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Subject: --{EXTERNAL}-- RE: Civil Infraction Rules

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Ok.

Having heard some, but not a lot of feedback non how to proceed,

I'd like the SB 21-271 subcommittee to work on proposing some civil infraction rules (by the January meeting, or, via some type of special meeting, by February 1).

And

I'll expand the subcommittee to (as I warned I would) include

Judge Nichols – who actually volunteered.

Sheryl Berry, and

Kevin McGreevy

From: Matt Holman <Matt.Holman@coag.gov>

Sent: Tuesday, November 9, 2021 3:52 PM

To: dailey, john <john.dailey@judicial.state.co.us>; samour, carlos <carlos.samour@judicial.state.co.us>; sberry@co.jefferson.co.us; gerdes, kandace <kandace.gerdes@judicial.state.co.us>; gilman, shelley <shelley.gilman@judicial.state.co.us>; grohs, deborah <deborah.grohs@judicial.state.co.us>; Abraham Hutt <abe@rklawpc.com>; malone, chelsea - DCC Judge <chelsea.malone@denvercountycourt.org>; mcgreevy@rmwpc.com; nichols, dana <dana.nichols@judicial.state.co.us>; bob.russel@denverda.org; karen.taylor@coloradodefenders.us; Sheryl.uhlmann@coloradodefenders.us; yacuzzo, karen <karen.yacuzzo@judicial.state.co.us>

Subject: Re: Civil Infraction Rules

Hi Judge Dailey and everyone,

I think the plan to expand the SB-271 subcommittee is a good one.

-Matt

Matthew S. Holman
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From: dailey, john <john.dailey@judicial.state.co.us>

Sent: Tuesday, November 9, 2021 7:05 AM

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Subject: RE: Civil Infraction Rules

I've heard back from a couple of you.

Here's what I think we'll need to do.

We'll assign this matter to the SB-271 subcommittee.

BUT, per another member's suggestion, I'd like to increase the size of the subcommittee by adding another prosecutor and defense counsel, if not another judge as well.

Volunteers appreciated. If no volunteers "step forward," I'll be "volunteering" someone[s] by the end of the week.

I'd like the newly constituted subcommittee to consider the possibility that our assigned task of coming up with civil infraction rules might (and the critical word is "might") not involve a lot of "brain damage." In this regard, I'm thinking

- If, as I understand it, Civil Infraction Rules are intended to be patterned after or parallel to the Traffic Infraction Rules,
- Could we achieve our goal by amending the title of and various provisions in the Traffic Infraction Rules to include references to "Civil Infractions" (w/o having to create a whole new set of rules)?

Just a thought.

From: dailey, john

Sent: Friday, November 5, 2021 11:25 AM

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Subject: Civil Infraction Rules

Dear Committee Members:

It appears I spoke too soon when, at the last meeting, I suggested SB-271 appears to have little to do with the work of our committee.

SB 21-271 -- which goes into effect on March 1, 2022 --will probably require us to develop a set of rules for civil infractions. Although the bill itself does not specify that, Terry Scanlon and Karen Yacuzzo from the Supreme Court Administrator's Office (Karen Yacuzzo and Terry Scanlon) anticipate that rules will be needed, after talking with the working group that drafted the bill. That working group -- which is comprised of six-people representing DAs and the defense bar -- is planning to ask legislators to run a "clean-up" bill in January to clarify any confusion about the nature of civil infractions and the intent to have them treated much like traffic infractions.

(Traffic infractions are litigated under the Colorado Rules for Traffic Infractions, which were originally proposed by a nine member committee, adopted by the supreme court on December 9, 1982, went into effect January 1, 1983, and updated in 1999, 2006, 2010, and 2011. So far as we can tell, the Civil Rules Committee had a traffic infraction subcommittee to amend the Colorado Rules for Traffic Infractions in 2010, and also handled the 2011 changes to the Rules.)

Even though analogous traffic infractions rules have previously been addressed by committees other than ours, the supreme court has assigned us the task of proposing a set of civil infractions rules. And, for what its worth, for the following reasons, I too think it should be us that addresses this subject:

1. the "civil infractions" to which the proposed rules would apply were formerly classified as misdemeanor criminal offenses;
2. the working group behind SB 21-271 is comprised of DAs and defense counsel;
3. its intent is that the Civil Infraction Rules parallel the Traffic Infraction Rules;
4. The Traffic Infraction Rules provide procedures more closely analogous to those for criminal cases (e.g., case starts with a charging document, there is a first hearing that is like an arraignment, etc.);
5. DAs and defense counsel will naturally want some say in the drafting of these rules; and,
6. Assigning the project of drafting the rules to another rules committee would risk depriving DAs and defense counsel of a meaningful voice in the process.

But, you might ask: wouldn't any action taken now be premature, in light of the fact that a clean up bill has yet to be created, much less passed by the legislature.

So far as I can discern, the supreme court doesn't think it's premature:

1. The clean up bill is expected to go forward in January.
2. Even if it could be passed by the end of January; that would leave only a month before SB 21-271 (which again, makes civil infractions of numerous formerly identified misdemeanors) goes into effect.
3. Getting to work on drafting rules now would give us a chance to propose a set of rules that the supreme court could put into effect on or within a short time of the effective date of SB 21-271 (March 1, 2022).

Going forward, we have two choices: (1) assigning the project to the SB-271 subcommittee (comprised of Mr. Holman, Judge Malone, and Abe Hutt); or (2) creating another (perhaps somewhat larger) subcommittee to address it. I would, though, like us to have the project assigned to a subcommittee by mid-week next week, so we can get a good start on it by the time we meet in January.

Give me your thoughts.