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 February 12, 1999.

Members present:

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

Albert D. Brault, Esq.
Robert L. Dean, Esq.
Bayard Z. Hochberg, 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.
Anne C. Ogletree, Esq.
Melvin J. Sykes, Esq.
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
James S. Becker, Esq.
Master Ann Sparrough
Master James P. Casey
Brian M. Penn
Jennifer Renne, Esq.
Rhonda B. Lipkin, Esq.
David Fishkin, Esq.
Kathaleen Brault, Esq., A.O.C., Foster Care Court Improvement Project
Robert T. Fontaine, Esq., Office of the Attorney General
Master Erica Wolfe
Heidi Connolly, Rules Committee Intern
Gary Patton, Rules Committee Intern

The Chair called the meeting to order. He asked if there were any corrections to the minutes of the January 8, 1999 Rules Committee

meeting. There being none, Mr. Klein moved to approve the minutes as presented. The motion was seconded and passed unanimously. The Reporter suggested that for the record the minutes of the November 20, 1999 be approved, because a quorum was not present at the January meeting when the November minutes were considered. Judge Kaplan moved to approve the November minutes, the motion was seconded, and it carried unanimously.

The Chair announced that three members of the Rules Committee had been honored by the Montgomery County Bar Association with a "Century of Service Award" for their outstanding abilities and service to the community and the profession. The three were: Albert D. Brault, Esq., the Honorable John F. McAuliffe, and Roger W. Titus, Esq. They were among a prestigious group of lawyers and judges who were also chosen. The Chair and the Committee congratulated Mr. Brault, Judge McAuliffe, and Mr. Titus. A copy of the announcement by the Montgomery County Bar Association is attached as Appendix 1.

The Reporter said that as she was reorganizing the Attorney Discipline Rules, she concluded that the service provisions needed to be changed somewhat. She redrafted Rule 16-725, Service of Papers on Attorney, and distributed copies of it to the Committee for its consideration.

Rule 16-725. SERVICE OF PAPERS ON ATTORNEY

(a) Statement of Charges

A copy of a statement of charges filed pursuant to Rule **16-741** shall be served on an attorney in the manner prescribed by Rule 2-121. If after reasonable efforts the attorney cannot be served personally, service may be made upon the treasurer of the Clients' Security Trust Fund, who shall be deemed the attorney's agent for receipt of service. The treasurer shall send, by both certified mail and ordinary mail, a copy of the papers so served to the attorney at the address maintained in the Trust Fund's records and to any other address provided by Bar Counsel.

(b) Service of Other Papers

Except as otherwise provided in this Chapter, notices and papers may be served on an attorney by any of the following methods: (1) personal delivery; (2) first class mail to the attorney's office for the practice of law or, if none, to the attorney's last known address; or (3) in the manner provided by Rule 1-321.

Committee note: The attorney's address contained in the records of the Clients' Security Trust Fund may be the attorney's last known address.

Cross reference: See Rule **16-763** concerning service of a petition for disciplinary action.

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

REPORTER'S NOTE

This Rule expands upon current Rule provisions concerning notice to the attorney.

Under section (a), a copy of a statement of charges ordinarily will be personally served on an attorney by one of the methods set out in Rule 2-121. To facilitate service upon absconding attorneys and attorneys who attempt to evade service, the second and third

> sentences provide a mechanism that allows service to be made upon the treasurer of the Clients' Security Trust Fund. This mechanism parallels a service provision that is included in Rule **16-763**.
>
> Section (b) sets out the general rule that, unless a different method is specifically required, papers may be served on an attorney by any one of three methods: (1) personal delivery, (2) first class mail to the attorney's office for the practice of law or last known address, or (3) in the manner provided by Rule 1-321.

The Reporter explained that section (a) provides how a statement of charges is served. Section (b) provides that all other papers may be served by one of three enumerated methods. The Reporter had asked Melvin Hirshman, Esq., Bar Counsel, and Mr. Howell, who had initially drafted the revised Attorney Discipline Rules, for their comments. Mr. Hirshman was not opposed to the change, although he did not state that he was in favor of it. The idea for the change is that the attorney should get better than first class mail notice of the statement of charges. Ordinarily, it would be served pursuant to Rule 2-121, Process--Service--In Personam. If Bar Counsel cannot get service on the attorney, Bar Counsel would serve the treasurer of the Clients' Security Trust Fund (CSTF) who would send a copy of the statement of charges by both certified mail and ordinary mail to the address maintained in the CSTF's records. This would allow Bar Counsel to move forward when the attorney has absconded or is evading service.

Mr. Brault commented that service of the statement of charges is not usually a problem, because most attorneys are represented during the investigatory phase of the case. Bar Counsel could call the attorney who represents the respondent attorney so that the former could accept service. The Vice Chair asked what method of service is used when a petition for disciplinary action is filed in the Court of Appeals. The Reporter replied that in the Court of Appeals, the attorney gets personal service, then any other method the court directs, then service on the CSTF. The Vice Chair pointed out that if the respondent attorney has counsel, section (b) should require the notice to be served on counsel. Section (b) could be simplified to provide that service is pursuant to Rule 1-321. The Reporter remarked that Bar Counsel has the ethical obligation to serve the respondent's counsel. The respondent attorney may not have gotten counsel. The Vice Chair said that Rule 1-321 applies whether or not the respondent attorney has gotten counsel. The Chair suggested that the language in section (b) beginning with the word "on" and ending with the number (3) be deleted. The Reporter commented that Rule 1-321 may not apply, because some papers are required to be sent to the respondent attorney before the original pleading is filed in the Court of Appeals. The Vice Chair noted that some papers are sent after charges have been initiated. These are not notices prior to the filing of charges. The Chair pointed out that Rule 1-321 is inclusive. The Reporter expressed the concern

that the reference to Rule 1-321 may not capture what is contained in the Committee note at the end of section (b) of Rule 16-725.

Mr. Brault noted that Rule 1-321 does not mandate service on a respondent attorney. Mr. Sykes commented that it is simple to serve both the respondent attorney and his or her counsel. The Chair reiterated that some of the language of section (b) can be deleted. Mr. Howell questioned eliminating the language in subsection (2) of section (b). The Vice Chair pointed out that the Committee note provides for the attorney's last known address. Mr. Howell suggested that the language "within the meaning of Rule 1-321" could be added to the Rule. Mr. Sykes suggested that the following language should be added to the end of section (b): "for service of papers after an initial pleading." The Chair said that the additional language directs one to the appropriate portion of Rule 1-321. It clarifies that regardless of whether an initial pleading has been served, the provisions of Rule 1-321 pertaining to service of papers after an original pleading apply.

The Vice Chair moved to accept Mr. Sykes' suggested language. The motion was seconded, and it passed unanimously.

Agenda Item 1. Continued consideration of proposed revised Title 11 (Juvenile Causes).

Mr. Johnson, Juvenile Subcommittee chair, told the Committee that several of the consultants to the Subcommittee were present at

today's meeting. He introduced Mr. Brian Penn, an honors student at the University of Maryland Baltimore County, who is an intern for Mr. Johnson. The Reporter said that two of the Rules Committee interns were present: Heidi Connolly and Gary Patton, both students at the University of Baltimore Law School. Mr. Brault introduced his daughter, Kathaleen Brault, Esq., who was attending the meeting.

Mr. Johnson presented Rule 11-203, Citation Cases, for the Committee's consideration.

Rule 11-203. CITATION CASES

(a) Filing

If an intake officer forwards a citation for a violation to the State's Attorney, the State's Attorney may initiate an action in the court by filing the citation with the clerk, together with a sufficient number of copies to provide for service upon the parties.

Cross reference: See Code, Courts Article §3-810 (l), (m), (n), and (o) concerning the forwarding of a citation to the State's Attorney by an intake officer. For the contents of a citation, see Code, Courts Article, §3-835 (b).

(b) Summons

(1) Issuance and Contents

Unless the court orders otherwise, upon the filing of a citation, the clerk shall promptly issue a summons returnable as provided by Rule 2-126 for each party except the person who filed the citation. Any summons addressed to a parent, guardian, or custodian of a respondent child shall require the person to produce the child on the date and time named in

the summons. The summons shall contain the information required by Rule 11-102 (c)(2)(A) - (F). The summons shall also contain the following information:

> TO THE PERSON SUMMONED: The Court may, at this time or any later hearings, consider and pass orders concerning but not limited to: treatment, fines, controlling conduct of persons before the court, and assessment of court costs.
>
> You may retain a lawyer to represent you at your own expense. A postponement will not be granted because you have failed to contract or retain a lawyer. If you choose not to retain a lawyer, but you wish to subpoena witnesses on your behalf, you must promptly request issuance of the subpoenas. If you received a Request for Witness Subpoena Form with this Summons, you must neatly list the names and addresses of the witnesses on the Form and promptly return the Form to the Clerk of the Juvenile Court at the address shown on the Form. If you did not receive a Request for Witness Subpoena Form, you must promptly contact the Clerk of the Juvenile Court at
>
> _____
> _____
> (telephone number), who will provide you with the necessary forms. A postponement will NOT be granted because you fail to promptly request subpoenas for witnesses.
>
> Any reasonable accommodation for persons with disabilities should be requested by contacting the court prior to the hearing.

(2) Service

The summons, together with a copy of the citation, shall be served in accordance with Rule 11-104 (a)(1).

(c) Subpoena

The clerk shall issue a subpoena for the person who issued the citation and for each witness requested by any party pursuant to Rule 11-108.

(d) No Written Response

The respondent shall not file a written response to the citation. The allegations of the citation shall be deemed denied by the respondent.

Source: This Rule is new.

Rule 11-203 was accompanied by the following Reporter's Note.

This Rule is new. It sets forth a procedure for cases initiated by the filing of a "citation" for a "violation" as those terms are defined in Code, Courts Article, §3-801 (g) and (u).

Subsection (b)(1) is based upon the provisions of proposed new Rule 11-102 (c), pertaining to the issuance and content of summonses in cases initiated by petitions. The content of the summons has been modified to reflect the more limited range of orders that may be entered in citation cases and that the person summoned is not entitled to representation by the Public Defender.

So that the citation procedure is as streamlined as possible, under section (d) no response is filed to the citation and the allegations of the citation are deemed denied by the respondent.

Mr. Johnson explained that the November, 1998 meeting was the last meeting at which the Juvenile Rules had been considered. At that meeting, the Rules Committee directed that Rule 11-203 be redrafted to simplify it. The Reporter explained that the redrafted Rule does not address the contents of a citation or what happens before a citation is in the hands of the State's Attorney. These matters are covered by statute. In section (a), the word "may" is used to indicate that the State's Attorney has the option as to whether or not to file the citation in court. If the citation is filed, the Rule spells out the procedure that follows. There is a cross reference to Code, Courts Article, §§3-810 and 3-835 for more details as to what precedes the filing. Howard Merker, Esq., a Deputy State's Attorney in Baltimore County, who is a consultant to the Juvenile Subcom-mittee and whose office prosecutes citation cases, approved of the change to the Rule.

Master Wolfe pointed out that there is a typographical error in subsection (b)(1) -- in the second sentence on the second page, the word "contract" should be "contact." Mr. Hochberg asked if the phrase in the last sentence of subsection (b)(2) which reads, "contacting the court prior to the hearing" means contacting the clerk. Judge Johnson explained that the clerk's office does not get involved. The court is responsible for compliance with the Americans with Disabilities Act (ADA). The Chair asked if the Rule should provide that the administrative judge should be contacted. Judge

Kaplan said that in Baltimore City, there is an ADA coordinator, but he was not sure that each jurisdiction has this. Mr. Johnson commented that the language should be left as it is, so the court can direct the matter to the appropriate person. The Vice Chair added that Rule 1-332, Notification of Need for Accommodation, refers to notifying the court.

Mr. Sykes pointed out that in subsection (b)(2), the sentence which begins: "If you did not receive a Request for Witness Subpoena Form, you must promptly contact the Clerk of the Juvenile Court....." is misleading, because this is only necessary if one wishes to subpoena witnesses. He suggested that the sentence begin as follows: "If you did not receive a Request for Witness Subpoena Form and you wish to subpoena witnesses, you must promptly contact the Clerk of the Juvenile Court...". The Committee agreed by consensus to this change.

Mr. Johnson presented Rule 11-301, Right to Counsel, for the Committee's consideration.

ALTERNATIVE DRAFT

Rule 11-301. RIGHT TO COUNSEL

(a) Counsel

(1) Generally

A party is entitled to be represented by counsel at every stage of all proceedings under this Title. Indigent parties shall be

provided with counsel in accordance with Code, Courts and Judicial Proceedings Article, §3-821 and Code, Article 27A.

(2) Indigent Child Alleged to Be Delinquent or In Need of Supervision

Unless counsel is knowingly and intelligently waived or is otherwise provided, an indigent child whose parents, guardian, or custodian are either indigent or unwilling to employ counsel shall be entitled to be represented by the Office of the Public Defender at every stage of the proceedings in a delinquency case and a child in need of supervision case.

(b) Waiver of Counsel

If a party indicates a desire or inclination to waive counsel, before permitting the waiver the court shall determine, after appropriate questioning in open court and on the record, that the party fully comprehends:

(1) the nature of the allegations and the proceedings, and the range of allowable dispositions;

(2) that the counsel may be of assistance in determining and presenting any defenses to the allegations of the petition, or other mitigating circumstances;

(3) that the right to counsel in a delinquency case, a child in need of supervision action, or an action in which an adult is charged with a violation of Code, Courts Article, §3-831 includes the right to the prompt assignment of an attorney if the party is indigent;

(4) that even if the party intends not to contest the charge or proceeding, counsel may be of substantial assistance in developing and presenting material which could affect the disposition; and

(5) that among the party's rights at any hearing are the right to testify and call other witnesses, the right to confront and cross-examine witnesses, the right to obtain witnesses by compulsory process, and the right to require proof of any charges.

(c) Discharge of Counsel - Adult

If an adult party requests permission to discharge an attorney whose appearance has been entered, the court shall permit the party to explain the reasons for the request. If the court finds that there is a meritorious reason for the party's request, the court shall permit the discharge of counsel; continue the case if necessary; and advise the party that if new counsel does not enter an appearance by the next scheduled hearing, the hearing will proceed with the adult party unrepresented by counsel. If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the adult party that the hearing will proceed as scheduled with the party unrepresented by counsel if the party discharges counsel and does not have new counsel. If the court permits the party to discharge counsel, the court shall comply with the provisions of section (b) of this Rule.

(d) Discharge of Counsel - Child

A child party may not discharge counsel before another attorney has entered an appearance on behalf of that child party.

(e) Indigent Parties Who Are Ineligible for Representation at State Expense

Indigent parties who do not wish to waive counsel, but who are not eligible to obtain counsel at State expense in accordance with Code, Courts Article, §3-821, shall be informed by the court about any source of attorneys who will represent clients in juvenile court cases on a pro bono basis. The court shall inform these parties that if they

are unable to find an attorney who will represent them, they will have to participate in the hearings without counsel.

Source: This Rule is derived in part from former Rule 906, in part from Rule 4-215, and is in part new.

Rule 11-301 was accompanied by the following Reporter's Note.

This Rule is a revision and reorganization of former Rule 906, which implements a party's right to counsel as granted by Code, Courts Article, §3-821.

Section (a) articulates the party's right to be represented by counsel at every stage of all proceedings and address who is entitled to court-appointed counsel.

Sections (b) is derived from former Rule 906 b 1. The phrase "after the filing of a juvenile petition" is deleted because, under §3-821, a party would have a right to counsel on a motion for continued detention. The phrase "without charge to the party if he is financially unable to obtain private counsel" has been changed to "if the party is indigent" to more accurately state the circumstances under which an individual is entitled to prompt assignment of an attorney and so as to not mislead an individual regarding the individual's potential obligations under Code, Article 27A, §7. Parties who are represented by the Office of Public Defender must comply with applicable part of Article 27A. Nothing in this Rule should be construed in a manner inconsistent with Article 27A.

Mr. Johnson explained that this draft of Rule 11-301 is the

Subcommittee's original version, with additional provisions suggested by the Office of the Public Defender. It spells out the classes of people entitled to representation by the Office of the Public Defender.

Mr. Fishkin commented that the draft of the Rule in the meeting materials was not entirely written by the Office of the Public Defender. The Public Defender's proposed additions to the Subcommittee's draft include the addition of a reference to Code, Article 27A to subsection (a)(1), and, in subsection (a)(2), an important clarification that the entitlement to representation by the Public Defender applies at every stage in delinquency and child in need of supervision cases. In section (b), the Office of the Public Defender would have preferred the language "[i]f a party initiates a request to waive counsel" in place of the language "[i]f a party indicates a desire or inclination to waive counsel." Otherwise, the language incorporates waiver provisions in current law. In section (c), the word "scheduled" has been added to indicate that an adult party is to get notice that he or she must have counsel or proceed without.

The Chair suggested that in subsection (a)(2), the beginning language which reads, "[u]nless counsel is knowingly and intelligently waived or otherwise provided" could be deleted. This language may be misleading. Mr. Brault asked how a child can waive counsel in a due process sense. Mr. Fishkin responded that this is a

problematic concept. It has been in the case law for some time. Mr. Brault inquired whether a finding has ever been challenged because of the ineffectual waiver by a minor child. Mr. Fishkin answered that this has not happened in Maryland. Ms. Lipkin noted that there is a case pertaining to juvenile waiver -- In Re Appeal No. 101, 43 Md. App. 1 (1976). The Vice Chair pointed out that section (d) does not allow a child to discharge counsel, which is odd since subsection (a)(2) allows a child to waive counsel. Mr. Brault questioned as to how a child is competent to waive counsel, when he or she is not competent to enter into a contract. There is a concern that a child could be railroaded into a decision. The Chair responded that this is unlikely to happen, because the judges will not let it happen. Mr. Brault explained that his concern is not the judges, but the advice the children get on the street.

Master Wolfe said that this is problematic. Under case law, children waive their Miranda rights. Also, some of the children become adults in criminal court by law, and no one raises the issue of whether the child can waive the right to counsel because the forum is different. Furthermore, almost every child is indigent. If the child cannot waive counsel, all the children will be entitled to representation. Who will staff all of these cases? Mr. Fishkin commented that it is up to the Office of the Public Defender to determine indigency. He is not concerned about the volume of cases. The parents push the children to waive counsel, because the parents

do not want to pay. However, the right to waive by a child is an issue of concern.

The Chair referred to the case In Re Appeal No. 101. He said that it analyzes juvenile waiver as identical to an analysis of adult waiver. Nothing in the case suggests that waiver can never occur. The history of the Rules reveals provisions for waiver. The concept should be retained. The judges can be trusted to not find a waiver if the juvenile is incompetent or the waiver proceeding inadequate. Mr. Fishkin noted that the language in the Rule proposed by the Subcommittee is the language of the existing rule. The language that had been suggested by the Public Defender is more restrictive. It requires a party to request a waiver, rather than a show of inaction which amounts to a waiver. The Vice Chair pointed out that the word "unwilling" in subsection (a)(2) could mean that the child is considered indigent even if his or her parents are wealthy.

Master Sparrough commented that the parents have to say the appropriate words to the Public Defender. Mr. Johnson commented that the intent of the Rule is make sure the child is represented. The Chair had suggested earlier in the discussion that the beginning language of subsection (a)(2) should be deleted. The Vice Chair moved that this language which reads as follows: "[u]nless counsel is knowingly and intelligently waived or otherwise provided" be deleted, the motion was seconded, and it passed unanimously.

Mr. Sykes suggested that the word "unwilling" in subsection

(a)(2) should be changed to the word "refuse", because most parents are unwilling to employ counsel. Master Sparrough noted the distinction between parents who say "I will not pay for counsel" as opposed to "I cannot afford to pay for counsel." Mr. Fishkin remarked that there are situations where the parents' involvement in the action results in a problem with the representation by the Public Defender. Mr. Johnson said that the word "unwilling" is broader and could include inaction. The juvenile may be hurt if the standard is narrow. Mr. Sykes noted that the word "unwilling" is also a problem. Parents may either be indigent or will not employ counsel. The Vice Chair suggested that in place of the language "unwilling," the language "fails to" should be substituted. Mr. Sykes suggested that the new language be "fails or refuses."

The Vice Chair referred to the language in subsection (a)(2) which reads, "parents, guardian, or custodian", and she commented that the plural noun should be the last one in a list. Mr. Sykes proposed that the list should read "guardian, custodian, or parents," and the Committee agreed to this change by consensus.

The Chair asked if the language in question in subsection (a)(2) should be "fails to employ counsel". He pointed out that the language in section (b) and the existing Rule which reads "indicates a desire or inclination to waive" would trigger a waiver when a party requests one. Mr. Sykes suggested that the beginning language in section (b) which reads "[i]f a party indicates a desire or

inclination to waive counsel" could be deleted, and the sentence would begin "Before permitting the waiver...". The Vice Chair questioned whether the language should track Rule 4-215, Waiver of Counsel. Mr. Johnson looked at Rule 4-215 and remarked that section (b) of Rule 11-301 does not track the criminal rule.

Mr. Fishkin inquired about how broad the waiver provision would be. The child appears without counsel, and the court inquires about this, rather than the lack of counsel automatically triggering a request for waiver. The Chair said that the court has to be satisfied that the child does not want counsel. There would be no increase in the number of waivers. It would be better if the Rule did not provide for two kinds of waivers -- those by inaction and those expressly requested. Master Wolfe commented that in Anne Arundel County, there is an arraignment hearing four to six weeks prior to the trial date. At that hearing, the child can make the election to have a Public Defender, no attorney, or private counsel. The Chair pointed out that at the arraignment, the parent may say that he or she will hire an attorney, but at the trial, there is no attorney, because the parent felt that it was too expensive. The Rule would require the court to go over the waiver litany again.

Master Sparrough noted that each county is different. In Prince George's County, there are hearings to obtain counsel. In Baltimore City, the attorney is already in place before the arraignment. Anne Arundel County is a middle ground, and on the

Eastern Shore, there are no arraignments. Mr. Sykes reiterated that the beginning clause of subsection (a)(2) should be deleted. The Vice Chair pointed out that the waiver and inquiry is mandated by law only when someone says that he or she does not want an attorney. If the beginning clause is deleted, every time a person appears without counsel, the court will have to question the party. The Chair remarked that this is the same procedure in criminal cases. The Vice Chair said that with an express provision, the case can go forward. Judge Johnson cautioned that the case may be reversed.

Mr. Johnson expressed his agreement with the Vice Chair. The Vice Chair commented that the Rule does not address the situation where someone says that he or she does not want an attorney. The Chair disagreed, stating that there is a constitutional right to counsel. Whatever the reason, the court has to comply with section (b). Master Wolfe observed that what often happens is that there are several postponements of the case for failure to obtain counsel. The court goes through the litany and many weeks later, the defendant claims that he or she still wants to obtain counsel. Mr. Johnson asked Master Wolfe how she handles this situation. Master Wolfe responded that she inquires what the reason is for failure to secure counsel. The decision depends on the circumstances of the case.

The Chair said that the child is presumed indigent when the parents have not obtained counsel, and the child gets a Public Defender. There is a waiver only when the child states that he or

she does not want an attorney. Master Casey remarked that if the child demands a waiver, often he or she will get one, but absent a demand for a waiver, the presumption is against waiver. Ms. Lipkin noted that this provision also applies in CINA cases, but the CINA child cannot waive counsel. There are different needs in delinquency and CINA cases. A CINA parent has no right to counsel, except statutorily.

The Chair suggested that in the beginning of section (b), the language "in a CINA case" should be added in after the word "waiver" and before the word "the." Ms. Lipkin inquired if this would preclude the requirement that parents be notified of the right to counsel in a CINA case. Mr. Johnson commented that a party may be represented at all stages of the proceedings. The Chair stated that the Rule could deal separately with waiver in CINA proceedings and in delinquency proceedings. Subsection (b)(3) is not applicable to a CINA case. Mr. Sykes observed that one waives only if one asks to waive. The critical point is that where a party is forced to trial without an attorney, before that happens, the party has to be told all of the items in section (b). Ms. Lipkin pointed out that this the nature of an arraignment, but Mr. Fishkin reiterated that not all jurisdictions provide for an arraignment. Master Casey suggested that language be put into the CINA section which would provide that the juvenile may not waive counsel.

The Chair said that the juvenile is not a criminal defendant

who has the right to represent himself or herself. The Court of Appeals has held that in a CINA case, the fact that the juvenile cannot waive counsel does not violate any constitutional rights. Master Sparrough referred to Code, Courts Article, §3-834. The Vice Chair added that this provides that a minor child in a CINA case cannot waive counsel. Master Wolfe remarked that in Anne Arundel County, children in CINA cases never appear without counsel. Ms. Jones pointed out that in a report on the foster care system, children appeared without counsel at certain hearings. Ms. Lipkin observed that it is not unusual in rural jurisdictions at shelter care hearings for counsel not to be appointed until the end of the proceeding. The Chair read from Code, Courts Article, §3-834 (a)(2) which provides that in any action in which payment for services of a court-appointed attorney for the child is the responsibility of the local department of social services, the court shall appoint an attorney who has contracted with the Department of Human Resources to provide the services. The Chair asked if every county has these contractual attorneys, and Master Sparrough answered that every county has a contract. The Chair suggested that language could be added to the Rule which provides that if an attorney is appointed to represent the child pursuant to Code, Courts Article, §3-834, the child cannot waive representation.

Ms. Lipkin pointed out that subsection (a)(2) provides for a Public Defender in a delinquency case, leaving the CINA children

without a way to effectuate subsection (a)(1). The Chair responded that the solution is to trigger section (b) to delinquency cases, since the children in CINA cases cannot waive representation. The Vice Chair suggested that subsection (a)(1) could provide that everyone is entitled to counsel, subsection (a)(2) could pertain to delinquency cases, and a new subsection (a)(3) could provide that children in CINA cases cannot waive representation. The Chair suggested that the beginning language of section (b) could read as follows: "If a party is entitled to waive representation, before permitting the waiver...". Mr. Johnson expressed the view that language should be added which would make explicit that in a CINA case, the child cannot waive representation. The Chair suggested that the following language be added to the beginning of section (b): "A child alleged to be in need of assistance is not entitled to waive counsel. If a party is entitled to waive counsel, before....". The Committee agreed by consensus to add this language. The Chair added that the statute could be cross referenced.

The Vice Chair pointed out that subsection (a)(2) does not refer to CINA cases. Master Sparrough responded that the Subcommittee had included the reference to CINA cases at one point. Ms. Lipkin said that the draft of the Juvenile Rules dated July, 1998 had a reference to CINA cases in Rule 11-301 (d). Master Casey noted that the reference in subsection (a)(1) to Code, Courts Article, §3-821 is worded the opposite way that the actual Code reference is

worded, which is "[e]xcept as provided in subsections (b) and (c) of this section, a party is entitled to the assistance of counsel at every stage of any proceeding under this subtitle." The Reporter asked whether the Rule should refer to Code, Courts Article, §3-834. Ms. Lipkin answered that the Code provision is simply a housekeeping matter. The history of it is that it forces the court, in aapointing attorneys to represent children in CINA cases, to appoint counsel who have contracted with the Department of Human Resources.

Mr. Becker expressed the opinion that adding a cross reference to Code, Courts Article, §3-834 was a good idea. The Reporter said that the cross reference could go after subsection (a)(1). The Committee agreed by consensus to this change. Mr. Johnson suggested that the reference to Code, Courts Article, §3-821 could be moved into the cross reference, so that it would be easier to change it if the statute changed. The Reporter pointed out that the Court of Appeals adopts the cross references and Committee notes as well as the body of the Rules, so any change to a cross reference would still have to be approved by the Court.

Master Wolfe observed that there is a typographical error in section (c) -- in the second sentence, the word "now" should be changed to the word "new." The Committee agreed with this change. The Vice Chair questioned why the word "scheduled" appears in the second sentence of section (c). Mr. Fishkin responded that this was

added to ensure notice. The Vice Chair asked if it matters if the hearing is scheduled or not. Mr. Fishkin answered that the word "scheduled" would not account for emergency hearings. The Vice Chair suggested that the word "scheduled" be deleted, and the Committee agreed by consensus to this change.

Mr. Johnson presented Rule 11-302, Response to Petition, for the Committee's consideration.

Rule 11-302. RESPONSE TO PETITION

(a) Generally

(1) Respondent

The respondent need not file a written response to the petition. If the respondent elects not to respond to the petition either orally or in writing, the allegations of the petition will be deemed denied.

(2) Local Department of Social Services

If the local Department of Social Services is served with a directive to respond to a petition pursuant to Rule 11-102 (c)(2)(H), the local department shall be added as a party and shall respond to the petition within the time specified in the summons.

(b) Responses

A respondent may admit or deny all or any facts alleged in the petition. Any allegation not admitted is deemed denied.

(c) Admission or Failure to Deny

If a respondent has admitted the allegations of the petition or indicates to the court an intention not to deny those allegations, the court, before proceeding with

an adjudicatory hearing, shall advise the respondent of the nature and possible consequences of the action or intended action. The court shall neither encourage or discourage the respondent with respect to the action or intended action, but shall ascertain to its satisfaction that the respondent understands the nature and possible consequences of failing to deny the allegations of the petition, that the respondent takes that action knowingly and voluntarily, and that there is a factual basis for the admission. These proceedings shall take place in open court and shall be on the record.

(d) Withdrawal of Admission

At any time before disposition, the court may permit a respondent to withdraw an admission when the withdrawal serves the interest of justice. After disposition, on motion filed within 10 days, the court may set aside its order and permit the respondent to withdraw an admission if the respondent establishes that the requirements of section (c) of this Rule were not met.

Source: This Rule is in part derived from former Rule 907 and in part new.

Rule 11-302 was accompanied by the following Reporter's Note.

This Rule is derived in part from former Rule 907 and is in part new.

Subsection (a)(1) incorporates part of the substance of Rule 907 a. The first sentence makes clear that the respondent need not file a written response - in delinquency cases, a response is frequently made orally in open court. The second sentence says that if no response is made in any form, the court will treat this as a denial.

Subsection (a)(2) is new. It provides

that where the respondent is alleged to be a child in need of assistance and the petitioner is not the local department of social services, the local department is added as a party and is required to file a response to the petition.

Section (b) is derived from the first and second sentences of Rule 907 a.

Section (c) is derived from Rule 907 b with style changes. See generally In re Montrail M., 87 Md.App. 420 (1991), aff'd on other grounds, 325 Md. 527 (1992). Deleted from the Rule is the distinction between a respondent who is an adult (to whom, under former Rule 907, "the provisions of Title 4 shall apply") and a respondent who is a child.

Section (d) is new and is adapted from Rule 4-242 (f).

Ms. Lipkin questioned the clarity of the reference in subsection (a)(2) to Rule 11-102 (c)(2)(H). Mr. Johnson explained that subsection (c)(2) of Rule 11-102 lists the contents for a summons in requirements identified by letter. Mr. Johnson suggested that the letter (H) could be taken out of the reference in subsection (a)(2) of Rule 11-302, but Master Wolfe argued that that would make that particular requirement difficult to find. The Vice Chair expressed the view that the reference to subsection (c)(2)(H) is not a problem.

Mr. Howell referred to subsection (a)(1) of Rule 11-302, and he asked what the phrase "orally or in writing" modifies. He suggested that this language be deleted. Master Wolfe noted that the language was in the original rule. The Chair commented that if the juvenile

does not file a response, the allegations of the petition will be deemed denied. Mr. Sykes observed that an oral response cannot be filed. The Rule could provide that if the respondent does not respond, then the allegations are deemed denied. Mr. Brault remarked that one can only orally respond at a hearing. He asked if subsection (a)(2) applies only in advance of the hearing. Mr. Sykes replied that it is not only in advance of the hearing. Section (c) is an additional category which is that the respondent indicates an intent not to deny. Since the Rule has already provided that failure to deny is deemed a denial, how can there be consequences for an intent not to deny? The Chair commented that this could be applicable in the courtroom setting, while section (a) could apply to a juvenile case that is in the clerk's office. Mr. Sykes referred to the language "either orally or in writing", and the Chair said that this should be deleted as Mr. Howell had suggested earlier. The Committee agreed by consensus to this deletion.

Mr. Howell suggested that the first sentence of subsection (a)(1) could read as follows: "The respondent may file a written response to the petition." The Reporter asked if in practice juveniles ever respond to the petition. Master Sparrough answered that that may depend on whether the respondent has private counsel. Master Wolfe pointed out that the current rule uses the language, "[a] respondent may file a pleading...". Mr. Johnson said that (b) is applicable to the situation of when a respondent files, and

section (a) provides that the respondent does not have to file and can still deny the facts of the petition. Master Wolfe questioned whether the response in section (b) has to be written. Mr. Johnson answered that although section (b) does not state it, the response probably has to be written.

The Chair commented that section (b) is not necessary. Mr. Sykes noted that the second sentence of section (b) should not be eliminated. The Chair suggested that section (b) could provide that the respondent may file a written response, admitting or denying any allegation not admitted. The content of section (b) could be moved to section (a). The Committee agreed by consensus to these suggestions. Mr. Johnson noted that section (c) becomes section (b). The Chair remarked that section (c) covers what amounts to guilty pleas. It is similar to a not guilty statement of facts. Mr. Karceski suggested that the language in section (c) which reads "or indicates to the court an intention not to deny those allegations" actually means the respondent is admitting the allegations.

Master Wolfe noted that the issues of pleading and advice of rights on a guilty plea are lumped into one rule. This is confusing. The Vice Chair remarked that the two issues should be separated. In the majority of cases, no written response is filed. The Chair said that the person who wishes to proceed under section (c) must be advised by the court of the consequences of a not guilty statement of facts. Mr. Karceski suggested that instead of using that language,

section (c) could provide in place of the language "indicates to the court an intention not to deny those allegations" that the person "agrees to stipulate as to the facts." Mr. Johnson said that the purpose of this provision is to advise the person of admissions and protect the person who does not want to admit the allegations, but does not intend to deny them. This is the same as a not guilty statement of facts. Mr. Sykes remarked that even if the person will not deny the allegations, they still have to be proved.

Master Wolfe suggested that Rule 4-242, Pleas, might provide some guidance. The Vice Chair said that section (c), Admission or Failure to Deny, should be a separate rule pertaining to this procedure, which is similar to taking a guilty plea. The Reporter cautioned that the Rules pertaining to hearings are in chronological order, and an admission could be made at several points in the process. Master Wolfe pointed out that this may take place at the arraignment, if there is one. Mr. Johnson commented that if section (c) is moved, section (d) cannot stand alone in Rule 11-302. The Vice Chair noted that section (d) also applies to withdrawal of the juvenile causes equivalent of a guilty plea. Mr. Johnson suggested that sections (c) and (d) be moved to the next rule. They should not go in the adjudicatory hearing rule, because it is too far removed from the stage of the proceedings pertaining to the response to the petition.

The Vice Chair asked about withdrawal of an admission. Ms.

Lipkin responded that section (c) only applies to what is written. A pro se litigant in a CINA case may send a letter to the court admitting the allegations, but then the litigant may get an attorney and withdraw the admission. The Chair said that section (d) could remain, but he inquired as to what to do with section (c). Ms. Jones noted that the respondent is one or both parents, but Master Wolfe added that in a CINA case, the respondent is the child. She asked if the Rule was designed to reach the parents. Master Casey commented that the child is the subject of the proceedings. Mr. Sykes pointed out that the parents have a right to respond. The Chair said that any party served with a petition has the right to file a written response to the petition. He suggested that subsection (a)(1) and section (b) could be combined.

Mr. Sykes reiterated that sections (c) and (d) should be separated into a rule entitled "Procedure When Allegations Not Contested." The Chair added that the Rule should be flexible to cover arraignments. Mr. Karceski asked about the language of section (c). He had previously suggested a change in the first sentence of section (c) in place of the language, "or indicates to the court an intention not to deny those allegations..". He noted that a failure to deny is a misnomer. Master Wolfe commented that if the respondent relies on a written admission, it is accomplished by a pleading. The respondent cannot as yet have indicated an intention not to deny the allegations. The Chair said that the suggested change to section (c)

which is to delete the language in the phrase "indicates to the court an intention not to deny those allegations" and substitute in its place "agrees in open court to proceed on an agreed statement of facts" would take care of the problem.

Mr. Karceski remarked that it is difficult to weigh the truth of an agreed statement of facts. Mr. Johnson observed that the respondent would come into court not contesting the facts alleged. Mr. Brault suggested that affirmative defenses which would admit or deny responsibility could be required. Mr. Karceski noted that if the respondent agrees to the facts, he or she cannot put forth a defense. Mr. Brault added that the Criminal Rules contain affirmative defenses.

The Chair pointed out that the language in section (c) may need some redrafting. He suggested that the last sentence could be moved to the beginning of the section. Section (c) could read as follows: "If in open court and on the record, the respondent admits the allegations of the petition or expresses an intent not to deny those allegations, the court, before proceeding with an adjudicatory hearing....". An admission could be made pretrial or on that day. A refusal to deny will result in a statement of facts. Mr. Karceski asked if this will be understandable to those reading the Rule. Mr. Howell suggested that sections (c) and (d) should be moved. Rule 11-302 should (1) provide that one does not have to file a response, (2) provide that if no response is filed, all of the allegations are

denied, and (3) in the response section, incorporate the first sentence of section (d). The Chair reiterated that the new Rule, which begins with section (c), starts with the following language: "On the record and in open court...". Mr. Howell remarked that he will defer his comments to see the context of the new rule in the later hearing phase. The Chair said that the Rule will provide that once the proceeding is in open court and on the record, the respondent can plead guilty or proceed on a not guilty statement of facts. If the respondent has already admitted the allegations, the court will ascertain to its satisfaction that there is a factual basis to the admission.

Mr. Johnson presented Rule 11-303, Waiver of Jurisdiction, for the Committee's consideration.

Rule 11-303. WAIVER OF JURISDICTION

(a) Initiating Waiver

(1) On Petition by Respondent

Except as otherwise provided in subsection (a)(3) of this Rule, within ten days after a petition alleging delinquency is served on the respondent or the appearance of counsel for the respondent, whichever is later, a respondent who is eligible for waiver under Code, Courts Article, §3-817 (a) may file a waiver petition requesting the court to waive its exclusive jurisdiction so that the respondent may be tried in a court exercising criminal jurisdiction. The waiver petition shall set forth the respondent's eligibility for waiver and shall state the reasons why the respondent requests the waiver.

(2) On Petition by State's Attorney

The State's Attorney may file a waiver petition requesting the court to waive its exclusive jurisdiction over a respondent alleged to be delinquent. The waiver petition shall:

(A) be filed not later than ten days before the first scheduled adjudicatory hearing, except as otherwise provided in subsection (a)(3) of this Rule;

(B) set forth the respondent's eligibility for waiver under Code, Courts Article, §3-817 (a); and

(C) state the reasons why the State's Attorney requests the waiver, with particular reference to the factors required to be considered by the court under Code, Courts Article, §3-817 (c) and (d).

Cross reference: For an adult alleged to have committed a delinquent act while a child, see Code, Courts Article, §3-807.

(3) If Subsequent Action Filed

The court may for good cause shown waive the time requirements set forth in subsections (a)(1) and (a)(2) of this Rule if, prior to the commencement of the adjudicatory hearing, the State files against the respondent (A) a subsequent petition alleging delinquency and a timely filed waiver petition in that action or (B) a charging document in a criminal case.

(b) Investigation

Upon the filing of a waiver petition, the court shall order the Department of Juvenile Justice to make a waiver investigation. The report of the waiver investigation shall include all social records that are to be made available to the court at the waiver hearing. At least five days before

the hearing, the Department of Juvenile Justice shall file the report with the clerk, with sufficient copies for all parties. The clerk shall make a copy of the report available to counsel for each party and to each unrepresented party.

Cross reference: See Rule 1-203 for computation of time periods of seven days or less.

(c) Hearing

(1) Hearing Required--Exceptions

Except as provided by sections (e) and (f) of this Rule, the court may not waive its jurisdiction without first conducting a waiver hearing.

(2) Time of Hearing

The hearing shall take place after notice has been given pursuant to Rule 11-308 and before an adjudicatory hearing is held.

Cross reference: Code, Courts Article, §3-815 (d)(7)(i).

(3) Purpose of Hearing

A waiver hearing is for the sole purpose of determining whether the court should waive its jurisdiction. The court shall assume, for purposes of that determination, that the respondent committed the delinquent act or crime alleged in the juvenile petition.

(4) Use of Report at Hearing

The report of the waiver investigation is admissible as evidence at the waiver hearing. Counsel or an unrepresented party has the right to examine and obtain a copy of the report from the clerk before its presentation to the court and to present evidence concerning it.

Cross reference: Code, Courts Article, §3-818.

(d) Considerations in Determining Waiver

In determining whether to waive its jurisdiction, the court shall comply with the provisions of Code, Courts Article, §3-817 (c) and (d). In the interest of justice, the court may decline to require strict application of the rules in Title 5, except those relating to

the competency of witnesses.

(e) Summary Waiver

If the court has once waived its jurisdiction with respect to a respondent who again comes before the court on a petition alleging delinquency, the court, on its own motion or on a waiver petition filed by the State's Attorney or the respondent, may waive its jurisdiction in the subsequent proceeding after a summary hearing.

Cross reference: For due process requirements in summary waiver proceedings, see In re Michael W., 53 Md.App. 271 (1982).

(f) Adult Respondent

Jurisdiction over an adult respondent charged under Code, Courts Article, §3-831 shall be waived by the court upon the motion of the State's Attorney or the adult respondent. Upon a determination that charges against the adult respondent arising out of the same incident are pending in the criminal court, the court may waive jurisdiction.

(g) Order

(1) Jurisdiction Waived

If the court concludes that its jurisdiction should be waived, it shall:

(A) state the grounds for its decision on the record or in a written memorandum filed with the clerk.

(B) enter an order:

(i) waiving its jurisdiction and ordering the respondent held for trial under the appropriate criminal procedure;

(ii) placing the respondent in the custody of the sheriff or other appropriate

officer in an adult detention facility pending a pretrial release hearing pursuant to Rule 4-222.

(2) Petition as a Charging Document Pending Bail Hearing

The petition alleging delinquency shall be considered a charging document for the purpose of detaining the respondent pending a bail hearing.

(3) True Copies to Be Furnished Appropriate Officer

A true copy of the petition alleging delinquency and of the court's signed order shall be furnished forthwith by the clerk to the appropriate officer pending a bail hearing.
Source: This Rule is derived from former Rule 913.

Rule 11-303 was accompanied by the following Reporter's Note.

This Rule is derived from former Rule 913 but makes some significant changes.

Subsection a 1 of the current rule, providing for waiver upon the court's own initiative, is recommended for deletion. Although the Committee was not unanimous, the majority felt that waiver upon the court's own initiative rarely happened in practice, and that the current rule invited the court to prejudge the matter.

Subsection (a)(1) is new. It permits an eligible respondent to request waiver.

Subsection (a)(2) is essentially the current Rule except that a time limit for filing the waiver petition is imposed. It is not believed to be unduly burdensome.

Subsection (a)(3) is new. It allows the

court, in appropriate cases, to waive the time requirements for filing a waiver petition if a subsequent charging document in a criminal case or juvenile petition alleging delinquency is filed against the respondent.

Section (b) incorporates the substance of Rule 913 b with three changes. The first sentence now makes clear that the Department of Juvenile Justice is the entity that performs the waiver investigation. The third sentence provides that copies will also be served on unrepresented parties, and expands, from two to five days before the hearing, the time by which the copy of the report must be made available to the parties.

Section (c) incorporates the substance of Rule 913 c with style changes, and the addition of a cross reference to Code, Courts Article, §3-815 (d)(7)(i) and the addition of subsection (c)(4). Subsection (c)(4) is based on Code, Courts Article, §3-818, with the addition of "an unrepresented party" having the right to examine and obtain a copy of the report.

Section (d) incorporates the substance of Rule 913 d.

Section (e) is based on Rule 913 e but incorporates the concept that due process requirements still must be observed. For this reason the term "summary hearing" is used instead of "summary review," the statutory term.

Section (f) incorporates the substance of Rule 913 f. The Committee believes that, absent legislative indication to the contrary, jurisdiction over an adult charged under the compulsory school attendance laws was not waivable.

Section (g) incorporates the substance of Rule 913 g with style changes. The Committee note following Rule 913 is obsolete; orders waiving jurisdiction are interlocutory and non-appealable.

Mr. Johnson explained that the Rule pertains to waiver from the juvenile court to the circuit court. Subsection (a)(2) contains the criteria necessary for a waiver petition filed by the State's Attorney. Judge Vaughan noted that the Rule also covers waiver to the District Court. The Reporter noted that no changes had been made to this Rule when it was last considered. Master Wolfe commented that the Rule has an impact on late filings and detentions. Subsection (a)(1) provides for a waiver to be filed within ten days after a petition alleging delinquency is served on the respondent or after the appearance of counsel for respondent, whichever is later. In Anne Arundel County, the appearance of counsel can happen the day before the scheduled adjudication. What does this do to a detention of 30 days? At the end of the 30 days, there is a review. An attorney may enter an appearance and request a waiver. Then the juvenile can only be detained on a different set of criteria and different time limits. The potential for delay exists.

The Chair asked about a respondent choosing to be tried in circuit court. Master Wolfe replied that some respondents want to go to criminal court, because they have a better chance as a youthful first offender in the criminal system. Judge Kaplan added that this is true for children from other jurisdictions. The Chair noted that implicit in the statute is the idea that a child may be so bad that the juvenile system is not appropriate for that child.

The Chair questioned whether there should be a time limit

change in the Rule. Master Wolfe said that she was reluctant to recommend that. Juvenile time limits tend to be short. The statute did not anticipate the juvenile asking for a waiver. At the end of the 30 days of detention, if the juvenile files a request for waiver -- what happens to the detention? A waiver hearing may be scheduled well past the detention period. Judge Johnson commented that the juvenile will be re-detained. Judge Kaplan observed that the juvenile caused the extension. The Chair said that there is a possible argument that the detention cannot continue. He questioned whether a specific provision should be added to the Rule to clarify this issue.

Master Wolfe pointed out that the current rules provide that if the State does not file quickly, the child is released. Mr. Karceski commented that defendants typically seek delays. Filing on the last day is a problem with the system. This is similar to requesting a jury trial which is a tactic that was formerly used to cause delays. The Chair suggested that the following language could be added to section (b): "The court shall determine whether the respondent should be detained pending a hearing on the petition." Mr. Johnson expressed the view that section (c) should be changed.

The Chair suggested that the following language could be added to subsection (c)(2): "Unless otherwise ordered by the court, a respondent who is detained at the time a waiver petition is filed, shall remain in detention." Mr. Johnson commented that this would

trump the statute. Mr. Brault remarked that if the waiver issue is part of the adjudicatory hearing, the statute provided for the court to order 30 days of detention. Master Sparrough pointed out that waiver has to be resolved prior to the adjudicatory hearing. The Chair said that the adjudicatory hearing would be postponed until the waiver hearing takes place. Mr. Fishkin noted that there may be no adjudicatory hearing, and the court has the power to detain the juvenile for 14 days and renew the detention.

Master Wolfe observed that there is a different set of standards for an initial detention. The Chair suggested that a cross reference, which would read "Detention of a respondent who files a petition for waiver shall be governed by Code, Courts Article, §3-815 (b)", should be added to the end of subsection (a)(1). Judge Vaughan inquired where reverse waiver is in the Rules. Mr. Johnson answered that it is in Rules 4-251, 4-252, and 11-204. Mr. Sykes asked if Code, Courts Article, §3-815 (b) has a time limit as to when the hearing on waiver will be held. Some of the time limits in the statute could be incorporated into the Rule.

Judge Kaplan suggested that a period of time before the adjudicatory hearing could be specified in the Rule. Mr. Sykes pointed out that there may never be an adjudicatory hearing. Master Sparrough suggested that a time limit be put into the Rule. She proposed a waiver hearing within 30 days of filing. Mr. Sykes cautioned that unless there is periodic revisitation, someone could

sit in detention indefinitely. He proposed that the Rule provide that unless the court orders otherwise, a hearing shall be held within 15 days. Mr. Johnson suggested that the time period be within 30 days after notice has been given. Judge Johnson suggested that the time frame be as soon as possible after the report is done by the Department of Juvenile Justice (DJJ). Judge Kaplan suggested that the large jurisdictions should be queried as to the time periods for reports to be done by DJJ. Mr. Fontaine, of the DJJ, said that the masters would have a better idea of the time frame. Master Casey stated that in Baltimore City, the reports are completed within 21 through 30 days.

The Chair suggested that a 60-day time limit could be put into the Rule. The language "unless the court orders otherwise" would protect the unusual situation. A prosecutor could file a petition for waiver, but not be able to make the case for it, and the master would not be able to detain the juvenile. The proposal would allow the master to detain the juvenile for 60 days. Mr. Johnson commented that subsection (c)(2) could provide that unless the court orders otherwise, a hearing pursuant to Rule 11-308 shall take place within 60 days. Master Casey suggested that the time limit in subsection (c)(2) be 30 days to mirror the statute. Mr. Fishkin observed that increasing detention times could be a problem, since it would be trumping the statute. Master Wolfe had made the point that 14-day extensions of the detention protect the child. Currently, the

State's Attorney can file a waiver petition any time before the adjudicatory hearing. The court has to wrestle with the detention question and can detain the respondent for 14 days. If the respondent does not want the waiver, the case comes back for a reconsideration of the detention question. The current statute covers this. Mr. Fishkin expressed the concern about having a long time frame and a longer detention period.

The Chair commented that if someone filed a petition to cause delay, and the court were to resolve it within 60 days, this would result in one less hearing. Otherwise, the court has to look at the case every 14 days, which is a waste of time. Mr. Fishkin remarked that the DJJ had advocated a change in the statute to shorten the detention time and had told the legislature that the DJJ can do its report within 14 days. The Chair said that if the Rule provides that if the hearing takes place within 30 days after the waiver petition has been filed, it would resolve the detention issue and provide a safeguard for the lost person. Judge Johnson observed that if the person's case is reviewed every 14 days, he or she will not get lost. The Chair reiterated his position that a review every 14 days is a waste of time.

Mr. Johnson suggested that the Rule could provide for another 30-day time period to be added onto the first 30-day period. The Chair added that the court would have to order the second 30-day period. Master Sparrough explained that the time periods necessary

could be easily figured out. If the respondent is a child the court already knows, there will already be a social history on file. If the court does not know the respondent, it may take 60 days to get information through the Interstate Compact. The Reporter pointed out that the statute provides 30 days. The Chair said that the Rule should provide for a 30-day time period unless the court orders otherwise. The prosecutor can explain the need for further time. Mr. Johnson moved to change subsection (c)(2) to provide that the hearing is to take place within 30 days after the waiver petition has been filed, unless the court orders otherwise. The motion was seconded, and it passed on a vote of seven in favor, four opposed.

Mr. Johnson told the Committee that the Vice Chair had redrafted Rule 11-302 based on the recommendations made earlier at the meeting. Copies of the revisions made by the Vice Chair were distributed. Mr. Johnson presented revised Rule 11-302, Response to Petition, for the Committee's consideration.

Rule 11-302. RESPONSE TO PETITION

(a) Generally

(1) Respondent

The respondent may file a written response to the petition that admits or denies all or any facts alleged in the petition. Any allegation not admitted is deemed denied.

(2) Local Department of Social Services

If the local Department of Social

> Services is served with a directive to respond to a petition pursuant to Rule 11-102 (c)(2)(H), the local department shall be added as a party and shall respond to the petition within the time specified in the summons.
>
> (b) Withdrawal of Admission
>
> At any time before disposition, the court may permit a respondent to withdraw an admission when the withdrawal serves the interest of justice.

Mr. Sykes noted that the Rule should pertain to any party served with a summons, and not simply the respondent. The Reporter pointed out that the word "party" is defined by statute. In place of the word "respondent", the following language could be substituted: "any party served with a petition." The Committee agreed by consensus to this change.

Mr. Howell observed that subsection (a)(1) has been collapsed with section (b) of the version of the Rule in the package. For clarity, the following language could be added to subsection (a)(1) of the Vice Chair's draft: "If no response is filed, the petition is deemed to be denied." Mr. Johnson said that this has already been stated. Mr. Howell responded that the provision is not as clear without the proposed addition. The Reporter commented that pro se litigants may need this language.

The Chair suggested that the second sentence of subsection (a)(1) could be, "Any allegation not admitted in a written response is deemed denied." The Committee agreed by consensus to this change.

Mr. Johnson said that the Vice Chair had also drafted a new Rule, Admissions in Open Court, which he presented for the Committee's consideration.

Rule 11-[?]. ADMISSIONS IN OPEN COURT

(a) Generally

If a respondent in open court and on the record admits the allegations of the petition or indicates an intention not to deny the allegations, the court shall advise the respondent of the nature and possible consequences of the action or intended action. The court shall neither encourage nor discourage the respondent with respect to the action or intended action, but shall ascertain to its satisfaction that the respondent understands the nature and possible consequences of admitting or failing to deny the allegations of the petition, that the respondent takes that action knowingly and voluntarily, and that there is a factual basis for the admission.

(b) Withdrawal of Admission

At any time before disposition, the court may permit a respondent to withdraw an admission when the withdrawal serves the interest of justice. After disposition, on motion filed within 10 days, the court may set aside its order and permit the respondent to withdraw an admission if the respondent establishes that the requirements of section (a) of this Rule were not met.

Ms. Lipkin suggested that the word "respondent" should be changed to the word "party." Master Wolfe remarked that the respondent and the parents are parties. Master Casey observed that

using the term "party" implies that the respondent can admit and the parents can deny. Mr. Sykes questioned as to why this is a problem. Mr. Johnson agreed that the word "respondent" should become the word "party." The Committee agreed by consensus to this change.

Ms. Lipkin pointed out that this change would not prevent a juvenile from making an admission. Master Wolfe added that this parallels the Criminal Rules and can be used in CINA cases. Master Casey said that there are many stipulations in CINA cases. Stipulating to the facts is not an admission, but the case can still proceed. Judge Vaughan asked whether a juvenile's admission can bind parents civilly. Master Casey replied that this does happen.

The Chair suggested that section (a) of the new Rule, Admissions in Open Court, read as follows: "Whether a written response pursuant to Rule 11-302 has been filed, a party entitled to file a response may in open court and on the record admit any or all of the allegations in the petition or state an intention not to deny one or more of the allegations. The court shall neither encourage nor discourage the action or intended action, but shall advise the party of the nature and possible consequences of admitting or failing to deny. Before accepting the admission or failure to deny, the court shall ascertain to its satisfaction that the party takes that action knowingly and voluntarily, and that there is a factual basis for doing so". The Committee agreed by consensus to this suggestion.

After the lunch break, Mr. Johnson presented Rule 11-304, Transfer -- Juvenile Court to Juvenile Court, for the Committee's consideration.

Rule 11-304. TRANSFER--JUVENILE COURT TO JUVENILE COURT

(a) Applicability

This Rule applies to the transfer of proceedings from the juvenile court of one county to the juvenile court of another county in accordance with Code, Courts Article, §3-809.

(b) Order

(1) Generally

A proceeding may be transferred to the juvenile court of another county only upon written order of the transferring court in one of the forms set forth in this section.

(2) Transfer of Proceedings Alleging Child in Need of Assistance

An order of transfer of proceedings alleging a child in need of assistance shall be in substantially the following form:

☐ DISTRICT COURT OF MARYLAND FOR _____ COUNTY
IN THE
☐ CIRCUIT COURT FOR _____CITY/COUNTY

SITTING AS A JUVENILE COURT

MATTER OF CASE NO.

ORDER OF TRANSFER OF PROCEEDINGS - CINA

Upon consideration of the facts of this case and as the Respondent/Parent/Custodian live at _____ _____City/County, it is this _____ day of _____, _____,

ORDERED, that the Clerk of the Juvenile Court shall transfer the case record and all supporting documents to the Circuit/District Court for _____City/County, said transfer to be completed within five days of the date of this Order.

Within _____ days/months of the date of this transfer, the receiving Court should set the matter for:

☐ Adjudicatory hearing ☐ Disposition hearing ☐ Review

☐ Other (please specify) _____ _____.

The following have been alleged/proven in the transferring Court and should be considered by the reviewing Court:

☐ Physical Abuse ☐ Sexual abuse ☐ Neglect ☐ Abandonment

☐ Extraordinary needs of child

☐ Other (please specify) _____ _____.

Pending further proceedings, the Respondent has been:

☐ Released to the custody of his/her Parent/Guardian/Custodian _____ who resides at _____.

☐ Placed in shelter care at _____ _____ until _____.

☐ Other (please specify) _____.

Support has/has not been ordered to be paid by _____

in the amount of $_____ per _____,

payable to _____

effective _____ payable through _____

_____.

The transferring court recommends that the status of the following matters be considered on transfer status review:

☐ **the placement of the child and the stability of that placement**

☐ **legal representation of the child, other parties, and intervenors;**

☐ **other pending proceedings**

☐ **the conditions imposed and services ordered by the transferring court**

☐ **investigations and reports that have been ordered by the transferring court and who is responsible for their completion**

☐ **the availability of services in the receiving court's jurisdiction that were ordered by the transferring court**

☐ **any orders for child support, restitution, and parental restitution**

☐ **the existence of issues that were not resolved by the transferring court**

☐ **further hearing dates**

☐ **other (please specify) _____**

The names and addresses of the child's parents are: _____

_____.

The names and addresses of the child's Guardians/Custodians/ Intervenors are _____

_____.

A copy of this Order shall be delivered to the Respondent, _____

_____, the Parent/Guardian/Custodian

_____ and counsel for the Respondent, _____.

Recommended by:

_____
Master

_____
Judge

(3) Transfer of Other Proceedings

An order of transfer of proceedings other than proceedings alleging a child in need of assistance shall be in substantially the following form:

☐ DISTRICT COURT OF MARYLAND FOR _____ COUNTY
IN THE
☐ CIRCUIT COURT FOR _____CITY/COUNTY

SITTING AS A JUVENILE COURT

MATTER OF CASE NO.

ORDER OF TRANSFER OF PROCEEDINGS - DELINQUENCY

AND OTHER CASES (NON-CINA)

Upon consideration of the facts of this case and as the Respondent/Parent/Custodian live at _____ _____City/County, it is this _____ day of _____, 19 _____,

ORDERED, that the Clerk of the Juvenile Court shall transfer the case record and all supporting documents to the Circuit/District Court for _____City/County, said transfer to be completed within five days of the date of this Order.

This case is being transferred for:

☐ Adjudication

☐ Disposition, as a finding of committed the acts in paragraphs/ counts _____ was made after a trial/plea and a pre-disposition report has (not) been ordered.

☐ Further action as deemed appropriate by the receiving Court, as the Respondent has been adjudicated ☐ delinquent ☐ other (please specify) _____ after a finding of committed the acts in paragraphs/counts _____ and disposition has been made resulting in the Respondent being:

☐ Placed on probation.

☐ Committed to _____ _____.

☐ Ordered to make restitution to _____ _____ in the amount of $_____

at the rate of _____ payable through

_____

effective _____.

☐ Other (please specify) _____

_____.

Pending further proceedings, the Respondent has been:

☐ Released to the custody of his/her Parent/Guardian/Custodian

_____

who resides at _____.

☐ Placed in detention/shelter care at _____

_____ until _____.

☐ Committed to _____.

☐ Other (please specify) _____.

The transferring court recommends that the status of following matters be considered on transfer status review:

☐ **the placement of the child and the stability of that placement**

☐ **legal representation of the child, other parties, and intervenors;**

☐ **other pending proceedings**

☐ **the conditions imposed and services ordered by the transferring court**

☐ **investigations and reports that have been ordered by the transferring court and who is responsible for their completion**

☐ **the availability of services in the receiving court's jurisdiction that were ordered by the transferring court**

☐ **any orders for child support, restitution, and parental restitution**

☐ **the existence of issues that were not resolved by the transferring court**

☐ **further hearing dates**

☐ **other (please specify) _____**

The names and addresses of the child's Parents/Guardians/ Custodians are: _____

_____.

A copy of this Order shall be delivered to the Respondent, _____ _____, the Parent/Guardian/Custodian _____ counsel for the Respondent, _____, and the Department of Juvenile Justice **in _____ (Receiving) County.**

Recommended by:

_____
Master

_____
Judge

(c) Duties of Clerk of Transferring Court

Not later than five days after entry of

the Order of Transfer of Proceedings, the clerk of the transferring court shall transmit by hand-delivery or by certified mail, return receipt requested, to the receiving court two copies of the Order of Transfer together with every order, document, social history, and record on file pertaining to the case. If the clerk has not received an acknowledgement of the transfer from the receiving court within ten days after initiating the transfer, the clerk shall contact the receiving court and make diligent efforts to locate the file.

(d) Duties of Clerk of Receiving Court

Upon receipt of transferred proceedings, the clerk of the receiving court shall docket the case and acknowledge receipt by making a notation of the date of receipt on a copy of the Order of Transfer and mailing that copy back to the clerk of the transferring court. The clerk shall also notify the following persons of the transfer of the proceedings and of the case number in the receiving court: (1) all parties and intervenors, or their attorneys, (2) if the petition alleges that a child is in need of assistance, the local Department of Social Services and the local provider of legal services that represents children in such cases, and (3) if the allegations of the petition are other than that a child is in need of assistance, the local State's Attorney, the local Office of the Public Defender if the child was represented by the Public Defender in the transferring court, and the local office of the Department of Juvenile Justice.

(e) Transfer Status Review

Not later than ten days after receipt of proceedings transferred to it pursuant to this Rule, the receiving court shall make a transfer status review of the file. The court shall enter a notation on the docket and, if appropriate file a memorandum, that recites any decisions made as a result of the review.

(f) Effect of Transfer

Unless modified or rescinded by the receiving court, all outstanding orders of the transferring court shall remain in effect after proceedings have been docketed in the receiving court, except that the receiving court shall have the sole jurisdiction to enforce, modify, or rescind the orders after the case has been docketed.

Source: This Rule is new.

Rule 11-304 was accompanied by the following Reporter's Note.

This Rule is new. It provides a uniform procedure for the transfer of actions from one juvenile court to another, pursuant to Code, Courts Article, §3-809.

Section (b) sets forth two mandatory forms of Order of Transfer of Proceedings -- one for use is cases alleging a child in need of assistance (CINA) and the other for use in non-CINA cases. The two forms are based upon forms that were approved by the Juvenile Law Committee of the Maryland Judicial Conference, have been available from the Administrative Office of the Courts for several years, and are currently in use in several jurisdictions. Added to the form is a checklist of matters that the transferring court recommends for consideration by the receiving court when it makes the transfer status review required by section (e). The Committee recommends that use of the form orders be expanded to all jurisdictions.

Sections (c) and (d) impose duties and time limits upon the clerks of the transferring and receiving courts. The Committee learned of cases that remained in the transferring court for months after an order of transfer had been entered, case files that were lost during transfer, and cases that remained inactive for

> months in the receiving court after transfer. To address these problems, section (c) requires the clerk of the transferring court to transmit the file to the receiving court within five days after entry of the order of transfer. Transmission must be by hand-delivery or by certified mail, return receipt requested. The clerk of the receiving court must acknowledge receipt of the file and send notice of the transfer to all parties and intervenors in the case and to the appropriate local agencies. If the clerk of the transferring court does not receive the acknowledgement within ten days after initiating the transfer, a search for the file is begun.
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> So that a transferred case receives prompt attention, section (e) requires that the receiving court make a transfer status review of the file within ten days after it receives the case and that the receiving court make a notation on the docket and, if appropriate file a memorandum reciting the decisions made as a result of the review.
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> Section (f) provides that orders of the transferring court remain in effect unless modified or rescinded by the receiving court; however, after the case has been docketed in the receiving court, only the receiving court may modify, rescind, or enforce the orders.

Mr. Johnson explained that the Reporter had made some changes by adding two "laundry" lists of items the court should consider on transfer status review. Mr. Klein pointed out that in both lists the semicolon that appears after the category "legal representation of the child, other parties, and intervenors" should be deleted. Master Sparrough noted that this is appropriate for both CINA and delinquency cases. Master Wolfe commented that there is no need to have restitution orders listed in CINA cases. She suggested that the

language, "restitution, and parental restitution" be removed from page 59. The Committee agreed by consensus to this change. Ms. Sparrough remarked that the review is to check that the case is in order so that a hearing can be set. Master Wolfe pointed out that this review does not imply that there will be a hearing. The Chair asked the origin of the list. Master Wolfe answered that it is derived from a form distributed by the Administrative Office of the Courts, which is in use in some jurisdictions. The Rule would mandate the use of the form in all jurisdictions. Mr. Johnson noted that the substance of the form has been incorporated into the Rule. The Rules Committee had wanted the form in the Rule.

Master Wolfe said that a box needs to be added on page 58 for the permanency planning hearing as a category of hearing which the reviewing court should set in. This hearing, which is required to be scheduled, did not exist when the Rule was first drafted. The Committee agreed by consensus to add another box on page 58 labeled "Permanency Planning Hearing."

The Chair questioned whether the term "reviewing court" should be "receiving court." Master Casey pointed out that in one place in the Rule it is "receiving court." The Chair cautioned that the Rule needs to be consistent. He suggested that the term "reviewing court" be changed to "receiving court" throughout the Rule. The Committee agreed by consensus to this change.

Judge Vaughan asked why the forms are in the middle of the

Rule. The Reporter responded that the Committee decided to put mandatory forms in the text of the Rules rather than at the end. Any form that is advisory would be placed in an appendix. The Chair asked if on page 59, the phrase "transferring court recommends that the status of the following matters be considered" should be changed to "transferring court orders that the status...". Master Wolfe replied that this change should not be made, because once the case is transferred, the transferring court loses its jurisdiction.

The Chair suggested that in place of the language "on transfer status review" the language "by the receiving court" could be substituted. The Reporter noted that originally the language was "transfer status hearing", but the Rules Committee decided that there should not be a hearing. Master Casey remarked that what was contemplated was that any hearings needed as a result of the review have to be scheduled. Master Wolfe added that the purpose of the form was to deal with the lack of communication between jurisdictions. The form was designed to prompt the sending jurisdiction to give enough information for the receiving court to act on the case.

There was no discussion of Rule 11-305. Mr. Johnson presented Rule 11-306, Study and Examination, for the Committee's consideration.

Rule 11-306. STUDY AND EXAMINATION

(a) Procedures for Physical and Mental Examination

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

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

(b) Use of Report

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

(c) Admissibility of Oral Testimony

Oral testimony concerning a study or examination ordered under Code, Courts Article,

§3-818 by persons who conducted the study or examination is admissible

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

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

Source: This Rule is derived from former Rule 905.

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

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

Because there may be occasions when it is inappropriate for a party to see the evaluation report, the Subcommittee has added to subsection (a) the notion that the court may regulate by order the distribution of copies of the report. Except in the case of a disposition hearing when the respondent is in detention following an adjudicatory hearing, the Subcommittee has increased from two to five days the minimum period in advance of a hearing that counsel will have to review the reports, subpoena witnesses, and take other pre-hearing actions occasioned by the contents of the reports. The two-day time frame has been retained for distribution of reports prior to a disposition hearing if the respondent is in detention, in order to allow sufficient time for completion of reports that were ordered at the adjudicatory hearing. This shorter time

frame is needed in light of Chapter 8, Laws of 1995 (S.B. 343) that requires a disposition hearing within 14 days after the adjudicatory hearing if the child is detained.

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

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

In making this recommendation, the Subcommittee is not unmindful of concerns raised by Legal Aid Bureau, Inc. that this change could result in harm to a child, either through a resultant failure to protect a child or an inappropriate removal from the parents' care. For example, an expert who performed a court-ordered examination of an allegedly-abused child may be able to provide valuable, reliable testimony regarding the existence and cause of the child's injuries, but the expert would not be allowed to testify at the CINA adjudicatory hearing. The Subcommittee believes that the matter of the uses (and misuses) of information garnered pursuant to Code, Courts Article, §3-818 merits further study by the legislature.

Mr. Johnson pointed out that in section (a), the Subcommittee's

preference was that a person should not be placed in detention or shelter care solely for the purpose of conducting an examination. The Reporter said that the problems with the time frames in the Rule were worked out.

Mr. Becker referred to his letter of February 11, 1999 to the Chair, a copy of which letter was distributed at the meeting. (See Appendix 1). At the end of the letter regarding Rule 11-306, there is a recommendation that section (c) of the proposed Rule be replaced with section (c) of current Rule 11-105. At the adjudicatory hearing it is appropriate to hear about the parents' psychological history, any court-ordered evaluation prior to adjudication, and any testimony by psychologists which is critical to a decision in the best interest of the child. The current Rule allows this. Ms. Renne, of the Legal Aid Bureau, expressed her agreement with Mr. Becker. This can be handled by the Rules of Evidence at the adjudicatory hearing. Under the proposed Rule, a physician would not be able to testify about the nature of a broken bone injury.

Master Casey noted that the Subcommittee's concern was that there is usually no need for a court ordered examination -- the relevant evidence comes in as a matter of course. The Subcommittee felt that if the threshold cannot be met showing CINA, there should be no benefit of a court-ordered examination. Mr. Becker responded that information pertaining to a psychiatric history is privileged, but if the information is about a broken bone, the information is

accessible. If the information is obtained through a court-ordered evaluation, the privilege does not attach. The court will need the information about the parents' mental status. Ms. Renne expressed the view that section (c) is over-inclusive; it appears to include any examination conducted under Courts Article, §3-818 and is not limited to a psychiatric evaluation. Master Sparrough pointed out that §3-818 cannot be used for an adjudicatory hearing.

Ms. Renne said that the physician should be allowed to testify if no report comes in. The Chair asked if the statute covers testimony, but Mr. Johnson replied that it covers only the report. Mr. Sykes pointed out that the examination report may be deleterious, and the other side would not be able to cross-examine. Mr. Becker remarked that the courts would be denied access to information. Master Casey argued that privileged information may be circumvented by this Rule. Mr. Becker stated that there may be evidence which is potentially critical to a finding of CINA. Because of the statute making the evidence privileged, the court cannot obtain it.

The Chair commented that a parent has no obligation to say anything incriminating to the psychiatrist. Mr. Sykes pointed out that the Reporter's note to section (c) indicates that the statute does not address the admissibility of live evidence. Courts Article, §3-818 provides that the report is admissible at a waiver or disposition hearing, but the attorney for a party may challenge or impeach the findings. The Rule does not go as far as the statute.

The Chair inquired as to how subsection (c)(2) of the proposed Rule keeps out evidence. Master Wolfe explained that this provision is aimed at alleged delinquents not competent to stand trial and not necessarily at parents in a CINA proceeding. Mr. Becker referred to the case of In re Wanda B., 69 Md. App. 105 (1986) which held that there is a hearsay exception for admission of evaluative reports at disposition hearings in CINA cases. Admission of the testimony is a separate issue from the admission of the report. Ms. Renne remarked that it should be, since one can object to live testimony, and the court can rule on the objections. Not allowing live testimony ties the court's hands. It is difficult to tell the social worker that if the child goes to see the physician, any findings of abuse will not be admitted at the adjudicatory hearing.

The Chair observed that evidence which is now admitted under Rule 11-105 (c) would no longer be admitted under subsection (c)(2) of the proposed Rule. If the issue is whether the father broke the child's leg, why should the Rule provide that the testimony from the physician who examined the child cannot be admitted? This is not the same as admitting testimony from the father's psychiatrist as to what the father told the psychiatrist. The Reporter said that there is a distinction between taking the child to a physician and a court-ordered study which cannot be used at the adjudicatory hearing. The Chair suggested language could be added to the effect that no statement made to a person conducting the examination under Courts

Article, §3-818 can be offered into evidence to prove the conduct that is the subject of the statement. Ms. Renne cautioned that the Rule has to be clear as to whether or not the results of a court-ordered examination of a child by a physician may be admitted at the adjudicatory hearing.

Mr. Johnson commented that there had been enough concerns that the Subcommittee felt that a change was necessary. The Chair asked if the problem is a potential one or if it is actually taking place. Mr. Becker responded that he is not aware of any problems with the current Rule. There is no other way to get the relevant evidence. Mr. Johnson stated that the Subcommittee does not want the proposed Rule to be changed. Mr. Sykes remarked that it appears that no real problem exists except when there is a waiver. The problem arises when a waiver hearing is held before the adjudicatory hearing.

Ms. Ogletree pointed out that if children are in shelter care, and the mother has a diminished capacity, this is not available information unless a report is written. Ms. Renne suggested that subsection (c)(2) be eliminated and section (c)(2) of Rule 11-105 be substituted. The Vice Chair moved that this substitution be made, and the motion was seconded.

Mr. Hochberg asked about the order. Master Casey answered that it would be up to the master. The Chair said that the order has to comply with statutory provisions. He asked the consultants how the order should look. Mr. Klein suggested that the Rule could require

that the order expressly state that it is pursuant to the statute. Mr. Fontaine commented that the only issue is that it is unclear to the DJJ and other agencies what they are being asked to do, why, and under what authority. Mr. Johnson asked the consultants to submit language to be put into the Rule. The comments can be considered at the next Rules Committee meeting.

Mr. Karceski questioned whether the Vice Chair's motion would be applicable to only CINA cases or all adjudications. The Vice Chair replied that it would just be CINA cases. Master Wolfe noted that the Rule now covers delinquency and all other cases. The Chair stated that the consultants are to submit proposed revisions to Rule 11-306 within two weeks. The Rule will be revisited in March. The Reporter said that the next meeting is March 12, 1999, and notice will be sent to all the consultants.

The Chair adjourned the meeting.