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 October 10, 1997.

Members present:

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

Lowell R. Bowen, Esq.
Albert D. Brault, Esq.
Robert L. Dean, Esq.
H. Thomas Howell, Esq.
Hon. G. R. Hovey Johnson
Harry S. Johnson, Esq.
Hon. Joseph H. H. Kaplan
Richard M. Karceski, Esq.
Robert D. Klein, Esq.
Hon. John F. McAuliffe
Larry W. Shipley, Clerk
Sen. Norman R. Stone
Roger W. Titus, Esq.
Hon. James N. Vaughan
Robert A. Zarnoch, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Anne Sparrough, Esq., Juvenile Court, Prince George's County
Bruce Martin, Esq., Attorney General's Office
David Addison, Esq., Public Defender's Office
Justin Oppenaz
James Keat, Esq., Maryland-Delaware-D.C. Press Association
Tom Marquardt, The Capital
George Burns, Esq., Public Defender's Office
Alice Lucan, Esq.
Carol Melamed, The Washington Post
Russell Butler, Esq.
Judy Barr
Alex Leikus

The Chair convened the meeting. He asked if there were any additions or corrections to the minutes from the September 5, 1997 meeting. There being none, Mr. Klein moved to approve the minutes,

the motion was seconded, and it passed unanimously.

Agenda Item 1. Consideration of proposed amendments to certain rules pertaining to juvenile causes: Rule 11-104 (Duties of Clerk), Rule 11-110 (Hearings--Generally) and Rule 11-121 (Court Records--Confidentiality)

The Chair said that Mr. Johnson, Juvenile Subcommittee Chair, would present an overview of the Juvenile Rules to be considered. Mr. Johnson presented Rules 11-104, 11-110, and 11-121 for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11

JUVENILE CAUSES

AMEND Rule 11-104 to add a requirement that the clerk prepare and make available to the public a certain list, as follows:

Rule 11-104. Duties of Clerk.

a. Separate Docket.

The clerk shall maintain a separate docket for Juvenile Causes. Upon the filing of a juvenile petition, or a petition for continued detention or shelter care the name of each respondent shall be entered on the docket and indexed.

b. Scheduling of Hearing.

Upon the filing of a juvenile petition, or a petition for continued detention or shelter

care the clerk shall promptly schedule a hearing.

c. Process--Issuance--Service.

Unless the court otherwise directs, upon the filing of a juvenile petition, the clerk shall promptly issue a summons substantially in the form set forth in Form 904-S of the Appendix of Forms and returnable as provided by Rule 2-126 for each party except the petitioner and a respondent child alleged to be in need of assistance. Any summons addressed to a parent of a respondent child shall require him to produce the respondent child on the date and time named in the summons.

The summons, together with a copy of the juvenile petition, shall be served in the manner provided by Chapter 100 of Title 2 for service of process to obtain personal jurisdiction over a person within this State.

If the parent of the child is a nonresident, or for any reason cannot be served, notice of the pendency and nature of the proceeding shall be given as directed by the court, and proof of the steps taken to give notice that justice shall require.

d. Subpoena.

The clerk shall issue a subpoena for each witness requested by any party, pursuant to Rule 2-510.

e. Deposit of Security for Appearance.

The clerk shall accept for deposit security for the appearance of any person subject to the court's original jurisdiction, in the form and amount that the court determines.

f. List of Open Hearings.

Prior to the convening of court on each day that the juvenile court is in session, the clerk shall prepare and make available to the

public a list that includes the time and location of the hearings scheduled for that day that are required by Code, Courts Article, §3-812 to be conducted in open court.

Source: This Rule is former Rule 904, except that section f. is new.

Rule 11-104 was accompanied by the following Reporter's Note.

The Juvenile subcommittee recommends this amendment to Rule 11-104 in light of Chapter 314 (S.B. 560), Laws of 1997. Confidentiality requirements pertaining to juvenile records preclude the public from inspecting the docket entries or file in a juvenile action to find out when a hearing is scheduled. When, because of Code, Courts Article, §3-812, a juvenile court hearing is required to be open to the public, proposed new section f. allows the public to learn the time and location of the hearing by requiring the clerk to prepare and make available a list of all such hearings scheduled each day.

MARYLAND RULES OF PROCEDURE

TITLE 11

JUVENILE CAUSES

AMEND Rule 11-110 for conformity with Code, Courts Article, §3-812, as follows:

Rule 11-110. 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 and welfare of the child, ~~his~~ the presence of the child may be temporarily excluded except when ~~he~~ the child is alleged to have committed a delinquent act.

c. Minimum Five-Day Notice of Hearing -- Service -- Exception.

Except in the case of a hearing on a petition for continued detention or shelter care pursuant to Rule 11-112 (Detention or Shelter Care), 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 together with a copy of the petition or other pleading if any, in the manner provided by section c of Rule 11-104 (Duties of Clerk) at least give days prior to the hearing.

d. Multiple Petitions.

1. Individual Hearings.

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

2. Consolidation.

Hearings on juvenile 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, (i) if prejudice may result to any respondent from a consolidation, the hearing on the juvenile petition against ~~him~~ the respondent shall be severed and conducted separately; and (ii) if juvenile petitions are filed against a child and an adult, the hearing on the juvenile 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 Section 3-827 of the Courts Article.

2. Other Remedies.

Title 15, Chapter 200 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.

Source: This Rule is former Rule 910.

Rule 11-110 was accompanied by the following Reporter's Note.

The proposed amendment Rule 11-110 conforms the rule to a change in Code, Courts Article, §3-812 concerning open hearings in the

juvenile court. See Chapter 314 (S.B. 560), Laws of 1997, effective October 1, 1997.

MARYLAND RULES OF PROCEDURE

TITLE 11

JUVENILE CAUSES

AMEND Rule 11-121 for conformity with Code, Courts Article, §3-828 and to add a Committee note, as follows:

Rule 11-121. Court Records -- Confidentiality.

a. Sealing of Records.

Files and records of the court in juvenile proceedings, including the docket entries and indices, are confidential and shall not be open to inspection except by order of the court or as otherwise allowed by law. On termination of the court's juvenile jurisdiction, the files and records shall be sealed pursuant to Section 3-828 (c) of the Courts Article, and all index references shall be marked "sealed. The date, time, and location of a hearing that is open to the public are not confidential.

b. Unsealing of Records.

Sealed files and records of the court in juvenile proceedings may be unsealed and inspected only by order of the court.

Cross reference: For confidentiality in appellate proceedings, see Rule 8-121 (Appeals from Courts Exercising Juvenile Jurisdiction -- Confidentiality).

Source: This Rule is former Rule 921.

Rule 11-121 was accompanied by the following Reporter's Note.

> The proposed amendment to Rule 11-121 adds the phrase "or as otherwise allowed by law" to section a. to conform the rule to a change in Code, Courts Article, §3-828, which allows increased access to juvenile court records under certain circumstances. See Chapter 390 (H.B. 53), Laws of 1997.
>
> Additionally, a new sentence in section a. makes clear that the date, time, and location of a hearing that is open to the public are not confidential. This sentence is recommended in light of Chapter 314 (S.B. 560), Laws of 1997, which changed Code, Courts Article, §3-812 to provide for a presumption of open juvenile court proceedings in cases in which a child is alleged to have committed a delinquent act that would be a felony if committed by an adult. The Subcommittee believes that the date, time, and location of any hearing that is open to the public are inherently not confidential.

Mr. Johnson explained that the Reporter had recently contacted him because of Senate Bill 560, Chapter 314, Laws of 1997, which opened up to the public juvenile proceedings involving delinquent acts that would be felonies if committed by an adult. The new law went into effect on October 1, 1997. The law provided that juvenile proceedings involving charges which are misdemeanors may be closed at the judge's discretion. The legislature took out the statutory language referring to the protection of juveniles, in favor of the policy of accountability to the public. Representatives of

the press expressed an interest in this matter and submitted some material to the Subcommittee before its meeting. Some of the press members attended the Subcommittee meeting to discuss the proposed rule changes. What the press had requested as rule changes was farther than the Subcommittee was willing to go concerning public access to information. The Subcommittee decided that there should be a mechanism in the Juvenile Rules to make the public aware of the calendar of cases which are now open to the public. The problem is that the legislature decided not to change the confidentiality provisions. Under the former law, if the press wanted to look at a court file in the clerk's office, the Subcommittee's view was that the jacket of the file was confidential, and the clerk could refuse to show the file. The Subcommittee still believes that this is true under the new law. A mechanism is needed to make the opening of the juvenile proceedings more meaningful, so that the public knows the date and time. The Subcommittee discussed posting the cases three days before the hearing. The press is pushing for some kind of notice ahead of time, so that the press knows when to appear. The Subcommittee feels that this is going too far.

The Chair told the Committee that a letter from Alice Neff Lucan, Esq., who is one of the guests attending the meeting today, has been circulated to the Committee. Ms. Lucan introduced herself and Carol Melamed from The Washington Post, James Keat from The Baltimore Sun, and Tom Marquardt from The Capital. Ms. Lucan

explained that in her letter of October 8, 1997, she expressed her acceptance and support of the changes proposed by the Subcommittee. She asked for a point of clarification as to whether the calendar information on the juvenile docket includes the name of the juvenile respondent. Although the Subcommittee was not in agreement, the representatives of the press are proposing a change to the Juvenile Rules, which would require that motions to close hearings should be filed in advance of the hearing and listed on the posted court calendar. The press feels that this would fit in with the procedures under the new law. It would guarantee the substance of the right to public access.

Mr. Martin, an Assistant Attorney General who represents the Department of Juvenile Justice, said that he supported the Subcommittee's proposed rules, except that he suggested that language be added which would provide that the listing on the court calendar would have only the child's first name and last initial. This is the type of protocol used in the appellate courts for juvenile cases. This would be consistent with the right to public access. The child's records would remain confidential. This is also consistent with the parallel statute, Code, Courts Article §3-828.

Mr. Addison, an attorney with the Office of the Public Defender, noted that on October 2, 1997, The Sunpapers and The Capital ran front-page stories on juvenile proceedings. The Sun reiterated its long-standing policy of not publishing the name of the

juvenile, but The Capital did mention the name of the juvenile in the heading and the first paragraph of the article. Mr. Addison said that he is not certain as to how long The Sun will maintain its policy of protecting the name of the juvenile. Rule 8-121, Appeals from Courts Exercising Juvenile Jurisdiction, provides that in these appeals, the proceedings shall be captioned using the first name and initial of the last name of the child. The press is of the opinion that the legislature is effecting a "sea change," but Mr. Addison stated that he did not agree with this. The legislature has made a balanced choice to make some of the juvenile proceedings open, yet leave the records confidential. The changes proposed by the press do not reflect this balance. Mr. Addison said that he also would request using the names of juveniles as Rule 8-121 provides.

The Chair commented that there are other options for listing names of juveniles other than the way Rule 8-121 lists the names. He asked if the Juvenile Rules should provide that the calendar does not identify the juvenile, or if the juvenile's full name should be listed. Previously, this has been left to local practice. For years in Baltimore City, the juvenile's last name has been posted. Judge Kaplan added that the full name is posted in the waiting room on sheets of paper which are kept in piles. Mr. Shipley commented that in Carroll County, the names are listed as provided in Rule 8-121.

Judge McAuliffe asked Mr. Addison if, under the new law, the

newspapers can print the juvenile's name if the newspapers learn of it. Mr. Addison replied that the newspapers can print the name if the hearing was open. The Chair remarked that Baltimore County uses the juvenile's full name. Mr. Marquardt said that when his newspaper, The Capital, covers hearings in juvenile court, the reporter asks for an accurate spelling of the juvenile's name. If the name is not listed on the calendar, the reporter asks the attorneys or the judge ahead of time in an attempt to reduce interference with the proceedings.

Ms. Lucan explained that the General Assembly modified the juvenile statute to encourage accountability. Members of the community who are interested in juvenile cases may not have the resources to find out the name or to find out about the hearing. Someone who is not a reporter but is interested in a specific hearing may have no way to find out about it. This leads to gamesmanship. The Chair argued that there is no gamesmanship. The legislature has made the situation somewhat difficult in that it did not specify what is to be done with respect to public hearings. If a juvenile is the subject of a public hearing, the attorney representing the child is entitled to file a motion to close the hearing. If the judge grants the motion, the docket may have already been printed using the juvenile's last name. Damage may have been done to the juvenile even if the proceedings are closed. The Rule does not prevent someone from finding out about the hearing. The reporter can ask prosecutors

or police officers about the matter.

Mr. Johnson commented that the Subcommittee had discussed the fact that there will be some reluctance to create a calendar of cases. The argument is that an interested person can ask the State's Attorney. Some members expressed the sentiment that there should be no rule at all. Mr. Dean, who is acting State's Attorney for Montgomery County, had said that if the press asks his office for any information, the office will provide it. Mr. Johnson noted that the Subcommittee was swayed by comments that not all jurisdictions have an open-door policy. Some clerks will not give out information about juvenile cases. Mr. Johnson questioned whether the proposed system would create a burden for the clerks' offices. The Subcommittee did not think that it would.

The Vice Chair commented that except for Baltimore City, there have been open juvenile hearings in many jurisdictions prior to October 1, 1997. She sat in on many juvenile proceedings in Anne Arundel County, which were not confidential, and no one had asked her to leave. She asked what the problem is with the Rule. Mr. Johnson responded that under the previous statute, the juvenile proceedings had the right to be closed. Now the "felony" cases are open, and the Subcommittee is attempting to conform the rules. The Vice Chair pointed out that unless the court closes the hearings in which the juvenile is alleged to have committed an act equivalent to an adult felony, the hearings will be open. To provide that the juvenile's

last name cannot be given is pointless, particularly in a large jurisdiction such as Baltimore City where the first names will be duplicative. Mr. Karceski noted that the overwhelming number of juvenile cases are charged as felonies, even though the proof is lacking. There may well be a good reason to file a motion to close the proceedings, and because of the large numbers, the juvenile's full name should not be on the docket. Mr. Addison agreed with Mr. Karceski's statement about the great number of felonies charged, especially in Baltimore City where the prosecutors tend to charge everything that they can. Mr. Karceski reiterated that often the fact patterns of the delinquent acts committed do not support a felony charge.

Mr. Titus commented that in the discussions of the proposed new Juvenile Rules, the philosophy had been expressed that there should not be local rules. He had suggested that the practice of open or closed hearings should be uniform throughout the State, and recalled that at a previous meeting he had made two motions, one to open hearings and one to close hearings, both of which did not pass. He expressed the view that the juvenile docket information should be available fully statewide in every county with no divergences. Mr. Johnson pointed out that the Subcommittee had not reached a conclusion as to the issue of how the name should be listed. The purpose of the calendar listing is so that people can find the hearing. The local practice is that it is still up to the judge to

decide if there is good cause to close a hearing on an alleged act equivalent to an adult felony. Misdemeanor cases may be closed. One issue to decide is if a case involves 20 misdemeanors and one felony, whether it should be open. The Subcommittee has taken the view that it is presumptively open under the new statute.

Mr. Titus explained that his concern is that a judge can close an individual case, so that the presiding judge in a county can open or close all cases. The Chair noted that the statute supersedes the current rule. Mr. Titus commented that in Montgomery County, the juvenile proceedings went from totally closed to totally open, even before the statute was revised. One local judge can open all hearings unless there is good cause to close them, while another can close them all. Mr. Johnson pointed out that the statute would not allow this. Master Sparrough remarked that the juvenile dockets are mixed in terms of felonies, misdemeanors, and Child in Need of Assistance (CINA) cases. Each of the cases should be listed the same way, no matter what type of case it is.

The Chair commented that the legislature may not have considered the extra work which the clerk has under the revised law. A person who wants to go to an open hearing has to be able to find it. Judge Kaplan responded that this is not a serious problem. The policy in Baltimore City is that the courtrooms are open for juvenile cases involving the equivalent of felonies, and they will remain open unless there is a motion filed and good cause shown before a juvenile

judge to close the hearing. The presumption is that the proceedings are open, and there is a schedule published. This has not caused any problems. The only problem faced by Baltimore City is the reprogramming of the juvenile automated system (QUEST) to include the offense with which the juvenile is charged.

Judge McAuliffe commented that it appears that the legislature clearly wanted the presence of the media in juvenile hearings involving serious juvenile offenses, but the legislature did not necessarily want to stigmatize the children involved. Since full access is provided, Judge McAuliffe asked Mr. Marquardt why The Capital was changing its pre-existing policy of protecting the identity of juveniles. Mr. Marquardt replied that he was not sure of the legislative intent of the new law. He noted that two Anne Arundel County State Senators introduced the new legislation. Prior to the October 1, 1997 effective date of the legislation, there were bomb threats at some local Anne Arundel County High Schools, and several juveniles were arrested. The Capital newspaper had found out the names of the ones arrested, but the court record was unavailable. The story of the bomb threats was published with no names revealed. He asked why the juveniles need to be protected. After October 1, 1997, The Capital, with the support of the public, will be publishing the names of juveniles.

Judge Vaughan pointed out that a juvenile's name could be printed in connection with a serious delinquent act, and it could be

that the child did not actually commit the act. What would be the child's redress for having his reputation damaged? Mr. Marquardt answered that this is always a problem, and one way to handle it is to clear the child's name in the press.

The Chair said that it would be helpful to figure out the legislative intent of the revised law. The accompanying rule should be drafted consistent with the legislative intent without superimposing burdens on the clerks' offices. If the Committee thinks that the legislature, in deciding to open up the hearing room, intended that the name of the juvenile not be confidential, language to this effect can be added to the Juvenile Rules. New language could be added to the beginning of the last sentence of Rule 11-121 a., so that it would read as follows: "The identity of the respondent and date, time, and location of a hearing that is open to the public are not confidential." The Chair asked Mr. Zarnoch about the legislative intent of the statute, and Mr. Zarnoch deferred to Mr. Martin concerning the workings of the new statute. Mr. Martin said that the legislature made a conscious decision to maintain the confidentiality of juvenile court records. One can presume that the General Assembly is aware of Rule 11-121. He reiterated the Chair's point that once the list is published, and then the hearing is closed, it is too late for the confidentiality of the proceedings. If the judge is permitted to close the proceedings when good cause is shown, the option of publishing the names of the juveniles ahead of

time should be taken away.

Ms. Melamed noted that even before the new law took effect, the last names of juveniles had been published. If the new rule prohibits this, it would be an odd result. Mr. Keat remarked that as a practical matter, if the hearing is closed after the full name has been posted, unless the closing of the case is suspicious, there is no story anyway. Mr. Titus pointed out that if a hearing is going to be closed, the motion to close should be timed so that the juvenile's name has not already been published. The Chair commented that nothing prohibits the attorney representing the juvenile from filing a motion asking the judge (1) to decide if there is good cause for closing the hearing and (2) to prohibit the clerk from posting the juvenile's name.

Mr. Titus suggested that, as a policy matter, the motion to close a juvenile hearing should be filed in advance of the hearing so that the juvenile's name is not placed on the docket. The Vice Chair responded that when she sat in the juvenile courtroom, very few of the children had counsel. Mr. Titus' suggestion would mean that the ability to move to close the hearing is waived, if it is not made in advance of the hearing. If the juvenile and his or her family come into a full courtroom, there may be good reason to close the hearing. Building in a mandatory motion procedure creates a problem not addressed by the legislature. The Vice Chair expressed the view that openness is appropriate, and the Rule should be vague, so that

present practices continue.

The Chair suggested that language should be added to section a. of Rule 11-121 which clarifies that the identity of the respondent can be revealed. Proposed new section f. of Rule 11-104 would not be needed. The remaining question is whether a requirement that a motion to close has to be filed in advance should be built in. A Committee note could be added which provides that an attorney representing a respondent who wants a proceeding to be closed and wants an order prohibiting the clerk from printing the name on the docket can seek relief.

Judge Kaplan asked when the list would be printed if the attorney is allowed to file a motion to close, and the name of the juvenile cannot appear on the list. The Chair said that the attorney representing the juvenile can file a motion, and if the hearing is closed, the clerk can be told not to put the juvenile's name on the list. Judge Kaplan pointed out that the name may already be on the list, which could have been printed two or three weeks prior to the hearing. Mr. Karceski remarked that someone may be wrongfully accused of a major crime that generates interest. Even if a motion to close is filed, the information about the case will still be known if someone does some research. Perhaps, the name of the juvenile should not be revealed until the case has been decided. Mr. Titus commented that the legislature has held that the juvenile who is charged with a felony should be treated as an adult. Judge Kaplan

observed that Mr. Karceski is correct in his statement that many of the juveniles are charged with felonies, but at the end of the case, the juvenile is not convicted of a felony. This means that many of the juvenile cases that are actually misdemeanor cases are open to the public.

Judge Johnson reiterated that confidentiality still exists. The Chair responded that there is confidentiality of the records, but Judge Johnson noted that the docket is part of the record. Mr. Johnson commented that the Subcommittee did not address what is in the record. The Subcommittee assumed that the list of cases would be posted on the day of the hearing on the wall of the courthouse, so the press could find out about the cases. The Subcommittee did not contemplate that the list would be prepared one month in advance. The legislature may have to reconsider this issue; the Rules Committee cannot solve the problem. The docket or calendar sheet is meaningless without a name. If the list is only in the courthouse and not available to the press, there is no prejudice to the juvenile.

The Vice Chair moved to adopt the Chair's suggestion that section a. of Rule 11-121 clarify that the identity of the respondent is not secret information. The motion was seconded, and it passed unanimously.

Mr. Howell referred to Courts Article, §3-828, Confi-dentiality of Records, and asked if there were any other laws which pertain to

confidentiality. The Chair responded that, for example, a District Court Commissioner has a right of access to juvenile records when considering the pretrial release of an adult with a juvenile record. Mr. Howell expressed a concern that the phrase "as otherwise allowed by law" may lead to erroneous inferences that some confidential records should be open. He moved that in lieu of that phrase in Rule 11-121 a., the following language be substituted: "except as otherwise expressly provided by law." The motion was seconded, and it passed unanimously.

Mr. Titus moved that at the end of Rule 11-104 f., the following language should be added: "unless the hearing is closed for good cause under Code, Courts Article, §3-812, the list shall also include the name of the respondent." The motion was seconded. The Reporter inquired as to the procedure in a detention hearing. Master Sparrough replied that when there is a detention hearing, no list is published. The Chair explained that the intent of the rule is not that the clerk has to prepare something. Master Sparrough explained that detentions are scheduled very quickly, and there is no time to file a motion to close the hearing. The Reporter noted that closed hearings are not covered by section f. This section focuses only on hearings that are required to be open. Mr. Titus remarked that his suggested language would provide a hint to the bar. Mr. Bowen agreed with the Reporter that the language suggested by Mr. Titus does not belong in the last sentence of section f. He felt

that the added language about the name of the respondent should go into the first sentence of section f. Mr. Titus withdrew his motion.

Mr. Bowen moved to amend section f. by adding the words "identity of the respondent" after the word "the" and before the word "time" in the first sentence. The motion was seconded. Judge McAuliffe suggested that in place of the word "identity," the word "name" be substituted. Mr. Bowen consented to the amendment of the motion. The motion was voted upon and passed unanimously. Mr. Johnson inquired if a parallel change would be made to Rule 11-121, and the Chair replied that it would.

Mr. Titus pointed out that the press had drafted language on how to conduct motion to close hearings. The Chair called on Ms. Lucan. She observed that the case of News American v. Maryland, 294 Md. 30 (1982) addresses the subject of opposing the motion to close. Most of the cases on the subject provide that if the press is not present at the discussion of the motion to close, the press is simply out of luck. There should be a provision in the Juvenile Rules which states that a motion to close a juvenile proceeding should be filed in advance, so that the press knows about it. Judge McAuliffe commented that the principles of due process and constitutional law should be followed, and it is not necessary to memorialize them in the Rule. The Chair observed that if the requirement of filing a motion to close ahead of time is too rigid, it would preclude the decision from being made the day of the hearing, such as if a victim

were to come into the hearing terrified, and the judge would want to close the case. To conclude that a motion to close is not timely is oppressive. Mr. Titus suggested that the filing of a motion to close could appear on the docket. Mr. Brault added that there could be a requirement that the hearing on a motion to close is open. The Chair suggested that this be left to case law.

Judge Vaughan pointed out that a motion to close a hearing can be a "catch-22" because someone may have to disclose the very information he or she wishes to keep confidential. The Chair said that what the press can do is to keep in touch with the prosecutor, and if a motion to close is filed, the prosecutor can alert interested journalists. Mr. Brault observed that Mr. Johnson had said previously that there does not have to be a hearing on a motion to close. Mr. Johnson remarked that the Subcommittee did not propose procedural time frames; these will have to be worked out. The members of the Subcommittee did suggest to the press that if problems arise with the Rule, the press should let them know. The Rules were approved as amended.

Special Agenda Item.

The Chair stated that an extra agenda item would be considered at this point. He presented Rule 16-108, Conference of Circuit Judges, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE,

JUDICIAL DUTIES, ETC.

AMEND Rule 16-108, as follows:

Rule 16-108. Conference of Circuit Judges.

a. ~~Membership and Meetings~~ Purpose.

There shall be a Conference of Circuit Judges ~~which shall meet periodically for the purpose of exchanging ideas and views with respect to the circuit courts and the improvement of the administration of justice and making recommendations with respect thereto. The circuit administrative judges and one circuit judge from each judicial circuit, who shall be elected every two years by the circuit judges of his circuit, shall constitute the members of the Conference~~ that represents the interests of the circuit courts and is the policy advisory body to the Chief Judge of the Court of Appeals in all circuit court matters.

b. ~~Complaints~~ Powers.

~~The conference shall also have the power to initiate complaints to the Commission on Judicial Disabilities concerning alleged judicial misconduct or disability~~

1. Administration Policies.

To fulfill its purpose, the Conference shall work collaboratively and in consultation with the Chief Judge of the Court of Appeals in developing policies affecting the administration of the circuit courts, including but not limited to:

(A) programs and practices that will

enhance the administration of justice;

(B) the level of operational and judicial resources as it relates to the Judiciary Budget;

(C) legislation that may affect the circuit courts;

(D) the compensation and benefits of circuit court judges; and

(E) the securing of consultive services relating to circuit court matters with the approval of the Chief Judge of the Court of Appeals.

2. Complaints to Commission on Judicial Disabilities.

In addition to the powers under subsection b.1. of this Rule, the Conference may initiate complaints to the Commission on Judicial Disabilities concerning alleged sanctionable conduct or disability of a circuit judge.

3. Consultation with Chief Judge of the Court of Appeals.

The Conference shall:

(A) consult with the Chief Judge on the appointment of circuit judges to committees of the Judicial Conference in accordance with Rule 16-802 f.2.; and

(B) consult with the Chief Judge of the Court of Appeals to recommend circuit judges for membership on other committees and bodies of interest to the circuit courts.

4. Majority Vote.

The Conference shall exercise its powers and carry out its duties pursuant to a majority vote of its authorized membership, or by an executive committee, pursuant to a

majority vote of its authorized membership.

c. ~~Chairman~~ Membership and Operation.

1. Composition

The Conference shall ~~elect a Chairman by majority vote every two years~~ be composed of 16 members including the circuit administrative judge from each judicial circuit and one circuit judge from each judicial circuit who shall be elected every two years by majority vote of the circuit judges then authorized in the circuit.

2. Chair and Vice-Chair.

The Conference shall elect from its members every two years a Chair and Vice-chair.

3. Quorum.

A majority of the authorized membership of the Conference shall constitute a quorum.

4. Meetings.

The Conference shall meet at least four times a year.

d. ~~Secretariat~~ Executive Committee.

~~The Administrative Office of the Courts shall serve as secretariat for the Conference.~~

1. Power and Composition.

There shall be an Executive Committee of the Conference. It shall consist of the Conference Chair and Vice-Chair and such other members as may be designated by the Conference and shall be empowered to act with the full authority of the Conference when the Conference is not in session. The actions of the Executive Committee will be reported fully to the Conference at its next meeting.

2. Quorum.

A majority of the authorized membership of the Executive Committee shall constitute a quorum.

3. Convening the Executive Committee.

The Executive Committee shall convene at the call of the Conference Chair. In the absence of the Chair, the Vice-Chair is authorized to convene the Executive Committee.

e. Secretariat.

The Administrative Office of the Courts shall serve as Secretariat to the Conference and its Executive Committee.

Source: This Rule is in part former Rule 1207 and is in part new.

Rule 16-108 was accompanied by the following Reporter's Note.

The Conference of Circuit Judges has rewritten Rule 16-108 and has requested its adoption.

The Chair explained that revised Rule 16-108 has been endorsed by Chief Judge Robert M. Bell and the Conference of Circuit Court Judges. The revised Rule formalizes the duties of the Conference members and the requirement that the Conference consult with the Chief Judge on specified issues.

The Vice Chair noted that in subsection b.1 (E), there is an inference that the Chief Judge has to approve the securing of consultive services relating to circuit court matters. Judge

McAuliffe commented that none of the other items listed under subsection b.1 requires the expenditure of money. He suggested that subsection (E) would be more appropriately placed in a separate category. The Vice Chair suggested that subsection (E) could be placed in subsection b.3. She expressed the view that it is a style issue as to whether the securing of consultive services is a power of the Judicial Conference. The Chair responded that the Conference can develop policies and programs. The Vice Chair noted that subsection b.1 (A) is similar to subsection (E). The Chair commented that a policy as to how to go about securing consultant services is needed. Mr. Bowen observed that this potentially requires the approval of the Chief Judge. The Vice Chair said that if the Conference wants the power to have a policy relating to consultant services, then this can go into a separate section with additional language stating that the Chief Judge has to give approval. Mr. Bowen suggested that the language could be "With the approval of the Chief Judge of the Court of Appeals, the Conference may retain consultants in matters relating to the circuit court." This would be a free-standing provision which would go in as a new b.2. The Committee agreed with this suggestion by consensus.

Mr. Johnson referred to the existing subsection b.2, Complaints to Commission on Judicial Disabilities, and he asked why the Conference cannot currently initiate complaints. Judge Kaplan replied that it can. Mr. Johnson inquired as to why this proposed

provision is needed. The Vice Chair pointed out that Rules 16-803 (d) and 16-805 (a) of the Judicial Disabilities Commission Rules, both of which pertain to the filing of complaints, do not specifically authorize entities to initiate complaints. The Chair commented that often no judge wants to sign the accusation, so it is signed by the chair of the organization. Judge Kaplan remarked that ordinarily, nothing prevents the association from filing a complaint, but the proposed Rule states that there is a right to do this.

Mr. Howell moved to delete existing subsection b.2. He explained that this raises a question as to whether the Rules on Judicial Disabilities require an affidavit for the Conference to make a complaint. He expressed the opinion that the approach taken by the Conference of Circuit Court Judges is unusual. The motion was seconded. Mr. Brault pointed out that a complaint signed by 16 judges would be very difficult to oppose. Mr. Johnson remarked that he was troubled by the fact that Rule
16-803 (d) requires that the complaint be under affidavit, but subsection b.2 of proposed Rule 16-108 does not require one. The Chair called for a vote on the motion to delete subsection b.2, and the motion carried unanimously. There was no other discussion on Rule 16-108, so the Rule was approved as amended.

Agenda Item 2. Consideration of proposed new Rule 1-361
(Execution of Warrants and Body Attachments.
____

The Chair presented Rule 1-361, Execution of Warrants and Body Attachments, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

ADD new Rule 1-361, as follows:

Rule 1-361. EXECUTION OF WARRANTS AND BODY ATTACHMENTS

(a) Generally

A person arrested on a warrant or taken into custody on a body attachment shall be brought before the judicial officer indicated in the specific instructions contained on the warrant or body attachment.

Cross reference: See Rules 4-102, 4-212, and 4-347 concerning warrants. See Rules 1-202, 2-510, 3-510, 4-266, and 4-267 concerning body attachments.

(b) Warrants Without Specific Instructions

If a warrant for arrest issued by a judge does not contain specific instructions indicating the judicial officer before whom the arrested person is directed to appear:

(1) Without unnecessary delay and in no event later than 24 hours after the arrest, the person arrested shall be brought before a judicial officer of the District Court sitting in the county where the arrest was made, and

(2) The judicial officer shall establish the conditions under which the arrested person shall be released or brought before the judge

who issued the warrant.

(c) Body Attachments Without Specific Instructions

If a body attachment does not contain specific instructions indicating what is to be done with the person taken into custody, that person shall be presented without unnecessary delay to the judge who issued the body attachment. If the court is not in session when a person is taken into custody on a body attachment, that person shall be presented at the next session of court. If the judge who issued the body attachment is not then available, the person shall be presented to another judge of the court where the body attachment was issued for a determination of the person's eligibility for release, any conditions for release, and any conditions under which the person shall appear before the judge who issued the body attachment.

Committee note: Code, Article 27, § 594 D-1 (a)(2) requires that a warrant for arrest issued by a circuit court contain certain instructions to the sheriff or other law enforcement officer who will be executing the warrant. This Rule provides procedures for processing a person taken into custody on a warrant or body attachment that does not contain this information.

Source: This Rule is new.

Rule 1-361 was accompanied by the following Reporter's Note.

New Rule 1-361 is proposed in light of Chapter 515 (H.B 1036), Laws of 1997. An apparent impetus for this legislation is the occasional lack of specific instructions on an arrest warrant or body attachment. Absent these instructions, a sheriff or peace officer who arrests a person on a warrant or takes a person into custody on a body attachment may not know how to process the person,

particularly if the warrant or body attachment was issued in another county.

Section (a) states the general rule that the officer is to follow the instructions on the warrant or body attachment. A cross reference to other rules pertaining to warrants and body attachments follows the section.

Section (b) provides a procedure when a warrant does not contain specific instructions
.

Section (c) provides a procedure when a body attachment does not contain specific instructions.

The Chair explained that Delegate Harkins introduced House Bill 1036 which amended Code, Article 27, §594 D-1. The statute requires the judge who issues a warrant or body attachment to be specific as to how the person in custody is to be processed. This is to cure the problem of the failure to set forth directions on the face of the document. The Chair said that he spoke with Delegate James M. Harkins who is in agreement with the way Rule 1-361 is drafted. Judge Daniel M. Long, Chair of the Legislative Subcommittee of the Judicial Conference, liked the Rule, as did Captain McKenna of the Sheriff's Association. The Rule tells a law enforcement officer what to do when it is not obvious from the face of the warrant or body attachment. There have been problems with this when more than one county is involved.

Judge Kaplan commented that representatives of the various sheriffs' offices throughout the State spoke to the Conference of

Circuit Court Judges. Previously, there has been no agreement as to a uniform warrant or body attachment. If a warrant was issued in Allegheny County, and the person was picked up in Crisfield, it was not clear what the sheriff in Crisfield was supposed to do. The sheriffs have complained about the lack of a uniform warrant.

The Vice Chair said that she had a problem with putting this Rule into Title 1. Rule 4-212 is entitled "Issuance, Service, and Execution of Summons or Warrant", and section (e) of that Rule is entitled "Execution of Warrant--Defendant Not in Custody." The Rule provides that once the defendant is taken into custody, the defendant goes before a judicial officer of the District Court. The defendant is then processed pursuant to Rule 4-216. There appears to be an overlap between this procedure and the proposed Rule. More can be added to Rule 4-212 to cover what is in the proposed Rule. The Chair pointed out that a body attachment is not a criminal procedure. Mr. Bowen remarked that a body attachment can be issued in civil cases, including those involving child support. The Vice Chair said that her point was that the Rule pertaining to the execution of warrants is inappropriate in Title 1. Judge McAuliffe observed that Rule 2-510, Subpoenas, refers specifically to certain body attachments.

The Reporter noted that the basic warrant is not affected by the proposed Rule. Sections (b) and (c) are used when judges issue warrants or body attachments. Most warrants are filled out on the District Court form. The ones causing the problems are the body

attachments and warrants issued by a judge. An example would be a warrant for failure to appear. Judge Kaplan said that a bench warrant and a failure to appear warrant are very different. The latter is issued in only certain jurisdictions. There is a separate charge in the Code for failure to appear. A bench warrant is issued in Baltimore City with no bail and with directions to bring the defendant before the judge who issued the warrant. The judge is required to hear the matter within one-and-a-half hours of the defendant being picked up. The Reporter commented that the problem is that often there is no detail in the warrant. If a defendant is picked up in Garrett County, who is to bring him or her to the other county? A body attachment is only issued by a judge. House Bill 1036 purports to deal only with arrest warrants, but also mentions body attachments. Judge Vaughan commented that there has been discussion about uniform warrants, and Judge Johnson responded that that is what led to the proposed Rule. The Reporter remarked that creating a uniform warrant form was a task that had been tackled, without success, by various groups, including the Criminal Justice Information System (CJIS), the Conference of Circuit Judges, and the Department of Public Safety, in addition to the Criminal Subcommittee of the Rules Committee. The Chair noted that a rule may be needed to cover the situation when a warrant is not in compliance with the statute. The Vice Chair suggested that language could be added to Rule 4-212 (e).

Judge Vaughan said that there may be a problem in that the defendant who is brought in on a warrant in one jurisdiction and then sent to another one may receive unintended different treatment in each jurisdiction. The Vice Chair pointed out that the scheme of Title 4, including Rules 4-211 and 4-212, does not apply to all warrants, just those issued after the initial charging. The Chair commented that a judge will issue a body attachment, and the sheriff will bring the person in before the District Court Commissioner who has to direct the sheriff to bring the person before a certain judge. Judge Kaplan added that the commissioners do not handle the issuance of a warrant for failure to appear with a pre-set bail. If bail has been pre-set, the commissioners will not tamper with the bail. For this reason, in Baltimore City, warrants for failure to appear are not issued, but no-bail warrants are. This Rule handles interjurisdictional problems, but it is not geared to handle warrants with pre-set bail.

The Vice Chair said that while she is supportive of fixing the problem with the warrants, she feels that the suggested changes are not an appropriate way to solve the problems. The Chair observed that if a warrant has specific language, there is no problem. Title 1 covers body attachments in criminal and civil cases. There is no need to have warrants and body attachments dealt with all over the Rules.

Judge Johnson moved to adopt the Rule. The Vice Chair pointed

out that if the new Rule is the recommendation of the Subcommittee, a motion is not necessary. The Reporter responded that the revisions are not a Subcommittee recommendation. Judge Johnson explained that the Subcommittee was told to design a uniform warrant, but it was too difficult to do. The new Rule is an alternative to a uniform warrant. Mr. Shipley remarked that the District Court uses a uniform warrant. The Chair said that proceedings in the District Court are sufficiently uniform, so that a uniform warrant is feasible. Mr. Karceski commented that it seems ridiculous to write a rule to cover mistakes made by people, but the Chair explained that the Rule is a result of a request made by the individuals who serve the warrants.

The Vice Chair suggested that the Rule could be recommitted to the Subcommittee to take another look at broadening Rule 4-212(e). Judge Johnson noted that this Rule has also been recommended by the Office of the Attorney General. He moved for its adoption, the motion was seconded, and it passed with five opposed.

Agenda Item 3. Consideration and reconsideration of certain rules changes proposed by the Criminal Rules Subcommittee: (a) Consideration of proposed amendments to Rule 4-252 (Motions in Circuit Court), (b) Consideration of proposed amendments to Rule 4-341 (Sentencing--Presentence Investigation), (c) Consideration of proposed amendments to Rule 4-342 (Sentencing --Procedure in Non-Capital Cases), (d) Consideration of proposed amendments to Rule 4-343 (Sentencing--Procedure in Capital Cases), and (e) Reconsideration of proposed amendments to the rules and form pertaining to expungement.

Judge Johnson presented Rule 4-252, Motions in Circuit Court,

for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-252 to allow a court to reconsider the grant of a motion to suppress evidence under certain circumstances, as follows:

Rule 4-252. MOTIONS IN CIRCUIT COURT

(a) Mandatory Motions

In the circuit court, the following matters shall be raised by motion in conformity with this Rule and if not so raised are waived unless the court, for good cause shown, orders otherwise:

(1) A defect in the institution of the prosecution;

(2) A defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense;

(3) An unlawful search, seizure, interception of wire or oral communication, or pretrial identification;

(4) An unlawfully obtained admission, statement, or confession;

(5) A motion for joint or separate trial of defendants or offenses.

(b) Time for Filing Mandatory Motions

A motion under section (a) of this Rule shall be filed within 30 days after the earlier

of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213 (c), except when discovery discloses the basis for a motion, the motion may be filed within five days after the discovery is furnished.

(c) Motion to Transfer to Juvenile Court

A request to transfer an action to juvenile court pursuant to Code, Article 27, §594A shall be made by separate motion entitled "Motion to Transfer to Juvenile Court." The motion shall be filed within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213 (c) and, if not so made, is waived unless the court, for good cause shown, orders otherwise.

(d) Other Motions

A motion asserting failure of the charging document to show jurisdiction in the court or to charge an offense may be raised and determined at any time. Any other defense, objection, or request capable of determination before trial without trial of the general issue, shall be raised by motion filed at any time before trial.

(e) Content

A motion filed pursuant to this Rule shall be in writing unless the court otherwise directs, shall state the grounds upon which it is made, and shall set forth the relief sought. A motion alleging an illegal source of information as the basis for probable cause must be supported by precise and specific factual averments. Every motion shall contain or be accompanied by a statement of points and citation of authorities.

(f) Response

A response, if made, shall be filed within 15 days after service of the motion and

contain or be accompanied by a statement of points and citation of authorities.

(g) Determination

Motions filed pursuant to this Rule shall be determined before trial and, to the extent practicable, before the day of trial, except that the court may defer until after trial its determination of a motion to dismiss for failure to obtain a speedy trial. If factual issues are involved in determining the motion, the court shall state its findings on the record.

(h) Effect of Determination of Certain Motions

(1) Defect in Prosecution or Charging Document

If the court granted a motion based on a defect in the institution of the prosecution or in the charging document, it may order that the defendant be held in custody or that the conditions of pretrial release continue for a specified time, not to exceed ten days, pending the filing of a new charging document.

(2) Suppression of Evidence

(A) If the court grants a motion to suppress evidence, the evidence shall not be offered by the State at trial, except that suppressed evidence may be used in accordance with law for impeachment purposes. On motion of the State filed before trial and based on (i) newly discovered evidence which could not have been discovered by due diligence in time to present it to the court before the court's ruling on the motion to suppress evidence, (ii) an error of law made by the court in granting the motion to suppress evidence, or (iii) a change in law before trial, the court may reconsider its grant of a motion to suppress evidence. The court may hold a hearing on the motion to reconsider which, whenever practicable, shall be held before the judge who

granted the motion to suppress evidence. If the court reverses or modifies its grant of a motion to suppress evidence, it shall state its reasons in writing or on the record in open court.

(B) If the court denies a motion to suppress evidence, the ruling is binding at the trial unless the court, on the motion of a ~~party~~ defendant and in the exercise of its discretion, grants a supplemental hearing or a hearing de novo and rules otherwise. A pretrial ruling denying the motion to suppress is reviewable on a motion for a new trial or on appeal of a conviction.

(3) Transfer of Jurisdiction to Juvenile Court

If the court grants a motion to transfer jurisdiction of an action to the juvenile court, the court shall enter a written order waiving its jurisdiction and ordering that the defendant be subject to the jurisdiction and procedures of the juvenile court. In its order the court shall (A) release or continue the pretrial release of the defendant, subject to appropriate conditions reasonably necessary to ensure the appearance of the defendant in the juvenile court or (B) place the defendant in detention or shelter care pursuant to Code, Courts Article, §3-815. Until a juvenile petition is filed, the charging document shall be considered a juvenile petition for the purpose of imposition and enforcement of conditions of release or placement of the defendant in detention or shelter care.

Cross reference: Code, Article 27, §594A.

Committee note: Subsections (a)(1) and (2) include, but are not limited to allegations of improper selection and organization of the grand jury, disqualification of an individual grand juror, unauthorized presence of persons in the grand jury room, and other irregularities in the grand jury proceedings.

Section (a) does not include such matters as former jeopardy, former conviction, acquittal, statute of limitations, immunity, and the failure of the charging document to state an offense.

Source: This Rule is derived from former Rule 736.

Rule 4-252 was accompanied by the following Reporter's Note.

This amendment to Rule 4-252 is proposed in response to a request by the Court of Appeals in Long v. State, 343 Md. 662, 676 n.6 (1996).

Judge Johnson explained that the denial of a motion to suppress can be reconsidered, but not the granting of a motion to suppress. In the case of Long v. State, 343 Md. 662, 676 n. 6 (1996), the Court of Appeals provided in the footnote that the Rules Committee should consider whether trial judges should have the authority to reconsider decisions to suppress evidence. The Subcommittee has suggested amending subsections (h)(2)(A) and (B) to allow the reconsideration of a granting of a motion to suppress.

The Vice Chair pointed out that the Rule makes it very difficult for the State to obtain the reconsideration of a granting of a motion to suppress. Mr. Dean responded that this was written this way intentionally. Mr. Karceski remarked that this change levels the playing field, but the Vice Chair noted that it is not level. Mr. Karceski said that the Subcommittee had discussed the 180-day trial rule and the gamesmanship that occurs. He expressed

the view that if the State had a chance to argue against suppression of the evidence and lost, another opportunity to argue the same issue is not necessary.

Mr. Burns, of the Appellate Division of the Office of the Public Defender, opined that the language in subsection (h)(2)(A) which reads "an error of law made by the court in granting the motion to suppress" is too broad. Mr. Dean remarked that unless new evidence comes up, the State is stuck with the findings of fact at the suppression hearing. The Chair commented that the State should be prepared the first time around. Allowing a second chance may encourage sloppiness in the first presentation. He expressed the view that the language in subsection (h)(2)(A) is intentionally broad. Mr. Burns suggested that the error of law to which the subsection refers could cite to a specific case. Mr. Karceski remarked that the court does not have to hold a hearing. If there was an error of law, the judge will be persuaded, but this argument will not prevail very often. Mr. Dean noted that any findings of fact cannot be revisited. The Chair said that Mr. Burns' point was that if there has been a change in the law, a reconsideration is appropriate, but a bad call by a judge will not be revisited. Judge McAuliffe expressed the opinion that part (ii) of subsection (h)(2)(A) should not be taken out. Judge Johnson commented that the Rule was appropriate as it is written.

Judge Kaplan moved to accept Rule 4-252 as it was presented.

The motion was seconded, and it passed unanimously.

Judge Johnson presented Rule 4-341, Sentencing--Presentence Investigation, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-341 to add a cross reference and restyle the existing cross reference, as follows:

Rule 4-341. SENTENCING -- PRESENTENCE INVESTIGATION

Before imposing a sentence, the court may order a presentence investigation and report. A copy of the report, including any recommendation to the court, shall be mailed or otherwise delivered to the defendant or counsel and to the State's Attorney in sufficient time before sentencing to afford a reasonable opportunity for the parties to investigate the information in the report. The presentence report, including any recommendation to the court, is not a public record and shall be kept confidential as provided in Code, Article 41, §4-609.

Cross reference: As to circumstances when a presentence report is required, see Sucik v. State, 344 Md. 611 (1997). As to the handling of a presentence report, see Haynes v. State, 19 Md.App. 428, ~~311 A.2d 822~~ (1973).

Source: This Rule is derived from former Rule 771 and M.D.R. 771.

Rule 4-341 was accompanied by the following Reporter's Note.

This amendment to Rule 4-341 is proposed in light of Sucik v. State, 344 Md. 611 (1997), in which the Court held that before a judge may sentence a person to imprisonment for life without the possibility of parole, the judge

must order a presentence investigation in accordance with Code, Article 41, §4-609.

Judge Johnson explained that a cross reference to the case of Sucik v. State, 344 Md. 611 (1997) has been added to the Rule. In the case, the Court of Appeals held that before a judge may sentence a person to imprisonment for life without the possibility of parole, the judge must order a presentence investigation in accordance with Code, Article 41, §4-609. Mr. Bowen pointed out that the Rule provides that the court may order a presentence investigation while the cross reference states that the court must order one. The Reporter commented that the Sucik case, read in conjunction with dicta in Williams v. State, 342 Md. 724 (1996), creates some interpretive problems, and a cross reference following the Rule seems to be the best course of action.

Mr. Dean suggested that the language "unless otherwise required by statute" could be added to the first sentence of the Rule. Judge McAuliffe suggested that the following language could be added to the beginning of section (a): "Where required by law, the court shall order a presentence investigation and report. In all other cases, the court may order a presentence investigation and report." Mr. Bowen moved that this language be added in, the motion was seconded, and it passed unanimously. The Reporter asked if the cross reference will still remain in the Rule, and Mr. Bowen answered that it should to provide a clue to the statutory requirements.

Judge Johnson presented Rule 4-342, Sentencing--Procedure in Non-Capital Cases, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-342 to add certain provisions concerning restitution from a parent of the defendant, as follows:

Rule 4-342. SENTENCING -- PROCEDURE IN NON-CAPITAL CASES

(a) Applicability

This Rule applies to all cases except those governed by Rule 4-343.

(b) Statutory Sentencing Procedure

When a defendant has been found guilty of murder in the first degree and the State has given timely notice of intention to seek a sentence of imprisonment for life without the possibility of parole, but has not given notice of intention to seek the death penalty, the court shall conduct a separate sentencing proceeding as soon as practicable after the trial to determine whether to impose a sentence of imprisonment for life or imprisonment for life without parole.

Cross reference: Code, Article 27, §§412 and 413.

(c) Judge

After a trial has commenced, the judge who presided shall sentence the defendant. When a defendant enters a plea of guilty or nolo contendere before trial, any judge may sentence the defendant except that, the judge who directed entry of the plea shall sentence the defendant if that judge has received any

matter, other than a statement of the mere facts of the offense, which would be relevant to determining the proper sentence. This section is subject to the provisions of Rule 4-361.

(d) Presentence Disclosures by the State's Attorney

The State's Attorney shall disclose to the defendant or counsel any information which the State expects to present to the court for consideration in sentencing within sufficient time before sentencing to afford the defendant a reasonable opportunity to investigate the information. If the court finds that the information was not timely provided, the court shall postpone sentencing.

(e) Allocution and Information in Mitigation

Before imposing sentence, the court shall afford the defendant the opportunity, personally and through counsel, to make a statement and to present information in mitigation of punishment.

(f) Reasons

The court ordinarily shall state on the record its reasons for the sentence imposed.

(g) Credit for Time Spent in Custody

Time spent in custody shall be credited against a sentence pursuant to Code, Article 27, §638C.

(h) Advice to the Defendant

At the time of imposing sentence, the court shall cause the defendant to be advised of any right of appeal, any right of review of the sentence under the Review of Criminal Sentences Act, any right to move for modification or reduction of the sentence, and the time allowed for the exercise of these rights. The circuit court shall cause the defendant who was sentenced in circuit court to be advised that within ten days after filing an appeal, the defendant must order in writing a transcript from the court stenographer.

Cross reference: Code, Article 27, §§645JA-

645JG (Review of Criminal Sentences Act).

(i) Terms for Release

On request of the defendant, the court shall determine the defendant's eligibility for release under Rule 4-349 and the terms for any release.

(j) Restitution from a Parent

If restitution from a parent of the defendant is sought pursuant to Code, Article 27, §807, the State shall serve notice of intention to seek restitution on the parent and the defendant prior to the sentencing of the defendant and file a copy of the notice with the court. The court may set a hearing on parental restitution as appropriate, which hearing may be as part of the defendant's sentencing hearing, but the court may not enter a judgment of restitution against the parent unless the parent has been afforded a reasonable opportunity to be heard and to present evidence.

~~Cross reference: Code (1957, 1992 Repl. Vol.), Article 27, §§645JA-645JG (Review of Criminal Sentences Act).~~

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 772 a.
Section (b) is new.
Section (c) is derived from former Rule 772 b and M.D.R. 772 a.
Section (d) is derived from former Rule 772 c and M.D.R. 772 b.
Section (e) is derived from former Rule 772 d and M.D.R. 772 c.
Section (f) is derived from former Rule 772 e and M.D.R. 772 d.
Section (g) is derived from former Rule 772 f and M.D.R. 772 e.
Section (h) is derived from former Rule 772 h and M.D.R. 772 g.
Section (i) is new.

Section (j) is new.

Rule 4-342 was accompanied by the following Reporter's Note.

> This amendment to Rule 4-342 is proposed to be added in light of Chapters 311 and 312, Laws of 1997 (S.B. 173, H.B. 768), which, *inter alia*, repealed and reenacted, with amendments, Code, Article 27, §807. Under the new law, a judgment of restitution may be entered against a parent of a defendant who is under the age of 18 years but is tried as an adult.
>
> The proposed amendment places on the State the responsibility for serving notice of intention to seek restitution on the parent and on the defendant prior to sentencing. A copy of the notice must be filed with the court.
>
> In accordance with the statute, the court may not enter a judgment of restitution against the parent unless the parent has been afforded a reasonable opportunity to be heard and to present evidence. A hearing under this section may be set as part of the defendant's sentencing hearing.
>
> With the addition of new section (j), the cross reference to the Review of Criminal Sentences Act that follows the rule is proposed to be moved to follow section (h) as a matter of style.

Judge Johnson explained that there is a new law which provides that a judgment of restitution may be entered against a parent of a defendant who is under the age of 18 years but is tried as an adult. The Rule is being suggested for modification to provide that the State shall serve notice of the intention to seek restitution prior to the sentencing of the defendant. The Stephanie Roper Committee

through its counsel, Russell P. Butler, Esq., has suggested that the parent can receive notice of the intention to seek restitution after the sentencing, also. Mr. Butler, who was present at the meeting, explained that some parents may avoid service. Hypothetically, after the presentence investigation is completed by the Department of Parole and Probation, and the victim wants restitution, if the State was unable to serve the defendant, the case must be continued. Often, the parents avoid service. The statute provides due process to the parents, but the victim may be upset at the judge or the prosecutor if the case is continued. The defendant gets notice under Rule 1-321, anyway. There is no reason to require that the parent can only be served prior to the sentencing.

The Chair suggested that the proposed language in section (j) which reads "and the defendant prior to the sentencing of the defendant" be deleted, and the next sentence begin as follows: "A hearing on parental restitution may be part of the defendant's sentencing hearing as appropriate...". Judge Johnson commented that the victim can come in any time to seek restitution, but in a juvenile case, there is a restitution hearing within 30 days, and this is not open-ended. The Reporter pointed out that Rule 11-118 currently provides that a hearing to determine parents' liability shall be held not later than thirty days after the disposition hearing. Mr. Butler noted that the former statute, Article 27, §808 provided that the restitution hearing was no later than 30 days after

the disposition, but this provision was deleted and merged into Article 27, §807.

Judge McAuliffe pointed out that the preamble to the Victims' Rights Act of 1997 supersedes Rule 11-118, and the time limit has been removed. Mr. Johnson commented that an emergency change could be made to Rule 11-118 before the entire set of Juvenile Rules is revised. Judge McAuliffe commented that since the legislature removed the time limit, no time limit should be

inserted in Rule 4-342. Mr. Dean observed that this is not really a problem, because the prosecutor will want to take care of the victim and will seek the restitution. Mr. Burns asked how the judge determines insufficient notice. Judge McAuliffe replied that it is constitutional due process, that which is reasonable under the circumstances.

Mr. Bowen moved the adoption of the changes suggested earlier by the Chair which were to remove the language "and the defendant prior to the sentencing of the defendant" and begin the next sentence as follows: "A hearing on parental restitution may be part of the defendant's sentencing hearing as appropriate...". The motion was seconded, and it was passed with one opposed.

Judge Johnson commented that there will be no time limit to notify the parents. The Reporter added that the parents will have a reasonable opportunity to be heard and to present evidence. Judge Vaughan observed that there is a law which provides that an order of restitution is an automatic judgment. Judge Johnson said that this is indexed in the circuit court documents. The Reporter inquired about fixing Rule 11-118. Judge Johnson answered that it needs to be changed. The Reporter said she will draft an amendment to that Rule, and if there are any additional policy decisions to be made concerning the Rule it could be on the November Rules Committee meeting agenda. Mr. Butler thanked the Committee for its attention to this matter.

Judge Johnson presented Rule 4-343, Sentencing--Procedure in Capital Cases, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-343 to require the completion of one Findings and Sentencing Determination form with respect to each death for which the defendant is subject to a sentence of death, to clarify certain language in section (b), to add the victim's name to the Findings and Sentencing Determination form, and to correct certain internal references, as follows:

Rule 4-343. SENTENCING -- PROCEDURE IN CAPITAL CASES

(a) Applicability

This Rule applies whenever a sentence of death is sought under Code, Article 27, §413.

(b) Statutory Sentencing Procedure

When a defendant has been found guilty of murder in the first degree, the State has given the notice required under Code, Article 27, §412 (b)(1), and the defendant may be subject to a sentence of death, a ~~separate~~ sentencing proceeding separate from the proceeding at which the defendant's guilt was adjudicated shall be conducted as soon as practicable after the trial pursuant to the provisions of Code, Article 27, §413 and one Findings and Sentencing Determination form that complies with sections (g) and (h) of this Rule shall be completed with respect to each death for which the defendant is subject to a sentence of death.

(c) Presentence Disclosures by the State's Attorney

The State's Attorney shall disclose to the defendant or counsel any information which the State expects to present to the court or jury for consideration in sentencing within sufficient time before sentencing to afford the defendant a reasonable opportunity to investigate the information. If the court finds that the information was not timely provided, the court may postpone sentencing if requested by the defendant.

(d) Reports of Defendant's Experts

Upon request by the State after the defendant has been found guilty of murder in the first degree, the defendant shall produce and permit the State to inspect and copy all written reports made in connection with the action by each expert whom the defendant expects to call as a witness at the sentencing proceeding, including the results of any physical or mental examination, scientific test, experiment, or comparison, and furnish the State with the substance of any such oral report or conclusion. The defendant shall provide this information to the State within sufficient time before sentencing to afford the State a reasonable opportunity to investigate the information. If the court finds that the information was not timely provided, the court may postpone sentencing if requested by the State.

(e) Judge

Except as provided in Rule 4-361, the judge who presides at trial shall preside at the sentencing proceeding.

(f) Allocution

Before sentence is determined, the court shall afford the defendant the opportunity, personally and through counsel, to make a statement.

(g) Form of Written Findings and Determinations

Except as otherwise provided in section ~~(f)~~ (h) of this Rule, the findings and determinations shall be made in writing in the following form:

(CAPTION)

FINDINGS AND SENTENCING DETERMINATION

VICTIM: [Name of murder victim]

Section I

Based upon the evidence, we unanimously find that each of the following statements marked "proven" has been proven BEYOND A REASONABLE DOUBT and that each of those statements marked "not proven" has not been proven BEYOND A REASONABLE DOUBT.

1. The defendant was a principal in the first degree to the murder.

__________ proven   _________ not proven

2. The defendant engaged or employed another person to commit the murder and the murder was committed pursuant to an agreement or contract for remuneration or the promise of remuneration.

_________ proven   ________ not proven

(If one or both of the above are marked "proven," proceed to Section II. If both are marked "not proven," proceed to Section VI and enter "Life Imprisonment.")

Section II

Based upon the evidence, we unanimously find that the following statement, if marked "proven," has been proven BY A PREPONDERANCE OF THE EVIDENCE or that, if marked "not proven," it has not been proven BY A PREPONDERANCE OF THE EVIDENCE.

At the time the murder was committed, the defendant was

mentally retarded. ________ proven ________ not proven

(If the above statement is marked "proven," proceed to Section VI and enter "Life Imprisonment." If it is marked "not proven," complete Section III.)

Section III

Based upon the evidence, we unanimously find that each of the following aggravating circumstances that is marked "proven" has been proven BEYOND A REASONABLE DOUBT and we unanimously find that each of the aggravating circumstances marked "not proven" has not been proven BEYOND A REASONABLE DOUBT.

1. The victim was a law enforcement officer who was murdered while in the performance of the officer's duties.

_______ proven _______ not proven

2. The defendant committed the murder at a time when confined in a correctional institution.

_______ proven _______ not proven

3. The defendant committed the murder in furtherance of an escape from or an attempt to escape from or evade the lawful custody, arrest, or detention of or by an officer or guard of a correctional institution or by a law enforcement officer.

_______ proven _______ not proven

4. The victim was taken or attempted to be taken in the course of a kidnapping or abduction or an attempt to kidnap or abduct.

_______ proven _______ not

proven

5. The victim was a child abducted in violation of Code, Article 27, §2.

_______ proven _______ not proven

6. The defendant committed the murder pursuant to an agreement or contract for remuneration or the promise of remuneration to commit the murder.

_______ proven _______ not proven

7. The defendant engaged or employed another person to commit the murder and the murder was committed pursuant to an agreement or contract for remuneration or the promise of remuneration.

_______ proven _______ not proven

8. At the time of the murder, the defendant was under the sentence of death or imprisonment for life.

_______ proven _______ not proven

9. The defendant committed more than one offense of murder in the first degree arising out of the same incident.

_______ proven _______ not proven

10. The defendant committed the murder while committing or attempting to commit a carjacking, armed carjacking, robbery, arson in the first degree, rape in the first degree, or sexual offense in the first degree.

_______ proven _______ not proven

(If one or more of the above are marked "proven," complete Section IV. If all of the above are marked "not proven," do not complete Sections IV and V and proceed to Section VI and enter "Life Imprisonment.")

Section IV

Based upon the evidence, we make the following determinations as to mitigating circumstances:

1. The defendant has not previously (i) been found guilty of a crime of violence; (ii) entered a plea of guilty or nolo contendere to a charge of a crime of violence; or (iii) been granted probation on stay of entry of judgment pursuant to a charge of a crime of violence.

(As used in the preceding paragraph, "crime of violence" means abduction, arson in the first degree, carjacking, armed carjacking, escape, kidnapping, mayhem, murder, robbery, rape in the first or second degree, sexual offense in the first or second degree, manslaughter other than involuntary manslaughter, an attempt to commit any of these offenses, or the use of a handgun in the commission of a felony or another crime of violence.)

(Mark only one.)

☐ (a) We unanimously find by a preponderance of the evidence that the above circumstance exists.

☐ (b) We unanimously find by a preponderance of the evidence that the above circumstance does not exist.

☐ (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find by a preponderance of the evidence that the above circumstance exists.

2. The victim was a participant in the defendant's conduct or consented to the act which caused the victim's death.

(Mark only one.)

☐ (a) We unanimously find by a preponderance of the evidence that the above circumstance exists.

☐ (b) We unanimously find by a preponderance of the evidence that the above circumstance does not exist.

☐ (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find by a preponderance of the evidence that the above circumstance exists.

3. The defendant acted under substantial duress, domination, or provocation of another person, even though not so substantial as to constitute a complete defense to the prosecution.

(Mark only one.)

☐ (a) We unanimously find by a preponderance of the evidence that the above circumstance exists.

☐ (b) We unanimously find by a preponderance of the evidence that the above circumstance does not exist.

☐ (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find by a preponderance of the evidence that the above circumstance exists.

4. The murder was committed while the capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired as a result of mental incapacity, mental disorder, or emotional disturbance.

(Mark only one.)

☐ (a) We unanimously find by a preponderance of the evidence that the above circumstance exists.

☐ (b) We unanimously find by a preponderance of the evidence that the above circumstance does not exist.

☐ (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find by a preponderance of the evidence that the above circumstance exists.

5. The defendant was of a youthful age at the time of the crime.

(Mark only one.)

☐ (a) We unanimously find by a preponderance of the evidence that the above circumstance exists.

☐ (b) We unanimously find by a preponderance of the evidence that the above circumstance does not exist.

☐ (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find by a preponderance of the evidence that the above circumstance exists.

6. The act of the defendant was not the sole proximate cause of the victim's death.

☐ (a) We unanimously find by a preponderance of the evidence that the above circumstance exists.

☐ (b) We unanimously find by a preponderance of the evidence that the above circumstance does not exist.

☐ (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find by a preponderance of the evidence that the above circumstance exists.

7. It is unlikely that the defendant will engage in further criminal activity that would constitute a continuing threat to society.

(Mark only one.)

☐ (a) We unanimously find by a preponderance of the evidence that the above circumstance exists.

☐ (b) We unanimously find by a preponderance of the evidence that the above circumstance does not exist.

☐ (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find by a preponderance of the evidence that the above circumstance exists.

8. (a) We unanimously find by a preponderance of the evidence that the following additional mitigating circumstances exist:

____

____

____

____.

(Use reverse side if necessary)

(b) One or more of us, but fewer than all 12, find by a preponderance of the evidence that the following additional mitigating circumstances exist: _______________________________

____

____

____

____
(Use reverse side if necessary)

(If the jury unanimously determines in Section IV that no mitigating circumstances exist, do not complete Section V. Proceed to Section VI and enter "Death." If the jury or any juror determines that one or more mitigating circumstances exist, complete Section V.)

Section V

Each individual juror shall weigh the aggravating circumstances found unanimously to exist against any mitigating circumstances found unanimously to exist, as well as against any mitigating circumstance found by that individual juror to exist.

We unanimously find that the State has proven BY A PREPONDERANCE OF THE EVIDENCE that the aggravating circumstances marked "proven" in Section III outweigh the mitigating circumstances in Section IV. _______ _______
yes no

Section VI

Enter the determination of sentence either "Life Imprisonment" or "Death" according to the following instructions:

1. If both of the answers in Section I are marked "not proven," enter "Life Imprisonment."

2. If the answer in Section II is marked "proven," enter "Life Imprisonment."

3. If all of the answers in Section III are marked "not proven," enter "Life Imprisonment."

4. If Section IV was completed and the jury unanimously determined that no mitigating circumstance exists, enter "Death."

5. If Section V was completed and marked "no," enter "Life Imprisonment."

6. If Section V was completed and marked "yes," enter "Death."

We unanimously determine the sentence to be _______________.

Section VII

If "Life Imprisonment" is entered in Section VI, answer the following question:

Based upon the evidence, does the jury unanimously determine that the sentence of life imprisonment previously entered shall be without the possibility of parole? _______ yes _______ no

______________________________ Foreman	______________________________ Juror 7
______________________________ Juror 2	______________________________ Juror 8
______________________________ Juror 3	______________________________ Juror 9
______________________________ Juror 4	______________________________ Juror 10
______________________________ Juror 5	______________________________ Juror 11
______________________________ Juror 6	______________________________ Juror 12
or,	______________________________ JUDGE

(h) Deletions From Form

Section II of the form set forth in section ~~(e)~~ (g) of this Rule shall not be submitted to the jury unless the issue of mental retardation is generated by the evidence. Unless the defendant requests otherwise, Section III of the form shall not include any aggravating circumstance that the State has not specified in the notice required under Code, Article 27, §412 (b)(1) of its intention to seek a sentence of death. Section VII of the form shall not be submitted to the jury unless the State has given the notice required under Code, Article 27, §412 (b)(2) of its intention to seek a sentence of imprisonment for life without the possibility of parole.

Committee note: Omission of some aggravating circumstances from the form is not intended to preclude argument by the defendant concerning the absence of those circumstances.

(i) Advice of the Judge

At the time of imposing sentence, the judge shall advise the defendant that the determination of guilt and the sentence will be reviewed automatically by the Court of Appeals, and that the sentence will be stayed pending that review.

Cross reference: Rule 8-306.

(j) Report of Judge

After sentence is imposed, the judge promptly shall prepare and send to the parties a report in the following form:

(CAPTION)

REPORT OF TRIAL JUDGE

I. Data Concerning Defendant

A. Date of Birth

B. Sex

C. Race

D. Address

E. Length of Time in Community

F. Reputation in Community

G. Family Situation and Background

1. Situation at time of offense (describe defendant's living situation including marital status and number and age of children)

2. Family history (describe family history including pertinent data about parents and siblings)

H. Education

I. Work Record

J. Prior Criminal Record and Institutional History (list any prior convictions, disposition, and periods of incarceration)

K. Military History

L. Pertinent Physical or Mental Characteristics or History

M. Other Significant Data About Defendant

II. Data Concerning Offense

A. Briefly describe facts of offense (include time, place, and manner of death; weapon, if any; other participants

and nature of participation)

B. Was there any evidence that the defendant was under the influence of alcohol or drugs at the time of the offense? If so, describe.

C. Did the defendant know the victim prior to the offense?

Yes _____ No _____

1. If so, describe relationship.
2. Did the prior relationship in any way precipitate the offense? If so, explain.

D. Did the victim's behavior in any way provoke the offense? If so, explain.

E. Data Concerning Victim

1. Name
2. Date of Birth
3. Sex
4. Race
5. Length of time in community
6. Reputation in community

F. Any Other Significant Data About Offense

III. A. Plea Entered by Defendant:

Not guilty _____; guilty _____; not criminally responsible ______

B. Mode of Trial:

Court _____ Jury _____

If there was a jury trial, did defendant challenge the jury selection or composition? If so, explain.

C. Counsel

1. Name

2. Address

3. Appointed or retained

(If more than one attorney represented defendant, provide data on each and include stage of proceeding at which the representation was furnished.)

D. Pre-Trial Publicity -- Did defendant request a mistrial or a change of venue on the basis of publicity? If so, explain. Attach copies of any motions made and exhibits filed.

E. Was defendant charged with other offenses arising out of the same incident? If so, list charges; state whether they were tried at same proceeding, and give disposition.

IV. Data Concerning Sentencing Proceeding

A. List aggravating circumstance(s) upon which State relied in the pretrial notice.

B. Was the proceeding conducted

before same judge as trial? ______

before same jury? _____

If the sentencing proceeding was conducted before a jury other than the trial jury, did the defendant challenge the selection or composition of the jury? If so, explain.

C. Counsel -- If counsel at sentencing was different from trial counsel, give information requested in III C above.

D. Which aggravating and mitigating circumstances were raised by the evidence?

E. On which aggravating and mitigating circumstances were the jury instructed?

F. Sentence imposed: Life imprisonment
Death
Life imprisonment without the possibility of parole

V. Chronology

Date of Offense

Arrest

Charge

Notification of intention to seek penalty of death

Trial (guilt/innocence) -- began and ended

Post-trial Motions Disposed of

Sentencing Proceeding -- began and ended

Sentence Imposed

VI. Recommendation of Trial Court as to Whether Imposition of Sentence of Death is Justified.

VII. A copy of the Findings and Sentencing Determination made in this action is attached to and made a part of this report.

____
Judge

CERTIFICATION

I certify that on the _____ day of _______________, 19 ____ I sent copies of this report to counsel for the parties for comment and have attached any comments made by them to this report.

____
Judge

Within five days after receipt of the report, the parties may submit to the judge written comments concerning the factual accuracy of the report. The judge promptly shall file with the clerk of the trial court and with the Clerk of the Court of Appeals the report in final form, noting any changes made, together with any comments of the parties.

Committee note: The report of the judge is filed whenever a sentence of death is sought, regardless of the sentence imposed.

Source: This Rule is derived from former Rule 772A with the exception of sections (c) and (d), which are new, and section (f), which is derived from former Rule 772 d and M.D.R. 772 c.

Rule 4-343 was accompanied by the following Reporter's Note.

In accordance with the request of the
Court of Appeals in Burch v. State, ___ Md. ___

(No. 38, September Term, 1996, filed July 3, 1997) (Majority Op. at 48, n.7), the Criminal Law Subcommittee attempted to develop an alternative Findings and Sentencing Determination form in Rule 4-343 usable in multiple murder situations. The Subcommittee concluded that because there are very few categories on the form where one can say with absolute certainty that a particular statement must be equally applicable to each murder, any such form would be overly complicated and susceptible to mistakes by jurors.

The Subcommittee recommends instead that Rule 4-343 (b) be amended to require the completion of one Findings and Sentencing Determination form with respect to each death for which the defendant is subject to a sentence of death. Additionally, the phrase "a separate sentencing proceeding" in section (b) is amended to read "a sentencing proceeding separate from the proceeding at which the defendant's guilt was adjudicated" to make clear that there do not have to be individual sentencing proceedings for each death for which the defendant is subject to a sentence of death.

In section (g), a space for the murder victim's name has been added to the Findings and Sentencing Determination form to make the form easier to use in multiple murder situations.

The proposed amendments also correct internal references in section (g) and (h) of the Rule.

Judge Johnson explained that there was a capital case in Prince George's County involving two victims. The attorneys and the court had agreed to have one modified Findings and Sentencing Determination form cover both murders. A sentence of death was entered as to each murder. The Court of Appeals held in the case of Burch v. State, 346

Md. 253 (1997) that the particular procedure used in that case was not proper, and vacated one of the sentences in favor of life imprisonment. The Court of Appeals directed the Rules Committee to propose for its consideration a form that could be used in multiple murder cases. The Criminal Subcommittee could not devise a satisfactory form and is instead recommending that section (b) of Rule 4-343 be amended to require the completion of one Findings and Sentencing Determination form with respect to each death for which the defendant is subject to a sentence of death. Each victim's name would be captioned on the heading of the form pertaining to that victim. Mr. Dean noted that this is easy to put in place, and many prosecutors have already done so. Mr. Dean moved to adopt the change to the Rule, the motion was seconded, and it carried unanimously.

Due to the lack of a quorum after the lunch break, the Chair adjourned the meeting.