COURT OF APPEALS STANDING COMMITTEE

ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee virtually held via Zoom for Government on April 16, 2021.

Members present:

Hon. Alan M. Wilner, Chair

Hon. Vicki Ballou-Watts
Julia Doyle Bernhardt, Esq.
Hon. Pamila J. Brown
Stan Derwin Brown, Esq.
Hon. Yvette M. Bryant
Sen. Robert G. Cassilly
Hon. John P. Davey
Mary Anne Day, Esq.
Del. Kathleen Dumais
Alvin I. Frederick, Esq.
Pamela Q. Harris, State Court Administrator
Victor H. Laws, III, Esq.
Dawne D. Lindsey, Clerk
Bruce L. Marcus, Esq.
Donna Ellen McBride, Esq.
Stephen S. McCloskey, Esq.
Hon. Douglas R. M. Nazarian
Hon. Paula A. Price
Scott D. Shellenberger, Esq.
Gregory K. Wells, Esq.
Hon. Dorothy J. Wilson
Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Colby L. Schmidt, Esq., Deputy Reporter
Heather Cobun, Esq., Assistant Reporter
Meredith A. Drummond, Esq., Assistant Reporter
Phillip Andrews, Esq.
Audra Cathell, Esq.
Cori Coates
Paul Cooper
Lawrence Coppel, Esq.
Mary Katharine Fowler, Esq.
Emily Greene, Esq.
Nancy Harris, Esq.
Janet Hartge, Esq.
Marianne Hendricks
Abigail Hill, Esq.
Anne Hurwitz
Sarah Kaplan, Esq.
Special Juvenile Magistrate Lena Kim

Connie Kratovil-Lavelle, Esq.
George Lane
Erica LeMon, Esq.
Jenna McGreevy
William O'Connell, Esq.
G.M. Patashnick, Esq.
Gregory Phillips
Steve Price
Jesse Roth
Tom Stahl, Esq.
Gillian Tonkin, Esq.
Magistrate Erica Wolfe
Nena Villamar, Esq.
Kaitlin Zarro, Esq.
Brian Zavin, Esq.

The Chair convened the meeting. He announced that the 207th Report has been filed and the comment period expired on May 10, 2021. The Court of Appeals scheduled an open hearing for June 14, 2021 at 1 pm. The Chair added that a supplement may be submitted to adjust Rule 4-345 to account for Chapter 61, 2021 Laws of Maryland (SB 494), enacted over the Governor's veto. The bill allows the court to modify the sentence of an inmate who committed the subject crime before the age of 18 and was sentenced to 20 years or more before October 1, 2021. The proposed Rule is broader than the statute in most respects, but some provisions of the statute are more favorable to juveniles, including that juveniles can file every three years under the statute instead of waiting six years. The Chair stated that he is working with the Office of the Attorney General and the Office of the Public Defender to determine any necessary conforming amendments.

The Chair added that 2021 legislation is being reviewed to determine the impact, if any, on the Rules. Subcommittee meetings will be needed in the summer.

The Reporter announced that the Rules Order from the 206th Report has been signed and is available online. She advised that the meeting was being recorded and speaking will be treated as consent to being recorded.

Mr. Shellenberger asked to be included in any discussions about conforming proposed Rule 4-345 to the new statute. The Chair indicated that an upcoming Zoom meeting is scheduled.

Agenda Item 1. Consideration of proposed amendments to Rule 12-102 (Lis Pendens)

Mr. McCloskey, Chair of the Property Subcommittee, presented Rule 12-102, Lis Pendens, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 12 – PROPERTY ACTIONS

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 12-102 to modify the filings in land records required by section (b) to create constructive notice of a pending action, to make stylistic changes to section (b), to add a Committee Note following section (b), to replace the term "created" with "recorded" in subsection (c)(1), to add language to subsection (c)(2) clarifying when a plaintiff is required to take action after a dismissal and what

actions are required by a plaintiff upon conclusion of the action, and to modify subsection (c)(3) concerning the action of the clerk upon entry of an order terminating a *lis pendens*, as follows:

Rule 12-102. LIS PENDENS

(a) Scope

This Rule applies to an action filed in a circuit court or in the United States District Court for the District of Maryland that affects title to or a leasehold interest in real property located in this State.

(b) Creation - Constructive Notice

In an action to which the doctrine of lis pendens applies, the filing in the land records of each county in which the real property that is the subject of the action is located of either (1) a certified copy of the complaint giving rise to the lis pendens or (2) a Notice of Lis Pendens, **substantially in** a form approved by the State Court Administrator **and posted on the Judiciary website,** ~~of the complaint~~ is constructive notice of the ~~lis pendens~~ pending action as to the subject real property located in that ~~the~~ county only. ~~in which the complaint is filed. In any other county, there is constructive notice only after the party seeking the lis pendens files either a certified copy of the complaint or a notice giving rise to the lis pendens, with the clerk in the other county.~~

Committee Note: The amendments to Rule 12-102 (b) adopted by the Court of Appeals by Rules Order dated [xx/xx/2021] changed the procedure for providing notice of a *lis pendens* by requiring that a notice substantially in the form approved by the State Court Administrator be recorded in the land records of each county in which the affected real property is located. Prior to these amendments, notice of a *lis pendens* was effected either by the filing of the complaint in the county in which the affected real property was located, or by filing a certified copy of the

complaint or a notice with the clerk in any other county. Since the amendments are prospective, practitioners and title searchers should continue to review filings of a complaint for notice of *lis pendens* as to actions filed before [xx/xx/2021] using the procedure that was followed before [xx/xx/2021].

(c) Termination

(1) While Action Is Pending

On motion of a person in interest and for good cause, the court in the county in which the action is pending may enter an order terminating the lis pendens in that county or any other county in which the lis pendens has been ~~created~~ recorded.

(2) Upon Conclusion of Action

If (A) the action is dismissed and a timely appeal is not taken or the dismissal is affirmed on appeal, or (B) judgment is entered in favor of the defendant and a timely appeal is not taken or the judgment is affirmed on appeal, or (C) judgment in favor of the plaintiff is reversed on appeal, vacated, or satisfied, the plaintiff shall ~~file~~ record a notice of withdrawal of lis pendens in the land records of the county in which the lis pendens was recorded ~~certified copy of the appropriate docket entry with the clerk in each county in which a certified copy of the complaint or notice was filed~~ pursuant to section (b) of this Rule. The notice shall be in substantially the form approved by the State Court Administrator and posted on the Judiciary website. If the plaintiff fails to comply with this subsection, the court with jurisdiction over the action, on motion of any person in interest and upon such notice as the court deems appropriate in the circumstances, may enter an order terminating the lis pendens. In the order terminating the lis pendens, the court shall direct the plaintiff to pay the costs and expenses incurred by the person obtaining the order, including reasonable attorney's fees, unless the court finds that the plaintiff had a reason justifying the failure to comply.

(3) Duty of Clerk

Upon entry of an order terminating a lis pendens, the clerk of the court of entry shall transmit a certified copy of the order to the clerk of the circuit court for the county in which the lis pendens was recorded for recording in the land records in the manner prescribed in Rule 12-811 ~~in any other county specified in the order~~.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former Rule BD1 and BD2.
Section (c) is derived from former Rule BD3.

Rule 12-102 was accompanied by the following Reporter's note.

The Judiciary's Major Projects Committee recently advised the Rules Committee of potential issues with *lis pendens* actions in Maryland, noting that to create constructive notice that a property is subject to the outcome of a pending action, most states require parties to file notice with the appropriate land records office. In contrast, Maryland Rule 12-102 (b) states that the filing of a complaint is constructive notice of the *lis pendens* as to real property in the county where the complaint was filed. Constructive notice is created in any other county by the filing of either a certified copy of the complaint or a notice with the clerk of the other county. Requiring notice of a pending action or a copy of the complaint to be filed in the land records of the county in which the real property that is the subject of the action is located, regardless of the county where the complaint was filed, would assist title searchers and bring Maryland procedure into conformance with the majority of states. Proposed amendments to Rule 12-102 are intended to create a uniform practice for treatment of *lis pendens* actions.

Amendments to section (b) delete provisions that permit the filing of a complaint to serve as constructive notice in the county where the complaint is filed. To create constructive notice of the pending action, new language requires filing a certified copy of the complaint or a notice in the land records of

the county in which the real property that is the subject of the action is located. A Committee Note following section (b) is added to remind practitioners that the previous version of this Rule did not require any additional affirmative act to obtain constructive notice, and that any search for *lis pendens* matters conducted that will encompass actions filed prior to the effective date of any Rules Order implementing these proposed changes will need to encompass the parameters of the current version of this Rule.

Language added to subsection (c)(2)(A) clarifies that, if a case is dismissed, the plaintiff is required to record a withdrawal of a notice of *lis pendens* only when a timely appeal is not taken or when the dismissal is affirmed on appeal. Other proposed amendments to subsection (c)(2) change the type of filing required by the plaintiff upon conclusion of the action and require that a notice of withdrawal shall be in substantially the form approved by the State Court Administrator and posted on the Judiciary website. Subsection (c)(3) is amended to clarify the duty of the clerk upon entry of an order terminating a *lis pendens*.

The Chair explained that the Property Subcommittee approved certain amendments to Rule 12-102. A handout, however, contains a revised version of the Rule with other amendments that were not reviewed by the Subcommittee. See Appendix 1. He clarified that any amendments to the Subcommittee version must be made by motion.

Mr. McCloskey noted that Rule 12-102 applies to civil actions that affect title to or a leasehold interest in real property. Pursuant to current Rule 12-102 (b), the filing of such a civil action in the same county where the property is located serves as constructive notice of the pending suit. No

further filing in land records in needed. The current Rule further provides that if the civil action involves property in a different county, constructive notice occurs only by filing a notice of the action or a copy of the certified complaint in the county where the property is located.

Mr. McCloskey explained that the Major Projects Committee ("MPC") brought this issue to the attention of the Property Subcommittee. The MPC pointed out that this *lis pendens* process differs from the processes in most other states. The MPC also suggested that notice of *lis pendens* should always be filed in the land records of the county where the property is located. Mr. McCloskey specified that the Property Subcommittee approved revisions to Rule 12-102, deleting the constructive notice that occurs merely by filing a suit in the same county where the property is located and requiring that notice of the pending suit be filed in land records. Notice may be a copy of the certified complaint or a notice filed in land records. If the pending suit affects land in a county other than the county where the suit was filed, notice must be filed in the other county as well.

Mr. McCloskey pointed to a Committee note explaining that the Rule is not retroactive. If the Rule is adopted, title searchers will still need to review for complaints filed before the effective date of the Rule. The proposed Rule also

clarifies the plaintiff's burden to record a notice in land records when *lis pendens* has been terminated. Mr. McCloskey stated that the two main points made by the MPC were that nothing is being filed in land records when a suit is pending and, when the pending suit ends, typically nothing is filed to advise searchers that the pending suit was terminated.

Mr. McCloskey added that, since the meeting materials were distributed, the Property Subcommittee's version of Rule 12-102 was modified further. The updated version is available as a handout. See Appendix 1. Mr. McCloskey noted that most of the changes in the updated version are stylistic and clarify certain provisions, but some changes are substantive. The revised Rule primarily clarifies the same general points that the Property Subcommittee sought to address. He explained that section (c) is now separated into three subsections. The updated amendments set forth various ways *lis pendens* can terminate and provide that it is the plaintiff's burden to file notice when the *lis pendens* can terminate. Mr. McCloskey noted that there is a mechanism in place for other interested parties to act if the plaintiff does not file appropriate notice.

Mr. McCloskey explained that the current version of Rule 12-102 requires that the Clerk provide notice upon termination of the *lis pendens*. He added that the requirement has been deleted in the proposed amendments. Ms. Lindsey asked whether

it should be clarified that there are fees to record notices of *lis pendens* and notices of termination. Mr. McCloskey noted that no version of the Rule references fees. The Chair commented that, if the fee is not automatic, it would need to be approved by the State Court Administrator and the Board of Public Works. Ms. Lindsey responded that the recording fee is not new. She added that clerks do not often receive the release to be recorded and expressed concerns about expecting a clerk to collect a fee. The Chair agreed that this was an important area to address. Upon termination of the *lis pendens*, the plaintiff must file to withdraw the notice, but he or she may have no interest in terminating the *lis pendens*. The Reporter noted that the revised version of Rule 12-102 deletes the duty of the clerk to take action upon termination of the *lis pendens* and puts the responsibility on the plaintiff. If the plaintiff does not file to terminate the notice, an interested party may file a motion with costs to be paid by the plaintiff.

Mr. Laws indicated that, although he does not take issue with the revised version, he does not understand the inclusion of subsection (c)(2)(D) requiring the plaintiff to file a notice of termination of the *lis pendens* upon satisfaction of a judgment in favor of the plaintiff. He suggested that it is unclear when that situation would arise in the context of these actions. When a plaintiff wins, a court orders that title

belongs to the plaintiff. Mr. Laws noted that these cases differ from cases terminate by the satisfaction of a money judgment. He clarified that the *lis pendens* would terminate, but only in the sense that the property then belongs to the plaintiff. The Chair commented that *lis pendens* concerns property that can be affected by any judgment in the underlying case. Is it always that case that the plaintiff gets title to the property if he prevails? Judge Price answered that it is not always the case.

The Chair noted that the *lis pendens* sits as a cloud on the title if notice of termination is not filed. A cloud on the title would affect mortgagees, judgment creditors, contract purchasers, and others with an interest in the property. Mr. Laws responded that subsection (c)(2)(D) was not in the earlier drafts of the Rule and questioned what staff intended by adding the subsection. The Chair explained that if there is a money judgment in favor of the plaintiff and it is satisfied, then the case is over. However, a notice of *lis pendens* may remain in the land records after a case concludes. Mr. Laws pointed out that a money judgment is a lien on property in the county in which the judgment is filed. Current Rules already obligate the judgment-creditor to file a satisfaction when a judgment is satisfied. Mr. Laws expressed concern that this subsection may obligate the plaintiff to file a notice of termination of the

lis pendens when the plaintiff wins and there is an order declaring that the property belongs to the plaintiff. The termination of the *lis pendens* may lead title searchers to conclude that the underlying action terminated in the defendant's favor. Subsection (c)(2)(D) therefore introduces an element that is unclear or misleading.

Mr. O'Connell responded that there are times when the plaintiff seeks money, but the only asset of the defendant is the subject real property. The plaintiff may seek a prejudgment lien on the real property as a result of concern that the defendant will sell the property, leaving no assets to satisfy a judgment. Mr. O'Connell noted that, in some situations, the plaintiff is not interested in title to the property, but is interested in creating a lien. A prejudgment lien affects title. To seek that lien, a *lis pendens* would be filed. Mr. O'Connell concluded that there is a need for subsection (c)(2)(D) and its inclusion does not harm the Rule.

Mr. Laws responded that a separate prejudgment attachment Rule provides the mechanism when real property is the only asset that may satisfy a judgment that has not been obtained yet. He made a motion to delete subsection (c)(2)(D) from the revised version of Rule 12-102. The motion was seconded and carried.

Ms. Harris moved to approve the revised version of Rule 12-102, as amended. The motion was seconded and passed by majority vote.

Agenda Item 2. Reconsideration of proposed amendments to Rule 14-305 (Proceedings Following Sale) and conforming amendments to Rule 2-644 (Sale of Property Under Levy), Rule 3-644 (Sale of Property Under Levy), and Rule 3-722 (Receivers)

Mr. McCloskey presented Rule 14-305, Procedure Following Sale, and conforming amendments to Rule 2-644, Sale of Property Under Levy; Rule 3-644, Sale of Property Under Levy; and Rule 3-722, Receivers, for reconsideration.

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 300 – JUDICIAL SALES

AMEND Rule 14-305 by adding new section (c) requiring an affidavit by an auctioneer following a sale, by adding a Committee note after section (c), and by making stylistic changes, as follows:

Rule 14-305. PROCEDURE FOLLOWING SALE

(a) Report of Sale

As soon as practicable, but not more than 30 days after a sale, the person authorized to make the sale shall file with the court a complete report of the sale and an affidavit of the fairness of the sale and the truth of the report.

(b) Affidavit of Purchaser

Before a sale is ratified, unless otherwise ordered by the court for good cause, the purchaser shall file an affidavit setting forth:

(1) whether the purchaser is acting as an agent and, if so, the name of the principal;

(2) whether others are interested as principals and, if so, the names of the other principals; and

(3) that the purchaser has not directly or indirectly discouraged anyone from bidding for the property.

(c) Affidavit of Auctioneer

Within 15 days after conducting a sale, the auctioneer shall file an affidavit stating that:

(1) neither the auctioneer nor any affiliate or subsidiary of the auctioneer has paid any compensation or other consideration to any person for hiring or aiding in the hiring of the auctioneer to conduct the sale;

(2) neither the auctioneer nor any affiliate or subsidiary of the auctioneer has any direct or indirect interest in the property sold other than a lawful and agreed-upon fee for conducting the sale; and

(3) neither the auctioneer nor any affiliate or subsidiary of the auctioneer has entered into any agreement or understanding with any person to conduct or assist with the resale of the property other than a resale ordered by the court pursuant to section (f) or (h) of this Rule.

Committee note: Section (c) of this Rule does not preclude a trustee from hiring an auctioneer to provide additional services in connection with the sale. If the additional compensation is to be paid to the auctioneer from the trust estate, a court order approving the payment is required.

~~(c)~~ (d) Sale of Interest in Real Property; Notice

Upon the filing of a report of sale of real property or chattels real pursuant to section (a) of this Rule, the clerk shall issue a notice containing a brief description sufficient to identify the property and stating that the sale will be ratified unless cause to the contrary is shown within 30 days after the date of the notice. A copy of the notice shall be published at least once a week in each of three successive weeks before the expiration of the 30-day period in one or more newspapers of general circulation in the county in which the report of sale was filed.

~~(d)~~ (e) Exceptions to Sale

(1) How Taken

A party, and, in an action to foreclose a lien, the holder of a subordinate interest in the property subject to the lien, may file exceptions to the sale. Exceptions shall be in writing, shall set forth the alleged irregularity with particularity, and shall be filed within 30 days after the date of a notice issued pursuant to section ~~(c)~~ (d) of this Rule or the filing of the report of sale if no notice is issued. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

(2) Ruling on Exceptions; Hearing

The court shall determine whether to hold a hearing on the exceptions but it may not set aside a sale without a hearing. The court shall hold a hearing if a hearing is requested and the exceptions or any response clearly show a need to take evidence. The clerk shall send a notice of the hearing to all parties and, in an action to foreclose a lien, to all persons to whom notice of the sale was given pursuant to Rule 14-206 (b).

~~(e)~~ (f) Ratification

The court shall ratify the sale if (1) the time for filing exceptions pursuant to section ~~(d)~~ (e) of this Rule has expired and exceptions to the report

either were not filed or were filed but overruled, and (2) the court is satisfied that the sale was fairly and properly made. If the court is not satisfied that the sale was fairly and properly made, it may enter any order that it deems appropriate.

~~(f)~~ (g) Referral to Auditor

Upon ratification of a sale, the court, pursuant to Rule 2-543, may refer the matter to an auditor to state an account.

~~(g)~~ (h) Resale

If the purchaser defaults, the court, on application and after notice to the purchaser, may order a resale at the risk and expense of the purchaser or may take any other appropriate action.

Rule 14-305 was accompanied by the following Reporter's note.

Proposed amendments to Rule 14-305 require an auctioneer to file an affidavit after conducting a sale to affirm that the auctioneer did not have any conflicts of interest in the sale.

The Court of Appeals remanded the proposed amendments in February after hearing from attorneys and auction house representatives who objected to the change as unnecessary and anti-competitive. The Property Subcommittee reconsidered the Rule at a subsequent meeting and heard from supporters and opponents before voting to approve the proposed amendments as presented.

The amendments would require an auctioneer conducting the judicial sale of a property to sign an affidavit stating that the auctioneer has not entered into any agreement or understanding to conduct or assist with the resale of the property. The concern is that an auctioneer who has an agreement in place to conduct a second sale will not be incentivized to secure the highest price at the judicial sale because the commission is significantly larger at the later sale. The Subcommittee was informed that even if

there is no actual conflict for the auctioneer, there is an appearance of impropriety if this kind of agreement is in place.

New section (c) specifies the contents of the affidavit and requires the affidavit to be filed within 15 days after the sale is conducted. The 15-day deadline is used because subsection (e)(1) of the Rule requires that exceptions be filed within 30 days after notice of the sale, which could be immediately after the sale, and the auctioneer's affidavit may be relevant to any possible exceptions.

A Committee note following section (c) clarifies that the Rule is not intended to preclude a trustee from hiring an auctioneer to provide additional services related to the judicial sale.

Current sections (c)-(g) are re-lettered as (d)-(h), respectively, and internal references are conformed to the re-lettering.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-644 by updating the reference to Rule 14-305, as follows:

Rule 2-644. SALE OF PROPERTY UNDER LEVY

. . .

(d) Transfer of Real Property Following Sale

The procedure following the sale of an interest in real property shall be as prescribed by Rule 14-305, except that (1) the provision of Rule 14-305 ~~(f)~~ (g) for referral to an auditor does not apply and (2) the court may not ratify the sale until the judgment creditor has filed a copy of the public

assessment record for the real property kept by the supervisor of assessments in accordance with Code, Tax-Property Article, § 2-211. After ratification of the sale by the court, the sheriff shall execute and deliver to the purchaser a deed conveying the debtor's interest in the property, and if the interests of the debtor included the right to possession, the sheriff shall place the purchaser in possession of the property. It shall not be necessary for the debtor to execute the deed.

. . .

Rule 2-644 was accompanied by the following Reporter's note.

Proposed conforming amendments to Rule 2-644 alter a reference to Rule 14-305 in light of proposed amendments to that Rule impacting lettering.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 3-644 by updating the reference to Rule 14-305, as follows:

Rule 3-644. SALE OF PROPERTY UNDER LEVY

. . .

(d) Transfer of Real Property Following Sale

The procedure following the sale of an interest in real property shall be as prescribed by Rule 14-305, except that (1) the provision of Rule 14-305~~(c)(4)~~ (g) for referral to an auditor does not apply and (2) the court may not ratify the sale until the judgment creditor has filed a copy of the public assessment record for the real property kept by the

supervisor of assessments in accordance with Code, Tax-Property Article, § 2-211. After ratification of the sale by the court, the sheriff shall execute and deliver to the purchaser a deed conveying the debtor's interest in the property, and if the interests of the debtor included the right to possession, the sheriff shall place the purchaser in possession of the property. It shall not be necessary for the debtor to execute the deed.

. . .

Rule 3-644 was accompanied by the following Reporter's note.

Proposed conforming amendments to Rule 3-644 alter a reference to Rule 14-305 in light of proposed amendments to that Rule impacting lettering.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 700 – SPECIAL PROCEEDINGS

AMEND Rule 3-722 by updating the reference to Rule 14-305, as follows:

Rule 3-722. RECEIVERS

. . .

(f) Procedure Following Sale

(1) Notice by Mail

Upon filing the Report of Sale, the receiver shall send a notice by first class mail and certified mail to the last known address of: the mortgagor; the present record owner of the property; and the holder of a recorded subordinate mortgage, deed of trust, or other recorded or filed subordinate interest in the

property, including a judgment. The notice shall identify the property and state that the sale of the property has been completed and will be final unless cause to the contrary is shown within 30 days after the date of the notice. The receiver shall file proof of mailing with the court. This notice shall be in lieu of notice and publication by the clerk pursuant to Rule 14-305 ~~(c)~~ (d).

(2) Posting of Property

The receiver also shall cause the notice to be posted in a conspicuous place on the property and file proof of posting with the court.

(3) Exceptions to Sale

Exceptions to the sale may be filed within 30 days after the date of the mailing or posting of the notice, whichever is later. In all other respects, exceptions shall be governed by Rule 14-305 ~~(d)~~ (e).

. . .

Rule 3-722 was accompanied by the following Reporter's note.

Proposed conforming amendments to Rule 3-722 alter a reference to Rule 14-305 in light of proposed amendments to that Rule impacting lettering.

The Chair explained that amendments to Rule 14-305 were approved by the Committee at the October 2020 meeting. There was no opposition to the amendments at that time. At the open meeting on the 206th Report before the Court of Appeals, arguments against the amendments were raised that had not been presented to the Committee. The Court deferred action and

remanded the proposed Rule change to the Committee for further consideration.

Mr. McCloskey stated that the proposed amendments to Rule 14-305 add a new section (c) requiring an auctioneer in a judicial sale to file an affidavit to affirm that the auctioneer does not have any conflicts of interest in the sale. The Chair added that this issue piqued the interest of at least some members of the General Assembly. As a result, language was added to the State budget directing the Judiciary to file a report with the Budget & Taxation Committee addressing four items. The Report is not due until December and the fate of the Rule will be known by that time. The Chair indicated that the Committee does not know what triggered the addition of the budget language. It is not uncommon for the General Assembly to add language to the budget bill asking for reports. The requested reports are almost always germane to appropriations in the current year or in future years. The Chair added that he has never seen such language asking the Judiciary to justify a Rule.

Ms. Zarro stated that she represents Auction.com and that she previously submitted correspondence detailing Auction.com's response to the proposed Rule changes, including proposed changes to the amendments. See Appendix 2. She added that Mr. Price and Mr. Roth, also representatives of Auction.com, can

provide information as auctioneers that conduct both foreclosure and real estate owned ("REO") sales in Maryland.

Mr. Roth explained that he is the Senior Vice President at Auction.com. The foreclosure sales program of Auction.com started in 2011 at the request of the Federal National Mortgage Association ("Fannie Mae") because of rising convictions for bidder collusion during the last crisis. Fannie Mae wanted a better way to ensure a competitive auction process where bidders cannot work together to circumvent the process of a full public auction. Over the years, Auction.com expanded its foreclosure program throughout the country and across the majority of the mortgage-servicing market. Mr. Roth added that Auction.com has been successful because its process reduces losses for clients. He said that the process also is better for neighborhoods. When looking at the execution for clients, Auction.com performs about 17 points better than if the property were to go into REO and follow the traditional model of evicting the current occupant, valuing the property, making necessary repairs, and selling the property on the traditional retail market. The traditional process takes an average of seven months and can cost $20,000. There are significant savings to the client when the property is sold to a third party at the foreclosure sale and those properties are returned back to occupied homes much faster. A higher percentage of retail value also is recovered on third

party sales, and the occupants may have an opportunity to stay in the property. Mr. Roth commented that, in a recent survey, roughly 62% of Auction.com's buyers offered the current tenant the opportunity to rent the property. If the property goes to a bank's REO department, the bank may offer cash for keys. However, the bank will evict all occupants. Mr. Roth added that Auction.com does not always know what properties are going to come back for REO sales. He acknowledged that Auction.com is asked to conduct some REO sales due to its success in the marketplace.

Mr. Roth noted that Auction.com is a marketing company with a database of about 6.2 million registered users. Auction.com spends tens of millions of dollars every year in marketing assets to drive a competitive process, yielding the noted execution numbers for clients. Mr. Roth explained that, because of that success, many clients ask to run the property through Auction.com's online platform to see if another buyer in the broader marketplace is interested in purchasing the property before beginning the traditional REO process that can take seven months and cost $20,000. He described the process as an extension of the foreclosure sale before the property enters the REO process. Mr. Roth noted that it is much more in the client's interests to sell to a third party at the foreclosure sale. For Auction.com's clients, more REOs are never desired

because the loss is hard and would violate many of the clients' charters.

Mr. Price stated that he manages foreclosure operations for Auction.com. The number of customers that Auction.com has worked for is due in part to talking to potential buyers and explaining the foreclosure process prior to the sale. Auction.com's mission is to ensure that buyers can come and compete for properties. Through this competition, Auction.com reaches the seventeen points of improvement mentioned by Mr. Roth, helping reduce the deficiency for the borrower.

Ms. Zarro added that the General Assembly has signaled interest in this matter. The auctioneers at Auction.com are in all 50 states and operate regularly under licensing and regulations. As noted at the Property Subcommittee meeting, there is no current licensing or regulation of auctioneers in Maryland. Ms. Zarro commented that global concerns over auctioneers' conduct would be best addressed under a licensing and regulation platform. The Chair asked if Ms. Zarro proposed any specific legislation. She responded that Auction.com would be interested in the feedback of the Judiciary and the report, and that Auction.com would support legislation.

Del. Dumais noted that the differences between the proposed amendments to Rule 14-305 and the changes suggested in Ms. Zarro's letter seem minor. Auction.com did not object to

requiring an affidavit, but proposed changes to the final sentence in subsection (c)(3). Del. Dumais asked Ms. Zarro to explain the distinction in that subsection.

Ms. Zarro agreed that Auction.com would support an auctioneer affidavit requirement in conjunction with a licensing and regulation scheme. Auction.com's proposed change to subsection (c)(3) is a direct response to conversations at the Property Subcommittee meeting and confirms that there is no financial incentive for auctioneers to push sales into REO. Ms. Zarro commented that auctioneers are paid only when selling to a third party at foreclosure or in REO. Auction.com's proposal narrowly tailors the Rule's language to indicate that the fee would be the same for auctioneers who sell to a third party at foreclosure. The Rule's language as approved by the Property Subcommittee limits auctioneers to participate only in foreclosure or REO sales. Ms. Zarro noted that there should not be an appearance of impropriety because successful auctioneers are hired to conduct both foreclosure and REO sales.

Del. Dumais added that the Committee note suggests that section (c) does not preclude a trustee from hiring an auctioneer to perform additional services in conjunction with the foreclosure sale. If the additional compensation is to be paid from the trust estate, a court order approving payment is required. Del. Dumais indicated that she is unclear why the

change proposed by Auction.com is different than the language of the proposed Rule.

Ms. Zarro noted that her understanding is that the Committee note addresses judicial resales. In the foreclosure sale process, there is ratification and review by the court after sale. If there was a deficiency in the process, such as a glaring error in the advertisement, the court would order a resale. The Committee note indicates that the auctioneer who conducted the initial foreclosure sale can also conduct a foreclosure resale. Ms. Zarro noted that her arguments concern situations where the lender buys the property at the foreclosure sale and then resells after ratification of the foreclosure sale. Ms. Zarro requested that the Rule's language specifically indicate that auctioneers are not precluded from conducting both the foreclosure sale and the potential future sale.

Mr. Andrews spoke on behalf of Alex Cooper Auctioneers. He added that Harvey West Auctioneers and Tidewater Auctions, also local Maryland auctioneers, agree with his comments. The purpose of the proposed amendment to Rule 14-305 is not to protect auctioneers. Mr. Andrews clarified that the amendments protect homeowners and eliminate the irreconcilable conflict that exists when an auctioneer agrees to conduct a judicial foreclosure sale and has an agreement in place to conduct a REO sale if the lender buys the subject property at the judicial

sale. If the property is sold at the judicial foreclosure sale and there is a deficiency in the amount owed, the lender has the right to pursue a deficiency judgment against the homeowner. When the property goes to a post-judicial REO sale, all proceeds go to the lender and are not credited back to the homeowner. Mr. Andrews explained that it is of obvious importance to the homeowner that the judicial sale brings the best price. There is an inherent conflict when the auctioneer agrees to represent the trustee at the judicial sale, who has a responsibility to maximize sale proceeds for the benefit of the homeowner, and also contracts with the lender, who will reap all of the proceeds from a subsequent REO sale and any deficiency judgment resulting from the judicial sale.

Mr. Andrews added that there is a financial component to this issue. The proposed change to the amendment by Auction.com does not resolve the conflict. He explained that auctioneers for a judicial sale are typically paid a fixed fee of several hundred dollars regardless of the sale price. At a REO sale, the auctioneer receives about 5 to 6% of the purchase price. There is an incentive for an auctioneer not to be concerned about the sale price at the judicial sale if a resale arrangement is in place because the property will be bought by the lender and the auctioneer will receive a percentage of the sale price at the REO sale. Mr. Andrews commented that the

conflict of interest exists when the auctioneer has that arrangement in place, regardless of whether the auctioneer makes more at the REO sale. There remains an inherent conflict with real-world consequences for homeowners.

Mr. Andrews stated that the Property Subcommittee held a very long meeting and everyone had the opportunity to be heard. The Subcommittee voted unanimously to return to the Committee the same language that the Committee approved last October. Mr. Andrews acknowledged that it is a real-world issue that auctioneers are not regulated. He added that the proposed Rule affords to homeowners the same protections that distressed businesses are afforded in receiverships pursuant to Code, Commercial Law Article, § 13-302 and Rule 13-106.

Mr. Andrews next addressed the changes suggested by Auction.com, noting that the proposal does not solve the conflict of interest issue. He explained that Auction.com's suggested provision aims to prevent an auctioneer from earning more at the REO sale than at the judicial sale, but the auctioneer will still earn money from conducting a second sale. The goal is to try to get the homeowner the best price at the judicial sale. Mr. Andrews noted that Auction.com's proposed language may be read to indicate that, as long as no agreement for a specific fee exists, the auctioneer is free to handle both sides of the sale and agree upon a fee later.

Mr. Andrews pointed out that the General Assembly's actions should not drive the Committee's decision of whether to recommend a Rule change. The General Assembly is free to request the information, but the request should not dissuade the Committee from adopting a Rule that solves a conflict of interest problem. He added that there are interesting separation of powers issues to consider.

Mr. Zollicoffer asked how a homeowner is harmed if another entity buys the house for a resale when the auctioneer's stated purpose is to get the highest price and there are no bids. Mr. Andrews responded by noting there is a question as to why no other entity bid on the property. Mr. Zollicoffer agreed, noting that it may be for lack of advertising or other issues. Mr. Andrews explained that a lack of bids may be caused by a variety of factors, but, with amended Rule 14-305, the homeowner does not need to worry about a conflict of interest as a possible factor. He added that the judicial sale is done under the auspices of the Court. To have the confidence that the homeowner and the public is entitled to, the amendment as proposed by the Property Subcommittee is needed.

Mr. Robinson commented that no consumer advocates testified when this proposal was first introduced. He added that he did not appear to comment at the earlier Committee meeting because he did not see any problems with the original proposal. The

Maryland Consumer Rights Coalition and other nonprofit groups have not provided any testimony for or against the proposal.

Mr. Robinson noted that two types of businesses appear concerned with this topic. The first group is local businesses that have conducted foreclosure auctions typically where the sale price determines the deficiency or surplus to the former homeowner. The other player, Auction.com, wants to throw a resale option into the equation and claims there is some benefit to homeowners. Mr. Robinson commented that it is unclear how Auction.com's proposal would help consumers. He added that he is troubled by the legislative aspect of the activity behind the scenes. If the legislature wants to look at this issue and license auctioneers, that can be debated in the legislature.

Mr. Robinson pointed out that the Rules typically have governed this aspect of the foreclosure process. He suggested that if the Committee wants to consider Auction.com's proposal, then it may also determine that the higher price is used to calculate the deficiency or surplus owed to the homeowner if a property is resold by the lender for a higher price. This approach would reflect a consumer perspective on Auction.com's proposal. Mr. Robinson concluded that the original proposal from the Property Subcommittee appears straightforward, fair, reasonable, and transparent.

The Chair questioned whether the change proposed by Mr. Robinson may be made by Rule or if such change requires an amendment of substantive law. Mr. Robinson responded that the deficiency calculation is set by Rule. The Chair pointed out that, if the circuit court ratifies a foreclosure sale, the property is no longer in foreclosure and it belongs to the buyer. Mr. Robinson noted that, in the situation being addressed, the buyer also is the lender. The local auctioneer's concerns are that potential buyers will be steered to the resale auction. Mr. Robinson commented that there is no need for Auction.com's proposed amendment. If, however, Auction.com's amendment is considered, the consumer will benefit if any deficiency or surplus is calculated using the higher resale price from the second auction. He added that the resale can apparently occur in just days.

Ms. Zarro responded that lenders are not in the business of owning real estate. Lenders own real estate in REO portfolios as a result of executing foreclosure sales on collateral that was security for a loan provided to a defaulting homeowner. Actively seeking to foreclose on liens to garner property would violate the charters of the lenders. Ms. Zarro added that these properties are distressed assets, not windfalls to lenders. It is not an advantage for lenders to take on properties. She commented that it is important to have as much competition

between auctioneers as possible to maximize prices at foreclosure sales. Auction.com is hired by lenders seeking auctioneers with robust marketing to bring as many bidders as possible to the foreclosure sale. Ms. Zarro concluded that forcing auctioneers to conduct either the foreclosure sale or the REO sale of a property pushes auctioneers out of the market. The lack of competition disadvantages the Maryland consumer.

The Chair pointed out that these cases do not typically concern local banks lending money or keeping mortgages. No one really knows who owns these loans anymore. The loans are bundled, packaged, and securitized. He added that deals are now national or international events, not typically between only a homeowner and a bank. REOs are allegedly part of this process.

Mr. Robinson responded that many foreclosure loans are owned now by private equity entities. The entities have not paid full value, so they are not taking losses at the foreclosure sales. He commented that the private equity entities paid perhaps 70% of what is owed on the loan, making a calculation based on the value of the property. Mr. Robinson explained that their predecessors may have lost money, but the foreclosing entities are not losing money because their investment in the debt is much less than what was borrowed.

Mr. Roth stated that Auction.com sells about 46 to 50% of properties to third parties at foreclosure sales. Looking at

the overall market, assets not sold through Auction.com's process typically sell only about 20% to a third party. Mr. Roth added that Auction.com also tracks excess proceeds. Auction.com has returned over $1.2 million in excess proceeds on these assets to junior lienholders and homeowners. Auction.com's process also helps reduce the potential deficiency for the homeowner. Mr. Roth commented that Auction.com's data does not reflect that most of those foreclosing are private equity firms. He clarified that the biggest lenders are still Fannie Mae, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, and banks that hold these assets in their portfolios. There is a small component of hedge funds that have purchased these assets, but the majority are still held by the large lenders known across the industry.

Mr. Cooper asserted that, as Mr. Robinson suggested, a lot of this activity is now driven by private equity. He added that Alex Cooper Auctioneers has been selling 60% of properties at foreclosure sales to third parties. The auctions have up to two dozen registered bidders. Mr. Cooper explained that, as opposed to foreclosure sales prices in the subprime lending days, the values of the properties currently being foreclosed upon are pulling away from the amounts owed. He noted that there is a tremendous amount of equity in these foreclosed properties. Sales are therefore creating a large surplus that goes back to

the homeowner. Mr. Cooper provided an exaggerated example, noting that if $100,000 is owed on a mortgage loan and the subject property sells for $500,000 at foreclosure sale, a total of $400,000 goes to the homeowner. However, if the lender purchases the property at foreclosure for $100,000 and then sells the property at an REO sale for $500,000, the lender keeps the entire $500,000. Mr. Cooper explained that this creates a conflict of interest. An auctioneer cannot represent the homeowner who wants the property to sell at the foreclosure sale while also representing the lender who wants to buy and resell it. Mr. Cooper commented that the proposed Rule change is not about Auction.com, but it is about a business model that Auction.com wants to introduce in Maryland. Every auctioneer will adopt this business model to compete with Auction.com and a shady auction company will try to take equity away from Maryland consumers. Mr. Cooper pointed out that local auctioneers have chosen not to conduct REO sales because of the described conflict.

The Chair noted that the Committee has several options after the referral from the Court of Appeals. The Committee can vote to approve the previously submitted version of the Rule, reconsider the Rule and recommend no change, or recommend a different change to the Rule. The Chair acknowledged that subsection (c)(3) has caused conflict. The Committee may remove

subsection (c)(3) and recommend the other changes to the Court of Appeals or take other action.

Judge Brown stated that listening to the conversation was enlightening. She is not persuaded that the initially proposed Rule is detrimental and it appears to be a significant benefit to the community at large, providing checks and balances.

Del. Dumais noted that the legislature included language in the budget related to this issue. She acknowledged that a great deal of mischief is often done in the budget reconciliation acts. The budget provides a way for the legislature to ask an executive agency or the judiciary to provide additional information. The language may involve withholding money until information is provided. Del. Dumais pointed out that, in this circumstance, only a report was requested. There may be legislation next year that looks to regulate and license auctioneers, which likely would be considered by the Economic Matters Committee. She added that the budget language does not appear to conflict with the Rule, but she wanted to ensure that the Committee was aware of the request for the report.

Del. Dumais inquired whether the Committee note after section (c) suggests that a trustee can hire an auctioneer for two different things. Mr. Andrews responded that it is a matter of timing and what is disclosed. He noted that the concern is a prearranged deal. The Chair added that a local auctioneer

previously indicated that a trustee may ask the auctioneer to complete extra tasks that are not ordinarily part of due diligence, such as specific requests for advertisements.

Judge Brown moved to approve the proposed amendments to Rules 14-305, 2-644, 3-644, and 3-722 originally approved by the Committee. The motion was seconded and passed by a majority vote.

Agenda Item 3. Consideration of proposed revised Title 11 (Juvenile Causes)

Ms. Day explained that the revision of Title 11 began ten years ago. She commended Assistant Reporter Cobun for keeping the Subcommittee on track and leading the Subcommittee through the proposed revisions.

Ms. Day presented Rule 11-101, Applicability, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 11-101, as follows:

Rule 11-101. APPLICABILITY

(a) Rules in Title 11

The Rules in this Title govern procedure in juvenile causes under Code, Courts Article, Title 3,

Subtitles 8, 8A, and 8C and guardianships under Code, Family Law Article, Title 5, Subtitle 300.

Cross reference: For procedures governing adoptions under Code, Family Law Article, Title 5, Subtitle 3, see the Rules in Title 9, Chapter 100.

(b) Interstate Compacts; Indian Child Welfare Act

The Rules in this Title are subject to the applicable provisions of Code, Human Services Article, Title 9, Subtitle 3 (Interstate Compact for Juveniles); Code, Family Law Article, Title 5, Subtitle 6 (Interstate Compact on the Placement of Children); and 25 U.S.C.A. §1901 et seq. (the Indian Child Welfare Act).

Source: This Rule is new.

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

Current Title 11 (Juvenile Causes) is proposed to be rescinded and replaced by a revised Title 11, divided into five chapters: Chapter 100 (General Provisions), Chapter 200 (Child in Need of Assistance; Voluntary Placement), Chapter 300 (Guardianship Terminating Parental Rights), Chapter 400 (Delinquency), and Chapter 500 (Other Proceedings).

In Rule 11-101, section (a) lists the Maryland Code sections that include proceedings governed by Title 11.

Section (b) states that the Rules in Title 11 are subject to applicable Interstate Compacts and the federal Indian Child Welfare Act.

Ms. Day stated that Rule 11-101 concerns the applicability of the Title. The Chair noted that section (b) reference the U.S.C.A. and stated that the "A" should be deleted. The annotated laws of the U.S. Code are a Westlaw product. The

Reporter agreed that the "A" in "U.S.C.A." should be removed from section (b). By consensus, the Committee approved the Rule, subject to correction of the citation by the Style Subcommittee.

Ms. Day presented Rule 11-102, Definitions, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 11-102, as follows:

Rule 11-102. DEFINITIONS

The following definitions apply in this Title:

(a) Statutory Definitions

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

Cross reference: See Code, Courts Article, §3-801 for definitions of "abuse," "adjudicatory hearing," "adult," "child," "child in need of assistance," "CINA," "commit," "court," "custodian," "custody," "developmental disability," "disposition hearing," "guardian," "guardianship," "local department," "mental disorder," "mental injury," "neglect," "parent," "party," "qualified residential treatment program," "reasonable efforts," "relative," "sex

trafficking," "sexual abuse," "sexual molestation or exploitation," "shelter care," "shelter care hearing," "TPR proceeding," "voluntary placement," "voluntary placement hearing."

See Code, Courts Article, §3-8A-01 for definitions of "adjudicatory hearing," "adult," "child," "child in need of supervision," "citation," "commit," "community detention," "competency hearing," "court," "custodian," "delinquent act," "delinquent child," "detention," "developmental disability," "disposition hearing," "incompetent to proceed," "intake officer," "mental disorder," "mental retardation," "mentally handicapped child," "party," "peace order proceeding," "peace order request," "petition," "qualified expert," "respondent," "shelter care," "victim," "violation," "witness."

(b) Additional Definitions

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

(1) Court

"Court" means the division or part of the circuit court that exercises the jurisdiction conferred on the circuit courts by Code, Courts Article, Title 3, Subtitles 8, 8A, and 8C.

(2) Next Day

"Next day" means the next day that the circuit court is in session.

(3) Respondent

"Respondent" means the juvenile who is the subject of a petition, or an adult charged under Code, Courts Article, §3-828 or §3-8A-30.

(4) State's Attorney

"State's Attorney" has the meaning set forth in Rule 4-102 to the extent the individual is

authorized to represent the State in a proceeding under Code, Courts Article, Title 3, Subtitle 8A.

(5) 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.

Source: This Rule is derived from former Rule 11-101.

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

Proposed Rule 11-102 contains definitions of terms that are used throughout the Title.

Section (a) incorporates statutory definitions in Title 3 of the Courts Article and states that if a definition in Subtitle 8 differs from a definition in Subtitle 8A, the definition in the Subtitle pursuant to which the proceeding was filed applies. A cross reference lists the terms defined in each Subtitle.

Section (b) defines additional terms used in the Title. "Court" is defined to include any circuit court division that exercises jurisdiction conferred by Code, Courts Article, Title 3, Subtitles 8, 8A, and 8C. "Next day" means the next day the court is in session. "Respondent" means the juvenile who is the subject of a petition or an adult charged with causing a child to be CINA or delinquent. The definition of "State's Attorney" is derived from Rule 4-102. "Summons" is derived from the definition in Rule 1-202.

Ms. Day commented that Rule 11-102 concerns definitions. There are several definitions added to the Rule. The Chair inquired whether the phrase "or an action for contempt of court"

should be added at the end of subsection (b)(5)(B) concerning the definition of "summons." He explained that an action for contempt is usually provided for in these summonses. Judge Price moved to amend the Rule to add the phrase, "or an action for contempt of court" at the end of subsection (b)(5)(B). The motion was seconded and passed. By consensus, the Committee approved the Rule as amended.

Ms. Day presented Rule 11-103, Magistrates, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 11-103, as follows:

Rule 11-103. MAGISTRATES

(a) General Authority; Applicability

(1) Generally

A magistrate appointed for juvenile causes is authorized to hear any cases and matters assigned by the court, except a hearing on a waiver petition or a hearing to terminate parental rights.

(2) Exception

Other than the procedures set forth in section (b) of this Rule, the procedures in this Rule do not apply to hearings before a magistrate in detention or shelter care proceedings.

Cross reference: See Rule 11-204 for procedures in shelter care proceedings. See Rule 11-406 for procedures in delinquency detention and shelter care proceedings.

(3) Findings, Conclusions, and Recommendations

The findings, conclusions, and recommendations of a magistrate do not constitute orders or final action of the court.

(b) Hearings

(1) Authority to Conduct and Regulate

A magistrate may conduct hearings and regulate all proceedings relating to the hearing, including:

(A) fixing the time and place of the hearing, including permitting remote participation in the hearing;

(B) directing the issuance of subpoenas to compel the attendance of witnesses and the production of documents or other tangible things;

(C) administering oaths to witnesses;

(D) ruling on the admissibility of evidence;

(E) examining witnesses;

(F) convening, continuing, and adjourning the hearing, as required; and

(G) recommending contempt proceedings or other sanctions to the court.

(2) Recording

All proceedings before a magistrate shall be recorded verbatim.

(c) Report and Recommendations

(1) Contents of Reports

The Magistrate's report shall be a written report that includes proposed findings of fact, conclusions of law, recommendations, and proposed orders.

(2) When Filed

Within 10 days after completing a disposition hearing or a post-disposition proceeding that requires a court order, the magistrate shall transmit to a judge assigned to the court the entire file in the case, together with the Magistrate's report.

(3) Service

A copy of the report and proposed order shall be served on each party as provided by Rule 20-205 in MDEC counties or Rule 1-321 in other counties.

Cross reference: Rule 1-321 addresses the service of pleadings and other paper filed after the original pleading.

(d) Immediate Review

(1) By Agreement

The parties may agree to waive the right to file exceptions to the magistrate's report and recommendations and to the immediate entry of the order proposed by the magistrate with such amendments or clarifications to which the parties agree.

(2) Emergency Orders

If a magistrate finds that extraordinary circumstances exist and recommends that an order be entered immediately, a judge of the court shall review the file, any exhibits, and the magistrate's findings and recommendations and shall afford the parties an opportunity for oral argument. The court may accept, reject, or modify the magistrate's recommendations and issue an immediate order. An order entered under this subsection remains subject to a later determination by the court on exceptions.

(e) Exceptions

(1) Filing; Content

Unless waived pursuant to subsection (d)(1) of this Rule, any party may file exceptions to the magistrate's proposed findings, conclusions, or recommended order. The exceptions shall be in writing, filed with the clerk within five days after service of the magistrate's report, and served on each other party. Exceptions shall specify:

(A) whether the hearing on the exceptions is to be de novo or on the record made before the magistrate; unless the excepting party requests a de novo hearing, the hearing shall be on the record;

(B) those items to which the party excepts; and

(C) if the hearing is to be on the record made before the magistrate, each asserted error, with particularity.

(2) Transcript

If the hearing is to be on the record made before the magistrate, the excepting party shall cause to be prepared, transmitted to the court, and served on each other party, a transcript of so much of the proceeding as is necessary for the court to rule on the exceptions, unless (A) a transcript has already been filed, (B) the hearing is to be on an agreed statement of facts, or (C) the hearing is to be on an electronic recording of the proceeding before the magistrate. The transcript shall be filed and served within 30 days after the filing of exceptions unless, upon motion made prior to expiration of the 30-day period, and for good cause, the court extends that time.

(f) Hearing on Exceptions

(1) Duty to Schedule

Upon the filing of timely exceptions which comply with this Rule, the court shall schedule a prompt hearing, which shall occur within 30 days after

the filing of exceptions unless the court, with the agreement of the parties, or for good cause, extends the time.

(2) Type and Scope of Hearing

(A) An excepting party, other than the State in a delinquency proceeding, may elect a hearing de novo or a hearing on the record made before the magistrate.

(B) If the State is the excepting party in a proceeding involving juvenile delinquency, the hearing shall be on the record, supplemented by additional evidence as the judge considers relevant and to which the parties raise no objection. In either event, the hearing shall be limited to those matters to which exceptions have been filed.

Cross reference: See Code, Courts Article, §3-807 (c).

(C) If the hearing is on the record, the court may confine the hearing to the particular allegations of error stated in the exceptions.

(3) Record

(A) If the hearing is on the record made before the magistrate, the hearing shall be held either on an agreed statement of facts or on the part of the record that is relevant to the exceptions.

(B) The court, on its own initiative or on motion of a party, may accept an electronic recording of the proceeding in place of a transcript.

(g) Review by Court if No Exceptions Filed

If no exceptions have been filed in compliance with this Rule, the court, within 10 days after the expiration of the time for filing exceptions, shall:

(1) adopt the magistrate's proposed findings of fact, conclusions of law, and recommendations and enter an appropriate order based on them;

(2) remand the case to the magistrate for a further hearing; or

(3) schedule a de novo hearing before the court, unless the parties agree to a hearing on the record.

Source: This Rule is derived in part from former Rules 11-110 and 11-111. Section (d) is new.

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

Proposed Rule 11-103 addresses the authority and duties of magistrates in juvenile proceedings under Title 11.

Section (a) is derived from current Rule 11-111 a and states the magistrate's authority to hear cases and matters assigned by the court. Generally, magistrates may hear any matters other than waiver petitions and hearings to terminate parental rights. Sections (c) through (g) do not apply to hearings in detention or shelter care proceedings. A cross reference refers to Rules governing procedures in shelter care and detention proceedings.

Section (b) is derived from current Rule 11-110 a and specifies the authority of magistrates to conduct and regulate hearings, including fixing the time and place, issuing subpoenas, administering oaths, ruling on evidence, examining witnesses, convening and adjourning hearings, and recommending contempt or other sanctions. Proceedings before a magistrate shall be recorded.

Section (c) is derived from current Rule 11-111 b and states the requirements and procedure for the issuance of the magistrate's report and recommendations. Subsection (c)(1) requires the report to be written and include proposed findings of fact, conclusions of law, recommendations, and proposed orders. The Subcommittee discussed the necessity of a written report if the parties waive exceptions and determined that the report is required to provide the judge reviewing the matter context for the proposed order.

Subsection (c)(2) requires the report to be filed within 10 days after completing a disposition hearing or post-disposition proceeding requiring an order. Subsection (c)(3) requires service of the report on each party.

Section (d) is new and contains the procedure for an immediate review of the magistrate's report and recommendations. Subsection (d)(1) allows for immediate review by agreement of the parties. Subsection (d)(2) permits the magistrate to recommend an order be reviewed by a judge and entered immediately in emergency circumstances. Such an order is subject to exceptions later.

The Subcommittee was concerned with the ability of parties to seek immediate review and an enforceable order in emergency situations that cannot wait for the exceptions process and order of the court at the conclusion of proceedings. Provisions for immediate review of shelter care and detention determinations are included in later Rules.

Section (e) is derived from current Rule 11-111 c and addresses the exceptions process after the magistrate enters a report and recommendations. Subsection (e)(1) states that the exceptions must be in writing, filed with the clerk within five days after service of the report, and served on the other parties. The exceptions must specify whether the hearing on the exceptions will be *de novo* or on the record and the items to which the party excepts. A hearing will be on the record unless the excepting party requests *de novo* review. If the hearing is on the record made before the magistrate, the exceptions shall specify each asserted error. Subsection (e)(2) requires the excepting party, if the hearing is on the record, to cause the necessary transcript to be prepared and transmitted to the court and the other parties. The transcript requirement does not apply when a transcript has already been filed, the hearing is on an agreed statement of facts, or the hearing will use an electronic recording of the proceedings before the magistrate.

> Section (f) is also derived from current Rule 11-111 (c) and states the requirements for scheduling and conducting a hearing on exceptions. The court must schedule a prompt hearing to occur within 30 days after the filing of exceptions unless the court extends the time by agreement or for good cause. An excepting party that is not the State in a delinquency proceeding may elect a hearing *de novo*. If the State is the excepting party, the hearing shall be on the record and supplemented by additional evidence as permitted. If the hearing is on the record, it shall be held on an agreed statement of facts or the relevant part of the record. The court may accept an electronic recording in place of a transcript.
>
> Section (g) is derived from current Rule 11-111 d and states that the court shall act within 10 days of the expiration of the time for filing exceptions. The court may adopt the magistrate's recommendations and enter an appropriate order, remand the case to the magistrate, or schedule a *de novo* hearing before the court.

Ms. Day explained that Rule 11-103 addresses the authority of magistrates. In essence, the Rule grants magistrates the authority to conduct juvenile proceedings, except waiver hearings and termination of parental rights hearings.

The Chair questioned whether these proceedings are being handled remotely by magistrates. Mr. Hartge responded that there have been some remote hearings and Ms. LeMon agreed. The Chair noted that remote proceedings are governed by the Rules in Title 2, Chapter 800, which are not applicable in juvenile court. He asked whether a reference to the remote hearing Rules should be added in this Title. Mr. Hartge commented that a

reference should be helpful. Mr. Pataschnick agreed that the addition would be beneficial.

Ms. Hartge pointed out that Legal Aid expressed concern that a hearing on exceptions should be held in 30 days, but the Rule also provides 30 days to prepare the transcript. See Appendix 3. The two parallel time frames create a conflict. Ms. Hartge noted that the 30-day time period is critical for hearing exceptions. In Baltimore City, where there are many exceptions hearings, the parties use CourtSmart records and do not obtain transcripts.

Ms. Day added that the timeframe was discussed by the Subcommittee. Most counties use MDEC and the other counties appear able to use electronic records. Magistrate Wolfe commented that she did not remember the last time a transcript was used. Ms. Villamar added that transcripts may be ordered on an expedited basis. The Office of the Public Defender regularly orders transcripts with a 24-hour turnaround. She suggested shortening the time to obtain a transcript to 15 days, enabling the hearing to proceed within 30 days. The Chair inquired whether there were objections to changing the time period to obtain the transcript to 15 days.

Ms. Hartge raised concerns about the costs of transcripts. Ms. LeMon acknowledged that she was unsure of the cost difference for expedited transcripts, but added that it may be

substantial. She agreed with establishing a 30-day period for the exceptions hearing, but noted that preparation of the transcript may cause issues. Ms. LeMon questioned whether the court would deny exceptions if a transcript was not filed within 15 days. She suggested a 21-day period for filing the transcript, but added that she was unsure of the cost difference. Ms. Villamar responded that the cost depends on how quickly the transcript must be produced. For a 24-hour turnaround, there is a significant cost increase. However, the cost increase may be less significant for a 15-day period.

Ms. Villamar noted that most hearings are recorded and an audio recording can be used in place of a transcript. The Chair pointed out that the Rule permits the use of an audio recording. He added that, as a practical matter, the time period for the transcript needs to be shortened if the time period for the hearing remains 30 days. Ms. LeMon commented that 21 days would likely not result in an extra cost to the excepting party. Ms. Day questioned whether the 21-day period provides all parties adequate time to prepare. Ms. LeMon acknowledged that the 21-day period leaves only seven days to prepare with the transcript before the hearing. She concluded that allowing either 15 or 21 days to file the transcript is acceptable.

The Chair moved that the time period to file the transcript be amended to 20 days. By consensus, the Committee approved the Rule as amended.

Ms. Day presented Rule 11-104, Motions, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 11-104, as follows:

Rule 11-104. MOTIONS

(a) Generally

An application to the court for an order shall be made by motion which, unless made during a hearing, shall be in writing, accompanied by a proposed order, and shall set forth the relief or order sought. This Rule does not apply to motions required to be filed pursuant Rule 11-419 (b).

Cross reference: Rule 11-419 (b) addresses mandatory motions in delinquency and citation proceedings.

(b) Response

Unless the court orders otherwise;

(1) a party against whom a motion is directed is not required to file a response;

(2) any response shall be filed within 10 days after service of the motion, and

(3) If a party fails to file a response, the court may proceed to rule on the motion.

(c) Hearing

Any party desiring a hearing on a motion shall request the hearing in the motion or response under the hearing "Request for Hearing." The title of the motion or response shall state that a hearing is requested.

(d) Statement of Grounds

The grounds of a written motion or response shall be stated with particularity.

(e) Affidavit

A motion or response that is based on facts not contained in the record or papers on file in the proceeding shall be supported by affidavit and accompanied by any papers or exhibits on which it is based.

Source: This Rule is new. It is derived from Rule 2-311.

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

Proposed Rule 11-104 is derived from current Rule 2-311 and provides that a request for a court order must be in the form of a motion, which shall be in writing unless made during a hearing. The Rule does not apply to mandatory motions filed in a delinquency proceeding, which are governed by Rule 11-419. Section (b) states that a party, unless ordered by the court, is not required to respond to a motion but any response shall be filed within 10 days after service.

A hearing on a motion is held if a party requests one pursuant to section (c). A motion or response shall state the grounds with particularity and be supported by affidavit if based on facts not contained in the record.

She explained that the motions in this Rule do not apply to motions in delinquency and citation proceedings that are addressed in Rule 11-419. The Chair pointed out a spelling error in section (c), noting that the phrase "under the hearing" should be "under the heading." He added that the noted change can be addressed by the Style Subcommittee.

Ms. Hendricks indicated that she works for case management at the Circuit Court for Montgomery County. She inquired about the hearing requirement in Rule 11-104 (c). Rule 2-311 gives the court some discretion when evaluating whether a hearing is required. Ms. Hendricks wondered why the discretion in Rule 2-311 was not brought into Rule 11-104, noting that section (c) indicates that a hearing is required if requested.

Ms. Hartge explained that the Rules in Chapter 200 of Title 11 address when the court must hold a hearing. She explained that required hearings are also addressed in Rule 11-218. Magistrate Wolfe noted that there is a question about whether anyone requesting a hearing is entitled to one regardless of circumstances. She agreed that Rule 11-104 appears to eliminate discretion in determining whether a hearing is appropriate. A litigant may request a hearing, but that does not mean that his or her motion seeks relief that is appropriate for court action. She noted that maybe some discretion should be built into the Rule.

The Chair asked what language in Rule 11-104 provides that the court must hold a hearing. Ms. Villamar noted that the language is in the second paragraph of the Reporter's note. The Chair responded that the language of Rule 11-104 does not state that a movant is entitled to a hearing. Mr. Shellenberger responded that the language of the Reporter's note suggests that a hearing is required. The Reporter explained that the Reporter's note is not part of the Rule. The Chair agreed that Reporter's notes are not part of the final Rules adopted by the Court of Appeals. Assistant Reporter Cobun stated that the Reporter's note will be corrected.

By consensus, the Committee approved the Rule, subject to correction of a spelling error in section (c) by the Style Subcommittee.

Ms. Day presented Rule 11-105, Subpoenas; Rule 11-106, Summons; and Rule 11-107, Service of Papers, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 11-105, as follows:

Rule 11-105. SUBPOENAS

(a) Generally

Except as otherwise provided by law, the clerk shall issue a subpoena for each witness requested by any party, pursuant to Rule 2-510.

(b) Hospital Records

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

Cross reference: Rule 2-510 addresses subpoenas in civil proceedings generally. Subsection (i) of that rule addresses records produced by custodians.

Source: This Rule is derived in part from former Rule 11-104. Section (b) is new.

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

Proposed Rule 11-105 is based in part on current Rule 11-104 (d) and states that subpoenas for witnesses and hospital records are governed by Rule 2-510. A cross reference to Rule 2-510 follows the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 11-106, as follows:

Rule 11-106. SUMMONS

(a) Generally

Upon the filing of a petition, the clerk shall issue a summons for each party except the petitioner and a respondent child alleged to be in need of assistance.

(b) Content

(1) Generally

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, and place of the scheduled hearing;

(E) a statement that failure to attend may result in the person summoned being taken into custody; and

(F) a statement that the person summoned shall keep the court advised of the person's address during the pendency of the proceedings.

(2) Production of Child

A summons to a parent, guardian, or custodian, of a respondent child shall require the person to produce the child at the place and on the date and time stated in the summons.

Source: This Rule is derived from former Rule 11-104. Section (b) is new and is derived from former Form 904-S.

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

Proposed Rule 11-106 is derived from current Rule 11-104 and Form 904-S. Generally, the clerk shall issue a summons for each party upon the filing of the petition except the petitioner and respondent in a CINA proceeding. The summons shall contain the details listed in section (b) and a summons to a parent, guardian, or custodian of a respondent child

must require the person to produce the child.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 11-107, as follows:

Rule 11-107. SERVICE OF PAPERS

(a) Summons

A summons issued pursuant to Rule 11-106 shall be served in the manner provided by Rule 2-121, and returnable as provided by Rule 2-126.

(b) Other Papers

Except as otherwise provided by law, all other papers filed with the court, other than a petition or citation, shall be served in the manner provided by provided by Rule 20-205 in MDEC counties or Rule 1-321 in other counties.

Source: This Rule is derived in part from former Rule 11-104 c and is in part new.

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

Proposed Rule 11-107 is derived in part from current Rule 11-104 c. Section (a) states that summonses shall be served pursuant to Rule 2-121, returnable as provided by Rule 2-126. Section (b) permits all other papers, except as provided by law, to be served pursuant to Rule 20-205 for MDEC counties or Rule 1-321 in non-MDEC counties.

Ms. Day explained that Rule 11-105 concerns subpoenas. Rule 11-106 addresses summonses. She added that Rule 11-107 deals with the service of papers. There being no motion to amend or reject the proposed Rules, they were approved as presented.

Ms. Day presented Rule 11-108, Hearings, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 11-108, as follows:

Rule 11-108. HEARINGS

(a) Non-jury

Hearings shall be conducted before a judge or magistrate without a jury, and shall be conducted in an informal manner.

(b) Recording

All proceedings shall be recorded verbatim by a recording method approved by the county administrative judge.

Committee note: The requirement that all juvenile proceedings be recorded verbatim applies regardless of the location of the hearing.

(c) Place of Hearing

A hearing may be conducted in open court, in chambers, remotely in conformance with the procedures and requirements in Rules 2-801 through 2-806, or elsewhere where appropriate facilities are available.

(d) Open and Closed Hearings

(1) Exclusion from CINA or Voluntary Placement Hearings

A determination of who may or shall be excluded from a Child in Need of Assistance or voluntary placement hearing is governed by Code, Courts Article, §3-810 (b).

(2) Exclusion from Delinquency, CINS, or Peace Order Hearings

A determination of who may be excluded from a delinquency, Child in Need of Supervision, or peace order hearings is governed by Code, Courts Article, §3-8A-13 (f).

(3) Participation by Nonparties

Participation by foster parents, preadoptive parents, caregivers, and attorneys for those individuals is governed by Code, Courts Article, §3-816.3.

Cross reference: Code, Courts Article §3-810 addresses both mandatory and permissive exclusion of the general public from a CINA or voluntary placement hearing. Code, Courts Article, §3-8A-13 addresses permissive exclusion of the general public from a CINS or certain delinquency or peace order proceedings, and requires certain delinquency proceedings to be conducted in open court.

(4) The court shall take appropriate steps to prevent public disclosure of information that is confidential under state or federal law.
Committee note: Statutes that govern confidential information include Code, Health General Article, §§4-302 and 4-307, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. §1320d *et seq*.

(e) List of Open Hearings

Prior to the convening of court on each day that 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 Courts Article, §3-8A-13 (f) to be conducted in open court. The list shall include the full name of each respondent and the time and location of the hearing.

(f) Notice

(1) Generally

Unless the parties are notified in open court and on the record of the date, time and purpose of the next hearing, and except for a hearing on a petition for continued detention or shelter care, the clerk shall issue to each party a notice of the date, time, place, and purpose of each hearing. The notice shall be served in the manner provided by Rule 11-107.

(2) Timing

The notice shall be provided as soon as practicable. It shall be provided at least five days before the hearing unless a different time is provided by law, the five day notice period is waived, or the hearing is:

(A) on a petition for emergency medical treatment pursuant to Code, Courts Article, §3-824 (a) or §3-8A-13 (h);

(B) on a petition for continued shelter care or detention;

(C) a disposition hearing held the same day as the adjudicatory hearing; or

(D) an emergency review hearing under Code, Courts Article, §3-820 (d).

(g) Consolidation

(1) Multiple Petitions Against One Respondent

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

(2) Petitions Filed Against More than One Respondent

(A) Except as otherwise provided in this subsection, hearings on petitions filed against more than one respondent arising out of the same incident or conditions may be consolidated or severed as justice may require.

(B) If prejudice may result to any respondent from a consolidation, the hearing on the petition against that respondent shall be severed and conducted separately.

(C) If petitions are filed against a child and an adult, the hearing on the petition filed against the child shall be severed and conducted separately from the adult proceeding.

(h) Victims

At an adjudicatory hearing in a delinquency action, the judge, magistrate, or clerk shall (1) inquire whether any victim or victim's representative, as defined in Code, Criminal Procedure Article, §11-104 (a) or family member of a victim is present, and (2) cause to be inserted in the case file a list of all such individuals as provided by the State's Attorney's Office. Identifying information regarding those individuals shall be shielded pursuant to the Rules in Title 16, Chapter 900 and Code, Criminal Procedure Article, §11-301.

Committee note: Code, Courts Article, §3-8A-27.1 (b)(2) requires the court to serve a petition for expungement of a juvenile record on all listed victims and all family members of a listed victim "who are listed in the court file as having attended the adjudication for the case in which the person is seeking expungement." In order to comply with that requirement, the court file must include a list of those individuals.

(i) Admissions Made in Court

A party entitled to file a response, whether or not a response was filed, may admit in court and on

the record any or all of the allegations in the petition or state an intention not to deny one or more of the allegations. The court shall neither encourage nor discourage an admission or denial.

Source: This Rule is derived from former Rule 11-110.

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

Proposed Rule 11-108 is derived from current Rule 11-110 and provides that hearings shall be conducted without a jury, in an informal matter, and recorded in a method approved by the county administrative judge. A Committee note following section (b) specifies that the recording requirement applies regardless of the location of the hearing.

Section (c) is derived from current Rule 11-110 b and addresses the potential locations of hearings, which can be conducted in open court, in chambers, remotely, or elsewhere as appropriate.

Section (d) is new but derived from statutes and addresses when hearings should be open or closed and cites statutes that govern exclusion of individuals from juvenile proceedings. Subsection (d)(4) states that the court shall take appropriate steps to prevent public disclosure of confidential information. A Committee note provides examples of state and federal privacy laws.

Section (e) is derived from current Rule 11-104 f and states that a list of open hearings shall be made available to the public each day. The list must include the full name of each respondent and the time and location of the hearing.

Section (f) addresses notice of hearings given to the parties. Generally, except for a hearing on a petition for continued detention or shelter care, the clerk is required to issue a notice of the date, time, place, and purpose of each hearing unless the parties are notified in open court on the record of the details of the next hearing. The notice shall be served in the manner provided by Rule 11-108.

Subsection (f)(2) is based in part on current Rule 11-110 (c) and states that the notice shall be provided as soon as practicable and at least five days before the hearing unless otherwise provided by law or if the subject of the hearing is one of the following: a petition for emergency medical treatment, a petition for continued shelter care or detention, a disposition hearing held the same day as an adjudicatory hearing, or an emergency review hearing.

Section (g) is derived from current Rule 11-110 d and provides that multiple petitions against one respondent and petitions filed against more than one respondent may be consolidated or severed, as justice requires. If consolidation may result in prejudice to a co-respondent, that respondent's petition shall be severed. If petitions are filed against a child and an adult, the petition against the child shall be severed.

Section (h) requires the judge, magistrate, or clerk to inquire at an adjudicatory hearing about any victim or victim's representative and insert a list of those individuals in the case file with identifying information shielded. A Committee note states that the court is required by law to serve a petition for expungement of a juvenile record on all listed victims and listed family members.

Section (i) is derived from current Rule 11-107 and permits a party entitled to file a response to admit in court and on the record any or all of the allegations in the petition or state an intention not to deny.

Ms. Day explained that Rule 11-108 concerns hearings and is derived from old Rule 11-110. The hearings are informal and conducted without a jury. The Rule provides when parties are entitled to a hearing.

Ms. Villamar questioned whether the requirements for the contents of a summons change if a hearing is held remotely. The

Chair responded that the language in a summons for a remote hearing is addressed in Title 2, Chapter 800 of these Rules. The summons must alert the person being summonsed that the hearing will be remote and indicate what he or she must do to attend the hearing. Ms. Villamar asked whether references to Rules 2-801 through 2-806 are sufficient. The Chair noted that, in other Rules dealing with particular proceedings, the Committee has stated directly in the specific Rule that Title 2, Chapter 800 applies.

The Chair added that Chapter 800 of Title 2 addresses summonses and subpoenas for remote proceedings. The Reporter confirmed that Rules concerning virtual jury trials are pending before the Court of Appeals in the 207th Report. She noted that the contents of a subpoena were addressed in the virtual jury trial Rule because there are many different issues involved in getting jurors and witnesses for a virtual trial. Judge Davey commented that the discussion of subpoenas was expanded when considering the virtual jury trials. The Chair noted that it is important for a subpoena to state what is expected of the person being subpoenaed and to note that there may be consequences if the subpoenaed individual does not appear. Judge Davey noted that there are additional requirements for the person requesting the subpoena if it is for a virtual hearing. The Chair commented that the same instructions drafted for subpoenas in

virtual trials should likely apply to summonses for virtual hearings, including in juvenile cases. Ms. Day agreed.

The Chair indicated that language from Chapter 800 of Title 2 can be added to the juvenile Rules. Additional language can alert the person being summonsed or subpoenaed that the matter is scheduled for a remote hearing and can explain what a remote hearing requires. The important question is whether the person can participate remotely. The Chair added that similar language has already been drafted in other Rules and can be added to Title 11.

Magistrate Wolfe asked whether all concepts of remote proceedings in Title 2, Chapter 800 are being considered for Title 11. The Chair responded that not all of Chapter 800 may be applicable. Magistrate Wolfe responded that a lot of the Chapter appears relevant. The Chair agreed that much of the Chapter is relevant if someone is testifying remotely. Language can be added to Chapter 100 of Title 11 and returned to the Committee for review. Ms. Day agreed that Chapter 100 is the appropriate place to address remote proceedings.

By consensus, the Committee remanded the matter to staff to add language concerning remote proceedings.

Ms. Day presented Rule 11-109, Production of Child; Rule 11-110, Juvenile Restraints; and Rule 11-111, Controlling Conduct, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 11-109, as follows:

Rule 11-109. PRODUCTION OF CHILD

Unless the child's presence is excused by the court for good cause, the child's custodian shall bring the child to (1) a shelter care hearing and (2) all other hearings under the Rules in this Title. An attorney for the child may waive the child's presence in any proceeding other than a delinquency proceeding or a child consultation pursuant to Code, Courts Article, §3-823 (j).

Source: This Rule is new.

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

Proposed Rule 11-109 is new and addresses production of a child at hearings under Title 11. Unless the child's presence is excuse by the court for good cause, the custodian shall bring the child to a shelter care hearing and all other hearings. An attorney for the child may waive the child's presence in a proceeding other than a delinquency proceeding or child consultation.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 11-110, as follows:

Rule 11-110. JUVENILE RESTRAINTS

If a child who is the subject of the proceedings is brought before the court wearing any physical restraint device, absent a particularized security concern, the device shall be removed while the child is in the courtroom or hearing room. Although security personnel have the ongoing responsibility for maintaining security and order throughout the proceeding, the judge or juvenile magistrate conducting the proceeding shall determine whether the child needs to remain in restraints while in the courtroom or hearing room.

Source: This Rule is new.

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

Proposed Rule 11-110 addresses when a child may be physically restrained while before the court. Generally, absent a particularized security concern, a physical restraint device shall be removed while the child is in the courtroom or hearing room. The Subcommittee chose to emphasize in the second sentence that the ongoing responsibility for security falls to security personnel, but the judge or magistrate has the ultimate authority to determine if the child needs to remain in restraints.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 11-111, as follows:

Rule 11-111. CONTROLLING CONDUCT

(a) Authority

On its own initiative or on application or motion of a party, the court may direct, restrain, or otherwise control the conduct of any person properly before the court in accordance with the provisions of Courts Article, §3-821 or §3-8A-26.

(b) Service of Order

Any order under this Rule shall be served on the person to whom it is directed.

(c) Other Remedies

In addition to the remedies provided by section (a) of this Rule, Chapter 200 of Title 15 of these Rules (Contempt) is applicable to juvenile causes, and the sanctions provided in that Chapter may also be imposed.

Source: This Rule is derived from Rule 11-110 e.

Rule 11-111 was accompanied by the following Reporter's note.

Proposed Rule 11-111 is derived from current Rule 11-110 (e) and the court to direct, restrain, or otherwise control the conduct of a person properly before the court in accordance with certain statutes. An order shall be served on the person to whom it is directed. Section (d) provides that Title 15, Chapter 200 (Contempt) Rules are also applicable.

Ms. Day noted that Rule 11-109 concerns the production of a child and when his or her appearance may be waived. Rule 11-110 addresses when a child may be restrained in a courtroom. She added that Rule 11-111 provides how the court may control

conduct within the courtroom. There being no motion to amend or reject the proposed Rules, they were approved as presented.

Ms. Day presented Rule 11-112, Papers in a Foreign Language, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11 – JUVENILE CAUSES

CHAPTER 100 – GENERAL PROVISIONS

ADD new Rule 11-112, as follows:

Rule 11-112. PAPERS IN A FOREIGN LANGUAGE

Whenever the court or other unit of the State or local Government has reason to believe that an individual required to be served with a summons, subpoena, notice of hearing or court conference, or other document that requires a decision, action, or response by the individual, by reason of unfamiliarity with the English language, may be unable to read and understand the document, the unit shall (1) serve the document in English and in a language that the court or unit reasonably believes the individual can understand, or (2) as an attachment to the English version of the document, inform the individual in a language the court or unit reasonably believes the individual can understand that, if the individual, due to unfamiliarity with the English language, is unable to read and understand the document, (A) a copy of the document in a language the individual understands will be made available upon request, or (B) an individual fluent in the language the served individual understands will be made available to translate the document.

Committee note: Court documents can be translated into several languages by the Access to Justice Department of the Administrative Office of the Courts.

See Code, State Government Article, §10-1103 requiring State agencies, including the Department of Human Services, Department of Juvenile Services, and Attorney General's Office to provide "the translation of vital documents ordinarily provided to the public into any language spoken by any limited English proficient population that constitutes 3% of the overall population within the geographic area served by a local office of a State program as measured by the United States Census."

Source: This Rule is new.

Rule 11-112 was accompanied by the following Reporter's note.

Proposed Rule 11-112 is new and governs when a court or unit of government has to take steps to translate certain documents or otherwise inform an individual who is not proficient in English of their options for a translated document or interpreter services. The Subcommittee's goal was to encourage a practice of translating important documents, particularly where the intended recipient is known to lack proficiency in English.

The Rule is triggered when the court or government unit has reason to believe that the recipient of a summons, subpoena, notice of hearing or court conference, or other document requiring a decision, action, or response may be unable to read and understand the document.

A Committee note outlines agencies and departments which are able to translate documents and cites a statute requiring State agencies to provide translation of certain documents under certain circumstances.

Ms. Day explained that the Rule concerns translations into a foreign language. The Chair added that the Subcommittee was advised by the Access to Justice Committee that it is able to

deal with translations with respect to court notices and documents. A statute requires executive branch agencies to provide the same translations. He added that implementation of the Rule should not be a problem, unless an obscure language is involved. The Judiciary is already completing translations for several languages.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Ms. Day presented Rule 11-201, Applicability, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 200 - CHILD IN NEED OF ASSISTANCE; VOLUNTARY PLACEMENT

ADD new Rule 11-201, as follows:

Rule 11-201. APPLICABILITY

The Rules in this Chapter govern child in need of assistance and voluntary placement proceedings under Code, Courts Article, Title 3, Subtitle 8.

Source: This Rule is new.

Ms. Day explained that Rule 11-201 addresses the applicability of the Chapter. There being no motion to amend or reject the proposed Rule, it was approved as presented.

Ms. Day presented Rule 11-202, Definitions, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 200 - CHILD IN NEED OF ASSISTANCE; VOLUNTARY PLACEMENT

ADD new Rule 11-202, as follows:

Rule 11-202. DEFINITIONS

The following definitions apply in this Chapter:

(a) CINA Petition

"CINA petition" means a petition filed with the court pursuant to Code, Courts Article, §3-809.

(b) Former CINA

"Former CINA" means an individual who (1) had been found to be a CINA, (2) is now at least 18 years old but under the age of 21 years, and (3) is subject to the jurisdiction of the court pursuant to Code, Courts Article, §3-804 (a)(2).

(c) Emergency Shelter Care

"Emergency shelter care" means shelter care when a child has been removed from the home or placement by a local department in accordance with Code, Courts Article, §3-815.

(d) Petition for Continued Shelter Care

"Petition for continued shelter care" means a petition filed pursuant to Rule 11-204 (b).

(e) Voluntary Placement Petition

"Voluntary placement petition" means a petition filed pursuant to Rule 11-206.

Source: This Rule is new.

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

> Proposed Rule 11-202 contains additional definitions that apply in Chapter 200. "CINA petition" is defined as a petition filed pursuant to Code, Courts Article, §3-809. A "former CINA" is an individual previous found to be a CINA who is now between age 18 and 21 and still subject to the jurisdiction of the court. "Emergency shelter care" is defined as shelter care when a child has been removed from the home or a placement by the local department. "Petition for continued shelter care" and "voluntary placement petition" are petitions filed pursuant to their respective Rules.

Ms. Day explained that Rule 11-202 contains definitions for Chapter 200. Ms. Villamar raised a concern about the definition of "emergency shelter care." She questioned whether the phrase "removed from the home" is accurate and if the definition should instead reference removal from the parents' or guardian's care. Ms. LeMon commented that the Rule's definition tracks federal language that uses the term "home." Ms. Hartge pointed out that the definition also references removal from a placement. The

child may not necessarily be with his or her guardian. For example, the child may be in the hospital or at another individual's house. Assistant Reporter Cobun noted that Code, Courts Article, § 3-815 discusses continued shelter care when, among other factors, return to the child's home is contrary to the safety and welfare of the child. The use of "home" appears to refer to wherever the child was with the parent. The Chair asked whether home necessarily refers to being with a parent. Ms. Day acknowledged that the child may be living with a sibling or other person. Assistant Reporter Cobun responded that the child's "home" describes where the child is.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Ms. Day presented Rule 11-203, Confidentiality of Records, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 200 - CHILD IN NEED OF ASSISTANCE; VOLUNTARY PLACEMENT

ADD new Rule 11-203, as follows:

Rule 11-203. CONFIDENTIALITY OF RECORDS

(a) Generally

All court records in CINA and voluntary placement proceedings pertaining to a child are confidential and may not be disclosed, by subpoena or otherwise, except by order of court on good cause shown, or as permitted by Code, Courts Article, §3-827 or Code, Human Services Article, §1-202.

(b) Sealing

(1) Generally

On motion, petition, or on its own initiative, and for good cause shown, the court may order the court records of a child sealed and shall order them sealed after the child has reached 21.

(2) Opening of Sealed Records

If sealed, court records of a child may not be opened, for any purpose, except by order of court for good cause shown.

(c) Furnishing Information to Nonparty Seeking Intervention

On request of a nonparty who files a motion to intervene pursuant to Rule 11-215, the clerk shall provide sufficient information within the requirements of Code, Courts Article, §3-827, to enable the nonparty to effectuate service.

Cross reference: See Rule 11-108 (d) concerning open and closed hearings and Rule 11-220 concerning termination of proceeding.

Source: This Rule is derived in part from former Rule 11-121. Paragraph (c) is new.

Rule 11-203 is accompanied by the following Reporter's note.

Proposed Rule 11-203 is derived from current Rule 11-121 and relevant statutes. Generally, records in proceedings under the Rules in Chapter 200 are confidential and may not be disclosed except by order of the court or as permitted by law.

> Section (b) governs sealing records. The court may order records of a child sealed for good cause on motion, petition, or its own initiative. The order may seal the records after the child reaches age 21. Sealed records may be opened only by order of the court for good cause shown.
>
> Section (c) provides that a nonparty seeking intervention is entitled to sufficient information to enable the nonparty to effectuate service.

Ms. Day asked if there were any comments on the automatic sealing provisions set forth in Rule 11-203. Ms. Lindsey pointed to section (c) requiring the clerk to provide sufficient information to a non-party in order for the non-party to serve a motion to intervene. She stated that it is unclear what information should be provided and it may be confusing to clerks. The Chair noted that Rule 11-215 permits a non-party to move to intervene for limited purposes. The motion must be served on the other parties. Ms. Lindsey noted that the clerks are anxious about confidentiality and juvenile matters, so it may make them uncomfortable if required to determine what constitutes sufficient information to provide to the non-party without clarity in the Rule.

The Chair noted that movants may or may not be registered users under MDEC. Ms. Day questioned whether the information would appear in the MDEC portal. Ms. Lindsey confirmed that the information would not show up. She noted that individuals would not even be able to see that a case exists on the public portal

at the courthouse. The Chair commented that if a non-party files a motion to intervene, then he or she is aware that there is a case.

Ms. Kaplan stated that an individual may only know that a case exists, or he or she may be incorrect and no case exists. She questioned whether it would be appropriate to ask the court to complete service of the motion to intervene to ensure that confidential information is not distributed. This process would be similar to a court serving the victim with documents in a criminal case when an expungement is requested. The victim's information is not given to the petitioner. Ms. Lindsey inquired whether the clerks would need to file a certificate of service. The Reporter said that she cannot think of another Rule that places the burden of service on the clerk. The burden needs to be on a party. She added that the Department of Social Services ("Department") would have the most information and the best chance at serving the other parties. Ms. Lindsey stated that her office currently refers individuals requesting information or documents for juvenile matters to the Department.

Magistrate Wolfe commented that it may be awkward to give a potential adversary the responsibility of completing service. Mr. Hartge said that placing the burden of service on the Department would be unfair. In most cases, the child, the parent, and the Department are represented. If moving to

intervene, the movant would be serving attorneys. The Chair noted that it depends on whether there are attorneys entered in the case for each party. Magistrate Wolfe agreed that there will always be at least two attorneys: child's counsel and the Department.

The Chair said that this situation appears most likely when someone like a grandparent wants custody of the child. Magistrate Wolfe agreed that an intervenor is typically a relative. Ms. Day noted that the foster parents may also seek to intervene.

Ms. Villamar suggested that additional language in the Rule should indicate that the clerk shall provide the case number, caption, and the identities of the parties that are required to be served to a movant seeking to intervene. Sensitive confidential information would not be revealed. Ms. Villamar added that a person already knows about the case if he or she is attempting to intervene. She added that the names and addresses of the parties to be served would include the child's counsel, parent's counsel, and the Department. The Chair commented that the movant only requires names and addresses. Ms. Hartge questioned whether the address of the parents would be provided to the movant. Ms. Villamar responded that the address of counsel should be provided, unless the party is *pro se* because he or she would need to be served.

Magistrate Wolfe noted that a *pro se* party planning to intervene may go to the clerk's office and request this information without a motion in hand. She questioned whether the clerk must provide this information before the person is prepared to file his or her motion. Del. Dumais suggested that a magistrate or judge determine if the information should be provided to the movant. The decision would be based on the filing of the motion, before service is rendered. She expressed concerns about the clerk making decisions about whether information can be provided without a determination by a judicial officer. The judicial officer should issue an order addressing whether the information should be provided to the movant. Ms. Lindsey approved of the suggestion.

The Chair wondered to what extent legal services would get involved to help movants in these cases. There are groups that provide such support. The Chair added that, in the example of a grandmother seeking custody, the grandmother would know that there is a case even if she did not have the case number. She would also know the name of the child and at least one of the parent's names.

Ms. Hartge noted that the ability of an individual to intervene in these cases in restricted. The movant requesting the information from the clerk may not be qualified to intervene. The court may be put in the position of not

technically having a motion before it, but determining whether the motion seeks appropriate relief. Magistrate Wolfe stated that the party seeking to intervene should present a motion. She agreed that the clerk should not be in the position of determining if it is a valid motion to intervene nor should the clerk need to determine who is required to be served. She expressed approval of sending the filing to a judge or magistrate first to determine if the motion is appropriate under the statute. Many of the attempts to intervene in these cases are about visitation. The Chair agreed that visitation is not an appropriate reason to intervene pursuant to the Rules. Magistrate Wolfe commented that the judicial officer must first determine whether the movant seeks appropriate relief to which he or she may be entitled. The second determination concerns who must be served.

Ms. LeMon inquired whether there are concerns about the *ex parte* nature of this proposed process because the pleading would first go to the judge and not to the parties. She voiced approval of Ms. Villamar's suggestion that the clerk provide the names of the parties. Ms. LeMon noted that, in any other filing situation, the filer must find addresses for service on his or her own. Magistrate Wolfe responded that these cases are not like other situations because this information is confidential.

The Chair noted that two things are clear from this discussion. First, non-parties may file motions to intervene. Second, the Rule indicates that information shall be provided for service. The Chair clarified that the question now concerns who provides the information, not whether it should be provided. The Chair acknowledged the proposal that, if the clerk does not provide the information, the request may be sent to a judge for review.

Del. Dumais commented that the motion can be presented to the judicial officer assigned to handle juvenile cases. The court can issue an order for the clerk to either provide or not provide the information to the movant. From an *ex parte* perspective, the parties will receive a copy of the order. Del. Dumais suggested that the order can provide that a copy of the motion must be sent to the parties with the order.

The Chair clarified that requesting visitation is not a proper motion under Rule 11-215. He asked whether a judge can decline to provide information to the movant for service. Del. Dumais responded that there can be a form order sent to the movant and to the parties indicating that the motion is not an appropriate motion to intervene. If more information is needed, the order can state that more details are required. This procedure would ensure that everyone receives notice and that no one talks directly to a judge. The clerk can be required to

send to all parties a copy of the document filed by the movant with the court's order.

By consensus, the Committee approved the suggested amendments to the Rule.

Ms. Hartge noted that the Reporter's note indicates that the court may seal records after the respondent reaches the age of 21. However, the Rule states that the court shall seal records under this circumstance. Ms. LeMon noted that the Rule also states that the court "may" seal certain records. The Chair acknowledged that Legal Aid has requested that the "may" in the Rule be changed to "shall." See Appendix 3. Ms. Hartge noted that the Rule indicates that the word "shall" is used after the respondent is 21. Ms. Day clarified that the "shall" applies after the respondent is 21, but the term "may" is used when the respondent is under the age of 21. Ms. Villamar added that there is a difference between confidential and sealed files. Ms. LeMon added that she does not understand why the record would not be sealed. These cases involve juveniles and private information. There is no reason to take this protection away from the vulnerable population.

Magistrate Wolfe noted that the Code states that the court may order the records sealed and that the court shall order the records sealed after age 21. The new Rule tracks the language of the Code. Ms. Kaplan added that the current Rule does not

indicate that the files are sealed, just that they are confidential. The index records are sealed upon termination of jurisdiction. She does not see where the current Rule seals the records prior to closing the case. The Chair responded that, under the access Rules, these cases are all shielded, but may not all be sealed. More than confidential, the records are shielded and not open to public inspection.

Ms. Hartge clarified that the Rule provides the records shall be sealed at age 21. She noted that the Reporter's note simply says "may" seal in regard to records after age 21. Assistant Reporter Heather Cobun responded that the Reporter's note can be corrected to "shall" to reflect the language in the Rule.

By consensus, the Committee approved the Rule as amended.

Ms. Day presented Rule 11-204, Shelter Care, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 200 - CHILD IN NEED OF ASSISTANCE; VOLUNTARY PLACEMENT

ADD new Rule 11-204, as follows:

Rule 11-204. SHELTER CARE

(a) Placement in Emergency Shelter Care

A local department may place a child in emergency shelter care before a hearing in conformance with Code, Courts Article, §3-815 (b).

Cross reference: See Code, Courts Article, §3-807 for the authority of a magistrate to order shelter care.

(b) Petition for Continued Shelter Care

Unless a child placed in emergency shelter care pursuant to section (a) of this Rule has been released, the local department shall:

(1) give to the child's parent, guardian, or custodian written notice of the emergency shelter care; and

(2) immediately file a CINA petition with a request for continued shelter care or a separate petition requesting continued shelter care including the allegations supporting the request for continued shelter care.

(c) Hearing

(1) Timing

The court shall hold a hearing on a request for continued shelter care not later than the next day following the filing of the petition. The hearing may be postponed or continued by the court for good cause shown, but it may not be postponed for more than eight days following the commencement of the respondent's emergency shelter care.

(2) Notice

The petitioner shall give reasonable notice of the time, place, and purpose of the hearing to the child's parents, guardian, and custodian, and to the child's other relatives, if they can be located.

(3) Presence

Respondents shall be present for the hearing, except that the attorney for respondent may waive the presence of a respondent.

Committee note: If the hearing is conducted by remote electronic means, "present" or "presence" means the ability (1) to observe the proceeding, (2) to communicate with other participants when such communication is permitted, and (3) to be observed by other participants when communicating.

(4) Rules of Evidence

The Rules of Evidence in Title 5, other than those relating to the competency of witnesses, do not apply to shelter care hearings. Privileges mandated or authorized by law shall be respected.

(d) Decision, Burden of Proof, and Order

(1) Limitation on Continued Shelter Care

The court may continue shelter care prior to adjudication if the court has reasonable grounds to find the criteria in Code, Courts Article, §3-815 (d) have been satisfied.

(2) Duration

The court may not order continued shelter care for more than 30 days, except that it may extend the shelter care for an additional period not exceeding 30 days if it finds, by a preponderance of the evidence, after a hearing held as part of an adjudication hearing, that continued shelter care is needed to provide for the safety of the child.

(3) Findings and Order

If the court orders continued shelter care, the court shall make written findings as to the grounds for removal and efforts to prevent removal as required by Code, Courts Article §3-815 (d) and (e). If the hearing was conducted by a magistrate, the magistrate also shall make written conclusions and recommendations. If a magistrate declines to order continued shelter care, the magistrate shall prepare

written findings in support of that determination and enter an order denying continued shelter care.

(4) Review of Magistrate's Shelter Care Determination

(A) Request

If a hearing under this Rule was conducted by a magistrate, a party may request immediate review of an order orally or in writing.

(B) Review by Judge

Not later than three days following a request for immediate review, a judge of the court shall review the file, any exhibits, and the magistrate's findings and recommendations and shall afford the parties an opportunity for oral argument.

Source: This Rule is derived in part from former Rule 11-112 and is in part new.

Rule 11-204 was accompanied by the following Reporter's note.

Proposed Rule 11-204 is derived from current Rule 11-112 and addresses shelter care.

Section (a) states that a local department may place a child in emergency shelter care prior to a hearing in conformance with the statute. A cross reference following section (a) refers to the authority of a magistrate to order shelter care.

Unless a child placed in emergency shelter care pursuant to section (a) is released, the local department is required to take the steps outlined in section (b). Section (b) states that the local department shall give notice to the child's parent, guardian, or custodian of the emergency shelter care and immediately file a CINA petition with a request for continued shelter care.

Section (c) is derived from current Rule 11-112 a.3. and governs hearings on a petition for continued

shelter care. The hearing must be held the next day following the filing of the petition unless postponed for good cause. The hearing may not be postponed for more than eight days following the commencement of the emergency shelter care. The petitioner must give reasonable notice of the time, place, and purpose of the hearing to the child's parent, guardian, and custodian as well as other relatives, if located.

A respondent must be present for the hearing unless the presence is waived by the respondent's attorney. The Title 5 Rules of Evidence do not apply to shelter care hearings but privileges shall be respected.

Subsection (d)(1) is derived from current Rule 11-112 b authorizes the court to continue shelter care prior to adjudication if there are reasonable grounds to find the criteria in the statute are satisfied. Subsection (d)(2) restricts the duration of continued shelter care to 30 days, with the possibility of an additional 30-day extension if the court finds after a hearing held as part of adjudication that the extension is needed for the child's safety.

Subsection (d)(3) requires the court ordering continued shelter care to make written findings regarding the grounds for removal and efforts to prevent removal. To facilitate review by a judge, additional requirements apply if shelter care is continued or denied by a magistrate. If a magistrate continues shelter care, the magistrate must make written conclusions and recommendations. If a magistrate denies shelter care, the magistrate must prepare written findings in support of that decision.

Subsection (d)(4) is new and addresses immediate review of a magistrate's shelter care determination as contemplated by the statute. A party may request review orally or in writing, and the review by a judge shall occur no later than three days following the request.

Ms. Hartge suggested striking the phrase "immediately" from subsection (b)(2) and substituting the phrase "on the next day."

She commented that her suggestion follows the current Rule. The time to file should be clear in the Rule. Children may be removed at 11 pm and, under the current practice, the filing occurs the next morning. If a child is removed at 2 am, there may be a filing that same day, but it probably will not be filed until the following day. The Chair noted that "the next day" is a defined term meaning the next court day. Ms. Villamar added that the Office of the Public Defender shares Ms. Hartge's view. By consensus, the Committee approved replacing "immediately" in subsection (b)(2) with "on the next day."

Ms. Day pointed out that Legal Aid did not like the use of the term "respected" in subsection (c)(4). See Appendix 3. The Chair commented that it is a term of art used when the court is not be bound by the Rules of evidence, but must respect privileges. He noted the term has been used for decades. Ms. LeMon clarified that the language states that a person can assert his or her privilege. She asked if the language was needed. Ms. Day responded that she believed the language was needed and there was no need to remove it.

The Chair questioned what individuals are considered the child's "other relatives" in subsection (c)(2) concerning reasonable notice. He indicated that, after discussions with Ms. LeMon, he understands "other relatives" to refer to other relatives who have been identified as a potential placement

resource for the child. Magistrate Wolfe agreed with the explanation of the phrase.

Ms. Hartge inquired whether "other relatives" will be further defined. The Chair added that the term cannot refer to all of the child's relatives in this context. Ms. Villamar agreed that some limiting language is needed in light of the confidential nature of the proceedings. The Rule should refer to relatives who are proposed as placement resources. The Chair suggested that the addition of language indicating that the Rule concerns relatives that have been identified as placement resources. Magistrate Wolfe noted that the number of other relatives receiving notice tends to be self-limiting because the Department's source of information is almost always the parents, if they are willing to share. The Department would then contact these relatives to see if they are potential resources. Magistrate Wolfe added that some distant relatives may lead the court to other resources, but they may not need to be at the hearing.

Ms. LeMon commented that she prefers the use of "identified" instead of "proposed" placement resources. Judge Ballou-Watts asked who identifies a prospective placement resource and questioned if it will be clear from the language of the Rule. Ms. LeMon responded that a resource may be identified

by anyone. Sometimes the parents or children identify relatives.

Ms. Kaplan noted that this language concerns who the Department must notify. At this point in the process, there have been no home studies. The resources are those identified by the petitioner as potential placement resources.

The Chair questioned whether referring only to resources identified by the petitioner only may be too limiting. If the child is older, he or she may believe that a certain person is a potential resource, regardless of the Department's position. Ms. Hill agreed that she would be concerned it is too limited if only referring to resources identified by the petitioner. She clarified that this Rule is not indicating that the resources have been vetted, just identified as potential resources.

Ms. Hartge commented that this discussion concerns a short period of time during which a worker tries to place a child and get records for the shelter care hearing. Ms. LeMon responded that the Rule only requires service on a relative if the individual can be located. If the Rule is limited to refer to potential resources identified by the Department only, the Department may conclude that an individual does not need to be located if the Department does not consider the individual a potential resource. The Chair agreed that there are valid concerns. He added that, if the child is in shelter care, the

Department has taken the child out of his or her home. If the child requests to live with a specific family member, the Department may not necessarily approve of the placement. However, if the child states that a family member is a good resource, shouldn't the Department be required to notify the individual of the hearing?

Judge Ballou-Watts suggested that the Committee look at the timing involved in this Rule. The notice discussed concerns the hearing on the shelter care petition. Judge Ballou-Watts said that, in her experience, it is common that parties or counsel will often identify potential placements at the hearing and the court will direct the Department to investigate the possible resources. Judge Ballou-Watts added that the Rule does not remove the requirement that the Department look at other relatives, but it does provide a baseline considering the information available to the Department at the time. She commented that the petition at issue is filed rather quickly. The Rule does not preclude the Department from having the responsibility to explore other relative resources.

Magistrate Wolfe added that exploring relative resources should be a part of the Department's reasonable efforts at the shelter hearing. Identification of resources, however, is not placed on the Department in Code, Courts Article, § 3-815, which states that reasonable notice should be given if the relatives

can be located. She clarified that the Code requires reasonable notice without specifying who is responsible for identifying the resources. Judge Ballou-Watts noted that the Department files the petition.

The Chair explained his concern that this hearing occurs quickly because shelter care is just the first step in this process. However, a child can stay in shelter care for at least 30 days or maybe more. There have been cases where a child's wishes may be antithetical to what the Department wants. Magistrate Wolfe responded that the Rule does not preclude counsel for the child or others from identifying and notifying potential resources. Sometimes the relative resources may even be brought to the hearing with one of the parties.

Ms. LeMon stated that, in all cases, if a party provides his or her attorney with contact information for a resource, the attorney should do what is possible to get the individual to the hearing. However, sometimes an attorney is unable to talk to his or her client until the hearing. She suggested that the Department has a larger window of time to reach possible placement resources. Magistrate Wolfe commented that the Department does not have much time prior to the hearing. If a child is removed on Wednesday, the Department will need to be in court on Thursday. Ms. LeMon responded that calls may be made on Wednesday or otherwise before the hearing.

Ms. Kaplan commented that there is an implication that people brought to the hearing by the Department are appropriate resources. The fact that a child identifies a resource does not mean that the individual is an appropriate resource. There is insufficient time for the Department to investigate a child's proposed resources before the hearing. She added that the Department should not bring people to the hearing who it does not have some reason to believe are appropriate resources. The court can order the Department to investigate resources proposed by the child. Ms. Kaplan noted that the idea that someone should be notified of the hearing at this point simply because the Department has his or her name does not seem appropriate for the protection, safety, health, and welfare of the child. Ms. LeMon responded that the Department will take this position described by Ms. Kaplan and those relatives will not be at the hearing. Ms. LeMon said that there are many reasons why the Department may consider a resource inappropriate. The court may disagree with the Department's determination. Any delay in placing the child with someone he or she knows and is comfortable with is too long of a delay. Ms. LeMon noted that the Department only needs to provide reasonable notice the identified individuals. An investigation is not required at this time.

The Chair inquired whether the possible language referring to resources identified by the petitioner is the issue. Ms. Hartge commented that there is disagreement even with the phrase "by the petitioner." She pointed out that shelter care hearings can be postponed for up to eight days on good cause shown. If a child requests placement with a specific person, there may be a short one or two day postponement to ensure the individual's presence at the hearing or to conduct an investigation of the individual.

Ms. Villamar suggested adding that the Department shall provide notice to potential relative resources, not requiring the Department to endorse the relatives as resources. The relatives may not be appropriate resources, but the Department can give the information to the court and provide notice so that the individuals may be at the hearing for the court to consider. Magistrate Wolfe inquired whether notice would be given to relatives who declined to serve as a resource. Ms. Villamar responded that individuals are not considered potential resources if they refuse to serve as resources. Assistant Reporter Cobun noted that the relative resources receive notice, but are not required to attend the hearing. Ms. LeMon noted that the Department still determines who is a potential resource. She added that the Department may decide someone is not a potential resource because of his or her background or

living situation. Magistrate Wolfe added as an example that an individual may be living with a registered sex offender. She stated that not all relatives can be brought in. For example, it would not make sense to bring the child's six-year-old sibling to the hearing. There must be some delineation.

The Chair commented that the issue comes down to one adjective. The language in the proposed Rule is too broad because there are many people that may be considered the child's "other relatives." The Rule was not intended to cover this broad a group of individuals. The Chair noted that, in terms of narrowing the scope of the phrase, the discussion has focused on other relatives that may be placement resources. It is the duty of the petitioner to give reasonable notice of the hearing. He added that there is disagreement about what people must receive notice. Should notice be provided only to the persons identified by the Department as potential resources or should it be given to all identified resources?

Magistrate Wolfe said that adding the term "potential" to the Rule addresses these issues by realistically narrowing the universe of individuals to receive notice. If other resources who did not receive notice are mentioned at the hearing, the court can refuse to make a finding of reasonable efforts.

The Reporter clarified that subsection (c)(2) should read, "...and to the child's other relatives who may be a potential

placement resource." Ms. Day asked whether the Committee agreed with the proposed language. Judge Ballou-Watts commented that the new language in subsection (c)(2) may state, "...who have been identified as potential placement resources." The Chair noted that the difference was a matter of style. Judge Ballou-Watts noted that the proposed language does not indicate who has identified the resource. By consensus, the Committee remanded the matter to staff to draft language concerning the reference to placement resources in subsection (c)(2).

Ms. Lindsey raised a question about requesting immediate review of the order either orally or in writing. She asked whether a party can come to the clerk's counter and orally request that an order be reviewed, leaving the clerk to put something in writing. Ms. Day responded that the oral request for review of an immediate order must be done in front of a magistrate. The party must tell the magistrate right then and there that he or she requests a review. Ms. Lindsey responded that it is not clear in the Rule that the request is made at the hearing. Ms. Day clarified that the clerk will have to deal with the request in writing, but not with an oral request. Del. Dumais added that a portion of Rule 11-204 is modeled after Rule 9-208. If the magistrate states that an immediate order is to be entered, the parties can indicate that they want to see a judge. Magistrate Wolfe indicated that reviews of immediate

orders have never involved the clerk's office. Generally, parties are sent directly to the judge for review. Del. Dumais added that, in family law, the case is sent to the duty judge.

Ms. Hartge asked if the reference to three days in subsection (d)(4)(B) can be changed to "not later than the next day." Magistrate Wolfe commented that multiple attorneys often cannot agree to come back into court the very next day. Ms. Hartge expressed concern about waiting three days for review. The Chair responded that the next court date may be in three days. Ms. Day added that three days is the realistic time period. Judge Ballou-Watts agreed that the reality is three days.

The Chair noted that subsection (d)(4)(B) also mentions the magistrate's finding and recommendations. He questioned whether the term "conclusions" should be added to that phrase. By consensus, the Committee approved the addition of "conclusions" to subsection (d)(4)(B).

Ms. Villamar pointed to subsection (c) of Rule 11-204 addressing the timing of the hearings. A hearing for a request for continued shelter care currently takes place the next day that the court is open after the removal. This proposed language appears to add an additional day. She provided an example of a child being removed and the Department filing its petition the next day that the court is open. Under subsection

(c)(1), the court is not required to hold a hearing until the next day after the filing of the petition. Consequently, the hearing is held two days after the removal, while the current Rule requires a hearing to be held in one day after removal. Ms. Villamar suggested that this substantive change should not be made. Ms. Hartge agreed that hearings are currently heard on the day the petition is filed, typically in the afternoon.

The Chair asked about the timing of the hearing if the petition is filed in the afternoon. Ms. Hartge responded that the petitions typically are not filed at that time. Ms. Day questioned whether the Rule should specify a time of day for filing. Ms. Villamar responded that because the hearing is required to be held the next day that the court is open, the Department is required to file the petition no later than that day. In order to provide adequate note, petitions are usually filed by the morning. Ms. Villamar added that the current timeframe has been working. Assistant Reporter Cobun stated that the language of the proposed Rule may have been muddled by using the phrase "the next day" twice. The Chair responded that the Rule states, "not later than the next day." If the hearings are being held in the afternoon, they can continue to be held that way. Magistrate Wolfe clarified that the current Rule requires the hearing on "the same day."

Ms. Villamar said that there is still an issue with the proposed language. For example, if a child is removed on Wednesday night, the Department is required to file a petition by Thursday. Under subsection (c)(1), the hearing is not required to occur until no later than the next day following the filing of the petition. An additional day is therefore added, although the hearing may occur earlier. Ms. Hartge responded that, in terms of giving notice, the proposed language may create confusion about the scheduled hearing date if the court can elect to hold the hearing on either Thursday or Friday.

The Chair noted that he is having trouble combining subsections (c)(1) and (c)(2). If the petition is filed in the afternoon, how will notice be given under (c)(2) for a hearing that day? Ms. Hartge responded that the current practice is to file the petition the next day in the morning. She said that she has not heard of a local department filing a petition at 3 pm in the afternoon. Ms. Day asked whether the Rule should state that the court shall hold a hearing on the same day that the petition is filed. Magistrate Wolfe added that holding a hearing on the same day is the current practice. Ms. Hartge agreed, noting it is in the current Rule as well. By consensus, the Committee approved amending the Rule to require that a hearing be held on the same day a petition is filed.

Ms. Day presented Rule 11-205, CINA Petition, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 200 - CHILD IN NEED OF ASSISTANCE; VOLUNTARY PLACEMENT

ADD new Rule 11-205, as follows:

Rule 11-205. CINA PETITION

(a) Who May File

A CINA petition may be filed only by:

(1) a local department; or

(2) under the circumstances set forth in Code, Courts Article, §3-809 (e), the person or agency that filed a complaint or caused a complaint to be filed with the local department.

Cross reference: See Rule 11-202 (a) for the definition of "CINA petition." See Code, Courts Article, §3-809 for administrative procedures relating to the decision whether to file a petition.

(b) Where Filed; Transfer

(1) Where Filed

A CINA petition shall be filed in the county where:

(A) the child is residing when the petition is filed; or

(B) the act on which the petition is based

allegedly occurred.

(2) Transfer

Whenever a CINA petition is filed other than in the county in which the child resides, the court may transfer the case in accordance with Code, Courts Article, §3-805.

Cross reference: See Code, Courts Article, §3-805 (a)(1) concerning venue for filing.

(c) Separate CINA Petition for Each Child

A separate CINA petition shall be filed for each child alleged to be a CINA.

(d) Caption

The CINA petition shall be captioned "In the Matter of . . . . . ."

(e) Form; Contents

The CINA petition shall be filed in substantially the form approved by the State Court Administrator and posted on the Judiciary website and shall state:

(1) The name and address of the petitioner and the basis of the petitioner's authority to file the petition pursuant to section (a) of this Rule.

(2) The child's name, address, and, if known, date of birth, and the name and address of the child's parent, custodian, or guardian.

(3) The basis for the court's jurisdiction over the child pursuant to Code, Courts Article, §3-803 or §3-804.

(4) That the child is in need of assistance and, in clear and simple language, the alleged facts in support.

(5) The name and address of each witness, known at the time the petition is filed, whom the petitioner

intends to call to testify in support of the petition.

(6) Whether the child is in shelter care, and, if so:

(A) the date the shelter care commenced;

(B) whether the child's parent, custodian, or guardian has been notified; and

(C) whether the petitioner is seeking continued shelter care.

(f) Signature; Affidavit

(1) Who Must Sign

The CINA petition shall be signed by:

(A) the petitioner personally, if the petitioner is an individual; or

(B) an attorney for the petitioner in other cases.

(2) Effect of Signature

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 a legal and factual basis to support the petition, and that it is not filed for an improper purpose or delay.

(3) When Affidavit Required

A CINA petition filed under the Interstate Compact for Juveniles or the Interstate Compact on the Placement of Children shall be verified by affidavit and comply with the applicable Compact.

Cross reference: For the Interstate Compact for Juveniles, see Code, Human Services Article, Title 9, Subtitle 3. For the Interstate Compact on the Placement of Children, see Code, Family Law Article, Title 5, Subtitle 6.

(g) Copies

The petitioner shall file a sufficient number of copies to provide for service on the parties. Committee note: Electronic filing of pleadings and papers is allowed only as provided by Rules Title 20.

Source: This Rule is derived in part from former Rule 11-103. Section (f) is derived from former Rule 11-103 a.3. and Rule 1-311 (b). Section (g) is derived in part from former Rule 11-103.

Rule 11-205 was accompanied by the following Reporter's note.

Proposed Rule 11-205 is derived from current Rule 11-103 and governs the CINA petition process. Section (a) addresses who is authorized by law to file a petition – a local department or, under certain circumstances, the person or agency that filed a complaint – and section (b) addresses the appropriate venue for filing a petition.

Section (c) requires a separate CINA petition to be filed for each child alleged to be a CINA and section (d) states the proper caption for the petition.

Section (e) is derived from current Rule 11-103 a.2. and states the required contents of a CINA petition. A petition must provide information about the petitioner, the child, and the basis for the court's jurisdiction. The petition must also state that the child is in need of assistance and the facts supporting that allegation and the names of any witnesses. The petition shall state whether the child is in shelter care and provide details.

Section (f) is derived from current Rule 11-103 a.3. and addresses signature requirements and when an affidavit is required pursuant to an interstate compact. A cross reference following section refers to the statutes adopting the Interstate Compact for Juveniles and the Interstate Compact on the Placement of Children.

> Section (g) is derived from current Rule 11-103 b and requires the petitioner to file a sufficient number of copies of the petition to provide for service on the parties. A Committee note following the section addresses permitted electronic filing.

Ms. Day explained that two comments were received from Legal Aid concerning this Rule. See Appendix 3. Concerns were raised about providing an address for the child and using the term complaint instead of petition in subsection (a)(2).

Ms. Hartge responded that the Department uses the Department's address as the child's address. The address of a foster home is not given out. Ms. Hartge said that, in terms of the use of "complaint" in subsection (a)(2), the term refers to the limited process whereby a complainant files his or her own CINA petition if the Department refuses to file a petition. She noted that the filing is still called a CINA petition, but the term complaint refers to the process used to file the petition after a local department's refusal. Magistrate Wolfe stated that the process parallels the delinquency provisions and agreed that the terms "complaint" and "petition" are not interchangeable in the Rule.

Ms. LeMon noted her agreement with Ms. Hartge's explanation, but added that the Rule uses the term complaint before using the term petitioner. The term complainant is not used. She expressed concerns that the language may be

confusing. Magistrate Wolfe stated that the phrasing has not presented an issue yet. Assistant Reporter Cobun responded that the term "complaint" appears in Code, Courts Article, § 3-809 in the discussion of receipt of a complaint from a person or agency, but it is not a defined term. The Chair asked for a recommendation with respect to Rule 11-205. Ms. LeMon clarified that the person who filed a complaint may then file a petition. Assistant Reporter Cobun confirmed, pointing to section (e) of the Rule.

Ms. LeMon said that subsection (e)(2) requires the address of the child to be included in the petition. She acknowledged that Ms. Hartge explained that the address of Department is provided as the address of the child. Magistrate Wolfe noted that a non-sheltered CINA case will still include the child's address.

The Chair pointed to subsection (e)(6), requiring that the petition state whether the child's parent, custodian, or guardian has been notified if the child is in shelter care. He questioned whether other relatives should be added for that notice too. Magistrate Wolfe responded that notice to other relatives does not need to be part of the pleading.

Magistrate Kim raised a question about subsection (e)(5), requiring that the petition state the name and address of each witness to testify in support of the petition known at the time

of filing. When a petition is filed in Montgomery County, names and addresses are not listed in the CINA petition. She added that a pretrial statement will be filed or distributed at the time of mediation about two weeks after the petition is filed. The pretrial statement may generally identify people. She said that she is unsure why this information needs to be included at the time of the petition. Magistrate Wolfe responded that providing the information is an issue of notice to the parties. This notice is similar to the notice provided in delinquency cases. Parties are entitled to know who will be called to give evidence in the case.

Magistrate Kim acknowledged that the names and addresses of the witnesses are listed in a delinquency petition when filed. In a CINA petition, this information is not included at the time of filing. She noted that the information is furnished to the opposing party within a two-week time period because the discovery order indicates that parties need to provide discovery and prepare a pretrial statement with the names and address of every witness. Ms. Villamar responded that subsection (e)(5) is not a new part of the Juvenile Rules. Assistant Reporter Cobun clarified that the address requirement is new. The current Rule requires the petition to include the name of each witness. Magistrate Wolfe noted that it is not a complicated Rule. Ms. Villamar responded that petitions in Baltimore City have

included this information for years.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Ms. Day presented Rule 11-206, Voluntary Placement Petition, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 200 - CHILD IN NEED OF ASSISTANCE; VOLUNTARY PLACEMENT

ADD new Rule 11-206, as follows:

Rule 11-206. VOLUNTARY PLACEMENT PETITION

(a) Who May File

A voluntary placement petition may be filed only by a local department.

Cross reference: See Code, Family Law Article, §5-525 (b)(2)(ii), requiring approval of a juvenile court for a continuation beyond 180 days of an out-of-home placement under a voluntary placement agreement. See Code, Courts Article, §3-819.1 concerning the voluntary placement hearing.

(b) Where Filed

(1) The voluntary placement petition for a child under the age of 18 shall be filed in the county where the parent or legal guardian resides.

(2) The voluntary placement petition for a former CINA shall be filed in the county where:

(A) The former CINA's commitment to the local department was rescinded; or

(B) The former CINA receives voluntary placement services.

(c) Caption

The voluntary placement petition shall be captioned "Matter of the Voluntary Placement of ....."

(d) Content

(1) The voluntary placement petition for a child under the age of 18 shall state:

(A) The name and address of the petitioner and the basis of the petitioner's authority to file the petition pursuant to section (a) of this Rule.

(B) The name, address, and birth date of the child who is the subject of the petition.

(C) The name and address of the child's out-of-home placement.

(D) The names and addresses of the child's parents or guardian, if known.

(E) The facts supporting the finding that it is in the best interest of the child that the voluntary placement continue.

(F) The name and address of each witness known at the time the petition is filed whom the petitioner intends to call to testify in support of the petition.

(G) A copy of the voluntary placement agreement.

(2) The voluntary placement petition for a former CINA shall state:

(A) The name and address of the petitioner and the basis of the petitioner's authority to file the petition pursuant to section (a) of this Rule.

(B) That the former CINA's commitment to a local department was rescinded after the individual reached the age of 18 years but before the individual reached the age of 20 years and 6 months.

(C) That the former CINA did not exit foster care due to reunification, adoption, guardianship, marriage, or military duty.

(D) The name, address, and birth date of the former CINA who is the subject of the petition.

(E) The facts supporting the finding that it is in the best interest of the former CINA that the voluntary placement continue.

(F) The name and address of each witness known at the time the petition is filed whom the petitioner intends to call to testify in support of the petition.

(G) A copy of the voluntary placement agreement.

(e) Signature

The voluntary placement petition shall be signed in the manner set forth in Rule 11-205 (f)(1) and shall have the effect set forth in Rule 11-205 (f)(2).

(f) Copies

The petitioner shall file a sufficient number of copies to provide for service on the parties.
Source: This Rule is new.

Rule 11-206 was accompanied by the following Reporter's note.

Proposed Rule 11-206 is new but is derived from statutes governing voluntary placement petitions.

Section (a) states that a petition may be filed only by a local department. A cross reference cites the Code section requiring court approval for a

continuation of an out of home placement beyond 180 days and also refers to the statute governing the voluntary placement hearing.

Section (b) states where a petition may be filed for a child under the age of 18 or a former CINA.

Section (c) states the required caption for a petition.

Section (d) addresses the required content for a voluntary placement petition for a child under 18 or a former CINA. The petition must include information about the child or former CINA as well as the petitioner, including the petitioner's authority to file the petition. The petition must state the facts supporting the finding that it is in the best interest of the child to be in a voluntary placement. For a former CINA, the petition must state why it is in the former CINA's best interest for the placement to continue.

Section (e) addresses signature requirements.

Section (f) requires the petitioner to file a sufficient number of copies of the petition to provide for service on the parties.

Ms. Day noted that Rule 11-206 concerns voluntary placement petitions. She explained that there are several issues raised by Legal Aid, including a question about the definition of a "former CINA." See Appendix 3. The Chair responded that "former CINA" is a defined term. Magistrate Wolfe added that the term is in the definitions section. The Chair noted that the term is defined in Chapter 100. Assistant Reporter Cobun clarified that it is defined in 11-202 (b).

Ms. Day summarized other concerns raised by Legal Aid. See

Appendix 3. The issues raised included clarifying that shelter care hearings should not be delayed by noncompliance and that the person or agency who has custody should be required to produce the child.

Magistrate Wolfe said that the most salient feature of any issues with Rule 11-206 is that voluntary placements and former CINAs in voluntary placements are different categories. One must question how much of the typical CINA Rules apply to the voluntary or former CINA voluntary placements. She wondered whether the two categories should stand along in some respects. For example, it is not expected that children in voluntary placements would participate in inpatient evaluations because they are likely already in a facility. Magistrate Wolfe commented that many aspects of CINA cases are not relevant to voluntary and post-CINA voluntary cases.

The Chair commented that, if the Rule is split, Rules addressing voluntary and post-CINA voluntary placement cases would be moved to Chapter 500 of Title 11 concerning other proceedings. It would be self-contained. If Rules concerning voluntary and post-CINA voluntary placement cases are moved out of Chapter 200, CINA Rules should be incorporated by reference when desired.

Magistrate Wolfe responded that Chapter 500 should be reviewed to determine that additional problems are not created

by moving this category to the Chapter. The Reporter noted that Chapter 500 serves as a miscellaneous catchall for Rules that do not fit in the other Chapters of Title 11.

Ms. Hartge noted that voluntary placements are significant and should not be part of a catchall provision. In some cases, six-month review hearings are required, as well as findings of reasonable efforts. There are parallels to CINA cases. Magistrate Wolfe commented that the issue is that not all aspects of the cases are parallel. The Chair stated that the Rule can be moved, but questioned where to move it. The topic can also remain in Chapter 200 as a separate Rule that is as self-contained as possible. He added this is what was done with CINS in Chapter 500.

Magistrate Wolfe noted that the topic may either remain where it is, while highlighting the exclusions in the current Chapter, or moved, carrying over what is applicable in the current Chapter. The Chair agreed that those are the options before the Committee. He asked those dealing with these cases to suggest the best place to put the Rules for these cases. Magistrate Wolfe responded that courts have gotten used to the Rules for this topic being with Rules for CINA cases because the two categories are together in the statute for the most part. A lot of it is in the Family Law Article. By consensus, the Committee remanded the matter to staff to draft possibilities

for further consideration by the Committee.

Ms. Day presented Rule 11-207, Summons; Notice to Attorney, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 200 - CHILD IN NEED OF ASSISTANCE; VOLUNTARY PLACEMENT

ADD new Rule 11-207, as follows:

Rule 11-207. SUMMONS; NOTICE TO ATTORNEY

(a) Issuance of Summons

Unless the court orders otherwise, upon the filing of a petition, the clerk shall issue a summons for each party other than the petitioner and the respondent child. If the petitioner is a person or entity other than the local department, the clerk also shall issue a summons to the local department.

(b) Content

(1) In General

A summons shall contain:

(A) the name of the court and the assigned docket reference;

(B) the name and address of the party summoned;

(C) the date of issue;

(D) the date, time, and place of the scheduled hearing;

(E) a statement that failure to answer the

petition may result in the issuance of a body attachment for the person summoned; and

(F) a statement that the party summoned shall keep the court advised of the party's address during the pendency of the proceedings.

(2) CINA Petition

A summons issued on the filing of a CINA petition shall also contain a notice substantially in the form set forth in Form 11-207 of the Appendix of Forms that follows the Rules in this Chapter.

(3) Production of Child

A summons to a parent, custodian, or guardian of a respondent child shall require the person to produce the child at the place and on the date and time stated in the summons.

(c) Service

(1) Manner of Service

The summons, together with a copy of the petition, shall be served in the manner provided by Rule 2-121.

(2) Failure of Service

If the parent, custodian, or guardian of the respondent child cannot be served for any reason, the petitioner shall file proof of the steps taken to give notice or provide sworn testimony of the steps taken to give notice. Notice of the pendency and nature of the proceeding shall be given as directed by the court.

(3) Effect of Delay in Service

Delay in effecting service upon, or in giving notice to, any parent, custodian, or guardian shall not prevent the court from proceeding.

(d) Notice to Child's Attorney

The clerk shall send to the respondent child's attorney a copy of the petition and a notice of any scheduled hearing.

Source: This Rule is new.

Rule 11-207 was accompanied by the following Reporter's note.

Proposed Rule 11-207 governs the issuance, content, and service of a summons. This Rule is new but draws from current Rules 2-112, 2-114, and 2-121.

Upon the filing of a petition, the clerk issues a summons for each party other than the petitioner and the child. If the petitioner is not the local department, a summons shall also be issued to the local department. A summons must provide details of the case, the party being summonsed, and the scheduled hearing as well as a statement that the failure to answer may result in a body attachment and a statement that the party must keep the court advised of his or her address during proceedings. A summons issued on the filing of a CINA petition must contain a notice substantially in the form of Form 11-206. A summons to a parent, custodian, or guardian of the respondent child should require the person to produce the child as dictated in the summons.

Section (b) provides that the summons and copy of the petition shall be served in the manner provided by Rule 2-121. If the parent, custodian, or guardian cannot be served, the petitioner shall file proof of the steps taken to attempt service. Subsection (b)(3) provides that a delay in effecting service on or giving notice to a parent, custodian, or guardian does not prevent the court from proceeding.

Section (d) directs the clerk to send a copy of the petition and notice of any scheduled hearing to the respondent child's attorney.

Ms. Day noted that Rule 11-207 addresses summonses and how to get attorneys to the hearing. The Chair inquired if a

separate Rule for summonses is needed in each Chapter or if it can be addressed in Chapter 100. He noted that language about remote hearings may also be added.

Ms. Hartge commented that the Office of the Public Defender does not represent parents in voluntary placement proceedings. The Department would issue a notice and summons to the parent, but the Public Defender would not be representing the parent. There would be two types of notice. In the second type, the Department would just notify the former CINA to appear at the hearing. Ms. Hartge noted that it has been her experience that the younger children in voluntary placements cases are often unable to be brought to court. The children may be in crisis or in a residential treatment center that does not recommend transporting the child to court. Ms. Hartge said that she does not want to take away the right of a child to be present at court or for their attorney to argue for his or her presence, but it may be problematic to bring the child to court in voluntary placement cases where the child is in a residential placement. Ms. LeMon responded that the Department can make that argument to the Court and it can be considered on a case-by-case basis. The default should be that the child is produced. If the Department presents documentation that the child cannot be produced and the court finds the reason acceptable, then production of the child may be excused.

Magistrate Wolfe commented that, depending on the condition of the child, a remote hearing may be appropriate. If the child is medically or emotionally fragile, or there is a risk to themselves or others to transport the child, a remote hearing would be useful. Magistrate Wolfe pointed out that the child is always represented, so the child's attorney may waive the child's presence. Ms. Hartge noted that subsection (b)(3) already indicates that the attorney can waive the child's presence. The Chair suggested adding "unless otherwise ordered by the court" to subsection (b)(3). The Reporter asked how the court would have the relevant information about whether the child should be produced. The Chair noted that it might not.

Ms. Day said that other Rules permit an attorney to waive the child's appearance. Ms. LeMon indicated that it is unclear why language about waiver of appearance is needed because such waiver already occurs. There is no dispute that an attorney can waive the appearance of his or her client.

The Chair noted that section (b), content, is a duplication of what is in 11-106 (b). He stated that he is unsure if the information in the section needs to be repeated. By consensus, the Committee approved amending the Rule by deleting section (b).

The Committee approved the Rule as amended by consensus.

Ms. Day presented Rule 11-208, Right to Attorney; CASA, for

consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 200 - CHILD IN NEED OF ASSISTANCE; VOLUNTARY PLACEMENT

ADD new Rule 11-208, as follows:

Rule 11-208. RIGHT TO ATTORNEY; CASA

(a) Generally

A party is entitled to the assistance of an attorney at every stage of a CINA proceeding.

(b) Representation of Child

(1) Generally

A child who is the subject of a CINA petition or petition for voluntary placement shall be represented by an attorney. The right to an attorney for a child may not be waived.

(2) Source of Attorney

Unless the court finds that it would not be in the best interests of the child, the court (A) shall appoint an attorney with whom the Department of Human Services has contracted to provide that service, and (B) if another attorney has entered an appearance for the child, the court shall strike the appearance of that attorney.

(3) Assessment of Compensation for Child's Attorney

After considering the party's ability to pay, the court may assess against any party reasonable compensation for the services of an attorney appointed to represent a child.

(c) Other Parties; Representation at State Expense

(1) Limitation on Entitlement

Except as otherwise provided in this Rule and for the local department, a party is not entitled to representation at State expense unless the party is (A) indigent, or (B) otherwise not represented and under the age of 18 and incompetent by reason of mental disability.

(2) Public Defender

The Office of the Public Defender may not represent a party in a CINA proceeding unless the party (A) is the parent or guardian of the alleged CINA, (B) applies to the Office requesting representation in the proceeding, and (C) is financially eligible for the services of the Public Defender.

(d) Court-Appointed Special Advocate

In addition to the appointment of an attorney, the court may appoint a special advocate under the Court-Appointed Special Advocate Program created by Code, Courts Article, §3-830.

Cross reference: See Code, Courts Article, §3-813 concerning assistance of counsel. See Code, Courts Article, §3-830 concerning court-appointed special advocates.

Source: This Rule is derived in part from former Rule 11-106 and is in part new.

Rule 11-208 was accompanied by the following Reporter's note.

Proposed Rule 11-208 is derived in part from current Rule 11-106. Section (a) states that a party is entitled to the assistance of an attorney at every stage of a CINA proceeding.

Section (b) governs representation of a child. A

child respondent is always represented, and the right to an attorney cannot be waived. Unless it is not in the best interest of the child, the court must appoint an attorney contracted by the Department of Human Services to represent a child and strike the appearance of another attorney who has entered an appearance. After considering the party's ability to pay, the court may assess reasonable compensation against any party for the services of an attorney appointed to represent a child.

Reasonable costs may be assessed against any party to compensate the attorney appointed to represent a child. The Subcommittee determined that the ability to pay must be considered prior to the assessment of costs against a party.

Other parties may be entitled to representation at State expense as provided in section (c). A party is entitled to representation at State expense if the party is indigent or under the age of 18 and incompetent by reason of mental disability. The Office of the Public Defender may only represent a party in a CINA proceeding if the party is the parent or guardian of the respondent child, applies to the office requesting representation, and is financially eligible.

The court may also appoint a Court-Appointed Special Advocate for a respondent child as provided in section (d).

Ms. Day noted that Rule 11-208 concerns a party's right to an attorney and the appointment of a CASA. The Chair stated that the "and" in subsection (c)(1)(B) should be replaced with "or."

Ms. Hartge pointed out that the current statute on which subsection (c)(1) is based states, "... for the local department and the child." The phrase "and the child" has been dropped

from the Rule. Magistrate Wolfe agreed with Ms. Hartge's recitation of the statute and asked if subsection (c)(1) should use the same language. Ms. Day noted the Rule may be amended to conform with the statute. Magistrate Wolfe suggested that the words "and the child" be added after "local department" in subsection (c)(1). Ms. Hartge agreed with the proposal. By consensus, the Committee approved the proposed amendment.

Ms. Hartge noted that a child is entitled to an attorney at State expense because his or her counsel is paid for by the Maryland Legal Service Program. Subsection (b)(2) references the appointment of an attorney with a contract with the local department, but does not discuss State expense. Ms. Hartge added that if there is a conflict or no attorney is under contract, the child will still be represented at State expense. Ms. Day noted that subsection (b)(2) provides that the court shall appoint an attorney when there is a contract to provide the service. Ms. LeMon commented that the subsection does not indicate that the appointment is at State expense.

The Chair pointed to subsection (c)(3), indicating that the State can recover money for the appointment of an attorney for the child. Ms. Hartge responded that the State does not seek to recover the money propounded under the Maryland Legal Service Program. The Chair noted that they can recover the funds under the Rule and it may be ordered by the Court. Ms. Hartge noted

her suggestions aim to make the Rule consistent with Code, Courts Article, § 3-813. Ms. Day asked whether subsection (c)(3) should be deleted. Assistant Reporter Cobun responded that subsection (c)(3) is in the statute.

The Chair pointed to subsection (c)(2). He noted that the authority of the Office of the Public Defender to represent parties is established by the Code. He inquired whether the Court of Appeals can adopt such a Rule about representation. The Reporter responded that this aspect of representation by the Public Defender is in the Code. The Chair noted that this Rule indicates that the Public Defender may not represent a party under certain circumstances, instead of prescribing who they may represent.

Ms. Villamar responded that that portion of the Rule appears superfluous. The parties are entitled to representation and the Office of the Public Defender can represent the parties under certain circumstances. She noted that it was unclear why this section is needed in the Rule. Magistrate Wolfe responded that the language is from Code, Courts Article, § 3-813 (c). The Chair withdrew his concern upon consideration of the Code.

By consensus, the Committee approved the Rule as amended, subject to the correction in subsection (c)(1)(B) by the Style Subcommittee.

Ms. Day presented Rule 11-209, Response to Petition, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 200 - CHILD IN NEED OF ASSISTANCE; VOLUNTARY PLACEMENT

ADD new Rule 11-209, as follows:

Rule 11-209. RESPONSE TO PETITION

(a) Nature of Response

A party served with a petition may file a written response that admits or denies all or any of the facts alleged in the petition. Any allegation not admitted in the response is deemed denied.

(b) Withdrawal of Admission

At any time before disposition, the court, in the interest of justice, may permit an admission in a response to be withdrawn.

Source: This Rule is derived from former Rule 11-107.

Rule 11-209 was accompanied by the following Reporter's note.

Proposed Rule 11-209 is derived from current Rule 11-107. Section (a) is derived from current Rule 11-107 (a) and provides that a party served with a petition may file a written response that admits or denies any or all facts alleged. Any allegation not admitted is deemed denied.

Section (b) provides that, in the interest of

justice, the court may permit an admission to be withdrawn before disposition.

Ms. Day said that Rule 11-209 addresses responses to petitions and is fairly simple. There being no motion to amend or reject the proposed Rule, it was approved as presented.

Ms. Day presented Rule 11-210, Amendments to Pleadings and Other Papers, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 200 - CHILD IN NEED OF ASSISTANCE; VOLUNTARY PLACEMENT

ADD new Rule 11-210, as follows:

Rule 11-210. AMENDMENTS TO PLEADINGS AND OTHER PAPERS

(a) Generally

With the approval of the court:

(1) A CINA petition may be amended at any time prior to the commencement of the adjudicatory hearing. With the approval of the court and for good cause shown, the CINA petition may be amended at any time prior to the conclusion of the adjudicatory hearing;

(2) A voluntary placement petition may be amended at any time prior to the conclusion of the first voluntary placement hearing; and

(3) A motion or other pleading may be amended at any time before the final disposition of the motion or pleading.

(b) Continuance; Postponement

If an amendment is made, the court shall grant the parties a continuance or postponement as justice may require in light of the amendment.

Source: This Rule is derived in part from former Rule 11-108 and is in part new.

Rule 11-210 was accompanied by the following Reporter's note.

Proposed Rule 11-210 is derived from current Rule 11-108.

Generally, a CINA petition may be amended at any time before the adjudicatory hearing begins or, for good cause shown, prior to the conclusion of the adjudicatory hearing. A voluntary placement petition may be amended before the conclusion of the first voluntary placement hearing. A motion or other pleading may be amended at any time before the final disposition of the motion or pleading.

If an amendment is made, section (b) requires the court to grant a continuance or postponement, as justice may require.

Ms. Day stated that Rule 11-210 concerns amendments to pleadings and other papers. She noted that a comment was received pertaining to this Rule from the Office of the Attorney General. See Appendix 4.

Ms. Hartge explained that the current Rule provides that a CINA petition may be amended at any time prior to the conclusion of the adjudicatory hearing "by or with the approval of the court." Subsection (a)(1) of the proposed Rule only states that such amendments may be made "with the approval of the court."

The Chair asked what the addition of "by" adds. Ms. Hartge responded that the inclusion of "by" suggests that the court may amend the petition. The Chair asked whether the court may amend the petition without adding the "by" to the phrase. The Reporter questioned why the court would amend a party's pleading. Magistrate Wolfe noted that she did not believe such amendment should occur without a request. Ms. Day added that, even with "by" in the Rule, she does not believe the court can amend a petition *sua sponte*.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Ms. Day presented Rule 11-211, Study; Physical or Mental Examination, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 200 - CHILD IN NEED OF ASSISTANCE; VOLUNTARY PLACEMENT

ADD new Rule 11-211, as follows:

Rule 11-211. STUDY; PHYSICAL OR MENTAL EXAMINATION

(a) Order

(1) Generally

Any order for a study or examination pursuant to Code, Courts Article, §3-816 shall specify the

time, place, manner, conditions and scope of the study or examination and the person or persons by whom it is to be made.

(2) Physical or Mental Examination

Any order for a physical or mental examination pursuant to Code, Courts Article, §3-816 also:

(A) Shall require that the examination be conducted on an outpatient basis if, considering the child's condition, that is feasible and appropriate;

(B) May order an inpatient evaluation if, after a hearing, the court finds: (i) that an inpatient evaluation is necessary, and (ii) that there is no less restrictive means to obtain an evaluation; and

(C) May address: (i) the filing of a report of findings and conclusions, and the testimony at a hearing, by the examining physician, psychiatrist, psychologist or other professionally qualified person, (ii) the payment of the expenses of the examination, and (iii) any other relevant matters.

(b) Service of Copies of Report

Notice and copies of all studies and reports of examinations made to the court under this Rule shall be served on the attorney for each party represented by an attorney and on each unrepresented party. Reports ordered pursuant to Code, Courts Article §3-816 shall be served at least 5 days before presentation to the court.

(c) Use of Report Ordered Under Code, Courts Article §3-816

The report of an examination ordered pursuant to Code, Courts Article §3-816 and testimony regarding that report is not admissible at an adjudicatory hearing but is admissible at a disposition hearing and post-disposition hearing.

Cross reference: See Code, Courts Article, §3-816 concerning case studies.

Source: This Rule is derived in part from former Rule 11-105 and is in part new.

Rule 11-211 was accompanied by the following Reporter's note.

Proposed Rule 11-211 is derived in part from current Rule 11-105. Code, Courts Article, §3-816 provides that after a petition is filed, the court may order the local department or another qualified agency to arrange for a study concerning the child and the child's family and environment. As a part of the study, the court also may order that the child or any parent, guardian, or custodian be examined by a qualified person.

Section (a) is modeled after current Rule 11-105 a.1. and provides for the content of a court order under this Rule. Any order must specify the time, place, manner, conditions, and scope of the study or examination. A physical or mental examination of a child must be outpatient, if feasible, but an inpatient evaluation may be required if, after a hearing, it is found to be necessary and no less restrictive option is available. The order may address the filing of a report of findings and conclusions and testimony at a hearing, payment of expenses, and any other relevant matters.

Section (b) is derived from current Rule 11-105 a.2. and governs service of copies of the report. Notice and a copy of any study or report must be served on the attorney for represented parties and on each unrepresented party. Reports of an examination ordered pursuant to §3-816 must be served at least five days before presentation to the court.

Section (c) restricts admissibility of a report of an examination ordered pursuant to §3-816 to disposition and post-disposition hearings, as permitted by the statute. The report is not admissible at an adjudicatory hearing.

Ms. Hartge suggested that the Rule be made consistent with the current Rule and other proposed Rules in the Chapter by adding the statutory 21-day restriction for in-patient hospitalization in subsection (a)(2)(B). The Chair agreed with the suggestion. He added that the 21-day limit also is referenced in Rule 11-216. Ms. Hartge noted that the 21-day restriction can be found in the Code, Courts Article. To be clear and consistent, the limitation can be added in Rule 11-211. The Chair commented that he did not know why it was deleted in this Rule. Assistant Reporter Cobun noted that the stem for subsection (a)(2) refers to any order pursuant to the statute. She noted that the Rule should be more explicit in tracking the statute. Magistrate Wolfe asked for clarification on the referenced statute. Assistant Reporter Cobun responded that Code, Courts Article, § 3-816. Ms. Hartge added that the 21-day limitation appears in § 3-816 (b)(2)(ii). Magistrate Wolfe noted sorting out the different types of evaluations may create a later issue, but the proposed change is appropriate for Rule 11-211. By consensus, the Committee approved the amendment to the Rule.

Ms. Day noted that the Office of the Attorney General submitted a comment concerning section (c) prohibiting the use of the report of an examination and testimony regarding the report at an adjudicatory hearing. See Appendix 4. Ms. Hartge

clarified that her comment concerns the admissibility of testimony. The court currently controls how any testimony coming out of the ordered evaluation is used. For example, if a parent admits to an evaluator that he or she abused the child, the Department should not be prohibited from presenting the testimony of what the parent said to the evaluator.

The Chair inquired whether Ms. Hartge agrees that the report is not admissible and clarified that her suggestions concerns the admissibility of testimony. Ms. Hartge agreed and noted that the admission of such testimony is not prohibited under the current Rules. The Rules of Evidence apply and testifying witnesses are subject to cross examination.

The Chair asked how testimony regarding the report can be admissible when the report is inadmissible. Ms. Hartge responded that the court can limit the testimony at a hearing. The Chair noted that the report is hearsay. Ms. Hartge referenced *In re Shirley B.,* 419 Md. 1 (2011), explaining that the parties learned of horrible abuse that occurred in the household from the evaluation. She said that testimony should not be limited at an adjudication hearing if horrible abuse or neglect is revealed in an evaluation. The CINA petition may be amended to reflect the newly discovered abuse, but the parental admission in the evaluation may be the only evidence of the abuse. Ms. Day noted that the parent may be questioned on the

stand. She asked how the parties would be permitted to use hearsay. Ms. Hartge responded that the statements are not hearsay because they are statements against interest. The Chair noted that the statements in the evaluation may or may not be against the party's interest. The report of the examination would be hearsay and would need to be authenticated before admission. Ms. Hartge commented that, in the current Rule, the report is not admissible at adjudication hearings. The report is admissible at a disposition. Ms. Hartge requested that testimony about the report that involves the safety of the child be admissible at adjudication hearings.

Magistrate Wolfe commented that Ms. Hartge wants the evaluator to be able to testify. Magistrate Wolfe pointed out that this Rule concerns court-ordered evaluations. She questioned whether there are fundamental fairness concerns when the court compels a party to participate in an evaluation that then implicates the party in an untoward action. Ms. Kaplan noted that Ms. Villamar needed to leave the meeting and wondered whether the discussion of this issue should be deferred until her return to receive Ms. Villamar's input. Ms. Hartge noted that she discussed this issue with Ms. Villamar and Ms. Villamar opposed Ms. Hartge's suggestion.

Ms. Day raised her concern about setting people up. Magistrate Wolfe added that the Department has the burden of

proving its case and it should not need to rely on a court-ordered evaluation to make its case. Ms. Day asked if the participants in the evaluation will be told up front that they are being set up. Magistrate Wolfe responded that a participant is told that the evaluation is not confidential, but is not given his or her *Miranda* rights. Ms. Bernhardt responded that the evaluation is not a custodial interrogation. Magistrate Wolfe acknowledged that point, but added that the parties have no indication that what they say can be used in court to prove the Department's case. The parties are simply complying with a court order by completing the evaluation.

Ms. Hartge said that a parent may admit to knowledge of abuse in an evaluation. The Chair asked why the information from the parent has to be related to the report. Testimony regarding the report is not admissible. Other testimony not regarding the report is admissible as normal. Ms. LeMon questioned if the evaluator can testify about what happened during the evaluation. The Chair asked whether it would be relevant to the facts of the adjudication. Ms. LeMon noted that if there are disclosures during the evaluation, Ms. Hartge proposes that the disclosures may apply to the facts or that the CINA petition may be amended. Ms. Hartge noted that the ultimate goal is to protect the child. If someone admits abuse or neglect, the Department should not be hamstrung by being

prohibited from bringing the information before the court. The court must make a decision about the safety of the child. Ms. Bernhardt noted that it is unclear why that testimony would be regarding the report. Such testimony concerns an admission made by the parent. Ms. Hartge asked if courts will interpret the Rule in that manner. Magistrate Wofle responded that the admission is within the report. She indicated she does not see how one can separate the testimony from the report. The Chair responded that if a party can ask the evaluator to testify to everything that happened during an evaluation, nothing is gained by making the report itself inadmissible.

Ms. Hartge said that if the court is provided the ability to restrict testimony at a hearing under section (c), the Department may file a motion seeking permission for the evaluator to testify to certain facts at the adjudicatory hearing if the parent admitted abuse. She noted that section (c) states that testimony about the report is not admissible, limiting the court's ability to restrict or expand testimony at the hearing.

Ms. LeMon commented that anytime there is a restriction on placing someone in the hospital for treatment, language that the respondent is a danger to himself or others should be considered. The Chair responded that such language is not in the statute. Assistant Reporter Cobun explained that the

standard in the statute is whether an inpatient evaluation is "necessary."

By consensus, the Committee approved the Rule as amended.

Ms. Day presented Rule 11-211.1, Emergency Medical Treatment, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11 – JUVENILE CAUSES

CHAPTER 200 - CHILD IN NEED OF ASSISTANCE; VOLUNTARY PLACEMENT

ADD new Rule 11-211.1, as follows:

Rule 11-211.1. EMERGENCY MEDICAL TREATMENT

(a) Generally

The court may order emergency medical, dental, surgical, or psychiatric treatment of a child who is the subject of a petition under this Chapter and who is alleged to be suffering from a condition or illness which, in the opinion of a licensed physician or dentist, requires immediate treatment if the child's parent, guardian, or custodian is not available or, without good cause, refuses to consent to the treatment.

(b) Expedited Hearing

The court shall hear and rule on a petition seeking an order for emergency medical, dental, surgical, or psychiatric treatment on an expedited basis.

(c) Life-Sustaining Procedures

The court shall apply the factors set forth in Code, Estates and Trusts Article, §13-711 (b), to the extent relevant, when deciding whether to withhold or

withdraw a life-sustaining procedure as defined in Code, Estates and Trusts Article, §13-711 (c).

Cross reference: See Code, Courts Article, §3-824.

Source: This Rule is new.

Rule 11-211.1 was accompanied by the following Reporter's note.

Proposed Rule 11-211.1 is new and addresses emergency medical treatment for children subject to the court's jurisdiction under this chapter. The Subcommittee chose to create separate Rules in Chapter 200 and Chapter 400 to incorporate the different statutory provisions for emergency medical treatment for an alleged CINA and an alleged delinquent child, respectively. A subsection of a Rule in Chapter 500 addresses emergency medical treatment for an alleged CINS.

Code, Courts Article, §3-824 governs the authority of the court to order emergency medical, dental, surgical, or psychiatric treatment for a child who is the subject of a CINA petition. In Rule 11-211.1, section (a) establishes when the Rule is applicable. The subject child must be alleged to be suffering from a condition or illness that a licensed professional believes requires immediate treatment, and the child's parent, guardian, or custodian must be unavailable or, if available, refuses to consent to treatment without good cause.

Section (b) requires that a hearing be held and a ruling made on an expedited basis.

Section (c) requires the court to apply the factors from Code, Estates and Trusts Article, §13-711 (b) when considering whether to withhold or withdraw a life-sustaining procedure.

Ms. Day explained that Rule 11-211.1 concerns ordering medical treatment for a CINA. Ms. Hartge commented that the

Rule should exclude former CINAs because they are adults with the right to make medical treatment decisions. Magistrate Wolfe noted that "child" is a defined term referring to someone under the age of 18. Former CINAs are over the age of 18. The Chair clarified that former CINAs are therefore already excluded by the use of "child" in the Rule. A former CINA is 18 to 21 years old and jurisdiction for a CINA can extend up to age 21.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Ms. Day noted that the next Rule concerns discovery, which has generated a lot of discussion at the Subcommittee meeting. The Chair suggested that the Committee break for the day and continue with Title 11, Chapter 200 at the next meeting. Ms. Day agreed and there were no objections to concluding the meeting. The Chair explained that the rest of Chapter 200 will be considered at the next meeting, along with other Juvenile Rules.

There being no further business before the Committee, the Chair adjourned the meeting.

Appendix 1

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 12-102 to modify the filings in land records required by section (b) to create constructive notice of a pending action, to make stylistic changes to section (b), to add a Committee Note following section (b), to amend the tagline of section (c), to replace the word "or" with "and" and replace "created" with "recorded" in subsection (c)(1), to rename subsection (c)(2), to add language to subsection (c)(2)(A) clarifying when a *lis pendens* is terminated after a dismissal, to make stylistic changes to subsections (c)(2)(A) and (c)(2)(B), to delete and add language to subsection (C)(2)(C), to add new subsection (c)(2)(D), to create new section (d) with language from former subsection (c)(2) and new language addressing the required actions of a plaintiff upon termination of a *lis pendens*, to add language to section (d) requiring a notice to be substantially in the form approved by the State Court Administrator and posted on the Judiciary website, to create new section (e) with language from former subsection (c)(2) and new language addressing a plaintiff's failure to file a termination notice within 10 days after termination of the *lis*

pendens, to make stylistic changes to section (e), to replace the phrase "enter an order terminating the lis pendens" with the phrase "authorize any interested person to file the notice of termination" in section (e), to add the word "good" before "reasons" in section (e), and to delete current subsection (c)(3), as follows:

Rule 12-102. LIS PENDENS

(a) Scope

This Rule applies to an action filed in a circuit court or in the United States District Court for the District of Maryland that affects title to or a leasehold interest in real property located in this State.

(b) Creation - Constructive Notice

In an action to which the doctrine of lis pendens applies, the filing in the land records of a county in which real property that is the subject of the action is located of either (1) a certified copy of the complaint giving rise to the lis pendens or (2) a Notice of Lis Pendens, substantially in a form approved by the State Court Administrator and posted on the Judiciary website, ~~of the complaint~~ is constructive notice of the ~~lis pendens~~ pending action as to the subject real property located in that ~~the~~ county. ~~in which the complaint is filed. In~~

~~any other county, there is constructive notice only after the party seeking the lis pendens files either a certified copy of the complaint or a notice giving rise to the lis pendens, with the clerk in the other county.~~

Committee Note: The amendments to Rule 12-102 (b) adopted by the Court of Appeals by Rules Order dated [xx/xx/2021, effective yy/yy/2021], changed the procedure for providing notice of a *lis pendens* by requiring that a notice substantially in the form approved by the State Court Administrator be recorded in the land records of each county in which the affected real property is located. Prior to these amendments, notice of a *lis pendens* was effected either by the filing of the complaint in the county in which the affected real property was located, or by filing a certified copy of the complaint or a notice with the clerk in any other county. Since the amendments are prospective, practitioners and title searchers should continue to review filings of a complaint for notice of *lis pendens* as to actions filed before [yy/yy/2021] using the procedure that was followed before [yy/yy/2021].

(c) Termination of Lis Pendens

(1) While Action Is Pending

On motion of a person in interest and for good cause, the court in the county in which the action is pending may enter an order terminating the lis pendens in that county ~~or~~ and any other county in which the lis pendens has been ~~created~~ recorded.

(2) Termination as a Matter of Law

~~Upon Conclusion of Action~~ ~~If~~ A lis pendens is terminated:

(A) by an order of court dismissing the action, ~~is dismissed~~ if a timely appeal is not taken or the dismissal is affirmed on appeal; ~~or~~

(B) ~~judgment is entered in favor of the defendant and~~ by entry of a judgment in favor of the defendant, if a timely appeal is not taken or the judgment is affirmed on appeal~~,~~; ~~or~~

(C) ~~judgment in favor of the plaintiff is reversed on appeal, vacated, or satisfied,~~ by the mandate of an appellate court reversing a judgment in favor of the plaintiff; or

(D) by satisfaction of a judgment in favor of the plaintiff.

(d) Duty of Plaintiff to File Notice of Termination of Lis Pendens

Upon termination of a lis pendens pursuant to section (c) of this Rule, the plaintiff shall ~~file~~ record a notice of termination of lis pendens in the land records of each county in which the lis pendens was recorded ~~certified copy of the appropriate docket entry with the clerk in each county in which a certified copy of the complaint or notice was filed~~ pursuant to section (b) of this Rule. The notice shall be in substantially the form approved by the State Court Administrator and posted on the Judiciary website.

(e) Failure to File Termination Notice

Within 10 days after termination of the lis pendens, ~~If~~ if the plaintiff fails to comply with ~~this~~ subsection (d) of this Rule, the court with jurisdiction over the action, on motion of any person in interest and upon such notice as the court deems appropriate in the circumstances, may ~~enter an order terminating the lis pendens~~ authorize any interested person to file the notice of termination. In the order ~~terminating the lis pendens~~, the court shall direct the plaintiff to pay the costs and expenses incurred by the person obtaining the order, including reasonable attorney's fees, unless the court finds that the plaintiff had a good reason justifying the failure to comply.

~~(3) Duty of Clerk~~

~~Upon entry of an order terminating a lis pendens, the clerk of the court of entry shall transmit a certified copy of the order to the clerk in any other county specified in the order~~.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former Rule BD1 and BD2.
Section (c) is derived from former Rule BD3.
Section (d) is new.
Section (e) is new.

REPORTER'S NOTE

The Judiciary's Major Projects Committee recently advised the Rules Committee of potential issues with *lis pendens* actions in Maryland, noting that to create constructive notice that a property is subject to the outcome of a pending action, most states require parties to file notice with the appropriate land records office. In contrast, Maryland Rule 12-102 (b) states that the filing of a complaint is constructive notice of the *lis pendens* as to real property in the county where the complaint was filed. Constructive notice is created in any other county by the filing of either a certified copy of the complaint or a notice with the clerk of the other county. Requiring notice of a pending action or a copy of the complaint to be filed in the land records of the county in which the real property that is the subject of the action is located, regardless of the county where the complaint was filed, would assist title searchers and bring Maryland procedure into conformance with the majority of states. Proposed amendments to Rule 12-102 are intended to create a uniform practice for treatment of *lis pendens* actions.

Amendments to section (b) delete provisions that permit the filing of a complaint to serve as constructive notice in the county where the complaint is filed. To create constructive notice of the pending action, new language requires filing a certified copy of the complaint or a notice in the land records of the county in which the real property that is the subject of the action is located. A Committee Note following section (b) is added to remind practitioners that the previous version of this Rule did not require any additional affirmative act to obtain constructive notice, and that any search for *lis pendens* matters conducted that will encompass actions filed prior to the effective date of a Rules Order adopting the proposed changes will need to encompass the parameters of the current version of this Rule.

The tagline of section (c) is amended to state that it addresses the termination of a *lis pendens*. Replacing certain terms in subsection (c)(1) clarifies that the court in the county in which the action is pending may terminate the *lis pendens* in any county where the *lis pendens* was recorded. Subsection (c)(2) is renamed to address termination of a *lis pendens* as a matter of law. Language added to subsection (c)(2)(A) clarifies that, if a case is dismissed, the *lis pendens* is terminated as a matter of law only when a timely appeal is not taken or when the dismissal is affirmed on appeal.

Stylistic amendments are proposed to subsection (c)(2)(B). The language in subsection (c)(2)(C) is deleted and replaced with language addressing only the reversal of a judgment in favor of the plaintiff. Reference to a judgment in favor of the plaintiff that is "vacated" on appeal is deleted because the *lis pendens* is not terminated by that disposition on appeal. New subsection (c)(2)(D) addresses the satisfaction of a judgment in favor of the plaintiff, an outcome previously included in subsection (c)(2)(C).

New section (d) uses language from former subsection (c)(2) and new language to state the duty of a plaintiff to file a notice after termination of a *lis pendens* pursuant to section (c). The proposed amendments change the filing required by the plaintiff and require that a notice of withdrawal be in substantially the form approved by the State Court Administrator and posted on the Judiciary website.

New section (e) combines language from former subsection (c)(2) and new language to address the result of a plaintiff's failure to file a notice of termination. Proposed amendments require a notice to be filed within ten days after termination of the *lis pendens* and permit a court upon motion to authorize any interested person to file the notice of termination. An additional amendment clarifies that the plaintiff's reason justifying the failure to comply must be "good" to avoid being directed to pay costs and expenses. Stylistic changes are also proposed.

Former subsection (c)(3) is deleted because the clerk no longer is required to transmit copies of orders terminating a *lis pendens* to other counties.

Appendix 2

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April 14, 2021

Standing Committee on Rules of Practice and Procedure
Judiciary Education and Conference Center
2011-D Commerce Park Drive
Annapolis, MD 21401

Re: Proposed Changes to MD Rule 14-305- Affidavit of Auctioneer

Dear Members of the Committee:

This firm represents Auction.com, a national auctioneer crying auctions in all fifty states. Auction.com fully supports any effort to ensure that foreclosure sales in Maryland are conducted in a manner that achieves the best possible price, which is in the interest of both consumers and lenders.

Auction.com

Auction.com is a leader in innovating the practice of foreclosure auctioneering across the country and has a demonstrated track record of achieving high third party sales rates at foreclosure sales. The benefits of competitive foreclosure auctions are widespread: (i) borrowers receive additional sale proceeds applied towards their debt and are entitled to receive any surplus proceeds from the foreclosure sale; (ii) neighboring property values are supported by generating a higher sale price at a foreclosure auction; and (iii) foreclosed properties are more often sold to local investors who can more quickly repair the property and place it back in the local housing supply, avoiding blight and increasing the availability of housing.

The benefits of Auction.com's business model to Maryland consumers are clear. Over the last five years, 41% of foreclosure sales marketed by Auction.com have resulted in a surplus totaling over $13 million in surplus to borrowers at foreclosure, including $1.2B in surplus funds nationwide. Auction.com sales result in owners occupying property 321 days faster when sold to a third party at foreclosure than REO process. These measures of success are a direct result of Auction.com's access to a large buyer base as well as innovative and detailed marketing efforts.

Regulation of auctioneers in Maryland would be more effective to curb potential conflicts of interest.

The current proposed revisions to Rule 14-305(c) do not effectively accomplish the stated concerns of avoiding a potential conflict of interest by restricting the employment of an auctioneer as both a foreclosure auctioneer and an REO auctioneer. This limitation may have unintended consequences to the foreclosure sale process that ultimately may harm the consumer and negatively impact neighborhoods. Additionally, having an auctioneer sign a self-serving affidavit is not the best way to address this concern.

As stated by the proponents of the Rule, there is no governing body, licensing or regulation of auctioneers in Maryland, which would be key to addressing the concerns raised. The General Assembly has signaled that it intends to review the current landscape of auctioneering in Maryland to determine whether a regulation scheme would benefit Maryland consumers and confirm that auctioneers are operating within the statutory and ethical bounds. Auction.com is a proponent of an approach to have a governing body license and regulate auctioneers in Maryland. A licensing scheme would be effective in regulating auctioneer conduct and possible conflicts of interest because any unethical behavior would threaten their license and future ability to cry auctions in Maryland. Auction.com regularly operates under licensing and regulation schemes in other states.

The premises of the proposed rule is flawed.

The premise that the auctioneer would be tempted to not advertise or cry the auction to the best of their ability is simply unfounded. An auctioneers' measure of success in foreclosure auctions lies in their third party sales rate. Auction.com's national third party sales rate was 62.6% in the first quarter of 2021. Their marketing efforts of properties in foreclosure far exceed any other auctioneer in the market. Auction.com provides services related to foreclosures by doing marketing only and by doing both the marketing and auctioneering at the foreclosure sale. The data reveals that in the cases where Auction.com serves as auctioneer, the third party sales rate is 10% higher than when another auctioneer is used. This data point is indicative that the opportunity to conduct both a foreclosure sale and a REO does not lead to auctioneers chilling the bid to push properties to REO. By forcing Auction.com to choose to conduct either foreclosure sales or REO sales, Maryland consumers will not have the benefit of that potential 10% improvement on third party sales.

The proposed rule is anti-competitive.

In practice, the proposed requirement in 14-305(c)(3) would have anti-competitive effects in that auctioneers would need to choose to conduct either foreclosure auctions or REO auctions – foreclosure auctioneers would not be able to compete for REO business and REO auctioneers would not be able to compete for foreclosure business. This harms innovation in the foreclosure auctioneering industry, and introduces inefficiencies where the foreclosure auctioneer is in the best position and with the most information to conduct the most open and beneficial REO sale if a sale is not procured during the initial foreclosure auction. This additional step in the foreclosure process ultimately would impact negatively both borrowers and lenders by increasing the cost of foreclosure auctioneering services and reducing the competition for quality of services provided at foreclosure sales.

COVID required adaptation to doing business virtually. It is clear that the post-COVID landscape will continue to shift to more digitally focused business strategies. We need to protect the public but not to favor one class of business over another.

There are public policy benefits to retaining the same auctioneer to cry both a foreclosure auction and an REO auction of the same property. For example, unlike traditional foreclosure auctioneers, Auction.com provides marketing photos, property information, comparable sales reports, and other information to prospective bidders when it markets and conducts a foreclosure auction. Auction.com is able to use this information to quickly re-list the property and find a suitable buyer if the foreclosure auction does not result in a sale to a third party. Reducing the amount of time a lender must hold an REO asset is greatly beneficial to local communities by preventing the blight associated with unsold foreclosed properties and making more housing available to local communities.

The foreclosure ratification process regulates foreclosure sale procedures.

The existing rules provide courts with oversight of foreclosure auctions and the ability to order appropriate relief as part of the sale ratification process. Pursuant to the existing Rule 14-305(e), all foreclosure sales are subject to ratification by the court. The court is only permitted to ratify the sale if the court is "satisfied that the sale was fairly and properly made." If the court is not satisfied with the auctioneer's conduct of the sale, the court "may enter any order that it deems appropriate." This rule provides each

judge with broad discretion to find to her or his satisfaction that the sale was fairly made.[1]

Any incentive the auctioneer may have to artificially depress a foreclosure sale price is overcome by the sale process itself. The auctioneer is subject to minimum statutory requirements regarding the advertisement and process for the sale. Even after the sale, the borrower can object to the process by which the sale was conducted. The lender/trustee provides specific instructions to the auctioneer prior to the sale with the bidding parameters. The auctioneer simply carries out these instructions. The nature of a public auction makes it impossible to predict whether the parties that attend the sale will be enticed to bid on the property based on the bidding instructions provided by the lender and carried out by the auctioneer. The only discretion the auctioneer has is calling the sale complete after determining there is no additional bidding from the public. Additionally, after the sale is completed and ratified, it is also entirely within the lender's purview to decide how to market and sell its REO properties.

The proposed rule is inconsistent with current Bankruptcy law and Maryland law regarding auctioneers.

Moreover, the proposed rule and its limitations are inconsistent with what is permitted in 11 U.S.C. 327 and Comm. Law 24-303 and introduces unnecessary uncertainty into the process of ratification. The limitations contained in the proposed rule that require auctioneers serve only in one capacity (e.g., foreclosure versus REO) undermine competition among the companies that can conduct auctions, which is detrimental to the goal of ensuring that robust representation exists so foreclosure sales are fairly and properly made. It very well may be that in a foreclosure the trustee could determine that the auctioneer with the most substantial knowledge of the property to be sold, or equipped with the best access to potential buyers also should be retained for an REO sale, even if it is performing as the initial foreclosure auctioneer. Limiting the trustee's discretion in this manner introduces inefficiencies into an already cumbersome process.

Unlike proposed Rule 14-305(c)(3), the Bankruptcy Code does not disqualify auctioneers based on the potential existence of a potential conflict of interest solely based on its employment by a creditor. To the contrary, the Bankruptcy Code expressly provides that "a person is not disqualified for employment [as an auctioneer] under this

[1] **(e) Ratification.** The court shall ratify the sale if (1) the time for filing exceptions pursuant to section (d) of this Rule has expired and exceptions to the report either were not filed or were filed but overruled, and (2) the court is satisfied that the sale was fairly and properly made. If the court is not satisfied that the sale was fairly and properly made, it may enter any order that it deems appropriate. *Rule 14-305 - Procedure Following Sale*, Md. R. Prop. Sales 14-305

section solely because of such person's employment by or representation of a creditor." To disqualify an auctioneer under the Bankruptcy Code, the party objecting to the employment must demonstrate that there is an actual conflict of interest.

The provisions of Comm. Law 24-303 (the "Commercial Code") are identical to those in the Bankruptcy Code, stating "a person is not disqualified from engagement [as an auctioneer] under this section solely because of the person's engagement by, representation of, or other relationship with the receiver, a creditor, or any other party." Similarly, the Commercial Code permits the court to disqualify a proposed auctioneer only if there is an actual, not potential, conflict of interest.

Auction.com's suggested amendment to the proposed rule specifically addresses a conflict created by a fee discrepancy.

While we support the Property Subcommittee's recommendation that an Affidavit be required, and that auctioneers be required to certify that no conflict of interest exists, this revision directly addresses comments made and concerns raised by the Property Subcommittee to confirm that there is no financial incentive for auctioneers to poorly market foreclosure sales in order to have another chance to sell the property in REO.

Auction.com recommends that the proposed Rule 14-305(c)(3) be revised as follows:

> (c) Affidavit of Auctioneer. Within 15 days after conducting a sale, the auctioneer shall file an affidavit stating that:
>
> (1) neither the auctioneer nor any affiliate or subsidiary of the auctioneer has paid any compensation or other consideration to any person for hiring or aiding in the hiring of the auctioneer to conduct the sale;
>
> (2) neither the auctioneer nor any affiliate or subsidiary of the auctioneer has any direct or indirect interest in the property sold other than a lawful and agreed-upon fee for conducting the sale; and
>
> (3) neither the auctioneer nor any affiliate or subsidiary of the auctioneer has entered into any agreement or understanding with any person to conduct or assist in the resale of the property for a fee that would be greater than the fee earned for procuring a third party buyer at the foreclosure sale.

In conclusion, we respectfully request that the Committee consider the requested revision to the proposed amendment to the Rule in order to accomplish its stated goal of guarding against conflicts of interest in foreclosures sales in Maryland.

Sincerely,

Kaitlin R. Zarro

Whiteford, Taylor & Preston, LLP

11720520

Appendix 3

MARYLAND LEGAL AID

Advancing Human Rights and Justice for All

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April 14, 2021

Honorable Alan M. Wilner, Chair
Standing Committee on Rules of Practice and Procedure
Judiciary A-Pod
580 Taylor Avenue
Annapolis, Maryland 21401

Re: Standing Committee on Rules of Practice and Procedure
Maryland Legal Aid Comments

Dear Judge Wilner,

Thank you for the opportunity to provide comments to the Standing Committee on Rules of Practice and Procedure which will be discussed at the April 16, 2021 Open Meeting. Maryland Legal Aid (MLA) is a non-profit law firm that provides free legal services to Maryland's low-income and vulnerable residents. As a part of this representation, MLA's staff provides legal services to over 2,000 Maryland children every year in the child welfare system who participate in Children in Need of Assistance (CINA) and Termination of Parental Rights (TPR) proceedings. Thus, MLA has expertise in child welfare matters, including children in foster care and youth aging out of foster care. This letter also serves as notice that Erica LeMon, Esq., will be attending the open meeting on behalf of Maryland Legal Aid. We have reviewed the proposed rules in detailed and prepared the following response:

Proposed Rule 11-213

We suggest changes to proposed rule 11-213. The proposed rule 11-213(b)(2)(C) could be read to require that the protections of shelter care must be withdrawn from children, irrespective of the safety of the children, if the adjudication hearing is not held within a certain time frame. While we support timely held adjudication hearings, there are occasions that adjudication hearings need to be continued for good reasons beyond the reasonable control of the parties or the court. Adjudication hearings can be delayed for various reasons, such as delays in records, or illness of the parties. Currently, judges and magistrates extend shelter care when necessary to protect the safety of the child, even if the adjudication hearing date exceeds the time guidelines. The proposed rule 11-213(b)(2)(C) could restrict the discretion of judges and magistrates which could endanger vulnerable children.

Consider for instance an infant that has sustained life-threatening injuries, removed from the home due to multiple intentionally inflicted injuries on multiple occasions, but the adjudication hearing cannot be held within 60 days due to delays in a hospital providing medical records. It would be incompatible with the child-protection goals of the CINA subtitle to return this infant to a dangerous situation because of the delay in the adjudication hearing.

Also, it is unclear when 11-213(b)(2)(C) is activated. What hearing is referenced; is it the hearing held as a part of an adjudication hearing or the adjudication hearing itself?

MLA Suggestion: Therefore, we suggest adding the following language the end of 11-213(b)(2)(C): [UNLESS THE COURT DETERMINES THAT SHELTER CARE IS NEEDED FOR THE SAFETY OF THE CHILD.]

The proposed rule 11-213(c) could be read to mean that only the petitioner can present evidence. This provision is not consistent with *In Re Najasha B.*, 409 Md. 20, 972. A.2d 845 (2009). Section 11-213(c) states "The petitioner shall present the evidence in support of the CINA petition and has the burden of proving the allegations in the CINA petition by a preponderance of the evidence." Other parties present evidence in support of the petition, especially child's counsel on behalf of the Respondent. Sometimes the Department of Social Services (DSS) abandons defending the petition after the shelter hearing for various reasons. Fortunately, *Najasha B.* provides that Respondent's counsel can prosecute and present evidence supporting the petition. Respondent's counsel also calls witnesses. Currently, these witnesses are considered prior to determining if Petitioner met the burden of proof by a preponderance of the evidence. In addition, the proposed rule states the Petitioner has the burden of proving the allegations in the CINA petition. If the Petitioner (which is usually DSS) presents no evidence and Respondent's counsel presents evidence. If there is sufficient evidence presented that meets the burden of proof, does this meet the requirements of the Petitioner's burden of proof?

MLA Suggestion: We propose removing "The Petitioner shall present the evidence in support of the CINA Petition and has the burden of proving the allegations in the CINA Petition by a preponderance of the evidence and replace this language with- [THE BURDEN OF PROOF MUST BE MET BY A PREPONDERANCE OF EVIDENCE TO SUSTAIN THE ALLEGATIONS IN THE PETITION.]

Proposed Rule 11-103(2)

The time pertaining to the transcript date and hearing date conflict.

Proposed Rule 11-203

Sealing of this very private confidential information for vulnerable minors is no longer automatic. This is very important to children in CINA and Delinquency cases.

MLA Suggestion- Keep the requirement that the records are automatically sealed.

Proposed Rule 11-204
This provision and others indicate that privileges mandated or authorized by law shall be "respected"? It may be helpful to provide clarity on the meaning of "respected".

Proposed Rule 11-204
We are concerned about providing the address of the child. In addition, the term "Petitioner" is used but it is unclear if this includes another authorized person. For example, the definitions sections references "under certain circumstances, the person or agency that filed a "complaint". In other provisions, "Petitioner" is sometimes use restrictively. A person or agency that filed a complaint should be included in defining the term Petitioner.

Proposed Rule 11-205
Some provisions reference Complaint instead of Petition. It should be clear these two terms are interchangeable.

Proposed Rule 11-206
What is the definition of former "CINA"? There are two different types of voluntary placement so this should be clarified. It should be emphasized that the shelter care hearing should not be delayed by non-compliance. Person not agency is not clarified. The person or agency that has custody should be required to produce the child.

MLA Suggestion: [THE CUSTODIAN OF THE CHILD AT THE TIME OF THE SHELTER CARE HEARING MUST PRODUCE THE RESPONDENT.]

Proposed Rule 11-211- The study of physical or mental examination is only applicable to children and not the parents. Also, inpatient evaluation is being authorized without the standard of being harmful to self or others.

MLA Suggestion – The Court should be able to order a study or physical or mental examination of the parents in this provision. Inpatient evaluations are the most restrictive and the standards should be high, requiring the Respondent to be a danger to themselves or others before inpatient evaluations are ordered.

Proposed Rule 11-211.1
Immediate treatment is significant but the proposed rule does not require the child to be harmful to self or others. In addition, this provision should not apply to former CINA. Finally, what is the applicable burden of proof.

MLA Suggestion – Immediate treatment should require the Respondent to be a danger to themselves or others.

Proposed Rule 11-212
The rule does not clarify that subpoenas are permitted. Also, the proposed rule does not have automatic requirements for discovery. Currently, the court will only require discovery if it is triggered by DSS refusing a request. DSS has no requirement to submit information. What is the burden of proof to require requested discovery.

Proposed Rule 11-214
Why is the address of child required? What if the child is in foster care?

MLA Suggestion– Remove "each child" from this provision.

Proposed Rule 11-216
What is the definition of Psychiatric facility? This is not consistent with the statute and reduces necessary protections.

MLA Suggestion- The language should directly track the statute.

Proposed Rule 11-217
Former CINA requires a clear definition in this provision. Does the statute permit a voluntary placement after the Respondent turns 18 years old? What is the definition of a Former CINA? COMAR or a DSS policy directive may prohibit a former CINA from voluntary placement agreements. Is there legal authority to maintain individuals 18 and over in a voluntary placement without their agreement?

Proposed Rule 11-219
Proposed Rule 114-219(d)(2)(D) refers to Courts and Judicial Proceedings §3-823 (k) but is should refer to §3-823 (j).

Proposed Rule 11-220
The proposed rule restricts the discretion of the court to continue jurisdiction and does not allow the court to find good cause to continue jurisdiction. This is not consistent with *In Re Adoption/Guardianship Dustin R.*, 445 Md. 536 (2015) or Courts and Judicial Proceedings §3-804 (d) and §3-819 or Family Law §5-324 (d) and §5-328 (e).

MLA Suggestion: The court [MAY] enter a final order terminating the proceeding. Jurisdiction may continue for transitional purposes pursuant to Courts and Judicial Proceedings §3-804 (d) and §3-819m and Family Law §5-324 (d) and §5-328 (e).

The Juvenile Court has the parens patriae duty and authority to protect the health and safety of children in Children In Need of Assistance cases. Our comments and suggestions are reflect these long-standing protections. Please let us know if we have can provide any additional information. Thank you for your consideration.

/s/
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Director of Advocacy for Children's Rights
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cc: Stuart O. Simms, Chief Counsel, Maryland Legal Aid

Appendix 4

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April 15, 2021

The Honorable Alan M. Wilner, Chair
Standing Committee on Rules of Practice and Procedure
580 Taylor Avenue
Annapolis, Maryland 21401

RE: Consideration of proposed revised Title 11 (Juvenile Causes):
New Chapters 100 and 200

Dear Judge Wilner and Committee Members:

I would like to recognize the significant work and hours that have gone into revising the juvenile rules. I have listed below several additions or changes to the proposed 200 rules that I would like the Committee to consider.

Rule 11-204. Shelter Care

Under the current rules, after placing a child in shelter care, a local department must file a petition for shelter care "on the next day the court is sitting." Rule 11-112(a)(1). Proposed **Rule 11-204(b)(2)** potentially changes this requirement.

> The local department is directed to file "immediately" but that term is not specifically defined. Moreover, many children are not removed during business hours. If proposed **Rule 11-204(b)(2)** were changed from "*immediately*" to "*on the next day*," that change would eliminate any confusion regarding a change from the current requirements since "next day"

is defined in proposed Rule 11-102 as the next day that the circuit court is in session.

Proposed Rule **11-204(d)(4)(B)** specifies that an immediate review of a magistrate's shelter care order shall occur not later than three days following a request for an immediate review. This time period is too long given the emergency nature of shelter care proceedings and potential risks and losses to children and parents. Changing this time period from "*Not later than three days*" to "*Not later than the next day*," which is defined under proposed Rule 11-102 as the next day that the circuit court is in session, would help ensure the protection of the children subject to shelter care proceedings.

Rule 11-208. Right to Attorney; CASA

This new proposed rule generally tracks the language in § 3-813 of the Courts and Judicial Proceedings Article but omits that statute's reference in subsection (b) clarifying that a child is entitled to representation at State expense. If the new proposed rule added "*and the child*" to new **Rule 11-208(c)(1)** following the words: "for the local department," the new proposed rule would be consistent with § 3-813(b). The Department of Human Services through the Maryland Legal Services Program makes legal services available to all CINA children. *See* COMAR 07.01.13.01 *et seq.*

Rule 11-210. Amendments to Pleading and Other Papers

Under the current rule, Rule 11-108, an amendment can be made "by or with the approval of the court[.]" The new proposed **Rule 11-210(a)(1)** has eliminated "*by or*" and restricted the juvenile court's ability to amend the petition sua sponte. Reincorporating this phrase to the proposed Rule 11-210(a)(1) would continue to allow a juvenile court to amend a petition, when necessary, and would comport with the Court of Appeals' recognition in *In re Najasha B.*, 409 Md. 20 (2009) of "the inherent role of the court in protecting the rights of minors," *id.* at 22, and "the court's unique role as guardian and fact-finder[,]" *id.* at 28. As the Court of Appeals previously stated, "in a CINA case, the court's role is necessarily more pro-active." *In re Mark M.*, 365 Md. 867, 706 (2001).

Rule 11-211. Study; Physical or Mental Examination

The proposed new **Rule 2-211(a)(2)(B)** generally tracks § 3-816(b)(2) of the Courts and Judicial Proceedings Article but does not include the statutory 21-day restriction on an impatient hospitalization. This 21-day restriction is included in the proposed new Rule 11-216(f)(2)(B) and should be included under Rule 2-211(a)(2)(B) for consistency with the statute and subsequent rule.

The proposed new **Rule 2-211(c)** prohibits testimony regarding the evaluator's report at an adjudicatory hearing. This is a change from the current rule, Rule 11-105(c)(2), which allows the admission of such testimony "at any hearing." If the Committee eliminates from Rule 2-111(c): "*and testimony regarding that report is not admissible at an adjudicatory hearing but*," the juvenile court would still have the option to use its discretion regarding an evaluator's testimony under subsection (a)(2)(C)(iii). If, for example, a parent admitted to an evaluator that they caused the child's injuries, that is evidence that a juvenile court should hear; it should not be precluded under this proposed rule. The proposed change would permit this testimony.

Rule 11-211.1. Emergency Medical Treatment

Former CINAs who become subject to the juvenile court's jurisdiction under voluntary placements should be excluded from this proposed new rule. The former CINA is an adult who has the right to make these decisions. If a guardian of the person is required for a former CINA, that would be a separate proceeding, not in the juvenile court.

Rule 11-213 Adjudicatory Hearing—CINA Proceeding

The new proposed **Rule 11-213(c)** only permits the petitioner, which is typically the local department of social services, to present evidence in support of the CINA petition. This limitation is contrary to the Court of Appeals decision, *In re Najasha B.*, 409 Md. 20 (2009), which held that the juvenile court should have conducted an adjudicatory hearing on the merits of the petition based on the child's objection because the local department did not have a unilateral right to withdraw its petition. To address this omission, I suggest that the Committee add the following language to the end of Rule 11-213(c): "*,but if the petitioner elects not to proceed, the respondent child may elect to proceed and present evidence in support of the CINA petition to meet the burden of proof.*"

Rule 11-214. Identity and Address of Parents

Former CINAs who become subject to the juvenile court's jurisdiction under voluntary placements should be excluded from this proposed new rule. The former CINA is an adult and this adult's parents are not parties to the proceeding.

Rule 11-215. Intervention

Former CINAs who become subject to the juvenile court's jurisdiction under voluntary placements should be excluded from this proposed new rule. The former CINA is an adult and not subject to someone seeking to obtain custody or guardianship of them.

Rule 11-218. Modification or Vacation of Order

The new proposed **Rule 11-218(c)** requires a hearing when requested when there is a change in the "custody, guardianship or commitment" of a respondent child. The Court of Special Appeals also recently held that there should be a hearing, if requested, when there is a reduction or further restriction of visitation about which there is a factual dispute. *In re M.C.*, 245 Md. App. 215, 323 (2020). The new rule, however, does not specifically address a factually disputed reduction in visitation and could be viewed as inconsistent with the recent decision.

Rule 11-218(e) provided that a motion filed within 10 days of an order to modify or vacate that order stays the time to file an appeal. Current Rule 8-202(c) specifies the time to file an appeal in civil actions when a party files a similar motion. There either needs to be an amendment to Rule 8-202(c) to include motions filed under this new rule or this new rule needs to add: "the notice of appeal shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order denying or disposing of the motion."

Rule 11-219. Post Disposition Review and Modification

The new proposed **Rule 11-219(d)(1)** does not direct the juvenile court to consider reasonable efforts as required by § 3-816.1 of the Courts and Judicial Proceedings Article, but proposed Rule 11-216(g)(1), addressing the disposition hearing, does. Deleting the period at the end of that section (after (g)) and adding "; and any finding required by Code, Courts Article § 3-816.1." would correct this omission.

The new proposed **Rule 11-219** lists many of the hearings that are held post-disposition, but it does not include three important types of hearings: the six-month review hearing mandated by § 3-816.2(a) of the Courts and Judicial Proceedings Article; a hearing regarding a qualified residential treatment program mandated by § 3-816.2(a) of the Courts and Judicial Proceedings Article; and a waiver of reasonable efforts hearing under § 3-812 of the Courts and Judicial Proceedings Article. Adding three more subsections would correct these omissions.

(e) Six-Month Review Hearing

For every child, the court shall conduct a hearing to review the status of each child under its jurisdiction within 6 months after the filing of the first CINA or Voluntary Placement petition and at least every 6 months thereafter. At that hearing, the court shall consider the requirements set forth in Code, Courts Article, § 3-816.2(a)(2).

(f) Hearing for a Child Placed in a Qualified Residential Treatment Program

For every child placed in a qualified residential treatment program, the court shall conduct a hearing to review that child's status and determine the appropriateness of placement within 60 days after the child enters the placement. At that hearing, the court shall consider the requirements set forth in Code, Courts Article, § 3-816.2(b)(2).

(g) Waiver of Reasonable Efforts Hearing

If the local department files a request under Code, Courts Article § 3-812, to waive its obligation to make reasonable efforts to reunify a child with a parent or guardian, the court shall hold a separate hearing at any time after finding the child to be a CINA, shall apply the rules of evidence in Title 5 of these rules, and make findings under a clear and convincing evidence standard.

Thank you for consideration of these suggested changes.

Very truly yours,

Janet Hartge

Janet Hartge
Assistant Attorney General