr. Treister made in a previous meeting. It narrowed the exception from the one-year limitation under 60b to two kinds of motions: (1) a motion is to reopen a case, and (2) a motion is to obtain reconsideration of an order allowing or disallowing of a claim entered without a contest. Mr. Treister thought the last sentence of Alternative I should be added to the end of Alternative II. Professor Riesenfeld did not like the wording of the last sentence of Alternative I. He felt

Rule 60 was permissive. He said the rule would not extend the time in any event but would only permit the extension of time. Professor Seligson moved that the last sentence be changed to read, "This rule does not permit the extension of the time allowed by §15 of the Act for the filing of a complaint to revoke a discharge"; that this sentence be added to Alternative II; and that Alternative II be adopted. The motion was carried.

The reporter then suggested turning to subdivision (c) of Rule 1.9, Hearing and Disposition of Petition. The reporter then read the subdivision, including a sentence making Rule 60(b) applicable to the setting aside of an adjudication. His suggestion was that this sentence was not needed after the adoption of Rule 9.60. Professor Riesenfeld moved the deletion of the sentence in accordance with the reporter's suggestion.

The question was raised whether the next to the last sentence of Rule 60(b) of the Federal Rules of Civil Procedure would have any application in bankruptcy cases. This sentence was read: "This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., §1655, or to set aside a judgment for fraud upon the court." It was moved that this sentence be excluded from applicability to bankruptcy cases. In other words, the rule would state, as the reporter pointed out, as far as a judgment or order of the bankruptcy court is concerned, one cannot bring an independent action to set aside the judgment or order otherwise than as allowed by the first two sentences of Rule 60(b). Professor Seligson suggested leaving the decision up to the reporter as to whether the sentence should not be left in the rule. There was discussion as to why the sentence should or should not be left in. Professor Joslin then moved the committee not to write its own rule and to accept what appeared in the deskbook. The motion was carried.

RULE 9.65.1. Security: Proceedings against Sureties. The reporter read two alternatives for a Rule 9.65.1 with notes. Mr. Treister moved the adoption of Alternative II.

Professor Joslin stated he felt Alternative II limited too much the rights which were granted by Rule 65.1 of the Federal Rules of Civil Procedure. He did not make a motion, however, because he felt that the adoption of Alternative I, with the addition of the last two lines of Alternative II would provide a remedy under either of two procedures. Professor Riesenfeld seconded the motion. It was carried.

RULE 5.38. Recording and Reporting of Proceedings. Professor Kennedy suggested discussing Rule 5.38 even though Judge Gignoux was not present. He stated the Judge had written him his views.

(a) Record of Proceedings. The reporter read the memorandum of November 5, 1968, which set out Rule 5.38 as seen by the Subcommittee on Style.

Professor Riesenfeld wanted to know why it was important to set out how the recording was made, since the fact that there was a recording was the important thing. Professor Seligson stated "how the recording is taken" and "by whom the recording is taken" should be separated. Judge Shelbourne asked if this rule meant a recording of all proceedings must be made in every case. He was answered, "whenever practicable." Professor Seligson asked Mr. Jackson if it was not the practice now that, in every proceeding whenever practicable, a recording was made. Mr. Jackson stated that even in no-asset cases, magnetic tapes are kept for approximately one year and erased and used over again.

Professor Joslin moved the acceptance of the first sentence of Rule 5.38 and the omission of the second. Professor Riesenfeld seconded his motion. Referee Whitehurst stated the second sentence explained the type of record referred to in the first sentence. It was then moved "verbatim" be added in line 2 before "record". The motion was lost. Referee Whitehurst then suggested the deletion of "all" in line 2. He said it was too broad. He then told how the electronic recordings were made in proceedings in his court. It was the consensus that "all" could be left in without taking a vote. Professor Seligson, returning to the second sentence, felt it should be divided.

Instead of stenography, he felt "mechanical or other means" could be used. Professor Riesenfeld read what he thought to be a better way of stating the second sentence: "The record may be taken by electronic sound recording, or by a stenographer employed on authorization of the court to take a verbatim record by shorthand or other means." It was stated as a motion. Mr. Treister suggested adding "verbatim" in line 2 preceding "record", since the word "stenographer" means one taking of a verbatim record. It was then suggested "stenographer" be changed to "reporter" in line 4. Professor Riesenfeld suggested "verbatim" be put into line 5 instead of line 2. The chairman then read the first two sentences as moved for a vote: "Whenever practicable, the court shall require a record to be made of all proceedings in bankruptcy cases. The record may be taken by electronic sound recording, or by a reporter employed on authorization of the court to take a verbatim record by shorthand or other means." No vote was necessary. It was approved.

The discussion was then on the third sentence. Professor Seligson moved approval of the third sentence. It was carried.

On reading the fourth sentence, it was decided "stenographer" would be "reporter" to conform to the first sentence. The discussion turned to the problem of finding space for the filing of the original shorthand notes. Mr. Jackson stated he felt the only situation where a shorthand notebook is kept is where a transcript is made. The period of time the records should be kept was discussed. It was decided the court should keep the records of the proceedings, since the reporter may move or become deceased. Professor Kennedy suggested the committee approve the last portion of subdivision (a) [lines 9 through 13] and then add a line or two suggesting the length of time the records should be kept. Professor Seligson moved the approval of the last sentence with the change of "stenographer" to "reporter". The motion carried. The time limit on destroying records was again discussed. Mr. Jackson stated destruction of records was governed by the regulations of the Archives with the approval of the Administrative Office of the United States Courts. He also stated the time of

retention of magnetic tapes was usually six months to a year. The court waits until the close of the trial and when it is reasonably sure no further use can be made of the records, they are destroyed. After a discussion, it was decided a new sentence would be added to subdivision (a) stating the records could be destroyed after a minimum of six months.

(b) Transcripts of Proceedings. Professor Kennedy stated he had set out in the note that "stenographer" meant the person doing the actual typing of the transcripts. In line 21 of subdivision (b) it was decided "by the stenographer" should be changed to "by the person making the transcript" in order to have one certificate. Then, in line 22, "Each stenographer" was changed to "Such person". Professor Joslin moved the deletion of lines 22 through 25. There was no second to his motion. Professor Seligson moved the adoption of this subdivision as amended. The motion was carried.

[At this point, 5:15 p.m., the meeting adjourned until 10:00 a.m. on December 5, 1968.]

The meeting convened at 10:00 a.m. Professor Kennedy read Rule 5.38 as approved the day before. In reading subdivision (a), the reporter added to the end of line 13 -- "to be retained for so long as the court may feel they [the records] are needed and destroyed or discarded thereafter in not less than six months". In reading subdivision (b), in line 16 "a stenographer" was changed to "the reporter or the typist".

With reference to charges, Judge Gignoux read the second sentence of 28 U.S.C. §753(f): "He [the reporter] shall not charge a fee for any copy of a transcript delivered to the clerk for the records of court." Mr. Treister stated this problem was covered by the final sentence of subdivision (b): "The cost of transcription shall be a charge against the estate only when approved by the court."

Judge Gignoux felt it could be handled better by adding a sentence to the effect that: "He [the reporter] shall not charge a fee for any copy of the transcript delivered to the court." Judge Gignoux then stated if that suggestion was the consensus of the committee, he would so move. The motion was carried.

(c) Admissibility of Record in Evidence. The reporter read subdivision (c) and stated it was a combination of present 28 U.S.C. §753(b) and Rule 80(c) of the Federal Rules of Civil Procedure. Professor Seligson moved the adoption of subdivision (c) as it appeared in the deskbook. The motion was carried. The reporter then stated he was leaving "evidence" in line 28 and "to establish the record thereof" in line 29 and deleting "[or record]" in line 30.

RULE 8.1. Appeal to District Court. The reporter stated this rule was discussed at the last meeting and also at the Style Subcommittee meeting. This rule was an adaptation of the Federal Rules of Appellate Procedure, which govern appeals from the district court to the court of appeals. Subdivisions (a), (b), and (c) were much like the rule discussed at the June 1968 meeting. At the meeting of the Subcommittee on Style in October, Judge Gignoux suggested the reporter draft a complete rule to cover this subject instead of incorporating a lot of cross references. Professor Kennedy then read subdivision (a), Filing the Notice of Appeal, and stated it was an adaptation of FRAP 3(a). Subdivision (a) made reference to Form No. 46A, and the reporter read the Form. Professor Joslin stated line 4 of the Rule was not necessary. He thought subdivision (b) could speak for itself. There was no objection from the members. Professor Riesenfeld suggested ending line 3 with "notice of appeal". Mr. Treister said he would prefer leaving "with the referee" in subdivision (a) and excluding the phrase in subdivision (b). Judge Gignoux made the suggestion of combining the two subdivisions by adding in place of line 4 the phrase: "within 10 days of the date of the entry of the judgment or order appealed from." Professor Seligson wanted to consider the parenthetical passages in both subdivisions. Mr. Treister felt the parenthetical sentence in subdivision (a) should be left in because it was a direct quote from FRAP. It also answered any question as to the

action to be taken if the notice is not timely filed. Professor Seligson moved the parenthetical phrase in subdivision (a) be left in. The motion was carried. The chairman read the parenthetical phrase in subdivision (b). Mr. Treister felt it should be left in the rule. He so moved. The motion was carried.

Judge Gignoux withdrew his suggestion of combining the two subdivisions. Professor Riesenfeld, returning to subdivision (a), felt "timeliness" was left "in the air" because of the deletion of line 4 which allows the time set forth in subdivision (b). Because of the "timeliness" taken out of the subdivision, Judge Snedecor felt reconsideration should be made of the decision to delete line 4. He so moved. The motion carried. The reporter suggested the committee generally approve the substance of Rule 8.1, and then the minor points could be brought up. This was agreeable with the members. Professor Kennedy then read paragraph (2), Effect of Motion on Time for Appeal, and paragraph (3) Extension of 10-day Period. Professor Kennedy then stated that subsection (3) allowed a person to get an extension of time without showing excusable neglect if requested within the 10-day period. However, if an extension was asked for after the 10-day period had expired, an extension could be obtained for up to 20 days if excusable neglect was proved. Mr. Treister brought up the point whether the referee as well as the district court could allow extensions. He stated in FRAP only the district court could allow such extensions.

Judge Gignoux felt a motion to affect a final order or judgment in some way ought to terminate the running of the 10-day period. In other words, he felt the rule should be broader. The reporter stated the draft was very restrictive as was the Federal Rules of Appellate Procedure. Professor Seligson moved this rule be modified to incorporate the suggestion of Judge Gignoux and Mr. Treister, "that any motion resulting in vacating or modifying an order or the findings or conclusions of law will be sufficient" to stop the running of the time for appeal. Judge Forman stated this was a motion of policy not drafting. It was decided to leave the time limit and extensions up to the reporter.

Mr. Treister, returning to subsection (2), suggested leaving the parenthetical phrase "(as to all parties)" in. Professor Seligson asked if "(filed with the referee)" was necessary. It was agreed that this phrase was understood without being included in the rule. There were no objections to the deletion of this phrase. The next parenthetical phrase "(, for a judgment notwithstanding the verdict,)" was left to the reporter. The "(again)" was decided to be unnecessary. It does not appear in FRAP. It was decided lines 28 through 30 would have to be coordinated with prior language. The reporter said there would be changes in these lines to coordinate with the first sentence of the paragraph.

Professor Seligson suggested leaving the phrase "(for any cause)" in line 37 of subsection (3), Extension of 10-day Period. The rule, he said, should point out that the referee may extend the time for filing the notice of appeal for an additional 20 days except in real estate cases. That is, it could in some cases be extended to 30 days. Judge Snedecor was opposed to leaving anything open unless an extension was asked for within the first 10 days. He then moved the part of the last sentence beginning on line 38 with "but . . ." be omitted. There was a discussion on the length of time permitted to ask for extensions. Thirty days being the outside limit, Judge Snedecor withdrew his motion.

The beginning sentence of subsection (3) was disputed. It was felt the "except" phrase should appear elsewhere. The reporter stated it was changed in the meeting of the Subcommittee on Style. He then read the subsection as approved at the last meeting. Everyone was in agreement as it was left at that meeting. The subsection read: "A motion to extend the time for filing a notice of appeal from a judgment or order authorizing the sale of real estate must be filed within 10 days from the entry of the judgment or order." Professor Seligson moved the exception be omitted from the beginning of subsection (3) and the old language be restored. The motion carried.

Judge Gignoux suggested the last sentence should read: "Such an extension may be granted only upon a showing of excusable neglect if requested more than 10 days after entry of the judgment or order appealed from." Mr. Treister asked whether, if stated this way, it wouldn't imply that an extension requested within the 10-day period becomes a matter of right. Professor Seligson stated it may be a matter of right or of discretion or not available at all. Judge Gignoux suggested subsection (3) read: "The referee may extend the time for filing the notice of appeal by any party for a period not to exceed 20 days from the expiration of the time otherwise prescribed by this subdivision. If a request for an extension is made after such time has expired, it shall be granted only upon a showing of excusable neglect." Professor Seligson did not agree with Judge Gignoux. He felt Mr. Treister had a good point. Professor Seligson then suggested lines 36 through 40 stay in with revision of the reference in line 38 to meet Mr. Treister's question about the commencement of the 10-day period when a motion has terminated the running of the period from the entry of the judgment or order appealed from. Having no objection, Judge Forman stated it would be left up to the reporter to redraft along the lines as suggested by Mr. Treister and Professor Seligson.

Professor Riesenfeld stated time and place had now been covered. He wanted to discuss the order of time and place. He wanted to relate subdivisions (a) and (b) with order. Professor Kennedy stated he had drafted these subdivisions to correspond with the rules dealing with the same subject matter in FRAP. Professor Riesenfeld stated he felt the parenthetical phrases in subdivisions (a) and (b) should appear as a separate subdivision. Judge Gignoux agreed that in order to have a valid appeal one has to file a notice of appeal with the referee in the time allotted. The caption in FRAP relating to this subject is entitled "How Taken." Professor Riesenfeld stated he would like to combine subdivisions (a) and (b) and have the parenthetical phrases as a separate section (leaving out the parentheses). The chairman asked if this could be left up to the reporter since it was a matter of drafting. This was agreeable.

(c) Finality of Referee's Judgment or Order. Professor Seligson noted that subdivision (c) was taken from §39c of the Bankruptcy Act. He then moved the approval of subdivision (c). The reference to the other subdivision in the passage, "filed within the time prescribed by subdivision (b)" was discussed. The reporter suggested "timely" might be substituted for the quoted words. Professor Riesenfeld stated subdivision (a) should also be a cross reference if subdivision (b) was mentioned. This was agreeable with the members. It was the consensus of the committee that subsection (c) be left to the reporter for redrafting. The new draft will then be submitted to the committee for approval.

(d) Service of the Notice of Appeal. The reporter read the subdivision. He stated it was closely related to section 3(d) of the Federal Rules of Appellate Procedure. The Federal Rules of Appellate Procedure impose the duty of serving notice on the clerk of the district court. This subdivision of the bankruptcy rule, however, imposes the duty of service on the referee. He suggested the deletion of the parenthetical phrases as usual. Professor Riesenfeld suggested combining the "referee" statements. Professor Seligson felt the parenthetical phrases should be left in the subdivision. Referee Whitehurst had two questions: (1) is the duty of service meant to fall on the referee? and (2) if the duty is to fall on the referee, should a requirement be added that enough copies would be supplied him? Under the present practice, the referee has to make all the necessary copies because he has the duty of mailing them. Referee Whitehurst stated that the number of copies could be handled by local rule. Professor Seligson then moved all the material in the parentheses be retained. Mr. Treister suggested "of the referee" be left out of the second sentence of the subdivision because the referee is mentioned in the preceding sentence. This was agreed to by Professor Seligson. There was no objection from the committee with respect to leaving the parenthetical sentence beginning on line 51 in the rule. Disposition of the parenthetical phrase "of the referee" was left to the reporter.

(e) Bond for Costs on Appeal. The reporter read the subdivision and stated that the $100 value of the bond was just a suggestion. This subdivision is an adaptation of section 7 of the Federal Rules of Appellate Procedure, which prescribes a $250 bond unless the court fixes a different amount. Judge Gignoux asked if any bond was required for petition for review at present. Understanding not, he wanted to know why a bond should be required at all. Professor Riesenfeld stated it was to cover taxing costs. Mr. Treister felt $100 was more than would be necessary. Judge Gignoux moved to delete the entire subdivision. The motion was carried.

Mr. Treister raised a question as to the effect of the action just taken on Rule 8.20, which dealt with appeal bonds to be given by trustees and receivers. Professor Kennedy stated he felt if cost bonds were required only on appeals to the court of appeals, they should be covered in the Federal Rules of Appellate Procedure. Judge Gignoux stated he felt the Federal Rules of Appellate Procedure were designed to provide a comprehensive set of rules to cover all appeals to the court of appeals. It was suggested that Rule 8.20 be submitted to the Appellate Rules Committee after a conference with Judge Maris. Professor Riesenfeld thought it best if the reporter have the views of the Bankruptcy Rules Committee before such a conference. Judge Gignoux stated that the committee should submit to the standing Committee a report covering a complete set of Bankruptcy Rules and recommending, "subject to approval by the appropriate committee," that Rule of the Federal Rules of Appellate Procedure be amended by adding a sentence. The recommendation should state what the rule could be. Judge Gignoux stated the appellate committee had already in effect repealed §25a of the Bankruptcy Act. Mr. Treister asked if it was true that the Federal Rules of Appellate Procedure had repealed any part of the Bankruptcy Act. Professor Kennedy stated that according to the Note to Rule 6 of the Federal Rules of Appellate Procedure, that rule superseded Section 25.

Professor Kennedy asked what the committee wished to do in regard to Rule 8.20, When Appeal Bond to be Given by Trustee or Receiver, and in particular subdivision (a), Bond for Costs. Mr. Treister suggested recommending at the appropriate time that the Federal Rules of Appellate Procedure be amended or changed and Mr. Seligson concurred. The chairman stated he understood it was the consensus of the members that subdivision (e) be deleted.

(f) Stay Pending Appeal. The reporter read the subdivision, stating it was an adaptation of section 8 of the Federal Rules of Appellate Procedure. Professor Joslin suggested lines 66 through 69 read: "A motion for such relief may be made to the district court, but shall show why the motion was not made to the referee". Judge Gignoux said Professor Joslin's rewording raised problems. Professor Joslin asked: "Suppose relief was denied; then could the appellant file the motion in the district court notwithstanding denial of relief by the referee?" The reporter replied yes. Other "relief" was discussed. Mr. Treister suggested inserting "or other relief" to follow "supersedeas bond" in line 65. "Such a motion may be made to the district court" would then follow in the next sentence.

Professor Seligson asked, "What gives the referee the power to approve a supersedeas bond?" The reporter replied by referring to Rule 7.62, Stay of Proceedings to Enforce a Judgment, making Rule 62 of the Federal Rules of Civil Procedure applicable to adversary proceedings. Rule 62(d) authorizes supersedeas bonds. The reporter suggested returning to Rule 8.20(b), Supersedeas Bond. The question was whether it should be included in Rule 8.1(f). Judge Gignoux suggested deferral of consideration of appeals to the court of appeals until a later date. Professor Riesenfeld felt certain decisions should be made in Rule 8.20 before Rule 8.1 was finished. The reporter stated that the committee had already approved Rule 8.20. He wanted the committee to decide whether a trustee or receiver may be required to give a supersedeas bond or other appropriate security in order to obtain a stay when taking an appeal to the district court. He was

opposed to postponing anything. Mr. Treister felt Rule 8.20(b) did not belong in Rule 8.1, since Rule 8.20(b) was broader in application than just to an appeal to the district judge. Professor Seligson felt as a matter of policy that the receiver and trustee might properly be required to give a supersedeas bond, and that the policy should be applicable to appeals from a referee's decision to the district court. He didn't care where the requirement was in the Rules. There were no objections to retention of the parenthetical phrase in subdivision (f).

(g) Record and Issues on Appeal. The reporter read the subdivision and stated it was an adaptation of section 10 of the Federal Rules of Appellate Procedure. Professor Seligson asked if there was anything in the Bankruptcy Rules that would allow the district court to change the limitation of time. The reporter suggested Rule 9.6. He stated Rule 9.6 on Time had not been approved, but it might answer Professor Seligson. The reporter read subdivision (c), Reduction. The Rules referred to in subdivision (c) did not include Rule 8.1(g). It was then decided the court could change the time limitations.

Judge Gignoux stated his court procedures with regard to reviews would be greatly slowed down by this subdivision. He suggested adding: "Within a certain number of days the parties shall file with the clerk of the court a statement of the issues and the record, and the record shall be transmitted in a certain number of days after that." Professor Seligson agreed with Judge Gignoux that once the case is sent up to the district court, the handling of the case should not be determined by the Bankruptcy Rules, but should be determined by the district court rules and handled like any other matter in the district court. Professor Kennedy said it should not be assumed that after an appeal is made to the district court, the Federal Rules of Civil Procedure apply because the Federal Rules of Civil Procedure themselves state they do not apply to proceedings in bankruptcy.

Judge Shelbourne asked what the significance of "papers" in line 76 was. The reporter replied he had attempted to use a word which would include everything. The Federal Rules of Appellate Procedure which dealt with this matter provide that the "whole record" is to be considered relevant unless there is a designation. The question of whether "papers" covers "exhibits" was discussed. It was stated that physical evidence would not be covered by this word. Judge Shelbourne asked if it would cover exhibits which had not been presented at the hearing before the referee. It was decided these "exhibits" should not be included. Mr. Treister suggested "appellant shall designate the contents of the record on appeal". This was satisfactory with the members. The reporter reworded: "shall file and serve on the appellee a description of the contents". Mr. Treister suggested combining the ideas in the first and second portions of the first sentence of subdivision (g) so that one "designates by filing and serving". He suggested: "file and serve on the appellee a designation of the contents of the record on appeal". It was then decided the first sentence of subdivision (g) would read: "Within 10 [or 7] days after filing the notice of appeal the appellant shall file and serve on the appellee a designation of the contents of the record on appeal, and a statement of the issues he intends to present."

Judge Gignoux asked with whom the appellant files, the referee or the district court. The reporter stated the rule does not say; however, it is meant that the designation be filed with the referee. Judge Gignoux suggested including this requirement in the Rule. The reporter suggested "with the referee" be added after "the appellant shall". Professor Joslin suggested adding "for inclusion on appeal" be added after "a designation of the contents of the record".

Mr. Treister suggested as was agreed to earlier by the members, that the first "run-through" be done for content only. Professor Riesenfeld asked whether the committee had adopted a scope of the review on appeal. The reporter stated the subdivision had been erroneously omitted from the draft.

The subject of cost of the transcript was discussed. The reporter stated a provision of the Federal Rules of Appellate Procedure does include costs, but it was not included in subdivision (g). Professor Seligson stated he felt costs should be covered in bankruptcy rules. Professor Seligson also felt 5 days was plenty of time for the appellant to make his designation. The appellee needs less than 5 days. However, Professor Seligson wanted to give the court the right of extending the time.

Mr. Treister felt the "10 days" already mentioned in subdivision (g) was all right. Professor Seligson stated it was all right as long as the judge could shorten the time. The portion of subdivision (g) dealing with "transcript designation" was suggested to be rewritten. Professor Seligson suggested it include the ordering of a transcript or for any party to proceed without one. The reporter asked the members if they would be satisfied with this subdivision if he reworded it to impose the duty to take action on all parties to an appeal. It was to be left to the reporter for rewriting.

(h) Transmission of the Record. The reporter read the subdivision. The question was raised whether the order was of the district court or the referee. The reporter stated it was the order of the referee. Professor Seligson stated the record on appeal had been approved to be transmitted within 17 days. He felt because of this, the 21 days allowed in this subdivision was acceptable. The reporter stated if he attempted to follow the Federal Rules of Appellate Procedure closely, subdivision (d) of Section 11 would be appropriate. This subdivision allows the district court to make an order to extend the time for transmitting the record and under certain circumstances, the court of appeals can make such an order. The reporter then suggested it would be very strange to allow the referee to make an order that excuses himself. It was then suggested that the last clause of subdivision (h) read, "unless a different time is prescribed by order of the district court." It was pointed out by the reporter that it was the duty of the clerk of the district court to transmit the record under the Federal Rules of Appellate Procedure. In other words, the district court can allow the clerk more time to transmit. Mr. Treister felt

"21 days" was too short a time limit. He stated the time already allowed [17 days] only left 4 days which might be used up by weekends. Professor Kennedy suggested 30 days. Referee Whitehurst suggested dating the transmission from the time the last designation is received instead of the notice of appeal, i.e., 10 days from the last designation. Mr. Treister said that because the last designation may be late, he felt the time allowable could run from the date of the notice of appeal. Professor Seligson felt 30 days was good because in districts like New York there is no judge assigned to a particular case. It was then the consensus that "30 days" be the time prescribed for transmission of the record. Mr. Treister asked if "district court" meant "judge". The reporter stated that had been the understanding.

Professor Riesenfeld suggested the titles of subdivisions (a) and (b) of Rule 8.1 be changed to coincide with the Federal Rules of Appellate Procedure: (a) Manner of Appeal and (b) Time. The reporter agreed.

[At this point, the meeting was adjourned until 10:00 a.m. on December 6, 1968.]

(i) Docketing the Appeal(; Filing of the Record.) The reporter read subdivision (i) and stated it was an adaptation of Rule 12 of the Federal Rules of Appellate Procedure. Professor Seligson said at present a fee is paid when the petition for review is filed, and no fee is paid to get a case on the district court calendar. His question was whether things were being changed to eliminate the requirement of a fee when notice of appeal is filed. Judge Gignoux stated that under present appellate practice a fee is paid when a notice of appeal is filed. Referee Whitehurst said the fee for filing a petition for review is now prescribed by the Judicial Conference of the United States not the Director of the Administrative Office as set out in the subdivision. In answer, the reporter read § 40c(3) of the Bankruptcy Act. Referee Whitehurst read §40c(2) of the Act: "Additional fees for the referees' salary and expense fund shall be charged, in accordance with the schedule fixed by the conference . . .." Professor Seligson

stated there were two questions: (1) when the fee is to be paid, and (2) the governing law. Judge Gignoux called attention to 28 U.S.C. §1917, District courts; fee on filing notice of or petition for appeal. This section applies to appeals from the district court to the court of appeals. He further stated that Rule 12 of the Federal Rules of Appellate Procedure, from which was adapted Rule 8.1(i), referred to docket fees fixed by the Judicial Conference to be paid to the clerk of the court of appeals. The reporter asked the opinion of the members as to whether Rule 8.1 should set out the time and place of payment of a fee for taking an appeal. Referee Whitehurst asked what the effect would be if such a provision were left out. The reporter replied there was no provision in §39c of the Act to cover payment of fees, this matter being covered only in §40c.

It was then decided to go on to subdivision (j) and, on the basis of the action taken, return to subdivision (i) to correlate the two.

(j) Filing and Service of Briefs. The reporter read subdivision (j), stating it was an adaptation of Rule 31 of the Federal Rules of Appellate Procedure. Judge Gignoux moved subdivisions (j), (k), and (l) be eliminated and a simple provision be inserted to the effect that procedures for written and oral argument be as the local rules of court provide. His reason was that formal structuring of procedure for briefs and arguments in the very limited number of cases on the district court calendar was wholly unnecessary and could result in unwarranted delays and restrictions on procedures which vary from district court to district court throughout the country. Bankruptcy appeals represent less than 5% of the total number of controverted or contested matters handled on district court calendars. Further, usually each district has its own practice, and there is a local rule as to the disposal of such matters. Since the motion involved them, the reporter read subdivisions (k) on Oral Argument and (l) on Motion for Rehearing. Professor Riesenfeld asked that the subdivisions be disposed of separately. He wanted subdivision (l) to be retained. Judge Gignoux agreed to limit his motion to subdivisions (j) and (k). Mr. Horsky stated he felt it would be desirable to have at least some indication in the rules as to what the national practice should be

and suggested that perhaps Judge Gignoux's purpose could be accomplished by prefacing subdivisions (j) and (k) so that if the district court wanted to change the rule, the court could have a local rule; but apart from that, the Bankruptcy Rules will have standards which will indicate briefs should be handled promptly, etc. Referee Whitehurst was in agreement with Judge Gignoux. The circumstances are so different in various parts of the country, he thought it better to leave these matters up to the various district courts. Professor Seligson stated that in the absence of a local rule the litigants were left to the general rules, and the general rules did not cover appeals in district courts. He agreed to Mr. Horsky's idea of a national procedure as good policy. He felt the preface should be, "Unless otherwise provided by local rule or court order, . . ." Judge Forman restated Judge Gignoux's motion to delete subdivisions (j) and (k), the practice to be governed by local rules of the court. Professor Seligson moved an amendment: retain subdivision (j) with a preface, "Unless otherwise provided by a local rule or court order," and limit the first motion to subdivision (j) only. His motion was seconded and carried. Judge Forman said the motion vindicated the principle that there would be some effort to establish a uniform regulation subject to the rules and orders of the district court where needed.

Professor Seligson questioned whether the district court should have authority by local rule to shorten time limitations. The reporter replied that an adaptation of Rule 2 of the Federal Rules of Appellate Procedure would allow a shortening of time limitations. Mr. Horsky thought "the time for filing briefs" should be prescribed in the rule instead of a requirement that "the briefs shall be filed . . . ." The reporter stated the time limitations set forth in Rule 8.1 were only suggestions. He asked that the committee consider the time limitations. The Federal Rules of Appellate Procedure provide 40 days, 30 days, and 14 days. Professor Seligson felt the time limitations should not run from the filing of the record. In such case, subdivision (i) could be eliminated. Mr. Treister suggested that opening briefs be filed within 30 days after the filing of the notice of appeal.

He felt it would be more expeditious if the running of the time started on the date of filing the notice of appeal, but it could start from the designation of the issues on appeal. Professor Seligson was in favor of the time running from the filing date of the notice of appeal. Mr. Treister stated the notice of appeal had to be filed within 10 days and the designation of the issues on appeal within 10 or 7 days. Professor Seligson felt 30 days from the filing of the notice of appeal would be sufficient. Mr. Horsky stated there was some possibility that if the time limit was tied in with the filing of the statement of the issues, a party getting a delay of the statement for a valid reason would not require changes in the entire time schedule. In other words, he would give the party a limited amount of time from the filing of the statement of the issues -- around 15 days. In that way, if an extension were granted, only one time limitation would be affected. Everyone was in agreement that the first sentence of subdivision (j) should read: "Unless otherwise provided by a local rule or court order, the appellant shall serve and file his brief within 15 days after the service of the statement of issues."

Mr. Horsky stated he understood the committee was in agreement that the time for the appellee's brief should run from the time of the receipt of the appellant's brief. The second sentence of subdivision (j) setting forth 15 days for the service and filing of the appellee's brief was acceptable. The reporter read the revised version of subdivision (j), stating it was to be made clear that the court could dispense with the filing of any brief and not merely the 15-day requirements. There were no objections to the 5-day requirement for serving and filing a reply brief. It was suggested the parenthesized clause, "but, except for (good) cause shown, a reply brief must be filed at least 3 days before argument," be eliminated. Mr. Horsky stated with this portion of the subdivision included, it was too meticulous. There were no objections to the elimination of the parenthetical phrase.

It was decided that subdivision (i) was no longer necessary. Mr. Horsky stated that the clause, "the clerk shall thereupon enter the appeal upon the docket," should be included in subdivision (h). His reason was that it is a direction to the clerk. Professor Riesenfeld agreed. There were no objections.

(k) Oral Argument. The reporter read subdivision (k). Professor Seligson was in agreement that if "local rule" was to be retained, a reference to "court order" should be added. Professor Riesenfeld moved the parenthetical phrase requiring the clerk to advise the parties be deleted, after Judge Gignoux said he knew of no court fixing the time and place for oral argument and not notifying the parties. The reporter noted that Rule 34(a) of the Federal Rules of Appellate Procedure required the clerk of the court of appeals to notify the parties. Professor Riesenfeld then extended his motion to include placing the period after "argument". He felt "at a time and place fixed by the district court" was unnecessary. His motion was seconded and carried.

(l) Motion for Rehearing. The reporter read subdivision (l) and stated it was an adaptation of Rule 40 of the Federal Rules of Appellate Procedure, which allows 14 days for the filing of a petition for rehearing. Professor Kennedy said "petition" was used in the Appellate Rules, but since that word had a different meaning from the definition used in the Bankruptcy Rules he substituted "motion". Mr. Triester stated he felt it was futile to provide for a motion for rehearing if the committee had no intention of amending the Federal Rules of Appellate Procedure. It was replied that if the Bankruptcy Rules say nothing about a motion for rehearing, the court can rehear a case without limitation and change its order if it so desires. Professor Kennedy stated that the sentiment of the committee at the last meeting was to have a 10-day period of limitation. Professor Seligson said the value of this rule was the 10-day outside limit for filing a motion for rehearing. The reporter asked if "local rule or court" should not precede "order" in the last line for consistency. Professor Seligson

thought it should. He then moved the adoption of the rule with an amendment: "Unless the time is shortened or enlarged by local rule or court order, a motion for rehearing may be filed within 10 days after entry of judgment by the district court." The motion carried. Mr. Treister felt the court should not have the authority to shorten the time limitation in this respect. On this point, the rule was understood to read: "Unless otherwise provided by local rule or court order, a motion . . .."

(m) Duties of Clerks. The reporter read subdivision (m), stating that Rule 45 of the Federal Rules of Appellate Procedure required certain matters to be taken care of by the clerk of the court of appeals which could be handled by the clerk of the district court under this rule. It was decided that Rule 5.2, Books and Records Kept by Clerks, covered the material in the first sentence of subdivision (m) The first sentence was to be deleted. Mr. Horsky moved the adoption of the second sentence. The vote was 4 to 4. The chairman was in favor of adoption. The motion carried.

The reporter stated that the parenthesized third sentence covered the giving of notice of an appeal from the judgment of the district court by the clerk to the referee. The committee had previously decided not to deal with this subject in the Bankruptcy Rules. He questioned whether a recommendation should be given to Judge Maris that a provision be made in the Federal Rules of Appellate Procedure for the referee to get such a notice. Mr. Horsky supposed that if the Administrative Office could order a clerk to keep various records, he could be ordered to send notices of appeal to the referee without amending the Federal Rules of Appellate Procedure. Referee Snedecor then moved the deletion of the parenthetical sentence, adding to his motion that the reporter should not ask the Appellate Rules Committee to adopt this portion. He felt it too inconsequential. The motion carried. Mr. Jackson felt this provision should be included in the Clerk's Manual. There were no objections to this suggestion.

(n) Applicability of the Federal Rules of Appellate Procedure. The reporter read subdivision (n) and stated this rule said only that the district court could go to the Federal Rules of Appellate Procedure at any time for lack of any other rule. Referee Snedecor moved the deletion of this subdivision. The court could go to the Federal Rules of Appellate Procedure anyway. Mr. Treister moved an amendment to the motion that a Note accompany Rule 8.1 giving the information contained in subdivision (n). The motion was carried as amended.

(o) Disposition of Appeal; Weight Accorded Referee's Findings. An additional subdivision of Rule 8.1 relating to scope of review, had been inadvertently omitted from the deskbook. The reporter read the subdivision as approved at a previous meeting. "Upon an appeal from a judgment or order of the referee, the district court may affirm, modify, or reverse the referee's judgment or order or remand with instructions for further proceedings. The court shall accept the referee's findings of fact unless they are clearly erroneous and shall give due regard to the opportunity of the referee to judge the credibility of witnesses." He then stated that this subdivision eliminated the possibility of a district judge's taking more evidence. The subdivision was approved at a previous meeting, and Professor Seligson therefore moved its adoption. The motion carried.

Costs. Another addition to Rule 8.1 was the incorporation of the substance of Rule 39 of the Federal Rules of Appellate Procedure entitled Costs. The reporter read subdivision (a) To Whom Allowed, and (e) Costs on Appeal Taxable in the District Courts. After reading subdivision (e), he stated a comparable provision in the Bankruptcy Rules would deal with Costs Taxable by the Referee. The reporter stated subdivision (c) Costs of Briefs, Appendices, and Copies of Records was not necessary in the Bankruptcy Rules. Mr. Horsky moved the reporter draft a subdivision which would substantially conform to Rule 39 of the Federal Rules of Appellate Procedure. Professor Seligson seconded the motion. It carried.

Form No. 46A. The reporter asked the members to turn to Official Form 46A - Notice of Appeal to a District Court (from a Judgment or Order of a Referee). Subdivision (a) of Rule 8.1 states: "The notice of appeal shall conform substantially with Official Form No. 46A." Mr. Horsky was satisfied with the language of subdivision (a) of Rule 8.1 and the suggested form. Mr. Treister suggested rewording the Form as: "_____ hereby appeals to the district court . . . ." There were no objections to the suggestion. It was adopted to read: "_____, the bankrupt [or plaintiff or defendant] above named, hereby appeals to the district court . . .." The title remained the same.

RULE 7.7. Pleadings Allowed; Forms of Motions. The chairman read Rule 7.7. Mr. Treister said subdivision (b)(2) of Federal Civil Rule 7 was not applicable in bankruptcy and asked whether the proposed Bankruptcy Rules had a section to cover forms. The reporter read Rule 7.10, Form of Pleadings. He then read Bankruptcy Rule 9.2(b), Caption. However, Rule 9.2 did not cover adversary proceedings. With regard to "captions", the committee turned to Form No. 6A, Caption for (Complaint in) Adversary Proceeding. Mr. Treister stated Rule 7.10 did not answer his question. He moved "(a)" be inserted after "Rule 7" in the first line of Rule 7.7. The reporter stated that if only subdivision (a) was incorporated in Rule 7.7, the caption would be changed to "Pleadings Allowed". It was then agreed that subdivision (b) of Rule 7 of the Federal Rules of Civil Procedure would be incorporated into Rule 9.2. The motion to incorporate only FRCP 7(a) into this Rule was carried.

RULE 7.8. General Rules of Pleading. The reporter read Rule 7.8 and stated that the "clause (1) of subdivision (a)" referred to in this Rule was the clause which required every complaint or other pleading setting forth a claim for relief to contain a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it. Referee Whitehurst moved the adoption of this rule. It carried.

RULE 7.9. Pleading Special Matters. The reporter read Rule 7.9 and the subdivision titles of Rule 9 of the Federal Rules of Civil Procedure: (a) Capacity, (b) Fraud, Mistake, Condition of the Mind, (c) Conditions Precedent, (d) Official Document or Act, (e) Judgment, (f) Time and Place, (g) Special Damage, and (h) Admiralty and Maritime Claims. No discussion was held. There was a motion to adopt the rule as drafted. It carried.

RULE 7.10. Form of Pleadings. The reporter read Rule 7.10 and the subdivision titles of Rule 10 of the Federal Rules of Civil Procedure: (a) Caption; Names of Parties, (b) Paragraphs; Separate Statements, and (c) Adoption by Reference; Exhibits. Professor Kennedy changed the requirement of compliance with "Bankruptcy Rule 9.2(b)" to that of conformity to "Official Form 6A" in accordance with an earlier suggestion of Mr. Treister. The reporter read the Form. Mr. Horsky suggested "the style of" precede "Official Form 6A" in the Rule. Professor Kennedy read Rule 9.3 on Forms. Mr. Treister questioned the difference between "Bankruptcy Docket No." and "File No.", stating that in his district there would be only one number. He then suggested striking "File No. . . ." Referee Snedecor suggested changing "Bankruptcy Docket No." to "Bankruptcy No.". All the referees in bankruptcy were in agreement with him. Judge Gignoux moved the approval of Form 6A as amended. The motion carried. There was a motion to approve Rule 7.10 as amended. This, too, carried.

RULE 9.2. General Requirements of Form. The reporter stated that the version of Rule 9.2 dated 10-8-67 had been put on the shelf. He was proposing in the version dated 11-15-68 the addition of the second sentence of subdivision (b), Caption. The new sentence was one which was approved when the committee discussed the Statements of Affairs. Mr. Treister stated that in some bankruptcy papers there could be a long list of names to be carried on through the years. The reporter then suggested these names only be required in petitions and notices. It was his opinion that if the proposal was approved for petitions and notices only, maybe it should go into the rules on petitions and the rules on notices. There were no objections to the approval of the proposal.

RULE 7.1. Scope of Rules of Part VII. The reporter read from the Note a list of the different actions which were and were not adversary proceedings as governed by this Rule. He stated Mr. Treister had objected to the citation of § 2a(21) of the Act in connection with proceedings initiated by the court since such proceedings eventually become adversary proceedings in most cases. It was decided by the members that revision of the Note would be left to the reporter.

RULE 7.13. Counterclaim and Cross-Claim. The reporter read a draft proposing that Rule 13 of the Federal Rules of Civil Procedure apply to adversary proceedings. He stated this rule did not deal with a counterclaim filed by the trustee or the receiver. Mr. Horsky stated that if a party is a bankrupt, it may be that the "whole business" will be put together by the referee and that the concept of compulsory counterclaim is unnecessary. Mr. Treister stated that in some cases, the referee would have no jurisdiction of a related counterclaim. He then asked if a party is being restrained from foreclosing on property, is it a compulsory counterclaim for the respondent to set up the validity of the mortgage and to seek reclamation. Professor Seligson said no, since the validity of the mortgage was not in issue in the proceeding to enjoin. The only issue would be, in his opinion, whether there was an equity in the property. Mr. Treister said that the right to enforce the security may arise out of the same transaction or occurrence as the right to restrain the secured party from foreclosing. It was suggested that Rule 7.13 be referred to the reporter for further study. Professor Riesenfeld asked the reporter also to consider the jurisdictional aspects of this rule in bankruptcy.

RULE 7.14. Third-Party Practice. The reporter read a draft of Rule 7.14. Mr. Treister questioned whether subdivision (c) of Rule 14 of the Federal Rules of Civil Procedure had any application to bankruptcy. Professor Kennedy stated it was not the policy of the committee to fix jurisdictional limitations into the bankruptcy rules. Professor Riesenfeld moved the rule be adopted as drafted, subject to further consideration in light of information found by the reporter. The motion carried.

Professor Seligson asked if anything similar to Rule 82 of the Federal Rules of Civil Procedure had been incorporated into the Bankruptcy Rules. The reporter replied that Rule 7.82 dealt with venue, not jurisdiction. Professor Seligson moved that the reporter declare in the rules that the committee was not trying to extend jurisdiction. Judge Gignoux suggested that Appellate Rule 1(b) would be a good model for a Bankruptcy Rule declaring the committee was not trying to extend jurisdiction. Professor Seligson agreed to Judge Gignoux's amendment: "These rules shall not be construed to extend or limit the jurisdiction of the courts of bankruptcy as established by law." The motion carried.

RULE 7.16. Pre-Trial Procedure; Formulating Issues. The reporter read a draft of Rule 7.16: "Rule 16 of the Federal Rules of Civil Procedure applies to adversary proceedings." The reporter then read subsection (5) of Rule 16 of the Federal Rules of Civil Procedure: "The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury." He then read Bankruptcy Rule 5.53, which deals with special masters. Professor Seligson moved approval of the rule. The motion carried.

RULE 9.1. General Definitions. The reporter read the introductory paragraph of Rule 9.1 and suggested the deletion of "shall" in the second line. There were no objections. Professor Riesenfeld questioned "meanings" in line 2 of the Rule. In the caption of § 1 of the Bankruptcy Act the word appears in the singular. He was in favor of the singular for consistency. By a vote of 3 for and 2 against, the matter was left to the reporter to resolve.

Professor Kennedy stated that at an earlier session it was suggested that "Accountant" and "Attorney" be defined in this rule. He read his definition of "Accountant" to include a partnership or corporation authorized by the law of the state where the court of bankruptcy was sitting to render professional accounting services.

Judge Gignoux asked the reporter what he had drafted as a definition to "attorney". Professor Kennedy stated: "a partnership or corporation authorized by the law of the state where the court of bankruptcy is sitting to render professional legal services." Professor Seligson asked if the committee had not already approved a provision that an attorney admitted to practice in one state can appear in another state. The reporter answered by quoting Rule 9.10 Representation and Appearances; Powers of Attorney. Mr. Treister thought the definition did not incorporate the fact that an attorney can be authorized in one state, yet practice in another. It was then suggested the definition should read: " . . . authorized to practice in the court." It was suggested this approach could apply to accountants. It was then suggested "authorized to practice in the state in which the court is sitting" be included in both definitions. Mr. Treister said all that was necessary with regard to a definition for "accountant" was "an accounting partnership or corporation." Everyone was in agreement that the short definition should apply to both "Accountant" and "Attorney".

The reporter, with regard to the definition of "Affiliate", stated it was primarily for use with Rule 1.10(a)(4), which was read: "if a petition by or against a bankrupt is filed in accord with any of the foregoing paragraphs of this subdivision, a petition may also be filed in the same district by or against an affiliate of the bankrupt." This definition was never approved for the shelf, whereas Rule 1.10(a)(4) was. Professor Kennedy read the definition. Professor Seligson moved its adoption. The motion carried.

The reporter read the definition of "Application". For comparison, he read the definition of "Motion". Professor Kennedy suggested adding to the definitions one for "Petition" as defined in Rule 9.1.1: "a document seeking an adjudication of a person in bankruptcy and the administration of his estate under Chapters I-VII of the Act." With reference to the definition of "Pleadings" he noted that for the purposes of adversary proceedings this term is limited to the complaint, answer, etc." Outside Part VII pleadings will sometimes be used to include "petition". Professor Seligson suggested in subdivision (8) the "and" be

omitted from line 53, so as not to separate "petition" from "answer". In other words, the "answer" would be to the "petition". Professor Seligson moved to adopt the definitions of "Application", "Motion", "Pleadings", and "Petitions". Professor Seligson's motion referred to the definition of "petition" as set out in Rule 9.1.1. Professor Riesenfeld questioned the definition of "petition". Judge Forman asked for a vote on approving the definitions of "application", "motion", and "pleadings". The motion carried.

Professor Riesenfeld said he thought it would be better to adopt a definition for "petition" in another Rule with an introductory clause. Professor Seligson accepted the suggestion. He then moved the definition of "petition" be adopted subject to an introductory clause to be drafted at a later date and its placement in the Rules then to be decided. Mr. Treister suggested deferring the definition of "petition". He felt it was subject to re-examination each time it was used, since it could mean different things in different places. There were no objections to the deferment.

Referee Whitehurst asked, with regard to Form No. 1, Petition for Voluntary Bankruptcy, what the petitioner is praying for. Professor Kennedy suggested the petitioner was praying for relief under the Bankruptcy Act. Mr. Treister suggested changing the title to "Petition for Relief as a Voluntary Bankrupt". The reporter stated the present title had been decided upon at a previous meeting after lengthy discussion in which Judge Maris was a participant. He pointed out that Form No. 5 was entitled "Creditors' Petition for Bankruptcy". Professor Riesenfeld moved the title be left as drafted. There were no objections.

The next definition discussed was that of "Bankrupt". Judge Gignoux moved approval. Referee Whitehurst asked if the drafted definition would include an "alleged bankrupt". The reporter stated if the "alleged bankrupt" is a corporation, it does apply. Professor Seligson said the definition of "bankrupt" was taken from § 7b of the Act. The motion to adopt the definition of "bankrupt" was carried.

The reporter read the definition of "Bankruptcy judge". Section 2a(15) of the Act restricts the power to enjoin a court to a district judge. Section 43c authorizes a judge to act when the referee's office is vacant. Bankruptcy Rule 5.21 authorizes a judge to revoke a reference and to act in lieu of the referee under certain circumstances. Referee Snedecor moved to adopt the definition. The motion carried. Professor Riesenfeld suggested changing "and" in line 38 to "or". There were no objections.

Professor Kennedy read the definition of "Lien". Mr. Treister asked for what purposes this definition was needed. Professor Kennedy said the committee thought a definition of "lien" was necessary was when it approved Rules 6.18(b)(3) and 7.1(3), which refer to a sale free of a lien. Mr. Treister stated that whether the court has or does not have the power to sell free and clear of a lien will not come from the Bankruptcy Rules but from the case law. His motion to delete the definition of "Lien" was carried.

RULE 9.1.2. Definitions of Words Used in the Federal Rules of Civil Procedure. The reporter suggested dropping "shall" and the "s" on "meanings" for consistency. Professor Riesenfeld felt the title of this Rule should be changed to "Meanings of Words Used in the Federal Rules of Civil Procedure When Applicable in Bankruptcy". There were no objections.

The reporter suggested changing the definition of "Action" to include "or, when appropriate, a proceeding on a contested petition or to vacate an adjudication", with a Note referring to Rule 1.9.1, Applicability of Rules in Part VII. The suggestion was adopted.

If "appellate court" as used in Rule 50 of the Federal Rules of Civil Procedure is to be incorporated into the Bankruptcy Rules, the reporter wanted to be sure the "appellate court" included the "district court" as well as the "court of appeals". Rule 50d of the Federal Rules of Civil Procedure would not have very much application in bankruptcy cases, however, because there would not be many verdicts directed by referees.

The reporter was against including a definition for "Appellate court". The suggestion of not having it was adopted.

Professor Kennedy read the definition of "Clerk". He suggested changing "includes" to "means" and striking "adversary" before "proceeding." Referee Snedecor moved the adoption of the amended definition of "Clerk". The motion carried.

The reporter read the meanings of "district court" and "trial court" in paragraph (3). Mr. Treister asked why not have both terms refer to the "bankruptcy judge". The reporter agreed that sometimes the "district court" and "trial court" refer to the judge when acting in lieu of the referee. It was then suggested that paragraph (4) on "Judge" be absorbed by paragraph (3) to state: "'District court', 'trial court', and 'judge' mean 'bankruptcy judge'." The reporter and the members were in agreement.

The reporter read paragraph (5), which became (4) when "Judge" was absorbed in (3). After reading it, he suggested deleting "reviewable under Rule 8.11" since the reference was no longer appropriate. He suggested adding: "appealable under § 39c of the Act." Since "appealable" was not deemed appropriate when referring to § 39c, he suggested "reviewable under § 39c of the Act." Mr. Treister asked what "Judgment" meant in the Federal Rules of Civil Procedure. The reporter read Rule 54(a) to the effect that "'Judgment' as used in these rules includes a decree and any order from which an appeal lies". Professor Riesenfeld suggested "reviewable" modify "order of the referee". Using § 39c, Mr. Treister suggested " . . . includes any appealable order of the referee under section 39c of the Act". Everyone was in favor of "appealable". The suggestion was approved.

RULE 9.6. Time. Professor Kennedy stated the committee had previously approved applicability of subdivision (a) of Rule 6 of the Federal Rules of Civil Procedure in bankruptcy cases but had reserved the question as to what should be said of "enlargement" and "reduction" of time. The reporter read subdivision (b)

of Rule 9.6, Enlargement. He explained the cross-references: Rule 1.5.8(b) dealt with action on application for permission to pay filing fees in installments; Rule 3.2(e) with time for filing claims; Rule 4.5(c) with termination of the automatic stay against an unscheduled creditor; Rule 7.5(b) with time within which a paper served on a party must be filed; Rule 7.50 with a motion for judgment notwithstanding the verdict; Rule 7.52 with a motion for amendment of findings by the court; Rule 7.59 with a motion for new trial, etc.; Rule 9.60 with a motion for relief from a judgment or order; and Rule 8.1(b) with the filing of a notice of appeal. Professor Kennedy asked that the references be considered separately. There were no objections to including Rules 1.5.8(b) and 3.2(e). It was decided Rules 4.5(c) and 7.5(b) should be deleted. It was also decided to adopt the policy that no provision would be made to allow extension of the time for filing notice of appeal.

[At this point, the meeting adjourned until Saturday, December 7, 1968 at 9:00 a.m.]

a)

After a discussion of the dates for the next meeting of the Committee, they were tentatively set for either March or July of 1969.

(c) Reduction. The reporter read subdivision (c). Rule 2.1(a)(1), prescribing a 10-day interval for the first meeting of creditors, was discussed. Mr. Treister was against having Rule 2.1(a)(1) as an exception to subdivision (c). Professor Kennedy pointed out that if the committee left out reference to this rule as an exception, the court could shorten the time limitation. The vote on a motion for deleting the exception was 4-to-4. Because of the close vote, the chairman said the exception would be reconsidered when all the members were present.

The next exception was Rule 2.10(a), prescribing the 10-day requirement as to notice. Professor Seligson moved the deletion of Rule 2.10(a). The motion carried. Professor Riesenfeld asked what the motion did to the rule. Professor Kennedy stated that at any time a notice prescribed by Rule 2.10 could be given in less than 10 days. There was a procedural safeguard in Rule 9.6(c) that the reduction would be ordered only on "good cause shown". Professor Riesenfeld felt the committee had undertaken the deletion of the exception "too hastily". After re-reading Rule 2.10 Professor Seligson was in agreement with Professor Riesenfeld. He felt the time should not be diminished. He moved that the committee reconsider its vote on the deletion of Rule 2.10(a). Professor Kennedy stated that to avoid conflict between the two bases for shortening time, perhaps the closing clause of subdivision (b) of Rule 9.6 should also be included in subdivision (c): "except to the extent and under the conditions stated in them." Professor Seligson further felt that Rule 2.10(a) should stand alone without any other exception in subdivision (b) of Rule 9.6. The vote on the restoration of Rule 2.10(a) was 4-to-4. The chairman was in favor of restoring it. The motion carried. Referee Whitehurst moved the addition of the phrase to subdivision (c) as proposed by the reporter. The motion carried.

The reporter stated Rule 3.2(e) dealt with the filing of a proof of claim, and a six-month filing rule had been approved. Professor Seligson moved the approval of Rule 3.2(e). The motion carried.

Rule 4.12(a) and (b) relate to the filing of objections to discharge. Subdivision (a) sets a 30-day minimum on the time for filing a complaint, and subdivision (b) requires 30 days' notice by mail (after the first date set of the meeting of creditors). Referee Whitehurst moved the exceptions be retained. The motion carried.

Mr. Treister suggested adding Rule 8.1 as a possible exception to subdivision (c) so as to preclude the referee from shortening the time for appeal. Professor Kennedy was in favor of adding Rule 8.1(b) as an exception. The committee was in favor of adding Rule 8.1(b). It was then agreed there would be no right to shorten the time of appeal.

Mr. Treister wanted to include Rule 4.1(c). He said, "If the trustee refuses to exempt something, or if a trustee wants to exempt something and the creditor wants to object, the period of limitation is rather short." Rule 4.1 allows further time to be granted the object or by the court within the 10-day period after the filing of the report. Mr. Treister stated his suggestion in the form of a motion. The reporter said if Rule 4.1 were included in Rule 9.6(c), the court could not shorten the 10-day period at the instance of either the bankrupt or the creditors. In other words, both the bankrupt and the creditors would be protected against reduction if Rule 4.1(c) was included in subdivision (c). Professor Seligson asked, "Suppose the bankrupt wants the time shortened and the trustee agrees; should the time not be shortened because the creditors have to have at least 10 days' notice?" Mr. Treister withdrew his motion.

A discussion was held as to the words on line 17, "with (or without) motion . . . ." The reporter suggested "motion or notice". For enlarging time, he stated there was no requirement for a motion or notice if the order was made before the expiration of the original time period. Mr. Treister felt no reference to "notice" should be included. When reducing time, because of the urgency, no notice could be given. It was the consensus of the committee not to add "notice". The chairman said nothing definite had been done with the parenthesized

phrase, " at any time " in the preceding line. The reporter stated it was included in Rule 6(b) on enlargement. The consensus was to delete it.

(d) For Motions - Affidavits. The reporter read subdivision (d) and stated that Rule 6(d) of the Federal Rules of Civil Procedure dealt with motions and affidavits on motions. There was a possibility of a conflict of this subdivision with other provisions in the Bankruptcy Rules. It was moved the subdivision be approved subject to a check for conflict by the reporter. The motion carried.

Professor Kennedy stated no provision had been added to Rule 9.6 to incorporate subdivision (e) of Rule 6 of the Federal Rules of Civil Procedure. This subdivision allows a party 3 additional days for doing anything if service on him is by mail. Professor Kennedy stated that in the bankruptcy rules dealing with service of notice by mail, the committee had tried to allow additional time. He then stated subdivision (e) was not necessary. Everyone was in agreement.

RULE 5.23. Nepotism and Influence. The reporter stated that at a previous meeting he was asked to incorporate § 39b of the Act into the Rules. At that time, Mr. Treister had suggested submitting the subject matter of § 39b in separate rules. The reporter then read 39b(1): "Referees shall not (1) act in cases in which they are directly or indirectly interested . . .." This clause being so closely related to Rule 5.23, the reporter added it as a subdivision of that rule. He then stated comparable language could be found in 28 U.S.C. § 455. He said Rule 5.24 picked up the remaining portion of the first sentence of § 39b of the Act: "(2) purchase, directly or indirectly, any property of an estate in any proceeding under this Act." Mr. Treister felt it was better in this rule to impose its prohibitions on "any judge or referee" rather than on "any bankruptcy judge". Professor Seligson moved the bracketed material in the draft submitted in the reporter's Memorandum of November 12, 1968-i.e., "in which he has a substantial interest, has been of counsel, or is or has been a material witness" -- be used in subdivision (f) of Rule 5.23. It was suggested that "direct or indirect" be added after "substantial". The following new

RULE 5.24 Restrictions on Referees. The reporter read the draft of Rule 5.24 dated 11/12/68 and explained its purpose and scope. There was discussion of whether judges should be embraced within its prohibitions, and the consensus was that they should not be. The adoption of Rule 5.24 including the bracketed language in the draft was moved. Referee Whitehurst objected that the draft was too restrictive insofar as it applied to a retired referee. He pointed out that the retired referee is not in a financial position comparable to that of a retired federal judge. Judge Gignoux moved the deletion of the reference to "a referee receiving benefits" in lines 5-8 of the draft of Rule 5.24. Professor Kennedy suggested that if the motion should be adopted, the Note should explain the selective incorporation of § 39b of the Act. He thought the Note might appropriately point out that the regulation of activities of referees receiving benefits is peculiarly a legislative problem. Professor Riesenfeld thought the rule should include a statement to the effect that "this rule does not govern the status of retired referees." Judge Gignoux's motion was put to a vote and carried. Professor Kennedy stated his understanding that the committee was approving the first sentence of the draft prohibiting a referee from purchasing directly or indirectly any property of an estate and from acting as a trustee or receiver in any case; that this prohibition did not apply to a retired referee; and that the second sentence of the draft was approved insofar as it prohibited an active full-time referee from engaging in the practice of law and an active part-time referee from acting as an attorney for any party in any case under the Act.

RULE 1.6. Consolidation of Cases Commenced in Same Court. After a reading of the draft of Rule 1.6 dated 11/11/67, Professor Joslin said he felt there were too many "by or against's". Judge Gignoux suggested "by or against any combination of a partnership and the general partners thereof." Professor Seligson felt "consolidation" was the wrong word, because there were too many interpretations of what has been consolidated. Professor Kennedy proposed: "If two or more petitions are filed in the same court by or against a husband and wife, by or against a bankrupt and an affiliate, by or against a partnership and one or more of the general partners thereof, or by or against two or more of the general partners of the same partnership, the court may administer the estate together, and make such orders . . . ." With the many amendments to the rule, Referee Snedecor stated the caption had to be changed to "Administration". This was agreed. This rule covering only cases filed in the same court, Professor Seligson suggested adding "filed in or transferred to". It was decided his suggestion could more easily be handled in a Note. He had no objection to that. The reporter read the amended version of the rule. It was adopted.

Proposal for Reducing the Filing of Claims. The final discussion was on a letter to Professor Kennedy from Referee Daniel R. Cowans. Professor Kennedy stated this letter proposed elimination of the filing of claims unless there appeared a possibility of a dividend. Judge Snedecor read a memorandum he had drafted in answer to Judge Cowans' letter: "We must assume that Judge Cowans is confining his suggestion to non-business cases. Surely, he would not want to place the burden on the referee's staff of preparing a second notice with information as to the amount of each creditor's claim as scheduled in a business case in which there is at least the probability of assets. In non-business cases it is our experience that most creditors do not file claims even in the face of our warning that proofs of claim must be filed within six months. Frequently, our trustees have recovered several hundreds of dollars in which no claim has been filed. It is then we give second notices accompanied by the notice of the final meeting extending the time for the filing of the claim. For these reasons, I would oppose the suggestion and leave the responsibility on the creditors to file proofs of claim. As to the accumulation of claims in the clerk's office, the housekeeping schedule prescribed by the administrative office provides for the destruction of all proofs of claim ten years after the closing of the case."

Mr. Jackson was asked to prepare a memorandum stating the committee's and the Bankruptcy Division's views on this matter. This memorandum along with Judge Snedecor's memorandum will be submitted to the reporter for study.

[The meeting adjourned at 12:00 noon,
December 7, 1968.]