SECOND REPORT OF THE SUBCOMMITTEE
ON C.R.C.P. 121, § 1-15

FROM: Judge Jerry Jones

TO: Civil Rules Committee

At the January 27, 2017, committee meeting, the full Civil Rules Committee approved (that is, agreed to recommend to the Colorado Supreme Court) three changes to C.R.C.P. 121, § 1-15. By a vote of 10-8, however, the committee directed the subcommittee to make changes to a fourth proposal. That proposal was to amend subsection (8) to make the requirement of conferring before filing a motion applicable to self-represented parties. A majority of the committee expressed that the amendment should include exceptions for certain self-represented parties, specifically incarcerated parties and parties subject to protection or restraining orders.

The subcommittee met on April 25, 2017, to consider additional language to the proposed amendment to subsection (8). After discussion, the subcommittee decided to recommend that subsection (8) be amended to read as follows:

> Unless a statute or rule governing the motion provides that it may be filed without notice, moving counsel AND ANY SELF-REPRESENTED PARTY shall confer with opposing counsel AND ANY SELF-REPRESENTED PARTIES before filing a motion. THE REQUIREMENT OF SELF-REPRESENTED PARTIES TO CONFER AND THE REQUIREMENT TO CONFER WITH SELF-REPRESENTED PARTIES SHALL NOT APPLY TO ANY SELF-REPRESENTED PARTY AS TO WHOM THE REQUIREMENT IS IMPRACTICABLE OR CONTRARY TO COURT ORDER OR STATUTE, INCLUDING, BUT NOT LIMITED TO, ANY INCARCERATED PERSON

> OR ANY PERSON SUBJECT TO A PROTECTION OR RESTRAINING ORDER. The motion shall, at the beginning, contain a certification that the movant in good faith has conferred with opposing counsel AND ANY SELF-REPRESENTED PARTIES about the motion. If the relief sought by the motion has been agreed to by the parties or will not be opposed, the court shall be so advised in the motion. If no conference has occurred, the reason why, INCLUDING ALL EFFORTS TO CONFER, shall be stated.

Additional language is noted by all capital letters. The second sentence is the only change from the subcommittee's January proposal.

The subcommittee recognizes that lawyers or self-represented parties could seize on the word "impracticable" to attempt to justify a failure to confer in situations where conferring is warranted. But the subcommittee couldn't come up with a better word (though "unfeasible" was floated), and, in any event, the subcommittee anticipates that the specific examples included in the rule will give courts guidance in deciding whether parties have, in good faith, met their obligations.