COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Room 1100A, People's Resource Center, Crownsville, Maryland on November 20, 1998.

Members present:

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

Albert D. Brault, Esq.
Robert L. Dean, Esq.
Bayard Z. Hochberg, Esq.
Hon. G. R. Hovey Johnson
Harry S. Johnson, Esq.
Richard M. Karceski, Esq.
Robert D. Klein, Esq.
Joyce H. Knox, Esq.
Timothy F. Maloney, Esq.
Hon. John F. McAuliffe
Anne C. Ogletree, Esq.
Hon. Mary Ellen T. Rinehardt
Larry W. Shipley, Clerk
Sen. Norman R. Stone, Jr.
Melvin J. Sykes, Esq.
Hon. James N. Vaughan
Robert A. Zarnoch, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Bruce P. Martin, Esq., Office of the Attorney General
Master James P. Casey
David Fishkin, Esq., Office of the Public Defender
Shea McSpaden, Administrative Office of the Courts
William Howard, Administrative Office of the Courts
Carole Coursey, Esq., Department of Social Services
Master Bernard A. Raum
Master Ann R. Sparrough
Master Erica Wolfe
Heidi Connolly, Rules Committee Intern
Holly A. Currier, Rules Committee Intern

The Chair called the meeting to order. He asked if there were any additions or corrections to the minutes. There being none, Mr. Klein moved that the minutes be approved as presented. The motion

was seconded, and it passed unanimously.

The Chair said that the Vice Chair had a presentation to make. The Vice Chair told the Committee that Judge Rinehardt will be retiring from the bench in January, and this means that she will also be retiring from the Rules Committee. The Vice Chair read from a testimonial document signed by each Rules Committee member. The document provided that the Committee has been very grateful for Judge Rinehardt's participation in the Rules Committee since 1985 and that the Committee will miss her participation in the Committee. Judge Rinehardt accepted the testimonial document with thanks.

Mr. Hochberg asked for a moment of silence honoring the memory of George White, Jr., Esq., a longtime member of the Bar of Maryland, who had died a few days earlier.

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

Mr. Johnson explained that the Juvenile Rules had already been reviewed by the Rules Committee. Several issues had been recommitted to the Juvenile Subcommittee, and any Rules further altered by the Subcommittee were to be presented at today's meeting. The consultants to the Subcommittee worked very hard on the Rules. Those present today were: Master James P. Casey, Baltimore City; Bruce P. Martin, Esq., an Assistant Attorney General for the Department of Juvenile Justice (DJJ); Master Ann Sparrough, Prince George's County; David Fishkin, Esq., Office of the Public Defender, Juvenile Court

Division; Master Bernard A. Raum, Howard County. Master Raum said that he was representing the Juvenile/Family Law Section Council of the Maryland State Bar Association.

Mr. Johnson 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 are applicable to this Title.

(b) Additional Definitions

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

(1) 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 COMMITTEE:

The foregoing definition of "next day" is in accordance with the directives of the full Committee at its January, 1996 meeting. The following alternative draft is suggested by Master Bernard A. Raum, for the reasons stated in the proposed Committee note following the definition.

Alternative:

(1) 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 and, in those jurisdictions where the juvenile court does not sit daily, not more than three court days after the event has occurred.

Committee note: While there are several larger jurisdictions in the state which actually have out of necessity a juvenile court docket each business day, e.g., Baltimore City, Baltimore County, Anne Arundel County, Montgomery County and Prince George's County, the remainder of the counties do not sit each and every day as juvenile court. This is especially true in those counties where there is a duly appointed juvenile master. This amendment recognizes that while there is a need for expeditious handling of certain matters, particularly emergency detention and emergency shelter care hearings, court resources such as transportation to and from juvenile detention facilities might be severely strained. Further still, this allows for some flexibility for the Department of Juvenile Justice and Department of Social Services Representatives in the smaller jurisdictions where they would not otherwise ordinarily appear in court on a daily basis. The thinking with respect to the rule as it is currently phrased is too parochial and is based upon the practice in the major jurisdictions where resources are in apparent abundance.

(2) Petition

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

(3) Respondent

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

(4) 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.

(5) 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.

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.

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;" waiver petitions are separately named; and other petitions, such as a petition for continued detention or shelter care, are termed "motions."

The Committee notes that "parent" and "custodian" are defined terms in §3-801 of the Courts Article; "guardian" is defined in Rule 1-202. 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, §3-820 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. For those jurisdictions in which the juvenile court does not sit daily, a three-day time limit has been added which provides some leeway in scheduling, but prohibits too lengthy a time period for urgent events to be scheduled.

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.

Mr. Johnson noted that the Subcommittee had had a spirited discussion about the definition of the term "next day" as it appears throughout the Juvenile Rules. On page 8 of the Rules, the definition appears in bold print, and there is an alternative

definition which was drafted by Master Raum. Ms. Ogletree commented that she had the same concerns shown in Master Raum's draft of the definition. Master Raum explained that he had provided for a three-day grace period. In the larger jurisdictions even though there are daily juvenile dockets, when there is an emergency detention or shelter care case, it may be difficult to get all the parties there to try the case. Often, the attorney from the Office of the Public Defender is not available on short notice. The same Legal Aid Office provides services in Child in Need of Assistance (CINA) cases in both Howard and Montgomery Counties. It may be difficult to get the Legal Aid personnel in for the CINA cases if they are in Montgomery County. Also, the Department of Juvenile Justice (DJJ) workers, social workers, and other collateral personnel may not be available on two or three hours notice. The way the definition is drafted will result in postponements and cause a burden on the system.

Mr. Johnson pointed out that the first time the term "next day" is used is in Rule 11-105. Ms. Ogletree noted that in many counties, the circuit court does not sit every day. Master Raum added that often one day a week is set aside for juvenile cases to be heard. Ms. Ogletree remarked that she practices on the Eastern Shore of Maryland. In Talbot County, a District Court judge is cross-designated to sit as a juvenile court judge two afternoons a month. In Caroline County, juvenile court is held one or two days a month. Many counties have one circuit court judge in the entire county. It

would be impossible to comply with the "next day" rule.

Judge Vaughan noted that if the court is in session the next day, a county could comply with the Rule. Judge Rinehardt expressed a concern about the custody of children in shelter care if juvenile court is held twice a month. Mr. Johnson remarked that if a child is detained until the next day the juvenile court sits, which may be two weeks later, the child is deprived of his or her liberty for a long period of time. Ms. Ogletree said that the problem is the resources in the various counties. The Rule as drafted is impossible to comply with if a county has one judge involved in a week-long trial. In order to squeeze in emergency juvenile hearings, the Rule should provide for at least two days for the event to occur.

Judge Vaughan questioned as to how bond hearings are conducted in the less populated counties. Ms. Ogletree replied that in Talbot County, bond hearings are held on Friday mornings. In Caroline County, in the District Court, bond hearings are held on Mondays and Thursdays. The Chair suggested that the definition could keep the general requirement that "next day" means the next day that the court is in session and build in exceptions in particular rules when counties cannot comply. He noted that there is no sanction specified for violation. Mr. Brault pointed out that the definition does not say "the next day the juvenile court is in session." The definition is self-executing and requires the circuit court judge to deal with the matter at the next court session. Ms. Ogletree commented that

this language has been interpreted to mean the next juvenile court session. The Chair said that the purpose of the "next day" provision is to have the matter reviewed the next time the circuit court is sitting.

Mr. Johnson asked about the problem which Master Raum brought up earlier pertaining to the timing of the juvenile proceeding. Master Raum remarked that his scheduled juvenile docket is on Tuesday and Thursday. Judge Rinehardt inquired if in the case of a child detained on Friday, the hearing would be the following Tuesday. Master Raum answered that he would arrange with the clerk's office to have the juvenile court hear the case on Monday.

The Vice Chair inquired whether the intent of Master Raum's amended language is that in any jurisdiction where the juvenile court is in session every day, even if the juvenile court were in session, there would still be three days added in. Master Raum explained that this means not more than three days. The Vice Chair commented that she read the language to mean that the event could take place on the third day, even if it could have taken place earlier. She noted that the statute uses the language "next day." Mr. Martin observed that Code, Courts Article, §3-815 (d) provides that if the child is not released, the child is brought to court on the "next court day." Mr. Johnson noted that it depends on the jurisdiction as to whether there will be a substantial period of time until the juvenile court day. The Reporter observed that the

issue is how long is too long for a child to remain in custody prior to court involvement.

The Vice Chair said that she was not sympathetic to the argument that a jurisdiction may not have enough resources, because the State should be responsible for this. Ms. Ogletree stated that in the jurisdictions in which she practices, the cases can be set in, but not necessarily the next day. Three days is probably sufficient. Reading the Rule as the next juvenile court day would be a tremendous change. Mr. Brault observed that the statute uses the word "court" to mean sitting as a juvenile court. The Chair questioned whether the legislature focused on this when it passed the statute, and he asked whether it is necessary to trump the statute.

Judge Johnson told the Committee that the Honorable Alan M. Wilner, when he was Chair of the Rules Committee, had written to the judges on this issue. The judges responded that the masters were doing an excellent job handling these matters. Ms. Ogletree said that in the jurisdictions in which she practices, there is no juvenile master. Judge McAuliffe commented that in Montgomery County, the policy is that certain judges handle juvenile proceedings. He inquired about administrative judges in other jurisdictions designating certain judges to handle juvenile proceedings. The Chair noted that in Baltimore County, only the Honorable Edward DeWaters handles juvenile matters. Master Casey observed that there is a statutory provision that juvenile court

judges have to be approved by the Court of Appeals. Ms. Ogletree remarked that in Talbot County, the District Court historically cross-designates a judge to sit as a circuit court judge in juvenile court. In every other county, the circuit court has juvenile court days.

Mr. Fishkin commented that his office struggled with this issue. The position the Office of the Public Defender took was that "next day" means the next day the circuit court or District Court sits. Their recommendation is that "next day" means the next court day. Mr. Johnson said that the Subcommittee's intention was to track the statute, although they did not really track this issue. The next day on the Eastern Shore could mean two weeks, and it could be interpreted this way.

Judge McAuliffe pointed out that this is a policy question. The Rule seems to say that circuit court judges become qualified to hear juvenile cases. Is it necessary to have specialists hearing the cases? If the circuit court is in session, is it better to have any judge who is available or a judge who is a specialist? Mr. Johnson said that the statute provides for the rotation of judges who handle juvenile cases. It does not anticipate a judge switching hats to become a juvenile judge. Judge Vaughan remarked that that is unrealistic. The Eastern Shore counties cross-designate judges.

The Chair stated that if the intent of the Committee is to trump the statute, then the Rule can provide that the county should

get to a juvenile judge as quickly as possible. The January 1996 Rules Committee version of subsection (b)(2) of Rule 11-101 works fine. If the intent is not to trump the statute, then the definition of "next day" would mean the next day the juvenile court is in session, which could mean a lengthy amount of time until a proceeding is heard. No one seems to want that. Mr. Sykes noted that administratively, the Chief Judge of the Court of Appeals designates an emergency juvenile judge. The equity courts should be open every day. Nothing is more important than the liberty of a child. Mr. Brault questioned as to where the children are detained. Ms. Ogletree answered that in the jurisdictions in which she practices, the children are kept in Chestertown at a juvenile facility. The Chair said that the Rule should be left as it appeared in January, 1996, and the issue should be explained to the Court of Appeals. Mr. Brault observed that one of the considerations in this matter is procedural due process with constitutional implications. Mr. Fishkin commented that if a juvenile in custody is not brought to court for a long time, there are constitutional implications. This applies to both delinquency and CINA cases.

The Chair said that he believes that the present proposed Rule works. Mr. Johnson explained that the Subcommittee wanted to bring this issue back before the full Committee for a policy decision. The first version is the Subcommittee recommendation. The Chair suggested that the Committee go through the rest of the Rules in the

package. The January, 1996 version works as long as there are no dispositive consequences for failure to comply. The Committee should look at the other Rules before voting on the definition of "next day."

Mr. Johnson noted that in Rule 11-101, the other change is in subsection (b)(4). A definition of the word "summons" was derived from Rule 1-202 (z) and includes the authority for the body attachment to which Rule 11-102 (c)(2)(E) refers.

Rule 11-101 was approved as presented, except the Committee deferred action on the definition of "next day."

Mr. Johnson 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 motion 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.

(b) Scheduling of Hearing

Upon the filing of a petition, a motion 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.

(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, §3-812 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 and "motion" is substituted for "petition." 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 existing 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 current 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.

Mr. Johnson noted that the Rule includes the long form of the summons. Section (d) is new and provides that the clerk can accept security for the appearance of a person. The Reporter clarified that part of this section was in the existing rule, but the Subcommittee added the reference to Rule 11-107. The Vice Chair pointed out that Rule 11-107 provides that an adult is entitled to bail under the same considerations as a defendant in a criminal proceeding. She also pointed out that a respondent child may be released in accordance

with Rules 4-216 and 4-217, which contain factors relevant to conditions of release, such as whether the defendant is reasonably certain to appear and whether the defendant is a danger to himself or herself, or to others. If an adult or a juvenile respondent gets out on personal recognizance, there may be no security filed. The Chair said that section (d) of Rule 11-102 authorizes the clerk to take the security if the court decides to set the security. The Reporter noted that this provision is derived from existing Rule 11-104 e, which is similar except for the reference to Rule 11-107. The Vice Chair suggested that the Committee accept the Subcommittee's version of section (d), and the Committee agreed by consensus with the suggestion.

Mr. Johnson presented Rule 11-103, Confidentiality, for the Committee's consideration.

Rule 11-103. CONFIDENTIALITY

(a) Confidentiality

Files and records of the court in juvenile proceedings, including the docket entries and indices, are confidential and shall be open to inspection only by the court, authorized court personnel, parties, and their attorneys, **[except]** **and** as otherwise expressly provided by law or by order of court. If a hearing is open to the public pursuant to Code, Courts Article, §3-812, 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, §§3-828, 3-837, and 3-838, Code, Education Article, §7-303, and Code, Article 27, §808.

NOTE TO COMMITTEE:

Upon review of the text of section (a) that was approved by the Committee, the Subcommittee believes that the word "except" should be replaced by the word "and" to clarify that parties, their attorneys, etc. are always allowed to inspect the file.

(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, §3-828 (c) 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 to intervene pursuant to Rule 11-401 to obtain sufficient information to comply with the service requirements of that Rule.

Section (c) states that the sealing and unsealing of the files and records of the juvenile court are governed by Code, Courts Article, §3-828 (c).

A new Committee note calls attention to constraints placed by federal law on the public disclosure of information contained in child abuse and neglect reports and records and information obtained from a child welfare agency about children or families receiving certain services.

Mr. Johnson told the Committee that there are federal funding statutes which mandate confidentiality in child abuse and neglect cases and in cases concerning children or families receiving certain

services. Mr. Johnson noted that in section (a), the word "except" has been changed to the word "and." Ms. Ogletree pointed out that the word "and" clarifies that attorneys and parties are always allowed access to records. The Vice Chair commented that she did not understand the the Subcommittee's intended distinction between the two words. Mr. Johnson responded that the word "except" would mean that the court could deny access; the attorneys and parties always have access.

The Vice Chair said that using the "except" phrase would be an exception to confidentiality, and she suggested that the word should be "except." Ms. Ogletree argued that using the word "and" makes it clearer that there can be no denial of access to parties and their attorneys. The Chair pointed out that the court may want to deny access. The sentence could be reorganized to read: "Except as otherwise expressly provided by law or by order of court, files and records... ." Master Wolfe observed that an exception indicates that there is a possibility that some files and records can be excluded from inspection.

The Chair said that a situation could exist where information contained in some portion of the record places a witness at serious risk. The State could ask the judge for an order limiting disclosure of the record. There is no absolute requirement that a party must see all of the files and records. The Vice Chair suggested that the Chair's proposed language should be used. The first sentence would

read as follows: "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 and shall be open to inspection only by the court, authorized court personnel, parties, and their attorneys." The Committee agreed by consensus with this change.

Mr. Hochberg asked if inspecting a document means that the person can photocopy it. Mr. Johnson responded that inspection does not include copying. In other places in the Rules, there are references to "inspection and copying." Master Sparrough commented that the Subcommittee had discussed this. Under the rules providing for reports, such as Rule 11-303 (b), the reports can be copied. Mr. Johnson said that access to the documents could violate the federal statute pertaining to confidentiality. The court could have no control over a document when it is being copied, and the dissemination would be wider. To preserve confidentiality, inspection should not include photocopying.

Turning to section (b), Mr. Johnson noted that new language has been added to include furnishing information to a nonparty who is filing a motion for visitation pursuant to Rule 11-109 (e). An example of a nonparty would be a grandparent.

The Committee approved the Rule as amended.

Mr. Johnson presented Rule 11-104, Service, for the Committee's consideration.

Rule 11-104. SERVICE

(a) Summons and Petition or Citation

(1) Generally

A summons issued pursuant to Rule 11-102 (c)(1) or Rule 11-203 (c)(1), together with a copy of the petition or citation, shall be served in the manner provided by Rule 2-121. If the parent, custodian, or guardian of the child is a nonresident, or for any reason cannot be served, notice of the pendency and nature of the proceeding shall be given as directed by the court, and proof of the steps taken to give notice shall be filed. Delay in effecting service upon, or in giving notice to, any parent, custodian, or guardian shall not prevent the court from taking any action pending service or notice that justice shall require.

(2) Attorney for a Respondent Child Alleged to be in Need of Assistance

If a petition alleges a respondent child is in need of assistance, the clerk shall promptly provide a notice of the hearing scheduled in accordance with Rule 11-102 (b) and a copy of the petition to the respondent child's attorney.

(b) Other Papers

Except as otherwise provided by law, Rule 1-321 governs service of every paper filed with the court other than a petition or citation.

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

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

> Subsection (a)(1) is derived from the second, third, and fourth paragraphs of former Rule 904 c.
>
> Subsection (a)(2) is new. It requires the clerk to provide a notice of the hearing and a copy of the petition to the attorney for a child alleged to be in need of assistance ("CINA"), in that no process directed to the child is ever issued and the respondent child in a CINA case is always represented by counsel. See Rule 11-102 (c)(1).
>
> Section (b) requires all papers filed with the court to be served on other parties in accordance with Rule 1-321, unless otherwise provided by law.

Mr. Johnson pointed out that section (b) is new, and it provides a mechanism for service of papers other than a petition or citation. The Vice Chair inquired if the first phrase of the added language refers to any specific law, and why it is necessary to refer to Rule 1-321. The Chair responded that Rule 1-321 does not use the language "except as otherwise provided by law." Master Casey remarked that he did not know of any specific laws on this subject. The Reporter added that this introductory language would cover any law which may be applicable. She said that subsection (a)(1) governs service of petitions as defined in Rule 11-101 (b)(2) and citations. If the case converts to a proceeding in which parental rights could be terminated, such as an adoption, the "except as otherwise provided by law" portion of section (b) would apply. A petition for adoption is not included in the Rule 11-101 (b)(2) definition of "petition," and the requirements for service of a petition for adoption are

different from the methods set out in Rule 1-321. Master Raum remarked that when the custodial person consents to an adoption, the others are no longer parties as they were to the original juvenile proceeding.

Mr. Hochberg expressed the view that the Rule should be broad, referring both to the law and to Rule 1-321. The Chair stated that the Rule would be left as it is, and the Committee agreed by consensus with this.

Mr. Johnson presented Rule 11-105, Masters, for the Committee's consideration.

Rule 11-105. MASTERS

(a) Authority

(1) Detention or Shelter Care

A master is authorized to order detention or shelter care in accordance with Rule 11-201 subject to review by a judge not later than the next day after a request for review is made by any party.

Cross reference: Code, Courts Article, §3-813 (d).

(2) Other Matters

A master is authorized to hear any cases and matters permitted by law that are assigned by the court, except a hearing on a waiver petition. The findings, conclusions, and recommendations of a master do not constitute orders or final action of the court.

Cross reference: Code, Courts Article, §3-813 (a), (b), and (d).

(b) Report to the Court

Within ten days following the conclusion of a disposition or post-dispositional hearing held by a master, the master shall transmit to the judge the entire file in the case; together with a written report of the proposed findings of fact, conclusions of law, recommendations, and proposed orders. A copy of the report and proposed order shall be served upon each party as provided by Rule 1-321.

(c) Review by Court if Exceptions Filed

Any party may file exceptions to the master's proposed findings, conclusions, recommendations or proposed orders. Exceptions shall be in writing, filed with the clerk within five days after the master's report is served upon the party, and shall specify those items to which the party excepts, and whether the hearing is to be de novo or on the record.

Upon the filing of exceptions, a prompt hearing shall be scheduled on the exceptions. An excepting party, other than the State in a delinquency proceeding, may elect a hearing de novo or a hearing on the record. If the State is the excepting party in a delinquency proceeding, the hearing shall be on the record, supplemented by such additional evidence as the judge considers relevant and to which the parties raise no objection. In either case the hearing shall be limited to those matters to which exceptions have been taken.

QUERY TO COMMITTEE

The Subcommittee suggested that the next-to-last sentence of Rule 2-541 (h)(2) be added to the second paragraph of section (c), if a de novo hearing is not requested. In other words, something like:

If a de novo hearing is not

requested, instead of a transcript, the parties may agree to a statement of facts or the court by order may accept an electronic recording of the proceedings.

If this is added, should the transcript requirements of Rule 2-541 also be included in this Rule? If not, what happens when the parties cannot agree, the court declines to accept an electronic recording, or there is no electronic recording?

(d) Review by Court in Absence of Exceptions

In the absence of timely and proper exceptions, the master's proposed findings of fact, conclusions of law and recommendations may be adopted by the court and the proposed or other appropriate orders may be entered based on them. The court may remand the case to the master for further hearing, or may, on its own motion, schedule and conduct a further hearing. Action by the court under this section shall be taken within two days after the expiration of the time for filing exceptions.

Source: This Rule is derived from former Rule 911.

Rule 11-105 was accompanied by the following Reporter's Note.

This Rule is derived from former Rule 911 with style changes and some substantive changes.

In subsection (a)(1) the phrase "review by a judge not later than the next day after a request for review is made by any party" replaces the phrase "immediate review by a judge if requested by any party" in former Rule 911 a. The Committee recommends this change in light of the disparity of interpretations of the word "immediate" that have occurred throughout the State. The phrase "next day" is defined in proposed new Rule 11-101 (b)(1).

In subsection (a)(2), "permitted by law" is added to take account of statutory limitations on the powers of masters in Prince George's County.

In section (b), language limiting the types of hearings to "disposition" or "adjudication and disposition" has been deleted. Exceptions can be taken from other types of hearings (e.g., restitution).

In the second paragraph of section (c), language is added to make the Rule consistent with Code, Courts Article, §3-813 (c)(3).

In section (d), the phrase "supplemented by such additional evidence as the judge considers relevant and to which the parties raise no objection" has been deleted as an unnecessary restriction on how the hearing should be conducted.

> Although the Committee was concerned about constitutional issues inherent in the Master system (see the Reporter's Note to Rule 11-402), the consensus is that if the Master system is going to continue to be used, former Rule 911 (now renumbered Rule 11-111) works sufficiently well that it should not undergo a major revision.

Mr. Johnson noted that section (a) has the language "next day." The Chair said that this ensures that the matter is reviewed promptly by a judge. Mr. Johnson pointed out that there are no changes in subsections (a)(1) and (2) and section (b), except for the added cross references. The Reporter explained that in section (c), the Subcommittee wanted to include a reference to Rule 2-541 (h)(2). Nothing in the Rule provides for what happens if the parties do not agree, and the court does not accept the transcript. Master Casey remarked that in Baltimore City, the electronic recording tape goes to the court, but no transcripts go. The judge hears the tape and makes a decision.

Judge Vaughan inquired as to how often a de novo hearing is requested. Master Casey replied that it is requested about half the time. Judge Vaughan asked why one would not request a de novo hearing every time, if one has a right to it. Mr. Fishkin responded that if the case involves a question of law, the factual record is sufficient. The Reporter questioned whether there is always a tape recording. The Chair suggested that the following language could be added to section (c): "The court may accept an electronic recording

of the proceedings."

Master Raum commented that there are very few exceptions filed. The Chair asked if his proposed change would cause more exceptions. Judge McAuliffe suggested that the words "by order" should be added to the Chair's proposed language, so that the new language would read: "The Court may by order accept an electronic recording of the proceedings." Mr. Johnson inquired if this is inconsistent with Rule 2-541, and the Chair replied that it is not. The Reporter pointed out that Rule 2-541 does not apply to juvenile proceedings. She questioned as to how much of the language of Rule 2-541 goes into the Juvenile Rule. The Chair suggested that the new language could be: "If a hearing on the record is requested, the court may by order accept ... ." Master Casey suggested that in place of the language "if a hearing on the record is requested," the following language should be substituted: "If a hearing is held on the record." The Chair stated that it should be changed to: "If a hearing is on the record."

The Reporter asked if this would be instead of providing a transcript. The Vice Chair observed that this is out of context, because a transcript has not been mentioned previously. Under Rule 2-541, a transcript has to be ordered. The Reporter suggested that the new language could provide: "the court may either require that a transcript be ordered or accept an electronic recording." Mr. Brault asked how this is being handled currently. Master Sparrough answered

that the parties get the tape and are responsible for getting the transcript transcribed. The Reporter inquired as to who pays for this. Master Sparrough responded that the parties pay for the cassettes they get from Prince George's County. Master Casey remarked that this is also true in Baltimore City.

The Chair suggested that the new language could read as follows: "If a hearing is on the record, unless the parties agree to a statement of facts, the court, by order, may require a transcript or accept an electronic recording of the proceedings." Mr. Sykes expressed the view that the word "may" should be "shall." Judge McAuliffe noted that this change would involve the court very heavily, and it would create a burden on the court. The Vice Chair inquired as to why this change is necessary. The Chair replied that currently the Rules provide no guidance on the subject. The Chair suggested the following language: "If a hearing is on the record, unless the court by order requires a transcript or the parties agree to a statement of facts, the court shall accept an electronic recording of the proceedings." Judge McAuliffe suggested the following language: "If a hearing is on the record, the hearing will be held on either an agreed statement of facts or a transcript, unless the court, by order, accepts an electronic recording of the proceedings as the record." The Committee agreed by consensus to this added language. Mr. Johnson inquired whether a motion for acceptance of the electronic recording would have to be filed, and

the Chair answered affirmatively.

The Vice Chair pointed out that in the second line on page 22 of the proposed Juvenile Rules, Rule 11-105 provides that exceptions shall be filed with the clerk within five days after the master's report is served upon the party. The Committee had previously looked at the issue of what triggers the three extra days for mailing and what does not. Now the three-day rule applies to all of the Rules. In Rule 2-541, exceptions are filed within ten days after the filing of the master's report. The way Rule 11-105 (c) is structured creates the potential for the five days to become eight due to the mailing rule, Rule 1-203 (c). The Rule could be changed to provide that exceptions are filed within eight days after the filing of the master's report.

The Chair commented that this is a fast-track procedure. Ms. Ogletree noted the problem of pro se parties trying to figure this out. Mr. Sykes said that section (c) of Rule 11-105 is not providing for eight days after filing. If the time runs from service, one knows when the clerk put the report in the mail. The Chair pointed out that section (b) of Rule 11-105 provides that a copy of the master's report shall be served upon each party pursuant to Rule 1-321. The Vice Chair commented that that sentence implies that the master's report will be mailed at the same time it is filed. Master Raum remarked that in Howard County, the report is not given to the parties. The findings of the master are put on the record. If the

case is held sub curia, his office mails the report with a certificate of service. They do not rely on the clerk's office. Mr. Johnson said that Mr. Martin had pointed out to him that section (c) is the same as the current Rule. The Chair commented that the current Rule seems to be causing no problems.

The Vice Chair said that the Court of Appeals has made other changes to the current Juvenile Rules. Master Raum noted that the Court of Special Appeals has engrafted the three-day mailing rule on Rule 2-541. The Chair pointed out that section (h) of Rule 2-541 provides that within ten days after the filing of the master's report, a party may file exceptions. Mr. Johnson expressed the view that that is too long in juvenile causes. The Vice Chair moved that section (c) provide that exceptions shall be filed with the clerk within five days after the master's report is filed. The motion was seconded, and it did not pass on a vote of six in favor, nine opposed.

Mr. Hochberg inquired as to if there is a time limit when the hearing will be held after the exceptions are filed. The Chair answered that the current Rule provides for a "prompt" hearing.

Mr. Johnson presented Rule 11-106, Taking Child Into Custody, for the Committee's consideration.

Rule 11-106. TAKING CHILD INTO CUSTODY

A child may be taken into custody in accordance with Code, Courts Article, §3-814.

Cross reference: See Rule 1-361 (a) and (c) concerning procedures for processing a person taken into custody pursuant to a writ of attachment.

Source: This Rule is new.

Rule 11-106 was accompanied by the following Reporter's Note.

This Rule incorporates by reference the statutory authority for taking a child into custody.

Under Code, Courts Article, §3-814 (c), one method by which a child may be taken into custody is pursuant to a writ of attachment that a court may issue under the circumstances specified by the statute. A cross reference to Rule 1-361 (a) and (c) refers to procedures applicable when a child is taken into custody by this method.

Mr. Johnson told the Committee that the Rule is new. It refers to the appropriate Code section which spells out the procedure for taking a child into custody. The Chair said that the statute is comprehensive and covers everything.

Rule 11-106 was approved as presented.

Mr. Johnson presented Rule 11-107, Security for the Appearance of a Person, for the Committee's consideration.

Rule 11-107. SECURITY FOR THE APPEARANCE OF A PERSON

(a) Adult Subject to the Jurisdiction of the Court

An adult subject to the jurisdiction of the court is entitled to the same consideration with respect to bail as a defendant in a criminal proceeding.

Cross reference: See Rule 4-216 concerning pretrial release, Rule 4-217 concerning bail bonds, and Rules 4-348 and 4-349 concerning release after conviction.

(b) Respondent Child

If the criteria for detention of a respondent child have been met and the court determines that the imposition of one or more conditions of release will reasonably assure the appearance of the respondent child as required, the court may release the respondent child in accordance with Rules 4-216 and 4-217, provided that the purposes of Code, Courts Article, §3-802 may be reasonably achieved by the release.

Source: This Rule is new.

Rule 11-107 was accompanied by the following Reporter's Note.

This Rule provides a mechanism for the release of certain adults subject to the jurisdiction of the court and respondent children who have met the criteria for detention.

> Section (a) is adapted from Rule 15-208, with a cross reference to the pertinent portions of Title 4.
>
> Section (b) makes the provisions of Rules 4-216 and 4-217 applicable to respondent children who have met the criteria for detention, provided that their release is consistent with the purposes of Code, Courts Article, Title 3, Subtitle 8.

Mr. Johnson explained that this Rule applies to children in detention and adults subject to the jurisdiction of the juvenile court. The Vice Chair inquired whether the title of the Rule should be changed to "Release Pending Trial" or "Pretrial Release." The Rule does not refer to any security. The Reporter pointed out that this tracks Rule 11-102 (d) which is titled "Deposit of Security for Appearance." The vast majority of children detained are released with no bond, and Rule 11-107 will not apply.

Mr. Dean observed that pretrial release is for adults. The Reporter added that that term is too broad for the title of this Rule. Master Wolfe noted that bond may be set post-adjudication, also. The Chair asked if this should be dealt with in another Rule. Senator Stone suggested that the title could be "Release Pending Appearance." Judge Rinehardt expressed the view that the present title of the Rule is appropriate. Mr. Johnson questioned whether the title is a matter of style. The Chair said that pretrial release is handled in Rule 4-216. In some situations, there is release after a verdict. He suggested that Rule 11-107 be titled "Prehearing

Release." The Committee agreed by consensus with this change and approved the content of the Rule as presented.

Mr. Johnson presented Rule 11-108, Subpoenas, for the Committee's consideration.

Rule 11-108. SUBPOENAS

(a) Generally

Except as otherwise provided by law, subpoenas issued in connection with proceedings subject to this Title are governed by Rules 4-265 and 4-266.

Cross reference: See Code, Article 27, §775 and Rule 4-261 concerning a subpoena issue in connection with the deposition of a witness to certain out-of-court statements of a child.

(b) Hospital Records

A subpoena for hospital records may be issued in accordance with Rule 2-510 (h).

Source: This Rule is new.

Rule 11-108 was accompanied by the following Reporter's Note.

This Rule is new and is more comprehensive than former Rule 904 d.

The former Rule was framed in terms of a "duty" of the clerk to "issue" a subpoena. The subpoena was issued "pursuant to Rule 2-510."

Using language borrowed from Rule 6-161, new Rule 11-108 (a) makes the provisions of Rules 4-265 and 4-266 applicable to subpoenas issued in connection with proceedings in the juvenile court. The Subcommittee considered

using the provisions of Rule 2-510, but rejected that approach in favor of Rules 4-265 and 4-266, primarily because it believes that the references in Rule 2-510 to depositions would be misleading in the context of juvenile proceedings. A cross reference concerning subpoenas issued in connection with depositions that may be taken in connection with juvenile proceedings follows section (a).

Section (b) allows a subpoena for hospital records to be issued in accordance with Rule 2-510 (h).

The Chair noted that this Rule brings in other subpoenas. The Reporter added that it is geared toward Title 4. The Vice Chair pointed out a typographical error in the cross reference--the word "issue" should be "issued." The Rule was approved, with this correction.

Mr. Johnson presented Rule 11-109, Motions, for the Committee's consideration.

Rule 11-109. MOTIONS

(a) Generally

An application to the court for an order shall be made by motion which, unless made during a hearing or trial, shall be made in writing and shall set forth the relief or order sought. To the extent practicable and unless the court otherwise directs, a motion directed to the adjudicatory hearing or to the juvenile petition itself shall be in writing and filed before the first scheduled date of the adjudicatory hearing.

(b) Response

Except as otherwise provided in this section, a party against whom a motion is directed shall file a response within 10 days after being served with the motion. If a party fails to file a response to a motion that was filed more than 13 days before a scheduled hearing, the court may proceed to rule on the motion. If a motion is filed 13 or less days before a scheduled hearing no response need be filed and, unless otherwise ordered by the court, the court shall rule on the motion at the hearing.

(c) Statement of Grounds and Authorities; Exhibits

A written motion and a response to a motion shall state with particularity the grounds and the authorities in support of each ground. A party shall attach as an exhibit to a written motion or response any document that the party wishes the court to consider in ruling on the motion or response unless that document has been filed previously in the case.

(d) Hearing

A party desiring a separate hearing on a motion shall so request in the motion or response under the heading, "Request for Hearing." Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but it may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.

(e) Motion for Visitation

A nonparty who desires visitation with the respondent child may file a motion for visitation. The motion may be filed at any time and shall state the statutory authority, if any, for the nonparty's assertion of visitation rights. The nonparty shall serve a copy of the motion on all parties or their attorneys in accordance with Rule 11-104 (b).

A nonparty who seeks or is granted visitation shall not be deemed a party.

Cross references: See Code, Family Law Article, §9-102 concerning visitation by grandparents and Code, Family Law Article, §5-525.2 (a) concerning visitation by siblings.

For the clerk's obligation to provide names and addresses of parties or their attorneys to a nonparty filing a motion for visitation, see Rule 11-103 (b).

For the definition of "party," see Code, Courts Article, §3-801 (r).

Source: This Rules is new.

Rule 11-109 was accompanied by the following Reporter's Note.

This Rule is new. In the current rules, there are no procedures regarding motions. New Rule 11-109 fills that gap.

The first sentence of section (a) is derived from Rule 2-311 (a). The second sentence of section (a) is directed toward reducing the number of "last-minute" motions filed at the adjudicatory hearing.

Section (b) is patterned after Rule 2-311 (b), except that a party against whom a motion is directed has ten days to file a response, instead of the 15 days allowed by Rule 2-311 (b). If a motion is filed 13 or less days before a scheduled hearing, no response need be filed and ordinarily the court will rule on the motion at the hearing.

Section (c) is derived from Rule 2-311 (c).

Section (d) is derived from Rule 2-311

(e).

> Section (e) sets out a procedure by which a nonparty may, at any time, file a motion for visitation with the respondent child. Particularly where a nonparty has a statutory right to seek visitation, the nonparty should not have to wait until disposition or "ride the coattails" of a party in order to have a determination of visitation rights.

Mr. Johnson explained that this is a new rule. Master Casey added that in the current Juvenile Rules, there is no rule that governs motions procedure. Motions do come up in juvenile cases, such as motions to transfer jurisdiction and motions for visitation in CINA cases. Until now, the motions have been handled ad hoc. Even though there have not been a lot of disputes about motions, the Subcommittee felt it was better to codify the procedure.

Mr. Klein commented that the way section (b) is worded seems to encourage last-minute filing. Ms. Ogletree responded that the time frames are shorter in juvenile court. The Subcommittee discussed having motions filed within 10 days prior to a hearing without the necessity of a response. Mr. Johnson pointed out that the detriment of a late motion is that the person filing the motion does not know what response his or her opponent will give. This encourages people to file in advance. Ms. Ogletree remarked that this is taking place even without a rule. Mr. Johnson said that the Rule will put more teeth in it. This creates a mechanism for filing a motion. Mr. Sykes noted that Rule 2-311, Motions, the general motions rule, has

certain requirements such as that a motion be filed under oath, and he asked why these requirements are not included in Rule 11-109. Master Casey remarked that the Rule 2-311 requirements could be added to Rule 11-109. The hope is that juvenile court will become more like other courts.

The Chair questioned as to which aspects of Rule 2-311 should be included in Rule 11-109. The Vice Chair answered that the affidavit in Rule 2-311 (d) should be in Rule 11-109. Mr. Dean pointed out that Rule 4-252, Motions in Circuit Court, which is the criminal motions rule, may provide some guidance. Mr. Sykes suggested that Rule 11-109 incorporate Rule 2-311. Mr. Johnson said that the first sentence of Rule 11-109 provides that a motion must be in writing, unless made during a hearing or trial. The Subcommittee did not want to preclude oral motions made in court. The Vice Chair suggested that since the first sentence allows oral motions, the language "in writing" should be deleted from the second sentence.

Mr. Brault asked the meaning of the language in the second sentence which reads: "a motion directed to the adjudicatory hearing." Master Casey replied that this refers to motions to dismiss the petition or to suppress evidence, for example. The idea is that someone should not be sandbagged at the hearing. The motion is filed before the hearing, so the opponent can respond. Mr. Brault commented that this is not clear from reading the Rule. The Chair suggested that the Rule could provide that the court need not

consider at the adjudicatory hearing a motion filed less than a certain number of days before the first scheduled date of the adjudicatory hearing, but Ms. Ogletree and Senator Stone were not in agreement with that suggestion. The Vice Chair commented that the sentence is difficult to understand. Judge McAuliffe said that it pertains to motions that are not related to disposition. Anything that affects the adjudication or petition should be filed before the adjudicatory hearing. It excludes other motions, such as restitution.

Mr. Karceski remarked that this Rule is more like the circuit court criminal rule, but it is causing more difficulty than it is curing. He suggested that something like the District Court criminal rule should be considered. The Chair responded that there are more time requirements in juvenile cases than in District Court cases. Mr. Fishkin observed that the scheme should not be too rigid so as to preclude motions which ought to be heard. Mr. Johnson noted that if the master excludes the motion because it was not filed early, the language in section (a) which reads, "to the extent practicable" covers the situation.

The Vice Chair pointed out that if the petition has a defect in it, and no written motion is filed before the hearing, which is postponed, it is arguable that the defect was waived since the Rule refers to the motion being filed before the first scheduled date of the adjudicatory hearing. Senator Stone expressed the view that what

is important is not how many hearing dates have been scheduled, but that the petition is filed before the hearing, whenever it is held. He said that he has never had a problem raising a motion at a hearing. In the District Court, most motions are oral.

Master Raum noted that the adjudicatory hearing must take place in 60 days, but that does not mean that the hearing must be completed in 60 days. A case can begin with a complex motion, which is held sub curia, and the hearing can be continued. Master Wolfe remarked that when motions are in writing, the court gets advance notice of them, and it can schedule its time accordingly. The Chair observed that the Rule may not be appropriate for delinquency cases.

Judge McAuliffe questioned whether the Rule should go back to the Juvenile Subcommittee, but the Vice Chair expressed the opinion that it should not. She again suggested that the language which reads, "in writing and" should be deleted from section (a), and the Committee agreed with this suggestion by consensus. The Chair suggested that in place of the language "directed to the adjudicatory hearing," the language "to be resolved at an adjudicatory hearing" be substituted. Mr. Fishkin remarked that the effect of this may be to encourage attorneys to file more motions to make sure they are not waived.

Judge Johnson observed that the motions in writing in juvenile court are very rare, and they should not pose a problem. Mr. Fishkin noted that sometimes the defense attorney only has the case for two

days before the hearing, and this could be a burden on the defense attorney, causing him or her to file more motions. The Chair suggested that the first sentence of section (a) read as follows: "A party may make an application to the court for an order by filing a motion which, unless made at the hearing, shall be made in writing and shall set forth the relief or order sought." The second sentence of section (a) would be eliminated. Judge Rinehardt remarked that the motions should not have to be in writing; it could lead to many different results throughout the State. The Chair pointed out that the existing Juvenile Rules are silent about motions. Arguably, they are not allowed. Mr. Sykes asked if Rule 2-311 applies, and the Reporter replied that Title 1 applies, but not Title 2. Mr. Johnson questioned whether a motions rule is needed. The Chair replied that there should be a motions rule. Mr. Dean added that in delinquency cases, a motions practice is important because it provides notice to prosecutors. Mr. Johnson commented both sides of juvenile practice were represented at the Subcommittee meetings, and the Rule is a balanced approach.

The Chair commented that section (a) uses the word "may" and is permissive. Mr. Klein noted that Rule 2-311 uses the word "shall," but it is equally permissive. Tracking Rule 2-311, except for using the word "may" is inconsistent. Mr. Sykes asked why the inconsistency would confuse people -- if someone wants to apply to the court for an order, it is done by motion. Wording the first

sentence "may be" has the same meaning as "shall." In either case, one does not have to make a motion.

Mr. Martin observed that an application to the court for continued detention or shelter care under Rule 11-201 is in the form of a "motion." He noted that the statute uses the term "petition" in place of the term "motion." Mr. Johnson responded that the Juvenile Rules have a different definition of the word "petition." The Chair said that the first sentence of section (a) should use the word "may." The Vice Chair said that referring to a petition as a "motion" does not affect the substance of the Rules.

The consensus of the Rules Committee was that there should be a general rule on motions. Mr. Johnson added that the Subcommittee and consultants were in agreement. Mr. Brault moved to modify the first sentence and delete the second sentence of section (a) as the Chair had suggested. The motion was seconded and passed unanimously.

Turning to section (b), the Chair suggested that this section be changed to the following: "A party against whom a motion is directed may file a response within 10 days after being served with the motion. If a motion is filed 13 or less days before a scheduled hearing, unless otherwise ordered by the court, a party against whom a motion is directed is not required to file a response, and the court shall rule on the motion at the hearing." The Vice Chair expressed the opinion that a response should be made to a motion which is filed 15 or 20 days before a hearing. Mr. Brault commented

that in the criminal rules, no response to a motion is required. Mr. Dean added that the burden is on the State to answer boilerplate motions. Mr. Brault said that no response to motions is required in District Court, and in the circuit court, a response, if made, is filed within 15 days. Mr. Johnson inquired if there is a sanction for not filing a response, and Ms. Ogletree answered that there is not. Mr. Sykes remarked that the court can rule on the motion without hearing from the other side if no response is filed.

The Vice Chair commented that a response should be mandated. Master Raum expressed the view that a response should be permissive, unless the court requires one. The Chair said that juvenile motions are ruled on at the hearing; there is no pretrial ruling. Master Casey noted that pretrial decisions do occur, although they are rare. The Vice Chair suggested that only two sentences are needed in section (b), and the second sentence should be couched in terms of when the court has not ordered a response. The Chair said that there should only be a response if the court requires it; otherwise, the court can rule on the motion at the hearing.

Judge McAuliffe pointed out that if the hearing is conducted by a master, the court will not rule on anything. The master makes only a recommendation. The problem is that the court does not take action until one or more days after the master's recommendation. Master Casey commented that this is an inherent contradiction in the master system. Judicial review is not practicable. The Chair said that

language could be added which provides that the motion shall be decided upon at the hearing. The Vice Chair asked if the word "court" excludes masters. Mr. Johnson answered that the definition of the word "court" in the statute does not encompass masters. Code, Courts Article, §3-813 does not define a master's hearing as a court hearing. Judge McAuliffe noted that a master is not a judicial officer. The court has to make the final decision. Either a distinction has to be made between masters' determinations, or the definition of "court" should be broadened to include masters.

The Reporter suggested that the first sentence of section (b) could read: "Unless the court orders otherwise, (1) a party against whom a motion is directed is not required to file a response, and (2) the matters raised in the motion shall be heard at the next scheduled hearing." The Committee agreed by consensus with this suggestion. The Chair said that the wording is a matter of style, but the thought to be expressed in the next sentence is that the motion shall not be decided upon prior to the hearing, unless the court orders otherwise. The Vice Chair asked if the court issues the order prior to the hearing or issues an order asking for a response. The Chair replied that either or both is appropriate. Unless the court so orders, no response is necessary, and the matter will not be decided prior to the hearing unless the court says so. The Reporter suggested that the second sentence of section (b) read as follows: "Unless a

response is required and the court notifies the parties that the motion will be heard in advance of the hearing, the court shall not decide the motion prior to the hearing." The Committee agreed by consensus with this suggestion.

Senator Stone asked where one files motions, and who signs the order. Master Casey said that the masters go to the judges to sign the order. Judge Johnson pointed out that the Rule is written generically -- the judge hears all delinquency cases in Prince George's County. Judge McAuliffe commented that the masters have some authority, but not the ultimate authority. One of the differences between an examiner and a master is that the masters rule on evidence questions. There is an old common law distinction between examiners and masters.

Mr. Brault asked if the statement of authorities in section (c) could be eliminated, because it is not in the criminal rules. He expressed the opinion that the reference to the exhibits is not necessary, either. The Vice Chair reiterated that a reference to filing the motion with affidavits should be added. The Committee agreed by consensus with these suggestions. Mr. Brault noted that the section (d) can be deleted, because of the change in section (b) which provides that the motion will be decided at the hearing. The Chair said that it is permissible to request a separate hearing. Mr. Johnson commented that the Rule should not take away the ability of the court to hear motions before the hearing. Master Raum noted that

this is going from a relaxed procedure to a detailed one. It would be preferable not to have the Rule cover the request. The court can fashion the appropriate relief in each case. The Chair suggested that section (d) as it appears now be deleted as unnecessary, and the Committee agreed by consensus with this suggestion. The Reporter said that the new section pertaining to affidavits can be placed in section (d).

Mr. Johnson told the Committee that there is statutory authority for section (e). Ms. Ogletree noted that this issue had been heavily debated, and the Reporter pointed out that there had been talk of limiting this to only what is allowed by statute. Some Subcommittee members felt that the Rule should not restrict who is allowed to file a motion for visitation. Section (e) reflects a compromise position. The statutory authority is cited, so that if there is a special right to visitation, the court is made aware of it. Ms. Ogletree said that there could be a person, such as a teacher, who has a special relationship with the child. The statute does not refer to a neighbor, for example, but it may be in the child's best interest to allow visitation with someone not listed in the statute.

Judge Vaughan inquired about the meaning of the last sentence of section (e). Ms. Ogletree responded that, for example, the nonparty who seeks or is granted visitation is not entitled to copies of certain reports pertaining to the respondent. Mr. Johnson added

that the person does not become a party to the proceedings. The Chair suggested that the following language be added to the end of the last sentence: "for purposes other than visitation." The Committee agreed by consensus to this change. The Chair said that the theory is that one cannot get all of the confidential materials in the case, just by filing for visitation.

After the lunch break, Mr. Johnson presented Rule 11-110, Continuance, for the Committee's consideration.

Rule 11-110. CONTINUANCE

(a) Generally

On motion of a party, or on the court's initiative, and for good cause shown, a judge may grant a change of a hearing date.

(b) On the Date of a Hearing Scheduled Before a Master

On the date of a hearing scheduled before a master, upon agreement of all parties present at the hearing and a finding of good cause by the master, the master may continue the hearing and present an order evidencing the continuance to a judge for the judge's signature. If the master finds good cause for a continuance and all parties present do not agree to it, a judge shall determine whether a continuance will be granted.

Source: This Rule is new.

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

This Rule establishes a good cause standard for continuances and requires, in most instances, that the decision to grant a continuance be made by a judge. The general rule for continuances in juvenile proceedings is set out as section (a), which is patterned after the last sentence of Rule 4-271 (a).

The Subcommittee learned that practices concerning the granting of continuances by masters vary from county to county. In light of the statutory time requirements applicable to hearings in juvenile proceedings, the responsibility of the judiciary with respect to docket control, and the limited powers of the master set out in Code, Courts Article, §3-813, the Subcommittee recommends that a master be allowed to grant a continuance only when, on

> the date of a scheduled hearing before the master, good cause for a continuance is shown and all parties present agree to the continuance. This exception is set out in section (b) of the Rule. Under all other circumstances, section (a) applies.

Mr. Johnson explained that section (a) provides that a judge may grant a change of a hearing date. The issue is under what circumstances may a master grant a continuance. Mr. Johnson said that he wrote letters to administrative judges throughout the State in the jurisdictions which use masters. He asked them whether masters grant continuances in their jurisdictions, should masters be allowed to grant continuances, and are the judges in favor of a rule on this. The responses to the letters were split. Some jurisdictions said that masters should not grant continuances; others allow masters to grant continuances all the time. Some of the administrative judges were opposed to the idea of masters granting continuances, because the judges thought that the law does not allow it, not because they were philosophically opposed to it. Letters were received from six or seven administrative judges. Opponents of the idea that masters can grant continuances are public defenders who have had problems with masters in the past. The decision was made by the Chair, the Reporter, and Mr. Johnson to draft a Rule that provides that as long as the parties agree, a master can continue a hearing, and a judge signs off on this. Master Wolfe asked why the Rule does not allow for continuances to be granted by a master prior

to the hearing date. In Anne Arundel County, if the defendant requests an extra week or two and the parties agree, the master takes care of the request. Judge Johnson said that in Prince George's County, there is a coordinating judge. No judge other than the coordinating judge can grant a continuance, and no master can grant one.

Master Wolfe pointed out that Rule 2-541 provides in subsection (d)(1) that the master shall fix the time and place for the hearing. The Reporter noted that this is a Title 2 Rule which does not apply to Juvenile causes. Master Wolfe commented that the paperwork is endless, and she suggested that section (b) not require the parties to come into the courtroom to arrange the agreement. Mr. Johnson responded that the Rule does away with the paperwork. It requires no motion or stipulation in writing. The parties come to court, and the master hears the matter. The Rule does not anticipate a motions practice. The Vice Chair questioned whether the agreement could be effected by telephone. Master Wolfe replied that it is arranged either by telephone or by motion. She reiterated her concern that there is no provision in the Rule for the master to continue the case prior to the hearing.

The Chair said that the Subcommittee felt that in advance of the hearing, a judge should grant a postponement. In many jurisdictions, the parties still have to see a judge the day of the hearing. The proposed Rule saves that extra step. Mr. Johnson

commented that the defense bar is opposed to the masters having this authority. The Subcommittee felt that in limited circumstances, the parties can agree, and the master can continue the case. In other circumstances, the court has the authority to continue the case. Judge Vaughan asked what happens if the master objects to the continuance even if the parties agree. Mr. Johnson said that the intention of the new Rule is not to expand the power of the master. There is less harm when all the parties agree, and usually the master will agree as well. If the master does not agree, a judge could decide.

Mr. Karceski commented that in criminal court in Baltimore City, if the parties agree to continue a case, they go before the trial judge, who hears the agreement and decides upon it. The parties need not go before the administrative judge. Rule 11-110 uses the same principle -- it avoids involving the judge in all requests for continuance.

Mr. Sykes suggested that the word "continuance" should be changed to the word "postponement." A continuance suggests that the case is changed to another date, and the master does not control the subsequent hearing date. The Vice Chair noted that in other Rules a "postponement" means a "continuance." The Chair stated that he agreed with Mr. Sykes about changing the two words, and the Committee agreed by consensus with this change.

Mr. Johnson 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 shelter care" is detention or shelter care ordered by the court or authorized by an intake officer or the local department of social services prior to a hearing.

(b) Emergency Detention or Shelter Care

When a child is taken into custody pursuant to Code, Courts Article, §3-814,

(1) The court or an intake officer may authorize emergency detention, pursuant to Code, Courts Article §3-815 (b), or emergency shelter care, pursuant to Code, Courts Article, §3-815 (c), for a child who may be delinquent or in need of supervision.

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

(c) Motion for Continued Detention or Shelter Care

QUERY TO COMMITTEE:

When these Rules were first considered, a decision was made that the juvenile petition would be called the "petition," a "waiver petition" would be a "waiver Petition," and all other requests for action by the court would be by "motion." See the Reporter's Note to Rule 11-101. With the addition of Rule 11-109 (Motions) to this package, should the "Motion for Continued Detention or Shelter Care" be renamed, to make clear that Rule 11-109 is inapplicable?

If an intake officer or local department authorizes a child placed in emergency detention or shelter care, the person who authorized that placement shall, on the next day:

(1) give written notice of the authorization for detention or 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 shelter care; and

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

(d) Hearing

If the court authorizes emergency detention or shelter care, the court shall afford the parties a hearing on the next day. If a motion is filed pursuant to subsection (c)(2) of this Rule, a hearing shall be held on the day the motion is filed. In either case 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 continued by the court for good cause shown for no longer than (1) in a delinquency case, one day beyond the business day the initial hearing was or should have been held; or (2) in other cases, five days beyond the business day the initial hearing was or 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 (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, §3-815. In general, those amendments make clear the differences in the criteria for detention and shelter care.

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

Section (b) is similar to current Rule 912 a 1 but incorporates the changes to Code, Courts Article, §3-815 (a), (b), and (c).

Section (c) is similar to current Rule 912 a 2 but incorporates in subsection (c)(1) the substance of §3-815 (i) of the Courts Article. Throughout the Rule the term "motion" is used instead of "petition".

Section (d) is based upon current Rule 912 a 3 and §3-815 (d)(1), (2), and (3). The time periods are shortened - the statute provides that the detention/shelter care hearing be held on the "next court day". The Rule simply says "next day," as that term is defined in proposed

new Rule 11-101 (b)(1). It is a deliberate choice, 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 Rule 912 b 1, with updated statutory references.

In light of 1995 amendments to Code, Courts Article, §3-815 (d) pertaining to certain maximum time limits applicable to the placement of a child in detention or shelter care, a cross reference to that Code section is added following section (e) of the Rule.

Section (f) carries forward the provisions of current Rule 11-112 d.

Mr. Johnson pointed out that section (a) contains the definition of emergency detention or shelter care. Section (b) applies prior to a hearing. The Reporter remarked that Mr. Martin had expressed a concern about section (c). Mr. Martin pointed out that Code, Courts Article, §3-815, provides for a specific set of procedures including a petition for continued detention. Should the new motions rule, Rule 11-109, be reconsidered in light of the motion for continued detention or shelter care in section (c) of Rule 11-201?

The Chair suggested that language could be added to Rule 11-109 which provides that a motion for continued detention or shelter care

is governed by Rule 11-201 (c). The Vice Chair asked why Rule 11-109 should not apply. The Chair replied that this is a special situation. He suggested that in Rule 11-201 the word "petition" could be used. The Reporter noted that the word "petition" is defined in Rule 11-101 (b)(2) and is used many times throughout the Juvenile Rules. Mr. Johnson said that a petition is an initiating document in the proceedings.

Mr. Johnson noted that in Rule 11-101, Definitions, there are definitions of the terms "petition" and "waiver petition." He questioned whether the word "motion" could be changed to the word "petition" in Rule 11-201. The Vice Chair pointed out that Rule 11-202, Petition, requires a caption and service. Master Wolfe remarked that this the other kind of petition. The Reporter observed that the procedure in Rule 11-201 is a fast-track one. The child is picked up in an emergency situation.

Mr. Sykes suggested that section (c) read as follows: "If an intake officer or local department authorizes the placement of a child in emergency detention or shelter care and the child has not been released, the person who authorized that placement shall, on or before the next day...". The Committee agreed by consensus to this suggestion.

The Chair suggested that in the definitions in Rule 11-101, language could be added which would provide that a petition for continued detention or shelter care means a petition filed pursuant

to Rule 11-201 (c). Mr. Johnson suggested that the definition be placed in Rule 11-201, instead of in Rule 11-101. Judge Vaughan expressed the view that all of the definitions should be in one place in the Rules. Mr. Sykes remarked that a definition should not be placed where the term is found. The Chair stated that the definition should be placed in Rule 11-101, and the Committee agreed by consensus.

Mr. Johnson noted that section (c) contains the language "next day" which is the next court day in the statute. The Reporter pointed out that the actions listed in section (b) are not really those of the court. Mr. Sykes suggested that the word "petition" be substituted throughout Rule 11-201 for the term "motion." The Committee agreed by consensus with this suggestion. Mr. Johnson said that the issue of the next court day has already been discussed. The Chair commented that a child in detention should have a prompt hearing by a court. Master Raum observed that the first sentence of section (d) does not reflect actual practice. Any authorization of detention or shelter care by a court is taken care of at a hearing.

Master Raum commented that the definition in section (a) is incorrect. The court does not have the authority to order emergency detention or shelter care prior to a hearing. The Chair asked the Rules Committee if it would be appropriate to take out the language "ordered by the court" in section (a), and the Committee agreed by consensus to take out this language.

Master Casey suggested that the references to the court be taken out of section (b). Mr. Sykes questioned as to what the Code provides. Mr. Johnson replied that Code, Courts Article, §3-815 provides that the court or intake officer authorizes detention or shelter care for a child. The issue is continued versus emergency detention. Judge Johnson commented that the court can authorize detention or shelter care, but this is not the same as emergency detention or shelter care. The Chair suggested that the language at the beginning of subsections (b)(1) and (b)(2) which reads "[t]he court or" should be deleted. The Committee agreed by consensus with this suggestion.

The Vice Chair asked about the notice of authorization in subsection (c)(1). The Chair responded that this involves the fact of the detention. He suggested that in the fourth line of subsection (c)(1), the word "emergency" be taken out, and the first line of the same subsection read "(1) give written notice of the emergency detention." The Committee agreed by consensus with this change.

The Vice Chair asked how long the emergency lasts when there is an emergency detention or shelter care. Mr. Johnson pointed out that on page 31 in the first sentence of section (c), the Rule provides that actions need to be taken on or before the next day after the child is placed in emergency detention or shelter care. Master Casey explained that the content of the notice is that a hearing will be held for the child who is in custody. The Vice Chair asked if a

petition is filed when a child is taken into emergency detention or shelter care, and Master Wolfe answered that no petition is filed. She noted that under subsection (c)(1), notice is given to the court even if the child is released the next day. The Chair inquired as to what the circumstances are when a child comes in and gets released. Master Casey said that sometimes notice cannot be given to the parents, because they cannot be found. Master Sparrough added that a child can be released when the CINA parents come in. Mr. Fishkin commented that intake may not have the necessary information to detain the child.

The Chair pointed out that if the child has been released, neither subsection (c)(1) nor (c)(2) is applicable. The Vice Chair suggested that subsection (c)(2) be modified to provide that the person who authorized the placement files the petition to continue the detention. Mr. Johnson noted that the statute is tied to whether the child has been released. The Vice Chair expressed the view that this should be tied to when emergency detention is sought to be continued, not when the child is released. Master Wolfe suggested that the statute should be tracked--Code, Courts Article, §3-815 (d) provides that if the child is not released, the intake officer shall immediately file a petition to authorize continued detention or shelter care. The Chair suggested that the statute should be followed, but Judge Rinehardt disagreed. Judge Johnson asked Master Sparrough what her position on this issue was. She expressed the

view that a hearing should be held the very first day after the child has been detained.

Ms. Ogletree noted that the hearings are routinely held the next day unless there is no judge available at all. Mr. Johnson commented that subsection (c)(2) references the statute already. The Rule should be left the way it appears. The Reporter said that subsection (c)(1) could be restyled to provide that written notice is given if a petition for continued detention is filed. Master Raum pointed out that the intake officer authorizes emergency detention or release. Mr. Johnson suggested that the Rule could add in the following language: "if an intake officer authorizes the detention, and the child is not released."

The Chair stated that the first clause of subsection (c)(2) which reads: "if continued detention or shelter care is sought," is not necessary and should be deleted. The Committee agreed by consensus to this suggestion.

Turning to section (d), Mr. Johnson pointed out that to be consistent with the previous changes to sections (a) and (b), the word "court" in the first sentence of section (d) should be changed to the words "intake officer." The Reporter suggested that the first sentence be deleted. The Committee agreed by consensus with this change. Judge McAuliffe expressed the concern that the court will not get notified to set the hearing. Judge Johnson responded that that will not happen. The child is either released or brought to

court. Mr. Johnson noted that the statute provides for a hearing on the next day. The Vice Chair said that since the first sentence of section (d) has been deleted, the beginning language of the third sentence which reads, "in either case" should be taken out. The Committee agreed by consensus with this suggestion.

The Vice Chair asked if the language "by the court" in the fourth sentence of section (d) is consistent with Rule 11-110, which allows masters to postpone cases. The Chair suggested that the phrase "by the court" be deleted, as well as the language in the same sentence which reads "for good cause shown." The Reporter pointed out that the word "continued" should be changed to the word "postponed" to be consistent with Rule 11-110. The Committee agreed by consensus to all of these changes.

Mr. Hochberg suggested that in the fourth sentence of section (d), the phrase "was or should have been held" should be changed to "should have been held." The Committee agreed by consensus with this suggestion. Mr. Johnson asked if anyone can postpone the hearing. The Vice Chair responded that this is to be conformed to Rule 11-110. The Chair said that there is a limitation on the length of a postponement to which the parties agree.

The Chair commented that a petition may be filed at 4:15 p.m. which is too late for a hearing to begin. He suggested that the second sentence of section (d) read as follows: "If a petition 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." This is a workable arrangement. Mr. Johnson noted that the statute requires a hearing the next day. Ms. Ogletree clarified that in the statute this means the next juvenile court day, which may be different than the "next day" under the Rules. Mr. Johnson suggested that the second sentence of section (d) read as proposed by the Chair, and the Committee agreed by consensus.

Judge Johnson remarked that in Prince George's County, a juvenile who is picked up and placed in shelter care is brought to court the very next day, and Master Sparrough will have a hearing sometime that day. The Chair commented that if a child is picked up for shoplifting late in the day, providing in the Rule that a hearing is to be held no later than the day after the petition is filed is a workable scheme. Judge Johnson pointed out that this is trumping the statute. The Chair said that the statute uses the term "next court day." The Vice Chair observed that the statute allows a different time frame based on good cause.

Mr. Karceski expressed the opinion that changing the Rule to no later than the next day will build in an extra day. Master Sparrough noted that often the child comes in, and the intake officer cannot reach the parents. The intake officer may file a petition for continued detention that afternoon. Mr. Johnson said that the statutory scheme is that the petition is to be filed "immediately," which may be the next day if the child is picked up later in the day

after the court is closed. The Vice Chair remarked that the child could be picked up by the authorities at 7:00 p.m., and the parents will not take charge of the child. The next morning the mother takes the child who is released by the authorities. The Vice Chair asked if under this scenario, the court is notified. Mr. Johnson answered that the court is not notified. Judge Johnson added that the record is in the juvenile intake office and not in the court.

The Vice Chair asked what happens according to the third sentence of section (d) if a hearing is started on the day after the petition is filed, but it is not finished. Judge McAuliffe responded that the Rule contemplates it as a continued hearing. As long as the case has been called, the master or judge can continue it, but not postpone it. Master Raum remarked that the initial purpose of the Rule, which is to produce the child before the court, has been met, even if the hearing is continued.

The Rule was approved as modified.

Mr. Johnson presented Rule 11-202, Petition, for the Committee's consideration.

Rule 11-202. PETITION

(a) Filing

A petition may be filed only by a person authorized by Code, Courts Article, §3-810 or §3-812 to file a petition. If a child is in emergency or continued detention or shelter care authorized by a court, a petition that complies with this Rule shall be filed no later

than next day after the detention or shelter care order is signed.

Cross reference: For administrative proceedings prior to the filing of a petition, see Code, Courts Article, §3-810.

(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, §3-810 or §3-812.

(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, §3-804.

(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, §3-831 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 83 C, §3-103), 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 Rule 903 and is in part new.

In section (a), the second sentence is new. It requires the filing of a petition no later than the next day after a court orders emergency or continued detention or shelter care. The Subcommittee 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.

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 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 a reference to §3-804 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 Subcommittee 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 acknowledgement that the named individual has read the petition. This sentence was included in order to accommodate Baltimore City's upcoming 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. A Committee note that repeats the substance of subsection (c)(4) is deleted.

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

Mr. Johnson told the Committee that section (a) explains who may file a petition. Master Wolfe pointed out that section (a) does not indicate who signs the order. Master Casey noted that by statute, a master can sign this order on his or her own authority. The Chair suggested that the following language be added at the end of section (a): "by the master or by the judge." The Committee agreed by consensus to this addition.

Judge Vaughan noted that the intake officer signs the form

provided for in Code, Courts Article, §3-810. He asked where there is any action by the court. The Chair responded that the court may have ordered continued detention. Judge Vaughan observed that Code, Courts Article, §3-810 does not provide for any action by the court. Master Casey pointed out that section (a) of Rule 11-101 provides that the detention or shelter care order is signed. The Reporter suggested that the language in the second sentence of section (a) which reads: "emergency or continued" should be deleted. Mr. Johnson commented that emergency detention becomes continued the next day. The Chair said that if the child is in detention or shelter care, a delinquency petition will be filed the next day. He agreed with the Reporter's suggestion to take out the language "emergency or continued". The Vice Chair suggested that the word "continued" be left in. The Reporter said that if the court releases the child, the "next day" language does not apply. The court can only authorize continued detention and not emergency detention. The local department of social services has until the next day to file the petition. The Committee agreed by consensus to delete the phrase "emergency or continued."

Master Raum commented that in a detention, there are no intake procedures. The State's Attorney files the petition. The Reporter pointed out that first there is an emergency detention. Master Raum observed that within three days there is an intake hearing to authorize the charges. The Vice Chair asked if there is a time limit

if an elementary school-age child is detained, no petition is filed, and the court orders continued detention or shelter care. Mr. Martin answered that the detention limits are up to 30 days prior to the adjudication. The Vice Chair inquired when the statute requires the petition to be filed. Master Sparrough answered that it is to be filed not less than five days before the adjudicatory hearing.

The Chair questioned what the problem is with the language of the Rule. Master Casey remarked that jurisdictions detain the children if there is enough information to warrant a detention and to file a petition. Mr. Johnson noted that if there is enough information to detain the child, the petition can later be amended if there is additional information. The Vice Chair inquired if the child is incarcerated prior to the trial, and Mr. Johnson replied in the affirmative. The Chair pointed out that the danger is that the State's Attorney will hold the juvenile without bail. Master Raum said that in Howard County, there is an adjudication hearing within 30 days of the day the child was detained.

Mr. Karceski commented that an adult who is arrested is apprised of the charges against him or her. He asked why a juvenile cannot know what the charges are. Master Raum responded that in an emergency situation, there is no intake hearing. Mr. Fishkin remarked that in some jurisdictions the intake is done together with the emergency hearing to authorize the emergency detention and the filing of the petition. In cases involving felonies and handguns, no

intake hearing is necessary. Judge McAuliffe inquired as to whether the State's Attorney signs off in these situations, and Mr. Fishkin replied in the affirmative.

The Vice Chair questioned whether a hearing on continued detention is like a bail hearing. Mr. Johnson replied that it is. Master Raum said that a petition for continued detention contains a statement of the factual circumstances which give rise to the detention. This provides some notice. Case law has held that the intake process is a necessary, serious, and meaningful part of the juvenile process. The Chair expressed his agreement with this. He observed that the Rule should be designed to be workable.

Master Casey inquired as to how there cannot be enough evidence to file a petition, but a juvenile is detained, anyway. Judge Johnson commented that this happens with adults. The Chair said that at a bail hearing, the State may not be ready to indict someone. Mr. Fishkin observed that a probable cause determination is made before an indictment is issued, but in juvenile causes, there is no similar protection. Judge Johnson noted that if there is continued shelter care, the parties are in court the next day. Mr. Johnson asked if the petition could include a reference to probable cause. The Chair observed that other things go into the petition. Master Wolfe pointed out that at a detention hearing, the intake officer may not have the police report in hand, and hearsay comes in. The State's Attorney has not seen the police report at the detention hearing.

With any luck, the Department of Juvenile Justice will forward the report within the next day, and the State's Attorney can decide how to proceed. Master Raum remarked that the State's Attorney and the juvenile worker are at the hearing, and they have the intake officer's report, if not the police report. Mr. Karceski noted that these kinds of cases are in the minority. With the number of cases in juvenile court, all the hearings cannot be held in one day. They are tried within 30 days. The time period should be reasonably sufficient to allow the respondent to be prepared for the adjudicatory hearing on the first hearing date.

Mr. Martin commented that there are practical problems if the process is abbreviated. Often, the Department of Juvenile Justice must meet with the child and his or her family. The victims may meet with the Department to discuss what is appropriate. More than a few days are needed. Mr. Fishkin said that if continued detention is being sought, it may not be possible to work out an agreement between the parties. Mr. Dean expressed the opinion that five days is not sufficient time for the petition to be filed. At least 10 days are necessary for prosecutorial charging. The charging document needs to be completed responsibly. The Chair suggested that language could be added to the Rule that unless the court extends the time, a petition filed against a child in detention should be filed no later than five days after the child is detained. The State can ask for more time. Judge Johnson said that this would not be practical. Judge McAuliffe

suggested that the time frame be not later than 10 days. Judge Johnson remarked that there are times when intake may recommend that the juvenile not be charged, and the State's Attorney can overrule this. The process takes time and should be at least 10 days.

Ms. Ogletree commented that in Talbot County, the State's Attorney's office has few resources. She asked why the court has to be involved every time. She expressed the view that 10 days is a workable time frame. Mr. Karceski observed that a 10-day time frame provides some teeth. If the petition is not filed within the time frame, the child is released. Master Wolfe noted that a in reverse waiver case, if the State fails to timely file a petition in the juvenile court, the child is released without prejudice to the right of the State to file a petition thereafter. Mr. Johnson asked what the sanction is now for late filing of the petition. Mr. Karceski responded that the case could be continued.

The Vice Chair noted that a five-day period would include the weekend, and it would become eight days. Mr. Karceski suggested that the time period be 10 days. Mr. Johnson pointed out that it would be no later than 10 days after the order is signed. Master Raum asked about the sanction. The Chair answered that the sanction is release. Master Raum remarked that the State cannot be barred from proceeding. The Reporter observed that the release is without prejudice. Mr. Johnson suggested that the sanction be added into the Rule, but Mr. Martin disagreed. Judge Johnson expressed concern that a juvenile

committing violent crimes would be released if the State failed to file a paper.

Ms. Ogletree commented that the legislature has not been asked about these proposed changes. Master Wolfe responded that the sanction in reverse waiver cases is simple and was accomplished by rule, not by statute. Ms. Ogletree remarked that some people feel this is legislative. The Vice Chair pointed out that if there is no specific sanction in the Rule, the court could impose appropriate sanctions. The Chair noted that the statute contains no sanctions. Since the legislature has not considered a sanction, the Rule should provide a sanction. Otherwise, as the Vice Chair has pointed out, the court can fashion its own sanction. It is not too much to charge a juvenile within 10 days. Master Raum noted that the Department of Juvenile Justice has a 25-day requirement.

Mr. Dean commented that some cases need more time than others. There should be some escape valve in the Rule. The Vice Chair asked about the sanction if the primary purpose is to file the petition quickly to allow the juvenile to prepare his or her defense. Does the defense attorney have the immediate ability to get discovery, etc? The Chair added that forcing trial before the juvenile is ready does not support the concept that the Rules protect the juvenile. Master Wolfe pointed out that this issue pertains not only to delinquency cases, but also to shelter care cases. If the Department of Social Services fails to file, an abused child may be released to

the child's abusers. Judge Johnson suggested that language could be added to the Rule that the child would be released absent leave of court for good cause shown.

The Chair suggested that the Rule could provide that if the child is in detention or shelter care, a delinquency petition is to be filed no later than 10 days after detention. Other petitions would not be subject to this 10-day requirement. Judge McAuliffe pointed out that Rule 1-204 applies. It would allow in extraordinary circumstances filing the petition later than the 10-day limit. The Chair stated that the consultants' position is that if the child is in shelter care, a CINA petition should be filed the next day. A delinquency petition should be filed within 10 days, if the child is in detention. Ms. Ogletree suggested that the time be 10 days for both.

Master Raum expressed his concern about the sanction for not timely filing the petition. The sanction in a CINA case should be different than in a delinquency case. In a CINA case, the child may be put back into a bad situation. The Chair commented that the time frame could be the same. Master Wolfe reiterated that there should be a different sanction in a CINA case. Master Sparrough noted that out of 1700 juvenile petitions in Prince George's County, including both delinquency and CINA, only 34 were for continued detention in a delinquency case.

The Chair said that the time frame can be 10 days for both CINA

and delinquency petitions. The sanction for delinquency petitions can be that if a petition has not been filed within the 10-day period, unless the court orders otherwise, the respondent shall be released.

Mr. Martin pointed out that the case of In Re Howard L., 50 Md. App. 498 (1982) involved the failure to meet a deadline in a juvenile case. The Court of Special Appeals held that the sanction on society for an administrative violation is not dismissal of the case. The inability to file a petition is not a sanction, the release of the child is. The revised Rule could trump the case. If there is no sanction in the Rule, then every judge will issue a different sanction. If the Rule states the sanction, then everyone will know the consequences. The Reporter asked if the Rule applies to Child in Need of Supervision (CINS) cases, and Mr. Johnson replied that it does not.

Mr. Hochberg inquired whether a court order is needed, if the child is not released while a sanction is being considered. Mr. Johnson asked how the child will be released, if a petition is not filed. Judge Johnson said that when there is a request to continue shelter care, the judge determines whether there is authority to keep the child. Master Casey added that detention may be authorized for 30 days. Master Wolfe remarked that in Anne Arundel County, if the State never files a petition, the Department of Juvenile Justice comes to the master to seek an order for temporary custody of the

juvenile for up to 10 days or 30 days from the expiration of the order. Master Casey inquired as to which is the release date. Master Raum responded that within 10 days if no petition is filed, the child is released.

The Chair commented that it requires a judicial order to release the child from detention on motion on the 11th day if no petition is filed. Should the Rule provide that a hearing will be held to determine if the sanction will be release, unless the court is persuaded that release is not appropriate? If the juvenile is released, can he or she be charged in the future? Mr. Dean noted that this is the functional equivalent of a preliminary hearing. The State will charge the juvenile if it is possible. Judge Rinehardt remarked that by 30 days later, the State should know what the charges are. Judge Johnson said that in Prince George's County, the juveniles are arraigned the first day. Mr. Johnson inquired as to what causes the child to go back to court. Mr. Fishkin answered that in Baltimore City, there is no problem with holding a hearing on the next day. When does it trigger the appointment of counsel? The Public Defender may come in before a petition has been filed. Master Raum remarked that the orders in Howard County require a return date to the institution holding the child. The clerk sends a notice to the institution. The Chair said that the institution is told to bring the child back to court.

Judge McAuliffe observed that if the petition is not timely

filed, the court can sign an order discharging the child from custody, unless the court determines this is not appropriate. The court can decide whether to hold a hearing. The Chair suggested that the language to be added could be: "the court shall release the respondent unless the court is persuaded that the detention shall be continued." Judge Rinehardt suggested that a review of the case could be scheduled for the 10th day. Judge McAuliffe commented that this would be unnecessary scheduling, because 99% of the juvenile petitions are timely filed.

Mr. Fishkin remarked that hopefully there will be an attorney representing the child. In a number of jurisdictions, the child is unrepresented. Judge Vaughan asked what happens if there is no attorney after 30 days has elapsed. Master Raum responded that there is a review every 14 days. Judge McAuliffe added that the Department of Juvenile Justice would bring this to the court's attention. Mr. Karceski commented that if the sanction requires a hearing, there will never be a sanction. Once the child's release is requested, the petition will be filed. On the 11th day, an order is presented to the judge seeking the release because the 10 days has passed. If there is a hearing, no sanctions will be issued. No court will take action if the petition is filed within the time frame. Mr. Karceski asked how defense counsel should approach this. He also inquired how many serious offenders are charged as adults and how many are charged as juveniles. Judge Johnson commented that there are violent

juveniles.

The Chair said that the court may order the release of a child, if a delinquency petition is not filed within 10 days after the shelter care order is signed. However, the court is not required to release the child. Mr. Dean referred to Rule 1-204, Motion to Shorten or Extend Time Requirements, which builds in flexibility to change time requirements. The State may have a good reason to have not filed the petition, or it may have no reason.

The Chair noted that the discussion has been keyed to the delinquency petition, and he asked about sanctions if the child is in shelter care. If a petition is not filed within the period, the court may release the child, or it may not release the child. He inquired as to other sanctions. Mr. Fishkin replied that they are discretionary.

Mr. Johnson directed the Committee's attention to subsection (b)(2). He explained that this contains new requirements that are not in the current rule. The Reporter observed that the Rules Committee had already approved the remainder of Rule 11-202.

The Committee approved Rule 11-202, as amended.

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

Rule 11-203. CITATION CASES

(a) Applicability of Other Rules

The rules in this Title are applicable to cases initiated by the filing of a citation, except where a rule (1) makes specific reference to petitions but not to citations or (2) is in conflict with this Rule.

(b) Contents and Filing

(1) Contents

The contents of the citation shall be as required by law.

Cross reference: See Code, Courts Article, §3-835.

(2) Who May File

A citation may be filed only by the State's Attorney.

(c) Summons

(1) Issuance and Contents

Unless the court orders otherwise, upon the filing of a citation, the clerk shall promptly issue a summons returnable as provided by Rule 2-126 for each party except the person who filed the citation. Any summons addressed to a parent, guardian, or custodian of a respondent child shall require the person to produce the child on the date and time named in the summons. The summons shall contain the information required by Rule 11-102 (c)(2)(A) - (F). The summons shall also contain the following information:

TO THE PERSON SUMMONED: The Court may, at this time or any later hearings, consider and pass orders concerning but not limited to: treatment, fines, controlling conduct of persons before the court, and assessment of court costs.

You may retain a lawyer to represent you at your own expense. A postponement will not be granted because you have failed to contract or retain a lawyer. If you choose not to

retain a lawyer, but you wish to subpoena witnesses on your behalf, you must promptly request issuance of the subpoenas. If you received a Request for Witness Subpoena Form with this Summons, you must neatly list the names and addresses of the witnesses on the Form and promptly return the Form to the Clerk of the Juvenile Court at the address shown on the Form. If you did not receive a Request for Witness Subpoena Form, you must promptly contact the Clerk of the Juvenile Court at

_____
(telephone number), who will provide you with the necessary forms. A postponement will NOT be granted because you fail to promptly request subpoenas for witnesses.

Any reasonable accommodation for persons with disabilities should be requested by contacting the court prior to the hearing.

(2) Service

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

(d) Subpoena

The clerk shall issue a subpoena for the person who issued the citation and for each witness requested by any party pursuant to Rule 2-510.

(e) No Written Response

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

Source: This Rule is new.

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

> This Rule is new. It sets forth a procedure for cases initiated by the filing of a "citation" for a "violation" as those terms are defined in Code, Courts Article, §3-801 (g) and (u).
>
> Subsection (c)(1) is based upon the provisions of proposed new Rule 11-102 (c), pertaining to the issuance and content of summonses in cases initiated by petitions. The content of the summons has been modified to reflect the more limited range of orders that may be entered in citation cases and that the person summoned is not entitled to representation by the Public Defender.
>
> So that the citation procedure is as streamlined as possible, under section (e) no response is filed to the citation and the allegations of the citation are deemed denied by the respondent.

Mr. Johnson told the Committee that this Rule pertains to the citation cases covered in Code, Courts Article, §3-801 (g). The Reporter noted that the Committee had previously approved this Rule. The Chair asked why subsection (b)(2) provides that the State's Attorney files a citation when, in fact, the citations are issued by police officers. The Reporter answered that the police officer gives a copy of the citation to the intake officer at the Department of Juvenile Justice. The police officer does not file the citation with the court. The Chair questioned whether there is a provision for the police officer to give the citation to the juvenile. Mr. Martin noted that Code, Courts Article, §3-835 provides that a citation for violation of alcoholic beverages is given to the child being charged. Mr. Johnson observed that this is the only law providing this.

The Chair suggested that section (a) provide as follows: "The rules in this Title are applicable to cases initiated by the filing of a citation pursuant to Code, Courts Article, §3-835... ." Mr. Johnson pointed out that there are other places in the Code pertaining to citations. Judge Vaughan added that there are Department of Natural Resources citations. The Chair commented that the State's Attorney has to initiate the issuance of a summons. He asked if the State's Attorney files a traffic citation with the clerk of the court. Judge Vaughan responded that jailable traffic citations are filed with the clerk. The Chair expressed the view that the Rule should be more specific. Section (a) could begin with the following language: "When the law requires that the State's Attorney file a citation... ." Judge McAuliffe suggested that the State's Attorney's Office could review this Rule.

Master Casey noted that a citation is an initial pleading for a violation. The term "violation" is defined in section (u) of Code, Courts Article, §3-801. Master Casey pointed out that this definition includes six Code sections. Judge Vaughan questioned whether any of the cited sections carry prison sentences. The Reporter stated that the offenses that carry prison sentences are not included in the categories of citations to which this Rule applies.

Mr. Johnson questioned as to who else is authorized to file citations. The Chair responded that the Rule does not specifically exclude some situations, such as where a police officer gives a

traffic citation to a juvenile. Master Wolfe noted that the Rule is limited to a certain class of citations. Master Casey suggested that the Rules incorporate the definition of the word "citation" from the Code. Mr. Johnson pointed out that a change has been made to section (a) referencing Courts Article, §3-801. Master Wolfe suggested that the Rule should provide that the citation is filed pursuant to Code, Courts Article, Title 3. The legislature may change the various provisions, and rather than requiring a rules change, it would be simpler to be less specific in the Rule.

The Chair suggested that section (a) begin as follows: "When a citation as defined in Code, Courts Article, §3-801 (g) has been issued, the Rules apply to cases initiated by the filing of a citation... ." Mr. Martin noted that Code, Courts Article, §3-810 (l) and (m) separate alcohol from tobacco violations. The Chair suggested that the Rule could use the language "citations governed by statute" in place of citing the specific provision. This would avoid a conflict with the legislature. Mr. Johnson pointed out that sections (l), (m), and (n) of §3-810 deal with citations.

The Chair asked why the Rule is necessary when the legislature has already covered the subject. Master Wolfe noted that the Department of Juvenile Justice forwards the citations to the State's Attorney. She suggested that the Rule could provide that when the Department has forwarded the citation, the State's Attorney shall file it. The Reporter commented that filing is discretionary with

the State's Attorney. The Chair said that the Rule could provide that if the State's Attorney wants to prosecute, the State's Attorney shall file the citation. Master Raum pointed out that the vast majority of the citations are resolved at intake. Judge Vaughan observed that the form has no place to put the parents' names on it. He inquired as to how the parents are contacted. The Chair pointed out that a citation is forwarded to the State's Attorney by the intake officer, and the intake officer would have this information. To the extent that the statute is silent, the Rule can provide what the State's Attorney must do if the State's Attorney elects to proceed on the citation. If there are statutory provisions, the Rule can refer to the statute.

The Chair said that subsection (c)(1) provides for the issuance and contents of the summons. Mr. Hochberg remarked that the statute does not provide that the parent has to receive the summons. The Chair noted that the statute does not provide for advice to parents. Mr. Martin observed that if a child is going to lose a driver's license, the parents may be concerned. The Reporter added that the parents might want to obtain an attorney. The Chair pointed out that many of these citations are handled informally, and it is important not to make the Rule too difficult. He requested that the Rule be redrafted and reconsidered the next time that the Juvenile Rules are on the Committee's agenda.

The Chair thanked the consultants for attending the meeting. He

stated that the Juvenile Rules will be considered again in February. The Reporter said that the meeting is to be held on February 12, 1999.

The Chair adjourned the meeting.