

MEMORANDUM

TO: JOHN DAILEY
FROM: MORRIS HOFFMAN
RE: AMENDMENTS TO 16-5-206 (summons in lieu of warrant)
DATE: JULY 7, 2016

As you know, I will not be able to make next week's meeting. As penance, I was charged with writing this memo.

To refresh everyone's recollection, our subcommittee (McGreevy, Holman, Nichols, me) was formed to look at recent amendments to § 16-5-206 (H.B. 16-1104), dealing with when summonses can issue in lieu of arrest warrants, to see if those amendments require or otherwise suggest changes in the criminal rules, and in particular in Rules 4, 4.1 or 9.

Our subcommittee is in agreement that that no changes to 4.1 are required (since the statute, both before and after the recent amendments, deals only with felony cases and Rule 4.1 covers misdemeanors and petty offenses), but that the *2009 and 2013* changes in the statute require some changes to Rules 4 and 9 that simply never were done. We also agree that we should retain the architecture of those rules (dealing, respectively, with post-filing felony procedures in county court (Rule 4) and district court (Rule 9), including procedures for issuing post-filing warrants or summonses), rather than draft a new rule covering both courts. Finally, we also agree that the recent changes to the statute appear on their face to be aimed only at when a summons may be issued *before* filing of the case (that is, before the filing of a felony complaint in county court or an information or indictment in district court).

Before we engage in drafting the agreed-to changes compelled by the 2009 and 2013 amendments (which actually should not be too extensive), the subcommittee would like to solicit views from the full committee on this question: should we also draft a new rule reflecting that the recent changes now allow summonses to issue pre-filing in certain circumstances? Or should we not draft such a rule, and instead retain the current reach of the two Rules, limited as it is to post-filing summonses?