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

The fifteenth meeting of the Advisory Committee on Bankruptcy Rules convened in the Supreme Court Building on Wednesday, February 14, 1968, at 10:00 a.m. and adjourned on Saturday, February 17, 1968, at 12:06 p.m. The following members were present during the sessions:

Honorable Phillip Forman, Chairman
Edwin L. Covey
Asa S. Herzog
Stanley Joslin
Norman H. Nachman (unable to attend on Wednesday)
Stefan A. Riesenfeld
Charles Seligson
Roy M. Shelbourne
George M. Treister
Elmore Whitehurst
Frank R. Kennedy, Reporter
Morris Shanker, Assistant to the Reporter

Judges Edward Gignoux and Estes Snedecor were unable to attend. Others attending were Professor James Wm. Moore, member of the standing Committee, and Mr. Royal E. Jackson, Chief, and Messrs. Berkeley Wright and Thomas Beitelman, Staff Members, of the Bankruptcy Division of the Administrative Office of the United States Courts.

Judge Forman welcomed the members and guests.

Agenda Item No. 1: [See infra p. 4.]

Agenda Item No. 2: PROPOSED BANKRUPTCY RULE 2.1 - MEETINGS OF CREDITORS

(a)(1) Date and Place.

Professor Kennedy read relevant material from his memorandum dated 1-14-68. He recommended the deletion of the words "date of" from line 4 of proposed Rule 2.1(a)(1) as drafted under date of 1-5-68. Mr. Treister suggested that there be added, at the end of the first sentence, the words "unless there is an appeal, in which event the court can postpone the date." Following a

short discussion, it was stated that the principle was agreed upon, and that the reporter would draft a new paragraph with a note thereto for further discussion at a future meeting.

Agenda Item No. 3: PROPOSED BANKRUPTCY RULE 2.22 - VOTING AT CREDITORS' MEETINGS

(b) Majority Vote; Creditors with Claims of $50 [or $200] or Less.

Professor Kennedy said the only question regarding Rule 2.22 that was being put to the Committee was whether $200 should be substituted for $50. He read proposed Rule 2.22(b) as drafted under date of 1-5-68. Judge Herzog moved that the subdivision be amended to read $200. Professor Seligson seconded the motion. Mr. Covey wished to amend the motion by having the amount changed from $200 to $100. Mr. Covey's motion was carried by a vote of 5 to 3.

Professor Kennedy called the Committee's attention to and explained the following changes made by the Subcommittee on Style: in subdivision (d) of Rule 2.22 there was an addition of the words "or affiliate" in lines 19 and 20, and in lines 23 and 24 there was added the phrase "or any person having an interest materially adverse to the estate". There were no objections to those two additions.

Professor Moore said he thought that subdivisions (a) and (e) of Rule 2.22 should be combined. Professor Riesenfeld suggested that the word "entitled" rather than "eligibility" be used. There was no objection to the usage of "entitled" and "entitlement" rather than "eligible" and "eligibility". There was no objection to combining subdivisions (a) and (e) in one paragraph. However, during the discussion which followed, Professor Riesenfeld said he wished to rescind his earlier vote and have subdivision (e) as originally proposed.

Professor Riesenfeld felt that perhaps something should be done by rule to cover those strange cases in which an assignee for the benefit of creditors is a creditor for the purposes of the Bankruptcy Act. Professor Kennedy said that he would look into the matter.

Professor Riesenfeld felt that if proposed subdivision (e) was to be merged into (a), it should be made clear in a comment that even if only the value of the security but not the claim itself was in dispute, temporary allowance could be made. Following a general discussion, Professor Kennedy stated that he had the following: "(a) Entitlement to Vote; Temporary Allowance for Voting Purposes. Except as hereinafter provided, a creditor is entitled to vote (a claim?) at a meeting if he has filed a proof thereof at or before the meeting, unless objection is made or unless the proof of claim appears to be insufficient on its face. Notwithstanding objection, the court may temporarily allow the claim of any creditor for the purpose of voting in such sum as to the court seems to be owing."

Mr. Treister felt that the words "to the allowability or extent of a claim" should be added after the word "objection" in the last sentence. Professor Riesenfeld suggested that it be "to the extent or allowability of a claim", and Mr. Treister agreed to that. Thus the last sentence was modified to read: "Notwithstanding objection to the extent or allowability of a claim, the court may temporarily allow it for the purpose of voting in such sum as to the court seems to be owing."

PROPOSED BANKRUPTCY RULE 3.5 - OBJECTIONS TO AND ALLOWANCE OF CLAIMS FOR PURPOSE OF DISTRIBUTION; VALUATION OF SECURITY

Professor Kennedy stated that Professor Riesenfeld had suggested that subdivisions (b) and (c) be reversed. However, when Professor Kennedy presented Rule 3.5 to the Subcommittee on Style, he did not have the Minutes of the November 196? Meeting and thereby submitted the rule in the order shown in his draft of 1-6-68. Professor Riesenfeld did not feel strongly about the order of the subdivisions, and he said that since the Subcommittee on Style had approved the order in the draft, he would withdraw his suggestion. Therefore, Rule 3.5 was left as proposed in the draft dated 1-6-68.

PROPOSED BANKRUPTCY RULE 5.33 - DELEGATION OF FUNCTIONS TO REFEREES' ASSISTANTS

Professor Kennedy read Rule 5.33 as proposed in his draft dated 1-7-68 and gave its background. Judge Whitehurst desired to have the meaning of "assistant" in line 1 made clearer, and to accomplish that purpose Professor Kennedy added the words "employed by him" after the word "assistant". After a short discussion, it was decided to leave Rule 5.33 as proposed and amended by the reporter.

Agenda Item No. 1: - Drafts for the Shelf

Judge Forman announced that at this point, subject to further action on Rule 5.53, it was understood that Bankruptcy Rules 1.50, 2.1, 2.22, 3.1, 3.2, 3.3, 3.4.1, 3.5, 3.10, 3.20, 3.66, 4.1, 5.2, 5.11, 5.11.1, 5.19, 5.33, 5.53, and 7.41 and Official Forms 17B and 17H were to be placed on the shelf. All were in agreement.

Agenda Item No. 5: - Role of the Advisory Committee on Bankruptcy Rules in Revising the Bankruptcy Act

Professor Kennedy gave the substance of his memorandum dated January 8, 1968, and read an excerpt from the September 12, 1967, Report of the Standing Committee to the Judicial Conference. Following a recess, there was discussion of the need to have the committee which drafts the statute to work in close conformity with the Committee on Rules and for the two committees to get their drafts out contemporaneously. Professor Kennedy said that he would undertake to prepare a presentation indicating how the Committee thinks the Bankruptcy Act ought to look if the Bankruptcy Rules are adopted.

Agenda Item No. 6: PROPOSED BANKRUPTCY RULE 2.9 - GENERAL AUTHORITY OF COURT TO REGULATE NOTICE; COMBINED NOTICES

Professor Kennedy read Rule 2.9 as proposed in the draft dated 1-5-68 and gave its background. Mr. Covey moved adoption of Rule 2.9 and there was no objection.

PROPOSED BANKRUPTCY RULE 2.10 - NOTICES TO CREDITORS

Professor Kennedy read subdivisions (a) and (b) of Rule 2.10 as proposed in the draft dated 1-17-68 and explained their background.

(a) Notices to All Creditors.

Judge Herzog felt that "approval" rather than "confirmation" should be used in clause (3), and there was no objection. Following a short discussion, it was the consensus that the word "receiver" covers "custodian".

Mr. Treister asked if there should be a separate subdivision of Rule 2.10 stating that "Notices of the last day for filing a complaint objecting to a discharge and of receipt of non-discharge shall be given as provided in Rules . . .." Everyone seemed to be in favor of such a subdivision.

There was no objection to retaining the parenthetical language in lines 1 and 2. There was agreement on elimination of the word "interim" in line 7. Mr. Treister thought that the principle should be that the word "every" is to be used for emphasis in the Bankruptcy Rules and not just because the word is used in the statutes. The sentiment was that the word "every" should come out wherever it appears in Rule 2.10 and that the proper article should be substituted.

(b) Notices to Creditors Whose Claims are Allowed.

In answer to Professor Joslin's question of whether subdivision (b) would be adopted as proposed, Professor Kennedy said that he had amended the draft dated 1-17-68 by the addition of the words "filed or" at the end of line 24. There were no objections to the adoptions of subdivisions (a) and (b) as amended.

(c) Addresses of Notices to Creditors.

Professor Kennedy read subdivision (c) of Rule 2.10 as proposed in his draft dated 1-17-68 and gave the background. During the discussion which ensued, Mr. Treister suggested that there be a note in Rule 2.10 stating that the forms for powers of attorney approved by the Committee do not include an authorization to an agent or attorney in fact to receive notice. Judge Whitehurst moved acceptance of subdivision (c) with the suggested note, and there was unanimous approval.

(d) Notices to Creditors' Committee.

Professor Kennedy read subdivision (d) of Rule 2.10 as proposed in his draft of 1-17-68 and explained its background. After a short, general discussion, there was no objection to leaving clauses (2), (3), (4), (5), and (8) in line 39 of subdivision (d), and it was agreed that clause (7) should not be included. There was no objection to approval of subdivision (d) as modified. Line 39 was thus to read as follows: "clauses (2), (3), (4), (5), and (8) of sub-".

(e) Notices to the United States.

Professor Kennedy read subdivision (e) of Rule 2.10 as proposed in the draft dated 1-17-68 and gave its background. Judge Whitehurst moved its approval. Subdivision (e) with modifications was approved unanimously.

(f) Notice by Publication.

Professor Kennedy read subdivision (f) of Rule 2.10 as proposed in the draft dated 1-17-68 and gave its background.

There was a general discussion concerning the impracticability of sending notices to magazine subscribers and the like, and Professor Kennedy said that in the note to Rule 2.10 he hoped to be able to cite cases to show when notice by mail is "impracticable".

Following that discussion, the Committee agreed to adopting subdivision (f) as proposed with a note. Mr. Treister said that the reference to subdivision (a) may have to be amended in order to accommodate references to notices of the deadline for filing of objections to discharge and of non-discharge.

PROPOSED BANKRUPTCY RULE 9.28 - PUBLICATION

Professor Kennedy read Rule 9.28 as proposed in his draft dated 1-6-68 and gave the background. Mr. Treister said he thought that the parenthesized words should be left in the rule. There were no objections to adopting Rule 9.28 with the parenthesized language.

Agenda Item No. 7: PROPOSED BANKRUPTCY RULE 5.3 - BOOKS, RECORDS, AND REPORTS OF REFEREES; DISCLOSURE OF INFORMATION

(a) Records to be Kept; Reports to be Made.

Professor Kennedy read subdivision (a) of Rule 5.3 as proposed in the draft dated 1-6-68. Following discussion, a vote was taken on the issue whether to separate into two subdivisions the references in subdivision (a) to the docket and list of claims, including the public examination aspect of it, from the provisions dealing with books, records, and reports as prescribed. The majority were opposed. Mr. Treister suggested that the second sentence be moved to Rule 5.3.1. Professor Seligson suggested that the first sentence read: "The referee shall keep such records including a docket for each case . . . ." After a short discussion, Professor Kennedy said that what he then had for the first sentence was the following: "The referee shall keep such books and records, including a docket for each case referred to him and a list of claims filed against each estate, and shall make such reports as may be prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States." He stated that the

second sentence would be transferred to Rule 5.3.1. There was no objection to subdivision (a) of Rule 5.3 as modified.

(b) Disposition of Papers of Closed Cases.

Professor Kennedy read subdivision (b) of Rule 5.3 as proposed in the draft dated 1-6-68. Following a short discussion of the mode of preservation of certain papers, Judge Whitehurst moved adoption of subdivision (b) with the parenthesized words being stricken. There was no objection.

(c) Disclosure of Information.

Mr. Treister said he thought that subdivision (c) of Rule 5.3 should be deleted entirely. There was no objection to the elimination of Rule 5.3(c). There was to be a note explaining what happened to the provision in § 39a(4) of the Bankruptcy Act.

PROPOSED BANKRUPTCY RULE 5.3.1 - PUBLIC ACCESS TO RECORDS AND PAPERS IN BANKRUPTCY CASES

Professor Kennedy read Rule 5.3.1 as proposed in the draft dated 1-7-68 and added the phrase "and the referee's docket and list of claims" after the word "cases" in line 1. He said the question was whether the Committee wanted to elaborate on or qualify this rule with respect to scurrilous or confidential data. Professor Joslin thought that a reference to Rules 9.30 and 9.31 should be included in the rule rather than in a note. Professor Kennedy suggested it be done by the addition of the words "Subject to the provisions of Rule 9.30 and 9.31" at the beginning of line 1. There was no objection to the adoption of Rule 5.3.1 as amended.

PROPOSED BANKRUPTCY RULE 9.30 - SECRET AND CONFIDENTIAL DATA

Professor Kennedy read Rule 9.30 as proposed in the draft dated 1-7-68 and gave its background. Professor Moore felt that the first line should include words to provide that the court may make such order on its own initiative. This seemed to be the general sentiment. There was a general discussion concerning different papers received by referees and whether the referees should keep so-called "nutty" letters, which might include scandalous or accusatory matter. At this point, Professor Kennedy stated that Rule 9.30 had been amended to read as follows: "Upon motion of any party in interest or

upon the court's own initiative, the court may make such order as justice may require to protect the estate or any party in interest in respect of any papers or information constituting secret processes, developments, or research or confidential business information." All agreed that the word "business" should be deleted from line 5.

Professor Shanker suggested the deletion of the words "of any party in interest" from line 1. It was suggested that the words "party in interest" in line 3 be substituted by the word "person". There were no objections to the aforementioned deletion and substitution.

Professor Kennedy suggested that the following addition be made after the word "information" in line 6: "or any letter or other paper filed in a bankruptcy case containing scandalous, accusatory, or irrelevant matter."

During an ensuing discussion, Professor Joslin moved that the words "received or filed" be used after the word "paper". The motion was lost by a majority disapproval. Professor Riesenfeld moved that the word "filed" only be used. Professor Seligson seconded the motion, and it was carried by a majority vote. In connection with Professor Kennedy's suggested addition at the end of line 6, Professor Riesenfeld moved that only "scandalous or accusatory" be used. There was a majority approval.

Professor Seligson felt that, in a case where an order was entered without notice, a party who had been adversely affected should be allowed a hearing. There was a general approval of the principle involved, and the reporter was to provide the appropriate language.

Following further discussion during which several suggestions were received, Professor Kennedy stated that what he then had for Rule 9.30 was the following:

"SECRET, CONFIDENTIAL, SCANDALOUS, OR ACCUSATORY MATTER"

"Upon motion or upon its own initiative, the court may make such order as justice may require (1) to protect the estate or any person in respect of any papers or information constituting secret processes, developments, or research or confidential information or (2) to protect any person against any letter or other paper filed in the bankruptcy case containing scandalous or accusatory matter."

There was approval of Rule 9.30 as read, with the understanding that the reporter would draft a sentence to deal with the allowance of a hearing to a party who had been adversely affected in a case when an order was entered without notice.

[A discussion was held concerning the next meeting, and it was scheduled to be held on June 5, 6, 7, and 8, 1968. Judge Forman said that a meeting of the Subcommittee on Style was scheduled for the dates of May 10, 11, and 12, 1968.]

The meeting was adjourned on Wednesday at 4:33 p.m. and was resumed on Thursday at 9:35 a.m.

Agenda Item No. 4: PROPOSED BANKRUPTCY RULE 5.53 - SPECIAL MASTERS

Professor Kennedy read Rule 5.53 as proposed in the draft dated 1-7-68. There were no objections by Mr. Jackson or by the Committee members to placement of the rule and the accompanying note on the shelf, nor were there any further comments.

Agenda Item No. 7: PROPOSED BANKRUPTCY RULE 5.30 - ISSUANCE AND CERTIFICATION OF COPIES OF PAPERS

Professor Kennedy read Rule 5.30 as proposed in the draft dated 1-7-68 and gave its background. Mr. Treister did not think that the phrase, "an assistant designated by him", was necessary, and there was no objection to the deletion of these words.

There was a general discussion of § 21d of the Bankruptcy Act. Mr. Treister moved that Rule 5.30 commence: "On request, an assistant designated by the referee or the clerk of the district court . . . ." However, following a short discussion, Mr. Treister withdrew his motion.

There was majority approval of having Rule 5.30 read: "On request, the referee or the clerk of the district court shall issue a certified copy of the record of any proceeding in a bankruptcy case or of any paper filed with the court."

PROPOSED BANKRUPTCY RULE 5.38 - EMPLOYMENT OF STENOGRAPHERS

Professor Kennedy read Rule 5.38 as proposed in his draft dated 12-19-67 and gave its background.

Judge Herzog felt that there should be a rule providing for utilization of a recording machine when a stenographer is not available for adversary proceedings. There was a lengthy discussion concerning different procedures followed for recording cases. Professor Seligson suggested that it be resolved as the sense of the Committee that, as far as practicable, recordings be made of all proceedings in a bankruptcy case. Mr. Covey felt that recording machines should always be used in court rooms and favored a mandatory provision that all proceedings in bankruptcy courts be preserved through some manner of transcript. There was a general discussion concerning the costs of recording machines, the services of persons hired to record, and copies of transcripts. It was the consensus that a recording device should be used for all bankruptcy court proceedings unless it was impracticable.

Professor Kennedy read the following draft of a rule presented by Mr. Jackson: "Before incurring any expense in perpetuating testimony, the court may require the bankrupt or other person in whose behalf the service is to be performed to make payment for such expense. Such payment may be reimbursed out of the bankrupt's estate as a cost of administration if ordered by the court." Judge Herzog moved adoption of the rule proposed by Mr. Jackson. After discussion, Professor Kennedy stated that the issue before the Committee was whether it was in favor of authorizing the court to require advance indemnity for recording. A majority was opposed to such authorization.

There was a general discussion during which Mr. Jackson set forth some of the problems besetting the Administrative Office in providing for the costs of recording machines and court reporters. Professor Seligson said he thought that the basic issue was whether the Committee wanted to authorize the courts to require anyone, including the trustee, who appears in a bankruptcy case, to pay for mechanically recorded testimony.

Following a short discussion, Professor Kennedy read Rule 5.38 as he then had it as follows: "The court may authorize the use of recording devices for recording or the employment of stenographers for reporting and transcribing examinations and other proceedings at such reasonable expense to the estate as it may fix." There was no objection to Rule 5.38 as amended, and the refinement of the language was left to the reporter.

Professor Kennedy said that there could be added the following: "The court may charge the bankrupt or any person other than the estate for the cost of recording." Following a short discussion, a vote was taken on approval of the additional sentence suggested by Professor Kennedy. The motion was lost by a count of 5 to 2.

Professor Joslin proposed that the rule be that the cost of recording may be put on the party if his contention is found to be vexatious or frivolous. After a short, general discussion Professor Joslin's proposal was favored by a vote of 6 to 1.

There was a lengthy discussion of the cost of furnishing transcripts. During that discussion, Professor Riesenfeld proposed that the rule make it possible for local rules to provide for a $5.00 fee to cover the cost of recorded transcripts. Following lunch and a short discussion, Professor Riesenfeld withdrew his proposal.

Professor Kennedy said he had made a note that the Committee ought to deal with the effects of this rule on General Order 10 and the provisions of some local rules. Thus, Rule 5.38 was set aside for further consideration by the reporter.

PROPOSED BANKRUPTCY RULE 5.60 - RECONSIDERATION OF ADMINISTRATIVE ORDERS

Professor Kennedy read Rule 5.60 as proposed in the draft dated 11-15-67 and explained its background. Mr. Treister suggested that the wording be, "An administrative order which has not been contested . . .." Mr. Treister said he thought that the policy of the Committee ought to be that administrative orders should be governed by Rule 60(a) of the Federal Rules of Civil Procedure but that anything entered after a contest should be governed by Rule 60(b) of the Federal Rules of Civil Procedure. He thought that there should be some kind of a time limit.

Following a general discussion, Professor Kennedy said he felt that the Committee wanted more documentation with regard to administrative orders, and that he would reconsider the proposed rule in light of the day's discussions.

Agenda Item No. 8: PROPOSED BANKRUPTCY RULE 5.13 - SELECTION AND QUALIFICATION OF TRUSTEE

(a) Election at First Meeting.

Professor Kennedy read subdivision (a) of Rule 5.13 as proposed in the draft dated 1-5-68 and gave its background. There was no objection to the adoption of this subdivision.

(b) Appointment by the Court.

Professor Kennedy read subdivision (b) of Rule 5.13 as proposed in the draft dated 1-5-68 and while so doing made the following changes: in line 7, he added "(1)" after the word "if"; in line 8, he placed a semi-colon after the word "trustee" where it first appears, eliminated the words "or if" and placed "(2)" before "the trustee"; in line 9, he placed a semi-colon in lieu of the comma at the end; and in line 10, he inserted "(3)" in lieu of the words "or if" where they first appear in the line, and "(4)" in lieu of the second "if" in the line.

Judge Herzog felt that creditors should be given a second choice if their first choice was not approved by the court. During the discussion, Mr. Nachman said he did not construe the Eloise Curtis case to hold that a referee has unlimited discretion. He felt that if the creditors did elect a trustee who was ineligible or incompetent, then at that stage the referee should be allowed to step in and appoint a trustee. Professor Seligson said that he did not feel that the referees were going to depart from the standards laid down by the Committee. Following the discussion, Mr. Treister moved that subdivision (b) be adopted with the parenthesized words being stricken. A general discussion concerning the right of creditors to elect trustees and the appointments of trustees by referees was held, and certain aspects of the Eloise Curtis case (2 CCH Bankr. L. Rep. ¶ 62, 583 (2d Cir. 1967)) were reviewed. Following that discussion, Professor Kennedy read what he had for subdivision (b) at that point as the following: "Except as provided in Rule 5.18, the court shall appoint a trustee if (1) the creditors do not elect a trustee; (2) the trustee so elected fails to qualify; (3) a vacancy occurs in the office of trustee; or (4) a trustee is needed in a reopened case. If the trustee so elected is ineligible, the court may appoint a trustee." Professor Riesenfeld did not see any need for the word "so" before "elected".

Judge Herzoz did not feel that the referee should be allowed to carry over his decision with regard to an elected trustee and later decide against the trustee elected and appoint one of his own choice. Mr. Treister said that the number of times the creditors elect an ineligible trustee was not very many, and he felt that, in those cases, the referees should be allowed to appoint a trustee to avoid calling another first meeting of creditors.

Professor Kennedy read subdivision (b) as quoted herein above with the exception of the word "so" in the last line. A vote was taken on the adoption of subdivision (b) as read, and all members, with the exception of Judge Herzog, were in favor.

(c) Qualification.

Following a recess, Professor Kennedy read subdivision (c) of Rule 5.13 as proposed in the draft dated 1-5-68 and gave its background. He asked whether the Committee wished to have a rule on bonds.

After a short discussion, Professor Seligson moved that it be the sense of the Committee that referees not be required to post or file bonds and that the Committee pass whatever formal rule may be appropriate to achieve that effect. Mr. Nachman seconded the motion, and it was carried unanimously. It was the sense of the Committee to have the reporter draft a rule abolishing bonds of referees.

Professor Kennedy asked whether the Committee wanted a rule involving trustees' and receivers' bonds with some of the provisions of § 50 of the Bankruptcy Act. Professor Seligson moved that there be a rule for procedure on bonds to implement §50n of the Bankruptcy Act. There was no objection to this proposal.

Professor Kennedy asked what other provisions of § 50 of the Bankruptcy Act were desired by the Committee. He read subdivisions d, e, f, and g of § 50 of the Bankruptcy Act. He said that he thought they could be all in one subdivision, if the Committee wanted a rule dealing with the subject matter. Following discussion, Professor Kennedy said he understood that what the Committee desired was that, rather than adopting the provisions of subdivisions e, f, and g of § 50 of the Bankruptcy Act, a rule be drafted which puts the responsibility on the court to assure that the rights of

parties in interest will be amply protected by the surety. All were in agreement.

Professor Kennedy said that Mr. Treister had suggested a rule which allowed the personal bond of a trustee to be acceptable when the court deems it acceptable, i.e., in effect, to excuse the trustee or the receiver from putting up a bond in a nominal asset case. Since it was felt that considerable research had been done in this area, Professor Kennedy said that he would check into the matter.

There was a short discussion concerning suits against receivers and trustees in their capacity as such. Professor Kennedy said the question seemed to be whether the Committee wanted a rule to recognize the applicability of Part VII to proceedings against trustees in their official capacity. It was decided that the reporter would do some research as to the need for such a rule and would come back to the Committee with a recommendation.

Professor Kennedy said that there is a provision of the Bankruptcy Act (§ 50j) that joint receivers or trustees may give joint or several bonds. He said that the Committee had eliminated the possibility of electing three trustees, so there was no need to worry about joint bonds of trustees, but he asked, "What about joint bond for receivers?" His inclination was to omit anything about joint bonds. Judge Whitehurst moved that the provision of § 50j of the Bankruptcy Act not be included in the Bankruptcy Rules. The motion was carried unanimously. It also was agreed unanimously that the provision of § 50k of the Act was not needed in the Bankruptcy Rules.

Professor Kennedy said he would like to have rules to deal comprehensively with reviews by district judges, by court of appeals, etc. A policy question he wished now to be resolved was whether the Committee wanted to continue the policy of § 25b of the Bankruptcy Act, which excuses a receiver or trustee from posting a bond, and if so, where the provision should be placed in the Bankruptcy Rules. Following a discussion concerning cost and supersedeas bonds, Mr. Nachman moved that it be the sense of the Committee that § 25b of the Bankruptcy Act should be modified or eliminated by a rule which will not under all circumstances relieve trustees and receivers of the requirement to post bonds. Mr. Treister seconded the motion. The motion was carried by a majority approval.

Professor Kennedy said that Mr. Treister made a point that if the provision for qualification was taken out of this rule and put into the rule on bonds, it would be a good thing for Rule 5.13 to have a cross reference for completeness, and he agreed with Mr. Treister.

(d) Eligibility.

Professor Joslin moved for the adoption of subdivision (d) as proposed in the draft dated 1-5-68. Professor Seligson suggested postponement of the discussion on subdivision (d) until the next day's session.

[The meeting was adjourned on Thursday at 5:00 p.m. and was resumed on Friday at 9:33 a.m.]

Professor Kennedy said the question before the Committee was whether eligibility in subdivision (d) of Rule 5.13 covers all the grounds for disapproval of creditors' choice of a trustee.

Mr. Nachman moved for reconsideration of subdivision (b) and for the Committee to reinstate the words relating to disapproval of the court. Mr. Covey seconded the motion, and it was carried by majority approval. Judge Herzog dissented. Professor Kennedy said that by the action taken, the second sentence of subdivision (b) would read: "If the trustee elected is ineligible or is disapproved by the court, the court may appoint a trustee."

During the ensuing discussion, Mr. Covey suggested that there be added to subdivision (d) something along the following lines: "The trustee shall have no prejudicial association or interest adverse to the estate."

Mr. Nachman felt it was a mistake to try and particularize under subdivision (d). He said he would prefer that broad language be used to give the referee the maximum discretion as to what is prejudicial to the administration of the estate. For subdivision (b) he suggested, "The court shall appoint a trustee if the creditors do not elect one, or if the court disapproves the trustee elected by the creditors because the trustee is ineligible to act."

Professor Riesenfeld suggested that subdivision (d) be left alone, and that the words "is disapproved by the court for other good cause" be added to subdivision (b). This suggestion was acceptable to the members.

PROPOSED BANKRUPTCY RULE 5.13.1 - RECORDS AND REPORTS OF TRUSTEES; DUTY TO FURNISH INFORMATION

Professor Kennedy read Rule 5.13.1 as proposed in the draft dated 1-17-68 and gave the background thereof.

He said that an issue presented in line 3 was whether the duty to file an inventory should be limited to what comes into the trustee's possession or whether the trustee should have to file a complete inventory of property whether or not it comes into his possession. Mr. Nachman moved that the parenthetical language in clause (1) be deleted. Mr. Treister seconded the motion. Following a general discussion, a vote was taken on Mr. Nachman's motion, and the motion received a majority approval. Mr. Treister suggested that the word "the" rather than "all" be used in line 2. There was no objection.

Mr. Covey moved acceptance of clause (2). There was no objection.

Professor Seligson said that clause (3) left the court at large to decide when information should be furnished. He felt that if subdivision (c) on disclosure of information by the referee was left out of Rule 5.13, then there should be a note in Rule 5.13.1 with regard to clause (3). There was no objection to adoption of clause (3) with the understanding that there would be a note with regard to the type of information to be furnished.

There was no objection to the adoption of clause (4) as proposed in the reporter's draft of 1-17-68.

In reply to a question from Mr. Nachman, Professor Kennedy said that where the Committee proposed any significant changes in the law by rules it was preparing for publication, that fact would be covered by a note wherein would also be stated the sources for such changes.

There was no objection to the adoption of clause (5) and the final sentence of Rule 5.13.1 as proposed in the draft dated 1-17-68.

PROPOSED BANKRUPTCY RULE 5.18.5 - REMOVAL OF TRUSTEE OR RECEIVER

Professor Kennedy read Rule 5.18.5 as proposed in the draft dated 1-7-68. Professor Joslin moved its approval.

There was a discussion of litigation instituted to remove trustees and receivers. Professor Kennedy pointed out that the Committee already has approved a rule which authorizes the appointment of a receiver to represent the estate in an action, adversary proceeding, or contested matter, when no trustee has qualified. It seemed to him very easy to adapt that provision to cover the case where the trustee, though qualified, was not performing his duty. Mr. Treister moved that Rule 5.11(a)(2) be amended to make it possible to appoint a receiver for a limited purpose and to have a note to Rule 5.18.5 referring to that possibility. The motion was carried by a vote of 5 to 3.

There was further discussion of the possibility that under Rule 5.11 someone other than a receiver could be appointed, e.g., a private attorney. Professor Seligson wanted it made clear in the note to Rule 5.11 that there are other avenues of representation besides appointment of a receiver. The reporter made a notation of what to cover in the note. Judge Herzog thought that there should be a note stating that payment of receiver could be made, and Professor Kennedy said that he would undertake to prepare a note concerning the law with regard to compensation to a receiver in such a situation.

Professor Kennedy called to the Committee's attention that § 46 of the Bankruptcy Act deals with nonabatement of proceedings when the receiver or trustee is removed. He said he thought that Bankruptcy Rule 7.25 by making Rule 25 of the Federal Rules of Civil Procedure applicable makes it unnecessary to have a counterpart of § 46 of the Bankruptcy Act in the Bankruptcy Rules. During the ensuing discussion, Mr. Treister favored usage of the provisions of Rule 25 of the Federal Rules of Civil Procedure. Professor Kennedy said he took it that the proposal was that Rule 25(d) of the Federal Rules of Civil Procedure be made applicable to adversary proceedings and in particular that subdivision (d) referring to public officers be made applicable to trustees and receivers. There was no objection to that treatment.

Professor Riesenfeld said he would recommend a repeal of § 46 of the Bankruptcy Act.

PROPOSED BANKRUPTCY RULE 5.69 - ACCOUNTING BY PRIOR CUSTODIAN OF BANKRUPT'S PROPERTY

(a) Accounting Required.

Professor Kennedy read Rule 5.69(a) as proposed in the draft dated 1-12-68 and gave its background.

Professor Seligson suggested that the wording of subdivision (a) be as follows: "Upon the filing of a petition, any receiver, trustee, assignee for the benefit of creditors, or agent who is required by the Act to deliver property in his possession or control to the receiver or trustee in bankruptcy shall account in writing to the bankruptcy court with respect to the property of the estate and his administration thereof." Mr. Treister suggested that it be, "Upon the filing of a petition, any of the following persons who are required to account in writing, etc." and then have a list of these persons. The following language was suggested by Mr. Nachman: "Any receiver, trustee, assignee for the benefit of creditors, or agent, required by the Act to deliver property in his possession or control to the receiver or trustee in bankruptcy, ..." Professor Riesenfeld suggested: "Upon the filing of a petition, any receiver or trustee appointed in proceedings not under the Act, assignee for the benefit of creditors, or agent, required by the Act to deliver property in his possession or control to the receiver or trustee in bankruptcy, shall account in writing to the bankruptcy court with respect to the property of the estate and his administration thereof." This last suggestion seemed generally acceptable.

Mr. Treister suggested that perhaps the word "superseded" should be added before the word "estate" in line 7. Professor Joslin suggested that line 7 be changed to read: "to such property and his administration thereof." Mr. Treister suggested that the word "superseded" be added before "administration" in line 11 of subdivision (b), and that the words "of the estate" be deleted therefrom, instead of having the word "superseded" before the word "estate" in line 7 of subdivision (a). Following a brief discussion, all agreed to accept line 7 as originally written.

Mr. Nachman suggested that line 6 read "shall report and account in writing to the bankruptcy court with respect". Mr. Treister suggested: "shall file a written report and account with the bankruptcy court with respect".

Professor Riesenfeld suggested striking "Upon the filing of a petition". Mr. Treister proposed that if Professor Riesenfeld's suggestion was accepted, the word "promptly" be added after the word "shall" in line 6. Judge Whitehurst moved the adoption of subdivision (a) as amended, including the last two suggestions. There was unanimous approval.

(b) Examination of Administration by Bankruptcy Court; Proceeding to Surcharge.

Professor Kennedy read subdivision (b) of Rule 5.69 as proposed in the draft dated 1-12-68. In line with an earlier suggestion, lines 9 through 11 were changed to read: "Upon the filing of the report and account required by subdivision (a) of this rule and after an examination has been made into the superseded administration, the court . . . ."

Following a lengthy discussion, Professor Riesenfeld suggested that it be spelled out in a note that the former person in possession could apply for an order of discharge or that the trustee or receiver could object to that at the stage when the report was filed and there was a chance to look it over. All agreed that there should be such a note.

Professor Seligson asked to what the words "the propriety thereof" in line 12 referred. To make the meaning clearer, Mr. Treister suggested that the word "thereof" be changed to "of such administration". Professor Seligson suggested that there be a note stating that the process includes the reasonableness of disbursements. Professor Joslin suggested that line 12 read: "shall determine the propriety of such administration including the reasonableness". His suggestion was approved by a vote of 6 to 2.

It was agreed that the last sentence, including the parenthesized reference to "an adversary proceeding", should remain in subdivision (b).

PROPOSED BANKRUPTCY RULE 5.74 - TRUSTEE'S DUTY TO CLOSE ESTATES [OR TO PROCEED] EXPEDITIOUSLY (AND ECONOMICALLY)

Professor Kennedy read Rule 5.74 as proposed in the draft of 11-10-67 and explained the background. Professor Joslin moved the deletion of Rule 5.74. Following a short discussion the motion was carried by a vote of 5 to 4.

Agenda Item No. 16: - PROPOSED BANKRUPTCY RULE 9.2.1 - RULE OF CONSTRUCTION

Having partly considered this rule in connection with Rule 5.74, Professor Kennedy then read Rule 9.2.1 as proposed in the draft dated 10-22-67. While so doing, he said it had been suggested that the word "adversary" be omitted from line 4. Mr. Treister moved the adoption of Rule 9.2.1. Professor Joslin moved to amend Mr. Treister's motion and have Rule 9.2.1 end with the word "estate" in line 2 and with the word "just" inserted somewhere in the rule. Professor Joslin's motion was lost by a vote of 6 to 3. A vote was then taken on Mr. Treister's motion to adopt Rule 9.2.1 as written with the exception of the word "adversary" in line 4. The motion was carried by majority approval.

Agenda Item No. 9:

Professor Kennedy read his memorandum dated November 9, 1967, regarding the disposition of § 47 of the Bankruptcy Act in the Rules.

PROPOSED BANKRUPTCY RULE 6.1 - MONEY OF THE ESTATE: COLLECTION, DEPOSIT, AND DISBURSEMENT

(a) Collection of Estate; Conversion to Money.

Professor Kennedy read subdivision (a) of Rule 6.1 as proposed in the draft dated 11-9-67.

Mr. Treister said that before going into specifics on Rule 6.1 he had a general observation to make. He said it seemed to him that Parts V and VI were very closely connected and that to have the collection of the estate and the reporting of the collection divided into two separate parts caused a large gap. Professor Kennedy suggested that decision on that matter be deferred.

Mr. Whitehurst thought that perhaps there should be added to subdivision (a) words to the effect that the trustee shall do the things mentioned under the direction of the court. Mr. Nachman suggested that either the words "under the direction of the court" be added before the word "convert" in line 2, or that there be a note explaining the procedure to be followed by the trustee. Following a short discussion, Professor Joslin moved that the words "under the direction of the court" be added before the word "convert" in line 2. Professor Seligson suggested substitution of "with the approval of the court" as the words to be added, and Professor Joslin concurred. Professor

Riesenfeld moved to amend the motion so that the wording for subdivision (a) would be: "Under the supervision of the court, a trustee shall collect the property of the estate and convert it to money." His motion was lost by a vote of 7 to 2. Professor Joslin's motion then carried by a majority approval.

(b) Deposits; Interest.

Professor Kennedy read subdivision (b) of Rule 6.1 as proposed in the draft dated 11-9-67 and said that part (3) of § 47a of the Bankruptcy Act should also be shown as a source.

Judge Herzog said that Federal Reserve Board had ruled that deposits could not be made in an interest-bearing savings deposit. Following discussion concerning different rulings and procedures for deposits to be made, Judge Whitehurst moved adoption of the reporter's language, i.e., "in a checking account or, if authorized by the court, in an interest-bearing account or deposit". Mr. Nachman suggested that the wording be: "The trustee shall deposit all money received by him in a checking account, in a designated depository, and, if so authorized by the court, ..." However, after hearing Professor Kennedy's views, Mr. Nachman agreed to the reporter's proposed language, which was: "The trustee shall deposit all money received by him in a designated depository in a checking account or, if so authorized by the court, in an interest-bearing account or deposit." Professor Kennedy said that a note could state that the language used covered an interest-bearing savings deposit, a time certificate of deposit, and a time deposit-open account as provided in the statute. Mr. Covey moved adoption of the reporter's language, and Judge Shelbourne seconded. The motion was carried by a vote of 7 to 1. Professor Riesenfeld wanted the note to explain what is meant by time certificate of deposit.

Mr. Nachman moved that the last sentence with the exception of the parenthetical phrase be left in the rule. Judge Herzog seconded the motion. Professor Kennedy stated that if the parenthesized words were deleted, it would be necessary to delete "its" at the end of line 11 and to add the words "of the estate" after "funds" in line 12. There was no objection to the adoption of the last sentence with the suggested amendments.

(c) Withdrawals.

Professor Kennedy read subdivision (c) of Rule 6.1 as proposed in the draft dated 11-9-67 and gave the background thereof.

Professor Seligson suggested that wording be: "The trustee shall maintain a record of all disbursements." It was pointed out that this was said in Rule 5.13.1. Mr. Nachman suggested: "The trustee shall disburse money of the estate by check or by such other means approved by the court."

Professor Riesenfeld said that the heading and the language used within the subdivision did not go together. Following a brief discussion, Mr. Nachman moved the following language: "The trustee shall withdraw and disburse money of the estate only by check or by such other method approved by the court." Judge Whitehurst seconded the motion, and it was carried unanimously. It was agreed that the title should be: "Withdrawals and Disbursements". Mr. Nachman agreed with the suggestion that the words "by such" were unnecessary, and they were deleted.

After discussion, the Committee agreed to stand by its 1965 decision to have no rule dealing with mechanical signatures or eliminating the requirement of countersignatures. Mr. Treister moved that there be a note to Rule 6.1(c) stating that General Order No. 29 had been abrogated and that, therefore, there is no longer any requirement as to countersignature or mode of signing checks. Mr. Nachman seconded the motion, and it was favored unanimously. It was agreed that the note would also indicate that the requirements which had been dropped through the abrogation of General Order No. 29 could be handled by local rule.

PROPOSED BANKRUPTCY RULE 6.2 - PROTECTION OF PROPERTY OF ESTATE AGAINST POST-BANKRUPTCY TRANSFERS

Professor Kennedy gave the background of and read subdivision (a) of Rule 6.2 as proposed in the draft dated 11-10-67. In drafting subdivision (b) he was incorporating a provision parallel to § 47c of the Bankruptcy Act for certain forms of personal property.

He suggested that the following clause be inserted between lines 9 and 10: "which is claimed and is clearly allowable in its entirety as exempt". Mr. Treister suggested that the idea of § 47c of the Bankruptcy Act be put into Bankruptcy Rule 5.13.1. Professor Riesenfeld felt that something should be said in Rule 6.2 about the recordation or registration laws of local districts.

Following a short discussion, Professor Kennedy said that he understood the Committee to favor a draft which would impose the duty to record or register the order approving the trustee's bond within 10 days after his qualification and to notify banks, building and loan associations, insurance companies, and other such persons.

Professor Kennedy said that if the first sentences were to be taken out of subdivisions (a) and (b), then the wording should be "the receiver or trustee within 10 days". Following general discussion, Professor Kennedy said he understood the Committee to favor a rule that would make it the duty of the receiver or trustee within 10 days after his qualification to record or register a copy of the order approving his bond, if not previously registered or recorded, and also to give notification by mail or otherwise to banks or other persons holding money or property or owing money to the bankrupt.

Judge Whitehurst felt that the 10-day limit for the trustee to mail a copy of the order approving his bond was too much of a hardship. He felt that the court should be authorized to allow an extension of time to the trustee.

During the ensuing discussion, Mr. Treister recommended that the principle be that obligors owing money to the bankrupt be given notice within 10 days or within such further time as the court may allow. Professor Shanker felt that a notice forthwith to the bank or to anyone holding money subject to withdrawal would be more appropriate, and the members agreed with that principle.

Mr. Nachman moved that there be no rule requiring the trustee to notify obligors. Judge Whitehurst seconded. However, after a few brief comments, Mr. Nachman withdrew his motion. Mr. Treister moved that one of the duties of the receiver or trustee be to notify all obligors within 10 days after his appointment or within such further time as the court may allow. The motion was lost by a vote of 6 to 2. Judge Herzog did not vote.

Professor Kennedy was to come back with a draft incorporating the suggestions approved for Rule 6.2.

Agenda Item No. 10: PROPOSED BANKRUPTCY RULE 5.12 - ANCILLARY PROCEEDINGS

Professor Kennedy read Rule 5.12 as proposed in the draft dated 1-25-68 and suggested that subdivision (a) be ended with the word "court" in line 4. Judge Whitehurst moved adoption of Rule 5.12(a) and (b). Judge Herzog seconded. However, Professor Riesenfeld asked that the votes be separated for each subdivision. Subdivision (a) as proposed by the reporter was adopted unanimously.

(b) Reference of Ancillary Proceeding.

Professor Riesenfeld suggested that the words "in a bankruptcy court" be added after "relief" in line 6. After a discussion of ancillary relief, Professor Seligson moved the adoption of subdivision (b) with the suggested amendment. The motion was carried unanimously.

[The meeting was adjourned at 5:07 p.m. on Friday and was resumed at 9:04 a.m. on Saturday.]

Agenda Item No. 11: PROPOSED BANKRUPTCY RULE 5.50 - COMPENSATION OF OFFICERS AND ATTORNEYS

(a) Application for Compensation.

Professor Kennedy gave the background of Rule 5.50 and read the text of subdivision (a) as proposed in the draft dated 11-11-67.

Judge Whitehurst felt that the application should also set forth any payments made to the filer of the application. Following a short discussion, Professor Kennedy suggested that the problem be met by the insertion of the words "or payments" after the word "allowances" in line 6. He agreed with Mr. Treister that the words "if any" in line 6 were unnecessary. Professor Seligson suggested that the words "for such services" be added after the word "him" in line 7 to make it clear that the allowances or payments referred to were those made in the bankruptcy case.

Judge Forman read "Costs of Administration" from the Report of the Judicial Conference Proceedings of March 1967. Mr. Nachman thought that the sense of the Judicial Conference Report should be reflected in the Bankruptcy Rules.

Professor Riesenfeld moved that the word "type" be added before the word "value" in line 4. He accepted the word "nature" for "type". Following a brief discussion, it was agreed that the words "nature, extent, and value" were to be used in lines 4 and 5. Professor Joslin suggested that the words "in detail" be added after the word "rendered". After hearing a few comments, Professor Joslin withdrew his suggestion.

Mr. Treister suggested that the policy be that compensation cannot be divided except in the manner set forth in the application. Professor Seligson recommended that the affidavit not be required but that the application include a statement to this effect. It was unanimously agreed that the affidavit requirement was to be eliminated and that the language in lines 7 and 8 would read: "The application shall state whether an agreement or understanding exists between . . .." Professor Riesenfeld suggested the deletion of "nature and" in line 10, and there was no objection. Rule 5.50(a) as proposed by the reporter and modified was favored unanimously.

(b) Sharing of Compensation.

Professor Kennedy gave the background of and read subdivision (b) as proposed in the draft dated 11-11-67.

During a general discussion concerning the sharing of compensation and the methods of operation used by some lawyers in different districts, Professor Riesenfeld said that he felt that discipline of attorneys was more a matter for the court than for Congress, and he thought that it would help to have a rule such as subdivision (b). Following further discussion, Professor Seligson suggested that there be a statement that there can be no division of fees among court-appointed lawyers. Mr. Nachman moved that subdivision (b) be adopted as proposed but with a period after the word "partner" in line 19, the remainder of the sentence being stricken. Mr. Nachman accepted Mr. Treister's suggestion that there be a vote only on the policy, i.e., that no attorney, receiver, marshal, trustee, or accountant may divide fees with anyone who has made no contribution in connection with services

of the case. There was unanimous approval of the policy.

Mr. Nachman suggested the elimination of the last sentence. Professor Riesenfeld, however, moved that the last sentence be retained, and Mr. Covey seconded the motion. The motion was carried by a majority approval. Professor Kennedy said that he would try to state that the crux of the whole matter was procedural. There was unanimous agreement that there should be a note to the subdivision, and that it should refer to the Canons of Ethics generally.

(c) Limitations on Compensation.

Professor Kennedy read paragraph (1) of subdivision (c) of Rule 5.50 as proposed in the draft dated 11-11-67 and explained its background.

Professor Joslin moved the deletion of subdivision (c)(1). Judge Whitehurst seconded the motion. The motion was lost by a majority opposition. Professor Riesenfeld moved the adoption of subdivision (c)(1) as proposed with the exception of the reference to "excessive or exorbitant" compensation. Mr. Covey seconded the motion, and it was carried by a majority approval.

Professor Riesenfeld suggested that the subdivisions be placed in a different order, i.e., (a) Application, then subdivisions (b) and (c) in reverse order.

Mr. Nachman thought that perhaps subdivision (c)(1) should be recast to say that "Reasonable compensation shall be allowed to receiver, trustee, attorney, accountant, or other officer or employee and in fixing such compensation, the court shall keep in mind the conservation and preservation of the estate and the interests of the creditors." Professor Kennedy said that he would consider the suggestion when redrafting the subdivision.

Mr. Treister moved that paragraphs (2) and (3) of subdivision (c) of Rule 5.50 be stricken. Judge Whitehurst seconded the motion, and it was carried unanimously.

(4) Receiver, Marshal, or Trustee.

Following a short recess, Professor Kennedy gave the background of Rule 5.50(c)(4). Mr. Covey moved its adoption. Judge Herzog seconded the motion, and it was carried unanimously.

Professor Kennedy proposed the following as an additional subdivision to Rule 5.50: "No allowance of compensation shall be made to any attorney for a receiver or trustee, except for professional services." Mr. Nachman moved adoption of the reporter's proposal. The motion was carried unanimously.

Professor Riesenfeld asked the reporter to consider a rearrangement of the subdivisions, and Professor Kennedy said that he would.

General Order 43

It was agreed that General Order 43 was not necessary, and that there would be a note to Rule 5.50 explaining why the Committee felt that General Order 43 is not necessary.

PROPOSED BANKRUPTCY RULE 5.62 - EXPENSES OF ADMINISTRATION

(a) Expenses of Officers Other Than Referees.

Professor Kennedy read subdivision (a) of Rule 5.62 as proposed in the draft dated 11-11-67.

Mr. Treister thought that the Committee might have a rule requiring specificity on recording of receipts and disbursements. Professor Kennedy felt that the rule suggested by Mr. Treister would be the following: "Receivers, marshals, and trustees must make a detailed accounting of receipts and disbursements."

Judge Herzog pointed out that Rule 5.13.1 stated that a trustee must file a complete inventory, unless it was done by a receiver. Since there was no bankruptcy rule requiring the receiver to do so, Judge Herzog thought that Rule 5.13.1 should be extended to include a receiver. During an ensuing discussion, Judge Whitehurst suggested that the following be added to Rule 5.13.1: "Where appropriate, a receiver should file the same reports as the trustee."

Professor Kennedy said that his understanding was that the sentiment was in favor of making all of the duties of Rule 5.13.1 applicable to a receiver where appropriate, and that the reference in Rule 5.13.1 to final report and account was to include a specification that the expenses, receipts, and disbursements should be reported in detail. Judge Herzog suggested that the following be added to subdivision (5) of Rule 5.13.1: "shall file a final report and account containing a detailed statement of receipts and disbursements." All members were agreeable to that. The actions taken resulted in proposed Rule 5.62 being absorbed in Rule 5.13.1.

Professor Kennedy said he supposed that subdivision (b) of Rule 5.62 should be deleted, and all of the members agreed.

Agenda Item No. 12: **PROPOSED BANKRUPTCY RULE 6.18 - APPRAISAL AND SALE OF PROPERTY**

(a) Appraiser: Appointment and Duties.

Professor Kennedy read subdivision (a) of Rule 6.18 as proposed in the draft dated 11-11-67 and gave the background thereof.

All were in agreement on retaining the parenthetical language in line 6. Mr. Nachman moved that the Committee adopt subdivision (a) in principle and leave the refinements of language to the reporter. Judge Whitehurst seconded the motion, and it was carried unanimously.

(b) Conduct of Sale.

(1) Court approval.

Professor Kennedy read Rule 6.18(b)(1) as proposed in the draft dated 11-11-67 and gave its background.

Mr. Treister suggested that the bracketed words in lines 13-14 be used. He also thought that the rule should permit the referee to do as he desires with the sales of property. Mr. Nachman suggested and Judge Herzog moved the elimination of the last sentence of subdivision (b)(1). The motion was carried by a vote of 8 to 1. There was no objection to a suggestion for a note saying that the court could in advance direct the minimum price of a sale.

(2) Public or private sale.

Professor Kennedy read subdivision (b)(2) of Rule 6.18 as proposed in the draft dated 11-11-67. There was a short discussion concerning the impracticability of listing names of purchasers, for instance, when there is a retail sale. Professor Kennedy suggested that words such as "Unless the court otherwise orders for reasons of impracticability" could be used to solve the problem posed. There was unanimous approval of subdivision (b)(2) of Rule 6.18 with the understanding that the reporter would draft appropriate language in conformity with the discussion.

(3) Sale free of lien.

Professor Kennedy proposed inclusion of a subdivision (b)(3), which would read: "(3) Sale Free of Security Interest or Lien. A proceeding to sell property free of security interest or a lien is governed by the rules in Part VII." Professor Seligson moved adoption of the reporter's proposal. Judge Whitehurst moved that a cross reference to proposed Rule 6.18(b)(3) be put in Part VII. Having been duly seconded, the motion was carried unanimously.

(c) Compensation and Qualification of Auctioneers and Appraisers.

Professor Kennedy read subdivision (c) of Rule 6.18 as proposed in the draft dated 11-11-67. Following a short discussion, Mr. Covey moved the adoption of subdivision (c). Judge Whitehurst seconded the motion, and it was carried unanimously.

[The meeting was adjourned at 12:06 p.m.]