COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Room 1100B of the People's Resource Center, 100 Community Place, Crownsville, Maryland on September 7, 2001.

Members present:

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

Lowell R. Bowen, Esq.
Robert L. Dean, Esq.
Hon. Ellen M. Heller
Bayard Z. Hochberg, Esq.
Hon. G. R. Hovey Johnson
Hon. Joseph H. H. Kaplan
Richard M. Karceski, Esq.
Robert D. Klein, Esq.
Joyce H. Knox, Esq.
Hon. William D. Missouri
Anne C. Ogletree, Esq.
Debbie L. Potter, Esq.
Larry W. Shipley, Clerk
Sen. Norman R. Stone, Jr.
Melvin J. Sykes, Esq.
Roger W. Titus, Esq.
Del. Joseph F. Vallario, Jr.
Robert A. Zarnoch, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Mary Pizzo, Esq., Office of the Public Defender
Robert T. Fontaine, Esq., Office of the Attorney General
Rhonda B. Lipkin, Esq., Legal Aid Bureau, Inc.
Master James P. Casey
Patricia Platt, Chief Clerk, District Court of Maryland
Tom Mostowy, Esq., District Court of Maryland
Master Erica Wolfe, Anne Arundel County
Andrea Khoury, Esq., Legal Aid Bureau, Inc.
Hon. Audrey J. S. Carrion, Circuit Court for Baltimore City
Gustava Taler, Esq.
Ricardo A. Flores, Esq., Public Justice Center
Deborah Unitus, Administrative Office of the Courts

The Vice Chair convened the meeting, explaining that the Chair was hearing a case in the Court of Special Appeals and

would be a few minutes late. The Vice Chair asked if there were any additions or corrections to the May 18, 2001 and June 22, 2001 Rules Committee meetings. There being none, Mr. Klein moved to adopt the minutes as presented, the motion was seconded, and it passed unanimously.

The Reporter announced that the October, 2001 meeting will be held at the Wakefield Valley Golf and Conference Center in Westminster, Maryland, because the conference rooms are not available in the People's Resource Center. The Committee met at Wakefield Valley last October, so there will be no problem in setting up the meeting room appropriately. The Vice Chair asked for the Committee's input as to whether overnight meetings should be reinstated. The Reporter noted that if an overnight meeting were planned, the previous month's meeting could be canceled, so that the time commitment to Rules Committee business is the same. Mr. Hochberg suggested that a proposal as to overnight meetings could be sent out, and the members of the Committee could respond after looking at their calendars.

The Reporter said that the feedback of the Committee as to the concept of overnight meetings and locations for one-day meetings is needed. Mr. Titus suggested that if overnight meetings were reinstated, members of the Court of Appeals could be invited occasionally. The Vice Chair agreed. Judge Heller pointed out that attendance at a Saturday meeting is a religious issue for some members. As to the location of one-day meetings, the Vice Chair commented that the Committee members have made a

commitment to the Court of Appeals to attend Committee meetings, and they will attend the meetings wherever the location.

The Vice Chair told the Committee that the Reporter had drafted a letter to two legislators, the Honorable Walter M. Baker and the Honorable Joseph F. Vallario, Jr., a copy of which letter was distributed at today's meeting. (See Appendix 1). The letter incorporates decisions made at the May and June 2001 Rules Committee meetings to eliminate the concept of alternate jurors. The Vice Chair asked the Committee to look over the letter, so that it could be discussed later in the meeting.

Agenda Item 1. Reconsideration of proposed amendments to Rule 2-124 (Process–Persons to be Served) and Rule 3-124 (Process–Persons to be Served)

Mr. Titus presented Rules 2-124 and 3-124, Process--Persons to be Served, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-124 to add certain provisions concerning Service on governmental entities, to delete a certain cross reference, to add a Committee note following section (a), to revise a certain Committee note, and to make stylistic changes, as follows:

Rule 2-124. PROCESS — PERSONS TO BE SERVED

(a) Statutes Not Abrogated

The provisions of this Rule do not abrogate any statute permitting or requiring service on a person.

Committee note: Examples of statutes permitting or requiring service on a person include the Maryland Tort Claims Act, Code, State Government Article, §12-108 (a) (service of a complaint is sufficient only when made upon the Treasurer of the State); Code, Insurance Article, §4-107 (service on certain insurance companies is effected by serving the Insurance Commissioner); Code, Business Regulation Article, §6-202 (service on certain nonresident charitable organizations is effected by serving the Secretary of State); and Code, Courts Article, §3-405 (notice to the Attorney General is required immediately after a declaratory judgment action is filed alleging that a statute, municipal or county ordinance, or franchise is unconstitutional).

[(a)**]** (b) Individual

Service is made upon an individual by serving the individual or an agent authorized by appointment or by law to receive service of process for the individual.

[(b)**]** (c) Individual Under Disability

Service is made upon an individual under disability by serving the individual and, in addition, by serving the parent, guardian, or other person having care or custody of the person or estate of the individual under disability.

[(c)**]** (d) Corporation

Service is made upon a corporation, incorporated association, or joint stock company by serving its resident agent, president, secretary, or treasurer. If the

corporation, incorporated association, or joint stock company has no resident agent or if a good faith attempt to serve the resident agent, president, secretary, or treasurer has failed, service may be made by serving the manager, any director, vice president, assistant secretary, assistant treasurer, or other person expressly or impliedly authorized to receive service of process.

[(d)**]** (e) General Partnership

Service made upon a general partnership sued in its group name in an action pursuant to Code, Courts Article, §6-406 by serving any general partner.

[(e)**]** (f) Limited Partnership

Service is made upon a limited partnership by serving its resident agent. If the limited partnership has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any general partner or other person expressly or impliedly authorized to receive service of process.

[(f)**]** (g) Limited Liability Partnership

Service is made upon a limited liability partnership by serving its resident agent. If the limited liability partnership has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any other person expressly or impliedly authorized to receive service of process.

[(g)**]** (h) Limited Liability Company

Service is made upon a limited liability company by serving its resident agent. If the limited liability company has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any member or other person expressly or impliedly authorized to receive service of process.

[(h)**]** (i) Unincorporated Association

Service is made upon an unincorporated association sued in its group name pursuant to Code, Courts Article, §6-406 by serving any officer or member of its governing board. If there are no officers or if the association has no governing board, service may be made upon any member of the association.

[(i)**]** (j) State of Maryland

Service is made upon the State of Maryland by serving the Attorney General or an individual designated by the Attorney General in a writing filed with the Clerk of the Court of Appeals and by serving the Secretary of State. In any action attacking the validity of an order of an officer or agency of this State not made a party, the officer or agency shall also be served.

[(j)**]** (k) Officer or Agency of the State of Maryland

[Service is made upon an officer or agency of the State of Maryland, including a government corporation, by serving the officer or agency.**]**

(1) Officer or Agency Represented by Attorney General

Service is made on an officer or agency of the State of Maryland represented by the Attorney General by serving the Attorney General, or an individual designated by the Attorney General, in a writing filed with the Clerk of the Court of Appeals and by serving the Secretary of State.

(2) Officer or Agency Not Represented by Attorney General

Service is made on an officer or agency of the State of Maryland not represented by the Attorney General by serving the resident agent designated by the agency. If the officer or agency has no

resident agent or if a good faith effort to serve the resident agent has failed, service may be made by serving the officer or the chief executive officer of the agency.

(l) Local Entity

Service is made on a county, municipal corporation, bicounty or multicounty agency, public authority, special taxing district, or other political subdivision or unit of a political subdivision of the State by serving the resident agent designated by the local entity. If the local entity has no resident agent or if a good faith effort to serve the resident agent has failed, service may be made by serving the chief executive officer or, if there is no chief executive officer, by serving the presiding officer of the governing body of the local entity.

[(k)**]** (m) United States

Service is made upon the United States by serving the United States Attorney for the District of Maryland or an individual designated by the United States Attorney in a writing filed with the clerk of the court and by serving the Attorney General of the United States at Washington, District of Columbia. In any action attacking the validity of an order of an officer or agency of the United States not made a party, the officer or agency shall also be served.

[(l)**]** (n) Officer or Agency of the United States

Service is made upon an officer or agency of the United States, including a government corporation, by serving the United States and by serving the officer or agency.

[(m)**]** (o) Substituted Service upon State Department of Assessments and Taxation

Service may be made upon a corporation, limited partnership, limited liability partnership, limited liability company, or other entity required by statute

of this State to have a resident agent by serving two copies of the summons, complaint, and all other papers filed with it, together with the requisite fee, upon the State Department of Assessments and Taxation if (i) the entity has no resident agent; (ii) the resident agent is dead or is no longer at the address for service of process maintained with the State Department of Assessments and Taxation; or (iii) two good faith attempts on separate days to serve the resident agent have failed.

[(n) Statutes Not Abrogated

The provisions of this Rule do not abrogate any statute permitting or requiring service on a person.**]**

Committee note: **[**Although this Rule does not preclude service upon a person who is also the plaintiff where the plaintiff enjoys a dual status, the validity of such service in giving notice to the defendant entity is subject to appropriate due process constraints.**]** If a person served pursuant to this Rule is a plaintiff as well as a person upon whom service on a defendant entity is authorized by the Rule, the validity of service on the plaintiff to give notice to the defendant entity is subject to appropriate due process constraints.

Source: This Rule is derived as follows:
Section **[**(n)**]** (a) is new and replaces former Rules 105 c and 106 f.
Section **[**(a)**]** (b) is derived from former Rule 104 b 1 (i) and (ii).
Section **[**(b)**]** (c) is derived from former Rule 119.
Section **[**(c)**]** (d) is derived from former Rule 106 b.
Section **[**(d)**]** (e) is new.
Section **[**(e)**]** (f) is new.
Section **[**(f)**]** (g) is new.
Section **[**(g)**]** (h) is new.
Section **[**(h)**]** (i) is new.
Section **[**(i)**]** (j) is new.
Section **[**(j)**]** (k) is new.
Section (l) is new.

Section **[**(k)**]** (m) is derived from former Rule 108 a.

Section **[**(l)**]** (n) derived from former Rule 108 b.

Section **[**(m)**]** (o) is new, but is derived in part from former section (c) and former Rule 106 e 1 and 2.

Rule 2-124 was accompanied by the following Reporter's Note.

Proposed amendments to Rules 2-124 and 3-124 are currently pending before the Court of Appeals, having been transmitted to the Court by the 149th Report of the Rules Committee. The proposed amendments add provisions concerning service on governmental entities, in light of Chapter 608, Acts of 2000 (HB 481), effective July 1, 2001. Additionally, current section (n) is moved to the beginning of the Rule, the substance of the cross reference that follows current section (j) is transferred to a Committee note following section (a) and is expanded, the Committee note at the end of the Rule is rewritten, and other stylistic changes are made.

Chapter 506, Acts of 2001 (HB 854), requires local entities and state agencies not represented by the Attorney General to designate a resident agent. Proposed subsection (k)(2) and section (l) now pending before the Court are further modified to reflect that service is to be made on the resident agent.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE--DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION

AND PROCESS

AMEND Rule 3-124 to add certain provisions concerning service on governmental entities, to delete a certain cross reference, to add a Committee note following section (a), to revise a certain Committee note, and to make stylistic changes, as follows:

Rule 3-124. PROCESS – PERSONS TO BE SERVED

(a) Statutes Not Abrogated

The provisions of this Rule do not abrogate any statute permitting or requiring service on a person.

Committee note: Examples of statutes permitting or requiring service on a person include the Maryland Tort Claims Act, Code, State Government Article, §12-108 (a) (service of a complaint is sufficient only when made upon the Treasurer of the State); Code, Insurance Article, §4-107 (service on certain insurance companies is effected by serving the Insurance Commissioner); Code, Business Regulation Article, §6-202 (service on certain nonresident charitable organizations is effected by serving the Secretary of State); and Code, Courts Article, §3-405 (notice to the Attorney General is required immediately after a declaratory judgment action is filed alleging that a statute, municipal or county ordinance, or franchise is unconstitutional).

[(a)**]** (b) Individual

Service is made upon an individual by serving the individual or an agent authorized

by appointment or by law to receive service of process for the individual.

[(b)**]** (c) Individual Under Disability

Service is made upon an individual under disability by serving the individual and, in addition, by serving the parent, guardian, or other person having care or custody of the person or estate of the individual under disability.

[(c)**]** (d) Corporation

Service is made upon a corporation, incorporated association, or joint stock company by serving its resident agent, president, secretary, or treasurer. If the corporation, incorporated association, or joint stock company has no resident agent or if a good faith attempt to serve the resident agent, president, secretary, or treasurer has failed, service may be made by serving the manager, any director, vice president, assistant secretary, assistant treasurer, or other person expressly or impliedly authorized to receive service of process.

[(d)**]** (e) General Partnership

Service made upon a general partnership sued in its group name in an action pursuant to Code, Courts Article, §6-406 by serving any general partner.

[(e)**]** (f) Limited Partnership

Service is made upon a limited partnership by serving its resident agent. If the limited partnership has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any general partner or other person expressly or impliedly authorized to receive service of process.

[(f)**]** (g) Limited Liability Partnership

Service is made upon a limited liability partnership by serving its resident

agent. If the limited liability partnership has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any other person expressly or impliedly authorized to receive service of process.

[(g)**]** (h) Limited Liability Company

Service is made upon a limited liability company by serving its resident agent. If the limited liability company has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any member or other person expressly or impliedly authorized to receive service of process.

[(h)**]** (i) Unincorporated Association

Service is made upon an unincorporated association sued in its group name pursuant to Code, Courts Article, §6-406 by serving any officer or member of its governing board. If there are no officers or if the association has no governing board, service may be made upon any member of the association.

[(i)**]** (j) State of Maryland

Service is made upon the State of Maryland by serving the Attorney General or an individual designated by the Attorney General in a writing filed with the Clerk of the Court of Appeals and by serving the Secretary of State. In any action attacking the validity of an order of an officer or agency of this State not made a party, the officer or agency shall also be served.

[(j)**]** (k) Officer or Agency of the State of Maryland

[Service is made upon an officer or agency of the State of Maryland, including a government corporation, by serving the officer or agency.**]**

(1) Officer or Agency Represented by

Attorney General

Service is made on an officer or agency of the State of Maryland represented by the Attorney General by serving the Attorney General, or an individual designated by the Attorney General, in a writing filed with the Clerk of the Court of Appeals and by serving the Secretary of State.

(2) Officer or Agency Not Represented by Attorney General

Service is made on an officer or agency of the State of Maryland not represented by the Attorney General by serving the resident agent designated by the agency. If the offer or agency has no resident agent or if a good faith effort to serve the resident agency has filed, service may be made by serving the officer or the chief executive officer of the agency.

(l) Local Entity

Service is made on a county, municipal corporation, bicounty or multicounty agency, public authority, special taxing district, or other political subdivision or unit of a political subdivision of the State by serving the resident agent designated by the local entity. If the local entity has no resident agent or if a good faith effort to serve the resident agent has failed, service may be made by serving the chief executive officer or, if there is no chief executive officer, by serving the presiding officer of the governing body of the local entity.

[(k)**]** (m) United States

Service is made upon the United States by serving the United States Attorney for the District of Maryland or an individual designated by the United States Attorney in a writing filed with the clerk of the court and by serving the Attorney General of the United States at Washington, District of Columbia. In any action attacking the validity of an order of an officer or agency of the United States not made a party, the officer or

agency shall also be served.

[(l)**]** (n) Officer or Agency of the United States

Service is made upon an officer or agency of the United States, including a government corporation, by serving the United States and by serving the officer or agency.

[(m)**]** (o) Substituted Service upon State Department of Assessments and Taxation

Service may be made upon a corporation, limited partnership, limited liability partnership, limited liability company, or other entity required by statute of this State to have a resident agent by serving two copies of the summons, complaint, and all other papers filed with it, together with the requisite fee, upon the State Department of Assessments and Taxation if (i) the entity has no resident agent; (ii) the resident agent is dead or is no longer at the address for service of process maintained with the State Department of Assessments and Taxation; or (iii) two good faith attempts on separate days to serve the resident agent have failed.

[(n) Statutes Not Abrogated

[The provisions of this Rule do not abrogate any statute permitting or requiring service on a person.**]**

Committee note: **[**Although this Rule does not preclude service upon a person who is also the plaintiff where the plaintiff enjoys a dual status, the validity of such service in giving notice to the defendant entity is subject to appropriate due process constraints.**]** If a person served pursuant to this Rule is a plaintiff as well as a person upon whom service on a defendant entity is authorized by the Rule, the validity of service on the plaintiff to give notice to the defendant entity is subject to appropriate due process constraints.

Source: This Rule is derived as follows:

Section [(n)] (a) is new and replaces former M.D.R. 106 f.
Section [(a)] (b) is derived from former M.D.R. 104 b 1 (i) and (ii).
Section [(b)] (c) is derived from former M.D.R. 119.
Section [(c)] (d) is derived from former M.D.R. 106 b.
Section [(d)] (e) is new.
Section [(e)] (f) is new.
Section [(f)] (g) is new.
Section [(g)] (h) is new.
Section [(h)] (i) is new.
Section [(i)] (j) is new.
Section [(j)] (k) is new.
Section (l) is new.
Section [(k)] (m) is derived from former Rule 108 a.
Section [(l)] (n) is derived from former Rule 108 b.
Section [(m)] (o) is new, but is derived in part from former section (c) and former M.D.R. 106 e 1 and 2.

Rule 3-124 was accompanied by the following Reporter's Note.

See the Reporter's Note to the proposed amendments to Rule 2-124.

Mr. Titus explained that the history of the proposed changes to the Rules began with his experience as counsel to the Montgomery County Board of Education. A show cause order to comply with a garnishment had been dropped on the desk of a low-level clerk working for the county, and the clerk had no idea what to do with it. The Rules Committee attempted to modify the procedures for serving a governmental entity and decided that legislative action was needed. The legislature passed a statute authorizing but not requiring service on a resident agent. The

statute was changed so that it now mandates the appointment of a resident agent to accept service on behalf of a governmental entity. The Rule has been updated to be consistent with the statute. The Vice Chair remarked that in her capacity as County Attorney, she has been designated as the resident agent for Anne Arundel County. She noted that Rules 2-124 and 3-124 are already in the package sent to the Court of Appeals in the 149th Report, and if the Committee approves the most recent changes, the updated Rules will be substituted for the versions of Rules 2-124 and 3-124 already in the 149th Report. The last draft of the Rules provided that appointment of a resident agent is permissive rather than mandatory. Mr. Titus added that the new statute requiring the appointment of a resident agent goes into effect on October 1, 2001.

Mr. Hochberg inquired as to the purpose of serving the Secretary of State in subsection (k)(1) of Rules 2-124 and 3-124. Mr. Zarnoch responded that this provision was already in the Rules. The Vice Chair added that when the Rules were presented to the Court of Appeals previously, the Honorable John Eldridge had wanted this provision to remain in the Rules. Mr. Hochberg questioned as to why the language in section (n) providing for service on the United States was added. Mr. Titus answered that the language had been there previously, and he remarked that the Court of Appeals cannot write rules for the United States. Mr. Hochberg asked how the United States is served. Mr. Titus replied that service is either on the head of an agency or on the

U.S. Attorney, but the Rules do not clarify this. Mr. Hochberg suggested deleting the language about serving the United States, but Mr. Zarnoch pointed out this is provided for in federal law and federal rules. Mr. Sykes suggested cross referencing the appropriate federal statutes, but Mr. Titus answered that the list is too long to include in a cross reference.

There being no other comments, the Committee approved both Rules by consensus.

Agenda Item 2. Reconsideration of proposed revised Title 11 (Juvenile Causes) and conforming amendments to: Rule 4-217 (Bail Bonds) and Rule 5-101 (Scope)

The Vice Chair introduced the consultants who were present to discuss the Juvenile Rules. They included: Master James P. Casey; Rhonda Lipkin, Esq.; Robert Fontaine, Esq.; Mary Pizzo, Esq.; Andrea Khoury, Esq.; and Master Erica Wolfe. Judge Kaplan thanked the consultants for assisting the Juvenile Subcommittee with the Juvenile Rules. He said that he has had the pleasure of chairing the Juvenile Subcommittee, taking over for Mr. Johnson after the new Child in Need of Assistance (CINA) statute was enacted. The duty of the Subcommittee was to blend the appropriate provisions of the new statute into the revised Juvenile Rules, which had already been approved by the Rules Committee, but not to revisit policy decisions already made. Judge Kaplan thanked all of the Subcommittee members and consultants who worked on the Juvenile Rules, explaining that they did a superior job. He also thanked the Reporter for all of

her hard work on the Rules. Judge Kaplan handed out a summary of the changes to the Rules, which his law clerk had prepared. (See Appendix 2).

Judge Kaplan presented Rule 11-101, Definitions, for the Committee's consideration.

Rule 11-101. DEFINITIONS

(a) Statutory Definitions

The definitions stated in **Code, Courts Article, §§3-801 and 3-8A-01** and are applicable to this Title. If the definition of a term in **Code, Courts Article, Title 3, Subtitle 8** differs from the definition of the term in **Code, Courts Article, Title 3, Subtitle 8A,** the term refers, as applicable under the circumstances, to the definition in the Subtitle under which the particular action or proceeding was filed or properly could be filed.

(b) Additional Definitions

In this Title the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(1) Adjudicatory Hearing

"Adjudicatory hearing" includes an adjudication hearing as defined in **Code, Courts Article, §3-801.**

~~(1)~~ (2) Next Day

"Next day" when used with respect to an event that must occur in court or an action that a judge must take means the next day that the circuit court~~, or in Montgomery County the District Court,~~ is in session. **Note to Rules Committee: The phrase ", or in Montgomery County the District Court," should**

not be deleted if the Rule is adopted with an effective date earlier than March 1, 2002. The phrase should then be deleted, effective March 1, 2002.

~~(2)~~ (3) Petition

"Petition" means a petition filed pursuant to Rule 11-202.

~~(3)~~ (4) Petition for Continued Detention or Shelter Care

"Petition for continued detention or shelter care" means a petition filed pursuant to Rule 11-201 (c).

~~(4)~~ (5) Respondent

"Respondent" means a person who is the subject of a petition or citation.

~~(5)~~ (6) Summons

"Summons" means a writ notifying the person named in the summons that (A) the person summoned is a party in an action that has been commenced in the court from which the summons is issued and (B) failure to attend may result in the issuance of a body attachment for the person summoned.

~~(6)~~ (7) Waiver Petition

"Waiver petition" means a petition filed pursuant to Rule 11-303.

Source: This Rule is derived from former Rule 901.

Rule 11-101 was accompanied by the following Reporter's Note.

This Rule incorporates the substance of former Rule 901 a and part of former Rule 901 b. Throughout these rules, references to sections of the Courts Article are

modernized.

In section (a), the lengthy cross reference has been deleted. The Rules Committee believes that the reference in the text is adequate to direct practitioners to the statute, and is concerned that "laundry lists" can easily become obsolete. Because statutory definitions applicable in juvenile proceedings are now set out in two Subtitles of Title 3 of the Courts Article, a second sentence, using language borrowed from Rule 1-202 (i) has been added to section (a) of Rule 11-101.

The Committee made a policy decision to have as few additional definitions as possible, and to incorporate the definitions in the rule to which they pertain or recommend that they be added to **Code, Courts Article, §3-801 or §3-8A-01.**

The substance of the definition of "emergency" detention or shelter care is recommended for inclusion in Rule 11-201.

The adjective "juvenile" before "petition" has been deleted. All petitions filed pursuant to Rule 11-202 are called simply "petitions;" "petitions for continued detention or shelter care" and "waiver petitions" are separately named; and other applications to the court for action are termed "motions." See Rule 11-109.

The Committee observes that "parent" and “guardian” are defined terms in **Code, Courts Article, §3-801** and that “custodian” is defined in **Code, Courts Article, §§3-801 and 3-8A-01**. Additional terms have been inserted where necessary in the rules.

The Rules Committee recommends that the substance of the definition of "probation" be incorporated in Rule 11-402. **Code, Courts Article, §3-8A-19** provides for probation as a disposition.

A definition of "next day" has been added to make clear that urgent events

requiring prompt action by the court are to occur the next day that the court is in session, rather than the next day that the court is scheduled to sit as a juvenile court. In the new “CINA statute” (Chapter 415, Acts of 2001), the terminology used for this concept is “the next day on which the circuit court sits.” For clarity in the Rules, the Committee prefers the terminology “the next day that the circuit court is in session.”

The definition of "respondent" has been restyled, since in CINA cases the petition is not really "against" the child. A reference to citation cases has been added.

A definition of "summons" has been added. It is derived in part from Rule 1-202 (z) and includes the authority for the body attachment to which Rule 11-102 (c)(2)(E) refers.

The term "waiver petition" has been retained since it is a very specific kind of petition that only arises in certain factual circumstances.

He noted that on page 9, there were proposed changes. The Vice Chair asked the meaning of the language in section (a) which reads “the term refers.” Master Wolfe replied that this language means that the definition to be used is the one from the applicable statute. There being no changes, the Committee approved the Rule as presented.

Judge Kaplan presented Rule 11-102, Duties of Clerk, for the Committee’s consideration.

Rule 11-102. DUTIES OF CLERK

(a) Separate Docket

The clerk shall maintain a separate docket for Juvenile Causes in accordance with the confidentiality provisions of Rule 11-103. Upon the filing of a petition, a petition for continued detention or shelter care, or a citation, or the receipt of proceedings transferred from another jurisdiction, the name of each respondent shall be entered on the docket and indexed.

Committee note: Although a petition for continued detention or shelter care may be the initiating document that invokes the jurisdiction of the juvenile court under **Code, Courts Article, §3-8A-15 (d),** a petition for continued shelter care in a child in need of assistance proceeding may only be filed after the jurisdiction of the juvenile court has been invoked in accordance with **Code, Courts Article, §3-803.**

(b) Scheduling of Hearing

Upon the filing of a petition, a petition for continued detention or shelter care, or a citation, the clerk shall promptly schedule a hearing.

(c) Process

(1) Issuance

Unless the court orders otherwise, upon the filing of a petition, the clerk shall promptly issue a summons returnable as provided by Rule 2-126 for each party except the petitioner and a respondent child alleged to be in need of assistance. If the petition alleges the respondent is a child in need of assistance and the petitioner is not the local Department of Social Services, the clerk shall also promptly issue a summons returnable as provided by Rule 2-126 for the local department. Any summons addressed to a parent, custodian, or guardian of a

respondent child shall require the person to produce the respondent child on the date and time named in the summons.

(2) Content

A summons shall contain (A) the name of the court and the assigned docket reference, (B) the name and address of the person summoned, (C) the date of issue, (D) the date, time, place, and nature of the scheduled hearing, (E) a statement that failure to attend may result in the person summoned being taken into custody, (F) a statement that the person summoned shall keep the court advised of the person's address during the pendency of the proceedings, (G) a notice in the following form:

> TO THE PERSON SUMMONED: The Court may, at this or any later hearings, consider and pass orders concerning but not limited to the detention, shelter care, commitment, custody, treatment, and supervision of the respondent child; responsibility for the child's support; restitution by the respondent and/or the parents in an amount not to exceed $10,000 for each incident; controlling the conduct of persons before the court; and assessment of court costs.
>
> You may retain a lawyer to represent you or the child; if you do, be sure to show this Summons to the lawyer. If you cannot afford a lawyer, contact the Office of the Public Defender promptly on any weekday between 8:30 and 4:30 at: _____ (address and telephone number). A postponement will NOT be granted because you fail to contact a lawyer.
>
> If you do not want a lawyer, but you wish to subpoena witnesses on your behalf or on behalf of the

respondent child, 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 subpoena 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.

and (H) If the person summoned is the local Department of Social Services, a directive that the local department file a written response to the petition not later than the date ~~named in the summons~~ set by the court.

(d) Deposit of Security for Appearance

The clerk shall accept for deposit security for the appearance of any person subject to the court's original jurisdiction, in the form and amount that the court determines in accordance with Rule 11-107.

(e) List of Open Hearings

Prior to the convening of court on each day that the juvenile court is in session, the clerk shall prepare and make available to the public a list of the hearings scheduled for that day that are required by **Code, Courts Article, §3-8A-13** to be conducted in open court. The list shall include the full name of each respondent and

the time and location of the hearing.

Source: This Rule is derived in part from former Rule 904 and in part new.

Rule 11-102 was accompanied by the following Reporter's Note.

This Rule incorporates the substance of former Rule 904 and part of Form 904-S.

In sections (a) and (b), consistent with the changes made in Rule 11-101, the adjective "juvenile" is deleted from the term "juvenile petition" and the defined term "petition for continued detention or shelter care" is used for the specific type of petition that requests continued detention or shelter care. A reference to the overriding confidentiality provisions of Rule 11-103 is added to section (a). A reference to citation cases is also added.

Section (c) is divided into two subsections. In subsection (c)(1), in addition to style changes, the reference to Form 904-S is deleted. Instead, in subsection (c)(2), the Rule prescribes the content of the summons, including the notice contained in Form 904-S. Because a respondent child alleged to be in need of assistance is always represented by counsel, the provision of former Rule 904 c excepting the child from issuance of original process addressed to the child is carried forward in the new rule.

The Rules Committee was informed that a Request for Witness Subpoena form is not always attached to the original summons, as the last paragraph of the Notice in Form 904-S suggests. Some clerks prefer a procedure where the recipient of the summons is directed to contact the Juvenile Clerk's office if the recipient wishes to subpoena witnesses. Therefore, the language has been modified to advise the recipient of the summons to contact the clerk at the appropriate telephone number to obtain

subpoena forms if no request for Witness Subpoena Form was enclosed with the summons.

In subpart (c)(2)(G), a sentence has been added to advise persons with disabilities to contact the court prior to the hearing to request any reasonable accommodation that is to be provided in accordance with the Americans with Disabilities Act.

Subpart (c)(2)(H) has been added to require that the local Department of Social Services when it declines to file a petition (the facts of which are seemingly within the Department's bailiwick) respond to the petition and thus provide to the Court a statement of the Department's position in the matter.

Section (d) is derived from former Rule 904 e, with the addition of a reference to new Rule 11-107.

Section (e) is a provision that was added to current Rule 11-104 by Rules Order dated June 8, 1998, effective October 1, 1998.

Section d of former Rule 904 has been deleted. The issuance of subpoenas is now governed by Rule 11-108.

Judge Kaplan said that section (a) contains a new Committee note pertaining to shelter care. Mr. Sykes pointed out that the Committee note seems misplaced and should be moved to another Rule. The Vice Chair suggested that the Style Subcommittee could consider this, and the Committee approved the suggestion by consensus. The Committee approved the Rule by consensus with the possible change to the Committee note.

Judge Kaplan presented Rule 11-103, Confidentiality, for the Committee’s consideration.

Rule 11-103. CONFIDENTIALITY

(a) Confidentiality

Except as otherwise expressly provided by law or by order of court, files and records of the court in juvenile proceedings, including the docket entries and indices, are confidential. If confidential, they shall be open to inspection only by the court, authorized court personnel, parties, and their attorneys. If a hearing is open to the public pursuant to **Code, Courts Article, §3-8A-13**, the name of the respondent and the date, time, and location of the hearing are not confidential.

Cross reference: For examples of exceptions to the confidentiality requirement of this section, see **Code, Courts Article, §§3-822, 3-827, and 3-8A-27; Code, Education Article, §7-303; and Code, Criminal Procedure Article, §11-615.**

(b) Furnishing Information to a Nonparty Who Seeks Visitation or to a Potential Intervenor

Upon request by a nonparty who is filing a motion for visitation pursuant to Rule 11-109 (e) or a nonparty who seeks to intervene pursuant to Rule 11-401, the clerk shall provide to the nonparty sufficient information to enable the nonparty to comply with the service requirements of Rules 11-109 (e) or 11-401 (a).

(c) Sealing and Unsealing of Records

Code, Courts Article, §§3-827 and 3-8A-27 governs the sealing and unsealing of files and records in juvenile proceedings.

~~Committee note: This Rule should be read and applied with attention to the constraints placed by federal law on the public disclosure of information contained in child abuse and neglect reports and records as well as information obtained from a child welfare~~

~~agency about children or families receiving services under Titles IV-B or IV-E of the Social Security Act, 42 USC Section 671 (a)(8) and Section 106 (b)(2)(A)(v) of CAPTA (Child Abuse Prevention and Treatment Act). In order to receive federal funding for child abuse prevention and foster care and adoption services, Maryland is required to prevent public disclosure of this information. Therefore, except in the case of neglect or abuse resulting in the death or near death of a child, any records or reports on child abuse and neglect or regarding children receiving foster care and adoption assistance may not be discussed in open court unless the general public is excluded and records of such discussions, including transcripts, must be kept confidential as well.~~

Source: This Rule is derived in part from former Rule 921 and is in part new.

Rule 11-103 was accompanied by the following Reporter's Note.

Section (a) is derived from Rule 8-121 and from the first and third sentences of current Rule 11-121 (former Rule 921), as amended by Rules Order dated June 8, 1998, effective October 1, 1998.

Section (b) is new. It is added to enable persons who seek visitation pursuant to Rule 11-109 (e) or who seek to intervene pursuant to Rule 11-401 to obtain sufficient information to comply with the service requirements of those Rules.

Section (c) states that the sealing and unsealing of the files and records of the juvenile court are governed by **Code, Courts Article, §§3-827 and 3-8A-27.**

Judge Heller questioned as to why the Committee note after section (c) has been deleted. Ms. Lipkin responded that this

provision is in the corresponding statute, and the Subcommittee did not feel that it was necessary in the Rule. There being no changes suggested, the Rule was approved as presented.

Judge Kaplan presented Rule 11-201, Detention or Shelter Care, for the Committee's consideration.

Rule 11-201. DETENTION OR SHELTER CARE

(a) Definition

"Emergency detention or emergency shelter care" is detention or shelter care authorized by an intake officer or the local department of social services prior to a hearing.

(b) Emergency Detention or Emergency Shelter Care

When a child is taken into custody pursuant to **Code, Courts Article, §3-814 or §3-8A-14**,

(1) an intake officer may authorize emergency detention, pursuant to **Code, Courts Article §3-8A-15 (b)**, or emergency shelter care, pursuant to **Code, Courts Article, §3-8A-15 (c)**, for a child who may be delinquent or in need of supervision.

(2) the local department of social services may authorize emergency shelter care, pursuant to **Code, Courts Article, §3-815**, for a child who may be in need of assistance.

(c) Petition for Continued Detention or Shelter Care

If an intake officer or local department authorizes the placement of a child in emergency detention or emergency shelter care, and the child has not been

released, the person who authorized that placement shall, on or before the next day:

(1) give written notice of the emergency detention or emergency shelter care to the court and to the child's parent, guardian or custodian, including a statement of the circumstances that led to the child being placed in emergency detention or emergency shelter care; and

(2) file a petition for continued detention or shelter care, showing that continued detention or shelter care is warranted ~~under Code, Courts Article, §3-815 (e) or (f), as applicable~~.

(d) Hearing

If a petition for continued detention or shelter care is filed pursuant to subsection (c)(2) of this Rule, a hearing shall be held no later than the next day after the petition is filed. The respondent shall be brought to court for the hearing, except that in a child in need of assistance proceeding, the presence of the respondent may be waived by counsel for the respondent. Unless the parties agree to a longer period of time, the hearing may be postponed for no longer than (1) in a delinquency case, one day beyond the business day the initial hearing should have been held; or (2) in other cases, five days beyond the business day the initial hearing should have been held. The court shall direct that reasonable notice of the date and time of the hearing be given to the respondent, to counsel, and, if they can be found, to the respondent's parent, guardian, or custodian.

(e) Continued Detention or Shelter Care

Detention or shelter care may not be continued beyond emergency detention or shelter care except as provided in Code, **Courts Article, §3-815 (c) or §3-8A-15 (e) or (f)**, as applicable.

~~Cross reference: For maximum time limits applicable to detention and shelter care, see Code, Courts Article, §3-815 (d).~~

(f) Title 5 Not Applicable

Title 5 of these rules does not apply to detention or shelter care hearings.

Source: This Rule is derived from former Rule 912.

Rule 11-201 was accompanied by the following Reporter's Note.

This Rule covers the same subject matter as former Rule 912 but has been completely revised in light of amendments to Code, Courts Article that make clear the differences in the criteria for detention and shelter care.

Section (a) is derived from the definition in former Rule 901 b 2.

Sections (b), (c), and (d) are derived from former Rule 912 a 1, a 2, and a 3, updated to conform to statutory changes. In section (d), the use of the defined term "next day" is intended to forestall extended detention or shelter care because the juvenile court is not formally in session. It means the next day that is not a Saturday, Sunday, or legal holiday. Also in section (d), the Subcommittee recommends that counsel be permitted to waive the presence of the respondent in a CINA proceeding.

Section (e) incorporates the substance of former Rule 912 b 1, with updated statutory references.

Section (f) carries forward the provisions of former Rule 912 d.

Judge Kaplan pointed out that the word "emergency" has been added throughout the Rule, the last line of subsection (c)(2) has

been deleted, and a cross reference after section (e) has been eliminated. The Rule was approved as presented.

Judge Kaplan presented Rule 11-202, Petition, for the Committee's consideration.

Rule 11-202. PETITION

(a) Filing

(1) Generally

A petition may be filed only by a person authorized by **Code, Courts Article, Title 3, Subtitle 8 or 8A** to file a petition. Cross reference: For administrative proceedings prior to the filing of a petition, see **Code, Courts Article, §§3-809 and 3-8A-10.**

(2) CINA Case

In a CINA case, if continued shelter care is sought, a petition alleging CINA shall be filed with or include the request for continued shelter care.

Cross reference: See Code, Courts Article, §3-803 concerning invoking the jurisdiction of the juvenile court in a CINA case.

(3) Delinquency or CINS Case

In a delinquency or a CINS case, ~~If~~ if a child is in detention or shelter care authorized by a court, a petition that complies with this Rule shall be filed no later than 10 days after the detention or shelter care order is signed by the judge or by the master. If a petition has not been filed within the time specified, the court may order the release of the respondent child.

~~Cross reference: For administrative proceedings prior to the filing of a~~

~~petition, see **Code, Courts Article, §§3-809 and 3-8A-10.**~~

(b) Form and Contents

(1) Caption

The petition shall be captioned "Matter of .....".

(2) Contents

The petition shall state:

(A) The name and address of the petitioner and the basis of the petitioner's authority to file pursuant to **Code, Courts Article, §3-809, §3-828, or §3-8A-13.**

(B) The respondent's name, address and date of birth. If the respondent is a child, the petition shall also state the name and address of the child's parent, custodian, or guardian.

(C) The basis for the court's jurisdiction over the respondent pursuant to **Code, Courts Article, §3-803 or §3-8A-03.**

(D) If the petition alleges the respondent is a child in need of assistance and the petitioner is not the local Department of Social Services, the basis of petitioner's authority to file the petition.

(E) The facts, in concise and definite language, on which the petition is based and, with reasonable particularity, the date and place of the delinquent acts, crimes, or incidents alleged. If the commission of one or more delinquent acts or crimes is alleged, the petition shall specify the laws allegedly violated by the respondent.

(F) The name of each witness to be subpoenaed in support of the petition known at the time of filing it.

(G) Whether the respondent is in detention or shelter care; and if so, whether

the respondent's parent, custodian, or guardian has been notified and the date the detention or shelter care commenced.

(3) Signature

Except in the case of a petition filed under the Interstate Compact on Juveniles, the petition shall be signed by the State's Attorney of a county or by any other person authorized by law if delinquency or a violation of **Code, Courts Article, §3-828 or §3-8A-30** is alleged. In other cases, the petition shall be signed by an individual who shall be (A) the petitioner, (B) an individual authorized by law to sign on behalf of the petitioner if the petitioner is not an individual, or (C) the attorney for the petitioner. If the petition is signed by an individual who is not an attorney, the signature constitutes a certification that the individual has read the petition; that to the best of the individual's knowledge, information, and belief there is good ground to support it; and that it is not interposed for improper purpose or delay. For the purposes of this Rule, in an electronically-filed petition the words "signed by" followed by the name of the filing attorney or other individual constitute a signature in accordance with Rule 1-311.

Cross reference: See Rule 2-311 (b) concerning the effect of the signature of an attorney.

(4) Interstate Compact Petitions

Juvenile petitions filed under Article IV of the Interstate Compact on Juveniles **(Code, Article 83C, §3-103)** or the Interstate Compact on the Placement of Children (**Code, Family Law Article, Title 5, Subtitle 6**) shall comply with the requirements of the Interstate Compact and must be verified by affidavit.

(c) Copies

The petition shall be filed with the

clerk of the court, electronically or in a sufficient number of copies to provide for service upon the parties and if subsection (b)(2)(D) of this Rule applies, upon the Department of Social Services. If the petition has been electronically filed, the clerk shall generate sufficient copies of the petition to comply with the service requirements of Rule 11-104 (a)(1).

Committee note: Electronic filing of pleadings and papers is allowed only as provided by Rule 16-307.

Source: This Rule is derived in part from former Rule 903 and is in part new.

Rule 11-202 was accompanied by the following Reporter's Note.

This Rule is derived in part from former Rule 903 and is in part new.

In section (a), subsections (a)(2) and (a)(3) are new.

Subsection (a)(2) makes clear that, under the new CINA statute, a CINA case is not initiated by the filing of a petition for continued shelter care. Rather, a petition that alleges that a child is a child in need of assistance is the pleading which invokes the jurisdiction of the juvenile court under **Code, Courts Article, §3-803**. If continued shelter case is sought, a request for that relief may be included in the petition or it may be filed contemporaneously as a separate motion or other paper in the CINA case.

Subsection (a)(3) requires the filing of a petition no later than the 10 days after a court orders continued detention or shelter care in a CINS or delinquency case. The Committee believes that the practice of last-minute filing of a petition (after a child has been in detention or shelter care for as long as 25 days) should be eliminated. If the petition has not been filed within the

time specified, the court may order that the respondent child be released.

Subsection (b)(2)(A) is new. In addition to requiring that the petition contain the name and address of the petitioner, it must also contain a statement of the basis of the petitioner's authority to file the petition.

In subsection (b)(2)(B), the words "custodian or guardian" are added in light of the deletion of former Rule 901 b 4.

In subsection (b)(2)(C), the parenthetical "laundry list" of bases for the court's jurisdiction over the person who is the subject of the petition has been deleted and replaced by references to **§§3-803 and 3-8A-03 of the Courts Article**. Subpart (D) has been added in conjunction with new Rule 11-102 (c)(2)(H), requiring a local Department of Social Services which declined to file a petition (the facts of which are seemingly within the Department's bailiwick) to respond to the petition. The change in subpart (E) is for consistency with the changes in subpart (C). In addition, a "date and place" requirement has been added, similar to that in Rule 4-202.

As originally approved by the Rules Committee, subsection (b)(2)(F) added a new requirement that the petition include addresses of witnesses to be subpoenaed in support of the petition known at the time of the filing of the petition. The Judicial Conference Committee on Juvenile Law requested deletion of the proposed new requirement, believing mandatory inclusion of witnesses' addresses on the petition to be inadvisable in light of the often volatile circumstances in which juvenile cases arise. The Committee has now deleted the address requirement from subpart (F). The changes in subpart (G) are in style only.

Added to the first sentence of subsection (b)(3) is language from Rule 4-202 authorizing a person other than the elected

State's Attorney to sign the petition in delinquency or contributing cases. The subsection has been modified to require other petitions to be signed by counsel or by another individual on behalf of the petitioner (e.g., an intake officer) authorized by law to sign a petition. Added to this subsection is a sentence that holds a non-attorney who signs a petition to the same standards to which an attorney is held under Rule 1-311 (b). Also added to this subsection is a sentence that provides that the words "signed by" followed by the name of the attorney or other individual who filed the petition constitute a signature on an electronically-filed petition and an acknowledgment that the named individual has read the petition. This sentence was included in order to accommodate Baltimore City's implementation of the QUEST system. With QUEST, there will be no paper petition filed by the State's Attorney's Office or other filing agency. Rather, the petition will be typed into a computer terminal in the office of the filing agency and transmitted electronically to the court. When a hard copy of the petition is required, such as for service upon the respondent, the computer will generate a paper copy imprinted with the name of the State's Attorney or other authorized person who filed the petition.

A Committee note is added to make clear that electronic filing of pleadings and papers is allowed only as provided by Rule 16-307.

In subsection (b)(4), the statutory reference to the Interstate Compact on Juveniles has been corrected and a reference to the Interstate Compact on the Placement of Children has been added. A Committee note that repeats the substance of subsection (b)(4) is deleted.

In section (c), a provision for electronic filing under QUEST has been added.

Ms. Lipkin commented that subsection (a)(2) was added in

connection with the new CINA statute. A related issue that may affect this and other Rules concerns how much notice of a hearing it is necessary to give. The current and proposed rule is five days' notice. The concern is that there are several statutes and rules in which the notice deadlines are five days or greater. The Department of Social Services gives copies of its report to all parties at least 10 days prior to the hearing. There is a problem obtaining hospital records by subpoena on short notice. Ms. Lipkin suggested that immediately upon the filing of the petition, the date of the adjudicatory hearing would be set. Except for emergency hearings, all other hearings would be set 30 days in the future, with at least 15 days' notice. She suggested that the Rules could require the announcement of the date of the next hearing in open court prior to the adjournment of the hearing. Practices throughout the State are different. In Baltimore City, the setting of the date is computerized. The advantage to setting the date of the next hearing at the previous hearing is that people leave the courtroom knowing the date. Many parties are mobile, and it is difficult to get notice to them. Also, the social workers handling the cases change often.

The Vice Chair inquired whether it is possible in all jurisdictions to be able to announce the date of the next hearing at the previous hearing. Ms. Lipkin answered that the clerk usually informs the judge or master concerning available dates. This can be accomplished in the Eastern Shore and northeast counties, also. The Vice Chair asked if the date of the hearing

is usually announced at the previous hearing. Ms. Lipkin responded that the practice is mixed, but it should be uniform. The Chair questioned whether language providing for the announcement of the hearing in the courtroom could be added to Rules 11-308, Hearings–Generally, or 11-310, Adjudicatory Hearing. Ms. Lipkin replied that in one of these Rules, language could be added which would state that an adjudicatory hearing is scheduled upon the filing of a petition. There may not be a hearing prior to the adjudication. Master Wolfe pointed out that in delinquency cases, a request for shelter care or detention may be made prior to the filing of the petition. Ms. Lipkin remarked that without a charging document, no adjudicatory hearing date is set. The Chair pointed out that at the end of Rule 11-202, Petition, in section (c), there are directions to the clerk. The Reporter asked if the new language could be added into Rule 11-102. Ms. Lipkin replied that it could be added there. The practice is that once the petition is filed, it is placed in a basket for counsel to pick up. Counsel calls the clerk to find out when the hearing has been scheduled. The Chair suggested that the clerk could be directed to schedule a hearing in compliance with the statutory time requirements. Ms. Lipkin expressed the concern that the notice should be prompt. The Vice Chair suggested that in Rule 11-102, language could be added which would provide that the clerk shall schedule a hearing on the same day that the petition is filed. Judge Heller suggested that the Rule could provide that the clerk shall send notice on

the day the petition is filed. Master Wolfe added that the procedures in shelter care may be different.

Master Wolfe noted that there are statutory time limits. In Anne Arundel County, the parties are served with notice as to the detention or shelter care hearing, and at that hearing, they are served with the petition and given the date of further proceedings. The Vice Chair remarked that if all jurisdictions followed these procedures, there would be no problem. Master Wolfe asked which jurisdictions have problems. Ms. Lipkin answered that in Baltimore County, there have been problems in cases where no shelter care or detention hearing was held because the situation was not an emergency. In some counties, there is an informal process, known as a preliminary hearing or an arraignment, at which the parents of the child are advised of their right to hire an attorney. This is not addressed by rule. It is important to avoid postponement of the adjudication on the ground that the parents have no attorney.

Master Wolfe said that when there is a CINA petition without a shelter care proceeding, the clerk sends notice five days before the hearing which has to be held within the time limit. The Vice Chair asked where the five-day time period is referenced. Ms. Lipkin replied that it is in Rule 11-308 (c). The Vice Chair pointed out that the five-day requirement is not consistent with other time requirements, such as for serving subpoenas, etc. If a petition is filed, and there is no proceeding scheduled in advance of the adjudicatory hearing, Rule

11-308 should provide that the clerk shall schedule the hearing. Judge Heller remarked that the time frame is five days. Ms. Ogletree added that this used to be in the statute. The Chair suggested that the wording of the new language should be: "Upon the filing of a petition that requires a hearing, the clerk shall promptly schedule a hearing and notify all parties as soon as practicable." The Vice Chair asked if the five-day time frame should be referenced. The Chair answered that this language is consistent with the five-day time frame and highlights the idea that the clerk shall take prompt action. Master Casey expressed his agreement with the Chair's suggested language, commenting that many hearings are not held pursuant to a petition being filed, but pursuant to the court's continuing jurisdiction.

Ms. Lipkin pointed out that Rule 11-102 (b) provides that upon the filing of a petition, the clerk shall promptly schedule a hearing. She expressed the view that the word "promptly" is too vague. The Chair suggested that the language could be added to Rule 11-102 and could read as follows: "The hearing will be scheduled in conformance with statutory requirements. All parties will be notified of the hearing as soon as practicable." The Vice Chair responded that this language is similar to the word "promptly." This does not mean that the hearing will be scheduled when the petition is filed. The Chair suggested the language "On the day the petition is filed, the clerk shall schedule a hearing and issue notices to all interested persons." Mr. Sykes noted that the court could close before the hearing is

scheduled. Judge Kaplan remarked that it could be scheduled the next day the court is open. The Chair said that he would not like to see an extra day added in.

Judge Heller asked if Rule 11-308 has been changed. The Chair replied that it has not been changed. The Vice Chair expressed the opinion that Rule 11-308 should be changed, because it includes scheduling a hearing without any petition being filed. Judge Heller commented that this is inconsistent with the five-day notice. Ms. Lipkin said that this could be added as an exception. The Chair stated that the intention of the Rule is to command the clerk to take action on the petition the day that it is filed. He questioned as to whether this is a problem for the clerks. Mr. Shipley answered that it could be a problem. Mr. Karceski pointed out that the word "promptly" is used in subsection (c)(1) of Rule 11-102. The Vice Chair noted that, as proposed, the notice of the scheduled hearing would be sent out the same day, but the issuance of the summons occurs later. Section (b) would contain two ideas – one is to schedule a hearing, and one is to send out notice on the day the petition is filed.

The Chair suggested that the second sentence of section (a) of Rule 11-102 should read as follows: "Upon the filing of a petition, the clerk shall docket and index the name of each respondent, schedule a hearing, and issue notices to all interested parties." Mr. Sykes inquired as to how this relates to the issuance of a summons. Does the clerk take the actions

suggested for section (a) before the summons is issued? Mr. Shipley answered that everything goes out together. Ms. Lipkin said that these notices are sent to those individuals who are not in the courtroom prior to the adjudication. The others can be notified while they are in the courtroom.

The Vice Chair expressed the view that only the word "promptly" should be deleted from section (b), which would allow for the scheduling to occur with the issuance of the summons. Mr. Sykes asked if anyone gets notice, but no summons. Ms. Lipkin responded that the petitioner and child get notice, but no summons. Mr. Sykes commented that if any interested person does not get a summons, it would be sensible to issue notice independent of the summons. Judge Kaplan suggested that the word "promptly" could be deleted throughout the Juvenile Rules, because it indicates some other time than right then. Ms. Lipkin suggested that a Committee note be added to explain that the removal of the word "promptly" does not mean that the action should not be taken less than promptly. The Committee agreed by consensus to delete the word "promptly." The Reporter noted that the word "promptly" appears in section (c) of Rule 11-102 and the Committee agreed by consensus to delete it there, as well. The Committee approved Rules 11-102 and 11-202 as amended.

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

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 Article, §3-813 and Code, Article 27A.**

Cross reference: ~~For procedures for the appointment of counsel for an alleged child in need of assistance, see Code, Courts Article, §3-813.~~ See Appendix: The Maryland Rules of Professional Conduct, Rule 1.14 (Client Under a Disability) and Appendix: Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Cases.

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

An indigent child whose parents, guardian, or custodian are either indigent or fails 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

A child alleged to be in need of assistance may not waive counsel. If a party is entitled 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, §3-828 or §3-8A-30** 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) 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, §3-813 or Code, Article 27A**, 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.

(d) 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 appear at the next hearing, the hearing will proceed with the adult party unrepresented by

counsel. If the court finds no meritorious reason for the party'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.

(e) Discharge of Counsel - Child

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

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, §3-813 and Article 27A.**

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

Section (b) is derived from former Rule 906 b 1, with the addition of a statement that a child who is alleged to be a child in need of assistance may not waive counsel.

Section (c) is new. It requires the court to inform indigent parties who are ineligible for representation at State expense about potential sources of pro bono representation and that, if they are unable to obtain counsel, their participation in the proceedings will be pro se.

Section (d) sets out procedures by which a party who is an adult may discharge his or her attorney.

Section (e) prohibits a party who is a child from discharging his or her attorney unless another attorney has entered an appearance on behalf of the child party.

Judge Kaplan explained that there had been a change to subsection (a)(1). There were no comments to this change, so the Rule was approved as presented.

Judge Kaplan drew the Committee's attention to subsection (b)(2) of Rule 11-304, Transfer--Juvenile Court to Juvenile Court.

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, §3-805 or §3-8A-09.**

(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:

~~G DISTRICT COURT OF MARYLAND FOR _____ COUNTY~~

IN THE G 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~~ fifteen 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

□ Permanency Planning Hearing

□ Other (please specify) _____

_____.

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

G Physical Abuse G Sexual abuse G Neglect G Abandonment

G Extraordinary needs of child

G Other (please specify) _____

_____.

Pending further proceedings, the Respondent has been:

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

_____ who resides at

_____.

G Placed in shelter care at
_____

_____ until _____.

G 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 by the receiving court:

G the placement of the child and the stability of that placement

G legal representation of the child, other parties, and intervenors

G other pending proceedings

G the conditions imposed and services ordered by the transferring court

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

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

G any orders for child support

G the existence of issues that were not resolved by the transferring court

G further hearing dates

G 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, _____~~ parties.

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:

~~G DISTRICT COURT OF MARYLAND FOR _____COUNTY~~

IN THE G 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 _____, _____,

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~~ fifteen days of the date of this Order.

This case is being transferred for:

G Adjudication

G 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.

G Further action as deemed appropriate by the receiving Court, as the Respondent has been adjudicated G delinquent G other (please specify) _____

after a finding of committed the acts in paragraphs/counts _____ and disposition has been made resulting in the Respondent being:

G Placed on probation.

G Committed to _____ _____.

G Ordered to make restitution to _____ _____ in the amount of $_____ at the rate of _____ payable through _____ effective _____.

G Other (please specify) _____ _____.

Pending further proceedings, the Respondent has been:

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

G Placed in detention/shelter care at _____ _____ until _____.

G Committed to _____.

G Other (please specify) _____.

The transferring court recommends that the status of following matters be considered by the receiving court:

G the placement of the child and the stability of that placement

G legal representation of the child, other parties, and

intervenors

G other pending proceedings

G the conditions imposed and services ordered by the transferring court

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

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

G any orders for child support, restitution, and parental restitution

G the existence of issues that were not resolved by the transferring court

G further hearing dates

G 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, _____, the State's Attorney in the transferring county and the Department of Juvenile Justice in _____ ~~(Receiving)~~ (Transferring) County.

Recommended by:

_____
Master

_____
Judge

(c) Duties of Clerk of Transferring Court

Not later than ~~five~~ fifteen 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 acknowledgment 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, §§3-805 (b) and 3-8A-09.**

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 fifteen 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 acknowledgment within ten days after initiating the transfer, a search for the file is begun.

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.

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. Bowen pointed out that the form in subsection (b)(2) and the form in subsection (b)(3) should be corrected by removing the box before the language “CIRCUIT COURT FOR...” in the beginning of the form. The Committee agreed by consensus with Mr. Bowen’s

suggestion. Judge Kaplan pointed out that in the order of transfer forms in Rule 11-304, the date the transfer is to be completed has been changed from within five days to within fifteen days. The Reporter said that this time frame is required by the CINA statute, and the time frame for delinquency cases has been conformed to avoid confusion. Judge Kaplan noted that at the end of the non-CINA transfer form, the State's Attorney in the transferring county has been added to the list of parties receiving a copy of the order. He also pointed out that in section (c), the time frame for the clerk of the transferring court to deliver the order has been changed from not later than five days to not later than fifteen days. The Committee approved the changes to Rule 11-304 by consensus.

Judge Kaplan 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, §3-816 or §3-8A-17** 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~~ presentation to the court.

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~~ placed for impatient care or treatment in a psychiatric facility or a facility for the developmentally disabled, see Rule 11-402 (c).

(b) Use of Report

The report of examination is admissible in evidence as set forth in **Code, Courts Article, §§3-816 and 3-8A-17.**

(c) Admissibility of Oral Testimony

Oral testimony concerning a study or examination ordered under **Code, Courts Article, §3-816 or §3-8A-17** by persons who conducted the study or examination is admissible

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

(2) unless the court orders otherwise, at an adjudicatory hearing on the issues of the 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, Acts 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, §§3-816 and 3-8A-17.** The

statute is silent concerning the admissibility of live testimony - that is covered by current Rule 11-105 c (formerly numbered Rule 905 c). See In re Wanda B., 69 Md. App. 105 (1986).

In discussing possible changes to the Rule, the Juvenile Subcommittee was concerned about a practice that occurs under the current rule. That practice involves petitions, other than in delinquency and "contributing" cases, that are filed when the petitioner has not first obtained sufficient facts to prove its case. After the petition is filed, the court orders persons to appear for evaluations. Although the report of the evaluation is, by statute, inadmissible at the adjudicatory hearing, the petitioner calls the evaluator to testify as to what was said, thus proving its case. The Subcommittee recommended 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. As drafted by the Subcommittee, subsection (c)(2) would have read as follows:

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

Representatives of the Legal Aid Bureau, Inc. expressed concerns that the change proposed by the Subcommittee 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.

> Although the Committee believes that ordinarily any testimony of the evaluator at an adjudicatory hearing should be limited to the issues of the respondent's competence and legal responsibility, it amended the Subcommittee's recommendation to allow for case-specific exceptions, as follows:
>
> > (2) unless the court orders otherwise, at an adjudicatory hearing on the issues of the respondent's competence to participate in the proceedings and legal responsibility for the acts alleged.

Section (a) contains a change in language at the end and the cross reference at the end of section (a) also has a change in language. There is a typographical error in the new language in the cross reference--the word "impatient" should be changed to the word "inpatient." The Juvenile Rules will be reviewed by the Style Subcommittee. With the correction of the typographical error, the Committee approved the changes to Rule 11-306 by consensus.

Judge Kaplan drew the Committee's attention to Rule 11-308, Hearings–Generally.

> Rule 11-308. HEARINGS--GENERALLY
>
> (a) Before Master or Judge; Proceedings Recorded
>
> Hearings shall be conducted before a master or a judge without a jury. Proceedings shall be recorded by stenographic notes or by electronic, mechanical, or other appropriate means.
>
> (b) Place of Hearing

A hearing may be conducted in open court, in chambers, or elsewhere where appropriate facilities are available. The hearing may be adjourned from time to time and, except as otherwise required by **Code, Courts Article, §3-8A-13,** may be conducted out of the presence of all persons except those whose presence is necessary or desirable. If the court finds that it is in the best interest of a child who is the subject of the proceeding, the presence of the child may be temporarily excluded except when the child is alleged to have committed a delinquent act.

Cross reference: See **Code, Courts Article §3-810** concerning child in need of assistance hearings.

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

All parties shall be notified as practicable before each hearing. Except in the case of (1) a hearing on a petition for emergency medical treatment pursuant to **Code, Courts Article, §3-824 or §3-8A-13 (h),** ~~or~~ (2) a hearing on a petition for continued detention or shelter care pursuant to Rule 11-201, ~~or~~ (3) a disposition hearing held on the same day as the adjudicatory hearing pursuant to Rule 11-402, or (4) an emergency review hearing under **Code, Courts Article, §3-820,** the court shall provide notice at least five days prior to the hearing of the time, place, and purpose of any hearing scheduled pursuant to the provisions of this Title unless a different time is otherwise provided by law. If the notice is in writing, the notice shall be served in the manner provided by Rule 11-104 (b).

(d) Multiple Petitions

(1) Individual Hearings

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

(2) Consolidation

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

(e) Admissions in Open Court

(1) Generally

Whether a written response 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.

(2) Withdrawal or 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 subsection (e)(1) of this Rule were not met.

(f) Controlling Conduct of Person Before the Court

(1) Sua Sponte or On Application

The court, upon its own motion or on application of any person, institution, or agency having supervision or custody of, or other interest in a respondent child, may direct, restrain or otherwise control the conduct of any person properly before the court in accordance with the provisions of **Code, Courts Article, §3-821 or §3-8A-26.**

(2) Other Remedies

Chapter 200 (Contempt) of Title 15 of these Rules is applicable to juvenile causes, and the remedies provided therein are in addition to the procedures and remedies provided by subsection (1) of this section.

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

At each hearing in a child in need of assistance proceeding, the court shall inquire into and make findings of fact on the record regarding the identity and current address of each parent of each child before the court in accordance with **Code, Courts Article, §3-822**. The court shall also inform the parents of their obligation to notify the court and the local department of social services of all changes in each parent's address, in accordance with **Code, Courts Article, §3-822**.

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

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

Sections (a), (b), (c), (d), and (f) of this Rule are derived from Rule former 910. Because many courts issue a computer-generated notice of hearing and may not have all file documents at hand, the requirement in Rule 910 c that "a copy of the petition or other pleading if any" accompany the notice has been deleted from section (c). These

documents must still be served, but not necessarily at the same time as the notice. Added to section (c) is a new sentence that requires that all parties shall be notified as practicable before each hearing. Also in section (c), the last sentence conforms the Rule to actual practice -- that service of written hearing notices after personal service of the initial summons is in the manner provided by Rule 11-104 (b), which refers to Rule 1-321. Except for the addition of references to **Code, Courts Article, §§3-810, 3-820, 3-824, and 3-8A-13,** the other changes are in style only.

Notification obligations that are not the responsibility of the court have not been included in the Rule. The Subcommittee notes that some statutory requirements for notices, such as notifying victims and foster parents, may involve timing different than the time requirements set out in the Rule.

Section (e) is derived in part from Rule 907 and is adapted from Rule 4-242 (g). 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. Rules 11-308 (e) and 11-302 set out procedures for the admission of an allegation of the petition and the withdrawal of an admission, whether the admission is in a written response to the petition or in open court.

Section (g) is added in light of the requirements of **Code, Courts Article, §3-822**.

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

The Chair observed that in light of the changes made regarding notice, the first sentence in section (c) may have to be changed. The Vice Chair expressed the view that this sentence is inconsistent with the other procedures if the petition is filed, and there is no hearing before the adjudicatory hearing. Ms. Ogletree noted that this notice happens later on in the proceedings. The Vice Chair commented that this can apply to notice at the outset of the case or later on. The Chair asked how the notification is accomplished. Ms. Ogletree answered that sometimes the notice takes place in open court, and sometimes it is given by the clerk. The procedures are not uniform.

The Chair suggested that the first sentence of section (c) should read: "All parties are entitled to be notified as soon as practicable." The last sentence of section (c) should be moved to become the second sentence. Master Wolfe inquired as to whether giving notice in open court suffices as proper notice. The Vice Chair looked at Rule 1-321, Service of Pleadings and Papers Other Than Original Pleadings, and she replied that delivery to the party is listed as an appropriate means of service. Ms. Lipkin recommended adding language to section (c) of Rule 11-308, which would provide that unless no further hearing is contemplated, announcement of the next hearing date shall be made in open court prior to the conclusion of the hearing. The Reporter asked about sending notice to persons who are not present in court. Ms. Ogletree remarked that this would be difficult to do in her jurisdiction.

Master Wolfe noted that setting a hearing date for a much later time might result in people forgetting the date. Notice in open court of a hearing 11 months later is the least trustworthy way of giving notice. Judge Kaplan commented that mailing notice to people not in the courtroom may be a waste of time for urban residents who move so often. He suggested that the language read "notified as soon as practicable." Ms. Pizzo observed that sometimes parties cannot be notified as soon as practicable. The Chair pointed out that it is difficult to lock in a specific mode of notice, and the language "as soon as practicable" indicates that the entitlement to notice is satisfied.

Ms. Lipkin suggested deleting the five-day requirement in section (c). Judge Heller clarified that the requirement is "not less than five days." Ms. Lipkin expressed the opinion that the notice requirement should be 15 days, but she acknowledged that Master Casey objects to this. Master Casey explained that an unintended consequence of providing for notice in a specific number of days is that if a party does not want the hearing to occur, the party can use the fact that the notice was not sent out within the specified time frame as a weapon to halt the proceedings. The Chair said that the five-day time frame in the Rule is appropriate. The Vice Chair noted that other rules give a longer time.

Ms. Lipkin commented that it is troubling that a rule cannot provide for a particular amount of time for notice because of a concern that the clerks cannot comply with this. Judge Heller

inquired as to where in the State there are problems with notice. Ms. Lipkin replied that in Baltimore and Harford Counties, the time of notice is up to the clerk. The child's attorney gets the docket one week before the case. Ms. Lipkin said that she does not know how the parents' counsel gets notice.

Ms. Lipkin reiterated that the time frame should be 15 days, stating that the clerk will not object to a 15-day time frame. Judge Kaplan expressed his agreement with Master Casey's point that this would create an excuse for unnecessary postponements. The system is working fairly well in Baltimore City and in most other jurisdictions. Master Wolfe agreed with Judge Kaplan. When the petition is filed, the sheriff may not be able to serve the parties. Five days' notice is adequate –- why should the proceedings be delayed? The Chair suggested that the first sentence of section (c) could read as follows: "Unless a different time is provided by the court or otherwise provided by law, at least five days prior to the hearing, the court shall issue notice to all parties of the date, time, place, and purpose of any hearing." Master Wolfe pointed out that this language may eliminate even the five-day notice period, which would not be appropriate. The Chair explained that it would be up to the court to get the case into court as quickly as possible.

The Vice Chair suggested that the first sentence should only provide that all parties are to be notified at the earliest possible time. Master Wolfe remarked that the system is working, and it should not be changed. The Chair said that the five-day

period should be left in the Rule. The Vice Chair posited a theoretical objection that it may be inconsistent to provide for five days' notice in this Rule when other rules and laws allow different time frames. Master Casey suggested that the Rule could provide for notice at least five days prior to the hearing, except that additional notice can be given to accommodate other requirements. The Chair said that any implication that someone can argue about the time should be avoided. Master Casey observed that he gets odd requests, such as a hearing requesting the master to determine whether someone can travel abroad, because the custodian cannot consent to travel abroad. The court has the authority to waive time limits, if the parent cannot be reached.

The Chair suggested that the five-day time period be left in, and language be added as in other rules providing that the court on its own motion or on the motion of a party for good cause shown can change the time. The Vice Chair pointed out that this would infer that the notice could be less than five days. It is not a good idea to build in a minimum time and then except it out. Judge Kaplan suggested that the language of Rule 11-308 (c) should be: "All parties shall be notified as soon as practicable," and the last sentence should be moved to be the second sentence. The Committee agreed by consensus with this suggestion. Ms. Lipkin suggested that there be a Committee note referencing statutory time requirements that should be considered in interpreting the phrase "as soon as practicable." The

Committee agreed by consensus to this addition, leaving the drafting of the Committee note up to the Style Subcommittee. The Committee approved the Rule as amended.

Judge Kaplan drew the Committee's attention to Rule 11-402, Disposition Hearing.

Rule 11-402. DISPOSITION HEARING

(a) Hearing--Scheduling

(1) Determination of Motion to Intervene; Disposition Hearing--Generally

If after an adjudicatory hearing the court determines that the allegations of the petition at issue in the adjudicatory hearing have been sustained, it shall promptly determine any pending motion to intervene and schedule a separate disposition hearing, subject to subsections (a)(2) and (a)(3) of this Rule.

(2) Same Day Hearing; Exceptions

In a child in need of assistance or citation proceeding, the disposition hearing shall be held on the same day as the adjudicatory hearing unless on motion of a party or intervenor or on the court's initiative, the court finds good cause to delay the disposition hearing. In all other proceedings, the disposition hearing may be held on the same day as the adjudicatory hearing if notice of the disposition hearing is waived on the record by all parties and intervenors. If a disposition hearing is not held on the same day as the adjudicatory hearing, it shall be held no later than 30 days after the conclusion of the adjudicatory hearing, except as set forth in subsection (a)(3) of this Rule.

(3) Child in Detention

If a child is detained after an adjudicatory hearing, the disposition hearing shall be held no later than 14 days after the adjudicatory hearing, unless the detention is extended in accordance with **Code, Courts Article, §3-8A-15 (d)(6)** in which instance the disposition hearing shall be held prior to the expiration of the extended detention.

(b) Procedure

(1) Definitions

(A) Probation

"Probation" means a status created by a court order under which a child adjudicated to be delinquent or an adult convicted under **Code, Courts Article, §3-828 or §3-8A-30** is to remain subject to supervision of the Court under conditions the Court deems proper, but is not removed from home by order in this proceeding.

(B) Probation With Stay of Delinquency Finding

"Probation with stay of delinquency finding" means a status created by a court order in which the court, without making a finding that a child is a delinquent child and with the consent of the child and the child's parent, guardian or custodian, places the child in a probationary status with appropriate conditions after the court has determined that the child committed a delinquent act.

(C) Protective Supervision

"Protective supervision" means the placement of a child in the home of the parent, custodian, or guardian of the child, under the supervision of a social service agency and the court, under terms and conditions ordered by the court.

(2) Generally

The disposition made by the court shall be in accordance with **Code, Courts Article, §3-819 or 3-8A-19 (c)**, except that in a citation case, disposition shall be in accordance with **Code, Courts Article, §3-8A-19 (e)**. If the disposition hearing is conducted by a judge, and the judge's order includes placement of the child outside the home, the judge shall ~~announce in open court a statement of~~ state on the record the reasons for the placement. If the hearing is conducted by a master, the procedures of Rule 11-105 shall be followed. In the interest of

justice, the judge or master may decline to require strict application of the rules in Title 5, except those relating to the competency of witnesses. A commitment recommended by a master is subject to approval by the court in accordance with Rule 11-105, but may be implemented in advance of court approval. If disposition includes probation, probation with stay of delinquency finding, or an order of protective supervision, the court shall place on the record or in writing any condition of the probation, probation with stay of delinquency finding, or the order of protective supervision.

(3) Probation with Stay of Delinquency Finding

By consenting to and receiving probation with stay of delinquency finding, the child and the child's parent, guardian, or custodian waive the right to except to or appeal from the finding that the child committed a delinquent act and any later entry of a finding that the child is a delinquent child upon the court's finding that the child violated a term or condition of probation. Prior to the court's acceptance of the consent of the child and the child's parent, guardian, or custodian to probation with stay of delinquency finding, the court shall advise them of the waiver provisions set forth in this subsection. Upon the child's fulfillment of the terms and conditions of probation, the court shall enter a final order of termination pursuant to Rule 11-407. Upon violation of a term or condition of the child's probation, the court may enter a finding that the child is a delinquent child and proceed to enter an appropriate modification order under Rule 11-405.

(c) ~~Commitment to the Custody of the Department of Health and Mental Hygiene~~ Inpatient Care and Treatment

(1) Order for Evaluation

If the court has reason to believe

that a child should be ~~committed to the Department of Health and Mental Hygiene for placement in a State mental hospital or State residential facility~~ placed for inpatient care or treatment in a psychiatric facility or a facility for the ~~mentally retarded~~ developmentally disabled, it shall order that the child be evaluated, pursuant to Rule 11-306 and **Code, Courts Article, §3-816 or §3-8A-17** ~~and Rule 11-306~~. The order shall require the agency conducting the evaluation to submit a written report setting forth its findings regarding

(A) the extent to which the standard for commitment set forth in subsection (c)(2) or (c)(3) of this Rule is met,

(B) the basis for these findings,

(C) its recommended disposition, and

(D) the reasons for its recommended disposition.

The evaluation shall be conducted on an outpatient basis if, considering the child's condition, that is feasible and appropriate. Where an inpatient evaluation in a psychiatric facility or a facility for the developmentally disabled is necessary, the court may authorize the admission of the child to ~~a State mental hospital~~ the facility for the purpose of the evaluation for a period not to exceed 20 days in a child in need of assistance case unless the court extends the time for good cause or 30 days ~~for the purpose of the evaluation~~ in all other cases.

(2) Placement in a ~~State Mental Hospital~~ Psychiatric Facility -- Standard for Commitment

A court may not commit a child ~~to the custody of the Department of Health and Mental Hygiene for placement in a State mental hospital~~ for inpatient care and treatment in a psychiatric facility unless the court finds by clear and convincing

evidence that the standards set out in **Code, Courts Article, §3-819 (g) or §3-8A-19 (i)** are met.

~~(A) the child has a mental disorder, and~~

~~(B) the child needs inpatient care and treatment for the protection of himself or others, and~~

~~(C) the child is unable or unwilling to be voluntarily admitted to such hospital, and~~

~~(D) there is no less restrictive form of intervention available which is consistent with the child's condition and welfare.~~

(3) Placement in a ~~State Residential~~ Facility for the ~~Mentally Retarded~~ Developmentally Disabled -- Standard for Commitment

A court may not commit a child ~~to the custody of the Department of Health and Mental Hygiene for placement in a State residential~~ for inpatient care and treatment in a facility for the ~~mentally retarded~~ developmentally disabled unless the court finds by clear and convincing evidence that the standards set out in **Code, Courts Article, §3-819 (h) or §3-8A-19 (j)** are met.

~~(A) The child is mentally retarded;~~

~~(B) The condition is of such nature that for the adequate care or protection of the child or others, the child needs in-residence care or treatment; and~~

~~(C) There is no less restrictive form of care and treatment available which is consistent with the child's welfare and safety.~~

Committee note: In this section, the broader and more modern terminology in Code, Courts Article, Title 3, Subtitle 8 is used, rather than the terminology in Code, Courts Article,

Title 3, Subtitle 8A. Subtitle 8 uses the phrases "psychiatric facility" and "facility for the developmentally disabled." Subtitle 8A continues to use the phrases "State mental hospital" and "State mental retardation facility."

Source: This Rule is derived ~~as follows:~~

~~Section (a) is derived in part from former Rule 915 a and is in part new.~~
~~Section (b) is derived in part from former Rules 901 b 5 and 915 b and is in part new.~~
~~Section (c) is derived in part from former Rule 915 c 1 and c 2, in part from Code, Courts Article, §3-820 (h) and (i).~~ in part from former Rule 915 and is in part new.

Rule 11-402 was accompanied by the following Reporter's Note.

Section (a) of this Rule is derived from former Rule 915 a. Added to the section are a provision requiring prompt determination of any motions to intervene filed pursuant to Rule 11-401, language to implement statutory timing requirements, and a provision requiring "same day" disposition of citation cases, unless there is good cause for a delay.

Section (b) is derived from former Rule 915 b. Added to this section is a provision requiring the court to place any conditions of probation, probation with stay of delinquency finding, or an order of protective supervision on the record or in writing. This is to give the child and parent clear, advance notice of specific behaviors which may form the basis of a violation of probation or of the order of protective supervision. Also added to section (b) are the definition of "probation" formerly contained in Rule 901 b 5 and new definitions of "probation with stay of delinquency finding" and "protective supervision." Also, to highlight the difference between disposition of cases initiated by petition and cases initiated by

citation, separate references to **Code, Courts Article, "§3-819 or 3-8A-19 (c)" and "§3-8A-19 (e)"** are included in subsection (b)(2) of the Rule.

A new provision, "probation with stay of delinquency finding," is included in section (b) and is believed to be within the allowable range of disposition options set forth in **Code, Courts Article, §3-8A-19.** The Committee believes that this disposition represents an appropriate option in cases where a child committed a delinquent act, is likely to successfully complete probation, and should not for various reasons be labeled a "delinquent child."

Deleted from section (b) is the requirement of former Rule 915 b that a judge "prepare and file with the clerk" a statement of reasons for placement of a child outside the home. Preparation of this written statement is believed to be an unnecessary, redundant step in the proceedings, in light of the retention of the requirement that the judge's reasons for the placement must be announced on the record in open court. The Committee feels that the open court announcement of reasons for placement outside the home should be retained because of the potential beneficial impact upon the child and others present when the reasons are explained by the judge.

In section (b), the Committee has retained the provision in former Rule 915 b (renumbered Rule 11-115 b) that states "A commitment recommended by a master is subject to approval by the court in accordance with Rule [11-105], but may be implemented in advance of court approval." This recommendation is not without concern about the constitutional and statutory authority of masters. The Committee believes that the provision is within the authority of masters under **Code, Courts Article, §3-807** and is necessary to prevent the release of children for whom commitment is appropriate.

Section (c) former Rule 915 addressed

only the placement of a child in a "State mental hospital." This terminology has been replaced by the broader and more modern term, "psychiatric facility." Also, references to the procedures applicable to the placement of a child in a facility for the developmentally disabled have been added to section (c).

Sections c 3 and d of Rule 915 have been deleted from new Rule 11-402. All review provisions are now included in new Rule 11-405.

Subsection (b)(2) has a proposed change of language from "...announce in open court a statement..." to "...state on the record...". Mr. Sykes asked if there was a reason for deleting the requirement that the judge announce in open court the reasons for the placement of the child. Mr. Fontaine answered that in some juvenile matters, the courtroom is open, and in some, the courtroom is closed. Master Casey added that another reason is that putting the statement on the record accomplishes the same purposes as announcing it in open court. Judge Johnson expressed the opinion that announcing in open court and stating on the record are not the same. The Chair pointed out that Rule 4-407, Statement and Order of Court, provides that the judge "shall prepare or dictate into the record a statement setting forth separately each ground upon which the petition is based...". Master Wolfe suggested that the proposed language could be: "...state in court on the record..". The Chair expressed the view that an adaptation of the language of Rule 4-407 would read "prepare or dictate into the record a statement of reasons" would provide adequate protection. The Committee agreed by consensus

to this suggestion.

Judge Kaplan pointed out proposed changes in section (c) of Rule 11-402. The phrase "a psychiatric facility or a facility for the developmentally disabled" has been substituted for the phrase "a State mental hospital or State residential facility for the mentally retarded." Subsection (c)(2) has been shortened by eliminating a statement of the standards for commitment and instead referring to the statute. Referring to the language at the end of subsection (c)(1) which reads "...unless the court extends the time for good cause...", the Chair asked if there is a place in the Juvenile Rules for a general provision that the court can alter a time period for good cause shown. Ms. Lipkin answered that there are minimum federal law requirements concerning time periods. The Chair asked if the time period in subsection (c)(1) is inconsistent with any law. The Reporter replied that the 20-day period is taken from the CINA statute. The Chair inquired if there is any danger of losing federal funds, and Ms. Lipkin responded in the negative. The Committee approved the Rule as amended.

Judge Kaplan drew the Committee's attention to Rule 11-403, Custody--Appointment of Guardian--Pending Support Proceedings.

Rule 11-403. CUSTODY--APPOINTMENT OF GUARDIAN--PENDING SUPPORT PROCEEDINGS

(a) Custody--Appointment of Guardian of the Person

The court shall determine the custody

or appoint a guardian of a child only if the question arises in connection with a matter which is within its ~~exclusive~~ jurisdiction under **Code, Courts Article, §§3-803 and 3-8A-03**~~, and the determination of the question is necessary to make an appropriate disposition~~.

(b) Other Support Proceedings

The court shall give due consideration to orders or proceedings pertaining to custody or support issued by or pending in other courts. However, this shall not affect the court's authority to detain, commit, or place in shelter care a child under its jurisdiction, or to exercise its authority in accordance with **Code, Courts Article, §§3-819 (c), 3-821, 3-822 (e), 3-8A-26, and 3-8A-29**.

Cross reference: For the authority of a judge in juvenile proceedings to determine ~~the~~ custody or appoint a guardian~~, "of a juvenile subject to the jurisdiction of equity court,"~~ see **Code, Courts Article, §3-819 and 3-8A-19.** For the procedure for appointment of a guardian other than a guardian appointed pursuant to **Code, Courts Article, §3-819 or §3-8A-19,** see Title 10 (Guardians and Other Fiduciaries) of these Rules. For the requirement of notice in the original summons with respect to custody and support payments, see section (c) of Rule 11-102 (Duties of Clerk). The notice, when given in accordance with that Rule, shall be sufficient to permit the consideration and determination of these questions at hearings held after service of the summons.

Source: This Rule is derived from former Rule 917.

Rule 11-403 was accompanied by the following Reporter's Note.

This Rule is derived from Rule 917 without substantive change.

Judge Kaplan pointed out that in section (a) and in the cross reference to section (b), language has been deleted. There being no comments, the Rule was approved as presented.

Judge Kaplan drew the Committee's attention to Rule 11-405, Post-Dispositional Review and Modification.

Rule 11-405. POST-DISPOSITIONAL REVIEW AND MODIFICATION

~~(a) Revisory Power~~

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

~~(b)~~ (a) ~~Sua Sponte or On Motion~~ Discretionary Review and Modification

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

(b) Required Review

(1) Child in Need of Assistance

Post-dispositional reviews and modifications of orders of court in child in need of assistance proceedings are governed

by **Code, Courts Article, §§3-820, 3-823, and 3-824.**

(2) Child in Need of Supervision and Delinquency

This subsection applies in child in need of supervision and delinquency proceedings.

~~(c)~~ (A) Hearing--When Required

If the relief sought under section ~~(a)~~ (c) of this Rule is for revocation of (1) probation, (2) probation with stay of delinquency finding, or (3) order of protective supervision and for the commitment of a respondent, the court shall pass an order to show cause why the relief should not be granted and to set a date and time for a hearing. The petition, or order if issued on the court's own initiative, shall state each condition of probation, probation with stay of delinquency finding, or order of protective supervision that the respondent is alleged to have violated and the nature of the violation. The clerk shall cause a copy of the petition, if any, and Show Cause Order to be served upon the parties. In all other cases, the court may grant or deny the relief, in whole or in part, without a hearing.

~~(d) Review of Commitment to Department of Social Services~~

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

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

~~In cases in which a child is placed under guardianship, as that term is defined in Code, Family Law Article, §5-301, to a~~

~~department of social services, post-dispositional review is governed by Code, Family Law Article, §5-319.~~

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

~~(1)~~ (i) Periodic Reports

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

~~(2)~~ (ii) Periodic Review

The court shall review each report submitted under subsection ~~(f)(1)~~ (b)(2)(B)(i) of this Rule promptly and consider whether the commitment order should be modified or vacated. Upon the request of any party, the Department, hospital, or facility, or upon its own motion, the court shall grant a hearing for the purpose of determining if the standard in **Code, Courts Article, §3-8A-19 (i) or (j)** continues to be met. After the first six months of the commitment and at six month intervals thereafter upon the request of any party, the Department, hospital, or facility, the court shall grant a hearing for the purpose of determining if the standard in subsection ~~(h)~~ (i) or ~~(i)~~ (j) continues to be met. At any time after the commitment of a child to a State mental hospital if the individualized treatment plan developed under **Code, Health-General Article, §10-706** recommends that the child no longer meets the standards in **Code, Courts Article, §3-8A-19**, the court shall grant a hearing to review the commitment order. At any time after the commitment of a child to a state residential facility for the ~~mentally retarded~~ developmentally disabled if the individualized plan of habilitation

developed under **Code, Health-General Article, §7-1006** recommends that a child no longer meets the standards in **Code, Courts Article, §3-8A-19 (j)**, the court shall grant a hearing to review the commitment order.

~~(3)~~ (iii) Other Review

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

(c) Revisory Power

An order of the court may be modified or vacated if the court finds that action to be in the best interest of the child or the public, except that (1) in child in need of assistance cases involving commitment of a child for inpatient care and treatment at a psychiatric facility or facility for the developmentally disabled, the court shall proceed in accordance with **Code, Courts Article, §3-819** and (2) in child in need of supervision and delinquency cases involving commitment of a child for inpatient care and treatment at a psychiatric facility or facility for the developmentally disabled, the court shall proceed as provided in subsection (b)(2)(B) of this Rule.

~~(g)~~ (d) Conduct of Hearing

At hearings held pursuant to **Code, Courts Article, §3-820,** the rules in Title 5 shall be applied in accordance with **Code, Courts Article, §3-820 (e) and (f).** In the interest of justice, at any other hearing held pursuant to this Rule the court may decline to require strict application of the rules in Title 5, except those relating to the competency of witnesses.

Source: This Rule is derived ~~as follows:~~

~~Section (a) is derived in part from former Rule 916 a and is in part new.~~

~~Section (b) is derived from former Rule 916 b.~~

~~Section (c) is derived in part from former Rule 916 c and is in part new.~~

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

~~Section (e) is new.~~

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

~~Section (g) is derived from former Rule 916 d.~~ in part from former Rules 915 c 3 and 916 and is in part new.

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

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

Section (a) is derived from Rule 916 b.

Subsection (b)(1) is new. It provides a reference to **Code, Courts Article, §§3-820, 3-823, and 3-824**, which govern post-dispositional review and modification under the new CINA statute.

Subsection (b)(2)(A) is derived from Rule 916 c, with the addition of a requirement that the respondent be apprised of each condition of probation or order of protective supervision the respondent is alleged to have violated and the nature of the violation.

Subsection (b)(2)(B) is derived from Rule 915 c 3 and has been expanded to include cases where children have been placed in State residential facilities for the developmentally disabled, in addition to cases where children have been placed in State mental hospitals. This section also clarifies the standards to be met if the

commitment is to be continued.

Section (c) is derived from Rule 916 a, with the addition of an exclusionary references to **Code, Courts Article, §3-819** and reviews of placements in state residential facilities for the developmentally disabled.

Section (d) carries forward the provisions of former Rule 916 d, with the addition of a provision concerning the applicability of the rules in Title 5 to hearings under **Code, Courts Article, §3-820.**

Judge Kaplan noted that section (a) has been deleted. Mr. Sykes asked why section (a) was deleted, and Judge Heller replied that it was moved to section (c). New language has been added to section (b), existing sections (d) and (e) have been deleted, and new language has been added to part of section (d). The Vice Chair questioned the use of the term “revisory power” in section (c) because it is associated with judgments, but Master Wolfe explained that the term has always been used in this context. There being no other comments, the Committee approved the Rule as presented.

Judge Kaplan drew the Committee’s attention to Rule 11-501, Termination of Parental Rights and Related Adoption Proceedings in the Juvenile Court.

Rule 11-501. TERMINATION OF PARENTAL RIGHTS AND RELATED ADOPTION PROCEEDINGS IN THE JUVENILE COURT

(a) Applicability of Rule

This Rule applies to actions in which the juvenile court is exercising jurisdiction pursuant to **Code, Courts Article, §3-803 (a)(3), (4), and (5).**

(b) Definition

The word "guardianship" as used in this Rule has the meaning stated in **Code, Family Law Article, §5-301.**

(c) Applicability of Titles 1, 2, 5, and 9

The Rules in Titles 1, 2, and 5 and Chapter 100 of Title 9 apply to actions under this Rule, except as otherwise provided by law or ordered by the court.

(d) Petition

A proceeding for adoption or guardianship shall be initiated by the filing of a petition in a new action, separate from any other proceedings involving the child who is the subject of the adoption or guardianship proceeding. In addition to complying with the requirements of Rule 9-103, the petition shall state the basis for the juvenile court's jurisdiction and the name of the court and case number of the proceeding in which the child was adjudicated a child in need of assistance.

(e) Consolidation

A proceeding for adoption or guardianship may be consolidated with, or severed from, any other case pending in the juvenile court involving the child who is the subject of the proceeding, as justice may require.

(f) Hearing -- Before Whom Held

Except as otherwise allowed under section (g) of this Rule, ~~All~~ all hearings conducted pursuant to this Rule shall be held before a judge.

(g) Review of Cases Where a Department of Social Services has Been Granted Guardianship

In cases in which a child is placed under guardianship to a department of social services, guardianship review is governed by **Code, Family Law Article, §5-319.** Except in Prince George's County, a guardianship review hearing may be held before a master. The rules in this Title applicable to post-dispositional review hearings held before a master shall apply to guardianship review hearings held before a master. In the interest of justice, at any hearing held pursuant to this section the court may decline to require strict application of the rules in Title 5, except those relating to the competency of witnesses.

~~(g)~~ (h) Judgments of Adoption -- Recording and Indexing

The clerk shall record and index each judgment of adoption entered by the juvenile court on or after October 1, 1996 in the adoption records of the circuit court for the county where the judgment was entered.

Committee note: Judgments of adoption under this section include judgments entered under former Rule 923.

Source: This Rule is new.

Rule 11-501 was accompanied by the following Reporter's Note.

This Rule was originally adopted by Rules Order dated December 10, 1996, effective January 1, 1997, and was amended by Rules Order dated June 10, 1997, effective July 1, 1997. It is proposed for readoption without further amendment, except for a revised statutory reference in section (a), the addition of new section (g) pertaining to guardianship review hearings, and an amendment to section (f) that allows guardianship review hearings to be held before a master.

New section (g) incorporates by

reference the requirements of **Code, Family Law Article, §5-319** with respect to post-dispositional review where a department of social services has been granted guardianship (as defined in **Code, Family Law Article, §5-301**) of a child. Because a guardianship review hearing is akin to a post-dispositional review hearing in a CINA case and because a guardianship review can neither terminate parental rights (as in a TPR proceeding) nor establish a new parent/child relationship (as in an adoption proceeding), the Subcommittee believes that the Rule should allow flexibility as to whether a guardianship review hearing is set before a judge or a master. In light of **Code, Courts Article, §3-807**, the Rule requires that guardianship review hearings in Prince George's County be held before a judge.

Judge Kaplan said that a new section (g) has been added pertaining to review of cases where the DSS has been granted guardianship. There being no comments, the Rule was approved as presented.

Judge Kaplan drew the Committee's attention to Rule 11-701, Peace Orders, which has been added for peace orders in juvenile cases.

Rule 11-701. PEACE ORDERS

(a) Generally

The issuance of a peace order by the juvenile court is governed by **Code, Courts Article, §§3-8A-19.1 through 3-8A-19.5.** Rules 11-101 through 11-601 do not apply in peace order proceedings. A hearing in a peace order proceeding may not be set before a master.

(b) Peace Order Request

A peace order request may be filed only by an intake officer, as defined in **Code, Courts Article, §3-8A-01**, or the State's Attorney, as defined in Rule 4-102 (j). A peace order request shall be signed by the person who files it and shall be in substantially the following form:

(Caption)

PEACE ORDER REQUEST
(Juvenile Respondent)

(Note: Fill in the following, checking the appropriate boxes. Use additional paper, if necessary.)

1. I want protection from _____ _____.
Respondent (Juvenile)

The Respondent committed the following acts against _____

_____,
Victim

within the past 30 days on the dates stated below.

(Check all that apply)

[] kicking [] punching [] choking [] slapping

[] shooting [] rape or other sexual offense (or attempt)

[] hitting with object [] stabbing [] shoving

[] threats of violence [] harassment [] stalking

[] detaining against will [] trespass

[] malicious destruction of property

[] other _____

The details of what happened are: *(Describe injuries. State the*

date(s) and place(s) where these acts occurred. Be as specific as you can):

_____

_____

_____

2. Describe all other harm the Respondent has caused you and give date(s), if known.

_____

_____

_____

3. Provide the following information about the Respondent, if known:

Respondent's Full Name: _____ Date of Birth: _____

Sex: ____ Race: _____ School: _____ Grade: ____

Height: _____ Weight: _____ Hair Color: _____ Eye Color: ____

Living With: (Name and address) (Telephone Number)

Father's name and address, if different from above (Telephone Number)

Mother's name and address, if different from above (Telephone Number)

Respondent's place of work, address, telephone number: _____

_____

4. I want the court to order the Respondent:

☒ NOT to commit or threaten to commit any of the acts listed in paragraph 1 against _____
Name

☐ NOT to contact, attempt to contact, or harass _____
Name

☐ NOT to go to the residence(s) at _____
Address

☐ NOT to go to the school(s) at _____
Name of school and address

☐ NOT to go to the work place(s) at _____

_____

☐ To go to counseling

☐ To pay the filing fees and court costs

☐ Other specific relief: _____

and I do/do not want the court to impose court costs against
(circle one)
the parent(s), guardian, or custodian of the respondent.

I solemnly affirm under the penalties of perjury that the contents of this Peace Order Request are true to the best of my knowledge, information, and belief.

_____ _____
Date Signature of Victim

_____
Name (printed or typed)

_____
Address

Telephone Number

- -

Certification of Person Filing Peace Order Request

I hereby certify that I am an intake officer/the State's (circle one) Attorney and that I have conducted the inquiry or review required by law prior to the filing of this Peace Order Request.

Date Signature _____

Name (printed or typed) _____

Cross reference: See **Code, Courts Article, §3-8A-13 (c) and (d)**.

Source: This Rule is new.

Rule 11-701 was accompanied by the following Reporter's Note.

> Chapter 404, Acts of 2000 (House Bill 675) transferred from the District Court to the juvenile court jurisdiction over certain peace order proceedings. By Chapter 415, Acts of 2001 (Senate Bill 660), the procedures for peace order proceedings in the juvenile court are set out in **Code, Courts Article, §§3-8A-19.1 through 3-8A-19.5.**
>
> Section (a) of proposed new Rule 11-701 states that peace order proceedings are governed by the statute. Because the statute sets out the procedures for obtaining a peace order, which are substantially different than the procedures applicable in other juvenile proceedings, the second sentence of section (a) provides that Rules 11-101 through 11-601 do not apply in peace order proceedings. The third sentence requires that peace order

hearings be held before a judge, rather than a master.

In accordance with **Code, Courts Article, §3-8A-13 (c) and (d)**, section (b) of the Rule provides that a peace order request may be filed only by an intake officer or the State's Attorney and sets out the form of the request. The form is adapted from the District Court form set out in Rule 3-731.

The Committee approved the Rule as presented.

Judge Kaplan presented a conforming amendment to Rule 4-217, Bail Bonds.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-217 (a) for conformity with new Rule 11-107, as follows:

Rule 4-217. BAIL BONDS

. . .

(a) Applicability of Rule

This Rule applies to all bail bonds taken pursuant to Rule 4-216, and to bonds taken pursuant to Rules 4-267, 4-348~~, and~~ 4-349, and 11-107 to the extent consistent with those rules.

. . .

Rule 4-217 was accompanied by the following Reporter's Note.

This amendment to Rule 4-217 (a)

conforms the rule to new Rule 11-107, Prehearing Release.

Judge Kaplan explained that a reference to new Rule 11-107, Prehearing Release, has been added to Rule 4-217, Bail Bonds. The Committee approved the Rule as presented.

Judge Kaplan thanked the consultants for their assistance and invited them to attend the conference at the Court of Appeals when the Juvenile Rules are presented.

Agenda Item 5. Consideration of a proposed amendment to Rule 3-601 (Entry of Judgment)

The Chair stated that Agenda Item 5 would be considered next because Patricia Platt, Clerk of the District Court and Thomas Mostowy, Esq., assistant to the Chief Judge of the District Court, were present to discuss Rule 3-601. The Reporter presented Rule 3-601, Entry of Judgment, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE — DISTRICT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 3-601 (b) to conform it to Rule 2-601, as follows:

Rule 3-601. ENTRY OF JUDGMENT

. . .

(b) Method of Entry — Date of Judgment

> The court shall enter a judgment by making a record of it in writing on the file jacket, or on a docket within the file, or in a docket book, according to the practice of each court, and shall record the actual date of the entry. That date shall be the date of the judgment.
>
> . . .

Rule 3-601 was accompanied by the following Reporter's Note.

> Patricia Platt, Chief Clerk of the District Court, on behalf of the Hon. Martha F. Rasin, Chief Judge of the District Court request that Rule 3-601 (b) be amended to conform to Rule 2-601 (b), because the District Court no longer uses file jackets with lines for manually-written docket entries.

Ms. Platt explained that Chief Judge Rasin would like the District Court Rule to conform to section (b) of Rule 2-601, Entry of Judgment, the parallel circuit court rule. The District Court no longer enters a judgment by making a record of it in writing on the file jacket. The Vice Chair observed that the proposed changes are exactly like Rule 2-601. The Chair commented that the language "according to the practice of each court" is not necessary. Mr. Bowen remarked that there could be different ways of entering judgment. The Vice Chair pointed out that someone would check the file either way. The Reporter asked if the change to the Rule is applicable to Baltimore City, the only jurisdiction in which a District Court judgment is a lien on real property, and Ms. Platt replied that it is. The Committee approved the Rule as presented.

The Chair referred to the letter to Delegate Vallario and Senator Baker which the Committee had received when the meeting began. (See Appendix 3). The Vice Chair expressed the view that the letter should also contain the information that the Court of Appeals had established the Council on Jury Use and Management and give the background of this. It would also be helpful to reference the change made by the federal judiciary. The Reporter suggested that the minutes of the Rules Committee meetings at which the issue of jury size was discussed could be attached to the letter. Mr. Bowen said that the letter is self-explanatory, and it is not necessary to include the minutes. The Chair added that the minutes can be provided if the legislature is interested. Senator Stone suggested that a vote be taken as to whether to send the letter. The Vice Chair responded that the Committee had already voted at the last meeting to send the letter. The Chair said that the letter can be redrafted for comments and can go on the agenda for next months' Rules Committee meeting, if necessary. Senator Stone stated that he is not in favor of changing the size of the jury.

Judge Heller expressed the opinion that the contents of the letter are appropriate, and the minutes should not be sent. She asked who will send the letter, the Chief Judge of the Court of Appeals or the Rules Committee. The Chair answered that the Rules Committee will send the letter. Judge Heller inquired if the letter will be sent with the agreement of the Chief Judge and the Administrative Office of the Courts. The Chair replied that

the letter can be shown to Chief Judge Bell.

Mr. Sykes observed that the American College of Trial Lawyers has expressed the opinion that six-person juries are not satisfactory, because they are not representative of the population. Judge Heller asked if the Conference of Circuit Court Judges should approve the letter. Judge Missouri added that not all members of the Conference are in agreement on this issue. The Chair agreed that the letter should be presented to the Conference of Circuit Court Judges and to the Judicial Council, which includes the Chief Judge.

Mr. Bowen said he had made some changes to the letter and suggested that the letter be retyped and considered today, instead of waiting another month to discuss it. The Vice Chair commented that she had written an article on this issue and discovered a body of case law on it. Mr. Titus suggested that the Vice Chair rewrite the letter. The Vice Chair remarked that the Rules Committee already had voted on the concept of changing the size of juries. The Reporter observed that Mr. Bowen's suggested changes are stylistic. She expressed the view that if the concepts in the letter are acceptable to the Committee, the Committee does not need to see the letter after the changes are made. The letter can be sent to the Conference of Circuit Judges. The Chair inquired as to when the Conference's next meeting is, and Judge Missouri responded that it is September 17, 2001. The Chair stated that the letter will be completed before then.

Agenda Item 4. Consideration of proposed amendments to certain Rules to conform them to 2001 legislation: Rule 9-105 (Show Cause Order; Other Notice), Rule 15-1001 (Wrongful Death), and Rule 16-204 (Family Division and Support Services).

The Reporter told the Committee that the Assistant Reporter would present two of the Rules, because she had drafted them. The Assistant Reporter presented Rule 15-1001, Wrongful Death, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1000 - WRONGFUL DEATH

AMEND Rule 15-1001 to add another Code provision to the cross reference, as follows:

Rule 15-1001. WRONGFUL DEATH

(a) Applicability

This Rule applies to an action involving a claim for damages for wrongful death.

Cross references: See Code, Courts Article, §§3-901 through 3-904, relating to wrongful death claims generally. See Code, Courts Article, §5-806 relating to wrongful death claims between parents and children arising out of the operation of a motor vehicle. See also Code, Labor and Employment Article, §9-901 et seq. relating to wrongful death claims when worker's compensation may also be available, and Code, Insurance Article, §20-601, relating to certain wrongful death claims against the Maryland Automobile Insurance Fund. See also Code, Estates and Trusts Article, §8-103, relating to the

> limitation on presentation of claims against a decedent's estate.
>
> . . .

Rule 15-1001 was accompanied by the following Reporter's Note.

> Because of the passage of House Bill 183, which abrogates the doctrine of parent-child immunity in motor vehicle tort cases up to mandatory minimum liability coverage levels, and the case of Bushey v. Northern Assurance Co. Of America, 362 Md. 626 (2001) dealing with the same subject, the Specific Remedies Subcommittee is recommending that a reference to Code, Courts Article, §5-806 be added to the cross references at the end of Rule 15-1001.

The Assistant Reporter explained that Chapter 199, Acts of 2001 (HB 183), and the case of Bushey v. Northern Assurance Co. of America, 362 Md. 626 (2001) abrogated the doctrine of parent-child immunity in motor vehicle tort cases up to mandatory minimum liability coverage. The Specific Remedies Subcommittee is recommending that a reference to the amended statute, Code, Courts Article, §5-806, be added to the list of statutes cross referenced at the end of Rule 15-1001. The Committee approved this change by consensus.

The Assistant Reporter presented Rule 9-105, Show Cause Order; Other Notice, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 100 - ADOPTION; GUARDIANSHIP

TERMINATING PARENTAL RIGHTS

AMEND Rule 9-105 to conform to statutory changes pertaining to notice to parents of persons to be adopted, as follows:

Rule 9-105. SHOW CAUSE ORDER; OTHER NOTICE

. . .

(b) Persons to be Served

(1) In Adoption Proceeding

(A) Subject to paragraphs (1)(B), (1)(C), and (1)(D) of this section, if the petition seeks adoption, the show cause order shall be served on (i) the person to be adopted, if the person is 10 years old or older; (ii) the parents of the person to be adopted; and (iii) any other person the court directs to be served.

(B) If the parental rights of the parents of the person to be adopted have been terminated by a judgment of guardianship with the right to consent to adoption, service shall be on the guardian instead of the parents.

(C) If an attorney has been appointed to represent a parent or the person to be adopted, service shall be on the attorney instead of the parent or person to be adopted.

Cross reference: See Rule 9-106 (a) concerning appointment of attorney.

(D) ~~The show cause order need not be served on: (i) a parent of a person to be adopted if the~~ If a person to be adopted has been adjudicated to be a child in need of assistance in a prior juvenile proceeding, ~~the petition for adoption is filed by a child placement agency,~~ and the court is satisfied by affidavit or testimony that the petitioner has made reasonable good faith efforts to

serve the show cause order on the person's parent by both certified mail and private process at the addresses specified in Code, Family Law Article, §5-322 (b) and at any other address actually known to the petitioner as one where the parent may be found, the court shall order notice by publication as to that parent pursuant to section (c); or (ii) a person who has executed a written consent pursuant to Rule 9-102.

(E) the show cause order need not be served on a person who has executed a written consent pursuant to Rule 9-102.

(2) In a Guardianship Proceeding

(A) Subject to paragraphs (2)(B) and (2)(C) of this section, of the petition seeks guardianship, the show cause order shall be served on (i) the parents of the person for whom a guardian is to be appointed and (ii) any other person that the court directs to be served.

(B) If an attorney has been appointed to represent a parent or the person for whom a guardian is to be appointed, service shall be on the attorney instead of the parent or person for whom a guardian is to be appointed.

(C) The show cause order need not be served on: (i) a parent of a person for whom a guardian is to be appointed has been adjudicated to be a child in need of assistance in a prior juvenile proceeding and the court is satisfied by affidavit or testimony that the petitioner has made reasonable good faith efforts to serve the show cause order on the parent by both certified mail and private process at the addresses specified in Code, Family Law Article, §5-322 (b) and at any other address actually known to the petitioner as one where the parent may be found; or (ii) a person who has executed a written consent pursuant to Rule 9-102.

(c) Method of Service

Except as otherwise provided in this Rule, the show cause order shall be served in the manner provided by Rule 2-121. If the court is satisfied by affidavit or testimony that the petitioner or a parent, after reasonable efforts made in good faith, has been unable to ascertain the identity or whereabouts of a parent entitled to service under section (b) of this Rule, the court may order, as to that parent, that the show cause order be published at least one time in one or more newspapers of general circulation published~~. Publication shall be~~ in the county ~~of that parent's last know residence~~ in which the petition was filed. When a show cause order is published, unless the court orders otherwise, the show cause order shall identify the individual who is the subject of the proceeding only as "a child born to" followed by the name of any known parent of the child and shall set forth the month, year, county, and state of the child's birth, to the extent known.

Cross reference: ~~See Code, Family Law Article, §5-322 (c)(2)(ii), which provides that an indigent petitioner may serve notice by posting.~~ See Code, Family Law Article, §5-322 (e), setting forth the efforts necessary to support a finding that a reasonable, good faith effort has been made by a local department of social services to locate a parent.

. . .

Rule 9-105 was accompanied by the following Reporter's Note.

House Bill 705, enacted by the 2001 legislature, modified notice to parents of persons to be adopted by providing that if the person to be adopted has already been adjudicated to be a child in need of assistant and the petitioner has made good faith efforts to serve a show cause order on the parent by certified mail and private process, the court shall order notice by publication, instead of waiving notice which the previous version of the statute allowed.

Publication is to be in one or more newspapers of general circulation in the county in which the petition was filed. The cross reference after section (c) to Code, Family Law Article, §5-322 (c)(2)(ii) should be deleted because that provision has been deleted. The Family and Domestic Subcommittee is proposing conforming changes to sections (b) and (c) of Rule 9-102.

The Assistant Reporter explained that Chapter 496, Acts of 2001 (HB 705) changed procedures for service on parents of persons to be adopted. The statute no longer excepts out independent adoptions. If the person to be adopted already has been adjudicated to be a child in need of assistance, and the petitioner has made good faith efforts to serve a show cause order on the parent by certified mail and private process, the court has to order notice by publication. The court no longer can waive notice, which the previous version of the statute had allowed. The amended statute requires notice by publication by publishing at least once in one or more newspapers of general circulation published in the county in which the petition is filed. The Family and Domestic Subcommittee is recommending changes to Rule 9-105 to conform to the statutory changes. There being no comments, the Committee approved by consensus the Rule as presented.

The Reporter presented Rule 16-204, Family Division and Support Services, for the Committee’s consideration.

CHAPTER 200 - THE CALENDAR -- ASSIGNMENT AND DISPOSITION OF MOTIONS AND CASES

AMEND Rule 16-204 to conform it to recent legislation, as follows:

Rule 16-204. FAMILY DIVISION AND SUPPORT SERVICES

(a) Family Division

(1) Established

In each county having more than seven resident judges of the circuit court authorized by law, there shall be a family division in the circuit court.

(2) Actions Assigned

In a court that has a family division, the following categories of factions and matters shall be assigned to that division:

(A) dissolution of marriage, including divorce, annulment, and property distribution;

(B) child custody and visitation, including proceedings under the Maryland Uniform Child Custody Jurisdiction Act, Code, Family Law Article, Title 9, Subtitle 2, and the parental Kidnapping Prevention Act, 28 U.S.C. §1738A;

(C) alimony, spousal support, and child support, including proceedings under the Maryland Uniform Interstate Family Support Act;

(D) establishment and termination of the parent-child relationship, including paternity, adoption, guardianship that terminates parental rights, and emancipation;

(E) criminal nonsupport and desertion,

including proceedings under Code, Family Law Article, Title 10, Subtitle 2 and Code, Family Law Article, Title 13;

(F) name changes;

(G) guardianship of minors and disabled persons under Code, Estates and Trusts Article, Title 13;

(H) involuntary admission to state facilities and emergency evaluations under Code, Health General Article, Title 10, Subtitle 6;

(I) family legal-medical issues, including decisions on the withholding or withdrawal of life-sustaining medical procedures;

(J) actions involving domestic violence under Code, Family Law Article, Title 4, Subtitle 5;

(K) juvenile causes under Code, Courts Article, Title 3, Subtitles 8 and 8A;

(L) matters assigned to the family division by the County Administrative Judge that are related to actions in the family division and appropriate for assignment to the family division; and

(M) civil and criminal contempt arising out of any of the categories of actions and matters set forth in subsection (a)(2)(A) through (a)(2)(L) of this Rule.

Committee note: The jurisdiction of the circuit court, the District Court, and the Orphan's Court is not affected by this section. For example, the District Court has concurrent jurisdiction with the circuit court over proceedings under Code, Family Law Article, Title 4, Subtitle 5~~, and, in Montgomery County, the District Court sits as a juvenile court pursuant to Code, Courts Article, §4-403 and has exclusive original jurisdiction over certain termination of parental rights proceedings and related adoption proceedings pursuant to Code, Courts Article, §3-804~~.

. . .

Rule 16-204 was accompanied by the following Reporter's Note.

> The proposed addition to subsection (a)(2)(K) of a reference to Code, Courts Article, Title 3, Subtitle 8A conforms the Rule to Chapter 415, Acts of 2001 (SB660), which separates the statutory provisions relating to children in need of assistance from the statutory provisions relating to other juvenile causes.
>
> The proposed deletion of part of the Committee note that follows section (a) conforms Rule 16-204 to Chapter 414, Acts of 2001 (SB 659), which transfers jurisdiction over juvenile causes in Montgomery County from the District Court to the circuit court, effective March 1, 2002.

The Reporter explained that a reference to Code, Courts Article, Title 3, Subtitle 8A has been added to Rule 16-204. This conforms the Rule to Chapter 415, Acts of 2001 (SB 660), which separates the statutory provisions relating to CINA cases from the statutory provisions relating to other juvenile causes. The proposed deletion of the last part of the Committee note following section (a) is consistent with Chapter 414, Acts of 2001 (SB 659), which transfers jurisdiction over juvenile causes in Montgomery County from the District Court to the circuit court as of March 1, 2002. The Reporter pointed out a typographical error in subsection (a)(2) –- the word "factions" should be changed to the word "actions." The Committee agreed by consensus to approve Rule 16-204 as presented, except for correction of the

typographical error.

Agenda Item 3. Reconsideration of proposed Rules changes pertaining to Court Interpreters: Proposed new Rule 16-819 (Court Interpreters), Proposed new Rule 16-820 (Code of Conduct for Court Interpreters), Amendments to Rule 1-303 (Form of Oath), and Proposed deletion of Rule 5-604 (Interpreters).

The Chair introduced the Honorable Audrey J. S. Carrion of the Circuit Court for Baltimore City and chair of the Maryland Judicial Conference Advisory Committee on Interpreters. Judge Carrion thanked the Committee for its consideration of the Rules pertaining to court interpreters. She explained that more court interpreters are needed as the minority population in the State increases. There is a lack of uniformity in deciding who is qualified to interpret and when an interpreter is needed. Mr. Karceski asked how interpreters are used. He has seen many ways. Generally, use of an interpreter causes trials to lose a certain amount of fluidity. The most effective way for interpreters to do their job is to stand next to the person for whom they are interpreting. Judge Carrion said that the best way is for the interpreter to do the interpreting simultaneously as the person whose language needs interpreting is speaking. She agreed that interpreting in a trial can be very disruptive. Cases flow differently when an interpreter is involved. Because interpreters are not available for all languages, the Rule includes different types of qualifications for interpreters. The Advisory Committee intends to train judges as to how to manage

cases in which interpreters are used.

Judge Carrion presented Rule 16-819, Court Interpreters, for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-819, as follows:

Rule 16-819. COURT INTERPRETERS

(a) Scope

This Rule is applicable to parties and witnesses who need the services of an interpreter.

(b) Definitions

(1) Person in Need of an Interpreter

"Person in need of an interpreter" is a party or a witness who is limited English proficient, deaf, or who because of hearing, speaking, or other impairment cannot readily understand or communicate the English language.

(2) Limited English Proficient

"Limited English proficient" means the present inability to adequately understand or express oneself in the spoken or written English language.

(3) Qualified Interpreter

"Qualified interpreter" means an adult person who is certified by either:

(A) the Maryland Administrative Office of the Courts;

(B) any member of the Consortium for State Court Interpreter Certification; or

(C) the Federal Administrative Office of the Courts.

(4) Eligible Interpreter

"Eligible interpreter" means an adult person who is not a qualified interpreter as defined in subsection (b)(3) of this Rule, but who has met the following minimum requirements of the Maryland Administrative Office of the Courts:

(A) Submits to the Administrative Office of the Courts (i) a completed Maryland State Judiciary Information Form for Spoken and Sign Language Court Interpreters, (ii) a statement swearing or affirming compliance with the Maryland Code of Conduct for Court Interpreters, and (iii) a statement subscribing to the Interpreter's Oath;

(B) Attends the Maryland Judiciary's Orientation Workshop for Court Interpreters; and

(C) Does not have, in a state or federal court of record, a pending criminal charge or conviction on a charge punishable by a fine of more than $500 or imprisonment for more than six months unless pardoned or expunged in accordance with law.

(5) Non-Certified Interpreter

"Non-certified interpreter" means an adult person who is neither a qualified interpreter nor an eligible interpreter as defined in subsections (b)(3) and (b)(4) of this Rule.

(c) Appointment of Court Interpreters

(1) Application

A party or a witness who needs an interpreter, may apply to the court for the appointment of a qualified interpreter to assist the party or witness. The application shall be made by providing the information contained in the form in the Appendix to Rule 1-332.

(2) Certification Required

When an interpreter is requested or

when the court determines that an interpreter is needed for any party or witness, a qualified interpreter shall be secured by the court. If the court has made diligent efforts to obtain a qualified court interpreter and found none to be available, the court shall appoint an eligible interpreter who is otherwise competent. The court may choose a non-certified interpreter only if a qualified or eligible interpreter is not available in the appropriate language. Someone related by blood or marriage to the person who needs an interpreter may not act as an interpreter.

(3) *Voir Dire* Required

Before any appointment under subsection (c)(2) of this Rule, the court shall conduct a *voir dire* of the prospective interpreter on the record.

Committee note: Interpreter *voir dire* questions have been established by the Maryland Judicial Conference Advisory Committee on Interpreters and are available from the Administrative Office of the Courts.

(d) Multiple Interpreters

On its own motion or at the request of a party, the court may appoint more than one interpreter for the purpose of ensuring the accuracy of the interpretation or preserving confidentiality if any of the following apply:

(1) proceedings are anticipated to exceed three hours;

(2) proceedings confront additional challenges such as complex issues and terminology; or

(3) opposing parties require the use of interpretation in the same language.

Committee note: If a proceeding takes longer than thirty or forty-five minutes depending upon the complexity, an interpreter should be

granted a minimum twenty to thirty minutes rest to insure accurate interpretation.

(e) Procedures for Determining the Need for an Interpreter

(1) When an Examination is Required

If there has been no appointment of an interpreter, the court should examine a party or witness on the record to determine whether an interpreter is needed if:

(A) a party or counsel requests such an examination; or

(B) it appears to the court that a party cannot understand English well enough to participate fully in the proceedings and to assist counsel, or that a party or witness cannot speak English so as to be understood directly by counsel, the court, or the jury.

(2) Examination of Party or Witness

To determine if an interpreter is needed, the court should question the party or witness on the following matters:

(A) Identification;

(B) Active vocabulary in vernacular English; and

(C) The court proceedings.

(3) Sign-Language Interpreter Required

If a deaf person requests an interpreter, one shall be appointed.

Committee note: Regarding subsection (e)(2), matters related to identification include: name, address, birthdate, age, and place of birth. Questions eliciting active vocabulary in vernacular English include: “How did you come to the court today?;” “What kind of work do you do?;” “Where did you go to school?;” “What was the highest grade you completed?;” “Describe what you see in the courtroom;” “What have you eaten today?” Questions

should be phrased to avoid “yes or no” replies. Matters regarding court proceedings include the nature of the charge or the type of case before the court; the purpose of the proceedings and function of the court; the rights of a party or criminal defendant; and the responsibilities of a witness. Regarding subsection (d), under the Americans With Disabilities Act, 42 U.S.C. §12101, et seq., individuals who self-report as deaf shall be appointed a sign language interpreter, without being subject to an examination under this subsection.

(f) Disqualification From Proceeding

A court interpreter may be disqualified and removed from a proceeding for good cause. Good cause for disqualification includes, but is not limited to, an interpreter who engages in any of the following conduct:

(1) Being unable to interpret adequately, including self-reported inability;

(2) Knowingly making a false interpretation while serving in a proceeding;

(3) Knowingly disclosing confidential or privileged information obtained while serving in a proceeding; or

(4) Failing to follow applicable laws, rules of court, or the Maryland Code of Conduct for Court Interpreters.

Committee note: See Rule 16-820 for the Maryland Code of Conduct for Court Interpreters.

(g) Compensation of Court Interpreters

Any interpreter appointed to assist a defendant in a criminal case shall receive from the court compensation for services pursuant to Code, Article 27, §623A. Any interpreter appointed to assist a party or witness in a civil case shall be allowed compensation deemed reasonable by the court pursuant to Code, Courts Article, §9-114.

(h) Implementation

The Administrative Office of the Courts shall be responsible for implementing the regulations regarding court interpreters.

Source: This Rule is new.

Rule 16-819 was accompanied by the following Reporter's Note.

The Rules Committee is proposing the adoption of Rule 16-819, Court Interpreters, in accordance with the Report of the Maryland Judicial Conference Advisory Committee on Interpreters, which had recommended that the Court of Appeals adopt a set of rules governing the use of interpreters in court.

Judge Missouri referred to section (g) of the Rule, noting that compensation of interpreters in criminal cases is statutory. Does section (g) mean that in civil cases, the plaintiff's lawyer writes to the court requesting compensation, or does it mean that if the court appoints the interpreter, the interpreter receives reasonable compensation? Judge Carrion responded that the Advisory Committee was concerned about compensation for interpreters. Many pro se people cannot afford to pay an interpreter and are not aware of the form provided for in Rule 1-332, Notification of Need for Accommodation. Rules 2-603, Costs, and 3-603, Costs, have a section pertaining to assessment of the costs of an interpreter. The problem with section (g) of Rule 16-819 is that it does not address how costs are assessed when the court appoints an interpreter. Judge Heller said that in a case in Baltimore City, a judge determined that the plaintiff,

who spoke only Italian, needed an interpreter, but plaintiff's counsel refused one. Deciding that because the plaintiff could not understand English there could be no effective cross-examination, the judge tried to find an interpreter, but the only qualified interpreters were in Anne Arundel County. On the day of trial, the plaintiff did not have an interpreter. Refusing to postpone the case, the judge appointed an interpreter –- the question is who pays the cost.

The Chair commented that at the General Court Administration Subcommittee meeting on the issue of court interpreters, Judge John McAuliffe had expressed the view that the plaintiff who needs the interpreter in a civil case should pay for it unless the court assesses the costs against the defendant. This is similar to hiring an expert witness in a medical malpractice case. Mr. Titus had a different opinion -- access to the courts is important, and it is the responsibility of the courts to pay for an interpreter. Judge Missouri expressed his concern that if the court appoints an interpreter, then states that this is part of the costs of the case, the interpreter looks to the court for payment. The judge gets the interpreter's bill. This is not the function of the court; it is a function of the party's attorney. Ms. Ogletree pointed out that under Rule 12-101, Writ of Survey, the moving party puts up a deposit of the estimated cost of executing the writ as determined by the court. Judge Carrion remarked that one avenue for payment is public funds. If the person is not able to pay, it is a question of access, not

convenience.

Judge Heller said that the administrative manual for the Baltimore City Circuit Court provides that in civil cases, costs for individual with disabilities are assessed in the court's discretion. The Chair noted that the language drafted by the Subcommittee tries to comply with the appropriate statutes. A provision analogous to section (b) of Rule 5-706, Court Appointed Experts, which pertains to compensation of expert witnesses, could be drafted for Rule 16-819. This language has not caused problems in dealing with expert witnesses. Judge McAuliffe's hypothetical in discussing this issue involved a billionaire from Brazil who travels to the United States and wishs to file a lawsuit as opposed to a non-English speaker who is hit by a bus.

Judge Carrion commented that it is possible that under Rules 2-603 and 3-603, there is the opportunity to assess the costs and then determine if a party should pay or if the money should come from public funds. Ms. Potter asked if the interpreters are paid at an hourly rate, and Judge Carrion answered that certified interpreters are paid at the rate of $50 an hour, and non-certified interpreters are paid $40 an hour. Mr. Hochberg inquired as to whether foreign language interpreters are covered under the Americans with Disabilities Act (ADA), and Judge Carrion replied that the ADA does not cover interpreters for languages, except for sign language.

Mr. Hochberg questioned whether the ADA covers language problems due to motor or neurological defects, and Judge Missouri

responded that this is covered by the ADA.

Ms. Potter asked whether the interpreter charges for his or her travel time. Judge Carrion answered that in some, but not all jurisdictions, the interpreter charges the Court for his or her travel time.

Judge Carrion stated that her main concern is the situation when an interpreter is contacted, and then does not get paid. There also has to be a determination as to whether a non-certified interpreter is doing qualified interpretation. If someone needing the service has no money, how can the interpreter get paid?

Mr. Dean pointed out that subsection (c)(1) of Rule 16-819 provides that a party or witness may apply to the court for the appointment of a qualified interpreter. Judge Carrion said that this language comes from the Code of Conduct for Court Interpreters. Mr. Dean remarked that he tried a murder case in which a child served appropriately as an interpreter of a Chinese dialect. Judge Carrion expressed the concern that a child or family member who is interpreting may not be independent. Mr. Titus remarked that in reality, the parties can agree to an interpreter. The Vice Chair commented that just because someone can speak a language does not mean that the person is qualified to be an interpreter. Ms. Potter remarked that often people charged with minor traffic offenses bring friends or family to court to interpret for them. Mr. Mostowy added that parties in landlord-tenant or traffic cases often speak a language other

than English, and they should not be precluded from bringing someone to translate for them. The Code of Conduct for Court Interpreters is limited to court-appointed interpreters. Judge Carrion said that she would leave this issue up to the Rules Committee to decide. Ms. Ogletree noted that there may only be a family member to interpret for someone from a migrant population. The Chair suggested that language could be added to subsection (c)(2) which would provide that a non-certified interpreter may be chosen if the parties agree, and the court approves.

Judge Heller referred to the issue of costs. She commented that the first sentence of section (g) is correct. The second sentence directs that the issue of costs is handled by Code, Courts Article, §9-114 which provides that the court may tax the cost of the interpreter as part of the costs of the case, or the county where the proceedings were initiated pays the cost. What is being done in the jurisdictions around the State is inconsistent with the statute. Mr. Titus suggested that at the end of section (g) the following language could be added: "...unless costs are assessed against a party, compensation shall be paid by the county." Judge Heller reiterated that the statute mandates that the county pays. Judge Missouri remarked that in the last fiscal year, the Administrative Office of the Courts (AOC) paid all of the interpreter fees assessed by the court. The cost is passed on to the AOC budget. Mr. Titus inquired as to how an interpreter gets paid. Judge Missouri replied that an order is given to the State Court Administrator, who reimburses

the interpreter.

The Chair stated that the Rule should not supersede the statute. If a plaintiff asks for an interpreter, and the court refuses to appoint one after talking with the plaintiff, the statute will not trigger, but if the person cannot afford an interpreter, and the court appoints one, the statute is the remedy. Mr. Hochberg questioned whether Code, Courts Article, §9-114 only applies to deaf persons, but Senator Stone clarified that it applies also to persons who cannot readily understand English. Judge Heller added that the statute provides that if the person cannot understand or communicate spoken English, the AOC pays for the interpreter.

After the lunch break, the Chair told the Committee that Judge Heller had analyzed and determined the meaning of Code, Courts Article, §9-114. There are three aspects of the statute. The first is that the court may appoint an interpreter upon the application of a party or witness; the second is that the court has the discretion in civil cases to tax the cost of the interpreter as part of the costs of the case, as long as this is consistent with the ADA; and the third is that if the costs of the interpreter are not taxed as costs of the case, then the cost is paid by the county where the proceedings were initiated. The Vice Chair asked if the court is able to tax the cost of the interpreter as part of the other costs if the matter is other than an ADA case. Judge Heller answered that it is discretionary with the court to tax the costs consistent with the ADA, but

costs are taxed not necessarily only in an ADA matter. The Chair added that the language of the statute means that the court can tax the costs of the interpreter as part of the costs of the case to the extent that this is consistent with the ADA. Mr. Sykes remarked that if the ADA applies, any taxation of costs has to be consistent with the ADA.

The Chair suggested that since the cost issue has been resolved, the Committee should consider Rule 16-819 from the beginning. The Vice Chair suggested that subsection (b)(1) could be reworded. Mr. Bowen suggested that subsections (b)(1) and (b)(2) be combined to read: "'Person in need of an interpreter' is a party or witness who is deaf or who is unable adequately to understand or express oneself in the spoken or written English language."

The Chair commented that the term "limited English proficient," which would be omitted from section (b) under Mr. Bowen's proposed language, is a term of art. Mr. Flores added that in the federal regulations pertaining to Title VI, this term is used. The Vice Chair asked where in the Rule the term "limited English proficient" is found. Judge Carrion replied that it is in the Code of Conduct for Court Interpreters. The Chair suggested that the term could be taken out of subsections (b)(1) and (b)(2). Mr. Bowen said that the Style Subcommittee will fine-tune the language.

Mr. Bowen suggested that in subsection (b)(4), the word "minimum" should be deleted. The Committee agreed by consensus

to this change. Mr. Bowen also suggested that since parts (A), (B), and (C) of subsection (b)(4) are not part of the definition of "eligible interpreter," they should be moved and become a new section (h) with existing section (h) relettered as section (i). The Committee agreed by consensus to this suggestion. Judge Heller questioned whether the AOC has additional requirements for interpreters, and Ms. Unitus answered that there are no additional requirements.

Mr. Bowen pointed out that subsection (c)(2) should make it clear that it is necessary to exhaust each level before the next lower level of interpreter is reached. He suggested that the second sentence should read: "The court should make a diligent effort to obtain a qualified court interpreter, and if one is not available, the court shall appoint...". The Chair suggested that the sentence read as follows: "The court shall make a diligent effort to obtain and appoint a qualified court interpreter ...". The Committee agreed by consensus to this change. The Vice Chair suggested that the language "who is otherwise competent" should be deleted from subsection (c)(2), because that phrase could apply throughout the Rule. The Committee agreed by consensus to the deletion.

The Chair said that the proposed new language "unless the parties agree and the court approves" can be added to the third sentence of subsection (c)(2). Judge Carrion suggested that a Committee note could be added at the end of subsection (c)(2) which would provide that a family member could be the interpreter

in minor traffic cases, but not in serious traffic, landlord-tenant, or domestic violence cases. Ms. Ogletree disagreed with this suggestion, pointing out that this is a matter of resources. Sometimes in the smaller counties, a family member is the best person available to interpret. The judge can determine who the best available interpreter is. Judge Carrion expressed the concern that judges may not look for competent interpreters in serious cases. Ms. Ogletree responded that for a District Court case in Caroline County, one could look for months and find no qualified or eligible interpreters. The Vice Chair commented that the judges will need education about this.

Ms. Ogletree remarked that if a migrant worker is a party, the availability of interpreters changes. Judge Carrion noted that migrant workers could use a non-eligible or non-certified interpreter, except in a serious case. Ms. Ogletree observed that this could be for a serious case. Judge Carrion inquired as to what is a serious case. The Chair said that a judge can exercise discretion as to the choice of interpreter. The Vice Chair reiterated the suggestion that a Committee note be added explaining how a judge chooses an interpreter. Judge Heller added that this would be an educating tool for judges. The Committee agreed by consensus to this suggestion.

Mr. Sykes asked about the last sentence of subsection (c)(2), pointing out that the restriction should also apply to parties in the case, as well as to the person who needs an interpreter. Mr. Klein noted that the tagline to subsection

(c)(2) is wrong. The Chair suggested that the tagline should be: "Certification Required; Exceptions." The Committee agreed by consensus with these suggestions.

The Vice Chair referred to the Committee note after subsection (e)(3). She said that the last sentence of the note implies that no examination need be conducted on anyone who reports himself or herself as deaf. The person does not have to be "voir dired." The Chair said that the procedure is not a voir dire procedure, but an examination of the party or witness. Judge Heller suggested that the language "voir dire" be deleted from subsection (c)(3) of the Rule and replaced with the word "examination" to be consistent with section (e). Judge Kaplan suggested that the term "voir dire" be replaced with the term "inquiry." The Committee agreed by consensus to Judge Kaplan's suggested change. The Chair noted that subsection (c)(3) pertains to the examination of an interpreter, and section (e) pertains to the examination of a party or witness.

Mr. Sykes commented that the last sentence of the Committee note after subsection (e)(3), which states that individuals who self-report as deaf are assigned an interpreter, forecloses the opportunity of the court to determine if the self-reporting is true. Judge Heller remarked that on the other hand, this saves the embarrassment of the deaf person. Mr. Sykes expressed the opinion that this statement should be part of the Rule. The Vice Chair observed that the Style Subcommittee can take care of this issue.

The Vice Chair asked the meaning of the phrase in subsection (e)(1)(B) which reads "to assist counsel." Mr. Sykes answered that this means that the person is able to participate in the proceedings. The Vice Chair expressed some doubt as to whether the sentence is grammatically correct. Judge Johnson added that the meaning is not clear. The Chair stated that the Style Subcommittee will rewrite this sentence. The Vice Chair inquired as to whether a person who is unable to speak but is able to hear should be examined by the court, since a person who cannot hear is excused from being examined. The Vice Chair asked if the only condition to which the statute applies is deafness. Judge Carrion answered in the affirmative. The Chair suggested that subsection (e)(3) would be better if it were written to include the condition "when a deaf person applies." The Style Subcommittee can look at this.

Judge Kaplan noted that it is important to know if the person can understand sign language or if there has to be a real-time reporter. Not every deaf person can read sign language. The Chair commented that when the defendant wants a postponement to request an interpreter, the court can inquire if the person is deaf. Mr. Sykes pointed out that the Rule provides that self-reporting is sufficient. Judge Carrion added that this is statutory. The Vice Chair remarked that it is not sensible that the ADA deals with one certain disability in that way. Mr. Bowen observed that a person who can hear but is unable to speak may need an interpreter to translate. The Vice Chair noted that the

statute provides that the costs of the interpreter can be taxed as part of the court costs. Ms. Unitus said that this varies by jurisdiction. The Chair stated that the wording of the Rule is the best that can be done based upon the statute.

The Chair drew the Committee's attention to section (f) of Rule 16-819. He suggested that in the first sentence, the language "for good cause" should be replaced by "for the following conduct." Mr. Sykes suggested that subsection (f)(1) should be changed to read "failure to interpret adequately," and subsection (f)(2) should be changed to read "knowingly interpreting falsely." The Vice Chair said that the Style Subcommittee can redraft this provision.

Mr. Hochberg asked why the Code of Conduct for Court Interpreters is part of the Rules of Procedure. The Chair answered that the Court of Appeals had requested that this be part of the Rules. The Vice Chair pointed out that the Guidelines of Advocacy for Attorneys Representing Children in CINA and related TPR and Adoption Proceedings were put into an appendix. The Reporter noted that Guidelines of Advocacy are, as their title indicates, only guidelines, rather than a code of conduct. Mr. Hochberg pointed out that the interpreters cannot be sanctioned for a violation of the Code because they are not attorneys. The Chair reiterated that the Court of Appeals directed that the Code of Conduct for Court Interpreters be placed in the Rules.

Mr. Klein commented that the oath for interpreters in Rule

1-303, Form of Oath, is similar, but not parallel to the language of subsection (f)(3) of Rule 16-819. Mr. Bowen suggested that the word "willingly" should be changed to the word "willfully" in Rule 1-303.

Ms. Taler asked about the last sentence of subsection (c)(2). Judge Heller noted that subsection (c)(2) provides a priority list for appointing an interpreter. The Vice Chair commented that the last sentence is a ground for disqualification of an interpreter and is misplaced in the Rule. The Chair suggested that this provision be reorganized. In a case where the interpreter is related by blood or marriage, it would be appropriate if the parties agree and the court approves. The Vice Chair expressed the concern that the purpose of this section is to provide three choices, but there is language stating that the court cannot appoint someone related by blood or marriage. Another provision states that the parties can waive this prohibition. A Committee note explaining this may be useful.

Ms. Taler suggested that both the parties and the judge should have to approve the choice of a non-certified interpreter. She also expressed the concern about allowing a 13-year old to interpret. Mr. Dean pointed out that in the definitions of the various kinds of interpreters in section (b), the word "adult" appears in all of them. The parties cannot consent to someone other than an adult being the interpreter. The Chair suggested taking the word "adult" out of the definitions, but Ms. Taler disagreed with this suggestion. The Chair stated that the Rule

should not provide that no one under the age of 18 years can ever serve as an interpreter. The Rule should not lock the judges in.

Judge Carrion commented that on some occasions, minors are being appointed. The word "adult" should remain in the Rule. She stated that her Committee felt very strongly about this. Adults are needed to act as interpreters. Mr. Hochberg pointed out that there are 17-year-old mediators. Ms. Taler said she feels strongly that children should not interpret for their parents. The Vice Chair remarked that allowing a blood relative to interpret if the parties are in agreement does not necessarily mean that a 17-year-old can act as an interpreter. The Chair noted that the judge has to approve the choice of a non-certified interpreter. This provides a safeguard.

Ms. Unitus observed that many adults do not understand court terminology, and this would even be more difficult for young people under the age of 18. The Chair responded that this is generally true, but he hypothesized a situation where the 17-year-old son of a litigant is an honors student in a law magnet program and is needed to interpret in District Court. In this situation, the judge could allow the case to go forward, but not if it were a domestic violence case. The judges have common sense and should have discretion.

Judge Carrion commented that in many situations, pro se parties are intimidated and will agree to allowing one of their children to be appointed as interpreter. The goal is to achieve qualified interpretation. The Chair noted that there are

mechanisms in subsection (c)(2) to obtain a good interpreter. A non-certified interpreter is the last resort. The Chair stated that he has confidence in trial judges to make the correct choice.

The Vice Chair asked what criteria the judge uses to make the decision. Delegate Vallario responded that hearings were held by the legislature on this issue. Some languages are spoken only by ½ to 1 percent of the population, and it would be difficult to find outside interpreters. Judges should be fully authorized to allow a child to interpret. The word "adult" should be removed as a modifier of the word interpreter. Judge Heller asked about a 12-year-old interpreting, and Delegate Vallario answered that it would be up to the judge. The Chair said that an examination is required under subsection (c)(3) before the judge makes any appointment.

Mr. Dean suggested that the proposed Committee note could contain the caveat that the choice of an interpreter is an important decision. Judge Heller added that the note could go at the end of subsection (c)(2) and provide that a minor can be appointed as an interpreter under exceptional circumstances depending on the nature of the proceedings. Ms. Taler inquired about providing for diligent efforts by the judge, and Judge Heller replied that this language could go into the Committee note. Delegate Vallario suggested that the word "adult" be stricken where it modifies the word "interpreter," but the Chair suggested that it be deleted from subsection (b)(5) only. He

also suggested that the last sentence of subsection (c)(2) be modified to read as follows, “unless the parties agree and the court approves, a minor or someone related by blood or marriage to a party or to the person who needs an interpreter may not act as an interpreter.” The Committee agreed by consensus with the Chair’s suggestions.

Mr. Sykes suggested that subsection (c)(2) be changed to clarify that the steps to obtain an interpreter are mandatory. A judge would not be diligent if he or she appointed a 17-year-old immediately. Ms. Taler commented that an interpreter is an officer of the court, and she questioned whether a minor can act in this capacity. Judge Johnson responded that some 17-year-old minors are capable, and Ms. Ogletree pointed out that a 16-year-old who is emancipated may be mature enough. Ms. Taler observed that the child may have to testify as to intimate details of the case. The Chair said that in that situation, the judge would not permit the child to act as an interpreter. Even though some mistakes may be made, the judges cannot postpone minor traffic cases when the only interpreter available is a 17-year-old. Judge Kaplan stated that the Committee note will clarify this. The Committee agreed by consensus to add a Committee note after subsection (c)(2).

Mr. Sykes inquired as to whether the reference to Code, Article 27 in section (g) should be in the body of the Rule. If it were in a cross reference, it would be easier to change if the Code reference changed. The Vice Chair commented that this

occurs in the Rules; however, it might be preferable to put this into a Committee note. The Chair suggested that section (g) be left as is for right now.

The Committee approved the Rule as amended.

The Chair presented Rule 1-303, Form of Oath, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-303 to add language to section (b), as follows:

Rule 1-303. FORM OF OATH

(a) Generally

Except as provided in section (b), whenever an oral oath is required by rule or law, the person making oath shall solemnly swear or affirm under the penalties of perjury that the responses given and statements made will be the whole truth and nothing but the truth. A written oath shall be in a form provided in Rule 1-304.

(b) Court Interpreters

A court interpreter shall solemnly swear or affirm under the penalties of perjury to interpret accurately, completely, and impartially and to refrain from knowingly and willingly disclosing confidential or privileged information obtained while serving in an official capacity.

Source: This Rule is derived from former Rules 5 c and 21 and is in part new.

Rule 1-303 was accompanied by the following Reporter's Note.

> The proposed changes to this Rule are in conjunction with the proposed addition of new Rule 16-819, Court Interpreters.

Mr. Klein pointed out that the concept of willfully disclosing confidential or privileged information while serving in an official capacity is not included in Rule 16-819. The Chair suggested deleting the words "and willingly" from section (b), and the Committee agreed by consensus to this change. The Vice Chair suggested that subsection (f)(3) of Rule 16-819 should be consistent with the language in section (b) of Rule 1-303, so the language "serving in an official capacity" should be changed to the language "while serving in the proceeding." The Committee agreed by consensus to this change. The Committee approved the Rule as amended.

The Chair presented Rule 16-820, Code of Conduct for Court Interpreters, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-820, as follows:

Rule 16-820. CODE OF CONDUCT FOR COURT INTERPRETERS

Preamble

Many persons who come before the courts are partially or completely excluded from full participation in the proceedings because they have limited English proficiency, have a speech impairment, or are Deaf or hard of hearing. It is essential that the resultant communication barrier be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier. As officers of the court, interpreters help to ensure that such persons may enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively.

Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice.

Applicability

This Code shall guide and be binding upon all persons, agencies and organizations who administer, supervise use of, or deliver interpreting services to the judiciary.

Canon 1

Accuracy and Completeness

Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written and without explanation.

Commentary

The interpreter has a twofold duty: 1) to ensure that the proceedings reflect precisely what was said, and 2) to place the person with limited English proficiency on an equal footing with those who understand English. This creates an obligation to conserve every element of information contained in a source language communication when it is rendered in the target language.

Therefore, interpreters are obligated to apply their best skills and judgment to preserve faithfully the meaning of what is said in court, including the style or register of speech. Verbatim, "word for word," or literal oral interpretations are not appropriate because they distort the meaning of the source language, but *every spoken statement, even if it appears non-- responsive, obscene, rambling, or incoherent, should be interpreted*. This includes apparent misstatements.

Interpreters should never interject their own words, phrases, or expressions. If the need arises to explain an interpreting problem (*e.g.*, a term or phrase with no direct equivalent in the target language or a misunderstanding that only the interpreter can clarify), the interpreter should ask the court's permission to provide an explanation. Interpreters should convey the emotional emphasis of the speaker without reenacting or mimicking the speaker's emotions or dramatic gestures.

Sign language interpreters, however, *must* employ all of the visual cues that the language they are interpreting for requires) including facial and spatial grammar.

The obligation to preserve accuracy includes the interpreter's duty to correct any error of interpretation discovered by the interpreter during the proceeding.

Interpreters should demonstrate their professionalism by objectively analyzing any challenge to their performance.

Canon 2

Representation of Qualifications

Interpreters shall accurately and completely represent their certifications, training, and pertinent experience.

Commentary

Acceptance of a case by an interpreter conveys linguistic and interpreting competency in legal settings. Withdrawing or being asked to withdraw from a case after it begins causes a disruption of court proceedings and is wasteful of scarce public resources. It is therefore essential that, prior to appointment, interpreters present a complete and truthful account of their training, certification, and experience, so the officers of the court can fairly evaluate their qualifications for delivering interpreting services.

Canon 3

Impartiality and Avoidance of Conflict of Interest

Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest.

Commentary

The interpreter serves as an officer of the court, and the interpreter's duty in a court proceeding is to serve the court and the public to which the court is a servant. This is true regardless of whether the interpreter is retained publicly at government expense or privately at the expense of one of the parties.

Under Rule 5-604, an interpreter is subject to the provisions of Rule 5-702 relating to qualification as an expert and Rule 5-603 relating to the administration of an oath or affirmation to make a true translation.

Interpreters should avoid any conduct or behavior that presents the appearance of favoritism toward any of the parties. Interpreters should maintain professional relationships with the participants and

should not take an active part in any of the proceedings.

During the course of the proceedings, interpreters should not converse with parties, witnesses, jurors, attorneys, or law enforcement officers or with friends or relatives of any party, except in the discharge of official functions. It is especially important that interpreters who are familiar with courtroom personnel refrain from casual and personal conversations that may convey an appearance of a special relationship with or partiality to any of the court participants.

Interpreters should strive for professional detachment. Verbal and non-verbal displays of personal attitudes, prejudices, emotions, or opinions should be avoided at all times.

Whenever an interpreter becomes aware that a proceeding participant views the interpreter as having a bias or being biased, the interpreter should disclose that knowledge to the appropriate judicial authority and counsel.

Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest. Before providing services in a matter, court interpreters must disclose to all parties and presiding officials any prior involvement, whether personal or professional, that could be reasonably construed as a conflict of interest. This disclosure should not include privileged or confidential information.

The following are circumstances that are presumed to create actual or apparent conflicts of interest for interpreters so that they should not serve:

1. The interpreter is a friend, associate, or relative of a party or counsel involved in the proceedings;

2. The interpreter has served in an investigative capacity for any party to the

case;

3. The interpreter was retained by a law enforcement agency to assist in the preparation of the civil or criminal case at issue;

4. The interpreter or the interpreter's spouse or child has a financial interest in the subject matter in controversy or in a party to the proceeding or has any other interest that would be affected by the outcome of the case;

5. The interpreter has been involved in the choice of counsel or law firm for that case.

Interpreters should disclose to the court and other parties whenever they have been retained previously for private employment by one of the parties in the case.

Interpreters should not serve in any matter in which payment for their services is contingent upon the outcome of the case.

An interpreter who is also an attorney should not serve in both capacities in the same matter.

Canon 4

Professional Demeanor

Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

Commentary

Interpreters should know and observe the established protocol, rules, and procedures for delivering interpreting services. Interpreters should work without drawing undue or inappropriate attention to themselves.

Interpreters should avoid obstructing the view of any of the individuals involved in the proceedings. However, the positioning of interpreters should be conducive to receiving effective communications.

Canon 5

Confidentiality

Interpreters shall protect the confidentiality of all privileged and other confidential information.

Commentary

The interpreter must protect and uphold the confidentiality of all privileged information obtained during the course of her or his duties. It is especially important that the interpreter understand and uphold the attorney-client privilege, which requires confidentiality with respect to any communication between attorney and client. This rule also applies to other types of privileged communications.

Interpreters must also refrain from repeating or disclosing information that is obtained by them in the course of their employment and that may be relevant to the legal proceeding.

In the event that an interpreter becomes aware of information that suggests imminent harm to someone or relates to a crime being committed during the course of the proceedings, the interpreter should immediately disclose the information to an appropriate authority within the judiciary who is not involved in the proceeding and seek advice in regard to the potential conflict in professional responsibility.

Canon 6

Restriction of Public Comment

Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential.

Canon 7

Scope of Practice

While serving as interpreters, interpreters shall limit themselves to interpreting or translating and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating.

Commentary

Since interpreters are responsible only for enabling others to communicate, they should limit themselves to the activity of interpreting or translating.

Interpreters should refrain from initiating communications while interpreting, except as necessary for ensuring an accurate and faithful interpretation. Interpreters may be required to initiate communications during a proceeding when they find it necessary to seek assistance in performing their duties. Examples of such circumstances include seeking direction when unable to understand or express a word or thought, requesting speakers to moderate their rate of communication or to repeat or rephrase something, correcting their own interpreting errors, or notifying the court of reservations about their ability to satisfy an assignment competently. In such instances,

interpreters should make it clear that they are speaking for themselves.

An interpreter may convey legal advice from an attorney to a person only while that attorney is giving it. An interpreter should not explain the purpose of forms or services or otherwise act as counselors or advisors but, rather, merely interpret for someone who is acting in that official capacity. The interpreter may translate language on a form for a person who is filling out the form but may not explain the form or its purpose for such a person.

The interpreter should not perform acts that are the official responsibility of other court officials including, but not limited to, court clerks, pretrial release investigators or interviewers, or probation counselors.

Canon 8

Assessing and Reporting Impediments to Performance

Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority.

Commentary

Interpreters should notify the appropriate judicial authority whenever the communication mode or language of the persons with limited English proficiency cannot be interpreted readily.

Interpreters should notify the appropriate judicial authority about any environmental or physical limitation that impedes or hinders their ability to deliver interpreting services adequately (*e.g.*, the

court room is not quiet enough for the interpreter to hear or be heard, more than one person at a time is speaking, or principals or witnesses are speaking too rapidly for the interpreter to interpret adequately). Sign language interpreters must ensure that, prior to commencement of the proceeding, they are positioned visually in the most appropriate position for the Deaf or hard of hearing person to convey and receive the communication. The proceeding should not begin, even by permitting the attorneys to identify themselves for the record, until the sign language interpreter is positioned properly. Immediately after the attorneys have identified themselves, the interpreter oath should be administered, regardless of the type of proceeding.

Interpreters should notify the presiding officer of the need to take periodic breaks to maintain mental and physical alertness and to prevent interpreter fatigue. Interpreters should recommend and encourage the use of a relay interpreter and/or interpreter teams as necessary.

Interpreters are required to inquire as to the nature of a case before accepting an assignment. This enables interpreters to match their professional qualifications, skills, and experience more closely to potential assignments, to assess more accurately their ability to satisfy those assignments competently, and to identify any personal bias arising from the nature of the case.

Even competent and experienced interpreters may encounter situations in which routine proceedings involve unanticipated technical or specialized terminology unfamiliar to the interpreter (*e.g.*, the unscheduled testimony of an expert witness). When such instances occur, interpreters should request a recess for a sufficient amount of time to familiarize themselves with the terminology. If familiarity with the terminology requires extensive time or more intensive research, interpreters should inform the presiding

officer.

Interpreters should refrain from accepting a case whenever they feel the language or subject matter of that case is likely to exceed their skills or capacities. Interpreters should feel no compunction about notifying the presiding officer if they feel unable to perform competently, due to lack of familiarity with terminology, lack of preparation, or difficulty in understanding a witness or defendant.

Canon 9

Duty to Report Ethical Violations

Interpreters shall report to the proper judicial authority any effort to impede their compliance with any law, any provision of this Code, or any other official policy governing court interpreting and legal translating.

Commentary

Since users of interpreting services frequently misunderstand the proper role of the interpreter, they may ask or expect the interpreter to perform duties or engage in activities that run counter to the provisions of this Code or of laws, regulations, or policies governing court interpreters. It is incumbent upon the interpreter to inform such persons of his or her professional obligations. If, having been apprised of these obligations, the person persists in demanding that the interpreter violate them, the interpreter should ask a supervisory interpreter, a judge, or another official with jurisdiction over interpreter matters to resolve the situation.

Canon 10

Professional Development

Interpreters shall continually improve their skills and knowledge and advance the profession through activities such as professional training and education and interaction with colleagues and specialists in related fields.

Commentary

Interpreters must continually strive to increase their knowledge of the languages in which they work professionally, including past and current trends in technical, vernacular, and regional terminology as well as their application within court proceedings.

Interpreters should keep informed of all statutes, rules of courts and policies of the judiciary that relate to the performance of their professional duties.

Interpreters should seek to elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues, and reading of current literature in the field.

Canon 11

Compliance

After notice and an opportunity for a hearing, the court interpreter supervisory authority within the judiciary may discipline an interpreter, by actions such as public or private reprimand or suspension or removal from a list of court interpreters, for inadequate performance or other good cause.

Commentary

The following are examples of good cause for disciplining an interpreter:

Knowingly and willingly making false interpretation while serving in an official capacity;

> Knowingly and willingly disclosing confidential or privileged information obtained while serving in an official capacity;
>
> Failing to follow the standards prescribed by law and the ethics of the interpreter profession.

Mr. Sykes suggested that the second paragraph of the Preamble does not apply to non-certified interpreters and could be deleted. The Chair commented that the first sentence of the Preamble appears to be somewhat critical of the judiciary. The Vice Chair responded that she did not read the sentence that way. The Chair suggested that the first sentence could begin: "In the absence of a court interpreter, many persons...". The Committee agreed by consensus to this change.

Mr. Flores noted that the term "limited English proficiency" is found in federal regulations. The Vice Chair observed that this language had been deleted from the definition section of Rule 16-819, and the language of Rule 16-820 should be consistent with that Rule. Mr. Bowen suggested that the Applicability section should read as follows: "This Code shall guide and be binding upon all persons, agencies, and organizations that administer, supervise the use of, or deliver interpreting services to the courts of this State." The Committee agreed by consensus with this suggestion.

Mr. Hochberg inquired as to how agencies are governed by the Code. Ms. Ogletree replied that reporting agencies are covered, and Ms. Unitus added that the courts use agencies to hire

interpreters. Mr. Sykes questioned as to how the Code will be added to the Rules, and Mr. Hochberg answered that it will be a separate rule. Mr. Sykes remarked that except for the possibility of reporting companies and suppliers of professional interpreters, nothing in the Code extends beyond individual interpreters. Ms. Unitus pointed out that the Code has been accepted by 20 states. Mr. Dean observed that it applies to qualified court interpreters, and Judge Carrion added that it also applies to eligible interpreters. Mr. Sykes said that it would not apply to a 16-year-old interpreter. An ad hoc interpreter is not bound by Canon 10. The Chair suggested that the Applicability paragraph could read: "This Code shall guide and be binding upon all qualified and eligible interpreters." Mr. Sykes noted that some provisions apply to every interpreter.

Mr. Hochberg commented that the oath set out in Rule 1-303 is required to be taken by each interpreter, including the non-certified interpreter. Judge Carrion stated that the non-certified interpreter does not sign a statement swearing or affirming compliance with the Code. Mr. Sykes suggested that a note could be added providing that the non-certified interpreters are bound by the oath. Canon 1 duplicates the oath. There should be no implication that a non-certified interpreter does not have to conform to conduct specified in Canon 1. The Vice Chair suggested that the definition of "non-certified interpreter" in subsection (b)(5) of Rule 16-819 could provide that the person has to take the oath. If the Code does not apply

to non-certified interpreters, it implies that despite taking the oath, the person does not have to comply with the oath. The Chair suggested that a Committee note could be added explaining about the oath and the applicability of the substance of Canon 1 to non-certified interpreters.

The Vice Chair asked if the language of the Code as presented is the exact language of the 20 states which adopted it and if it is a Rule or an appendix in those states. Mr. Sykes commented that there are guidelines for discovery, and the Reporter noted that the Guidelines of Advocacy for CINA attorneys are placed as an appendix to the Rule. Mr. Hochberg questioned whether the Applicability section should be changed. The Chair answered in the affirmative, suggesting that the section provide that the Code applies to persons who are qualified or eligible interpreters as defined in Rule 16-819. The Committee agreed by consensus to this change.

The Chair questioned whether the language pertaining to the supervisory authority of the judiciary should remain in the Rule. Judge Carrion commented that changing the Code may delay the approval of the set of Rules. The Vice Chair remarked that many things delay the process. She said that she preferred that the Code be in an appendix similar to the Guidelines of Advocacy for CINA attorneys. Judge Carrion stated that she had no preference concerning the placement of the Code.

The Chair commented that his recollection was that the Court of Appeals wanted the Code as part of the Rules. The Vice Chair

suggested that only minor changes be made to the Code, so that it is similar to the Uniform Code. The Chair suggested that the language relating to the supervisory authority of the judiciary be changed to a reference to the Administrative Office of the Courts, and the Committee agreed by consensus to this suggestion.

The Vice Chair suggested that the Canons not be changed at all. Mr. Hochberg noted that the language "knowingly and willingly" appears in Canon 11. The Chair responded that it is only in the Commentary. The Chair said that the Code could be presented as an appendix as the Guidelines of Advocacy for CINA attorneys are, and added that the Style Subcommittee will look at this. The Vice Chair asked if there is a place in Rule 16-819 referring to the Code. Judge Carrion answered that the Code is referred to in subsection (b)(4) and in section (f) of Rule 16-819. The Committee approved Rules 16-819, 16-820, and 1-303 as amended.

The Chair presented Rule 5-604, Interpreters, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 600 - WITNESSES

DELETE Rule 5-604, as follows:

~~Rule 5-604. Interpreters~~

~~An interpreter is subject to the provisions of Rule 5-702 relating to qualification as an expert and Rule 5-603 relating to the administration of an oath or affirmation to make a true translation. Source: This Rule is derived from F.R.Ev. 604.~~

Rule 5-604 was accompanied by the following Reporter's Note.

The Maryland Judicial Conference Advisory Committee on Interpreters is recommending the deletion of Rule 5-604 if Rule 16-819, Court Interpreters, is adopted because the latter would supersede the former.

Based on the changes made today, Judge Carrion said that her Advisory Committee recommends deleting Rule 5-604, Interpreters. The Committee agreed by consensus to the deletion.

Mr. Hochberg said that he recently saw the Honorable Frederick Invernizzi, former Chair of the Rules Committee, who is retired. He is doing well and sends regards to the Rules Committee. The Chair thanked all of the consultants for their help with the Court Interpreter Rules.

The Chair adjourned the meeting.