

Opinion No. 16

ATTORNEYS; Justice Courts — COURTS; Jurisdiction; Justice Court; JUSTICE COURT; Jurisdiction; Civil Proceedings;— SECTIONS 93-401, 93-408, 93-2023, 93-6701, 93-6704, 93-6801, 93-6803, 93-7307, Revised Codes of Montana, 1947—Article VIII, Section 20—Article VIII, Section 21, Montana Constitution.

HELD: 1. Justice of the peace courts in Montana perform the function of small claims courts.

- A. The filing of a bill, with certification that it is true and correct and that the amount is due and owing, is sufficient to commence an action in the justice of the peace court.**
- B. The parties are not required to use the services of an attorney in such a proceeding.**
- C. The statutes authorize a party who is not a corporation to represent himself in a justice's court.**

August 29, 1963

Honorable Frank W. Hazelbaker
Speaker, House of Representatives
Dillon, Montana

Dear Mr. Speaker:

You have asked whether the justice of the peace courts in Montana are small claims courts. You have also asked three specific questions relating to this general question:

A. Is the filing of a bill, with certification that it is true and correct and that the amount is due and owing, sufficient to commence an action in the justice of the peace court?

B. Are the parties required to use the services of an attorney at any point in such a proceeding?

C. Would the failure to use an attorney constitute an unlawful practice of law?

In answer to your first specific question, Section 93-6701, R.C.M., 1947, states that:

“An action in a justice’s court is commenced by filing a copy of the account, note, bill, bond, or instrument upon which the action is brought, with a statement of the amount due thereon, or a concise statement in writing of the cause of action, either of which is deemed a complaint.”

The courts have required that great liberality be used in construing this statute. In **Coover v. Davis, et al.** 112 Mont 605, 607 121 P. 2d 985, the court said that a complaint “. . . will be upheld if it states facts sufficient to show the nature of the demand so as to enable a person of common understanding to know what is intended.”

Section 93-6801 states that the complaint need not be in any particular form. A complaint is defined by Section 93-6803 as “a concise statement, in writing, of the facts constituting the plaintiff’s cause of action; or a copy of the account, note, bill, bond or instrument upon which the action is based.” On the basis of the relevant statutes and the cases construing those statutes, it is my opinion that the bill in question would constitute a sufficient complaint to commence an action in the justice’s court.

The second and third questions are very closely related. Section 93-6704, R.C.M., 1947, states that:

“Parties in justice’s court may appear and act in person or by attorney; and that any person, except the constable by whom the summons or jury process was served, may act as attorney.”

There are, however, two stipulations attached to this statute. The first is that Section 93-2023 will not allow an attorney’s fee to a

party represented by someone other than a duly licensed attorney. The second is that an attorney is required if the party is a corporation. **State ex rel Freeborn v. Merchant's Credit Service, Inc.**, 104 Mont. 76, 102, 66 P. 2d 337 has interpreted the word "person" as used in Section 93-6704 to exclude corporations. Therefore, it is my opinion that the statutes authorize a party who is not a corporation to represent himself in a justice's court.

The civil powers of the justice courts are both granted and limited by constitutional (Montana Const. Art. VIII Sections 20 and 21) and statutory provisions (R.C.M., 1947 Sections 93-401 and 408). Jurisdiction is denied them ". . . in any case where the debt, damage, claim or value of the property involved exceeds the sum of three hundred dollars." (Mont. Const. Art VIII, Sec. 20). "Under such a statute the jurisdiction of the court is not dependent upon the amount which he demands." **Reynolds v. Smith** 48 Mont. 149, 151, 135 Pac. 1190 (1913). If the court finds that the plaintiff has actually been damaged in excess of the three hundred dollar limit, the plaintiff may remit the excess and the judgment can be entered for the residue. (R.C.M., 1947, Section 93-7307).

Section 93-408 outlines the kinds of cases over which the justice courts have jurisdiction. They are as follows:

1. Actions on contract for money damages only.
2. Actions for damages for taking, detaining, or injuring personal property, or for injuring real property where no issue invoking title or possession is raised by the verified answer.
3. Actions to recover personal property.
4. Actions for fine, penalty or forfeiture provided that no issue invoking legality is raised by the answer.
5. Actions upon bonds or undertakings, if the sum claimed does not exceed the jurisdictional limit, though the penalty may exceed that sum.
6. The court can take and enter judgment for the recovery of money on the confession of the defendant, provided that the amount confessed is not in excess of three hundred dollars.

There is one exception to the three hundred dollar jurisdictional limit. This exception involves an addition to the kinds of cases for which the justice courts may sit. The additional jurisdiction is over actions of forcible entry and unlawful detainer. This extension is specifically granted by Article VIII, Section 21 of the Montana Constitution and Section 93-409, Revised Codes of Montana, 1947. **Cushman v. Vickers** 69 Mont. 516, 521, 233 Pac. 897 (1924) held that the jurisdiction of the justice courts in these actions is unlimited as far as court money demands are concerned.

Actions of forcible entry and unlawful detainer give rise to another exception to the general rule. Although actions to determine title to real estate are not within the jurisdiction of the justice courts, evidence tending to show right to possession is admissible where title becomes important in determining the rights of the parties. **State ex rel. Hamshaw v. Justice Court of Union Township** 108 Mont. 12, 88 P. 2d 1 (1939).

Therefore, in answer to your general question, it is my opinion that the justice of the peace courts in Montana were intended to serve as small claims courts, and that they do, in fact, perform that function.

Very truly yours,

FORREST H. ANDERSON
Attorney General