

Opinion No. 56

JUSTICE COURT; Montana Rules of Civil Procedure, Inapplicable; demurrer in Justice Court; SECTIONS 93-2701, 93-6804; and 93-6807, Revised Codes of Montana, 1947.

- Held:**
- 1. The Montana Rules of Civil Procedure (Chapter 13, Laws of 1961) do not govern procedure in justice court civil actions.**
 - 2. Demurrers to complaint and answer in justice court are not abolished by enactment of the Montana Rules of Civil Procedure.**

December 31, 1962

Mr. Thomas J. Hanrahan
Lewis and Clark County Attorney
Helena, Montana

Dear Mr. Hanrahan:

You have requested my opinion on two questions concerning the effect of the Montana Rules of Civil Procedure (Chapter 13, Laws of 1961) on procedure in our justice courts. These questions are:

1. Is procedure in the justice courts governed by the Montana Rules of Civil Procedure?
2. Are demurrers to complaint or answer in justice court actions abolished by the Montana Rules of Civil Procedure?

With regard to your first question, pertinent intent of the legislature in enacting the new rules is set out in Section 1, Chapter 13, Laws of 1961 (Section 93-2701-1 RCM, 1947, as amended) as follows:

"These rules govern the procedure in the **district courts** of the State of Montana in all suits of a civil nature * * *" (Emphasis supplied.)

Subsequently, in the new rules, the legislature stated in Section 79 (b) of Chapter 13, Laws of 1961:

"Statutes superseded. Upon the taking effect of these rules all statutes and parts of statutes in conflict herewith * * * are superseded in respect of practice and procedure in the **district courts.**" (Emphasis supplied.)

The legislature has thus stated and restated as its intention in enacting the new rules that the procedure in **district court** civil actions was to be modified thereby. The general design and purpose of the law, given fair and reasonable construction, does not inferentially extend its modifications beyond the district courts.

It is therefore my opinion that the Montana Rules of Civil Procedure do not govern procedure in justice court civil actions.

The answer to your first question, however, is not the whole answer to your second. In justice courts the procedure for interposing demurrers is governed by incorporation by references of the grounds therefor under the former district court practice. The abolition of demurrers as a pleading under the new rules was accompanied and accomplished by repeal of the statutes pertaining thereto (Sections 93-3301 and 93-3502, RCM, 1947) formerly applicable to district court procedure. While the statutes allowing demurrers in justice court (Sections 93-6804 and 93-6807, RCM, 1947) were not specifically repealed by

Chapter 13, Laws of 1961, the statutes incorporated therein by reference were so repealed. The question evolves as one of whether or not there has been an implied repeal of Sections 93-6804 and 93-6807, *supra*, by an express repeal of Sections 93-3301 and 93-3502, *supra*.

The general rule that repeals by implication are not favored is bolstered under the instant circumstances by another rule of statutory construction even more pertinent. It is well expressed in *Gustafson v. Hammond Irrigation District*, 87 Mont. 217, 287 Pac. 640, thusly:

"The adoption of a statute by reference is construed as an adoption of the law as it existed at the time the adopting statute was passed, and therefore is not affected by any subsequent modification or repeal of the statute adopted."

Given this construction, as in my opinion they must be Sections 93-6804 and 93-6807, *supra*, remain now, as before, the law with regard to the use of demurrers in justice court.

It is therefore my opinion that demurrers to complaint or answer in justice court are not abolished by enactment of the Montana Rules of Civil Procedure.

Very truly yours,
FORREST H. ANDERSON
Attorney General