

MINUTES OF THE MAY 1962 MEETING OF  
THE ADVISORY COMMITTEE ON APPELLATE RULES

The third meeting of the Advisory Committee on Appellate Rules convened in the Supreme Court Building on May 21, 1962, at 9:30 a. m. The following members were present during all or part of the session:

E, Barrett Prettyman, Chairman  
Robert Ash  
Stanley Barnes  
Henry J. Friendly  
Willard W. Gatchell  
William J. Jameson  
Joseph O'Meara  
Clarence V. Opper  
Richard T. Rives  
Samuel D. Slade  
Simon E. Sobeloff  
Robert L. Stern

Bernard J. Ward, Reporter

Judge Shackelford Miller was unable to attend the meeting because of illness.

Others attending were Judge Albert B. Maris, Chairman of the standing Committee on Rules of Practice and Procedure, Professor James William Moore, a member of the standing Committee, and Aubrey Gasque, Secretary of the Rules Committees.

The Chairman welcomed the new member of the Committee, Judge Clarence V. Opper, who replaced Judge J. Edgar Murdock who resigned from the Committee due to ill health.

ITEM A. Consideration of Preliminary Draft of Rule  
on Docketing of the Appeal

The Reporter outlined in detail his General Note contained in Agenda Item A and expressed his apprehension concerning the Committee vote in November requiring (1) the appellant to pay the docketing fee within 10 days; (2) the clerk of the district court to transmit the record at the expiration

of 25 days after receiving the request from the clerk of the court of appeals; and (3) giving the appellant the responsibility of filing the notice of appeal.

Judge Friendly stated, after listening to the Reporter's arguments against the November proposal, that he was convinced that that proposal was unworkable and that Professor Ward's substitute rule has merit. He made the following motion:

That the Committee proceed to address its attention to the substitute draft which Professor Ward has prepared and which appears as an Appendix to his General Note on Page 10 of Agenda Item A.

The motion was carried and the substitute rule was discussed.

Judge Friendly suggested that the second sentence of subdivision (a) should be stated in terms of maximum time from the last notice of appeal filed within the permissible period and have the rule speak for itself. Mr. Slade and Dean O'Meara were of the same view and Dean O'Meara made the following motion:

That the second sentence of paragraph (a) of the rule regarding the filing of the record on appeal be amended so as to provide that when more than one appeal is taken from the same judgment, the time for filing the record shall be within 40 days from the date of filing of the last notice of appeal.

The motion was seconded and carried.

Judge Sobeloff suggested that instead of sending the check to the clerk of the court of appeals and having him notify the clerk of the district court, let the plaintiff give the instructions to the district court clerk for the preparation of the record and hand him the check at the same time. In this way, the clerk of the district court, within 40 days, files the record with the clerk of the court of appeals, together with the check, and the clerk of the court of appeals docket it.

Following a lengthy discussion of Judge Sobeloff's proposal, he made the following motion:

That the reporter be instructed to redraft paragraph (b) so that the sense of the rule be that the appellant pay the clerk of the district court the docket fee of \$25.00 and that the appellant pay the fee and arrange for the preparation of the record so that the clerk of the district court will be able to transmit the record and the fee to the clerk of the court of appeals within the 40-day period.

Since it appeared that the motion was not the consensus of the Committee, Judge Sobeloff withdrew it.

Dean O'Meara suggested that at some point, perhaps even in a note, there should be a coherent statement advising the appellant of his obligations.

Mr. Stern and Judge Friendly, jointly, proposed the following motion:

That it be made clear that the appellant's duty is to get the appeal docketed within 40 days from the date of filing the notice. The docketing embraces two different activities; one of which is the payment of the docket fee and the other the taking of steps that would enable the clerk of the district court to transmit the record for filing.

Eight members voted in favor of the motion and it was adopted.

The following alternate motion was made in line with Dean O'Meara's suggestion:

That the reporter be instructed to draft a concise statement of the steps that the appellant must take in order to get his appeal into the court of appeals as succinctly as possible with references to the various rules to which the attorney must turn to get the details of the situation. [The motion was carried].

The Committee voted to amend the second sentence of subparagraph (d) by striking out all the words down through "(1)" and inserting in lieu thereof, the words "The application shall show."

As approved by the Committee, clause (2) in the second sentence of subparagraph (d) will be rephrased into a separate sentence to follow the present first sentence.

The Committee voted to amend subparagraph (c) as follows:

(c) Notice of Docketing. The clerk shall immediately give notice of the date of the docketing of the appeal to all parties.

The Chairman summarized the provisions as adopted by the Committee as follows:

The responsibility for getting the appeal properly docketed in the court of appeals is to be upon the appellant. The appellant has to file his notice of appeal -- at that point the clerk of the district court sends the clerk of the court of appeals a copy of that notice.

Secondly, the appellant instructs or requests the clerk of the district court to get the record ready. Then the appellant goes to the reporter and makes arrangements with him to prepare the transcript and the appellant has to follow up with the reporter to see that he does that, and, if he doesn't do it he has to go to the court and get an extension of time and then the transcript is given to the clerk of the district court. In the meantime the appellant pays to the clerk of the court of appeals the docket fee of \$25.00. The clerk of the district court, when he has the record, transmits it to the clerk of the court of appeals and when the clerk of the court of appeals has the docket fee and the record, he then docketts the case in the court of appeals and in doing so he notifies all parties that this case is docketed in this court.

ITEM B. Consideration of Preliminary Draft of Rules on the Record on Appeal

The Committee voted to delete the second paragraph of subdivision (b), namely, that portion beginning at the bottom of page 2, Agenda Item B, and continuing on to the top of page 3, to conform with the action heretofore taken.

A motion was made and carried that the words "is on file" be stricken from paragraph (a) of Rule 16. Subdivision (a) would then read:

(a) Composition of the Record on Appeal. The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

In subdivision (f) the Committee voted to direct the reporter to redraft section (f) so as to make it clear that "any other party" may also designate.

ITEM C. Consideration of Preliminary Draft of Rule on Transmission and Filing of the Record.

The Committee voted to redraft subdivision (a) of Rule 17 to conform with action heretofore taken, and, on motion of Judge Rives [which carried] that subdivision (a) be amended so as to provide that either the court of appeals or the district court may, by order, fix a shorter time.

The Committee voted to delete subdivision (d) which read as follows:

(d) Multiple Appeals; Appeals from Cases Consolidated in the District Court. When more than one appeal is taken from the same judgment, the clerk of the district court shall transmit such additional parts of the record as are filed subsequent to original transmission of the record. If appeals are taken from judgments which were consolidated for hearing and decision in the district court, the clerk of the district court shall transmit a consolidated record.

A motion was made by Mr. Stern that a sentence be added to subdivision (b) to provide that a part of the record retained shall be a part of the record on appeal. This provision was NOT adopted.

It was the understanding of the Chairman that subparagraph (e) will be rewritten so as to be consistent with action heretofore taken. Without objection, it was so ordered.

ITEM D. Consideration of Preliminary Draft of Rule on  
Reproduction of Essential Parts of the Record  
(The Appendix)

At the request of Judge Maris, who was unable to attend the meeting on the first day, the Chairman suggested that discussion on Item D, The Appendix, be deferred until the following day.

ITEM E. Consideration of Preliminary Draft of Rule on  
Form of Briefs and Appendices.

At the suggestion of Judge Barnes, the Committee voted that the reporter be directed to draft a sentence for insertion in subparagraph (a) of Rule 31 to provide that in the case of typewritten documents all matters shall be double spaced.

Lunch 12:45 - 1:45

[Judge Opper was excused from the afternoon session]

Following discussion led by Judge Rives, it was the consensus of the Committee that the second sentence of Rule 31(a) should be recast so as to provide that typewritten copies of briefs and appendices may be submitted on behalf of persons permitted to proceed in forma pauperis and otherwise upon permission of the court.

Judge Barnes made a motion [which carried] that in the second sentence of Rule 31(c) the words "Pages containing" be stricken, and in lieu thereof, the words "Quotations from or reference to" be inserted. The second sentence of Rule 31(c) would then read:

Quotations from or references to testimony must indicate the pages of the reporter's transcript at which the testimony appears.

Mr. Stern made the motion [which carried with two dissenting votes] that the following sentence be inserted either in Rule 31 or the rule relating to the Appendix, Rule 30:

If enough copies of the portions of the reporter's transcript designated for inclusion in the joint appendix can be obtained in a form which will satisfy the first sentence of Rule 31(a), such copies may be used in the joint appendix without reproduction.

ITEM F. Consideration of Rules on Briefs -- Questions on Principles.

The following questions were submitted to the Committee:

1. With respect to the content of the appellant's brief:
  - (a) Shall a statement of questions presented be required?

Dean O'Meara: Yes. We should make a fresh start and adopt a new terminology and a new order. As I see it the first thing a court needs to know about a case is: where it originated, what happened below, and how the case came up, the issues which the court has to decide to dispose of the case, the facts out of which these issues have originated, the contentions made by the party with respect to each of the issues already stated, the reasons and authority that the party relies on to support his contentions with respect to each of the issues, and, finally, the conclusion.

Mr. Stern: Instead of "conclusion", say "relief sought."

Mr. Slade: Prefer "questions" to the word "issues."

Judge Prettyman: Prefer "issues" to "questions."

Committee Action:

Yes, However, the question was revised to  
"Shall a statement of the issues presented be  
required?"

1. (b) If so, how should the rule formulate the requirement?
  - (i) should there be a requirement or suggestion as to the length of the statement?

Committee Action: No.

1. (b) (ii) should the rule attempt to describe the statement?  
(e. g. , "expressed in terms and circumstances of the case,"  
or, "without names, dates, or particulars of any kind.")

Committee Action:

No, but that either in the rules or in the notes thereto some suggested examples of statements of issues be inserted.

1. (c) How should the rule formulate the requirement of the statement of the case?
  - (i) should there be a requirement of a brief preliminary statement of the entire case, including the nature of the proceeding, the manner of trial and its disposition below, followed by a statement of facts relevant to the precise matters presented for review?

Committee Action:

On motion by Dean O'Meara [which carried] the reporter was instructed to prepare a tentative draft which would include a brief preliminary statement incorporating where the case arose, how it was disposed of below and how it came up.

1. (c) (ii) what should be the requirement as to references to the record in the statement of the facts?

Committee Action:

On motion by Judge Friendly [which carried] the Committee voted that in the statement of facts, references to the pages of record be made as to each material fact.

1. (d) How should the rule formulate the requirement as to the argument?

Committee Action:

On motion by Dean O'Meara [which carried] the Committee adopted substantially the language of the Supreme Court Rule using some other term, however, than the word "points."

1. (e) Should there be an independent requirement of:  
 (i) a statement of points, or  
 (ii) a statement of errors

Committee Action: No.

1. (f) Should there be other requirements as to content:  
 (i) a jurisdictional statement

Committee Action:

Question previously answered.

- (ii) a summary of the argument?

Committee Action:

That there be included in the rules a reference to the summary of the argument with a statement that it's discretionary with counsel depending upon the nature of the case.

- (iii) a prayer for relief?

Committee Action:

That there be a statement of relief sought in lieu of a conclusion to the brief.



2. How should the rule formulate requirements as to the content of the appellee's brief?

Committee Action:

That a rule be adopted modeled on the Supreme Court rule with whatever modifications seem appropriate.

3. How should the rule formulate requirements as to the reply brief?

Committee Action:

That the reply briefs should be confined to the treatment of issues of fact or law raised by the appellee's brief and shall not repeat matters already contained in the appellant's opening brief or raise new questions not theretofore raised.

4. Should the rule authorize the filing of supplemental briefs?

Committee Action:

The Committee voted to adopt Rule 41(5) of the Supreme Court, as set out on the bottom of page 14, Agenda Item F-3.

5. How should the rule formulate the requirements as to the brief of an Amicus Curiae?

(a) Who are entitled to file such briefs without leave of court?

Committee Action:

That a rule be included as to briefs of amici, that they be allowed to be filed without leave if consented to by all parties, that the United States, an agency thereof, or a state or territory be allowed to file an amicus brief without the consent of all parties.

5. (b) Should the rule indicate the content of a motion for leave to file?

Committee Action:

That the rule should indicate the content of the motion for leave to file the brief amicus, which statement must identify the applicant's interest and, in general, state reasons for believing an amicus brief to be desirable.

5. (c) What should the rule provide with respect to oral argument by an amicus curiae?

Committee Action:

That the rule state that oral argument by amicus will be allowed only upon permission of the court for extraordinary reasons stated.

5. (d) Should the rule on the brief of an amicus curiae be included in the general rule on briefs, or should it be stated in a separate rule?

Committee Action:

By separate rule.

There followed a discussion as to the time for filing amicus briefs and it was the consensus of the Committee that the time for filing amicus briefs be not prescribed.

It was suggested that Question 6, with respect to the period of time allowed for filing briefs be deferred until after discussion of the Appendix, Rule 30.

7. With respect to formal requirements of briefs:
- (a) How should parties be designated in the caption:
    - (i) in the order of their appearance in the court below?
    - (ii) in the order of their appearance in the court of appeals?

Committee Action:

In the order of their appearance in the court below.

7. (b) Should an index of contents of the brief (in addition to an index of authorities) be required?

Committee Action:

Yes, if the brief exceeds 20 pages in length, with an adjustment of whatever Committee decides to do regarding other methods of reproduction.

7. (c) Should the rule impose a limit on the number of pages of the brief. If so, what number should be allowed?

Committee action:

Yes, 50 printed pages unless leave of court is granted, with 65 pages allowed for other methods of reproduction.

7. (d) How many copies of the brief should be required?  
(i) for the use of the court?

Committee action:

25 copies, unless otherwise ordered either by rule of court or by order of court.

7. (d) (ii) for the use of opposing parties?

Committee action:

That 3 copies be required for each counsel of record, however, for the purpose of this rule, if more than one lawyer of record for the same firm practice together, this should be treated as one counsel.

ITEM G, Consideration of Rules on Costs -- Questions on Principles.

Since the material relating to Item G was not distributed to the members in advance of the meeting, consideration of Item G was deferred until the following day.

ITEM H. Consideration of Rule on Scope and Construction of the Rules -- Tentative Draft with Alternatives

The Committee voted to adopt Rule 1, Scope and Construction of Rules, as written.

ITEM I. Consideration of Rule on Method of Taking an Appeal -- Tentative Draft with Alternatives.

The Committee voted that at the end of the first sentence of paragraph (c) of Rule 5 the period be changed to a semicolon and that language be added so that the first sentence would then read:

(c) Service of the Notice. The clerk of the district court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, or, if a party is not represented by counsel, to the party at his last known address, and shall mail a copy of the notice of appeal to the clerk of the court of appeals named in the notice; provided that in criminal cases a copy of the notice of the filing of the notice of appeal shall be served on the individual defendant.

Judge Rives made the motion [which carried] that there be inserted in Rule 5 the provision that in criminal cases the notice of appeal which is filed in the court of appeals shall be transmitted by the clerk of that court to the appropriate district court and it be considered as having been filed there on the date it was filed in the court of appeals.

At the suggestion of Professor Moore, the second sentence of paragraph (b) of Rule 5 was amended to read as follows:

A notice of appeal in a criminal case shall also include a general statement of the offense, the sentence imposed, if any, and the place of confinement if the defendant is in custody. [New language underlined]

The meeting adjourned for the day at 5:00 p. m.

The meeting was called to order May 22, 1962, at 9:30 a. m.

Judge Maris was present for the second day of the meeting. Judge Opper was excused during the morning session, however, was expected for the afternoon session.

[Continuation of discussion of Item I on the Agenda]

At the suggestion of Professor Moore, the title of Rule 5 and the first sentence of paragraph (a) were amended to include the words "as of right." The title and the first sentence would then read:

RULE 5. APPEAL AS OF RIGHT -- HOW TAKEN.

(a) Filing the Notice of Appeal. An Appeal permitted by law as of right from a district court to a court of appeals shall be taken by filing a notice of appeal in the district court.

[New language underlined]

A motion was made by Mr. Slade that Rule 5(a) be amended by adding a note which will call attention to the fact that permissive appeals are governed by Rules 7 and 8 rather than by this rule. [The motion was carried].

Dean O'Meara made the motion [which carried] that in Rule 5, at the appropriate point to be selected by the Reporter, there be added an Advisory Committee note which will make unmistakably clear that only the filing of the one notice of appeal is jurisdictional, and that the rule respecting additional copies does not affect the validity of the appeal.

The Committee voted to adopt Rule 5 as amended.

ITEM J. Consideration of Rule on Time for Taking an Appeal -- Tentative Draft with Alternatives.

The Chairman stated his objections to cross references in the rule and suggested that footnotes be used giving the language of the rule therein referred. Judge Rives agreed.

Judge Maris stated that this would just be a duplication of the rules and that in his opinion this should be the rule respecting the time for filing the notice of appeal and taken out of the civil rules. He said he does not object to the duplication of the rule in two separate books, but does object to having two rules on the same subject that are not identical.

After further discussion a motion was made that the short draft of Rule 6 be approved with the addition that the rules referred to be stated in full text in footnotes. [The motion was NOT adopted].

There was a further motion that the alternative rule be approved. [The motion was NOT adopted].

A third motion, made by Dean O'Meara, was that the matter of time for filing the notice of appeal to be covered by Rule 6 be referred back to the reporter with instructions to re-examine it and also to confer with the reporters of the other Committees to ascertain what their views are.

[This motion was adopted].

The Committee also voted to adopt a motion made by Judge Rives that the reporter communicate to the criminal rules committee the view of this committee that the rule respecting time in criminal appeals should include a provision that upon a showing of excusable neglect the district court may extend the time for filing a notice of appeal not to exceed 30 days from the time herein prescribed.

At the suggestion of Professor Ward the Committee voted to instruct the reporter to convey to the Bankruptcy Committee that the time for appeal in bankruptcy cases should be the same as the time for appeal in civil cases.

ITEM G. Consideration of Rules on Costs --  
Questions on Principles.

The following questions were submitted to the Committee:

1. With respect to the allowance of costs for the preparation of an appendix:
  - (a) should the rule fix a maximum cost per page
    - (i) in a monetary amount
    - (ii) in general terms, e. g. , "At rates not higher than those generally prevailing. "

Committee Action:

In general terms, e. g. , "at rates not higher than those generally prevailing. "

1. (b) what should the rule provide with respect to costs of appendices which are not prepared by commercial firms, i. e. , those prepared in attorneys' offices or otherwise informally prepared.

Committee Action:

That in the case of appendices produced by methods other than typographic printing, the allowance of costs be made in the amount not exceeding that generally prevailing in the area for such services, and this, regardless of whether the work is actually done in the lawyer's office or not.

2. Should the cost of printing briefs be an allowable item?

Committee action:

That the cost of printing briefs should be taxed under the same provisions concerning the cost of records.

3. Should the cost of the district court reporter's transcript of such of the proceedings as are necessary for the determination of the appeal be an allowable item?

Committee action:

Yes.

4. If so, should it be taxed in the court of appeals, or should the rule direct that it be taxed in the district court?

Committee action:

That the cost of the district court reporter's transcript of such of the proceedings as are necessary for the determination of an appeal be taxed in the district court and that the rule carry a note that the language necessary for the determination of the appeal leaves open the question of whether the cost of daily transcript is included.

5. Should the cost of a supersedeas or other bond given in connection with an appeal be made an allowable item by general rule?

Committee Action:

Yes.

6. What should the rule provide with respect to costs for and against the United States?

Committee Action:

That the present rule be reaffirmed that costs be not taxed against the United States except that where the Government is liable for costs it can recover costs, otherwise costs be neither taxed for or against the United States except as provided by statute.

Mr. Stern brought up the question about the case where the Government is a party, but where there are other private parties on both sides. The reporter was directed to give this some thought in his redrafting of the rule.

7. What procedure should the rule fix for presentation of costs allowable in the courts of appeals?

Committee Action:

Committee voted to approve the Third Circuit Rule allowing 10 days for the filing of the bill of costs.

ITEM K. Consideration of Rule on Interlocutory Appeals under Title 28, U. S. C., §1292(b) -- Tentative Draft with Alternatives.

On motion of Judge Friendly, the Committee voted that the words in line 4 of paragraph (a) of Rule 7 be expanded to make it clear that the references to the order of the district court does contain the certificate that is relied on by the applicant.

A motion was made that paragraph (c) of Rule 7 be amended so as to provide that if permission to appeal is granted, the order for the court granting the permission shall be treated as the notice of appeal for purposes of the procedural rules. [The motion was NOT adopted].

The Committee voted to approve the draft of Rule 7 as amended.

ITEM L. Consideration of Rule on Interlocutory Appeals under Title 28, U. S. C., §1292(b) -- Tentative Draft with Alternatives.

It was noted for the record that in the last sentence of paragraph (a) of Rule 8, the last phrase should be "together with proof of service on all adverse parties."

The first two sentences of the draft on Rule 8(b) were amended and approved as follows:



(b) Petition and Supporting Papers; Answer. The petition shall contain a statement of the facts necessary to an understanding of the questions to be presented by the appeal, a statement of those questions, and of the relief sought, and of the reasons why in the opinion of the petitioner the appeal should be allowed and it shall contain a copy of the order, decree or judgment complained of and any opinion or memorandum relating thereto.

The Committee voted to have paragraph (c) redrafted so as to include a provision for a notice of appeal.

Lunch - 12:45 - 1:45

[Judge Opper was present during the afternoon session]

ITEM O. Consideration of Rule on Filing and Service --  
Tentative Draft with Alternatives.

The draft of Rule 32(a) was amended and approved as follows:

(a) Filing. Papers required or permitted to be filed must be placed in the custody of the clerk within the time fixed for filing. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are actually received within the time fixed for filing.

The draft of Rule 32(c) was amended and approved as follows:

(c) Manner of Service. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

The draft of Rule 32 was approved as amended by a formal vote.

ITEM P. Consideration of Rule on Motions -- Tentative  
Draft with Alternatives.

A motion was made [and carried] that subparagraph (c) of Rule 33 be amended by adding to it a provision that if the parties desire to file supporting papers, memoranda, or briefs, such documents shall be filed at the time of the filing of the motion or answer.

Mr. Stern made the motion [which carried] that subparagraph (a) of Rule 33 be amended so as to provide that the three copies of the motion shall be filed unless the court, either by local rule, or by order of the court, shall otherwise provide.

On motion of Judge Barnes, the Committee voted to amend paragraph (b) of Rule 33 so as to include the provision that the court, by order, may either shorten or enlarge the time for the filing of an answer.

The Committee voted to strike the word "receipt" in the first line of paragraph (b) of Rule 33 and to insert in lieu thereof the word "service."

Subparagraph (d) of Rule 33 was amended by deleting the word "summarily" and adding the word "ex parte." Subparagraph (d) would then read:

(d) Motions for Procedural Orders. Motions for procedural orders, such as for extensions of time, for relief from rules fixing the number of pages of briefs or the time for oral argument, for advance or continuance of hearing, may be determined ex parte, subject to the right of an opposing party to seek reconsideration.

Rule 33 was approved as amended.

ITEM D. Consideration of Preliminary Draft of Rule on  
Reproduction of Essential Parts of the Record [The Appendix].

In their letters to Professor Ward, dated April 27 and May 1, 1962, Judges Clark and Maris strongly urged the retention of the separate appendix system.

Following a lengthy discussion of whether or not the appendix should be filed after the brief, it seemed to be the consensus of the Committee that this should be done. Judge Friendly made the following motion:

That the rule be recast so as to make the preferred method of presentation the joint appendix prepared after the appellant's and appellee's briefs have been filed. [The motion was carried].

The above motion was made by Judge Friendly with the understanding that an alternate motion would be made providing for the separate appendix system.

Judge Maris: "I would certainly hope that the Committee would continue, as an alternative, the separate appendix system which most of the circuits now have, which to my mind eliminates a lot of useless discussion and which, by and large, has worked well. "

Judge Friendly, after further discussion, made an alternate motion as follows:

That the alternate method be revised so that in place of what is now the last sentence on page 3, we substitute the District of Columbia provision whereby the appellant pays for everything that he proposes and for everything that the appellee proposes except that if he thinks the appellee is proposing too much, to put the burden back on the appellee. The right of the court to tax costs against anyone who they think has made an excessive designation should be preserved regardless of the result.

[Judge Barnes seconded the motion and it was carried].

Although Judge Friendly's alternate motion was seconded by Judge Barnes and carried when put to a vote, it was apparent that not all were satisfied with the appendix system envisioned by the alternative motion. In an effort to reach a middle ground, Mr. Ash offered the following motion:

That Rule 30 be redrafted so as to provide in general principle that the appendix be prepared after the briefs are filed and that the method of preparing it be that the appellant designate and the appellee designate, and the designated parts be printed in one volume by the appellant, with the saving clause that if either one over-designates, it may be taken up with the court and the original printing cost may be divided.

[The motion was carried].

ITEM Q. Consideration of Rule on Time -- Tentative  
Draft with Alternatives.

The Committee voted to adopt Rule 34 as drafted by the reporter with the understanding that a provision would be added in subparagraph (b) for petitions for review.

A vote of thanks was expressed to the reporter, Professor Ward, for the proficient manner in which he prepared all the materials relating to the current agenda.

The meeting adjourned at 5:00 p.m. subject to the call of the Chairman.

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