AGENDA

COLORADO SUPREME COURT
COMMITTEE ON
RULES OF CIVIL PROCEDURE

Friday, March 18, 2016, 1:30p.m.
Ralph L. Carr Colorado Judicial Center
2 E.14th Ave., Denver, CO 80203
Fourth Floor, Supreme Court Conference Room

I. Call to order

II. Approval of January 29, 2016 minutes [Page 3 to 6]

III. Announcements from the Chair

IV. Business

A. C.R.C.P. 16.1 and Raising County Court Jurisdiction subcommittee—(Chief Judge (Ret.) Davidson) [Page 7 to 22]

B. C.R.M. 6—(Judge Webb) [Page 23]

C. C.A.R. 8(d)—(David DeMuro) [Page 24 to 27]

D. C.R.C.P. 47 (b) Alternate Jurors—(Judge Webb) [Page 28 to 35]

E. County Court Rules Subcommittee—(Ben Vinci)

F. New Form for admission of business records under hearsay exception rule—(Damon Davis and David Little) [Page 36 to 45]

G. Form 20—(Skip Netzorg)

H. C.R.C.P. 121 § 1-14, CRCP 41(b), and CRCP 17(b)—(Judge Berger) [Page 46 to 48]

I. County and municipal appeals to district court—(Judge Espinosa)

J. C.R.C.P. 53—(Judge Zenisek) (Tabled to May 20, 2016)

V. New Business

VI. Adjourn—Next meeting is May 20, 2016 at 1:30pm

Michael H. Berger, Chair
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Conference Call Information:

Dial (720) 625-5050 (local) or 1-888-604-0017 (toll free) and enter the access code, **84902771**, **followed by # key.**

Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
January 29, 2016 Minutes

A quorum being present, the Colorado Supreme Court Advisory Committee on Rules of Civil Procedure was called to order by Judge Michael Berger at 1:30 p.m., in the Supreme Court Conference Room on the fourth floor of the Ralph L. Carr Colorado Judicial Center. Members present or excused from the meeting were:

Name	**Present**	**Excused**
Judge Michael Berger, Chair	X	
Chief Judge (Ret.) Janice Davidson	X	
Damon Davis	X	
David R. DeMuro	X	
Judge Adam Espinosa	X	
Judge Ann Frick		X
Judge Fred Gannett	X	
Peter Goldstein	X	
Lisa Hamilton-Fieldman	X	
Richard P. Holme	X	
Judge Jerry N. Jones	X	
Judge Thomas K. Kane	X	
Debra Knapp		X
Richard Laugesen	X	
Cheryl Layne		X
Judge Cathy Lemon	X	
Bradley A. Levin	X	
David C. Little		X
Chief Judge Alan Loeb	X	
Professor Christopher B. Mueller	X	
Gordon “Skip” Netzorg	X	
Brent Owen	X	
Stephanie Scoville	X	
Lee N. Sternal	X	
Magistrate Marianne Tims	X	
Jose L. Vasquez	X	
Ben Vinci	X	
Judge John R. Webb	X	
J. Gregory Whitehair	X	
Judge Christopher Zenisek	X	
Non-voting Participants		
Justice Allison Eid, Liaison	X	
Jeannette Kornreich	X	

I. Attachments & Handouts

A. January 29, 2016 agenda packet

B. Supplemental Material

1. Form 20 Subcommittee Report
2. Form 20 Subcommittee Report – Member Comment

II. Announcements from the Chair

- The November 20, 2015 minutes were approved as submitted.

- Four new members were introduced: Judge Fred Gannet, district court judge in the 5th judicial district; Judge Adam Espinosa, county court judge in Denver county; Bradley Levin, of Levin Rosenberg, PC; and Jose Vasquez, of Colorado Legal Services.

- David Little was honored with the Colorado Bar Association's Award of Merit for his exceptional contribution and dedication to the legal profession.

- Rule 120 was posted for public comment. Based on comments received the court will decide whether or not to hold a public hearing.

- The following rule changes were adopted: CRCP 23; CRCP 121, Sections 1-12, 1-14, and CRCP 10; Form 35.1; CRCP 359; and CRCP 103, 403, and Form 32.

- It was acknowledged that attendance in person is difficult if you're not in the metro area. However, if you're in the metro area attendance in person is preferred; calling in is an option, but it is not ideal.

III. Business

A. C.R.M. 5 & 6

The proposal to amend C.R.M. 5 and 6 was sent to the supreme court in December, and had been returned to the committee for further amendment. The committee discussed whether or not the subcommittee should amend the proposal further or if the proposal should be tabled. After discussion, it was decided that the proposal will be sent back to the subcommittee for further amendment.

B. Form 20

Subcommittee chair Skip Netzorg began and said that there were many revisions to Form 20, but he would highlight the substantive changes. After discussion, various amendments were proposed by the committee:

- There was a motion to add "(Questions)" to the title after "Interrogatories". The motion was seconded, but the vote was tied. Judge Berger voted "no" on the motion to break the tie, and the motion failed;

- In Section 3 there was a motion to add the principle of "good faith effort" in the last sentence of subsection (g) that passed 17:1. The subcommittee will present final language at the next meeting;

- In Section 5 there was a motion to keep 4.1 and 4.2, which were struck in the draft that failed 5:11;

- In Section 5 there was a motion to change the reference in 10.2 and 11.0 to "(Withdrawn. See 2016 Comment to C.R.C.P. 33.)" that passed unanimously;

- In Section 5 there was a motion to delete 3.5 that passed 15:1;

- In Section 5 there was a motion to delete 2.10 that passed unanimously; and

- Finally, an overall vote was taken, subject to prior amendments, to adopt the changes to C.R.C.P. 33 and Form 20 that passed unanimously.

C. CRCP 16.1 & County Court Jurisdiction Subcommittee

Chief Judge Davidson reported that the subcommittee is still considering what the county court jurisdictional increase recommendation will be and if C.R.C.P. 16.1 should be mandatory. The Council of Chief Justices Report will be issued in July, and the subcommittee might wait until the report is issued to make a recommendation. There are four ideas for the committee to consider in the meantime: once filed the case belongs to the court; court processes must be right sized to fit the requirements of each case; case triage at the time of filing should be done by court personnel and computers; and focus should be on case issues and not case types.

D. C.R.C.P. 47

In state court alternate jurors are not allowed to deliberate, and this issue came up in the court of appeals opinion 2015COA179. The committee expressed interest in amending CRCP 47, so a subcommittee will be formed.

E. C.R.C.P. 122

The amendments were adopted unanimously.

F. Post-Judgment Subcommittee and County Court Working Group

Passed to the March 18, 2016 meeting.

G. New Form for admission of business records under hearsay exception rule

Passed to the March 18, 2016 meeting.

H. County Court and Municipal appeals to district court

Passed to the March 18, 2016 meeting.

I. C.A.R. 8(d)

Passed to the March 18, 2016 meeting.

J. C.R.C.P. 121 section 1-14
Passed to the March 18, 2016 meeting.

K. C.R.C.P. 53
Passed to the March 18, 2016 meeting.

IV. Future Meetings

March 18, 2016

The Committee adjourned at 4:00 p.m.

Respectfully submitted,
Jenny A. Moore

MEMORANDUM

TO: **Judge Michael Berger, Chair**
Supreme Court Civil Rules Committee

FROM: **Subcommittee on Increasing County Court Jurisdictional Levels –**
Senior Judge Janice Davidson, Chair; Judge Chris Zenisek; Jeannette Kornreich; Richard Laugesen; Richard Holme; Peter Goldstein; Debra Knapp; Judge Cathy Lemon; Cheryl Layne; Ben Vinci; Stephanie Scoville

DATE: **March 11, 2016**

RE: **Recommendations Concerning County Court Jurisdictional Levels**

The Subcommittee unanimously recommends that the Civil Rules Committee send to the Supreme Court a recommendation in favor of the Court's support for legislation increasing county court jurisdictional limits. The Subcommittee voted for an increase of $25,000-$35,000 as most appropriate. The reasons for this recommendation, as expressed by subcommittee members, include:

a. An increase would encourage the filing of currently unfiled cases by providing greater access to county court -- district court is far too technical for the average person.

b. It would increase the average person's access to justice because costs would be decreased. People are not going to court now because it is too expensive and complicated.

d. The county courts are more accessible and better designed to serve pro se litigants.

e. Data from other states supports an increase to at least $25,000. Most other states have jurisdictional limits higher than $15,000. (A table of Civil Jurisdiction Thresholds, compiled by the NCSC, is included with this Memorandum.).

Although a more significant increase – e.g., to $50,000 – was seriously considered, it was rejected on the grounds that such an increase could jeopardize county court simplified procedure by increasing requests for depositions/discovery and/or trigger a push to increase filing fees. It was agreed, therefore, that an increase that substantial would need to be further considered before implementation, to ensure it did not result in an increase in expenses to litigants and decrease access to justice. It was also suggested that an increase that high would simply be too great a shock.

The Subcommittee also seriously considered the concerns voiced by Jonathan Asher, Executive Director of the Colorado Legal Aid Society, who was invited to the November 24, 2015 meeting to share a legal services perspective. Mr. Asher thought that increasing the jurisdictional limit would simply increase default judgments, pointing out that it is collection agencies, not pro se litigants, who are filing the majority of cases in county court. He was concerned that a jurisdictional increase, rather than improving access to justice, could result in more judgments against indigent persons without counsel.

However, it was the consensus of the Subcommittee, in response to these concerns, that this was not a zero-sum, that is, an increase in collection cases does not impact an increased ability of a plaintiff (pro se or not) to afford to file his/her claim. Moreover, any increase in collection filings in county court would not be additional or "new" cases, but more likely, would come from a shift to the county court those cases seeking recovery over $15,000, but less than $25,000-$35,000, that would have been filed regardless in the district court. Furthermore, any decrease in litigation costs necessarily benefits both parties, not just the collection agencies.

Please note that, while the Subcommittee was not charged with determining resource impacts, if any, of a jurisdictional increase, its discussions were informed by data presented from the SCAO Division of Court Services and the Presiding Judge and County Court Administrator of Denver County Court. For informational

purposes, included is additional information presented at the November 24, 2015 meeting:

> The Division of Court Services, Jessica Brill, reported that the county courts should be able to absorb an increase under the current and forecasted workload studies at a level of $15,000, a middle value of national jurisdictional limits. At this level, the courts would lose only about 2.67 FTE but that amount should be easily absorbed by shifting work from the district courts to the county courts without much of an impact on staffing levels. There is some anticipation of increased filings because of the lower court fees charged in county court.
>
> Presiding Judge Marcucci and County Court Administrator Langham appeared on behalf of the Denver County Court and reported that Denver has had a drop in caseload the last couple of years, so the county court could handle an increase in the jurisdictional limit. Denver is in good shape based on time to disposition and the civil satisfaction survey. An increase to $25,000 would be okay for now and they would perhaps consider $35,000 down the road. PJ Marcucci expressed strong concern that $50,000 would be too big of a jump without further analysis. County Court Administrator Langham was supportive of starting at $25,000 but expressed concern with $35,000 as too high a limit to begin with. In Denver district court, less than 1% of cases go to trial and Denver's docket is down 30% in the last five years. Denver currently has three county court judges, but might move around one or half of one of the county court judges elsewhere.

Civil Jurisdiction Thresholds

State	Amount	Statute	Language	Date of Last Change
Alabama	$10,000	Code of Ala. § 12-11-30(1)	The circuit court shall have exclusive original jurisdiction of all civil actions in which the matter in controversy exceeds **ten thousand dollars ($10,000),** exclusive of interest and costs, and shall exercise original jurisdiction concurrent with the district court in all civil actions in which the matter in controversy exceeds three thousand dollars ($3,000), exclusive of interest and costs.	HB 449 of 1995
		Code of Ala. § 12-12-30	The original civil jurisdiction of the district court of Alabama shall be uniform throughout the state, concurrent with the circuit court, except as otherwise provided, and shall include all civil actions in which the matter in controversy does not exceed **ten thousand dollars ($10,000),** exclusive of interest and costs, and civil actions based on unlawful detainer; except, that the district court shall not exercise jurisdiction over any of the following matters…	HB 449 of 1995
Alaska	$100,000	Alaska Stat. § 22.15.030(a)	The district court has jurisdiction of civil cases, including foreign judgments filed under AS 09.30.200 and arbitration proceedings under AS 09.43.170 or 09.43.530 to the extent permitted by AS 09.43.010 and 09.43.300, as follows **[$100,000]**	HB 227 of 2004
Arizona	$10,000	A.R.S. § 22-201(B)	Justices of the peace have exclusive original jurisdiction of all civil actions when the amount involved, exclusive of interest, costs and awarded attorney fees when authorized by law, is **ten thousand dollars** or less.	HB 2750 of 2007
Arkansas	$5,000	A.C.A. § 16-17-704	The district courts shall have subject matter jurisdiction **as established by Supreme Court rule**.	SB 462 of 2003
		AR Sup. Ct. Adm. Order No. 18(3)(b-d)	The district court shall have original jurisdiction within its territorial jurisdiction over the following civil matters **[$5,000].**	
California	n/a (single tier trial court)			

Civil Jurisdiction Thresholds

State	Amount	Statute	Language	Date of Last Change
Colorado	$15,000	C.R.S. 13-6-104	On and after January 1, 1991, the county court shall have concurrent original jurisdiction with the district court in civil actions, suits, and proceedings in which the debt, damage, or value of the personal property claimed does not exceed fifteen thousand dollars, including by way of further example, and not limitation, jurisdiction to hear and determine actions in tort and assess damages therein not to exceed **fifteen thousand dollars.**	??? of 1990
Connecticut	n/a (limited jurisdiction court has Probate jurisdiction only)			
Delaware	$50,000	10 Del. C. § 1322(a)	The Court [of Common Pleas] shall have jurisdiction over all civil actions at law where the matter or thing in controversy, exclusive of interest, does not exceed **$50,000.**	HB 527 of 1994
Florida	$15,000	Fla. Stat. § 34.01(1)(c)	County courts shall have original jurisdiction… Of all actions at law in which the matter in controversy does not exceed the sum of **$15,000**, exclusive of interest, costs, and attorney's fees, except those within the exclusive jurisdiction of the circuit courts…	??? of 1990
Georgia	None (State Court); $25,000 or $45,000 (Civil Court, two counties); $15,000 (Magistrate's Court)	O.C.G.A. § 15-7-4	Each state court shall have jurisdiction, within the territorial limits of the county or counties for which it was created and concurrent with the superior courts, over the following matters… The trial of civil actions **without regard to the amount in controversy**, except those actions in which exclusive jurisdiction is vested in the superior courts.	??? of 1981
		O.C.G.A. § 15-10-2(5)	Each magistrate court and each magistrate thereof shall have jurisdiction and power over the following matters… The trial of civil claims including garnishment and attachment in which exclusive jurisdiction is not vested in the superior court and the amount demanded or the value of the property claimed does not exceed **$15,000.00**, provided that no prejudgment attachment may be granted	??? of 1999 ($5,000 to $15,000)

Civil Jurisdiction Thresholds

State	Amount	Statute	Language	Date of Last Change
Hawaii	$40,000	HRS § 604-5(a)	Except as otherwise provided, the district courts shall have jurisdiction in all civil actions where the debt, amount, damages, or value of the property claimed does not exceed **$25,000,** except in civil actions involving summary possession or ejectment, in which case the district court shall have jurisdiction over any counterclaim otherwise properly brought by any defendant in the action if the counterclaim arises out of and refers to the land or premises the possession of which is being sought, regardless of the value of the debt, amount, damages, or property claim contained in the counterclaim.	HB 1846 of 2014 ($25,000 to $40,000); SB 2785 of 2008 ($20,000 to $25,000); HB 2326 of 1994 ($10,000 to $20,000)
Idaho	$5,000 or $10,000 (atty magistrate)	Idaho Code § 1-2208(1)(a)	**Subject to rules promulgated by the supreme court**, the administrative judge in each judicial district or any district judge in the district designated by him may assign to magistrates, severally, or by designation of office, or by class or category of cases, or in specific instances the following matters… When the amount of money or damages or the value of personal property claimed does not exceed **five thousand dollars ($5,000)**	SB 1400 of 2006 ($4,000 to $5,000); SB 1393 of 2000 ($3,000 to $4,000); HB 714 of 1992 ($2,000 to $3,000)
		Idaho Civil Procedure Rule 82(c)(2)(A)	The **jurisdiction of an attorney magistrate** is the same as that of a district judge, but the cases assignable to an attorney magistrate shall be those assignable to all magistrates and the following additional cases may be assigned to attorney magistrates when approved by the administrative district judge of a judicial district… Civil actions regardless of the nature of the action, where the amount of damages or value of the property claimed **does not exceed $10,000**	
Illinois	n/a (single tier trial court)			
Indiana		Burns Ind. Code Ann. § 33-35-2-4	A city court has concurrent jurisdiction with the circuit court in civil cases in which the amount in controversy does not exceed five hundred dollars ($500).	
Iowa	n/a (single tier trial court)			
Kansas	n/a (limited jurisdiction court has no civil jurisdiction)			

Civil Jurisdiction Thresholds

State	Amount	Statute	Language	Date of Last Change
Kentucky	$5,000	KRS § 24A.120(1)	District Court shall have exclusive jurisdiction in: Civil cases in which the amount in controversy does not exceed **five thousand dollars ($5,000),** exclusive of interest and costs…	SB 108 of 2011
Louisiana	$20,000 (Parish); $15,000 - $50,000 (city)	CCP 4842(A)	Except as otherwise provided by law, the civil jurisdiction of a parish court is concurrent with the district court in cases where the amount in dispute, or the value of the property involved, does not exceed **twenty thousand dollars.**	Prior to 1992
		CCP 4843	City Court civil jurisdiction is **$15,000** generally, but over two dozen named cities have exemptions ranging from **$20,000 to $50,000.**	Various
Maine	n/a (limited jurisdiction court has Probate jurisdiction only)			
Maryland	$30,000	Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. § 4-401	Except as provided in § 4-402 of this subtitle, and subject to the venue provisions of Title 6 of this article, the District Court has exclusive original civil jurisdiction in… An action in contract or tort, if the debt or damages claimed do not exceed **$30,000,** exclusive of prejudgment or postjudgment interest, costs, and attorney's fees if attorney's fees are recoverable by law or contract…	HB 1109 of 2007 ($25,000 to $30,000)
Massachusetts	$25,000	ALM GL ch. 212, § 3	The [superior] court shall have exclusive original jurisdiction of civil actions for the foreclosure of mortgages, and of real and mixed actions, except those of which the land court or district courts have jurisdiction, of complaints for flowing lands, and of claims against the commonwealth. Except as otherwise provided by law, the court shall have original jurisdiction of civil actions for money damages. The actions may proceed in the court only if there is no reasonable likelihood that recovery by the plaintiff will be less than or equal to **$25,000,** or an amount ordered from time to time by the supreme judicial court. Where multiple damages are allowed by law, the amount of single damages claimed shall control.	???

Civil Jurisdiction Thresholds

State	Amount	Statute	Language	Date of Last Change
		ALM GL ch. 218, § 19	Except as otherwise provided by law, the district court and Boston municipal court departments shall have original jurisdiction of civil actions for money damages. The actions may proceed in the courts only if there is no reasonable likelihood that recovery by the plaintiff will exceed **$25,000,** or an amount ordered from time to time by the supreme judicial court.	???
Michigan	$25,000	MCLS § 600.8301(1)	The district court has exclusive jurisdiction in civil actions when the amount in controversy does not exceed **$25,000.00.**	??? of 1996 ($10,000 to $25,000)
Minnesota	n/a (single tier trial court)			
Mississippi	$200,000	Miss. Code Ann. § 9-9-21(1)	The jurisdiction of the county court shall be as follows: It shall have jurisdiction concurrent with the justice court in all matters, civil and criminal of which the justice court has jurisdiction; and it shall have jurisdiction concurrent with the circuit and chancery courts in all matters of law and equity wherein the amount of value of the thing in controversy shall not exceed, exclusive of costs and interest, the sum of **Two Hundred Thousand Dollars ($200,000.00)…**	HB 973 of 2003 ($75,000 to $200,000)
Missouri	n/a (limited jurisdiction court has no civil jurisdiction)			
Montana	$12,000	3-10-301(1)(a), MCA	Except as provided in 3-11-103 and in subsection (2) of this section, the justices' courts have jurisdiction…in actions arising on contract for the recovery of money only if the sum claimed does not exceed **$12,000,** exclusive of court costs and attorney fees	SB 238 of 2011 ($7,000 to $12,000); HB 204 of 1999 ($5,000 to $7,000)
Nebraska	$52,000	R.R.S. Neb. § 24-517(5)	Concurrent original jurisdiction with the district court in all civil actions of any type when the amount in controversy is **forty-five thousand dollars or less through June 30, 2005, and as set by the Supreme Court** pursuant to subdivision (b) of this subdivision on and after July 1, 2005.	$15,000 to $45,000 plus Supreme Court future adjustments (LB 269 of 2001); $10,000 to $15,000 (LB 422 of 1991)

Civil Jurisdiction Thresholds

State	Amount	Statute	Language	Date of Last Change
		Neb. Ct. R. § 6-1462	The Nebraska Supreme Court has determined, pursuant to Neb. Rev. Stat. § 24-517(5), that on or after July 1, 2010, each county court shall have concurrent original jurisdiction with the district court in all civil actions of any type where the amount in controversy is **$52,000** or less.	
Nevada	$10,000 (until 1/1/17); $15,000 (from 11/1/7)	Nev. Rev. Stat. Ann. § 4.370(1)(a)	Except as otherwise provided in subsection 2, justice courts have jurisdiction of the following civil actions and proceedings and no others except as otherwise provided by specific statute…In actions arising on contract for the recovery of money only, if the sum claimed, exclusive of interest, does not exceed **$15,000**…	AB 66 of 2015 ($10,000 to $15,000, eff. 1/1/17); AB 100 of 2003 (??? To $10,000)
New Hampshire	$25,000 but Supreme Court may raise to $50,000	RSA 502-A:14	All district courts shall have original and exclusive jurisdiction of civil cases in which the damages claimed do not exceed $1,500, the title to real estate is not involved and the plaintiff or defendant resides within the district…All district courts shall have concurrent jurisdiction with the superior court of civil actions for damages in which the damages claimed do not exceed **$25,000**, the title to real estate is not involved and the plaintiff or defendant resides within the district where such court is located…**The supreme court shall have the authority** to increase the concurrent jurisdiction as provided in paragraph II of those district courts it selects, after consultation with the individual district courts, to hear civil actions in which the damages claimed do not exceed **$50,000**, the title to real estate is not involved, and the plaintiff or defendant resides within the district where such court is located.	HB 1494 of 1992 ($10,000 to $25,000)
New Jersey	n/a (limited jurisdiction courts have no civil jurisdiction)			
New Mexico	$10,000	N.M. Stat. Ann. § 34-8A-3(A)(2)	In addition to the jurisdiction provided by law for magistrate courts, a metropolitan court shall have jurisdiction within the county boundaries over all… civil actions in which the debt or sum claimed does not exceed **ten thousand dollars ($10,000),** exclusive of interest and costs…	SB 584 of 2001 ($7,500 to $10,000); SB 227 of 1999 ($5,000 to $7,500)

Civil Jurisdiction Thresholds

State	Amount	Statute	Language	Date of Last Change
		N.M. Stat. Ann. § 35-3-3(A)	Magistrates have jurisdiction in civil actions in which the debt or sum claimed does not exceed ten thousand dollars ($10,000), exclusive of interest and costs.	SB 584 of 2001 ($7,500 to $10,000); SB 227 of 1999 ($5,000 to $7,500); SB 242 of 1989 (??? to $5,000)
New York	$25,000 (NYC Civil & County Courts); $15,000 (City & District Courts); $3,000 (Town and Village Courts)	NY CLS NYC Civil Ct Act § 201 (NYC Civil Court)	The court shall have jurisdiction as set forth in this article and as elsewhere provided by law. The phrase **"$25,000**", whenever it appears herein, shall be taken to mean "$25,000 exclusive of interest and costs".	1984 (?)
		NY CLS Jud § 190(1) (County Courts)	An action for the partition of real property, for dower, for the foreclosure, redemption or satisfaction of a mortgage upon real property, for the foreclosure of a lien arising out of a contract for the sale of real property, for specific performance of a contract relating to real property, for the enforcement or foreclosure of a mechanic's lien on real property, for reformation or rescission of a deed, contract or mortgage affecting real property, or to compel the determination of a claim to real property under article fifteen of the real property actions and proceedings law, where the real property to which the action relates is situated within the county; or to foreclose a lien upon a chattel in a case specified in section two hundred six of the lien law where the lien does not exceed **twenty-five thousand dollars** in amount and the chattel is found within the county.	1988 (?)
		NY CLS UCCA § 202 (City Courts)	The court shall have jurisdiction of actions and proceedings for the recovery of money, actions and proceedings for the recovery of chattels and actions and proceedings for the foreclosure of liens on personal property where the amount sought to be recovered or the value of the property does not exceed **fifteen thousand dollars** exclusive of interest and costs.	1991 (?)

Civil Jurisdiction Thresholds

State	Amount	Statute	Language	Date of Last Change
		NY CLS UDCA § 201 (District Courts)	The court shall have jurisdiction as set forth in this article and as elsewhere provided by law. The phrase "**$15,000**", whenever it appears herein, shall be taken to mean "$15,000 exclusive of interest and cost".	1984 (?)
		NY CLS Const Art VI, § 16(d) (District Courts)	The district court shall have such jurisdiction as may be provided by law, but not in any respect greater than the jurisdiction of the courts for the city of New York as provided in section fifteen of this article, provided, however, that in actions and proceedings for the recovery of money, actions and proceedings for the recovery of chattels and actions and proceedings for the foreclosure of mechanics liens and liens on personal property, the amount sought to be recovered or the value of the property shall not exceed **fifteen thousand dollars** exclusive of interest and costs.	1983 ($6,000 to $15,000)
		NY CLS UJCA § 201(a) (Town and Village Courts)	The court shall have jurisdiction as set forth in this article and as elsewhere provided by law, subject, in the case of a city court governed by this act, to the limitations stated in § 2300(b)(2)(i) of this act. The phrase "**$3000**", whenever it appears herein, shall be taken to mean "$3000 exclusive of interest and costs", except that, in the case of a city court governed by this act whose monetary jurisdiction is, pursuant to § 2300(b)(2)(i) of this act, below **$3000**, it shall be taken to mean such lesser sum as is applicable in the particular court, exclusive of interest and costs.	1977 (?)
North Carolina	$25,000	N.C. Gen. Stat. § 7A-243	Except as otherwise provided in this Article, the district court division is the proper division for the trial of all civil actions in which the amount in controversy is twenty-five thousand dollars **($25,000)** or less; and the superior court division is the proper division for the trial of all civil actions in which the amount in controversy exceeds twenty-five thousand dollars ($25,000).	SB 452 of 2013 ($10,000 to $25,000); 1985 (??? To $10,000)
North Dakota	n/a (limited jurisdiction courts have no civil jurisdiction)			

Civil Jurisdiction Thresholds

State	Amount	Statute	Language	Date of Last Change
Ohio	$15,000	ORC Ann. 1901.17 (Municipal Courts)	A municipal court shall have original jurisdiction only in those cases in which the amount claimed by any party, or the appraised value of the personal property sought to be recovered, does not exceed **fifteen thousand dollars**, except that this limit does not apply to the housing division or environmental division of a municipal court.	HB 438 of 1996 ($10,000 to $15,000).
		ORC Ann. 1907.03(A) (County Courts)	Under the restrictions and limitations of this chapter, county courts have exclusive original jurisdiction in civil actions for the recovery of sums not exceeding five hundred dollars and original jurisdiction in civil actions for the recovery of sums not exceeding **fifteen thousand dollars**.	HB 438 of 1996 ($3,000 to $15,000).
Oklahoma	n/a (limited jurisdiction courts have no civil jurisdiction)			
Oregon	$10,000	ORS § 51.080(1)(a)	A justice court has jurisdiction, but not exclusive, of the following actions… For the recovery of money or damages only, when the amount claimed does not exceed **$10,000**.	HB 2710 of 2011 ($7,500 to $10,000); HB 2316 of 2007 ($5,000 to $7,500); SB 42 of 1999 ($3,500 to $5,000)
Pennsylvania	$12-15,000 (Philadelphia Municipal Court); $12,000 (Magisterial District Courts)	42 Pa.C.S. § 1123(a)(4) & (6) (Philadelphia Municipal Court)	Except as otherwise prescribed by any general rule adopted pursuant to section 503 (relating to reassignment of matters), the Philadelphia Municipal Court shall have jurisdiction of the following matters…(4) Civil actions, except actions by or against a Commonwealth party as defined by section 8501 (relating to definitions), wherein the sum demanded does not exceed $12,000, exclusive of interest and costs, in the following classes of actions…(6) Civil actions wherein the sum demanded does not exceed **$15,000** in matters involving judgments of real estate taxes and school taxes levied by cities of the first class.	HB 2172 of 2010 ($10,000 to $12,000 generally; $15,000 in certain tax)

Civil Jurisdiction Thresholds

State	Amount	Statute	Language	Date of Last Change
		42 Pa.C.S. § 1515(3) (Magisterial District Courts)	Except as otherwise prescribed by general rule adopted pursuant to section 503 (relating to reassignment of matters), magisterial district judges shall, under procedures prescribed by general rule, have jurisdiction of all of the following matters …Civil claims, except claims against a Commonwealth party as defined by section 8501 (relating to definitions), wherein the sum demanded does not exceed **$12,000**, exclusive of interest and costs, in the following classes of actions.	HB 2172 of 2010 ($8,000 to $12,000)
Rhode Island	$10,000	R.I. Gen. Laws § 8-2-14(a) (Superior Court)	The superior court shall have original jurisdiction of all actions at law where title to real estate or some right or interest therein is in issue, except actions for possession of tenements let or held at will or by sufferance; and shall have exclusive original jurisdiction of all other actions at law in which the amount in controversy shall exceed the sum of ten thousand dollars **($10,000**); and shall also have concurrent original jurisdiction with the district court in all other actions at law in which the amount in controversy exceeds the sum of five thousand dollars ($5,000) and does not exceed ten thousand dollars ($10,000)…	HB 7631 of 1992 ($5,000 to $10,000)
		R.I. Gen. Laws § 8-8-3(a)(1) & (c) (District Court)	The district court shall have exclusive original jurisdiction of… All civil actions at law, but not causes in equity or those following the course of equity except as provided in § 8-8-3.1 and chapter 8.1 of this title, wherein the amount in controversy does not exceed five thousand dollars ($5,000)… The district court shall have concurrent original jurisdiction with the superior court of all civil actions at law wherein the amount in controversy exceeds the sum of five thousand dollars ($5,000) and does not exceed ten thousand dollars (**$10,000**); provided, however, that in any such action, any one or more defendants may in the answer to the complaint demand removal of the action to the superior court, in which event the action shall proceed as if it had been filed originally in the superior court.	Prior to 1989

Civil Jurisdiction Thresholds

State	Amount	Statute	Language	Date of Last Change
South Carolina	$7,500	S.C. Code Ann. § 22-3-10	Magistrates have concurrent civil jurisdiction in the following cases…[**$7,500**]	HB 3379 of 2000 ($5,000 to $7,500)
South Dakota	$12,000	S.D. Codified Laws § 16-12B-13	A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the circuit courts to try and determine all civil actions, if the debt, damage, claim, or value of the property involved does not exceed twelve thousand dollars. Any magistrate court with a magistrate judge presiding has jurisdiction in small claims proceedings, if the debt, damage, claim, or value of the property involved does not exceed **twelve thousand dollars**.	HB 1122 of 2008 ($10,000 to $12,000); HB 1055 (??? to $10,000)
Tennessee	$25,000	Tenn. Code Ann. § 16-15-501(d)(1) (Courts of General Sessions)	The jurisdiction of courts of general sessions, where they have been created, shall extend to the sum of **twenty-five thousand dollars ($25,000)** in all civil cases, both law and equity; provided, that this section shall not apply to cases of forcible entry and detainer, in which the court shall have unlimited original jurisdiction; and provided further, that this section shall not apply to actions to recover personal property, in which the court shall have unlimited original jurisdiction, including jurisdiction to award an alternative money judgment; and general sessions judges shall have jurisdiction to issue restraining orders and to enforce the penalty provisions for violation of those restraining orders.	HB 2783 of 2005 ($15,000 to $25,000); HB 1017 of 1997 ($10,000 to $15,000)
Texas	$10,000	Tex. Gov't Code § 26.042(a)	A county court has concurrent jurisdiction with the justice courts in civil cases in which the matter in controversy exceeds $200 in value but does not exceed **$10,000**, exclusive of interest.	SB 618 of 2007 ($5,000 to $10,000); HB 1431 of 1991 ($2,500 to $5,000)
Utah	$10,000	Utah Code Ann. § 78A-8-102(3) & Utah Code Ann. § 78A-7-106	(78A-8-106) Justice courts have jurisdiction of small claims cases under Title 78A, Chapter 8, Small Claims Courts, if a defendant resides in or the debt arose within the territorial jurisdiction of the justice court…(78A-8-102(3)) The judgment in a small claims action may not exceed **$10,000** including attorney fees but exclusive of court costs and interest.	SB 176 of 2009 ($7,500 to $10,000).
Vermont	n/a (limited jurisdiction courts have no civil jurisdiction)			

Civil Jurisdiction Thresholds

State	Amount	Statute	Language	Date of Last Change
Virginia	$25,000	Va. Code Ann. § 16.1-77(1)	Exclusive original jurisdiction of any claim to specific personal property or to any debt, fine or other money, or to damages for breach of contract or for injury done to property, real or personal, or for any injury to the person that would be recoverable by action at law or suit in equity, when the amount of such claim does not exceed $4,500 exclusive of interest and any attorney's fees contracted for in the instrument, and concurrent jurisdiction with the circuit courts having jurisdiction in such territory of any such claim when the amount thereof exceeds $4,500 but does not exceed **$25,000**, exclusive of interest and any attorney's fees contracted for in the instrument. However, this $25,000 limit shall not apply with respect to distress warrants under the provisions of § 55-230, cases involving liquidated damages for violations of vehicle weight limits pursuant to § 46.2-1135, nor cases involving forfeiture of a bond pursuant to § 19.2-143.	HB 1590 of 2011 ($15,000 to $25,000)
Washington	$100,000	Rev. Code Wash. (ARCW) § 3.66.020	If the value of the claim or the amount at issue does not exceed **one-hundred thousand dollars**, exclusive of interest, costs, and attorneys' fees, the district court shall have jurisdiction and cognizance of the following civil actions and proceedings…	SB 5125 of 2015 ($75,000 to $100,000); HB 2557 of 2008 ($50,000 to $75,000); HB 2522 of 2000 ($35,000 to $50,000); SB 5151 of 1997 ($25,000 to $35,000); HB 1824 of 1991 (??? To $25,000)
West Virginia	$5,000	W. Va. Code § 50-2-1	Except as limited herein and in addition to jurisdiction granted elsewhere to magistrate courts, such courts shall have jurisdiction of all civil actions wherein the value or amount in controversy or the value of property sought, exclusive of interest and cost, is not more than **five thousand dollars**.	HB 4295 of 1994 ($3,000 to $5,000)
Wisconsin	n/a (limited jurisdiction court has no civil jurisdiction)			

Civil Jurisdiction Thresholds

State	Amount	Statute	Language	Date of Last Change
Wyoming	$50,000	Wyo. Stat. § 5-9-128(a)(i)	Each circuit court has exclusive original civil jurisdiction within the boundaries of the state for… An action where the prayer for recovery is an amount not exceeding **fifty thousand dollars ($50,000.00)**, exclusive of court cost…	SB 15 of 2011 ($7,000 to $50,000)

Based on our email exchange before the meeting, I cobbled together the following revision. The most noticeable difference is that I tried to make the language more generic, rather than being limited to "hearings." That said, I do not recall ever having seen a case where a magistrate ruled w/o a hearing, so perhaps this limitation should be restored.

5(g) For any proceeding in which a district court magistrate may perform a function only with consent under C.R.M. 6, the notice — which must be writen except to the extent given orally to parties who are present in court — shall state that all parties must content to the function being performed by the magistrate.

(1) If the notice is given in open court, then all parties who are present and do not then object shall be deemed to have consented to the function being performed by the magistrate.

(2) Any party who is not present when the notice is given and who fails to file a written objection within 7 days of the date of written notice shall be deemed to have consented.

6(2)(f) a district court magistrate shall not perform any function for which consent is required under any provision of this Rule unless the oral or written notice complied with Rule 5(g).

Please give me your reactions,

Thanks

John R. Webb

MEMORANDUM

To: The Honorable Michael Berger, Chairperson of the Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure

From: Dave DeMuro

Re: Proposal to add ¶7 to C.R.C.P. 121, §1-23

Date: March 6, 2016

At a prior meeting, Chief Judge Loeb brought to our attention that the Appellate Rules Committee had concluded that C.A.R. 8(d) (copy attached) on bonds and release of liens might be better placed in the Rules of Civil Procedure.

I reviewed this issue with the assistance of Fred Skillern, a former member of our Committee, who has extensive experience in real estate litigation. Fred explained that this rule allows for "bonding over a lien," and has a counterpart in C.R.S. §38-22-121, which allows a bond to be posted to replace a mechanic's lien. Fred said that this process allows for transfer of property more freely while protecting the lien claimant, and it often is utilized by the holder of a deed of trust on the property.

In the normal sequence of events that is relevant to us, a judgment creditor obtains a money judgment, and then obtains from the court clerk "a transcript of the judgment record of such judgment, certified by the clerk of such court." C.R.S. §13-52-102(1). The judgment creditor then records this document with the clerk and recorder in any county, which creates a lien on the real property of the judgment debtor in that county.

The judgment debtor may seek a stay of the enforcement of the money judgment by posting a bond under C.R.C.P. 121, §1-23 (copy attached). Once that process is completed, the judgment creditor's lien on the real property should be moot because the judgment creditor will be secured by the bond. Therefore, C.A.R. 8(d) was adopted at some point to provide for removal of the lien and to stop foreclosure of the judgment lien on the real property. But, C.A.R. 8(d) is not the place for this rule.

I propose to move this rule to the end of Rule 121, §1-23, on bonds (proposed rule attached). Fred agreed that this is a logical location for this rule. I have tried to simplify the language from C.A.R. 8(d), but still retain the same features.

I look forward to discussing this with the Committee.

RULE 8. STAY OR INJUNCTION PENDING APPEAL

(a) Stay Must Ordinarily be Sought in the First Instance in Trial Court; Motion for Stay in Appellate Court. Application for a stay of the judgment or order of a trial court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the trial court. A motion for such relief may be made to the appellate court or to a judge or justice thereof, but the motion shall show that application to the trial court for the relief sought is not practicable, or that the trial court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the trial court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the clerk and normally will be considered by a panel or division of the court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single judge or justice of the court.

(b) Stay May be Conditioned Upon Giving of Bond; Proceedings Against Sureties. Relief available in the appellate court under this Rule may be conditioned upon the filing of a bond or other appropriate security in the trial court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the trial court and irrevocably appoints the clerk of the trial court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion in the trial court without the necessity of an independent action. The motion and such notice of the motion as the trial court prescribed may be served on the clerk of the trial court, who shall forthwith mail copies to the sureties if their addresses are known.

(c) When Bond Not Required. The appellate court may, in its discretion, dispense with or limit the amount of bond when the appellant is an executor, administrator, conservator, or guardian of an estate and has given sufficient bond as such. The state, the county commissioners of the various counties, cities, towns, and school districts and all charitable, educational, and reformatory institutions under the patronage or control of the state and all public officials when suing or defending in their official capacities for the benefit of the public shall not be required to furnish bond.

(d) Bond; Release of Lien or of Notice of Lis Pendens. If a judgment for the payment of money has been made a lien upon real estate, when a bond is given such lien shall be released thereby. The clerk of the court wherein stay has been granted shall issue a certificate that the judgment has been stayed, and such certificate may be recorded with the recorder of the county in which such real estate is situated. Such certificate may also be served upon any officer holding an execution and thereupon all proceedings under such execution shall be discontinued, and such officer shall return the same into the court from which it was issued together with the copy of the certificate served upon him and shall set forth in his return what he has done under the execution.

Section 1–23
BONDS IN CIVIL ACTIONS

1. Bonds Which Are Automatically Effective Upon Filing With The Court. The following bonds are automatically effective upon filing with the clerk of the court:

(a) Cash bonds in the amount set by court order, subsection 3 of this rule, or any applicable statute.

(b) Certificates of deposit issued by a bank chartered by either the United States government or the State of Colorado, in the amount set by court order, subsection 3 of this rule, or any applicable statute. The certificate of deposit shall be issued in the name of the clerk of the court and payable to the clerk of the court, and the original of the certificate of deposit must be deposited with the clerk of the court.

(c) Corporate surety bonds issued by corporate sureties presently authorized to do business in the State of Colorado in the amount set by court order, subsection 3 of this rule, or any applicable statute. A power of attorney showing the present or current authority of the agent for the surety signing the bond shall be filed with the bond.

2. Bonds Which Are Effective Only Upon Entry of an Order Approving the Bond.

(a) Letters of credit issued by a bank chartered by either the United States government or the State of Colorado, in the amount set by court order, subsection 3 of this rule, or any applicable statute. The beneficiary of the letter of credit shall be the clerk of the district court. The original of the letter of credit shall be deposited with the clerk of the court.

(b) Any Other Proposed Bond.

3. Amounts of Bond.

(a) Supersedeas Bonds. Unless the court otherwise orders, or any applicable statute directs a higher amount, the amount of a supersedeas bond to stay execution of a money judgment shall be 125% of the total amount of the judgment entered by the court (including any prejudgment interest, costs and attorneys fees awarded by the court). The amount of a supersedeas bond to stay execution of a non-money judgment shall be determined by the court. Nothing in this rule is intended to limit the court's discretion to deny a stay with respect to non-money judgments. Any interested party may move the trial court (which shall have jurisdiction not withstanding the pendency of an appeal) for an increase in the amount of the bond to reflect the anticipated time for completion of appellate proceedings or any increase in the amount of judgment.

(b) Other Bonds. The amounts of all other bonds shall be determined by the court or by any applicable statute.

4. Service of Bonds Upon All Parties of Record. A copy of all bonds or proposed bonds filed with the court shall be served on all parties of record in accordance with C.R.C.P. 5(b).

5. No Unsecured Bonds. Except as expressly provided by statute, and except with respect to appearance bonds, no unsecured bond shall be accepted by the court.

6. Objections to Bonds. Any party in interest may file an objection to any bond which is automatically effective under subsection 1 of this rule or to any proposed bond subject to subsection 2 of this rule. A bond, which is automatically effective under subsection 1 remains in effect unless the court orders otherwise. Any objections shall be filed not later than 14 days after service of the bond or proposed bond except that objections based upon the entry of any amended or additional judgment shall be made not later than 14 days after entry of any such amended or additional judgment.

Committee Comment

The Committee is aware that issues have arisen regarding the effective date of a bond, and thus the effectiveness of injunction orders and other orders which are conditioned upon the filing of an acceptable bond. Certain types of bonds are almost always acceptable and thus, under this rule, are automatically effective upon filing with the Court subject to the consideration of timely filed objections. Other types of bonds may or may not be acceptable and should not be effective until the Court determines the sufficiency of the bond. The court may permit property bonds upon such conditions as are appropriate to protect the judgment creditor (or other party sought to be protected). Such conditions may include an appraisal by a qualified appraiser, information regarding liens and encumbrances against the property, and title insurance.

This rule also sets the presumptive amount of a supersedeas bond for a money judgment. The amount of a supersedeas bond for a non-money judgment must be determined in the particular case by the court and this rule is not intended to affect the court's discretion to deny a supersedeas bond in the case of a non-money judgment.

Proposal to add a new ¶7 to C.R.C.P. 121, section 1-23.

As of March 6, 2016

SECTION 1-23. BONDS IN CIVIL MATTERS

1 – 6. No change.

7. **Bonding over a lien.** If a money judgment has been made a lien upon real estate by the filing of a transcript of the judgment record by the judgment creditor, the lien shall be released upon the motion of the judgment debtor or other interested party if a bond for the money judgment has been approved and filed as provided in this section 1-23. The order of the court releasing the lien may be recorded with the clerk and recorder of the county where the property is located. Once the order is recorded, all proceedings by the judgment creditor to enforce the judgment lien shall be discontinued, unless a court orders otherwise.

TO: JUDGE BERGER

FROM: JUDGE WEBB

RE: C.R.C.P.47(b) SUBCOMMITTEE

DATE: MARCH 2, 2016

The C.R.C.P. subcommittee submits the following preliminary report.[1]

I. SUMMARY

A majority of the subcommittee favored revising C.R.C.P. 47(b) to afford trial courts greater discretion in allowing alternate jurors to deliberate.[2] However, the majority was divided on how to do so, especially given statutes addressing both the composition of civil juries and the role of alternates. One member suggested that a recommendation would be premature without input from stakeholders such as the CTLA, the CDLA, and other district court judges. We were informed, however, that the CBA Civil Litigation Section opposes any change, and that CTLA may take a position by mid-March.

[1] The subcommittee consisted of Damon Davis, David DeMuro, Adam Espinosa, Peter Goldstein, Judge Kane, Bradley Levin, Brent Owen, and Judge Webb.

[2] C.R.C.P. 347(b) does not permit alternate jurors.

II. BACKGROUND

C.R.C.P. 48 provides that "[t]he jury shall consist of six persons, unless the parties agree to a smaller number, not less than three." Identical language appears in section 13-71-103, C.R.S. 2015.

As relevant here, C.R.C.P. 47(b) provides, "If the court *and* the parties agree, alternate jurors may deliberate and participate fully with the principal jurors in considering and returning a verdict." (emphasis added) But according to section 13-71-142, C.R.S. 2015, "An alternate juror who does not replace a regular juror shall be discharged at the time the jury retires to consider its verdict, unless otherwise provided by law, by agreement of the parties, *or* by order of the court." (Emphasis added.) Thus, the statute could be read as empowering a trial court to allow an alternate to deliberate, regardless of the parties' contrary position.

Although no Colorado court has expressly addressed the potential conflict between and among these rules and statutes, presumably a civil jury may consist of more than six persons because C.R.C.P. 47(b) trumps C.R.C.P. 48 and section 13-71-142 trumps section 13-71-103. This conclusion would be supported by

the canon that a specific provision controls over a more general one. *Beren v. Beren*, 2015 CO 29, ¶ 21.

In *Johnson v. VCG Restaurants Denver, Inc.*, 2015 COA 179, ¶ 1, the division concluded, "As a matter of first impression in Colorado, we hold that C.R.C.P. 47(b) does not grant a trial court the discretion to permit an alternate juror to deliberate and participate fully with the principal jurors in considering and returning a verdict when one party objects." The division added, "Mr. Johnson does not explain why we should look to Rule 48 or sections 13–71–103 and 13–71–142 when Rule 47(b) directly addresses this issue." *Id.* at ¶ 15. This issue was also noted by the dissent in *Haralampopoulos v. Kelly*, 361 P.3d 978 (Colo. App. 2011), *rev'd*, 2014 CO 46, but the supreme court did not reverse on this basis.

Where a court rule and a statute conflict, the outcome depends on whether the subject is procedural or substantive. *See, e.g.*, *People v. Hollis*, 670 P.2d 441, 442 (Colo. App. 1983) ("[A] statute governing procedural matters . . . which conflicts with a rule promulgated by the Supreme Court would be a legislative invasion

of the court's rule-making powers."); *see also People v. Prophet*, 42 P.3d 61, 62 (Colo. App. 2001). The test has been framed as:

> To distinguish procedural from substantive matters we must examine the purpose of the statute. If the purpose is to permit the court to function and function efficiently, the matter is procedural and the conflicting statute must yield to a court rule. Conversely, if the statute embodies a matter of public policy, it is substantive, and the statute controls.

People v. Montoya, 942 P.2d 1287, 1295-96 (Colo. App. 1996).

In *Montoya*, the conflict between a court rule and a statute pertained to the timing of replacing a regular juror with an alternate during deliberations. *Id.* at 1294. The court deemed the issue substantive:

> [A]lthough the timing of the replacement of a regular juror indirectly affects court procedure, the overriding purpose of § 15-10-105 is to ensure that a party receives a fair trial by jury. . . . Such a determination necessarily involves important policy considerations and thus is a matter appropriate for legislative determination.

Id. at 1296. *See also Carrillo v. People*, 974 P.2d 478, 488 (Colo. 1999) (Because the timing and discharge of alternate jurors "is a matter of substance and not merely a matter of court procedure[,]"

the statute — not the conflicting rule of criminal procedure — controls.).

The federal rules of civil procedure no longer afford special status to alternate jurors.

III. PROCESS

The subcommittee considered leaving the status quo in place and three alternatives: (1) an alternate can never deliberate; (2) an alternate can always deliberate; and (3) the trial court should have greater discretion to allow deliberation by alternates.

A. Status Quo

Under current C.R.C.P. 47(b), the parties control the issue. One member strongly favored no change. He explained that because counsel owe their clients the duty to take all reasonable steps which favor a successful outcome, if counsel's observations during trial lead to the conclusion that the alternate may not favor the client's position, counsel should have an absolute veto on the alternate deliberating. Another member has warmed to this view.

B. Never

No member favored a complete prohibition on alternates deliberating.

C. Always

Two members favored always allowing alternates to deliberate, although one member doubted that such a court rule would survive challenge under section 13-17-142. His default choice was to allow trial courts greater discretion, as discussed in the next paragraph. Informal inquiries of trial judges discloses a strong preference for allowing alternates to deliberate, in recognition of their investment up to that point in the process.

D. Discretion

The remaining members favored allowing trial courts to permit deliberation by alternates, but disagreed on how much discretion the trial court should have. Some members in this group favored giving the court unfettered discretion, which would be consistent with section 13-17-142. Others favored discretion to override the objection of one or more, but not of all parties.

The majority shared the rationale that allowing deliberation acknowledges the alternate's contribution to the process until the case goes to the jury, which in a complex case such as *Haralampopoulos* can be several weeks. Some members in the majority noted that because C.R.C.P. 47(a)(5) now allows

predeliberation discussion among jurors, an alternate may have had some influence on his or her fellow jurors, even if the alternate does not deliberate. Other members pointed out that a trial court's discretionary decision to allow or not allow an alternate to deliberate would be very difficult to overturn on appeal, especially if the court made findings such as the alternate was or was not an attentive juror.

Finally, all members recognized that if section 13-17-142 controls C.R.C.P. 47(b), the practical choices may be limited to leaving the rule as is, unless and until it is challenged on the basis of conflict with the statute — an argument apparently not raised in *Johnson* — or amending the rule to conform to the statute. The potential for uncertainty in leaving the rule unchanged was the primary reason for placing this issue before the committee. Now, however, unless the supreme court overrules *Johnson*, it will be binding on the trial courts. Conforming the rule to the statute would allow trial court to override good faith decisions of counsel made to further their clients' interests.

IV. CONCLUSION

A majority of the subcommittee believes that the entire committee should now take up this issue, although at least one member favors deferring any decision until more stakeholders have weighed in. If a majority of the committee favors increasing trial court discretion, then C.R.C.P. 47(b) could be rewritten in two ways. Compare (new language in bold):

- Current: "If the court and the parties agree, alternate jurors may deliberate and participate fully with the principal jurors in considering and returning a verdict.
- Limited discretion: "If the court **orders and one or more but not all of** the parties **objects, or if all of the parties agree**, alternate jurors…"
- Unlimited discretion: "If the court **orders**, alternate jurors…"

Respectfully submitted,

_____ /s _____

John R. Webb

Form 10. CERTIFICATION OF RECORDS PURSUANT TO C.R.E. 902(11) AND 902(12)

Name of Organization or Business: _____

Address: _____

_____

City/State/Zip Code: _____

Telephone Number: _____

I swear or affirm that to the best of my knowledge and belief the following is true for the

attached documents, which are _____ (*describe documents*), consisting of

_____ number of pages, dated from _____ to _____.

1) I am the custodian of these records, or I am an employee familiar with the manner and process in which these records are created and maintained by virtue of my duties and responsibilities;

2) The records were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

3) Were kept in the course of the regularly conducted activity;

4) Were made by the regularly conducted activity as a regular practice.

Name: _____

Signature: _____

Subscribed and sworn to before me this ____ day of_____, 20___,

By _____

Witness my hand and official seal.

My commission expires_____.

_____
Notary Public

FORM 11. DISCLOSURE OF RECORDS TO BE OFFERED THROUGH A CERTIFICATION OF RECORDS PURSUANT TO C.R.E. 902(11) AND 902(12)

COUNTY COURT, _____ COUNTY, COLORADO Address: _____ Plaintiff(s): v. Defendant(s): _____ Attorney or Party Without Attorney (Name and Address): Telephone Number: E-Mail: FAX Number: Atty. Reg. #:	☐ **COURT USE ONLY** ☐ Case No. Div.

[NAME OF PARTY] DISCLOSURE OF RECORDS TO BE OFFERED THROUGH A CERTIFICATION OF RECORDS

[Name of Party] Hereby submits this Disclosure of Records to be Offered Through A Certification of Records.

[Name of Party] provides notice to all adverse parties of the intent to offer the following records through a certification of records pursuant to C.R.E. 902(11) and 902(12):

[List all records to be offered through a certification of records. If you intend to offer all records through a certification, you may state "all records." Use additional Pages if necessary]

_____

_____

_____

_____

_____

_____

These records with the accompanying certification (*check applicable line*):

_____ Have already been provided to all adverse parties.

_____ Are being provided to all adverse parties with this Disclosure.

_____ Have been provided to all adverse parties in part, with the remainder being provided with this Disclosure

_____ Are available for inspection and copying on reasonable notice at this location:

_____

Date: _____ _____

(*Signature of Party or Attorney*)

CERTIFICATE OF SERVICE

I certify that on _____ (*date*) a copy of this **DISCLOSURE OF RECORDS TO BE OFFERED THROUGH A CERTIFICATION OF RECORDS** was served on the following parties (*list all parties served by name and address, use extra pages if necessary*):

_____ _____

_____ _____

_____ _____

_____

(*Signature of Party or Attorney*)

Form 41. CERTIFICATION OF RECORDS PURSUANT TO C.R.E. 902(11) AND 902(12)

Name of Organization or Business: _____

Address: _____

_____

City/State/Zip Code: _____

Telephone Number: _____

I swear or affirm that to the best of my knowledge and belief the following is true for the

attached documents, which are _____ (*describe documents*), consisting of

_____ number of pages, dated from _____ to _____.

1) I am the custodian of these records, or I am an employee familiar with the manner and process in which these records are created and maintained by virtue of my duties and responsibilities;

2) The records were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

3) Were kept in the course of the regularly conducted activity;

4) Were made by the regularly conducted activity as a regular practice.

Name: _____

Signature: _____

Subscribed and sworn to before me this ____ day of_____, 20___,

By _____

Witness my hand and official seal.

My commission expires_____.

_____
Notary Public

FORM 42. DISCLOSURE OF RECORDS TO BE OFFERED THROUGH A CERTIFICATION OF RECORDS PURSUANT TO C.R.E. 902(11) AND 902(12)

DISTRICT COURT, _____ COUNTY, COLORADO Address: _____ Plaintiff(s): v. Defendant(s): _____ Attorney or Party Without Attorney (Name and Address): Telephone Number: E-Mail: FAX Number: Atty. Reg. #:	☐ **COURT USE ONLY** ☐ Case No. Div.

[NAME OF PARTY] DISCLOSURE OF RECORDS TO BE OFFERED THROUGH A CERTIFICATION OF RECORDS

[Name of Party] Hereby submits this Disclosure of Records to be Offered Through A Certification of Records.

[Name of Party provides notice to all adverse parties of the intent to offer the following records through a certification of records pursuant to C.R.E. 902(11) and 902(12):

[List all records to be offered through a certification of records. If you intend to offer all records through a certification, you may state "all records." Use additional Pages if necessary]

_____

_____

_____

_____

_____

_____

These records with the accompanying certification (*check applicable line*):

_____ Have already been provided to all adverse parties.

_____ Are being provided to all adverse parties with this Disclosure.

_____ Have been provided to all adverse parties in part, with the remainder being provided with this Disclosure

_____ Are available for inspection and copying on reasonable notice at this location:

_____

Date: _____ _____

(*Signature of Party or Attorney*)

CERTIFICATE OF SERVICE

I certify that on _____ (*date*) a copy of this **DISCLOSURE OF RECORDS TO BE OFFERED THROUGH A CERTIFICATION OF RECORDS** was served on the following parties (*list all parties served by name and address, use extra pages if necessary*):

_____ _____

_____ _____

_____ _____

_____

(*Signature of Party or Attorney*)

INSTRUCTIONS FOR FORMS 10 AND 11

Forms 10 and 11 provide a means to comply with the requirements of C.R.E. 902(11) and 902(12) to allow the admission of the records of a regularly conducted activity. These forms are not the exclusive means of complying with the rules and parties may use their own forms so long as they comply with the requirements of the rules.

Form 10

Form 10 should be completed by the person in charge of the records at the business or organization, or by another person who is familiar with how the records are kept. It must be notarized. If the business or organization does not have a notary, it may be necessary to find a notary willing to go to the business.

Form 10 may be provided to the business or organization at the time records are requested, either by letter or by subpoena. The form may then be completed at the time the records are provided. However, completion of the form is voluntary and the business or organization may refuse.

If a party desires a business or organization to complete Form 10 after the documents have been provided, it may be necessary to give the business a copy of the documents, so it can verify exactly what was earlier provided.

Form 10 calls for a description of the documents being certified. This description may be brief, such as: "medical records;" "architects notes and blue prints;" or "repair estimates."

Form 10 calls for a date range for the documents. This is to assist in determining what specific documents have been certified. If the documents are undated, and the date range cannot be ascertained, then this may be left blank.

The completed Form 10 must accompany the documents when they are offered at trial or a hearing.

Form 11

C.R.E. 902(11) and 902(12) require advance notice if documents will be offered into evidence through a certification of the records. Form 11 provides a means to provide this notice.

Form 11 should list each record that may be offered through a certification, unless all records may be offered in this manner, in which case Form 11 may state "all records." By way of example, the records may be listed by name or description, Bate's number, or trial exhibit number.

Both the records to be offered and the certifications must be provided to all adverse parties, or at least made available for inspection and copying. If the records or certifications have not already

been provided, they should be attached to Form 11 or be made available for inspection and copying. The serving party need only attach those records and certifications that have not already been provided.

Form 11 must be served on all adverse parties before of the use of the records at a trial or hearing. For the sake of simplicity, it may be desirable to serve all parties, and not just all adverse parties. The service must be sufficiently in advance of the trial or hearing that the adverse parties may prepare to address the documents.

What constitutes sufficient advance notice is decided on a case-by-case basis. But Form 11 should be served sufficiently in advance of the trial or hearing that the adverse parties may subpoena witnesses to testify about the documents if they so desire.

INSTRUCTIONS FOR FORMS 41 AND 42

Forms 41 and 42 provide a means to comply with the requirements of C.R.E. 902(11) and 902(12) to allow the admission of the records of a regularly conducted activity. These forms are not the exclusive means of complying with the rules and parties may use their own forms so long as they comply with the requirements of the rules.

Form 41

Form 41 should be completed by the person in charge of the records at the business or organization, or by another person who is familiar with how the records are kept. It must be notarized. If the business or organization does not have a notary, it may be necessary to find a notary willing to go to the business.

Form 41 may be provided to the business or organization at the time records are requested, either by letter or by subpoena. The form may then be completed at the time the records are provided. However, completion of the form is voluntary and the business or organization may refuse.

If a party desires a business or organization to complete Form 41 after the documents have been provided, it may be necessary to give the business a copy of the documents, so it can verify exactly what was earlier provided.

Form 41 calls for a description of the documents being certified. This description may be brief, such as: "medical records;" "architects notes and blue prints;" or "repair estimates."

Form 41 calls for a date range for the documents. This is to assist in determining what specific documents have been certified. If the documents are undated, and the date range cannot be ascertained, then this may be left blank.

The completed Form 41 must accompany the documents when they are offered at trial or a hearing.

Form 42

C.R.E. 902(11) and 902(12) require advance notice if documents will be offered into evidence through a certification of the records. Form 42 provides a means to provide this notice.

Form 42 should list each record that may be offered through a certification, unless all records may be offered in this manner, in which case Form 42 may state "all records." By way of example, the records may be listed by name or description, Bate's number, or trial exhibit number.

Both the records to be offered and the certifications must be provided to all adverse parties, or at least made available for inspection and copying. If the records or certifications have not already

been provided, they should be attached to Form 42 or made available for inspection and copying. The serving party need only attach those records and certifications that have not already been provided.

Form 42 must be served on all adverse parties before of the use of the records at a trial or hearing. For the sake of simplicity, it may be desirable to serve all parties, and not just all adverse parties. The service must be sufficiently in advance of the trial or hearing that the adverse parties may prepare to address the documents.

What constitutes sufficient advance notice is decided on a case-by-case basis. But Form 42 should be served sufficiently in advance of trial or hearing that the adverse parties may subpoena witnesses to testify about the documents if they so desire.

Rule 121. Local rules – Statewide Practice Standards

(a) – (c) [NO CHANGE]

Section 1-14

DEFAULT JUDGMENTS

1. – 2. [NO CHANGE]

3. If the party against whom default judgment is sought is in the military service, or his status cannot be shown, the court shall require such additional evidence or proceeding as will protect the interests of such party in accordance with the Service ~~M~~members Civil Relief Act ~~(SCRA)~~, 50 U.S.C. § 3931~~520~~, including the appointment of an attorney when necessary. The appointment of an attorney shall be made upon application of the moving party, and expense of such appointment shall be borne by the moving party, but taxable as costs awarded to the moving party as part of the judgment except as prohibited by law.

4. [NO CHANGE]

~~COMMITTEE~~ COMMENT

2006

[1] This Practice Standard was needed because neither C.R.C.P. 55, nor any local rule specified the elements necessary to obtain a default judgment and each court was left to determine what was necessary. One faced with the task of attempting to obtain a default judgment usually found themselves making several trips to the courthouse, numerous phone calls and redoing needed documents several times. The Practice Standard is designed to minimize both court and attorney time. The Practice Standard sets forth a standardized check list which designates particular items needed for obtaining a default judgment. For guidance on affidavits, see C.R.C.P. 108. See also Sections 13-63-101, C.R.S., concerning affidavits and requirements by the court.

RULE 41. DISMISSAL OF ACTIONS

(a) [NO CHANGE]

(b) Involuntary Dismissal: Effect Thereof.

(1) By Defendant. For failure of a plaintiff to prosecute or to comply with these Rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52~~(a)~~. Unless the court in its order for dismissal otherwise specifies, a dismissal under this section (b) and any dismissal not provided for in this Rule, other than a dismissal for failure to prosecute, for lack of jurisdiction, for failure to file a complaint under Rule 3, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

(c) – (d) [NO CHANGE]

Rule 17. Parties Plaintiff and Defendant; Capacity

(a) [NO CHANGE]

(b) Capacity to Sue or Be Sued. ~~A married woman may sue and be sued in all matters the same as though she were sole.~~ A partnership or other unincorporated association may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right. A father and mother or the sole surviving parent may maintain an action for the injury or death of a child; where both maintain the action, each shall have an equal interest in the judgment; where one has deserted or refuses to sue, the other may maintain the action. A guardian may maintain an action for the injury or death of his ward.

(c) [NO CHANGE]