

MINUTES OF THE NOVEMBER 1974 MEETING  
OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

The thirty-third meeting of the Advisory Committee on Bankruptcy Rules convened in the 6th Floor Conference Room of the Administrative Office of the United States Courts, 811 Vermont Avenue, N. W., Washington, D. C., on Wednesday, November 13 and adjourned on Saturday, November 16, 1974.

The following members were present during the sessions:

Phillip Forman, Chairman, presiding  
Asa S. Herzog  
Charles A. Horsky  
G. Stanley Joslin  
Stefan A. Riesenfeld  
Charles Seligson  
Morris G. Shanker  
George M. Treister  
Elmore Whitehurst  
Frank R. Kennedy  
Vern Countryman  
Lawrence P. King  
Walter J. Taggart

Others attending all or part of the sessions were Judge Roszel C. Thomsen, Chairman of the standing Committee on Rules of Practice and Procedure, Mr. William E. Foley, Deputy Director of the Administrative Office, and Mr. Thomas A. Beitelman, Jr., a member of the Bankruptcy Division.

Judge Herzog informed the members that he has received a report compiled by bankruptcy judges regarding amendments to the bankruptcy rules which were effective October 1, 1973. Professor Countryman indicated that he has also received suggestions for changes in the Chapter XIII Rules. It was

agreed that these proposed amendments should be submitted to the bench and bar for comments and Professor Riesenfeld requested that the suggestions be reviewed by the Reporters and distributed to the committee before the next meeting.

Chapter VIII [§ 77] Rules

Professor Taggart explained that the following rules were submitted for reconsideration by the committee.

Rule 8-112. Venue and Transfer

Judge Whitehurst moved approval of Professor Taggart's suggestion to change the last clause of line 41 to read: "a district judge of the court in which the first petition is filed." and his motion carried.

Judge Thomsen questioned/ <sup>the reference to a district judge ~~of~~</sup> "of the court of bankruptcy or the district court" in Rule 8-2 and Professor Taggart explained that this was translated from the straight bankruptcy rules into Chapter VIII terms. After discussion Judge Herzog <sup>ing</sup> suggested deleting the phrase and end/item (3) after "district judge." His motion carried.

Judge Thomsen indicated that ~~XXXXXXXXXXXX~~ Rule 8-112 permits some form of judge shopping. After discussion they <sup>by deleting the reference to the bk.</sup> conformed the rule to Chapter X/as follows, "A case, other than <sup>j</sup> a Chapter VIII case, transferred under this rule shall be referred, in accordance with Bankruptcy Rule 102, Rule 10-103, or Rule 11-5, by the clerk of the district court to which it has been transferred." Mr. Horsky moved approval and his motion carried.

Rule 8-207. Trustee, Receiver, or Debtor in Possession  
to Conduct Business of the Debtor

Professor Taggart indicated the rule had been rewritten to exclude the reference to jurisdiction of the courts. When questioned by Mr. Treister, it was explained that it is assumed the trustee, receiver or debtor in possession will be operating as officers of the court. Mr. Horsky moved approval and his motion carried.

Rule 8-211. Representation of Creditors and Stockholders

(a) Data Required. As stated in his memorandum, Professor Taggart explained his reasons for ~~XXXXXXXXXXXXXXXXXXXX~~ redrafting this rule using a different approach than directed at the previous meeting. Subdivision (a) is applicable to all multiple representation cases. Mr. Horsky felt that the/ facts given to the court ~~XXXXXXXXXXXXXXXXXXXX~~ were not clear about the waiver. Therefore Professor Countryman suggested the last line be changed to, "any material changes in the facts disclosed to the court at the time the waiver was granted." Mr. Horsky moved approval and his motion carried.

*David S*

(b) Failure to Comply; Effect. Professor Taggart explained that clauses (1) and (2) pertain to non-compliance with sub (a) and clause (3) states the broader power of the court to review these. He also stated the text is taken from ~~XXXXXXXXXXXXXXXXXXXX~~ Chapter X rule. 10-211. ~~Judge~~ Mr. Horsky moved approval as drafted and his motion carried. Judge Thomsen felt there should be more amplification of § 77 in the Note and Professor Taggart explained that this portion of the act is rather

lengthy and complicated therefore could not be easily summarized here. As stated in the note the reference to § 77 sounds unimportant, therefore Judge Thomsen suggested Professor Taggart revise the note to refer the reader to § 77.

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Rule 301. Formulation Filing of Plan

Professor Taggart indicated that this rule had been revised to conform to the committee's views at the last meeting. Judge Whitehurst moved approval and his motion carried.

Rule 8-304. Proceedings for Approval of a Plan

Professor Taggart explained that this rule was approved at the last meeting with the exception of a new subdivision (e) which was added at the suggestion of Professor Seligson to increase voting. Also, <sup>an</sup> ~~the~~ addition to subdivision (b) which would require a person to request further notice was moved to Rule 8-209 by the Style Committee.

Professor Riesenfeld felt the language of subdivision (e) was not clear and Judge Thomsen suggested elaborating on it in the note. Professor Taggart stated he would rewrite the note to reflect that the subdivision is a general notice of approval and the specific inclusions protect a non-registered security holder and make a reference to Rule 8-305. Professor Seligson moved approval of subdivision (e) with the deletion of "of Approval" from the caption as suggested by Mr. Treister and with the revised note. His motion carried.

Rule 8-305. Submission of Plan and Notice to Creditors and Stockholders

(a) Time for Acceptance or Rejection. Approved as written.

(b) Notice and Accompanying Information. Professor Taggart explained that this rule had been rewritten to place the responsibility for submission of the plan with the trustee instead of the Interstate Commerce Commission. Professor Riesenfeld thought it important to explain that the summary referred to in item (3) is the one which is certified. ~~IN~~ ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ Professor Taggart stated he would take care of this explanation in the note. Mr. Horsky moved approval of subdivision (b) and his motion carried.

Rule 8-306. Acceptance or Rejection of Plan

(a) Persons Entitled to Accept or Reject Plan; A Time for Acceptance or Rejection. Professor Countryman pointed out that "A" should be deleted from the caption. Mr. Horsky moved approval with the suggested deletion and his motion carried.

(b) Form of Acceptance or Rejection. Professor Taggart explained that this differs from Chapter X by not referring to more than one plan. Mr. Horsky moved approval and his motion carried.

(c) Acceptance or Rejection by Partially Secured Creditors. Mr. Horsky moved approval as written and his motion carried.

(d) Disqualification of Acceptance or Rejection. Professor Taggart explained that this subdivision has been added to track Chapter X except for lines 28 and 29 which track § 77. Mr.

Treister felt that omitting the "good faith" clause here suggests that one could be in bad faith and not otherwise unlawfully secured. Mr. Horsky stated that if lines 28-29 are replaced by the Chapter X language rejection made by any means forbidden by law is implied, therefore, he moved to track Chapter X. After discussion regarding the substantive effect, his motion carried.

(e) Computing Requisite Majorities. Mr. Horsky moved approval as written and his motion carried.

Rule 8-308. Approval or Confirmation of a Plan After Remand to the Interstate Commerce Commission

Professor Taggart stated that the rule had been rewritten to conform more closely to Chapter X and the format is similar the to/Chapter VIII rules on approval and confirmation.

(d) Ruling. (1) Confirmation. Mr. Horsky felt the language should reflect the changes in the plan, and Professor Taggart explained that the notion of the term modified plan does not fit the administrative procedure that is going on before the committee. Mr. Horsky suggested subsection (1) be reworded as follows: "If the court finds that any changes in the plan from the plan as previously submitted do not materially and adversely affect the interest of creditors and stockholders," etc. Professor Kennedy pointed out that "interest" should be plural. Professor Countryman disliked "or direct further proceedings to dismissal" and suggest it be changed to "or direct further proceedings pursuant to Rule 8-310."

(2) Confirmation. This subsection was changed to conform the language to subsection (1) as amended. However, Professor Countryman pointed out that "the interest of any creditors and stockholders" on lines 25-26 should be "the interest of any creditor or stockholder." Mr. Treister felt "as changed" should be added to the last line and Professor Countryman suggested "as previously submitted" be added to "the plan" on line 32. Mr. Horsky moved approval of subsections (1) and (2) as amended, and his motion carried.

Rule 8-310. Dismissal of Case

Professor Taggart indicated he added a new subdivision (b) to conform to the Chapter X rules. This subdivision had been omitted from the previous draft. Professor Seligson moved approval and his motion carried.

Vesting of Title.

(c) In order to track § 77, Professor Taggart added new language to cover the situation in which the court's dismissal order directs that title vest in someone other than the debtor. There was doubt as to whether this was correct. Professor Seligson agreed with the language of the rule but felt the reference to equity receiver in the note should be deleted. It was felt that the rule in some way is different than the presumption of vesting in the debtor which is reflected in the statute because of following the Chapter X rule/and then adding the § 77 language. After discussion, Judge Thomsen pointed out that the judge may not want to put the title into anyone's name and therefore

the title would be revested in the debtor. Professor Countryman suggested using the Chapter X language, "conclusive evidence of the revesting of the debtor's title to its property" and ending with "unless the order provides otherwise" as suggested by Professor Riesenfeld. Mr. Horsky moved approval and his motion carried.

Rule 8-401. Proof of Claim on Interest

(b) Filing Proof of Claim. (3) Who Must File.

Professor Taggart explained that a new subsection (C) was added to deal with late filed claims which was originally only in subsection (A), and should apply in both (3) (A) and (C). Professor Countryman pointed out that this exception should be stated in (A) and (B) and suggested adding, "Except as provided in paragraph (C)" before "any" on lines 22 and 28. Mr. Horsky agreed, stating this would avoid the repetition of using the term "notwithstanding the foregoing." Professor Countryman pointed out that "any" on line 31 should be "the" and Referee Herzog suggested adding "late" at the end of line 33. Mr. \*\*  
Horsky moved approval as amended and his motion carried.

\*\*Judge Thomsen questioned the reference to "this paragraph" on line 29 and Mr. Treister suggested adding "(B)" for clarification.

previously  
Rules not/considered by the Advisory Committee

Rule 8-506. Adoption and Rejection of Executory Contracts

(a) Adoption or Rejection After Hearing. Professor Taggart stated that this tracks Rule 10-606 except that adoption as well as rejection is governed by the rule.

(b) Authority to Adopt or Reject. Subdivision (b) provides the alternate procedure whereby the court may fix a class or



classes of executory contracts and authorize the trustee to accept or reject without a hearing. The committee agreed to the principal that the court can authorize classes of executory contracts be dealt with by the trustee. Referee Herzog felt it was not clear when it is deemed adopted or rejected. After discussion regarding the substantive issue the subdivision was redrafted as follows: "Notwithstanding subdivision (a), on motion of the trustee after hearing on such notice as the court may direct, the court may fix a class or classes of executory contracts, including unexpired leases other than the leases of lines of railroads, and authorize the trustee to give notice by mail to the parties to any executory contract within such class or classes of the adoption or rejection of the executory contract. Unless a motion for relief from the trustee's action as to any contract is made by a party to the contract or other party in interest within 25 days of mailing of notice of such action, or such other time as the court may fix, the adoption or rejection shall be deemed approved at the expiration of such period. If a timely motion is made, the court shall set a hearing on notice to the parties to the contract and such other persons as the court may direct." Mr. Treister felt this does not provide for parties to executory contracts and Professor Shanker suggested this should indicate what the notice to creditors should state. To take care of this <sup>and to make the court aware</sup> Professor Countryman suggested adding the

following sentence before the last sentence, "The trustee shall make periodic reports, as directed by the court, of contracts adopted and rejected under this subdivision. The court shall fix a time within which claims for damages for rejections shall be filed." Also/<sup>to</sup>take care of Professor Shanker's objection, Mr. Horsky suggested adding, "and the notice shall so state" at the end. Mr. Treister felt the caption was too broad and suggested it be changed to, "Authority to Adopt or Reject Contracts Within Classes."

(c) Motion of Determination by Trustee. Professor Taggart stated this subdivision could possibly be unnecessary and Professor Countryman pointed out that the first sentence of subdivision (a) contemplates what is reflected in subdivision (c) therefore it could be deleted. Professor Taggart then explained ~~xxxxxxx~~ that when drafting (c) he did not realize that (a) could apply to the trustee. The members agreed to the deletion of subdivision (c).

Rule 8-507. Operation of Leased Line After Rejection

Professor Taggart explained that this rule pertains to a very limited situation in which a railroad lease is rejected and the court, in order to keep the line operating, may determine ~~that the lessee can~~ <sup>must</sup> operate the line on account of the lessor.

~~xxxxxxx~~ Because the ~~xxxxxxx~~ lessee is always the trustee, Mr. Triester suggesting ~~the~~ changing the language. Mr. Horsky felt the choice spelled out in the rule is too narrow and other members felt the rule is substantive. After discussion, Professor Seligson suggested the rule begin, "After the rejection of a lease of a line of railroad of which the debtor is lessee is approved, the court on motion <sup>of the</sup> ~~of the trustee or lessor to determine whether the trustee or lessor shall operate the leased lines, the court shall set a hearing on such notice as it may direct.~~ Professor Taggart then suggested <sup>the following</sup> ~~the following~~ with style changes. "After ~~approval of the rejection of a lease of a line of railroad of which the debtor is lessee,~~ <sup>the</sup> the court, on its own motion or

on motion of the trustee or lessor to determine whether the trustee or lessor shall operate the leased line shall set a hearing thereon on such notice as it may direct." Mr. Treister ~~XXXX~~ suggested placing "approval of" before rejection and moved that the rule be ~~XXXXXX~~ <sup>adopted</sup> as amended.

Rule 8-508. Appraisal of Property; Compensation and Eligibility of Appraisers and Auctioneers  
(a) Appraiser: Appointment and Duties  
Professor Taggart indicated that this is the same as Rule 10-607(a). Mr. Horsky moved approval and his motion carried.

(b) Compensation and Eligibility of Auctioneers and Appraisers. Professor Taggart informed the members that at the suggestion of Professor Seligson the Style Subcommittee agreed to show the entire bankruptcy rule rather than a reference when feasible. Therefore, this subdivision as drafted will be changed to incorporate that decision. The Committee agreed.

Rule 8-509. Sale or Lease of Unencumbered Property

Professor Taggart explained that ~~the~~ subdivision (a) provides a straight hearing procedure and subdivision (b) an alternative procedure without hearing and the counterpart of the rule is Chapter X Rule 10-607.

(a) Sale or Lease After Hearing. Professor Seligson felt this implied that it could be ex parte and questioned why a hearing is required here when it is not ~~is~~ in the Chapter X rule. Professor Taggart replied that the Chapter X rule requires court approval and ~~is~~ §77 does not. He further

stated that it is necessary to follow § 77 because you have to show good cause for authorization of the sale. Mr. Treister moved that subdivision (a) track the Chapter X rule but as suggested by Professor Seligson that it be modified to state unencumbered real or personal property. His motion carried.

(b) Authority to Sell or Lease. Professor Countryman suggested this subdivision also track Chapter X by deleting "after hearing" on line 8 and adding "for cause shown." Professor Taggart felt this term is usually not used except when referring directly to the statute. However, Mr. Treister pointed out that a reason should be given to the court why subdivision (a) should not be followed, and he moved approval of subdivision (b) as suggested. His motion carried, and it was agreed that the captions should be changed.

#### Rule 8-510. Sale or Lease of Encumbered Property

Professor Taggart explained that this rule provides for a mechanism by which small parcels of ~~un~~encumbered property with many transactions may be sold without the hearing requirement.

(a) Sale or Lease After Hearing. Professor Countryman indicated that the requirement for a hearing in the instance of a sale/subject to a lien ~~(lines 8-9)~~ of encumbered property is unnecessary and the phrase on lines 8-9 should be in the previous rule. After discussion, Professor Seligson moved approval of the deletion of lines 8-9 so that the rule would not be applicable to a sale of encumbered property and this would be included in subdivision (a) of Rule 8-509. His motion carried. ~~After~~ The remaining

provisions of the subdivision were discussed and it was concluded that the note should clarify the this rule does not go beyond the statute when referring to liens. Professor Seligson moved approval of the subdivision as amended as follows: "On motion of the trustee, receiver, or debtor in possession after hearing on notice to persons having an interest in the property or to the indenture trustee or other representative of such persons, if any, to persons having an interest in the property, and such other persons as the court may direct, the court may authorize, on such terms and conditions as it may approve, the sale of personal property ~~subject to liens~~ free of liens and other interest for which the holder can be compelled to take a money satisfaction." There was further discussion regarding whether this rule should provide for a sale free and clear of liens or not and the committee agreed that the rule serves two purposes: (1) to resolve disputes between parties and (2) to provide for the sale and such notice as the court deems appropriate.

(b) Authority to Sell or Lease. Professor Taggart explained

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that this subdivision deals with the number of sales in a case and provides for an alternative mechanism which should provide protection for the creditor. Mr. Horsky moved approval with the elimination of lease and any other changes necessary to conform this subdivision with subdivision (a). His motion was approved in principle.

(c) Proceeds of Sale. Professor Taggart pointed out that this subdivision is the key to the reason for not having an adversary proceeding and to conform to Chapter X, "free of liens or other interest" should be deleted. Professor Reisenfeld felt this was substantive and therefore it was agreed to delete "the proceeds subject to such liens or other interest." There was question as to the necessity of this rule in relation to Rule 8-505 and Judge Herzog stated that unless they intended

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to set up a separate escrow account this rule is not needed. Professor Taggart replied that the reason the property can be dealt with without an adversary proceedings is that this account is separate. Mr. Treister felt the rule should be deleted because you can say so little of value that is not substantive. After further discussion, Professor Riesenfeld suggested adding "received" after "Proceeds" as indicated in the statute and Mr. Horsky moved approval of the rule as amended. His motion carried, and the rule was approved as follows: "Proceeds received from the sale of property under this rule shall be deposited with such depository and on such terms as the court may direct."

Mr. Treister then suggested that Rule 8-505 be amended by adding at the beginning, "Except as provided in Rule 8-510" and deleting the material between the commas on lines 3-4 to conform to the previous change. Mr. Horsky moved approval of this suggestion and his motion carried.

Rule 8-511. Abandonment of Property Other Than a Line of Railroad

Professor Taggart explained that this is the same as Rule 10-608 except abandonments of real property are governed by the abandonment of railroad lines Rule 8-512/because the term abandonment has a different meaning . Mr. Treister moved approval and his motion carried. Mr. Horsky was concerned whether the note defined the scope of the ICC and Professor Taggart suggested he had a cross reference to the jurisdiction rule. The committee agreed.

Rule 8-512. Abandonment and Termination of Services on Lines of Railroad or Portions-Thereof

Professor Taggart explained that he drafted the rule along the lines of a Supreme Court decision that an abandonment was equivalent to a termination of service, however, since this makes the rule complicated, ~~the reference to the case~~ it could be deleted from the rule and a reference to the case included in the note.

(a) Authority to Proceed Before Regulatory Agencies. On recommendation of Professor Taggart, the committee agreed to delete, "or terminate all service on" from lines 5-6. Professor Seligson felt that since the thrust of this subdivision is to get the application, "to abandon a line of railroad or portion thereof" should be moved up after "proceedings" on line 3.

Judge Whitehurst moved approval of subdivision (a) as <sup>amended</sup> ~~indicated~~ and his motion carried as indicated. ~~The motion was carried as indicated.~~

(b) Abandonment or Termination of All Service After Hearing. Professor Taggart read the subdivision making the same change with respect to who gets the notice, and deleting, "or termination of all service" from line 15. and from the caption. Mr. Treister suggested recasting the rule to state that the court may authorize ~~reference to~~ in the first sentence and then provide for the list of who gets the notice. The committee agreed.

Mr. Horsky pointed out that under existing law the ICC no longer has authority and the following should be deleted from subdivisions (a) and (b): "the ICC and when their approval is required." Mr. Horsky moved approval of Rule 8-512 as amended and his motion carried.



Rule 8-513. Trustee Certificates

Professor Taggart stated that there is no comparable rule in the Chapter X rules and this follows the Chapter VIII statute. Mr. Treister pointed out that "the court may authorize the trustee to issue certificates" is substantive. To solve this, Professor Seligson suggested the language read: "On motion of the trustee receiver, or debtor in possession to authorize the trustee to issue certificates of indebtedness, the court shall set a hearing." Professor Taggart agreed stating that <sup>deleting lines 6-9 and replacing</sup> by keeping the last sentence it with Prof. Seligson's suggestion and <sup>the time ~~problem~~ would be ~~carried~~ taken care of.</sup> Another necessary <sup>requirement</sup> change would be the spelling out of the ICC since it was deleted from line 7 and the deletion of "of the issuance of such certificates of indebtedness from line 13. Mr. Horsky felt there was an ambiguity regarding the time period and Professor Taggart suggested that the setting of terms and conditions of the notice by publication could be picked up in Rule 209 by adding that the first day of publication starts any relevant time period and simply stating here, "on at least 15 days' notice by publication." Mr. Treister ~~then~~ felt the rule would read better if the sentence regarding notice to the indenture trustee were included before notice by publication and Professor Taggart read the rule as amended: "On motion of the trustee, receiver, or debtor in possession to authorize the trustee to issue certificates of indebtedness, the court shall set a hearing on at least 15 days' notice to the indenture trustees and such other persons as the court may direct. Notice of the hearing shall/be given by ~~xxxx~~ <sup>also</sup> publication. If such motion is made, the court may, with or without hearing, authorize the initiation of proceedings before the ICC to obtain any necessary approval." Mr. Horsky moved approval as read and his motion carried.

Rule 8-514. Compromise and Arbitration

Professor Taggart stated the purpose of this rule is to settle the large number of personal injury claims with the least possible cost. Subdivision (b) dealing with this is new but subdivisions (a) and (b) have been taken from Bankruptcy Rule 919.

(a) Compromise or Settlement After Hearing. Mr. Treister pointed out that "and" should be added after "possession" on line 2 to conform to Rule 919. He also felt the rule would read better if the unless clause were deleted and a new last sentence be added as follows, "For cause shown the court may direct that notice not be given." Judge Whitehurst moved approval as amended and his motion carried.

(b) Authority to Compromise or Settle. ~~Mrx~~ To make this subdivision more explicit, Mr. Treister suggested adding "without further hearing or notice" at the end. Mr. Horsky moved approval as amended and his motion carried.

(c) Arbitration. Mr. Horsky moved approval as drafted and his motion carried.

After discussion it was agreed to clarify in the note that the examples given are illustrative only.

Rule 8-515. Redemption of Property From Lien or Sale

Mr. Treister called attention to the fact that this rule as well as Rules 8-516 and 8-517 are substantive and should be changed if they ~~did not conform~~ had not been written to conform to the bankruptcy rules which have been approved.

Judge Whitehurst pointed out that "and" should be added before "after" to conform to the bankruptcy rule. He felt "trustee" could be deleted as unnecessary, however, Professor Riesenfeld suggested this be specific and conform to Bankruptcy Rule 609 by adding, "receiver or debtor in possession" to "trustee." He, therefore, moved approval with the additional words and his motion carried.

Rule 8-516. Prosecution and Defense of Proceedings by Trustee, Receiver, or Debtor in Possession

Professor Taggart explained that this conforms to Bankruptcy Rule 610 except for the references to the specific Chapter VIII Rules. Mr. Horsky moved approval and his motion carried.

Rule 8-517. Preservation of Voidable Transfer

Professor Taggart stated this conform to Bankruptcy Rule 611 and Mr. Horsky moved approval. His motion carried.

Rule 8-601. Adversary Proceedings.

Professor Taggart indicated that this is the same as Rule 701 except for clause (3) which reflects the difference in the sale of property rules. Mr. Treister suggested the rule be restructured since the series is so long. The beginning phrase was changed to "The following proceedings in a Chapter VIII case shall be known as adversary proceedings: <sup>A proceeding</sup> (1) to," etc. Mr. Horsky suggested deleting clause (3) because Rule 510 takes care of it. After a discussion regarding clause (4) Mr. Horsky suggested it be limited to Rule 8-510(c) and the note include an appropriate explanation regarding subsection (2). Mr. Horsky moved to approve the entire rule as amended and his motion carried.

Rule 8-602. Applicability of Federal Rules of Civil Procedure and Bankruptcy Rules to Adversary Proceedings

Mr. Treister felt this would be earlier for the judges if/were simpler, however, the argument against changing the style is that this has already been accepted in the Chapter IX Rules. Mr. Horsky moved approval of the style of this rule and that the substance be left to the Reporters. His motion carried.

Rule 8-701. General Definitions

Professor Taggart stated this is taken from Bankruptcy Rule 901 and § 77. However, in Clause (3), the definition of railroad corporation has been deleted. Mr. Treister felt the deletion of railroad corporation should be explained and Professor Countryman suggested "any person other than a railroad corporation who is" be added after the opening phrase of ~~that~~ clause (3).

Professor Riesenfeld questioned the use of "any claim" on line 35 in the definition of "Claims." It was suggested to change those words to "all claims" for conformity with the statute. These changes in clause (3) and (6) were approved.

Mr. Treister questioned the necessity of clause (9), however, ~~it was changed and approved as follows, "Court"~~ it was changed and approved as follows, "Court" means the district court or a district judge."

In clause (10), Professor Riesenfeld pointed out that "whom" should be changed to "which" and the members agreed.

Judge Whitehurst called attention to the definition of "judgment" in clause (11) and a different definition of it in Rule 8-702. Professor Kennedy stated that since "judgment"

is not used in the Chapter VIII rules it is not necessary to define it here. Mr. Horsky moved to strike the definition and his motion carried.

Clause (12) led to a discussion of whether to change the definition of "affiliate" to put back in the case where the debtor is the lessor under item (3), however, (12) was approved as written.

Paragraphs (13) through (15) were approved as drafted.

Insert\*

Professor Riesenfeld questioned the omission of option warrants from clause (17) since it is included in (16).

After discussion "and options and warrants to receive or to subscribe for trust" was added to the end of (17). Professor Countryman suggested the addition of "(18) Stockholder means the holder of any stock" and the members agreed. Mr. Horsky stated that clause (6) should be changed to leave out ~~the~~ "or option warrants to subscribe to stock" thereby including option warrants and Professor Riesenfeld indicated option warrants to receive securities should be deleted from (16).

\*Professor Kennedy questioned the source of the definition of (16) "Railroad corporation." Professor Seligson suggested adding "a corporation which is" for clarification and the members agreed.

Rule 8-702. Meanings of Words in the Federal Rules of Civil Procedure When Applicable to Chapter VIII Cases

Professor Taggart stated that Rule 8-2 is comparable to Rule 10-2, however, it could be placed in this Rule 8-702 to conform to the same Chapter IX Rule. The committee agreed.

Mr. Treister pointed out that the definition of judgment could be deleted as unnecessary. To avoid confusion of where the judge is sitting and to conform to Chapter IX, the definition of "court," "referee," or "bankruptcy judge" was changed to, "the U. S. District Court or a judge thereof. Professor Seligson moved approval as amended and his motion carried.

#### Rule 8-703. General Provisions

Professor Taggart pointed out that politically, the reference to Civil Rule 53 may not be feasible. After discussion, it was agreed that the selection of the master should properly come from the panel selected by the court of appeals, thereby not changing the statute as pointed out by Professor Seligson. Professor King suggested including the provisions of the statute here and the members agreed.

Professor King pointed out that the reference to Rule 58 in paragraph (4) may belong in other rules regarding adversary proceedings. Professor Taggart stated it is not necessary, however, Mr. Treister suggested it could state merely what is contained on line 19. Mr. Treister also stated that the references in (b)(1) and (2) are unnecessary and too technical. He felt that unless there is a reasonable change of misunderstanding there should not be a reference. He moved approval of Rule 8-703 as amended and leaving any further style modifications to the discretion of the Reporters and the Style Subcommittee. His motion carried.

Rule 8-704. Service and Filing of Applications, Motions,  
and Other Papers

Professor Taggart explained that this rule adapts Civil Rule 5 through including the requirements of Bankruptcy Rule 705 regarding service and Bankruptcy Rule 509 regarding filing. The only difference here is that there shall be service even in matters that are not adversary matters.

(a) Service: When Required. It was suggested that "on Trustees and Intervenor" be added to the caption, after Professor Shanker expressed his feeling that the rules implies every piece of paper that comes to the court has to be distributed. Professor Kennedy questioned the use of "motion other than one which may be heard ex parte" when "application" would be more important. Therefore, Professor King suggested "one" be changed to "other than an application or motion!" Professor Seligson then pointed out that "or paper relating to discovery" was in the wrong place and should be after "motion!" Professor Shanker questioned whether order of court and complaint should be included here. Professor Taggart stated that orders are included elsewhere and he could not see a clerk's office discriminating between an order that is sent to a trustee and one which is not. He also stated that the place to specify that the complaint has to be filed on more than the defendant in the rule which states who has to be served, ~~which is to be served by the trustee~~ Therefore, if they want the trustees and intervenors to get the complaint it should be provided in the rule on adversary proceedings. To

accomplish this, there would be an adjustment in the reference rule 602(b)(1) to the adversary rule to provide that if the trustee or intervenor is not a party to the adversary proceeding, they shall nevertheless be served with a copy of the complaint. The Committee agreed. Professor Shanker then suggested adding a cross reference or "unless otherwise ordered" so that these copies will not have to be sent out even though the judge had already ordered it. Professor Taggart stated this could be taken care of in a note. Professor Seligson moved approval of subdivision (a) in principal based on the discussion and leaving the wording to the Reporter. His motion carried. Mr. Treister requested Professor Taggart to review the time limits in Rule 602 with regard to the fact that setting the trial date in advance may not be realistic.

(b) Service: How Made. Professor Taggart explained that this is taken from Civil Rule 5 and Mr. Treister asked why the language was changed. Professor Taggart replied that he wanted to point out that the court can change the service, however, Professor Seligson felt this was unnecessary because the Civil Rule language would be sufficient. He moved approval in principal with the understanding that the language would be conformed to Civil Rule 5. His motion carried.

(c) Filing with the court. Professor Shanker pointed out that this subdivision does not state what constitutes service. Professor Taggart indicated that incorporating Civil Rule 5 here may be better than the bankruptcy rule adaptation. Then Mr. Treister suggested using the Civil Rule 5 language ending with



the last sentence on line 23-24. By using the term, "all papers" Mr. Treister stated you would be including adversary proceedings which do not pertain to this rule. It was decided to leave the provisions in the adversary rule and include the exceptions here, and narrow the title by including, "Other Than in an Adversary Proceedings." After further discussion the Committee concluded that Rule 8-704 should only be applicable to non-adversary situations and/to avoid repeating except as otherwise provided an introductory paragraph would begin, "Except as otherwise ~~is~~ provided in these rule, this rule shall govern service of," etc. Subdivision (a) would be redrafted in general terms; subdivision (b) was approved in principal that it be limited to non-adversary proceedings and non-contested petition unless otherwise covered; (c) was amended; ~~and~~ (d) would be conformed to Civil Rule 5; and the caption would be appropriately amended. Professor Seligson's motion to the above was adopted.

Rule 8-705.

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