COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Room 1100A, People's Resource Center, Crownsville, Maryland on March 12, 1999.

Members present:

Hon. Joseph F. Murphy, Jr., Chair
Linda M. Schuett, Esq., Vice Chair

Lowell R. Bowen, Esq.
Albert D. Brault, Esq.
Robert L. Dean, Esq.
Bayard Z. Hochberg, Esq.
Hon. G. R. Hovey Johnson
Harry S. Johnson, Esq.
Hon. Joseph H. H. Kaplan
Robert D. Klein, Esq.
Joyce M. Knox, Esq.
Timothy F. Maloney, Esq.
Hon. John F. McAuliffe
Larry W. Shipley, Clerk
Hon. James N. Vaughan

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
James S. Becker, Esq., Baltimore City Department of Social Services
Mary Pizzo, Esq., Office of the Public Defender
C. J. Messerschmidt, Esq., Office of the Attorney General
Dara Munoz, Esq., Baltimore City Police Department
Col. Robert F. Smith, Baltimore City Police Department
Sharon A. H. May, Esq., Baltimore City State's Attorney Office
David W. Weissert, Coordinator of Commissioner Activity for the District Court
Shea McSpaden, Administrative Office of the Courts
Brian Penn, Whiteford, Taylor & Preston
Jennifer Renne, Esq., Legal Aid Bureau, Inc.
David Fishkin, Esq,. Public Defender's Office
Bruce Martin, Esq., Office of the Attorney General
Master Anne Sparrough
Master Erica Wolfe
Gary Patton, Rules Committee Intern

The Chair convened the meeting. He announced that the

Honorable Alan M. Wilner, Associate Judge of the Court of Appeals and former Chair of the Rules Committee, will be receiving the Distinguished Alumni Award from the University of Maryland Law School at its honors banquet in Westminster Hall. The date will be announced as soon as it is available.

The Chair asked if there any additions or corrections to the minutes of the February 12, 1999 Rules Committee meeting. There being none, Judge Kaplan moved that the minutes be accepted as presented. The motion was seconded and passed unanimously.

The Chair said that the following guests were present for the consideration of Agenda Item 1: Patricia Jessamy, Esq., State's Attorney for Baltimore City; Sharon A. H. May, Esq., Deputy State's Attorney for Baltimore City; Colonel Robert F. Smith of the Baltimore City Police Department; Dara Munoz, Baltimore City Police Department; and David Weissert, Coordinator of Commissioner Activity for the District Court.

Agenda Item 1. Consideration of proposed amendment(s) to Title 4 with respect to problems in the criminal justice system in Baltimore City

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Judge Johnson presented Rule 4-211, Filing of Charging Document, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

AMEND Rule 4-211 to clarify that the requirement of the filing of a statement of charges under subsection (b)(2) is applicable only if the State's Attorney does not file an information in the District Court and to add a certain Committee note, as follows:

Rule 4-211. FILING OF CHARGING DOCUMENT

(a) Citation

The original of a citation shall be filed in District Court promptly after its issuance and service.

(b) Statement of Charges

(1) Before Any Arrest

Except as otherwise provided by statute, a judicial officer may file a statement of charges in the District Court against a defendant who has not been arrested for that offense upon written application containing an affidavit showing probable cause that the defendant committed the offense charged. If not executed by a peace officer, the affidavit shall be made and signed before a judicial officer.

(2) After Arrest

When a defendant is arrested without a warrant, unless an information is filed in the District Court, the officer who has custody of the defendant shall (A) forthwith cause a statement of charges to be filed against the defendant in the District Court~~.~~ and (B) ~~A~~at the same time or as soon thereafter as is practicable~~, the officer shall~~ file an affidavit containing facts showing probable cause that the defendant committed the offense charged.

Cross reference: See Code, Courts Article, §2-608 for special requirements concerning an application for a statement of charges against a law enforcement officer for an offense allegedly committed in the course of executing the law enforcement officer's duties.

(c) Information

A State's Attorney may file an information as permitted by Rule 4-201.

Committee note: Nothing in section (b) of this Rule precludes the filing of an information in the District Court by a State's Attorney at any time, whether in lieu of the filing of a statement of charges or as an additional or superseding charging document after a statement of charges has been filed.

(d) Indictment

The circuit court shall file an indictment returned by a grand jury.

Source: This Rule is derived as follows:
Section (a) is derived from the last clause of M.D.R. 720 i.
Section (b) is derived from M.D.R. 720 a and b.
Section (c) is new.
Section (d) is new.

Rule 4-211 was accompanied by the following Reporter's Note.

At the request of Patricia Jessamy, State's Attorney for Baltimore City, the Criminal Subcommittee proposes amendments to Rule 4-211 to clarify the role of State's Attorneys in the filing of charging documents, particularly with respect to the filing of charges against defendants who are arrested without a warrant.

The proposed amendment to subsection (b)(2) makes clear that the filing of a statement of charges is not the exclusive

> procedure for charging a defendant who is arrested without a warrant. In that situation, the State's Attorney may file an information in the District Court. If no information is filed, the arresting officer is responsible for "forthwith [causing] a statement of charges to be filed against the defendant in the District Court."
>
> A proposed Committee note following section (c) makes clear that the State's Attorney's authority and discretion with respect to the filing of an information in the District Court (whether in lieu of a statement of charges or as an additional or superseding charging document after a statement of charges has been filed) is in no way affected by the provisions of section (b) of the Rule.

Judge Johnson explained that an emergency modification to Rule 4-211 is being requested. Changes in the criminal justice system in Baltimore City are being made in response to problems that have occurred there. One change is that a judge and staff will be placed at Central Booking. Another change is that Ms. Jessamy will be taking over a considerable portion of the initial charging at Central Booking, in lieu of police charging after an on-view arrest. The problem is interpreting Rule 4-211, which may have an ambiguity. The Criminal Subcommittee met twice with District Court personnel, members of the Baltimore City State's Attorney Office, the Baltimore City Police Department, and Judge Kaplan to draft a change to subsection (b)(2) of Rule 4-211. The amended Rule was distributed at today's meeting. The Subcommittee recommends that this change be made on an emergency basis. Judge Kaplan moved that the change to

Rule 4-211 be accepted, the motion was seconded, and it carried unanimously.

Agenda Item 3. Consideration of a proposed amendment to Rule 4-212 (Issuance, Service, and Execution of Summons or Warrant)

Judge Johnson presented Rule 4-212, Issuance, Service, and Execution of Summons or Warrant, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-212 to allow a judicial officer in the District Court to issue a warrant for the arrest of a defendant if there is probable cause to believe that the defendant poses a danger to another person or to the community, as follows:

Rule 4-212. ISSUANCE, SERVICE, AND EXECUTION OF SUMMONS OR WARRANT

. . .

(d) Warrant -- Issuance; Inspection

(1) In the District Court

A judicial officer may, and upon request of the State's Attorney shall, issue a warrant for the arrest of the defendant, other than a corporation, upon a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document and that (A) the defendant has previously failed to respond to a summons that has been personally served or a citation, or (B) there is a substantial likelihood that the

defendant will not respond to a summons, or (C) the whereabouts of the defendant are unknown and the issuance of a warrant is necessary to subject the defendant to the jurisdiction of the court, or (D) the defendant is in custody for another offense, or (E) there is probably cause to believe that the defendant posses a danger to another person or to the community. A copy of the charging document shall be attached to the warrant.

(2) In the Circuit Court

Upon the request of the State's Attorney, a warrant shall issue for the arrest of a defendant, other than a corporation, if an information has been filed against the defendant and the circuit court or the District Court has made a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document or if an indictment has been filed against the defendant; and (A) the defendant has not been processed and released pursuant to Rule 4-216, or (B) the court finds there is a substantial likelihood that the defendant will not respond to a summons. A copy of the charging document shall be attached to the warrant. Unless the court finds that there is a substantial likelihood that the defendant will not respond to a criminal summons, a warrant shall not issue for a defendant who has been processed and released pursuant to Rule 4-216 if the circuit court charging document is based on the same alleged acts or transactions. When the defendant has been processed and released pursuant to Rule 4-216, the issuance of a warrant for violation of conditions of release is governed by Rule 4-217.

(3) Inspection of the Warrant and Charging Document

Unless otherwise ordered by the court, files and records of the court pertaining to a warrant issued pursuant to subsection (d)(1) or (d)(2) of this Rule and the charging document

> upon which the warrant was issued shall not be open to inspection until either (A) the warrant has been served and a return of service has been filed in compliance with section (g) of this Rule or (B) 90 days have elapsed since the warrant was issued. Thereafter, unless sealed pursuant to Rule 4-201 (d), the files and records shall be open to inspection.
>
> Committee note: This subsection does not preclude the release of otherwise available statistical information concerning an unserved warrant nor does it prohibit a State's Attorney or peace officer from releasing information pertaining to an unserved arrest warrant and charging document.
>
> Cross reference: See Rule 4-201 concerning charging documents.
>
> . . .

Rule 4-212 was accompanied by the following Reporter's Note.

> At the request of the Hon. Martha F. Rasin, Chief Judge of the District Court of Maryland, the Criminal Subcommittee has considered whether Rule 4-212 should be amended to allow a Commissioner to take into account victim safety when the Commissioner determines whether to issue a summons or a warrant. The Subcommittee recommends the addition of a new clause (d)(1)(E) that allows a judicial officer to issue a warrant when there is probable cause to believe that the defendant poses a danger to another person or to the community.

Judge Johnson explained that the Honorable Martha F. Rasin, Chief Judge of the District Court, had requested the change to Rule 4-212 to add probable cause to believe that the defendant poses a danger to another person or to the community to the list of criteria for a judicial officer of the District Court to consider in deciding

whether to issue an arrest warrant. The Report noted that there were two typographical errors in subsection (d)(1) -- the word "probably" should be changed to "probable," and the word "posses" should be changed to "poses." The Committee agreed by consensus to these changes. Judge Kaplan moved to approve the suggested amendment to Rule 4-212. The motion was seconded, and it passed unanimously.

Special Agenda Item.
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Mr. Bowen presented Rule 16-749, Panel Decision, for the Committee's consideration.

Rule 16-749. PANEL DECISION

(a) Disposition

Unless the Hearing Panel finds that the attorney has engaged in professional misconduct or is incapacitated, it shall dismiss the charges and terminate the proceedings. If the panel finds that the attorney has engaged in professional misconduct or is incapacitated, it shall either direct the filing of a petition for disciplinary action or if section (c) of this Rule applies, reprimand the attorney.

(b) Notice of Dismissal; Warning

If the Hearing Panel dismisses the charges, the Panel Chair shall serve notice of the dismissal on the attorney and Bar Counsel, who shall notify the complainant. If the Panel directs, the Panel Chair shall send with the notice of dismissal a warning to the attorney. A warning after a hearing under this section may be used in future disciplinary proceedings as provided in Rule **16-748 (g)(3)**.

(c) Reprimand

(1) When Authorized

A Hearing Panel may reprimand an attorney if it finds that the attorney has engaged in professional misconduct for which a reprimand is appropriate, and that the misconduct was not so serious as to warrant disbarment or suspension.

(2) Content and Service

The reprimand shall be in writing, summarize the misconduct for which the reprimand is imposed, and include specific reference to any rule or statute violated by the attorney. The Panel Chair shall prepare the reprimand and mail copies to the attorney and to Bar Counsel, who shall notify the complainant.

(3) Rejection By Attorney

The attorney may reject the reprimand by serving written notice of the rejection on the Panel Chair within 15 days after service of the reprimand. Upon receiving the notice, the Panel Chair shall withdraw the reprimand and direct the filing of a petition for disciplinary action.

(4) Request for Review

If dissatisfied with a reprimand that is not rejected and withdrawn in accordance with subsection (c)(3) of this Rule, Bar Counsel may file with the Commission a request for review of the reprimand. The request shall state the reasons for the request and be filed not later than 30 days after service of the reprimand upon Bar Counsel. Bar Counsel shall serve copies of the request on the attorney and any complainant. Within 10 days of service, the attorney may file a response.

(5) Exception

A reprimand by a single-member Panel appointed pursuant to Rule **16-714 (f)(1)(B)** is not subject to rejection or review.

(d) Authorization of Disciplinary Action

(1) Panel Statement

The order of the Hearing Panel directing the filing of a petition for disciplinary action shall include a brief statement of the Panel's findings, and the nature and extent of any misconduct or incapacity.

(2) Request for Review

A member of the Panel who disagrees with a Panel decision under subsection (d)(1) of this Rule may attach to the Panel's order a request for a review of the decision and a summary of reasons supporting the request. Until the review process is completed pursuant to Rule **16-750,** the filing of the petition shall be deferred.

(3) Filing and Service

The Panel Chair shall file the order with the Commission and serve copies on the attorney and on Bar Counsel, who shall notify the complainant.

(4) Transcript or Recording

Upon receiving the Panel's order, Bar Counsel shall cause the transcript or a recording of the hearing to be included in the record and shall make the transcript or recording available for review by the attorney. At the attorney's request and expense, Bar Counsel shall provide a copy to the attorney.

Source: This Rule is in part derived from former Rule 16-706 d 4 (BV6 d 4) and in part new.

Rule 16-749 was accompanied by the following Reporter's Note.

> Section (a) of this Rule incorporates the substance of former Rule BV6 d 4 (a). Language is added to make clear that a Panel finding of professional misconduct or incapacity is prerequisite to a petition for disciplinary action. Although a Hearing Panel finds misconduct much in the same way "as a grand jury may find probable cause," AGC v. McBurney, 282 Md. 116, 122-23 (1978), the Panel applies the "preponderance of the evidence" standard of Rule **16-748 (g)(2)**.Section (b) tracks the substance of former Rule BV6 d 4 (c) as to notice of dismissal and warning against future misconduct. However, a Panel is no longer required to state its reasons for dismissal and there is no review of any non-unanimous dismissal. Section (b) is the involuntary dismissal analogue of Rule **16-742 (a)** (Authority of Bar Counsel).
>
> Section (c) is new. Subsection (c)(1) incorporates the substance of former Rule BV6 a 3, but transfers to the Hearing Panel the authority to reprimand an attorney that was formerly vested in the Review Board by former Rule BV7 c.
>
> Subsection (c)(2) requires the Panel Chair to prepare a written reprimand and serve copies upon the attorney and Bar Counsel, who in turn notifies the complainant. Because Bar Counsel and the attorney are not obliged to accept a reprimand that either finds objectionable, the subsection affords them an opportunity to review the text before deciding what to do.
>
> Subsection (c)(3) continues to permit the attorney to reject a reprimand, thereby requiring the Panel to direct the filing of a petition for disciplinary action. Because a reprimand presupposes a finding of misconduct, the Hearing Panel should not be authorized to respond to an attorney's rejection by withdrawing the reprimand and dismissing the

charges, as was formerly permitted. Instead, having found misconduct, the Panel is obliged to direct the filing of a petition.

Subsection (c)(4) enables Bar Counsel to request and obtain review of a reprimand, unless previously rejected by the attorney. Bar Counsel may obtain review of a reprimand not rejected and withdrawn by filing a request with the Commission not later than 30 days after service of the reprimand, accompanied by a statement of reasons for such review. It is Bar Counsel's responsibility to transmit to the Commission a statement of reasons for review. The last sentence was added by the Committee to afford the attorney an opportunity to reply to the statement of reasons.

Subsection (c)(5) recognizes that an attorney's right to reject a reprimand and Bar Counsel's right to request review are not available when they previously stipulated to the appointment of a single-member Hearing Panel pursuant to subsection (f)(1)(B) of Rule **16-714**. Under that provision, a reprimand by a single-member Panel is final and conclusive.

Section (d) is new. Subsection (d)(1) requires the Panel Chair to prepare a statement certifying the Panel's finding and its direction to file a petition for disciplinary action in a statement similar to that required by former Rule BV6 d 4 (b).

Subsection (d)(2) permits any member of the Panel who disagrees with the Panel decision under subsection (d)(1) to include in the Panel statement a request for review of a Panel decision under the section that directs the filing of a petition for disciplinary action. Such review is conducted under Rule **16-750** by the Review Board constituted under Rule **16-715**. Such a request suspends the Panel decision.

Subsection (d)(3) requires filing with the Commission and service of the Panel's statement upon the attorney and Bar Counsel, who shall notify any complainant.

> Subsection (d)(4) adds the requirement that, if a petition for disciplinary action is directed, Bar Counsel must cause a copy of the transcript or tape recording of the hearing to be included in the record and make copies available for review by the attorney.

Mr. Bowen explained that Mr. Howell had reviewed the entire package of the proposed revised Attorney Disciplinary Rules, and an issue had arisen concerning Rule 16-749 (b), which the Rules Committee needs to consider. Mr. Howell was of the opinion that section (b) should clarify that the warning in the third sentence means a warning after a hearing. The Reporter added that this is the "envelope" issue, which was discussed at great length by the Rules Committee, involving what should go into the envelope to be considered by the Hearing Panel after a hearing for a determination of discipline. Warnings issued after a full panel hearing were discussed, but warnings issued in pre-panel review were never discussed as possibly going into the envelope.

The Chair commented that there are situations where no hearing has been held, but the attorney admits misconduct and accepts a warning. The Rule could provide that a hearing panel warning in that situation may be used in future disciplinary proceedings. The Vice Chair expressed the view that it would not be appropriate to rely on a warning issued by a panel without a hearing. Judge Vaughan asked if the respondent were to commit the same misconduct again, would it be appropriate to include the initial warning for the same behavior

in the envelope? The Chair said that other rules provide when evidence of a prior disciplinary action may be relevant. Bar Counsel can introduce the evidence, and the envelope cannot be used as a shield to keep out relevant evidence.

The Chair inquired if the new language should provide that the warning can be used after the opportunity for a hearing in the event that the respondent waived a hearing. Judge McAuliffe questioned whether the attorney can do anything about the warning. Mr. Brault replied that in many situations, the attorney cannot do anything about the warning. Judge McAuliffe said that if the warning is given by Bar Counsel or the panel and the attorney cannot do anything about the warning, there is no right to reject. This issue was also discussed by the General Court Administration in working on the Judicial Disabilities Commission Rules. In those Rules, only a reprimand can be rejected, and not a warning.

Mr. Brault remarked that it is unusual to reject a warning, even if someone has the ability to do so. The Reporter noted that in the Judicial Disabilities Commission Rules, a warning to the judge is not discipline. Mr. Brault observed that there is a publicity component to judicial discipline, whereas, at this point, attorney discipline is confidential. The Vice Chair moved that the suggested language to Rule 16-749 (b) be approved. The motion was seconded, and it passed unanimously. The Reporter suggested that the language could be restyled. The Chair proposed that the last sentence read as

follows: "A warning under this section issued after a hearing may be used in future disciplinary proceedings as provided in Rule 16-748 (g)(3)." The Committee agreed by consensus to this change.

Agenda Item 2. Continued consideration of proposed revised Title 11 (Juvenile Causes)

Mr. Johnson presented Rule 11-306 for the Committee's consideration.

Rule 11-306. STUDY AND EXAMINATION

(a) Procedures for Physical and Mental Examination

Any order for a physical or mental examination pursuant to Code, Courts Article, §3-818 shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. Except for a person who has failed to appear for a previously-ordered examination, the court may not place a person in detention or shelter care solely for the purpose of conducting an examination. The order may regulate the filing of a report of findings and conclusions, the dissemination of the report to the parties and any intervenors, the testimony at a hearing by the examining physician, psychiatrist, psychologist or other professionally qualified person, the payment of the expenses of the examination, and any other relevant matters. Unless otherwise provided by order of court, copies of all studies and reports of examinations ordered pursuant to this Rule shall be furnished to the parties and any intervenors not later than (1) two days before a disposition hearing if the respondent is in detention following an adjudicatory hearing or (2) five days before any other hearing at which the results of the examinations will be offered in evidence.

Cross reference: If the court has reason to believe that a child should be committed to the Department of Mental Hygiene for placement in a state mental hospital or state residential facility for the mentally retarded, see Rule 11-402 (c).

(b) Use of Report

The report of examination is admissible in evidence as set forth in Code, Courts Article, §3-818.

(c) Admissibility of Oral Testimony

Oral testimony concerning a study or examination ordered under Code, Courts Article, §3-818 by persons who conducted the study or examination is admissible

(1) at waiver, disposition, and post-dispositional modification and review hearings, and

(2) at an adjudicatory hearing only on the issues of respondent's competence to participate in the proceedings and legal responsibility for the acts alleged.

Source: This Rule is derived from former Rule 905.

Rule 11-306 was accompanied by the following Reporter's Note.

This Rule is derived from former Rule 905, with some important changes. In the second sentence of subsection (a)(1), the Subcommittee has added language to strengthen the "tilt" in favor of outpatient examinations. The Subcommittee was concerned that the Rule not be construed to impliedly authorize involuntary commitment for this purpose.

Because there may be occasions when it is inappropriate for a party to see the evaluation

report, the Subcommittee has added to subsection (a) the notion that the court may regulate by order the distribution of copies of the report. Except in the case of a disposition hearing when the respondent is in detention following an adjudicatory hearing, the Subcommittee has increased from two to five days the minimum period in advance of a hearing that counsel will have to review the reports, subpoena witnesses, and take other pre-hearing actions occasioned by the contents of the reports. The two-day time frame has been retained for distribution of reports prior to a disposition hearing if the respondent is in detention, in order to allow sufficient time for completion of reports that were ordered at the adjudicatory hearing. This shorter time frame is needed in light of Chapter 8, Laws of 1995 (S.B. 343) that requires a disposition hearing within 14 days after the adjudicatory hearing if the child is detained.

In section (c) the adjective "oral" has been inserted before "testimony" to heighten the contrast with the report itself, the admissibility of which is governed by Code, Courts Article, §3-818. The statute does not address the admissibility of live testimony - that is covered by current Rule 905 c.

The Subcommittee is proposing a significant change in section (c). It is recommending that the admissibility of oral testimony concerning a study or examination in all cases, not just delinquency and "contributing" cases, be limited to waiver, disposition, post-dispositional modification and review hearings, and competency hearings. The Subcommittee was advised that in CINA cases courts frequently order persons to appear for evaluations, and that the State then calls the evaluator to testify to what was said, thus proving its case.

In making this recommendation, the Subcommittee is not unmindful of concerns raised by Legal Aid Bureau, Inc. that this change could result in harm to a child, either

> through a resultant failure to protect a child or an inappropriate removal from the parents' care. For example, an expert who performed a court-ordered examination of an allegedly-abused child may be able to provide valuable, reliable testimony regarding the existence and cause of the child's injuries, but the expert would not be allowed to testify at the CINA adjudicatory hearing. The Subcommittee believes that the matter of the uses (and misuses) of information garnered pursuant to Code, Courts Article, §3-818 merits further study by the legislature.

Mr. Johnson explained that Rule 11-306 was discussed at the February Rules Committee meeting. The Baltimore City Department of Social Services (DSS) had expressed its disagreement with section (c) of the proposed Rule and had requested that section c of current Rule 11-105 be substituted for proposed section (c). The Juvenile Subcommittee believes that proposed section (c) should remain in the Rule. Representatives of DSS have submitted documents since the February meeting, and these documents are in the March meeting materials. The Office of the Public Defender agrees with the Subcommittee. It is up to the Rules Committee to decide which provision should be in Rule 11-306. Code, Courts Article, §3-818 is silent as to the admissibility of oral testimony. Mr. Johnson said that the Subcommittee had been persuaded to delete section c of current Rule 11-105.

Mr. Becker expressed the opinion that section c of current Rule 11-105 should be retained. It is more protective of children. The case of In re Wanda B., 69 Md. App. 105 (1986) held that it was

proper for the evaluator to testify in a CINA adjudicatory hearing. Ms. Pizzo, of the Office of the Public Defender, stated that her office takes the strong position that the oral testimony concerning a study or examination is not admissible at an adjudicatory hearing. It would shift the burden of proof to the parent. The original allegation in the petition may have described the behavior of a parent who had some inability to care for his or her child. There may have been no information to corroborate the allegation. The purpose of a study or examination is to determine the appropriate services for a child or parent. Allowing in the oral testimony unduly shifts the burden to the parent and creates new issues that were not there originally. In an examination, the information which is elicited having nothing to do with the child could be used against the parent.

Mr. Fishkin noted that another argument brought up at the last meeting is that the new provision encourages the court to assist the DSS in making its case, when it is really up to the petitioner to make his or her case and not use the court as an arm to gather evidence. The court can order evaluations if necessary. Mr. Johnson remarked that he had read In re Wanda B.. The holding in the case is based upon Rule 905 c (current Rule 11-105 c). There is nothing in the statute that requires either the admission or the exclusion of the testimony of the evaluator on the issue of CINA adjudication. The statute is silent as to the admissibility of that testimony, and

there are no other cases on this issue.

The Chair suggested that the following language could be added to the beginning of section (c): "unless the court orders otherwise." This would leave the admissibility issue up to the discretion of the court. Mr. Brault pointed out that the statute provides that the evidence is not admissible at the adjudicatory hearing, but Ms. Pizzo explained that the statute provides that the report is not admissible. Mr. Becker noted that in the In re Wanda B. case, the court admitted the testimony in a CINA adjudicatory hearing. Courts Article, §3-818 provides an exception to the hearsay rule for written reports.

The Chair commented that it may be unfair to give the report to the judge without counsel available to cross-examine the person who prepared the report. Ms. Pizzo remarked that if the petition alleges that the child is not receiving proper care, an evaluation by anyone, whether it is a medical or mental health professional, does not advance the position as to what happened. Ms. Renne responded that the report could explain what happened to the child. She expressed the concern that the way section (c) of Rule 11-306 is written would not allow the testimony of the physician as to whether the child had any broken bones. DSS may not be able to prove this without the physician's testimony. However, Ms. Renne said that she was satisfied that the Chair's suggested language would cure the problem.

Judge Kaplan moved to adopt the change suggested by the Chair which is to add the language "unless the court orders otherwise" to the beginning of section (c). The motion was seconded. Mr. Johnson suggested that a Committee note could be added to the Rule which would explain that certain protections afforded the child are not to be used against the parents. Mr. Brault noted that at the end of current Rule 11-105, the annotation to the case of In re Wanda B. is incorrect, because it refers to "disposition hearings" only instead of including "adjudicatory hearings." Mr. Johnson remarked that the term "oral testimony" may be redundant, although the argument has been made that this emphasizes the distinction between written reports and oral testimony. Ms. Pizzo pointed out that the Rule does not preclude other examinations, just the court-ordered ones. DSS or the parents are allowed to arrange that exams be conducted.

The Chair called for a vote on Judge Kaplan's motion. The motion carried with all in favor, except for one abstention.

Mr. Fishkin asked if the Style Subcommittee would redraft the Rule to handle the differences in section (c) between delinquency and CINA cases. One of the issues is Fifth Amendment rights. The Chair agreed that a person is entitled to assert some privileges. Mr. Klein pointed out that the meaning of subsection (c)(2) is ambiguous. He suggested that the word "only" be deleted. The Committee agreed by consensus with this suggestion.

Mr. Johnson presented Rule 11-307, Discovery and Inspection,

for the Committee's consideration.

Rule 11-307. DISCOVERY AND INSPECTION

(a) Delinquency Cases and Criminal Cases Against Adults

(1) Scope of Section

This section applies to a proceeding in which a child is alleged to be delinquent and to a case against an adult over which the juvenile court has and is exercising jurisdiction pursuant to Code, Courts Article, §3-804.

Cross reference: Code, Courts Article, §3-831 and Code, Education Article, §7-301.

(2) Discovery by the Respondent

Without the necessity of a request the State's Attorney shall furnish to the respondent:

(A) any material or information which tends to negate the involvement of the respondent in the offense charged or to mitigate the severity of the disposition;

(B) any relevant material or information regarding

(i) specific searches and seizures;

(ii) wiretaps and eavesdropping;

(iii) the acquisition of statements made by the respondent; and

(iv) prehearing identification of the respondent by a witness for the State.

(C) the name and address, to the extent then known, of each person whom the State intends to call as a witness at any hearing to

prove its case in chief or to rebut alibi testimony.

(D) as to all statements made by the respondent to a State agent which the State intends to use at a hearing:

(i) a copy of each written or recorded statement; and

(ii) the substance of each oral statement and a copy of all reports of each oral statement;

(E) as to all statements made by a co-respondent to a State agent which the State intends to use at a hearing, unless a severance has been ordered by the court:

(i) a copy of each written or recorded statement; and

(ii) the substance of each oral statement and a copy of all reports of each oral statement;

(F) any written reports or statements made in connection with the action by each expert consulted by the State, including the results of any physical or mental examination, scientific test, experiment, or comparison, and furnish the respondent with the substance of any such oral report and conclusion;

(G) access to any documents (including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, translated, if necessary, by the State through detection devices into reasonably usable form) and any tangible object which the State intends to use at any hearing, in order to permit the respondent to inspect, copy and photograph them;

(H) access to any item obtained from or belonging to the respondent in order to permit the respondent to inspect, copy, and photograph

it; and

(I) if the State intends to offer an out-of-court statement pursuant to Code, Article 27, §775, notice of that intention and of the content of the statement.

(J) The State's Attorney's obligations under this section extend to material and information in the possession or control of staff members and of any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the particular case have reported to the State's Attorney.

(3) Discovery by the State

Upon the request of the State, the respondent shall:

(A) appear in a lineup for identification;

(B) speak for identification;

(C) be fingerprinted;

(D) pose for photographs not involving reenactment of a scene;

(E) try on articles of clothing;

(F) permit the taking of specimens of material under the fingernails;

(G) permit the taking of samples of blood, hair, and other material involving no unreasonable intrusion upon the respondent's person;

(H) provide handwriting specimens;

(I) submit to reasonable physical inspection or mental examination;

(J) produce and permit the State to inspect and copy all written reports made in

connection with the particular case by each expert who the respondent intends to call as a witness at the hearing, including the substance of any oral report and conclusion made in connection with the particular case by an expert which the respondent intends to use at the hearing and the results of any physical or mental examination, scientific test, experiment, or comparison;

(K) furnish, upon designation by the State of the time, place, and date of the alleged occurrence, the name and address of each witness other than the respondent whom the respondent intends to call as a witness to show the respondent was not present at the time, place and date designated by the State in its request.

(b) Child in Need of Assistance Cases

(1) Scope of Section

This section applies to a proceeding in which a child is alleged to be in need of assistance. In this Rule, "Petitioner" means the local Department of Social Services and any other person authorized by law to file a petition.

Cross reference: Code, Courts Article, §3-810 (b).

(2) Discovery by a Party

In each case, unless the Court finds good cause for a protective order, the Court, on its own motion or on motion by a party, shall order the petitioner to furnish to a party:

(A) any material or information which tends to negate the involvement of the party in the alleged circumstances;

(B) any material or information which tends to affect the appropriateness of the disposition proposed by the petitioner;

(C) any relevant material or information regarding the acquisition of statements made by the party;

(D) the name and address of each person whom the petitioner intends to call as a witness;

(E) as to all statements made by a party to an agent of the petitioner which the petitioner intends to use at a hearing:

(i) a copy of each written or recorded statement; and

(ii) the substance of each oral statement and copy of all reports of each oral statement;

(F) any written reports or statements made in connection with the action by each expert consulted by the petitioner, including the results of any physical or mental examination, scientific test, experiment, or comparison and furnish the respondent with the substance of any such oral report and conclusion;

(G) access to any documents (including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, translated, if necessary, by the petitioner through detection devices into reasonably usable form) and any tangible object which the petitioner intends to use at any hearing, in order to permit the party to inspect, copy, and photograph them;

(H) access to any item obtained from or belonging to a party, in order to permit the party to inspect, copy, and photograph it; and

(I) if the petitioner intends to offer an out-of-court statement pursuant to Code, Article 27, §775, notice of that intention and of the content of the statement.

(J) The petitioner's obligations under this section extend to material and information in the possession or control of staff members and of any others who have participated in the investigation or evaluation of the case and either regularly report or with reference to the particular case have reported to the petitioner.

(3) Discovery by the Petitioner

Upon the request of the petitioner, unless the court finds good cause for a protective order, the party shall:

(A) produce and permit the petitioner to inspect and copy all written reports made in connection with the particular case by each expert whom the party intends to call as a witness at the hearing, including the substance of any oral report and conclusion made in connection with the particular case by an expert whom the party intends to use at the hearing and the results of any physical or mental examination, scientific test, experiment, or comparison;

(B) furnish access to any documents (including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, translated, if necessary, by the party through detection devices into reasonably usable form) and any tangible object which the party intends to use at any hearing, in order to permit the petitioner to inspect, copy, and photograph them; and

(C) furnish the name and address of each person whom the party intends to call as a witness.

QUERY TO COMMITTEE:

Should subsections (a)(3)(J) and (b)(3)(A) (regarding expert witness information that the respondent must provide to the State or petitioner) be changed to conform to the format

of subsections (a)(2)(F) and (b)(2)(F) (keeping in any revision the thought that the respondent is required to disclose only those experts whom the respondent intends to call as witnesses)?

(c) Method of Compliance by State or Petitioner

Subject to the provisions of sections (f) and (g) of this Rule, the State or petitioner may comply with sections (a) and (b) of this Rule by advising the party, in writing or on the record, that the party may inspect the entire file of the State or petitioner and by allowing such inspection to occur at any time during normal business hours. However, if the State or petitioner has any exculpatory or other information specified in subsections (a)(2)(A) or (b)(2)(A) of this Rule, the State or petitioner shall promptly furnish such information to the party, whether or not the party has made the inspection provided for by this section.

(d) Matters Not Subject to Discovery

This Rule does not require the disclosure of:

(1) the identity of a confidential informant so long as the failure to disclose does not infringe on a constitutional right of the party and the State does not intend to call the informant as a witness;

(2) the identity of a reporter of abuse or neglect, so long as the failure to disclose does not infringe on a constitutional right of the party and the petitioner or State does not intend to call the reporter of abuse or neglect as a witness;

(3) any matter which is protected from discovery by privilege or work product; and

(4) any matter which the court orders, pursuant to a protective order, need not be disclosed.

(e) Procedure for Discovery--Time--Hearing on Motion to Compel

(1) Unless the court, for good cause shown, extends or shortens the time for discovery:

(A) The State shall provide discovery in accordance with subsection (a)(2) of this Rule and request discovery in accordance with subsection (a)(3) of this Rule within five days after the earlier of the appearance of counsel or the waiver of counsel under Rule 11-301.

(B) The respondent shall furnish discovery requested by the State in accordance with subsection (a)(3) of this Rule within 10 days after the request is made.

(C) The petitioner shall furnish discovery to a party in accordance with subsection (b)(2) of this Rule within ten days after the latter of the filing of the petition or the entry of the order requiring the petitioner to furnish the discovery.

(D) A party shall furnish discovery to the petitioner in accordance with subsection (b)(3) of this Rule within ten days after the request is made.

(2) If discovery is not furnished as required and after the party seeking discovery has made good faith efforts to resolve the discovery dispute, a motion to compel discovery may be filed which shall specify the items which have not been furnished. A hearing shall be held no later than five days after the motion is filed.

(f) Continuing Duty to Disclose

If, subsequent to compliance with a requirement or request made under this Rule or with any order compelling discovery, a party, including the State or petitioner, learns of additional information previously requested and

required to be furnished, the party shall promptly furnish the information to the other party or counsel. **The continuing duty to disclose includes prompt disclosure of information learned while a hearing is in progress.**

QUERY TO COMMITTEE: How long after the testimonial phase does the continuing duty extend?

(g) Orders Relating to Discovery

Upon motion and a showing of good cause, the court may order that specified disclosures be restricted. If, at any time during the proceedings, it is brought to the attention of the court that a party has failed to comply with this Rule or an order issued under this Rule, the court may:

(1) order the party to permit the discovery of the matters not previously disclosed;

(2) strike the testimony to which the undisclosed matter relates;

(3) grant a reasonable continuance;

(4) prohibit the party from introducing in evidence the matter not disclosed;

(5) grant a mistrial; or

(6) enter such other order as may be appropriate under the circumstances.

(h) Intervention

In proceedings in which intervention has been allowed pursuant to Rule 11-401, the court may pass such orders pertaining to discovery by and from the intervenor as justice may require.

(i) Other Cases

In any proceeding in which a child is alleged to be in need of supervision or has received a citation for a violation the court may, upon good cause shown, pass such orders in aid of discovery and inspection of evidence as justice may require.

Source: This Rule is in part derived from former Rule 909 and is in part new.

Rule 11-307 was accompanied by the following Reporter's Note.

This Rule is derived from Rule 909, which provided for quasi-criminal discovery in delinquency and "contributing" cases only. Under that rule, discovery in CINA and CINS cases was a matter of discretion with the juvenile court (Rule 909 b).

The proposed revised Rule goes beyond the current rule in one very significant respect, by expanding discovery to CINA cases. The Subcommittee recommends this change, recognizing that it is a policy question for the full Committee and the Court of Appeals. Because of the increasing importance of alleged child abuse and neglect as elements in CINA cases, and of the potentially serious consequences to both parent and child when these allegations are made, the Subcommittee believes that expanded discovery is necessary. The Subcommittee did not recommend extending discovery as a matter of course to CINS ("child in need of supervision") and violation cases, believing that discretionary discovery was adequate.

Section (a) of the Rule is derived from Rule 909 a 2, a 3, and a 6.

Subsection (a)(1) incorporates the substance of Rule 909 a 2. The phrase "case against an adult over which the juvenile court has and is exercising jurisdiction" is used because the juvenile court has concurrent jurisdiction with the District Court over adults charged with violations of the compulsory school attendance laws. See Code, Education Article, §7-301.
A cross reference to that provision and to Code, Courts Article, §3-831, the "contributing" provision, is added.

Subsection (a)(2) is Rule 909 a 3, with minor changes. In the introductory language, "State's Attorney" is used instead of "State"; see Rules 4-262 and 4-263. In subparagraph (A), consistent with the parallel Title 4 Rule, exculpatory information is expanded to include information that might lessen the severity of the disposition. In subparagraph (F), Rule 909 had referred to "the written substance of any oral report." The Subcommittee was concerned that this might reach privileged information and so substituted language from Rule 4-263 (b)(4). The same change is made in subsection (b)(2)(F), below. In subparagraph (G), the

broad language of Rule 2-422 (a) pertaining to documents is used instead of the "book, paper, document ..." list in Rule 909 a 3 (g). In subparagraph (H), the phrase "which the State intends to use at any hearing," which appears in Rule 909 a 3 (h), has been deleted. A new subparagraph (I) has been added to be co-extensive with the notice requirements of Code, Article 27, §775. That statute permits certain out-of-court statements by alleged victims under the age of 12 years to be admitted into evidence. Section 775 requires that, "a reasonable time before the juvenile proceeding," notice be given of the intent to introduce such a statement and of the content of the statement.

Subsection (a)(3) is Rule 909 a 6 with minor style changes. Subsections a 4 and a 5 of Rule 909 appear later in the revised rule, as provisions applicable to all discovery.

Section (b) is new and explicitly provides for reciprocal discovery in CINA cases. It is patterned after section (a) but is slightly different due to the nature of CINA proceedings.

Subsection (b)(1) defines "petitioner" as the local Department of Social Services and any other person authorized to file a petition. See Code, Courts Article, §3-810 (b). See also Rule 1-202 (q).

Subsection (b)(2) is essentially the same as subsection (a)(2), except that "party" is substituted for "respondent" throughout and the scope of disclosure of witnesses is broader.

Subsection (b)(3) provides for discovery by the petitioner in a CINA proceeding. It is not as extensive as subsection (a)(2), but requires a more comprehensive listing of witnesses.

Section (c) is derived from Rule 909 a 4 with style changes. The more inclusive term "party" is used instead of "respondent"

throughout the remainder of the Rule.

Section (d) is derived from Rule 909 a 5 with style changes, and the inclusion of the identity of reporters of abuse and neglect and matters protected by privilege.

Subsections (e)(1)(A) and (B) are derived from the first paragraph of Rule 909 a 7, with style changes. Subsections (e)(1)(C) and (D) are new and establish time frames applicable to the expanded discovery in CINA cases. Subsection (e)(2) is derived from the second paragraph of Rule 909 a 7, with style changes.

Sections (f) and (g) are derived from Rule 909 a 8, and 9, respectively, with style changes.

Section (h) has been added to allow discovery by and from persons who have attained intervenor status under Rule 11-401.

Section (i) is derived from Rule 909 b but is now limited to CINS cases and violation cases. Section c of Rule 909 pertaining to timeliness of disclosure was not carried forward because believed unnecessary.

Mr. Johnson explained that in the Rule there are two separate categories of discovery -- (1) discovery in delinquency cases and criminal cases against adults and (2) discovery in CINA cases. On page 74 in subsection (b)(2)(F), the language is in bold print indicating that a change to this provision had been made. The Reporter explained that the Rules Committee had asked that this provision be redrafted.

The Chair inquired if there were any comments about section (a), and none were made. Mr. Johnson commented that DSS had sent in

some comments after the February meeting. Some did not arrive until yesterday, and he had not had a chance to read them thoroughly. One complaint was the relatively short time frame to complete discovery in a case which may have very meager resources. The Chair questioned the language in subsection (b)(2) which indicates that the court must enter an order, even without a motion by a party. Mr. Johnson responded that a representative of the Attorney General's office had attended an earlier Rules Committee meeting to explain that federal statutes require confidentiality, and this is tied to federal funding. The Chair noted that this might be a burden on the court and the clerks' offices. The following language could be added to subsection (b)(2): "except for material declared confidential by statute." Mr. Johnson remarked that there is confidential material in every case. Mr. Becker added that all of the cases are covered by the federal statute. In Baltimore City, the court has issued a blanket order. Mr. Becker remarked that the Attorney General had some concerns about the legality of the blanket order. Mr. Johnson pointed out that the Attorney General had approved the language in subsection (b)(2).

Mr. Maloney inquired about having a standing order in every case. The Reporter commented that according to the Attorney General's analysis, there needs to be an order in each case. Mr. Johnson observed that even if there were a standing order, there would be an order in each case, and this would comply with the

statute. Master Wolfe suggested that it should be left up to the discretion of the court to enter an order. Mr. Johnson said that the court may act on its own motion, or a party may file a motion. It is a matter of convenience of the court. If there is a protective order, no information can be given out. The Chair questioned as to why there needs to be a protective order when the information can be prevented from being disseminated pursuant to an order. Mr. Johnson answered that the protective order dictates which portions of the record should be redacted. The Chair noted that unless the court makes a finding that someone cannot see the record, the person is entitled to see it, but the person has to ask for it. This is not like other discovery.

Mr. Becker noted that the letter from the Baltimore County DSS counsel supports his suggestion to modify section (b) of Rule 11-307. The Reporter pointed out that in the meeting materials, there is a letter from Baltimore City DSS which suggests that subsection (b)(2) of Rule 11-307 should be modified. Mr. Becker explained that the Baltimore City DSS is recommending the replacement of subsection (b)(2) on page 73 of the proposed Rule package with their own subsection (b)(2), which was included in the meeting materials. The Juvenile Subcommittee draft took the delinquency section and superimposed it on CINA cases, but the affirmative requirements set out in that draft are too burdensome in CINA cases. Mr. Johnson said that the concept of the Rules Committee was compulsory discovery for

both delinquency and CINA cases. The suggestion of the Baltimore City DSS is that it not be compulsory, and this could be accomplished by adding the language "upon request." He asked why this was recommended. Mr. Becker answered that if there is court-ordered discovery, the language "upon request" can be deleted.

The Chair commented that there are time demands on both sides. He suggested that subsection (b)(2) provide that the court shall order each petitioner to make available for inspection by the other party a witness list and the remainder of the "laundry" list. The Rule can leave it up to the parties to work it out, and the court can step in if the Rule is not complied with. Master Wolfe questioned as to why the court has to be involved. The Chair responded that without court involvement, federal funds would be lost.

Ms. Pizzo commented that under subsection (b)(2)(C) of the draft provided by Baltimore City DSS, the Public Defender would be required to furnish the names and addresses of all witnesses. This would be burdensome because sometimes the attorneys are not able to know who the witnesses are until the day of trial. The Chair remarked that the court can make adjustments. The language "if practicable" could be added to the Rule. The court could be consulted if the discovery cannot be provided. Ms. Pizzo said that she would not like to be in the position of having to furnish the name of a witness that she is not going to be calling at trial. Judge Johnson noted that one cannot provide a name of a witness if

one does not have the witness's name, but the court could find that the party should have had the witness's name.

Mr. Becker pointed out that in subsection (b)(2)(E) of the DSS version of Rule 11-307, language could be added indicating that the names of other witnesses may be provided, if practicable. The Chair commented that in civil cases, the court can be flexible. The Rule could be simplified to make it easier for attorneys and judges. The language could be: "the petitioner shall make available for inspection the names...". The Vice Chair noted a problem in the language in subsection (b)(2)(A) of the Subcommittee's version of Rule 11-307, in particular the meaning of the language "any material or information which tends to negate the involvement of any party...". Mr. Becker remarked that his approach utilizes the system the way it is working now. He suggested that the language of subsection (b)(2)(A) of the DSS version be used, but the reference to privilege could be removed. Exculpatory information has to be provided. It would be burdensome for DSS to have to go through every file to see if there is exculpatory information. The Vice Chair pointed out that if all of the records are made available, the party can find the information he or she needs.

The Reporter noted that the Subcommittee was inclined to provide for open file discovery. Mr. Johnson suggested that on page 73, subsection (b)(2) could provide: "In each case, unless the Court finds good cause for a protective order, the Court, on its own motion

or on motion by a party, shall order the petitioner to make available for inspection by a party...", and following this, the "laundry list" could be added. This would not force DSS to go through a time-consuming process.

Judge McAuliffe pointed out a problem with the Subcommittee draft. Subsection (b)(2) calls for broad provision of documents, and it takes away the chance to argue against providing some of the material. The Vice Chair observed that subsection (b)(2)(C) could be argued indefinitely as to what is relevant. The Chair commented that social service records, referred to in subsection (b)(2)(A) of the DSS draft, are not privileged. Mr. Becker explained that they tried to separate out attorney-client privileged records. The Chair noted that under the statute, these records are not privileged. Ms. Pizzo remarked that the Office of the Public Defender would want to include information which tends to negate the involvement of a party. It may not necessarily be part of a record.

The Vice Chair asked if the consultants and the Subcommittee have agreed as to how to revise subsection (b)(2). Mr. Johnson replied that the consultants and Subcommittee members have not agreed as to the revision. If the consultants would agree on the language, the Subcommittee would entertain a motion to accept the language. Mr. Brault inquired if the Subcommittee should meet to discuss this, but Mr. Johnson answered that he preferred that the decision be made at today's meeting. Mr. Brault remarked that he agreed with the Vice

Chair that the CINA section of the Rule should have different language.

Mr. Johnson pointed out that the Chair had suggested that the Subcommittee language should be used. The Chair suggested that subsection (b)(2) should begin as follows: "In each case....the Court,....shall order the petitioner to make available for inspection and copying: ...". The Vice Chair said that this language could be used for the delinquency section of the Rule. The Chair commented that this is parallel to the Criminal Rules. The Vice Chair inquired as to who pays for the copies. Mr. Johnson responded that the burden is on the State's Attorney. Mr. Dean observed that it depends on the jurisdiction. Mr. Johnson noted that the issue is whether to provide that the petitioner makes the information "available" or "furnishes" the information.

The Chair asked about the witness list which may not be located in the file. Master Wolfe pointed out that in a delinquency case, the witness list must be appended to the petition. The Vice Chair noted that there is variance in discovery procedures between the circuit and District courts. The Chair added that the variance exists from jurisdiction to jurisdiction. Judge Kaplan moved that the language be "make available for inspection and copying by a party." It is preferable not to handle the payment in the Rule. The motion was seconded, and it passed unanimously.

The Chair asked if in a CINA case, the petitioner has to

furnish to the other side the identity of the expert consulted, but who is not going to be called. This is what happens in delinquency and criminal cases. Subsection (b)(2)(F) covers this. Mr. Brault expressed the view that that subsection destroys the attorney's work product. This would not work in civil litigation. Mr. Johnson inquired if there is a reason to not give the expert's name. The Chair said that CINA cases are very different from delinquency cases. Subsection (b)(2)(F) is a criminal rule. Mr. Brault questioned whether the work product concept fits into this. Reports are not within litigation protections. Documents prepared before the petition is filed are not within the work product of the attorney. This Rule falls within the purview of work product, but it is trumped by the Rule on work product.

Judge Kaplan commented that whether the civil or criminal rule is being applied makes a difference. Master Wolfe noted that CINA cases do not fit neatly into either category. Mr. Brault pointed out that subsection (d)(3) provides that any matter which is protected from discovery by privilege or work product is not required to be disclosed. In the serious cases, open file discovery is appropriate, but where does the privilege language go? The Chair noted that the thoughts, mental impressions, and strategies of a party are privileged. Mr. Brault observed that in applying for a protective order, everyone contends that privilege exists.

Mr. Maloney questioned whether a CINA parent, who is a

represented party, who goes to see a physician and does not want to use the medical report, must disclose the report. Mr. Johnson replied that under subsection (b)(3)(A) of Rule 11-307, the CINA parent would not have to disclose the report. The predicate is that the party intends to use the document at the hearing. Mr. Maloney expressed the view that the Rule does not make this clear. In a criminal case, even if the expert is not expected to be called at trial, the State has to disclose the expert's report.

The Chair suggested that subsection (b)(3)(A) could end with the word "case," the second time the word "case" appears in that subsection. Mr. Maloney added that this is expert witnesses expected to be called. Master Sparrough suggested that the language at the end of subsection (b)(3)(A) which reads, "and the results of any physical or mental examination, scientific test, experiment, or comparison" should be added into the revised subsection. The Vice Chair suggested that subsection (b)(3)(A) read as follows: "produce and permit the petitioner to inspect and copy all written reports made in connection with the particular case, including the substance of any oral report, oral conclusion, and the results of any physical or mental examination, scientific test, experiment, or comparison;." The Committee agreed by consensus to this change.

The Vice Chair noted that the beginning language of subsection (b)(3) should be parallel to the beginning language of subsection (b)(2) so that it would read as follows: "Upon the request of the

petitioner, unless the court finds good cause for a protective order, the party shall make available for inspection and copying...". The Committee agreed by consensus to this suggestion.

Judge McAuliffe referred to the language in subsection (b)(2)(A) of the DSS draft of Rule 11-307 which provides: "Petitioner, upon request, shall make available for inspection during business hours, those portions of social services records of petitioner which are relevant to the case and not privileged;", and he inquired if this should be included in the Subcommittee draft. The Chair suggested that the reference to social services records be added to the "laundry list" in subsection (b)(2) of the Subcommittee draft, and the Committee agreed by consensus to this suggestion.

Mr. Maloney commented that a Committee note should be added to Rule 11-307 which would distinguish confidentiality from privilege. The Chair suggested that the Rule could refer to the records which are not privileged under the Courts Article. Mr. Maloney suggested that the language added could be: "non-privileged records otherwise subject to Article 88, §6." The note could indicate that social services records are not privileged. The Reporter suggested that this should go into the Rule. Mr. Dean pointed out that subsection (d)(3) of the Rule covers this. The Reporter commented that subsection (d)(3) may be too broad.

Mr. Fishkin said that the language "make available for inspection and copying" which has been added to subsections (b)(2)

and (b)(3) may not always work. If the information requested in subsection (b)(2)(A) which is "any material or information which tends to negate the involvement of the party in the alleged circumstances" is not in the record, but the State knows such information exists, it cannot make the information available for inspection and copying. However, if the language of subsection (b)(2) were not changed so that it reads "the Court ... shall order the petitioner to furnish to a party...", the State would be required to come forward with its information. The Reporter suggested that the Rule could provide "furnish or make available," but Judge Johnson expressed the view that furnishing is a separate idea.

Mr. Johnson asked about the confidentiality issue. The Chair responded that the "laundry list" can contain the social services records of petitioner which are not privileged, but it is not clear what to do about confidential matter. Mr. Brault expressed the view that the word "privileged" should not be used, because it is too confusing. Mr. Maloney commented that the reference in Code, Article 88, §6 is not to privileged information, it is to confidential information. The Chair suggested that the reference could be to records which are not privileged under the Courts Article. Judge Kaplan suggested that this could be added to section (d) of Rule 11-307 as a new number (5).

Mr. Brault observed that the distinction between "privileged" and "confidential" is confusing. Medical records, which are

confidential, are often treated as privileged by the courts. It would be better if the Rule required that anyone contending that a record need not be disclosed can move for a protective order, which will ensure that this is controlled by the court. Mr. Maloney pointed out that every file will be covered by the attorney-client privilege, so that a protective order will be filed in every case. Mr. Brault suggested that the attorney-client privilege be exempted out. Master Sparrough noted that it would be difficult timewise to have another court hearing on the issue of a protective order, because there are only 30 days between the shelter care hearing and the merits hearing. Mr. Brault remarked that when there are problems in civil litigation, the trial judge can be alerted by a telephone call, and the parties can meet with the judge by a conference call.

Mr. Maloney asked if the social services reports produced without a privilege claim are going to be referenced in the Rule. Judge McAuliffe said that they will be added to the "laundry list." The language at the beginning of subsection (b)(2), "unless the court finds good cause for a protective order" will take care of the privilege aspect. Judge Vaughan noted that reports of child abuse are not privileged. The Chair stated that subsection (d)(3) will be restructured. Master Wolfe inquired if subsection (b)(2)(F) is going to remain in the Rule, and Mr. Brault answered that it will remain.

The Chair commented that pursuant to subsections (d)(1) and (2), the petitioner does not have to identify a confidential

informant or a reporter of abuse or neglect, unless the failure to disclose would infringe on a constitutional right of the party. He suggested that subsection (d)(1) could be changed to read as follows: "the identity of a confidential informant that the State does not intend to call as a witness unless the court finds that the failure to disclose infringes on a constitutional right of a party." Subsection (d)(2) could read as follows: "the identity of a reporter of abuse or neglect that the State does not intend to call as a witness, unless the court finds that the failure to disclose infringes on a constitutional right of a party." The Committee agreed by consensus to these changes.

Mr. Becker stated that a reporter may be called as witness, but not identified as the reporter. He suggested that the last phrase of subsection (d)(2) of the Rule as modified which reads "unless the court finds that the failure to disclose infringes on a constitutional right of a party" should be deleted. The Chair pointed out that a person called to the stand to testify will have to give his or her name. Mr. Becker observed that there is a distinction between giving one's name as a witness and identifying oneself as the reporter. Mr. Johnson commented that it is the testimony that is important, and not the fact that the witness is the reporter. Mr. Becker said that the Rule seems to indicate that a reporter who takes the stand must identify himself or herself as the reporter. Mr. Johnson responded that the Rule is not designed to do

this. Mr. Brault cautioned that the Rule should not discourage anyone from reporting abuse or neglect.

The Chair noted that sometimes the identity of the reporter is important. Mr. Brault remarked that the Rule does not prohibit the respondent from questioning the witness as to who the reporter is. The Rule applies to the petitioner and not the witness. The witness cannot refuse to say who the reporter is. The Chair said that when the State gives the witness list to the defendant, the name of the informant may be on the list. Mr. Johnson clarified that any reporter the State is not intending to call need not have his or her name disclosed.

The Vice Chair asked if subsection (d)(2) requires that the reporter be identified. The Chair suggested that a Committee note could be added which would clarify that the State or the petitioner is not required to disclose that one of the witnesses was the reporter or informant. Mr. Becker commented that parties do have constitutional rights. Mr. Johnson questioned whether bias implicates constitutional rights. The Chair answered that the defendant has the right to information about the bias of the state's witness. Mr. Maloney noted that the Rule does not require the disclosure of the status as a reporter unless a constitutional right is infringed. The Chair reiterated that the problem can be solved with the addition of a Committee note. Judge Kaplan moved that a Committee note explaining that the State or petitioner is not

required to disclose the identity of an informant or reporter unless a constitutional right is infringed would be added to section (d). The motion was seconded, and it passed unanimously.

The Chair suggested that the following language from Rule 2-402 (c) be added to subsection (d)(3): "mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation," so that subsection (d)(3) would read as follows: "any matter which is protected from discovery by the attorney-client privilege and the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." The Committee agreed by consensus to this change.

The Chair asked how privilege should be worded in the Rule. Mr. Brault responded that subsection (d)(3) should be limited to attorney-client privilege. Master Wolfe inquired as to whether all other privileges are suspended. The Chair answered that they are not suspended, but one would be required to seek a protective order if another privilege were at issue. Mr. Brault commented that there is probably some form of privilege in most of the social services files. The distinction between confidential and privileged medical records is not clearly drawn. The Chair pointed out that the privilege may evaporate when there is a duty to report child abuse. The Rule will address one specific privilege, and leave the rest to seek a

protective order. Language can be put into the Rule which states that protective orders are available pursuant to Rule 2-403.

The Vice Chair commented that if she were the attorney representing a child and she were claiming psychiatrist-patient privilege, she would have to get a protective order. She asked what happens currently. Ms. Pizzo remarked that the change to the Rule would put the burden on parents to assert the privilege, and she expressed the view that the Rule should not work that way. The Chair explained that subsection (d)(4) provides that any matter which the court orders, pursuant to a protective order, need not be disclosed. Psychiatrist-patient privilege is waived with respect to allegations of child abuse. Attorney-client privilege is clearly recognized, and it is provided for in subsection (d)(3) along with "mental impressions, conclusions, opinions, or legal theories," which is the language in Rule 2-402 (c).

The Vice Chair expressed the view that this is a major modification of privileges and work product. She remarked that a case may be so complex involving medical information that the attorney may have to hire an expert for advice. The Chair asked if it was the sense of the Committee that the requirement that the State has to identify all of its experts should be in the Rule. The Vice Chair suggested that subsection (d)(3) could read: "any matter protected by privilege or work product except to the extent that the Rules require production." Mr. Brault pointed out that Rule 2-402

(c) provides: "the court shall protect against disclosure of the mental impressions...". The Chair said that the parallel Criminal Rule is Rule 4-263, and it provides that the defendant has to disclose the witnesses he or she intends to call at trial. The question is if this should be applicable in CINA cases, and the Committee indicated that it should be.

Mr. Brault commented that most of the record being discussed is medically-related information. The Maryland statutory scheme is that if the physical or mental health of someone is at issue, there is no privilege. Any party has the right to disclose the medical information. Mr. Hochberg remarked that the party asserting the issue waives the privilege. The Chair suggested that the following language be added to subsection (d)(4): "a party who asserts another privilege shall apply for a protective order." This would place the burden on the party who asserts the privilege. Judge Kaplan moved that the language suggested by the Chair be added to subsection (d)(4). The motion was seconded, and it passed with one opposed.

Mr. Johnson expressed the concern that section (e) provides a very short time frame for discovery to take place, both in delinquency and CINA cases. The concern is that if the time is extended, the juveniles will have to remain in continued detention, or the determination of delinquency or CINA will be delayed. The consultants to the Juvenile Subcommittee had been in favor of this.

Mr. Becker explained the proposal of the Baltimore City DSS, suggesting discovery within ten days of the order of discovery.

Mr. Hochberg inquired if the time period of five days in subsection (e)(2) is the same if no hearing is requested. Master Wolfe remarked that a hearing is not necessary. The Chair suggested that the wording of this provision could be changed to read: "if a hearing is requested, the hearing shall be held no later than five days after the motion is filed." Mr. Johnson pointed out that no hearing may be necessary. The master can make a ruling without a hearing. Mr. Hochberg noted that there is a similar rule in Title 2. The Chair suggested that language similar to the language in Rule 2-311 be used in subsection (e)(2), and the Committee agreed by consensus to this suggestion.

Mr. Johnson told the Committee that there is a suggestion for a change in the language of section (f). The Reporter explained that the Subcommittee could not decide how long to extend the continuing duty to disclose, after the testimonial phase of a hearing is over. The Chair responded that the continuing duty to disclose extends until the matter is concluded. One way to express it would be to provide that the continuing duty to disclose extends until the court enters a final judgment. Master Wolfe suggested the following language: "until the court's jurisdiction is terminated." Mr. Maloney observed that in a delinquency case, the duty to disclose exculpatory material goes on indefinitely, even after the disposition

of the case. There is a constitutional right to exculpatory matter. Mr. Johnson commented that there is no duty to disclose after the court's jurisdiction terminates.

The Vice Chair noted that current Rule 11-109 a. 8 does not state how long the continuing duty to disclose lasts. Mr. Dean added that Rule 4-263 (h), the parallel criminal rule, does not address this issue, either. Mr. Brault remarked that most attorneys do not continue to provide information indefinitely. Mr. Becker pointed out that in CINA cases, information is given every six months because review hearings occur at that interval. Mr. Johnson suggested that the last sentence of section (f) could be eliminated, leaving the issue up to current practice. It is too difficult to define the end point. The Chair asked if a Committee note could be added to address this issue. Mr. Brault observed that attorneys are unaccustomed to having the continued disclosure rule apply to such an extended length of time.

Mr. Johnson moved that the last sentence of section (f) be deleted, and a Committee note explaining the continuing duty to disclose be added. The motion was seconded, and it passed unanimously. The Chair suggested that the Committee note provide that the continuing duty to disclose includes the prompt disclosure of information learned while the court has jurisdiction over the case. The Vice Chair inquired whether the duty to disclose is ended in a delinquency case which is appealed. Judge Johnson remarked that

a CINA case could turn into an adoption based on new information. Judge Kaplan added that it could become a termination of parental rights case. Judge Johnson noted that the provision about the continuing duty to disclose should be in the Rule.

The Chair asked if there continues to be a duty to disclose if the case is on appeal. The Vice Chair responded that there is still a duty to disclose. Mr. Brault questioned whether the juvenile court retains jurisdiction over the minor even if the case is on appeal. The Chair replied that the juvenile court does retain jurisdiction. Master Wolfe added that there is no substantial change if the matter is on appeal. The Chair cautioned that the duty to disclose to the adverse party may mean that one has to advise the appellate court that new information has been obtained and suggest that the appropriate disposition on appeal is a remand. The wording of the Rule should not be left ambiguous.

Mr. Maloney pointed out that the procedure in delinquency and CINA cases is very different. In CINA cases, it depends on the facts of the case. An entire law review article could be written about this. He moved that there be no Committee note and the matter be left to a case-by-case determination. The motion was seconded, and it passed on a vote of eight in favor and four opposed.

Mr. Johnson said that section (g) pertains to relief granted for failure to comply. No change was suggested to this section since the Committee last looked at it. Sections (h) and (i) also have no

changes in them. Judge Kaplan moved to approve Rule 11-307 as amended, the motion was seconded, and it carried unanimously.

After the lunch break, Mr. Johnson presented Rule 11-308, Hearings--Generally, for the Committee's consideration.

Rule 11-308. HEARINGS--GENERALLY

(a) Before Master or Judge; Proceedings Recorded

Hearings shall be conducted before a master or a judge without a jury. Proceedings shall be recorded by stenographic notes or by electronic, mechanical, or other appropriate means.

(b) Place of Hearing

A hearing may be conducted in open court, in chambers, or elsewhere where appropriate facilities are available. The hearing may be adjourned from time to time and, except as otherwise required by Code, Courts Article, §3-812, may be conducted out of the presence of all persons except those whose presence is necessary or desirable. If the court finds that it is in the best interest of a child who is the subject of the proceeding, the presence of the child may be temporarily excluded except when the child is alleged to have committed a delinquent act.

(c) Minimum Five Day Notice of Hearing; Service; Exceptions

Except in the case of a hearing on a motion for continued detention or shelter care pursuant to Rule 11-201 or a disposition hearing held on the same day as the adjudicatory hearing pursuant to Rule 11-402, the clerk shall issue a notice of the time, place, and purpose of any hearing scheduled pursuant to the provisions of this Title. **This**

notice shall be served on all parties in the manner provided by Rule 11-104 (b) at least five days prior to the hearing.

(d) Multiple Petitions

(1) Individual Hearings

If two or more petitions are filed against a respondent, hearings on the petitions may be consolidated or severed as justice may require.

(2) Consolidation

Hearings on petitions filed against more than one respondent arising out of the same incident or conditions, may be consolidated or severed as justice may require. However, (A) if prejudice may result to any respondent from a consolidation, the hearing on the petition against that respondent shall be severed and conducted separately; and (B) if petitions are filed against a child and an adult, the hearing on the petition filed against the child shall be severed and conducted separately from the adult proceeding.

(e) Controlling Conduct of Person Before the Court

(1) Sua Sponte or On Application

The court, upon its own motion or on application of any person, institution, or agency having supervision or custody of, or other interest in a respondent child, may direct, restrain or otherwise control the conduct of any person properly before the court in accordance with the provisions of Code, Courts Article, §3-827.

(2) Other Remedies

Chapter 200 (Contempt) of Title 15 of these Rules is applicable to juvenile causes, and the remedies provided therein are in addition to the procedures and remedies

provided by subsection (1) of this section.

(f) Child in Need of Assistance Cases -- Identity and Address of Parents

At each hearing in a child in need of assistance proceeding, the court shall inquire into and make findings of fact on the record regarding the identity and current address of each parent of each child before the court in accordance with Code, Courts Article, §3-837.1 (a). The court shall also inform the parents of their obligation to notify the court and the local department of social services of all changes in each parent's address, in accordance with Code, Courts Article, §3-837.

Source: This Rule is derived in part from former Rule 910 and is in part new.

Rule 11-308 was accompanied by the following Reporter's Note.

Sections (a) through (e) of this Rule are derived from Rule former 910. Throughout the Rule, to be consistent with Rule 11-101 as revised, the adjective "juvenile" is omitted before "petition." A "petition for continued detention or shelter care" is referred to as a "motion." Because many courts issue a computer-generated notice of hearing and may not have all file documents at hand, the requirement in Rule 910 c that "a copy of the petition or other pleading if any" accompany the notice has been deleted from section (c). These documents must still be served, but not necessarily at the same time as the notice. Also in section (c), the last sentence conforms the Rule to actual practice -- that service of hearing notices after personal service of the initial summons is in the manner provided by Rule 11-104 (b), which refers to Rule 1-321. Except for a reference to Code, Courts Article, §3-812 in section (b), the other changes are in style only.

Section (f) is added in light of Code, Courts Article, §3-837.1, added by Chapter 11, Laws of 1995 and amendments to Code, Courts Article, §3-837 made by Chapters 11 and 177, Laws of 1995.

Although concerns were raised about the incidence of ex parte communications in some jurisdictions, the consensus was that Rule 1-351 is applicable in juvenile court proceedings and, therefore, no amendment to the Hearings rule is needed.

Mr. Johnson explained that the language in section (c) was bolded, since it was added after the last time the Rules Committee considered this Rule. It provides for notice of the time, place, and purpose of the hearing to be served on all parties pursuant to Rule 11-104 (b). Master Wolfe inquired why the notice has to be served. The notice can be given in open court, rather than served. Mr. Johnson asked if the notice is given at least five days before the hearing, and Master Wolfe replied that it is. The Vice Chair pointed out that Rule 11-104 (b) refers to Rule 1-321, which permits delivery as a means of service. Judge Vaughan commented that oral notice is sufficient. If the clerk informs the parties on the record about the hearing, Judge Vaughan said that he would expect the parties in one of his cases to be present at the hearing.

Mr. Johnson suggested that the wording of section (c) could be: "if notice is not given in open court, the notice shall be served in the manner provided by Rule 11-104." Judge McAuliffe pointed out that considering the advent of victims' rights, it is important to be

careful that victims receive the appropriate notice of the disposition hearing. Mr. Johnson commented that the problem may be that the clerk issues the notice. The Vice Chair suggested that the Rule could read as follows: "... Rule 11-402, the court shall provide notice at least five days prior to any hearing of the time, place, and purpose of any hearing scheduled pursuant to the provisions of this Title. If the notice is in writing, the notice shall be served on all parties in the manner provided by Rule 11-104 (b)."

Judge Kaplan moved that the Vice Chair's language be incorporated into section (c), the motion was seconded, and it passed unanimously.

Mr. Becker told the Committee that in the letter from the Baltimore City DSS, which is in the meeting materials, there was a suggestion to add a new section to Rule 11-308 concerning hearings involving issues of medical treatment of children. The Reporter suggested that this provision be put into section (c) of the Rule which covers exceptions. Mr. Becker explained that there are a few cases involving withholding or withdrawing life-sustaining procedures. Courts Article, §3-711 provides guidance. Jack Schwartz, Esq., an Assistant Attorney General, had considered this issue and had expressed the opinion that it would be helpful if the Rule were to reference the statute. He suggested that the language "to the extent relevant" be added to the new section.

The Reporter commented that the first sentence of the language proposed by Baltimore City DSS tracks the language of Code, Courts Article, §3-812 (h) and refers to the exception in section (c) of Rule 11-308. The second sentence appears to be too substantive to be included in the Rule. The Chair suggested that the beginning of the first sentence of section (c) read as follows: "Except in the case of a hearing on a petition for emergency medical treatment pursuant to Code, Courts Article, §3-812 (h) or on a motion for continued detention or shelter care pursuant to Rule 11-201 ...". The Committee agreed by consensus to this change.

Mr. Johnson moved that the Rule be approved as amended. The motion was seconded and passed unanimously.

Mr. Johnson presented Rule 11-309, Stay, for the Committee's consideration.

Rule 11-309. STAY

(a) Entry of Stay

In any case other than a child in need of assistance or child in need of supervision case, on motion of the State's Attorney, the court may indefinitely postpone adjudication by marking the petition "stay" on the docket. The respondent need not be present when a petition is stayed. **If the respondent (1) has never been served pursuant to Rule 11-104 (a), (2) is not present when the stay is entered, or (3) is not represented by an attorney,** the clerk shall send a notice of the stay substantially in the form set out in section (b) of this Rule to the respondent and respondent's parents at the last known address of each and to the respondent's

attorney of record, if any. A petition may not be stayed over the objection of the respondent. A stayed petition may be rescheduled for trial at the request of a party within one year and thereafter only by order of court for good cause shown.

(b) Form of Notice

A notice required by section (a) of this Rule shall be in substantially the following form:

IN THE MATTER OF * IN THE ☐ CIRCUIT COURT

*** ☐ DISTRICT COURT OF MARYLAND**

*** FOR _____ COUNTY**

*** SITTING AS A JUVENILE COURT**

*** CASE NO.**

*** ***

NOTICE

Pursuant to Maryland Rule 11-309, you are hereby notified that on _____, the State's Attorney
Date

for _____ County entered a stay in the above-captioned case. You are advised that a petition may not be stayed over your objection and may be rescheduled for trial at the request of a party within one year and thereafter only by order of court for good cause shown.

_____
Clerk

Date: _____

NOTE TO COMMITTEE: The Rules Committee requested a division of this Rule into two categories: stays in cases where the respondent has been served and stays in cases where the respondent has never been served. With the addition of the boldface language in section (a), the notice in section (b), and the change of terminology from "stet" to "stay," the Subcommittee believes that such a division is not needed and would unnecessarily complicate the Rule.

(c) Effect of Stay

When a petition is stayed, the clerk shall take the action necessary to recall or revoke any outstanding writ, warrant, or detainer that could lead to the arrest or detention of the respondent because of the petition unless the court orders that any writ, warrant, or detainer shall remain outstanding.

Source: This Rule is new.

Rule 11-309 was accompanied by the following Reporter's Note.

This Rule is new. It is patterned after Rule 4-248. The Subcommittee felt that the inclusion of "stay" option in the juvenile rules would provide additional flexibility in appropriate cases and administrative closure in cases which otherwise would be listed indefinitely as open and unadjudicated.

Mr. Johnson explained that on page 86, the note to the Rules Committee indicates that the Committee had requested a division of the Rule into two categories: stays where the respondent has been served and stays where the respondent has never been served. The Vice Chair asked about cases where the respondent has been served, but the parents have not been served. The respondent is a child in a

delinquency case and is served by original process pursuant to Rule 11-104 (a), but the clerk does not send notice of the stay to the parents or attorney of the respondent. Mr. Johnson responded that this does happen. Master Sparrough said that what the Subcommittee was trying to do was allow the court to stet the case if the respondent was never served, is not present in court, and is not represented by an attorney. The court can send notice to the last known address of the child. Judge McAuliffe inquired whether the child gets notice, if the child is not present when the stay is entered, whether he or she has been served or not. The Reporter answered that notice does go out if any one or more of the three enumerated conditions is true. The Chair commented that the Style Subcommittee can work out the details of this sentence.

Judge Vaughan remarked that there is no need to waive the right to a speedy trial on the stet docket. Master Wolfe noted that in Anne Arundel County, there is a form which is a motion for a continuance in the nature of a stet. On the form is a waiver of a speedy trial. The Chair questioned as to what the purpose of the Rule is. The Reporter responded that its primary purpose is to clear the docket where the respondent has not been served. Mr. Johnson moved that the Rule as presented be approved, the motion was seconded, and it passed unanimously.

Mr. Johnson presented Rule 11-310, Adjudicatory Hearing, for the Committee's consideration.

Rule 11-310. ADJUDICATORY HEARING

(a) Requirement

After a juvenile petition or citation has been filed, and unless jurisdiction has been waived or a stay entered, the court shall hold an adjudicatory hearing. The adjudicatory hearing shall be scheduled in accordance with section (b) of this Rule and shall be held not earlier than 15 days after the filing of a petition, unless all parties agree to an earlier date.

(b) Scheduling

(1) If Respondent is in Detention or Shelter Care

(A) Detention -- No Waiver Petition Filed

If the respondent is in detention and no waiver petition was filed, the adjudicatory hearing shall be held within 30 days from the date on which the court ordered continued detention unless the time for the hearing is otherwise extended by the court in accordance with Code, Courts Article, §3-815 (d).

(B) Detention -- Waiver Petition Filed

If the respondent is in detention and a waiver petition is filed, the adjudicatory hearing shall be held within 14 days after the waiver petition is denied or withdrawn, unless the time for the hearing is otherwise extended by the court in accordance with Code, Courts Article, §3-815 (d).

(C) Shelter Care

If the respondent is in shelter care, the adjudicatory hearing shall be held within 30 days from the date on which the court ordered continued shelter care, unless the time

for the hearing is otherwise extended for good cause for a period not to exceed an additional 30 days.

(2) Respondent Not in Detention or Shelter Care

If the respondent is not in detention or shelter care, an adjudicatory hearing shall be held within 60 days after the juvenile petition or the summons issued pursuant to Rule 11-203 (c) is served on the respondent or counsel unless a waiver petition is filed, in which case an adjudicatory hearing shall be held within thirty days after the court's decision to retain jurisdiction at the conclusion of the waiver hearing. On motion by a party made within these time limits, the time for the hearing may be extended for good cause.

Cross reference: See Rule 11-110 concerning continuances.

(c) Presentation of Evidence

The State's Attorney shall present the evidence in support of a petition that alleges delinquency. In all other cases, the appropriate governmental or social agency or other persons authorized by the court shall present the evidence.

Committee note: The provisions of sections d and e of former Rule 914 have been deleted as unnecessary recitations of substantive law. No change in substantive law is intended by these deletions.

(d) Adjudication--Findings--Adjudicatory Order

If the hearing is conducted by a judge, at its conclusion, the judge shall announce and dictate to the court stenographer or reporter, or prepare and file with the clerk, an adjudicatory order stating the grounds upon which the adjudication is based.

If the hearing is conducted by a master, the procedures set forth in Rule 11-105 (Masters) shall be followed.

Cross reference: For burdens of proof applicable to juvenile adjudications, see Code, Courts and Judicial Proceedings Article, §3-819.

Source: This Rule is derived as follows:
Sections (a), (b), and (c) are derived from former Rule 914 a, b and c.
Section (d) is derived from former Rule 914 f.

Rule 11-310 was accompanied by the following Reporter's Note.

This Rule is derived from former Rule 914 a, b, c, and f, with style changes in sections (b), (c), and (d) of the new Rule. References to citation cases have been added to sections (a) and (b).

In section (a), the second sentence is new. The Subcommittee was advised that in some jurisdictions, "last-minute" petitions are filed (five days before the adjudicatory hearing, in technical compliance with former Rule 910 c, now renumbered Rule 11-110 c), allowing the parties insufficient time to prepare their case and subpoena witnesses. Under this revised Rule, the time between the filing of the petition and the adjudicatory hearing will be at least 15 days, unless the parties agree otherwise.

In section (b), provisions pertaining to the scheduling of the adjudicatory hearing have been modified in light of Chapter 8, Laws of 1995, and a cross reference to new Rule 11-110 concerning continuances has been added.

Sections d and e of Rule 914 have been deleted as unnecessary recitations of substantive law. As to the deleted burden of proof provisions, a cross reference to Code, Courts and Judicial Proceedings Article, §3-819 is added. The Juvenile Subcommittee, by a single vote margin, recommends deletion of the rest of sections d and e of Rule 914, and the addition of a Committee note stating that no change in substantive law is intended by these deletions. The Subcommittee also recommends that the legislature incorporate the substance

of the deletions into Code, Courts and Judicial Proceedings Article, §3-819.

LEGISLATIVE NOTE: The Subcommittee observed that prior to In Re: William A., 313 Md. 690 (1988), most practitioners had assumed that a respondent child's mental state was a non-issue at the adjudicatory phase of a juvenile proceeding. The Subcommittee discussed the issue of respondent children who, if they were defendants in adult criminal proceedings, would be considered not competent to stand trial, not criminally responsible, or both. The Subcommittee concluded that this is an area of substantive law for the legislature to address.

Mr. Johnson explained that a cross reference has been added following section (b). There was no further discussion of the Rule, so it was approved as presented.

Mr. Johnson presented Rule 11-404, Restitution, for the Committee's consideration.

Rule 11-404. RESTITUTION

(a) Hearing

If the court finds that a respondent has committed acts for which the respondent's parent or parents may be liable under Code, Article 27, §807, the court shall summon the parent or parents in the manner provided by Rule 2-121 to appear at a hearing to determine liability. This hearing may be conducted contemporaneously with a disposition hearing, if appropriate.

(b) Recording

Recordation and enforcement of a judgment of restitution is governed by Code,

Article 27, §807.

(c) **Order to Provide Address of Judgment Debtor**

Upon motion and for good cause shown, the court may enter an order requiring the clerk to provide to the holder of an unsatisfied judgment of restitution the most recent address of each judgment debtor that appears in the files and records of the court in the juvenile proceeding.

Cross reference: Rule 11-103.

Source: This Rule is derived in part from former Rule 918 and is in part new.

Rule 11-404 was accompanied by the following Reporter's Note.

Sections (a) and (b) are derived, with style changes, from former Rule 918 (renumbered Rule 11-118), as amended by Rules Order dated June 8, 1998, effective October 1, 1998.

Section (c) is new. It is an exception to the confidentiality requirements of Rule 11-103 that is intended to assist the holder of a judgment of restitution with the collection of that judgment.

The Reporter pointed out that there was a typographical error in section (c) -- the last bolded word should be "restitution." The Committee agreed by consensus to this change. There being no other changes suggested to Rule 11-404, the Rule was approved as presented, except for the typographical error.

Mr. Johnson presented Rule 11-405, Post-Dispositional Review and Modification, for the Committee's consideration.

Rule 11-405. POST-DISPOSITIONAL REVIEW AND MODIFICATION

(a) Revisory Power

An order of the court may be modified or vacated if the court finds that action to be in the best interest of the child or the public, except in cases involving commitment of a child to the Department of Health and Mental Hygiene for placement in a State mental hospital or State residential facility for the mentally retarded. In cases involving such commitment the court shall proceed as provided in section (f) of this Rule.

(b) Sua Sponte or On Motion

The court may proceed under section (a) of this Rule on its own motion or on the motion of any party or other person, institution or agency having supervision or custody of the respondent, setting forth in concise terms the grounds upon which the relief is requested. If the court proceeds on its own motion, the modification order shall set forth the grounds on which it is based.

(c) Hearing--When Required

If the relief sought under section (a) of this Rule is for revocation of probation, probation with stay of delinquency finding, or order of protective supervision and for the commitment of a respondent, the court shall pass an order to show cause why the relief should not be granted and to set a date and time for a hearing. The petition, or order if issued on the court's own initiative, shall state each condition of probation, probation with stay of delinquency finding, or order of protective supervision that the respondent is alleged to have violated and the nature of the violation. The clerk shall cause a copy of the petition, if any, and Show Cause Order to be served upon the parties. In all other cases,

the court may grant or deny the relief, in whole or in part, without a hearing.

(d) Review of Commitment to Department of Social Services

In cases in which a child is committed to a local department of social services for placement outside the child's home, post-dispositional review is governed by Code, Courts Article, §3-826.1.

(e) Review of Cases Where a Department of Social Services has Been Granted Guardianship with the Right to Consent to Adoption or Long Term Care Short of Adoption

In cases in which a child is placed under guardianship, as that term is defined in Code, Family Law Article, §5-301, to a department of social services, post-dispositional review is governed by Code, Family Law Article, §5-319.

(f) Modification or Vacation of Commitment Order to Department of Health and Mental Hygiene

(1) Periodic Reports

A commitment order issued under Rule 11-402 (c) shall require the Department to file progress reports with the court at six-month intervals throughout the commitment. The report shall comply with the requirements of an evaluation report under Rule 11-402 (c)(1). The Department shall provide a copy of each report to the child's attorney of record.

(2) Periodic Review

The court shall review each report submitted under subsection (f)(1) of this Rule promptly and consider whether the commitment order should be modified or vacated. Upon the request of any party, the Department, hospital, or facility, or upon its own motion, the court shall grant a hearing for the purpose of determining if the standard in Code, Courts

Article, §3-820 (h) or (i) continues to be met. After the first six months of the commitment and at six month intervals thereafter upon the request of any party, the Department, hospital, or facility, the court shall grant a hearing for the purpose of determining if the standard in subsection (h) or (i) continues to be met. At any time after the commitment of a child to a State mental hospital if the individualized treatment plan developed under Code, Health-General Article, §10-706 recommends that the child no longer meets the standards in Code, Courts Article, §3-820, the court shall grant a hearing to review the commitment order. At any time after the commitment of a child to a state residential facility for the mentally retarded if the individualized plan of habilitation developed under Code, Health-General Article, §7-1006 recommends that a child no longer meets the standards in Code, Courts Article, §3-820 (i), the court shall grant a hearing to review the commitment order.

(3) Other Review

In addition to the periodic review provided for in subsection (f)(2) of this Rule, the court may at any time upon the petition of any party, the Department, hospital, or facility, or upon its own motion, modify or vacate its order, provided that the court may not modify or vacate its order without notice and opportunity for hearing.

(g) Conduct of Hearing

In the interest of justice, at any hearing held pursuant to this Rule the court may decline to require strict application of the rules in Title 5, except those relating to the competency of witnesses.

Source: This Rule is derived as follows:
Section (a) is derived in part from former Rule 916 a and is in part new.
Section (b) is derived from former Rule 916 b.
Section (c) is derived in part from former

Rule 916 c and is in part new.

Section (d) is derived from former Rule 915 d.

Section (e) is new.

Section (f) is derived in part from former Rule 915 c 3 and is in part new.

Section (g) is derived from former Rule 916 d.

Rule 11-405 was accompanied by the following Reporter's Note.

This Rule consolidates into a single rule the post-dispositional review and modification procedures set forth in former Rules 915 and 916 (renumbered Rules 11-115 and 11-116).

Section (a) is derived from Rule 916 a, with the addition of an exclusionary reference to reviews of placements in state residential facilities for the mentally retarded.

Section (b) is derived from Rule 916 b.

Section (c) is derived from Rule 916 c, with the addition of a requirement that the respondent be apprised of each condition of probation or order of protective supervision the respondent is alleged to have violated and the nature of the violation.

Section (d) simplifies the provisions of Rule 915 d, by providing that post-dispositional review of cases where a child is committed to a local department of social services for placement outside the child home is governed by Code, Courts Article, §3-826.1.

Section (e) is new. It incorporates by reference the requirements of Code, Family Law Article, §5-319 with respect to post-dispositional review where a department of social services has been granted guardianship (as defined in Code, Family Law Article, §5-301) of a child.

> Section (f) is derived from Rule 915 c 3 and has been expanded to include cases where children have been placed in State residential facilities for the mentally retarded, in addition to cases where children have been placed in State mental hospitals. This section also clarifies the standards to be met if the commitment is to be continued.
>
> Section (g) carries forward the provisions of former Rule 916 d.

Mr. Johnson explained that changes had been made to sections (d) and (e). The Reporter said that the statute governs; it is too difficult to provide the timing issues in the Rule. Master Wolfe commented that in section (c), it is not clear if the list of the three items in the beginning of the section are all modified by the word "revocation." The Reporter responded that all three are modified by the word "revocation," and she suggested that the three items be numbered as follows: "If the relief sought under section (a) of this Rule is for revocation of (1) probation, (2) probation with stay of delinquency finding, or (3) order of protective supervision and for the commitment of a respondent...". The Committee agreed by consensus to this change. Mr. Johnson moved that the Rule be approved with the change, the motion was seconded, and it passed unanimously.

Mr. Johnson presented Rule 11-406, Disposition of Property Brought Into Court, for the Committee's consideration.

> **Rule 11-406. DISPOSITION OF PROPERTY BROUGHT INTO COURT**

> Property brought into court shall be **[returned to the owner, or otherwise]** disposed of as the court may direct.
>
> Source: This Rule is derived from former Rule 919.

Rule 11-406 was accompanied by the following Reporter's Note.

> The Subcommittee discussed deletion of this Rule or a redrafting of it similar to Rule 2-516. It concluded that deletion would leave a void in the Juvenile Causes Rules and that the provisions of Rule 2-516 do not adequately address the range of circumstances which may arise in juvenile proceedings.
>
> The Subcommittee recommends retention of the Rule as a correct policy statement regarding disposition of property brought into juvenile court.

The Chair said that there had been a case in Anne Arundel County where a father requested that a gun, which had been admitted into evidence, be given to a child. Mr. Johnson suggested that the bolded language be deleted. The Chair suggested that language could be added which would provide that tangible items offered into evidence or marked for identification would be disposed of as the court may direct. Mr. Johnson expressed the view that this concept is too difficult to define. The Vice Chair suggested that the Rule be deleted entirely. Master Wolfe noted that it is a necessary rule to ensure that the items brought into court are provided for. Mr. Johnson suggested again that the bolded language be deleted, and the

Committee agreed by consensus to the deletion. Judge Kaplan moved that the Rule be approved as amended, the motion was seconded, and it passed unanimously.

Mr. Johnson presented Rule 11-407, Final Order of Termination, for the Committee's consideration.

Rule 11-407. FINAL ORDER OF TERMINATION

> A final order of termination of the proceedings shall be entered after the court's jurisdiction over the respondent is terminated. For good cause shown, a final order of termination may be entered on motion of a party, on the recommendation of the appropriate governmental agency exercising supervision over the respondent, or on the court's own initiative.
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> Source: This Rule is derived from former Rule 920.

Rule 11-407 was accompanied by the following Reporter's Note.

> This Rule is derived from Rule 920, with changes for style and clarification.

The Reporter explained that the Subcommittee had debated as to whether Rule 11-407 is necessary. The Chair commented that there is a continuing duty to disclose evidence until the final order of termination. Judge McAuliffe remarked that the court's jurisdiction may not terminate. In a CINA case, the court has continuing jurisdiction. The Chair suggested that the Rule be tied to Rule 11-

307 (f), Continuing Duty to Disclose and that there should be a cross reference to Code, Courts Article, §3-806. The Committee agreed by consensus to these changes. Mr. Johnson moved that the Rule be approved as amended, the motion was second, and it carried unanimously.

The Reporter noted that the last few rules in the package contain conforming amendments to the proposed Juvenile Rules.

The Chair thanked the consultants for their hard work in assisting with the drafting of the Rules. He also thanked Mr. Johnson, the Subcommittee Chair.

The Chair adjourned the meeting.