Civil Practice in Montana's "People's Courts:” The Proposed Montana Justice and City Court Rules of Civil Procedure

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CIVIL PRACTICE IN MONTANA'S "PEOPLE'S COURTS": THE PROPOSED MONTANA JUSTICE AND CITY COURT RULES OF CIVIL PROCEDURE

Cynthia Ford*

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* Associate Professor, University of Montana School of Law. I dedicate this article, and all my work on the courts of limited jurisdiction, to the most dedicated of judges: Justice of the Peace Michael Morris of Missoula. Judge Morris selflessly devoted time and effort to teaching students at the University of Montana School of Law about the limited jurisdiction courts, in both the classroom and the courtroom. Mike was a sterling example of competence and compassion for his fellow judges. Finally, Mike also taught me personally an enormous amount about the courts and about life, for which I will always be grateful.

I also thank Judge Nancy Sabo and David Mull, who worked long and hard on the proposed rules revisions, and all of the justices of the peace and city court judges who participated in the first Montana Justice Institute and who shared so willingly their experiences, frustrations, and triumphs on the front lines of justice.
I. INTRODUCTION

Montana has an active system of justice and city courts, which serve thousands of citizens every year. In recent years, the jurisdiction of these courts has expanded steadily, and, as a result, their civil caseload is increasing exponentially. These "people's courts" are courts of first and last resort for many Montanans and may be the only courts to which many citizens are ever exposed.

A large percentage of the parties in justice and city courts represent themselves without the advice of practicing lawyers. Furthermore, most of the judges in these courts are non-lawyers whose only legal education occurs in semi-annual conferences after they are elected to the bench. Because the justice and city courts administer so much justice with so little formal legal education among their judges and litigants, clear procedural rules are essential to guide the judges, the parties, and the courts' staffs and to make the system work as efficiently and fairly as possible.

The justice courts have been an important part of Montana's
judicial system since statehood. Until recently, the procedural
guidelines for these courts were nearly as old as the courts them-
selves. The 1895 Code established statutory provisions to govern
proceedings in justice courts which were largely unchanged for
almost one hundred years. In 1982, the Montana Supreme Court
adopted the first set of uniform rules for practice and procedure
in justice court. In 1990, the Montana Justice and City Court
Rules of Civil Procedure (the Rules) superseded the twenty origi-
nal rules. The drafters made some significant changes in light
of the courts’ experience with the first set of rules and added
provisions to deal with practice in city courts.

The past seven years have revealed several problems with
the current Rules. Last year, the Montana Supreme Court’s
Commission on Courts of Limited Jurisdiction (the Commission)
appointed a subcommittee to identify problems with the current
Rules and to draft solutions to make the rules easier and more
effective to use. The committee recommended, and the Commis-
sion approved, a set of proposed amendments to the current
Rules. The amendments are currently before the Montana Su-
preme Court for consideration, and the court will be asking for
public comment in the spring of 1997. The purposes of this arti-
icle are to facilitate informed comment from the bench, the bar,
and the people of Montana and to help practitioners and liti-
gants interpret and use the proposed Rules in the likely event
that the amendments are adopted.

Part II of this Article looks at the history of the courts of
limited jurisdiction in Montana. It then examines the current
role of these courts in Montana’s civil justice system. The Article
next discusses the current Rules and describes some of the prob-
lems these rules raise. Finally, the Article outlines the changes
suggested by the proposed Rules, and suggests some legislative
changes that would help to streamline and clarify current prac-
tice in these important, but often overlooked, courts.

1. Order Adopting the Montana Justice and City Courts Rules of Civil Proce-
dure (Mont. filed July 15, 1982) (effective date Oct. 1, 1982).
2. MONT. J. & CITY CT. R. CIV. P. 1-24, appearing in MONT. CODE ANN. Title
25, Chapter 23 (enacted 1991) (hereinafter “current Rules”).
3. I was one of three members of this subcommittee. The others were Nancy
Sabo, Justice of the Peace, Ravalli County, Montana, and David Hull, attorney, Hele-
na, Montana.
II. BACKGROUND

A. Use of the Courts of Limited Jurisdiction

The bulk of civil litigation in Montana is conducted in the justice and city courts. This state has 159 justice, city, and municipal courts, collectively called the Courts of Limited Jurisdiction, that employ 114 judges. The justice and city courts civil jurisdiction is limited by the amount at issue, but that jurisdictional limit has climbed steadily in recent years and now stands at $5,000 in civil cases. By contrast, Montana has fifty-six general jurisdiction district courts that are divided into twenty-one judicial districts and served by thirty-seven judges.

The courts’ increased authority, their reputation as more “user-friendly” than the district courts, and the sheer number of limited jurisdiction courts allow Montanans to conduct a very large share of their civil litigation at the justice and city court level. In fact, in recent years, more plaintiffs have filed civil cases in the courts of limited jurisdiction than in the district courts. The civil filings in this state’s courts of limited jurisdic-

4. See 1995 Mont. Sup. Ct. Judicial Rep. 38. Montana has 71 Justice of the Peace Courts, 83 City Courts, and one Municipal Court. See id. The difference in the two tallies is not explained. In January 1997, Billings and Kalispell both established Municipal Courts, and Great Falls is currently considering following their lead.

Because some courts require only part-time judges, some judges are available to work in more than one court, i.e., serving part-time as a city judge and part-time as a justice of the peace: “Montana has a total of 166 Limited Jurisdiction Courts. There are 120 Limited Court Judges. Forty-six Justices of the Peace also serve as City Court Judges.” 1994 Mont. Sup. Ct. Judicial Rep. 2.

5. The original Montana Constitution restricted the civil jurisdiction of the justice courts to cases where the debt, damage, claim, or value of the property involved was $300 or less. See Mont. Const. of 1889, art. VIII. The 1972 Constitution also establishes justice courts, but leaves the subject matter jurisdiction of those courts to the legislature. See Mont. Const. art. VII, § 1 (stating “justice courts shall have such original jurisdiction as may be provided by law”).

The legislature lost no time exercising its new authority to increase the civil jurisdiction of the justice and city courts. In 1975, the limit went from the historic $300 to $1,500. See 1975 Mont. Laws 11-420. In 1981, the monetary limit rose from $1,500 to $3,500. See 1981 Mont. Laws 1-348. The most recent amendment to section 3-10-301 of the Montana Code Annotated set the limit for civil actions in justice courts at $5,000, exclusive of court costs. See 1991 Mont. Laws 1-307.

Unlike the constitutionally-created justice courts, the city courts were established by the legislature in 1895. The Montana Code provides that the city courts have concurrent jurisdiction with the justice courts. See Mont. Code Ann. § 3-11-102 (1995). Thus, the same $5,000 jurisdictional limit applies in city courts. See Mont. Code Ann. § 3-10-301 (1995).


7. In 1992, there were 9,696 civil filings in justice and city courts compared with the 11,696 civil filings in the state’s district courts. See 1992 Mont. Sup. Ct.
JUSTICE COURT RULES

JUDICIAL REP. 15-37 (comprising 45% of all civil cases filed in Montana). In 1993, 15,436 civil cases were filed in justice and city courts in Montana, an increase of 59% over the previous year. See 1993 MONT. SUP. CT. JUDICIAL REP. 11-37. In comparison, 11,410 civil cases were filed in district courts, a decrease of two percent. See id. Thus, in 1993, the justice and city courts received 58% of the new civil caseload in the Montana state court system.

In 1994, 29,444 new civil cases were filed in the courts of limited jurisdiction, an astonishing 91% increase from 1993. See Facsimile from Kelly Chapman, Office of the Supreme Court Administrator, to Cynthia Ford (Sept. 5, 1996) (on file with author). The district court civil filings in 1994, statewide, came to 12,611 (exclusive of the additional total of 12,858 domestic relations, adoption, sanity, juvenile, and probate cases not included in the "civil" classification). See id. This constituted an increase of 10.5% over the 1993 District Court civil filing figure. The courts of limited jurisdiction carried 70% of the total new civil filings in state courts in 1994.

In 1995, there were 35,094 civil filings in the limited jurisdiction courts (exclusive of the four city courts and one justice court whose figures were not submitted on time to the Supreme Court Administrator), a 19% increase from the previous year. See id. In the district courts, there were 13,534 new cases classified as "civil" (and an additional 14,312 cases classified as domestic relations, adoption, mentally ill, juvenile, or probate). See id. Thus, limited jurisdiction courts civil filings comprised 72% of the overall civil caseload. The following Tables A and B represent, respectively, the growth in the civil caseload in Montana's courts of limited jurisdiction and a comparison of the caseloads of Montana's courts of limited jurisdiction, district courts, and the United States District Court for the District of Montana:

Increase in Number of Filings
For Justice and City Courts

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tion also far surpass the number of civil filings in the United States District Court for the District of Montana. Further, despite the ready availability of an appeal from a civil judgment in justice or city court, only 1.6 percent of justice and city court

![Number of Civil Cases in Justice, State and Federal Courts](image)

8. The federal court statistics are for the 12-month periods ending September 30 of each year. From October 1, 1991 through September 30, 1992 a total of 706 civil cases were filed in the U.S. District Courts for the District of Montana, 464 involving private parties and 225 involving the United States as a party. L. RALPH MECHAM, JUDICIAL BUSINESS OF THE UNITED STATES COURTS, REPORT OF THE DIRECTOR, Table C-1 (1992). For 1993, the total number of civil cases filed was 749; 535 cases were private and 215 cases were U.S. civil cases. L. RALPH MECHAM, JUDICIAL BUSINESS OF THE UNITED STATES COURTS, REPORT OF THE DIRECTOR, Table C-1 (1993). In 1994, the total number of civil cases filed was 701, consisting of 485 private and 216 U.S. civil cases. L. RALPH MECHAM, JUDICIAL BUSINESS OF THE UNITED STATES COURTS, REPORT OF THE DIRECTOR, Table C-1 (1994). For 1995, the total number of civil cases filed was 683; 456 cases were private and 227 cases were U.S. civil cases. L. RALPH MECHAM, JUDICIAL BUSINESS OF THE UNITED STATES COURTS, REPORT OF THE DIRECTOR, Table C-1 (1995).

Adding these numbers to those for the Montana state court system shows that in 1992, the state courts of limited jurisdiction received 44% of all the civil cases filed in Montana's state and federal courts combined. In 1993, state courts of limited jurisdiction received 56% of all the civil cases filed; in 1994, that number rose to 69%; and in 1995, that number rose yet again to 71%.

9. See MONT. CODE ANN. § 25-33-301 (1995) (explaining that a civil judgment from city or justice court may be appealed de novo to district court); see also City of Billings v. McCarvel, 262 Mont. 96, 100, 863 P.2d 441, 444 (1993) (citing Missoula
cases do in fact end in appeal, probably due to the minimal amounts at issue. Thus, for many Montanans, justice or city court is thought to be the court of first and final resort.

B. Lawyer Involvement in the Courts of Limited Jurisdiction

The very courts that dispense so much of Montana's civil justice are those in which lawyers are the least involved. In Montana, most city and justice court judges, like supreme court and district judges, are elected. Judges in the justice and city courts are not required to have any legal training or experience prior to assuming office. The only requirement for election or appointment is that the candidate be a United States citizen and a resident of that county for at least one year. Of the 113 justice

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10. The Supreme Court Administrator's Office calculates that in 1993, 302 civil cases were appealed from justice or city court to district court, comprising less than 2% of the total number of civil filings in the lower courts that year. (There are no figures for earlier years.) This means that only 2.6% of the civil cases filed in Montana District Courts in 1993 were considered by a court of limited jurisdiction. In 1994 and 1995, the numbers were similar: in 1994, 469 civil cases were appealed from limited jurisdiction to district courts compared to 29,444 new cases filed in limited jurisdiction courts, which constitutes only 1.6% of the new caseload in the limited jurisdiction courts and only 3.7% of the new civil cases filed in the district courts. In 1995, 419 civil cases were appealed to district courts from justice and city courts, which was 1.2% of the number of new cases filed in limited jurisdiction courts that year and 3.0% of the new civil actions filed in district courts statewide. Interestingly, the trend appears to be that the percentage of cases appealed to district court is decreasing as the number of cases filed in the lower courts increases. Taken together, the 1993, 1994, and 1995 appeals numbers reveal that an average of 1.6% of the cases filed in the limited jurisdiction courts are appealed to the district courts.

11. See MONT. CODE ANN. § 3-10-201 (1995) (providing for the election of justices of the peace). In first class cities (population of 10,000 or more) and second class cities (population between 5,000 and 10,000), the city judge must be elected. See MONT. CODE ANN. §§ 7-4-4101(2), -4102(2) (1995). In third class cities (population between 1,000 and 5,000) and in towns (population between 300 and 1,000), the governing body determines whether the city judge is to be appointed or elected. See MONT. CODE ANN. §§ 7-4-4102(3), -4103(3) (1995). However, when an elected judge dies, retires, or otherwise vacates the office during his or her term, the county commissioners or city officials appoint a successor to complete the term. See MONT. CODE ANN. §§ 3-10-206, 7-4-4112(1) (1995).

12. See MONT. CODE ANN. § 3-10-204 (1995). The qualifications for city judges are similar, although the city may prescribe additional qualifications by ordinance. See MONT. CODE ANN. § 3-11-202(1) (1995). Billings has required its City Court judge to have a Juris Doctor. Justice of the peace and city court judges are required to attend an orientation course immediately after being elected, as well as biannual training sessions. "Failure to attend disqualifies him from office and creates a vacan-
and city court judges in Montana in 1995, only nine had graduated from law school. Moreover, many of the litigants who prosecute and defend civil cases in the limited jurisdiction courts appear pro se, conducting their cases without the benefit of legal representation. Thus, in many cases, neither the parties nor the court has benefitted from systematic study of civil procedure.

The current Rules intend to provide clear rules for civil proceedings in these courts. When drafting the first version of these rules, the rulemakers designed a simplified system to fit the limited legal experience of both bench and litigants as well as the limited monetary value of the cases brought in justice and city courts. As a result, civil procedure in the courts of limited jurisdiction differs markedly from the procedure in district court. Some of the differences represent a conscious intent to tailor city and justice court procedure to the specific caseloads and clientele in those courts. However, some differences in the Rules are unnecessary and may, in fact, impair their overall goal.

C. A Brief History of Montana’s Courts of Limited Jurisdiction

Since the beginning of the legal history of Montana, justices of the peace have played an important part in the judiciary. When Congress created the Territory of Montana in 1864, it vested the judicial power of the territory in a supreme court, district courts, probate courts, and justices of the peace.


The legislation authorizing establishment of a municipal court requires that the municipal court judge be admitted to the practice of law in Montana for at least two years prior to the date of appointment or election. See MONT. CODE ANN. § 3-6-202(1) (1995). This requirement, combined with the fact that the municipal court is a court of record, makes the municipal court more like a district court, despite its jurisdictional limits. See MONT. CODE ANN. § 3-6-101(1) (1995).

13. This comprised eight percent of the limited jurisdiction judges. One of these judges, Whitefish City Judge Brad Johnson, has a J.D. and an LL.M. Interview with Kelly Chapman, Office of the Montana Supreme Court Administrator, Nov. 7, 1996.

14. Neither state district courts nor the state justice or city courts keep any records on the numbers of civil litigants who represent themselves. A local survey of 200 cases filed in the various courts located in Missoula county in the twelve month period from September 1, 1993 through August 31, 1994 showed that approximately 96% of civil cases in the Justice or City Courts had a pro se litigant on one side or the other at the time of trial, compared with approximately 26% in United States District Court (Missoula Division) and approximately 33% in the Montana Fourth Judicial District Courts.

Cf. WILLIAM B. POWERS, A STUDY OF CONTEMPORARY LAW SCHOOL CURRICULA, at 12.

16. Act of May 26, 1864, Ch. 95, § 9, 13 Stat. 85, 88-89 (1864).
Montana's first constitution, adopted in 1889, also specifically provides for justice of the peace courts and requires two justices of the peace in each township.\(^7\) Eighty-three years later, the delegates to the 1972 Montana Constitutional Convention reconsidered the need for and roles of justices of the peace in the state.\(^8\) Both the majority and the minority proposals of the Convention's Judiciary Committee chose to retain justice courts, but the majority proposal provided that the new constitution should specifically refer to the courts.\(^9\) The Convention ultimately adopted the majority view, resulting in Article VII, Section 5 of the Montana Constitution:

(1) There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation provided by law . . . .
(2) Justice courts shall have such original jurisdiction as may be provided by law . . . .
(3) The legislature may provide for additional justices of the peace in each county.\(^20\)

In addition to the constitutionally established justice courts,

\(^7\) See MONT. CONST. OF 1889, art. VIII, §§ 1, 20.
\(^8\) In 1961, the Montana Legislative Council met after conducting a general study of the justice court system in the state. See MONTANA LEGISLATIVE REPORT, supra note 17, at 1. The Legislative Council's Report concluded that the salary and qualifications of justices were too low, court facilities were inadequate, that there were too many justices of the peace, and that "jurisdiction is too limited both as to territory and amount of money in controversy." See id. at 4. The Council reported that many of these problems could not be improved without amendment to the state constitution and recommended that the amendment delete all references to justice courts from the constitution so that the legislature could make changes to the system freely. See id. The 1972 Constitutional Convention disregarded this advice.

\(^9\) Montana Constitutional Convention, 1971-72, Judiciary Committee Proposal, Vol. I, 500-01. The majority proposal provided for at least one justice of the peace in each county with "such original jurisdiction as may be prescribed by law." See, also, id. at Vol. IV, 1010 (considering the majority and minority proposals).

The minority proposal did not explicitly require justice of the peace courts, instead stating that "the judicial power of the state is vested in a supreme court and district courts and such other courts as may be provided by law." Judiciary Minority Proposal, Proceedings of the Montana Constitutional Convention, Vol. I, § 1, 510. The minority's comments on its proposal specify that "by deleting reference to justice of the peace, there is no intention to abolish or affect the present jurisdiction and operation of these courts, but rather to leave assignment of judicial power in these courts exclusively to the legislature where there is wide latitude for improvement and alterations that will adjust to the varying complexities of rural and urban problems in the administration of justice on the lower level." Id. at 514.

\(^20\) MONT. CONST. art. VII, § 5 (decreasing the required number of justices of the peace from four to one per county, but allowing the legislature to increase this number if necessary). Currently, Montana has 71 justice of the peace courts in 56 counties. See 1995 MONT. SUP. CT. JUDICIAL REP. 4.
Montana’s 1889 and 1972 constitutions both authorized the legislature to establish police and municipal courts for cities and towns. Pursuant to this authority, the 1895 legislature established a police court in each city and town. In 1975, the police courts were renamed “city courts.” Under section 3-11-205 of the Montana Code, the offices of city judge and justice of the peace may be combined. City courts have concurrent jurisdiction with the justice courts in most civil actions and exclusive jurisdiction in certain types of civil actions.

D. Criticism of “The People’s Courts”

Early in this century, the Montana Supreme Court observed that the justice of the peace courts were designed to be “a forum serviceable to the people, where litigation may proceed without the aid of attorneys or those familiar with the rules of pleading . . . .” An earlier New York case describes the office of justice of the peace:

The office of justice of the peace came down to us from remote times. It existed in England before the discovery of America, and it has existed here practically during our entire history, both colonial and state, at first with criminal jurisdiction only,

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21. See MONT. CONST. OF 1889, art. VIII, § 24. The 1972 Constitution does not provide specifically for City Courts, police courts, or municipal courts, but states that other courts may be provided by law.
22. See MONT. CODE ANN. § 3-11-101 (1995) (originally enacted as MONT. REV. CODE ANN. § 11-1601 (Smith 1895)).
23. See MONT. CODE ANN. § 3-11-101(2) (1995) (originally enacted as MONT. REV. CODE ANN. § 93-411 (Smith 1947)). Montana currently has 81 city courts. The legislature authorized city council in cities with populations of 4,000 or more to establish municipal courts. See MONT. CODE ANN. § 3-6-101 (1995) (originally enacted as MONT. REV. CODE ANN. § 5094.1 (Smith 1935)). For years, Missoula was the only city in Montana to exercise this authority and had the only municipal court in Montana. In January of 1997, both Kalispell and Billings converted their city courts to municipal courts. The municipal court is a court of record, and municipal court judges must have much the same qualifications as district court judges, including bar admission. See MONT. CODE ANN. §§ 3-6-101(1), -202(1) (1995). The current Rules do not apply to municipal court. See MONT. CODE ANN. § 25-30-101(2) (1995) (providing that “the proceedings and practice in municipal court must be the same as in district court,” and, thus, that they be governed by the Montana Rules of Civil Procedure).
24. See MONT. CODE ANN. § 3-11-102(1) (1995). The Montana Code grants exclusive jurisdiction of civil proceedings for the violation of a city or town ordinance, actions for the collection of money or taxes due a city or town where the amount claimed is less than $5,000, and various actions for less than $5,000 where the city or town is either a formal party or has some relation to the litigation to the city courts. See MONT. CODE ANN. § 3-11-103 (1995).
but for more than two centuries past with civil jurisdiction . . . .
It exists in every state of the Union, and is regarded as of great
importance to the people at large, as it opens the doors of jus-
tice near their own homes, and not only affords a cheap and
speedy remedy for minor grievances as to the rights of proper-
ty, but also renders substantial aid in the prevention and pun-
ishment of crime.

Interestingly, the tradition of the justice court as everyperson’s
court is still emphasized today by the so-called “Freemen,” who
profess that the only judicial authority in the state is vested in
the justice courts.

Despite their rich heritage, Montanans occasionally have
criticized the organization of the justice of the peace courts and
the way they functioned in civil matters. In 1961, the Montana
Legislature proposed a constitutional amendment which would
have withdrawn justice courts from the list of constitutionally es-
tablished courts. The proposed amendment was narrowly de-
feated.

The justice courts remained, but criticism of them continued.
In 1967, Professors Mason and Crowley wrote, in the Montana
Law Review, that the justice of the peace and police courts actu-
ally did very little civil work, for which they were generally un-
qualified, resulting in great unwarranted expense to the State of
Montana.

Citing the results of a 1967 Supreme Court ques-
tionnaire to sitting justices of the peace, Crowley and Mason ob-

omitted) (quoted in David R. Mason & William F. Crowley, Montana’s Judicial Sys-
tem—A Blueprint for Modernization, 29 MONT. L. REV. 1, 5 (1967)).

27. For instance, Judge Gregory Mohr, who serves as both Richland County
Justice of the Peace and Sidney City Court Judge, has had continuous contact with
various members of the Freemen over the past several years. He says that many of
the pleadings filed with his court contain references to the historical role of the jus-
tice court and the alleged lack of authority of the state and federal courts. For ex-
ample, in the criminal case pending against him, Freemen leader Rodney O. Skurdal
filed with the court a “certified copy” of a book published in 1886 that discussed the
law relating to justices of the peace, their powers and duties, and the procedure in
justice courts, with forms of process and entries used therein. See WILLIAM L.

Another quasi-legal document circulated by Westley Floyd Deitchler in connec-
tion with a criminal action arising out of his refusal to obtain a driver’s license as-
serted that: “Justices of the Peace haven’t been corrupted or dumbed down by law
school, but not one has the integrity with which to even want to know the law and
provide justice.” Point of Order at 4, State v. Deitchler, No. 95 M 472 (Rosebud
County J. Ct. 1995).

28. See 1961 Mont. Laws 366 (eliminating constitutional status of justice of the
peace courts, police courts, and municipal courts).

29. See Mason & Crowley, supra note 26, at 19-23.
served:

The justice of the peace courts in Montana are relatively inactive in the civil field. [They] appear to function mainly, at present, as misdemeanor courts for traffic offenses . . . . The constitutional objective of having a "poor man's court" in which litigants in actions involving small sums could get efficient and substantial justice is not being effectuated.  

Advocating abolition of the justice courts in favor of expanding the number of legally-trained district court judges, Professors Mason and Crowley concluded:

Abolition of inferior courts, reduction of the number of courts, and expansion of qualified judges at the district court level, are the dominant themes. . . . [T]he quality of justice dispensed will be improved, and the respect of citizens for law enhanced, by ceasing to expose them to courts which are in fact, as well as in name, inferior.

Despite the professors' critique, the drafters of the 1972 Montana Constitution retained the constitutionally mandated justice courts and allowed the legislature to decide whether to abolish the city courts.

30. Id. at 21.
31. Id. at 41.
32. The majority proposal from the Judiciary Committee at the Constitutional Convention, which ultimately passed, was to constitutionally mandate justice of the peace courts as the original Constitution had done. The chair of the committee, attorney David Holland, said: "Everybody who testified or who was polled were [sic] near unanimous for the abolition of the justice of the peace from the Constitution." Montana Constitutional Convention, 1971-72, Verbatim Transcript, Vol. IV, pp. 1014. Nonetheless, he stated that "as we begin to get some testimony from some of these lawyers from the small towns . . . I begin to appreciate more and more that there's just no way that this system of ours in the state can work out without a JP or the equivalent of him . . . . So we left him in . . . ." Id.

The minority proposal advocated eliminating mention of the justice of the peace courts from the constitution because 25 states had recently either abolished justice courts or had eliminated them from that state's constitution, a poll of all lawyers in Montana showed 66 lawyers in favor of retaining justice courts in the constitution and 415 opposed, and a poll of trial lawyers showed 73 voted to abolish justices of the peace and 38 voted to continue them. See Montana Constitutional Convention at 1019-20. Despite the results of the polls, the minority did not support abolition of the justice courts: "Because the justices of the peace are not specifically named in Section 1 of the minority report, that does not mean at all that they have been abolished. To the contrary. Their jurisdiction stays as it is today, but the Legislature may in the future, under our article, do with those courts as time and events require." Id., Vol. IV at 1020.
E. Education of Judges

Since the Crowley and Mason article appeared, many have sought to improve the courts of limited jurisdiction to ensure that they are not, in fact, inferior to the rest of Montana's court system. Because the judges who sit on the justice or city courts are not required to be licensed attorneys or to have other specialized legal training before taking the bench, the legislature, the Montana Supreme Court, and the limited jurisdiction judges themselves have tried to standardize and increase the quality of the education received by the judges after they take the bench.³³ The Commission conducts orientation training for newly-elected judges, as well as mandatory biannual training sessions for all judges throughout their terms. In 1985, the legislature mandated that justice and city court judges certify that they have completed the orientation course before assuming their duties.³⁴ Further, a judge's subsequent failure to attend the biannual training sessions disqualifies him or her from office and creates a vacancy on that bench.³⁵ At the end of every four years, the Commission requires each judge to pass a certification examination.³⁶

³³ However, the voters may actually prefer that their justice and city court judges be drawn from non-lawyer ranks. In the 1994 Missoula County primary for one justice of the peace position, two of five candidates were lawyers. One had practiced as a prosecutor and a private civil attorney for a total of 17 years, the other had clerked for five years for both the Montana Supreme Court and a Missoula County District Court judge, and neither made it through the primary. The justice of the peace, elected in the general election, was a retired Montana Highway Patrol officer who had never attended law school or practiced law. Similarly, after Mike Morris died in November of 1996, the Missoula County Commission received applications from 56 individuals seeking to replace him. Of those applicants, 20 were lawyers. The Commission appointed a non-lawyer, Michael Jaworsky, who previously worked as the vice-president of the Missoula Chamber of Commerce. See telephone interview with Marie Pruitt, Personnel Services, Missoula County Office of Personnel (Feb. 18, 1997).

³⁴ 1985 Mont. Laws 237, 238 (codified as amended at MONT. CODE ANN. § 3-10-203(3) (1995)).


³⁶ The biannual training sessions vary from three to five days, with between 24 and 40 hours of instruction per session. The subjects are taught in a four-year cycle which is designed to comprehensively treat a variety of topics in depth. Pursuant to Montana Supreme Court order of August 31, 1994, the Commission adopted a formal written judicial education policy to "promote accountability for the material covered during training conferences and provide an educational environment that is conducive to learning." MONTANA SUPREME COURT COMMISSION ON COURTS OF LIMITED JURISDICTION JUDICIAL EDUCATION POLICY, on file with author. Among other new provisions, the policy states that judges are subject to testing during all training conferences, in addition to the certification test given every four years.
III. ATTEMPTS TO IMPROVE CIVIL PROCEDURE IN LIMITED JURISDICTION COURTS

Improving the rules of procedure has been another focus for those concerned with improving the operation of the justice and city courts. Although the justice courts were meant to be “a forum . . . where litigation may proceed without the aid of attorneys . . .,” even the simplest system needs some rules of operation. Until 1982, civil procedure rules in justice and city courts were purely statutory and had been left largely unchanged since the nineteenth century. Pleadings and practice in the justice and city courts under these statutes followed the general pattern of the Code of Civil Procedure for district courts, modified slightly to ensure litigants could proceed “without the aid of those familiar with the rules of pleading.” Some of these statutory provisions still govern procedure in the justice and city courts.

A. The 1982 Rules

On July 15, 1982, the Montana Supreme Court adopted the first version of the Montana Justice Court Rules of Civil Procedure, a version nearly identical to that proposed by the Commission. These twenty original rules became effective October
Though less expansive, the 1982 Justice Courts Rules were modeled after the Montana and Federal Rules of Civil Procedure, which govern practice in Montana’s federal and state district courts. The 1982 Rules are scarce in coverage and detail. In many instances, the 1982 Rules expressly reject more formal requirements contained in the Montana and federal rules, attempting to offer a less intimidating, more user-friendly approach. The drafters of the 1982 Rules successfully created a more modern and easy-to-use set of procedural guidelines. However, as the courts of limited jurisdiction faced a marked increase in their civil caseloads, it became clear that the 1982 Rules, which sufficiently governed limited jurisdiction procedure in the 1980s, needed further revision.

B. The Current Rules

In 1990, the Montana Supreme Court adopted a second and much more complete set of rules for use in the justice and city courts. The current Rules became effective June 1, 1990. Cur-
rently, these Rules form the backbone of the practice and procedure of justice and city courts across Montana and, thus, govern a large and increasing part of the civil litigation in the state. Like the 1982 Rules, the current Rules are a much simpler adaptation of the Montana and Federal Rules of Civil Procedure.

IV. THE PROPOSED RULES

A. Overview

The current Rules are accomplishing their drafters' original purposes in large part. Civil practice in the courts of limited jurisdiction is now fairly uniform across Montana and generally simpler than procedure in the state district courts. However, the civil caseload of these courts has increased dramatically, forcing them to encounter a larger variety of procedural situations. Experience has revealed some shortcomings in the current Rules that can and should be remedied by the proposed Amendments.

In their attempt to draft Rules that are clear and easy to amended only once since their adoption. In 1991, the Legislature enacted a bill allowing the execution of a justice court judgment outside the county in which the judgment was obtained without having to file an abstract of the judgment in district court. Section 1, Chapter 285, L. 1991, amending M.C.A. Sec. 25-31-913. The code previously had required the filing of an abstract of the justice court judgment with the clerk of the district court, upon which the district court clerk could issue a statewide writ of execution. In turn, the legislature exercised its power to disapprove Rules 21(C) and 23(2)(a) of the Montana Justice and City Court Rules of Procedure which were inconsistent with the new legislation. Section 3, Chapter 285, L. 1991.

46. There are two additional sources for civil procedure in justice and city courts in Montana: the Uniform Rules and local rules. The Supreme Court adopted a set of Uniform Rules for the Justice and City Courts on March 25, 1993, effective June 1, 1993. These Uniform Rules, like the Uniform Rules for the District Courts, deal with matters which are more administrative than the Montana Justice and City Court Rules of Procedure: allocation of cases in multi-judge courts, custody of files and exhibits, form and quality of paper, presenting orders, decorum, office hours, and continuances. See MONT. UNIF. R.J. & CITY CT. 2, 3, 4, 8, 15, 18.

The Uniform Rules also allow justice and city courts to adopt local rules, so long as these rules are consistent with the Montana Justice and City Court Rules of Procedure and the Uniform Rules. See MONT. UNIF. R.J. & CITY CT. 1(b). Only one county, Missoula, appears to have adopted a local rule. This local rule requires all litigants in both small claims actions and civil actions to submit their dispute to mediation; small claims action must proceed to mediation before the pretrial conference and civil actions must proceed to mediation after the pretrial conference and before trial.

47. The current Rules proceed in the same order as the district court rules, but omit many of the more detailed rules and certain subjects altogether. The result is that the district court rules number one through 86, while the Montana Justice and City Court Rules of Civil Procedure contain only 24 rules. Additionally, each rule tends to abbreviate and simplify the district court rule.
read, the drafters of the current Rules were, at times, overly simplistic. Further, the current Rules are silent on issues that are raised frequently in the limited jurisdiction courts and, thus, provide no solution. Moreover, other sections of the current Rules are still difficult to interpret and follow for those who do not have extensive knowledge of the district court rules upon which they were modeled. Finally, in at least one important instance, the Rules directly conflict with statute. As a result, the litigation process in the courts of limited jurisdiction remains more confusing and complex than it needs to be.

In 1995, the Commission appointed a subcommittee to study the current Rules. This subcommittee drafted a set of proposed Rules and circulated them among select judges of the justice and city courts for comment. The Commission approved the subcommittee’s modified version of the proposed Rules and transmitted them to the Montana Supreme Court. The court met with the members of the subcommittee in November 1996 to discuss the proposed changes. During this meeting, the court and subcommittee agreed on several additional modifications. Since then, the subcommittee completed these changes and resubmitted the proposed Rules to the court. The court will publish the proposed Rules for public comment in the spring of 1997 before finally deciding whether to adopt them.

B. The Subcommittee’s General Goals

1. Explicitly Refer to Other Sources of Civil Procedure

To aid the users of the justice and city courts who have little or no formal legal training, the proposed Rules are written as clearly and comprehensively as possible. Further, the proposed Rules attempt to alert readers to other provisions in the Rules or in other sources that may address the same issue or procedure. Currently, a non-lawyer, believing that the Rules are the only source of civil procedure for these courts, could overlook an applicable provision in the Montana Code, the Uniform Justice and City Court Rules, or local rules. Wherever possible, the text of

48. Compare MONT. J. & CITY CT. R. CIV. P. 4(B)(1) (restricting the exercise of personal jurisdiction to persons within the county or city where the justice or city court is located) with MONT. CODE ANN. § 25-31-407 (1995) (allowing service of a summons issued by a city or justice court outside the county where that court sits).

49. See supra note 3.

50. MONT. J. & CITY CT. R. CIV. P. 1-24 (proposed) [hereinafter proposed Rules].
the proposed Rules reminds the reader to consult other relevant sources. These reminders may be redundant to a sophisticated litigant, but are essential to ensure that "the people's courts" are easy for the people to use.

To accomplish this goal, proposed Rule 1, "Scope of Rules," advises readers to consult the Uniform Rules and the Montana Code for applicable provisions.\(^2\) Additionally, other rules specifically refer to supplemental rules and statutes. For example, proposed Rule 2(A) indicates that the filing of a complaint begins a civil action and also states that the specific requirements for a complaint are set out in Rule 7. Again, such signposts may not always be necessary, but should help make the Rules and courts more user-friendly and efficient.

2. Eliminate Unnecessary and Confusing Provisions

The proposed Rules also attempt to make the current Rules more clear and concise by eliminating unnecessary and irrelevant provisions. For example, current Rule 2, which states that "there is one form of civil action," is an antiquated reference to the merger of the courts of law and equity.\(^5\) However, the courts of law and equity have been combined for a long time, and most non-lawyers are sure to be more confused than enlightened by this provision. The statutes, which grant subject matter jurisdiction to justice and city courts, clearly provide for the adjudication of both equitable and legal actions by these courts.\(^3\) Therefore, to eliminate the potential for creating doubt where none should exist, the proposed Rules simply delete this reference.

3. Regulating Non-Lawyer Representation

Another problem that earlier versions of the Rules did not foresee or address is the purported representation of parties by non-lawyers. One reason for the justice and city courts is to ensure that "litigation may proceed without the aid of attorneys or

\(^{51}\) See proposed Rule 1.


\(^{53}\) See MONT. CODE ANN. § 3-10-301 (1995) (granting the justice courts civil jurisdiction in actions for the recovery of money, which are clearly legal, and in actions to recover the possession of personal property and to issue certain temporary restraining orders, which are clearly equitable). See also MONT. CODE ANN. §§ 3-11-102, -103 (1995) (granting the same jurisdiction to the city courts and providing additional exclusive jurisdiction for certain specified cases which include legal and equitable remedies).
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those familiar with the rules of pleading.\textsuperscript{54} Parties can and do speak on their own behalves without incurring attorneys' fees.\textsuperscript{55} A long standing Montana statute reinforces this concept and also provides that a party may enlist the help of another "as attorney" to act for him or her.\textsuperscript{56} However, neither the founders of the peoples' courts nor the Montana Legislature foresaw that these courts would be used by non-lawyers as a forum in which they could represent litigants for profit.

The problem of non-lawyer representation has grown steadily with the increasing jurisdiction of the justice and city courts, frequently arising in the context of debt collection by credit agencies and paralegal practice.\textsuperscript{57} The party to the action pays a fee, either contingent or hourly, and relies on someone else to handle the action; but, neither the party, the opponent, nor the court receive the corresponding benefit of obtaining the service of a trained, practicing lawyer who is regulated by the State Bar and supreme court of Montana.

The Montana Supreme Court addressed this issue in 1992 in \textit{Sparks v. Johnson}.\textsuperscript{58} The court held that non-lawyers may not represent parties in justice and city courts on a regular and recurring basis.\textsuperscript{59} The court narrowly interpreted section 25-31-601 of the Montana Code Annotated to allow non-lawyer representation by friends and relatives of a party to help that party at a single proceeding.\textsuperscript{60} The Montana Supreme Court cited an Iowa decision interpreting a similar statute barring non-lawyer representation in justice courts which stated that "the salutary purpose of the statute may not thus be perverted to encourage the growth of a class of 'justice court lawyers,' unfettered by the rules that bind licensed attorneys and without training in law and ethics."\textsuperscript{61}

\textsuperscript{54.} Reynolds, 48 Mont. at 151, 135 P. at 1191.
\textsuperscript{55.} See supra note 17 and accompanying text.
\textsuperscript{57.} For example, the agency assumes responsibility for litigating the collection action in return for a percentage of the recovery, in effect representing the creditor. Many of these agencies then prosecute the action through non-attorney employees, who are neither trained nor overseen by the State Bar of Montana.
\textsuperscript{58.} 252 Mont. 39, 826 P.2d 928 (1992).
\textsuperscript{59.} See id. at 44, 826 P.2d at 931.
\textsuperscript{60.} See id. \textit{Sparks} technically involved lay representation in a criminal action in city court and held that section 25-31-601 of the Montana Code is limited to civil litigation in justice courts. See id. at 42, 826 P.2d at 930. The court then held that the statute was "not intended to permit the unauthorized practice of law; the intent is to enable a friend or relative to assist and speak on behalf of a party at one proceeding." Id. at 44, 826 P.2d at 931.
\textsuperscript{61.} Id. at 44, 826 P.2d at 930-31 (citing Bump v. Barnett, 16 N.W.2d 579, 582-
Proposed Rule 2 addresses directly the issue of representation, following the Montana Supreme Court's holding in *Sparks v. Johnson*. The rule states that an individual may represent him or herself or use an attorney. All others—agents, personal representatives, corporations, partnerships, joint ventures, and other legal or commercial entities—must file "through an attorney." Proposed Rule 2 still allows non-lawyers to have access to and represent themselves in the people's courts, but requires those who appear repeatedly on behalf of others for profit to be subject to some regulation.

While proposed Rule 2 does not explicitly provide for the help of a friend or relative in a single proceeding in justice or city court, the term "attorney" is defined in section 25-31-601 of the Montana Code and interpreted by the Court in *Sparks* to allow for such one-time help. Proposed Rule 2(A) does not advise litigants of this exception or direct them to the sources in which it is found. The subcommittee felt that to keep the rule clear and concise, the general rule should be stated clearly; however, the additional information about the exception and its application will be found in the Committee Comments and in this Article.

4. The Signature Requirement

The requirement that litigants represent themselves or be represented by licensed attorneys is particularly important because of the ambiguity in the Rules governing the signing of pleadings. Proposed Rules 2 and 7 both state clearly that

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83 (Iowa 1944)).
62. See proposed Rule 2(A).
63. See id.
64. See id.
65. Hopefully, the fact that attorneys have formal legal training and have passed the requirements for bar admission will obviate the need for intervention. In the event that intervention is necessary, a court may use the Supreme Court Commission on Practice for disciplinary proceedings and/or the impaired lawyers diversion program currently being adopted, which are not available for non-lawyer "representatives." Also, the State Bar Client Security Fund, which reimburses clients for monetary losses caused by dishonest attorneys, requires that the client's claim be against an active member of the Montana Bar.
67. See proposed Rule 2(A).
68. Alternatively, section 25-31-601 of the Montana Code should be clarified by the legislature. See *infra* notes 248-51 and accompanying text.
pleadings must be signed. If the party is represented by counsel, the attorney must sign all pleadings, and, if the party is unrepresented, he or she must sign all pleadings. However, unlike the federal and state rules, neither the current nor the proposed Rule indicates what the signature on a pleading certifies or provides for any penalty for violating the signing requirement.

The subcommittee considered incorporating some aspects of the federal or Montana rule 11 in the Rules' signature requirements, recognizing that some of the increased litigation in these courts may in fact be frivolous. However, the subcommittee was concerned that a certification requirement would unduly complicate and restrict access to the courts at the beginning of a lawsuit and that enforcing purported violations of the certification requirement would result in undue "satellite litigation," thus postponing a decision on the merits, adding time and expense, and increasing animosity between the parties. In the end, the signature requirement remains simple and clear but, unfortunately, lacking any deterrent value.

C. The Subcommittee's Venue Considerations

Prior to 1991, venue in the limited jurisdiction courts was statutory. In 1991, most of the limited jurisdiction venue pro-

69. See proposed Rules 2(A), 7(E)(4).
70. See proposed Rule 7(F)(4).
71. See Fed. R. Civ. P. 11; Mont. R. Civ. P. 11. While the federal and Montana Rule 11 differ somewhat since the 1993 amendments to the federal rule, both require parties to certify pleadings and both impose penalties for violation of the certification provisions. See id.

The purpose of both the state and federal certification and sanction provisions is to deter meritless litigation by requiring filers to "stop and think" before they make unfounded allegations or indulge in an improper purpose. Prior to 1983, the Montana and Federal rules were similar to the "toothless" signature requirement of the current and proposed Justice and City Court Rule of Civil Procedure. See Mont. J. & City Ct. R. Civ. P. 7(D)(4); proposed Rule 7(F)(4).

72. See Mont. J. & City Ct. R. Civ. P. 7(D)(4); proposed Rule 7(F)(4).
visions of the Montana Code were repealed, deferring to the current Rules.\textsuperscript{74} To simplify, the drafters of the current Rules elected to address venue within the Rules rather than to refer litigants to the Montana Code provisions. Venue for both the Montana District Courts and the United States District Court for the District of Montana is still statutory.\textsuperscript{75}

The current Rule 3 is more complete than its 1982 predecessor, but has proven difficult for litigants and judges to understand and apply.\textsuperscript{76} The subcommittee attempted to make the Rule clearer and more understandable to even those users who are not familiar with the concept of venue. Proposed Rule 3 affirmatively states general principles and then contains additional rules for specific circumstances.\textsuperscript{77} Much of proposed Rule 3 is adopted from the district court venue rules, three major differences remain and are discussed below.

Proposed Rule 3(A) begins with a definition of the term "venue," which is presumably unfamiliar to many non-lawyer litigants and judges. Rule 3(A) then explains that there can be more than one proper venue and that the determination of proper venue depends on two factors: (1) the residence of the defendant; and (2) the type of case before the court.\textsuperscript{78} If more than one venue is proper, the plaintiff may choose between them.\textsuperscript{79} If, however, the plaintiff files the action in an improper venue,
the defendant may move to dismiss the action.\textsuperscript{80}

1. \textit{Effect of Residence of Defendant}

Generally, the place of the defendant's residence is always a proper venue.\textsuperscript{81} If no defendant resides in Montana, venue is proper anywhere in Montana.\textsuperscript{82} This "venue anywhere" rule differs from the 1995 amendment to the district court venue statute for tort actions.\textsuperscript{83} Specifically, in district court tort actions, a litigant may not choose any venue if the non-resident party is a corporation.\textsuperscript{84} In revising the justice and city court venue rules, the subcommittee chose to retain the original practice for all defendants in all causes of action for the sake of simplicity.

2. \textit{Corporate Residence}

Neither the venue statutes nor the current Rules define which corporations are Montana residents or where the place of residence within Montana is for corporate defendants who are Montana residents. However, the United States Supreme Court in \textit{Burlington Northern Railroad v. Ford}\textsuperscript{85} stated:

The Supreme Court of Montana has long held that a corporation does not "reside in the state" for venue purposes unless Montana is its State of incorporation (citations omitted), and that a Montana corporation resides in the Montana county in which it has its principal place of business. In combination, these venue rules, with exceptions not here relevant, permit a plaintiff to sue a domestic corporation in just the one county

\textsuperscript{80} \textit{See infra} notes 109-20 and accompanying text.
\textsuperscript{81} \textit{See} MONT. J. \& CITY CT. R. CIV. P. 3(A)(1)(a) (stating venue is always proper in the county and/or city where the Montana defendant, or any one of the Montana defendants, resides at the time the complaint is filed). The Montana Supreme Court has repeatedly held this to be the most basic of the venue rules. \textit{See}, \textit{e.g.}, Foley v. General Motors, 159 Mont. 469, 472, 499 P.2d 774, 475 (1972); Clark Fork Paving v. Atlas Concrete, 178 Mont. 8, 12, 582 P.2d 779, 781 (1978).
\textsuperscript{83} \textit{See} MONT. CODE ANN. § 25-2-122(2) (1995).
\textsuperscript{84} The plaintiff is limited to one of four choices of venue: (1) the county in which the tort was committed; (2) the county in which the plaintiff resides; (3) the county in which the corporation's resident agent is located; or (4) the first judicial district. \textit{See} MONT. CODE ANN. § 25-2-122(2) (1995).
\textsuperscript{85} 504 U.S. 648 (1995).
where it has its principal place of business, while a plaintiff may sue a foreign corporation in any of the State's fifty-six counties.66

Justice Souter cited two cases for the proposition that the corporate residence is the county in which the corporation has its principal place of business; however, the language in both cases is only dicta.87 Furthermore, the Montana Supreme Court has yet to deal squarely with the issue.88 Thus, not finding any public policy or precedent to support the dicta in these cases, the subcommittee considered the issue of residence for Montana corporations anew. The proposed Rule now states the rules relating to corporations and venue clearly enough that litigants and judges may understand them without the need to resort to Montana or United States Supreme Court cases.89

Proposed Rule 3(A)(1) specifies that the place of incorporation determines the state of residence for a corporation and that a domestic corporation is a resident of each Montana county in which it has a place of business.90 While this new provision allows a plaintiff to choose between multiple "residences" of a Montana corporate defendant who maintains multiple places of business, the inconvenience to the defendant should be relatively

86. Id. at 651 (citations omitted).
88. In Platt, the plaintiff was injured in a residential swimming pool accident. See 222 Mont. at 187, 721 P.2d at 338. The plaintiff, the swimming pool, and the individual defendants who owned the pool were located in Lake County. See id. at 185, 721 P.2d at 337. The other two defendants were the manufacturer and distributor, corporations which apparently were not incorporated in Montana. See id. The plaintiff filed her action in Silver Bow County; upon defendant's motion, the trial court found that venue was improper and changed it to Lake County. See id. In affirming the trial court's change of venue, the court stated "as foreign corporations, Sears and the Muskin Corporation have no Montana residence for purposes of venue." Id. at 186, 721 P.2d at 337. Although technically dicta, the court went on to say, "a Montana corporation has only one residence, the county in which it has its principal place of business." Id. at 187, 721 P.2d at 338. However, the court cited no authority, statutory or common law, for this proposition.

Similarly, in Mapston, the court did not hear or resolve squarely the issue of the residence of a Montana corporation for venue purposes, but rather discussed venue as it related to the school district. See 227 Mont. at 523, 740 P.2d at 677. The court held that the "residence" of the school district was the county in which "it has it's [sic] principal place of business." Id.
89. See proposed Rule 3(A)(1)(c).
90. See proposed Rule 3(A)(1). The Rule directs the reader to the correct office, the Montana Secretary of State, to check whether the defendant corporation is incorporated in Montana. See id.
slight. Further, by establishing a place of business in a particular location, the defendant has demonstrated a willingness and ability to conduct business at that location and cannot reasonably expect to avoid litigation there.

3. Multiple Defendants

For cases involving multiple defendants, proposed Rule 3(A)(1) states that venue which is proper for any defendant involved in an action is proper for all defendants, even if the venue would be improper in a separate cause of action brought against one particular defendant. This provision is new to the Rules, but conforms to the district court venue statute and the common law in Montana. This rule provides plaintiffs with an incentive for joining multiple defendants in a single action. This, in turn, prevents multiple proceedings, conserves the resources of the court, the parties, and the witnesses, and avoids potentially inconsistent results. On the other hand, the rule provides a temptation for a plaintiff to add a defendant who might not otherwise be joined solely to acquire another possible venue. However, the subcommittee determined that the benefits of the Rule outweighed the risk of this possible misuse, in part because no significant abuse of the similar district court provision has been reported since its enactment.

91. See id.
92. See proposed Rule 3(A)(1)(d).
95. In the courts of limited jurisdiction, as in district court, venue is determined by reference to the factors which exist at the time of the commencement of the lawsuit. See MONT. J. & CTY CT. R. CIV. P. 3(B). Thus, the defendant's residence on the date the complaint is filed is determinative, even if the defendant moves to another venue the next day. See Emery v. Federated Foods, Inc., 262 Mont. 83, 88, 863 P.2d 426 (1993). Therefore, dropping a defendant after the complaint is filed will not change the venue, even if they were originally included only for venue purposes. See id. at 88, 863 P.2d at 426.

In the district courts, Rule 11 of the Montana Rules of Civil Procedure may act as a check on the practice of using a defendant for venue purposes, see MONT. R. CIV. P. 11, but neither the current nor the proposed Rules contain a Rule 11 corollary. However, given the relatively limited recoveries at stake in the justice and city courts and the large number of pro se litigants, the danger that this tactic will be abused in these courts is low.
4. Additional Proper Venues

Having established the general principles, proposed Rule 3(A)(2) sets out specific causes of action in which other venues may also be proper.96 Generally, a venue other than the defendant's residence may be used when there is some connection between the events giving rise to the cause of action and a county or city other than the defendant's home venue.

a. Contract Cases

For contract actions, the place of performance of the contract is an additional proper venue.97 Like the district court provision, proposed Rule 3(A) gives parties to a contract the first opportunity to specify its place of performance; however, in the event that the parties do not so specify, proposed Rule 3(A)(2) defines place of performance more broadly than the comparable district court statute.98 Rule 3(A)(2) recognizes that there may be multiple places of performance for a single contract and allows a plaintiff to sue in the venue where the performance was supposed to have occurred.99 Thus, in a contract for the sale of personal property across county lines, the seller whose payment was due in his or her home county may sue for non-payment there, while a buyer who paid the seller in the seller's county but did not receive the goods the seller promised may sue for non-delivery in the buyer's county.100

96. See proposed Rule 3(A)(2).
97. See proposed Rule 3(A)(2)(a); see also MONT. CODE ANN. § 25-2-121(1)(b) (1995).
100. See, e.g., Peenstra v. Berek, 188 Mont. 489, 614 P.2d 520 (1980). The defendant made a down payment on furniture in a Flathead County furniture store with the understanding that he would pay the rest once the furniture was delivered to his residence in Cascade County. See id. at 490, 614 P.2d at 521. The plaintiff furniture store filed suit in Flathead County after it delivered the furniture to the defendant buyer, and he refused to pay. The buyer moved to change venue to Cascade County, alleging that was the place of performance. See id. The Supreme Court affirmed the district court's denial of the change of venue, stating:
the express terms of the contract provide that the seller was to perform by making delivery in Great Falls, but that the buyer should perform by making payments in Kalispell. The seller fully performed, but the buyer allegedly has failed to perform his obligations which are to be performed in Flathead County.
Id. at 491, 614 P.2d at 521.
But, cf. MONT. CODE ANN. § 25-2-121(2) (1995). After Peenstra, the legislature
The subcommittee chose to incorporate the "multiple places of performance" rule for the courts of limited jurisdiction because the amounts sued upon are smaller than in district court, and, thus, having to travel to a distant venue is more likely to dissuade a litigant with a meritorious claim. Further, under this rule, the plaintiff who sues in the place where the defendant promised, but allegedly failed to perform, is in effect substituting the lawsuit for the promised performance and is not imposing an unexpected burden on the defendant.

b. Tort Cases

In tort actions, the subcommittee chose a nearly opposite approach. Proposed Rule 3(A)(2)(b) allows one additional proper venue, the place where the injury was incurred.101 The drafters changed the language of the current Rule, which allows venue "where the injury was committed," to avoid the recent confusion in the district courts about the meaning of the term "committed" when the defendant's act occurs in one place but the injury to the plaintiff results in another.102 The Montana Supreme Court has interpreted the phrase to mean that the tort is committed where the defendant's tortious conduct occurred, even if the

amended section 25-2-121(2) of the Montana Code to list the place of performance for particular categories of contracts, regardless of which party has breached its obligation. See MONT. CODE ANN. § 25-2-121(2) (1995). For instance, the proper county for "contracts for the sale of property or goods: the county where possession of the property or goods is to be delivered . . . " Id.

101. See proposed Rule 3(A)(2)(b).

102. In district court tort cases, the one proper place for trial is "the county where the tort was committed." MONT. CODE ANN. § 25-2-122(1)(b). The statute does not define the word "committed." See MONT. CODE ANN. § 25-2-122(a)(b) (1995). The Montana Supreme Court has held "for purposes of venue, a tort is committed where there is a concurrence of breach of obligation and the occasion of damages." Whalen v. Snell, 205 Mont. 299, 302, 667 P.2d 436, 437 (1983) (holding that in a suit for non-payment of fees, "the obligation [is] breached, if at all, where payment [is] to be made.").

See also Howard v. Dooner Laboratories, Inc., 211 Mont. 312, 688 P.2d 279 (1984). In that case, the alleged medical malpractice occurred at the doctor's office in Yellowstone County, but the patient did not suffer any ill effects until she filled the prescription in Fergus County. See id. at 313, 688 P.2d at 279. The Court held that the tort exception did not authorize venue in Fergus County and that the tort was "committed" in the county of the defendant's residence. See id. at 313-14, 689 P.2d at 279-80. But cf. Gabriel v. School Dist. No. 4, 264 Mont. 177, 870 P.2d 1351 (1994) (considering section 25-2-126(3) of the Montana Code, which governs venue for actions against political subdivisions, and holding that the wrongful death claim "arose" where the death occurred, even though the negligence and injuries that led to the death happened in another county).
plaintiff is injured elsewhere. In many cases, this interpretation means that the alternative venue is, in fact, no alternative at all; the only resulting proper venue is the defendant's place of residence. In district court cases with large sums at stake, it may be reasonable to expect an injured plaintiff to travel to a distant location to press a claim. However, for an injured plaintiff bringing an action in the justice or city courts, traveling to the defendant's home venue simply may not be worth the maximum compensation of $5,000.

A defendant who is sued in a venue where the injury is incurred, but where he or she may have never been, also must decide whether defending a suit in a distant venue is worth the possible $5,000 judgment. It may be true that this defendant could not have foreseen that the injury would occur at a distance, but the substantive law holds the defendant liable for unforeseen injuries so long as the defendant should have anticipated some form of injury. This venue rule merely extends this reasoning to place. Few cases involve a geographic split between act and injury, but for those that do, the proposed rule attempts to balance the rights of both parties while maintaining reasonable access to the judicial system.

c. Unlawful Detainer Cases

Proposed Rule 3 makes a simple but significant change in venue for unlawful detainer actions. Under this rule, plaintiffs may choose the defendant's place of residence in addition to the location of the real property in dispute as a proper venue. Since 1895, plaintiffs have been required to sue for recovery of possession of real property in the county where the property was located, even if the defendant resided elsewhere. This traditional venue rule is inconsistent with the general rule and unnecessarily inconveniences defendants. Be-
cause a plaintiff may now execute upon justice court judgments in any county in the state,\textsuperscript{108} simplicity and convenience dictate that the plaintiff be able to bring suit in the defendant’s place of residence, obtain a judgment for unlawful detainer in that county, and enforce that judgment by writ of execution directed to the sheriff of the county in which the property is located. The plaintiff still retains the option of suing where the property is located, but the defendant’s convenience is finally considered.

5. \textit{Dismissal for Improper Venue: Rule 3(B)}

The changes to Rule 3(B) are meant to clarify, not alter, the current practice in cases of improper venue.\textsuperscript{109} In justice and city courts, cases filed in improper venues are dismissed without prejudice.\textsuperscript{110} Because the justice and city courts have limited support staffs and resources, the subcommittee determined that the responsibility for filing in the correct court should fall on the plaintiff, not on the clerk of court. In district court, venue is not jurisdictional,\textsuperscript{111} and the court may not dismiss an action on its own motion for improper venue.\textsuperscript{112} The proposed Rule 3(B) provides that a party who believes that venue is improper must either move to dismiss the action on that ground at least ten days before trial or waive the motion.\textsuperscript{113} The rule clearly states that a court that is presented with a timely motion that demonstrates improper venue must grant the motion and dismiss the suit without prejudice.\textsuperscript{114}

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\textsuperscript{108} \textit{See} MONT. J. \& CITY CT. R. CIV. P. 23(A).
\textsuperscript{109} \textit{See} proposed Rule 3(B).
\textsuperscript{110} \textit{Cf.} MONT. R. CIV. P. 12(b)(ii) \textit{(stating the remedy for improper venue in district court is an order to change venue to the proper county).}
\textsuperscript{111} \textit{See, e.g.,} In re Marriage of Miller, 189 Mont. 356, 366, 616 P.2d 313, 320 (1980).
\textsuperscript{112} \textit{See, e.g.,} State ex rel. Gnose v. District Court of Deer Lodge County, 30 Mont. 188, 189, 75 P. 1109, 1109 (1904) \textit{(stating that “the court cannot act of its own motion, for, while a party may have an absolute right to a change of venue, it is a right which he may waive, and the court is without authority to invoke the statute in his behalf” \textit{(citations omitted)}.})
\textsuperscript{113} \textit{See proposed Rule 3(B)(1).} The subcommittee imposed this new deadline for the filing of motions to dismiss for improper venue to prevent defendants from changing venue on the morning of the trial. The subcommittee decided that because of the relative lack of legal expertise among litigants, the added strain on judicial resources, the added time between pleading and trial, and the fact that civil litigation in justice and city courts usually involves much less in the way of pretrial procedure than district court practice, the deadline should be shorter than in district court. \textit{See} MONT. R. CIV. P. 12(b)(iii) \textit{(imposing, generally, a 20-day deadline after the filing of the answer except in cases where an event occurs that will prevent an impartial trial or where impartiality arises after the 20-day period).}
\textsuperscript{114} \textit{See proposed Rule 3(B)(1).} In district court, the court must grant a motion
In the event an improper venue motion is granted, the proposed Rule 3(B) instructs plaintiffs that they must refile in a proper venue and pay another filing fee and advises them of the risk that the statute of limitations may toll.\textsuperscript{115} While these consequences may be apparent to attorneys who are familiar with the Rules, this rule ensures that a non-lawyer litigant who has filed in an improper venue will have enough information to refile correctly.

Different from the practice in district court,\textsuperscript{116} a decision on a motion to dismiss for improper venue in the courts of limited jurisdiction is not immediately appealable.\textsuperscript{117} Because a limited jurisdiction litigant who receives an incorrect venue ruling likely will not be prejudiced by waiting the relatively short time until after trial to have the ruling reviewed, the drafters determined that the case should be taken to its conclusion in the justice or city court.\textsuperscript{118} Further, on appeal to the district court from justice or city court, the dissatisfied party gets a trial de novo.\textsuperscript{119} If the district court judge determines that the original venue was wrong, he or she may transfer the case to the proper venue prior to the trial de novo.\textsuperscript{120}

6. Other Venue Issues: Rule 3(C)

When the plaintiff files in a proper venue but the trial of the action must take place elsewhere for other reasons, the case is transferred to the new venue rather than being dismissed without prejudice.\textsuperscript{121} Rule 3(C) recognizes only four grounds for

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\textsuperscript{115} See MONT. CODE ANN. § 25-2-201(1) (1995); see, e.g., Johnson v. Clark, 131 Mont. 454, 460, 311 P.2d 772, 776 (1957).
\textsuperscript{116} See proposed Rule 3(B)(1).
\textsuperscript{117} See MONT. R. APP. P. 1(b)(2) (allowing a party in district court to immediately appeal an order changing or refusing to change the place of trial).
\textsuperscript{119} The committee also deleted language that purported to instruct the district courts on how to deal with the motions in a case on appeal. The Montana Code contains specific procedures which the district court must follow in appeals from justice or city court. See MONT. CODE ANN. §§ 25-33-101 through -306 (1995).
\textsuperscript{120} See MONT. CODE ANN. § 25-33-301(1) (1995) (providing for trial de novo and stating that "[e]ach party has the benefit of all legal objections made in the justice's or city court"); MONT. CODE ANN. § 25-33-302 (1995) (setting forth the procedure to be followed when a judgment is reversed or set aside on a question of law arising in the lower court).
\textsuperscript{121} See MONT. CODE ANN. § 25-33-301 (1995).
\textsuperscript{122} See proposed Rule 3(C). To clarify the difference between transfer and dismissal, this Rule specifically prohibits the collection of an additional filing fee by the
change of venue if the original filing was in a proper location: (1) the judge is a material witness; (2) a fair trial is impossible because of bias or prejudice among the prospective jurors; (3) the judge is disqualified; or (4) the judge is sick or unable to preside. To obtain a change of venue in the first two instances, a party must submit an affidavit that establishes the basis for the motion. However, in the event the judge is disqualified or sick, no affidavit is necessary. The court must assess the evidence before it, and, if it appears to the satisfaction of the judge that one of the four grounds is met, he or she may grant a change of venue.

If the parties cannot agree upon a new venue, the original court shall choose the new venue. Because there may not be another court in the same county, proposed Rule 3(C) deletes earlier language limiting the transfer to courts in the same county, but requires the transferring judge to try to keep the case close—to transfer to "the nearest appropriate court in which the judge agrees to accept the case." Proposed Rule 3(C) also deletes the previous limit on the number of times a party may

transferee court. See id.

122. See proposed Rule 3(C)(1). Like all other judges in Montana, justice and city court judges may not sit in actions in which they are a party, are related to a party or an attorney, or have represented a party. See MONT. CODE ANN. § 3-1-803 (1995). Further, they are automatically disqualified when under a felony indictment or information and during supreme court review of a recommendation for removal by the Judicial Standards Commission. See MONT. CODE ANN. § 3-1-1109 (1995). In all other cases, a party seeking to unseat a judicial officer for a particular case must show cause. See MONT. CODE ANN. § 3-1-805 (1995).

123. See proposed Rule 3(C)(1)(a), (b). The party must allege facts showing personal bias or prejudice on the part of the judge. In addition to the affidavit, counsel for the moving party must sign and file a certificate that the affidavit was made in good faith. See id.

124. See proposed Rule 3(C)(1)(c), (d). The disqualification is not automatic; another judge conducts a disqualification hearing before deciding whether the original judge should continue to sit on the case. See MONT. CODE ANN. § 3-1-805(1) (1995).

125. See proposed Rule 3(C)(1).

126. See proposed Rule 3(C)(2).

127. The 1972 Constitution requires only one justice of the peace in each county, although the legislature has the authority to provide for additional justices of the peace in any county. See MONT. CONST., art. VII, § 5. The Montana Code currently provides for at least one justice court in each county and authorizes county commissioners to add more courts under certain circumstances. See MONT. CODE ANN. § 3-10-101 (1995). Beaverhead, Blaine, Carbon, Cascade, Chouteau, Fergus, Gallatin, Granite, Judith Basin, Lincoln, Missoula, Ravalli, Roosevelt, Rosebud, Silver Bow, and Yellowstone Counties all have more than one justice court.

128. See MONT. J. & CITY CT. R. CIV. P. 3(C)(5).

129. See proposed Rule 3(C)(2).
move to change venue, accommodating the rare circumstances in which similar problems arise in the transferee court.

To prevent defendants from using motions for change of venue as a dilatory tactic, the judge in the new venue must issue a notice of the time and place set for trial as soon as he or she receives the file. To ensure that the transferee court exercises its power to move the case along to its resolution, the court should order the defendant to file an answer within ten days of the court's order if the file does not contain one.

D. Other Suggested Amendments

1. Payment of Court Fees: Rule 2(B)

Another problem that has surfaced since the adoption of the current Rules is the non-payment of fees. In some cases, plaintiffs faced with a looming statute of limitations have successfully convinced the clerk of court to file the complaint, but to postpone collecting the statutorily required filing fee. Once the clerk accepts the complaint, the statute of limitation arguably is tolled, and, subsequently, collecting the fees has proved difficult. Proposed Rule 2 adds a subsection that specifically instructs clerks and judges faced with this situation not to allow filing of a complaint without the payment of the fee. Filing a complaint without paying the fee will no longer toll the statute of limitations.

2. Personal Jurisdiction: Rule 4

Proposed Rule 4 discusses personal jurisdiction, the power of the court to render a judgment binding on the parties before

130. See MONT. J. & CITY CT. R. CIV. P. 3(C)(3).
131. See proposed Rule 3(C)(5).
132. See id. The 10-day limit is shorter than the original 20 days for an answer given to defendants under the current Rule. See MONT. J. & CITY CT. R. CIV. P. 5(A).
133. Interview with participating judges, Montana Justice Institute, at the University of Montana School of Law, Missoula, Mont. (Summer, 1994).
134. See proposed Rule 2(B). Several of the judges in attendance at the Montana Justice Institute had faced this situation and expressed a desire for clear guidance on the issue. Because most of the courts are in small communities, silence in the Rules has subjected the judges and clerks to personal pressure to accept late filing fees. However, the clear statement in an outside authority should prevent this. Interview with participating judges, Montana Justice Institute, at University of Montana School of Law, Missoula, Mont. (Summer, 1994).
135. See proposed Rule 2(B).
In very few words, the amendment to Rule 4 significantly expands the courts’ personal jurisdiction. Under proposed Rule 4(B), city and justice court judges have statewide personal jurisdiction.

Currently, much confusion exists regarding the personal jurisdiction of the city and justice courts. Section 3-10-304 of the Montana Code limits the personal jurisdiction of a justice court to the county in which it is located. However, section 25-31-407 of the Montana Code, to which section 3-10-304 explicitly refers, imposes special requirements for summonses served out of the justice court’s county without explaining how such service can be possible if the court’s jurisdiction is limited to its county’s boundaries. Furthermore, the entry of judgment in a justice court appears to have statewide effect.

The 1982 and current Rules give a cursory treatment of the issue of the limits of the court’s personal jurisdiction, stating that “[a]ll persons are subject to the jurisdiction of a justice or city court who are found within the county or city, respectively, or who can be served as provided in these rules.” This rule does not clearly instruct litigants how to resolve the apparent conflict between the territorial limit imposed by section 3-10-304 of the Montana Code and the expanded jurisdiction offered by section 25-31-407 of the Montana Code.

Many of the city and justice court judges believe that they do have statewide personal jurisdiction and act on that belief daily. The judges with whom the subcommittee spoke felt

136. See proposed Rule 4.
137. See proposed Rule 4(B)(1) (stating that “all persons are subject to the jurisdiction of a justice or city court who reside or are found within the State of Montana”). The subcommittee decided not to attempt to give the courts of limited jurisdiction long-arm jurisdiction over defendants not found within the state of Montana because it would be overly complicated.
138. See MONT. CODE ANN. § 3-10-304 (1995) (stating that “the civil jurisdiction of a justice’s court extends to the limits of the county in which it is held, and mesne and final process of a justice’s court in a county may be issued to and served in any part of the county”).
140. See MONT. CODE ANN. § 25-31-914 (1995) (stating that a justice court judgment can be used to create a lien in any county where the defendant owns real property). The current Rule 23(A)(1) allows judgments to be enforced within the boundaries of the county or city in which the judgment was obtained by a writ of execution, while Rule 23(A)(2) appears to allow the procedure authorized by section 25-31-914 of the Montana Code. See MONT. J. & CITY CT. R. CIV. P. 23(A)(1), (2).
142. Interview with participating judges, Montana Justice Institute, at the Uni-
strongly that it would not be fair to allow alleged wrongdoers to escape the consequences of their wrongs unless the plaintiff travels to the home county or city of the defendant and sues there. Further, the judges report that in practice, they rarely, if ever, face any challenge to their assertion of statewide personal jurisdiction, even when the defendant lives on one side of the state and is served with process on the other. Technically, a defendant who answers without asserting lack of personal jurisdiction waives this defense. In the courts of limited jurisdiction, where so many defendants are pro se and so many judges are confused about the scope of the courts' personal jurisdiction, most of these waivers are more likely unwitting than voluntary. Most litigants probably assume that if a court issued a summons, it must have jurisdiction.

The subcommittee thought it essential to clarify the jurisdictional boundaries of justice and city courts and to suggest legislative changes to make the statutes consistent. As a matter of policy, allowing statewide jurisdiction satisfies these criteria. Even in 1961, the legislative council noted: "Territorial jurisdiction is limited to counties, and this also restricts the effectiveness of a J.P. court." Today, the increasing civil case-load and amount of money at issue in justice and city courts, as well as the vastly improved communications and transportation around the state, weigh even more strongly in favor of statewide jurisdiction and enforcement of decrees.

143. Id.
144. Id. The judges I spoke with also indicated that they regularly issue summonses for defendants in other counties. Id.
145. See MONT. J. & CITY CT. R. CIV. P. 4(B)(2). This rule provides for acquisition of jurisdiction by "voluntary appearance" as well as by service; therefore, appearing without raising the defense of lack of personal jurisdiction waives that defense. See id. The proposed Rule makes no change. See proposed Rule 4(B)(2).
146. See proposed Rule 4(B)(1); see also supra notes 44-47 and accompanying text.
147. MONTANA LEGISLATIVE REPORT, supra note 18, at 3.
3. Language of the Summons: Rule 4(C)

The only other significant change in Rule 4 is in the form of the summons. The current Rule 4 requires the summons to contain a statement directing the defendant to appear and file a written answer within twenty days of service of the summons and complaint. In many actions filed in the courts of limited jurisdiction, federal law requires the plaintiff to give the defendant more than twenty days to answer. Some have tried to solve this dilemma by stating in the summons that the defendant had the federally-required number of days in which to answer; however, some justice and city court judges have strictly interpreted the rule and not allowed summonses giving the federally-required number of days. To alleviate this problem, the proposed Rule allows the defendant twenty days, "unless otherwise provided by law," in which to answer.

4. Late Filing of Answers: Rule 5

Proposed Rule 5 governs service and filing of pleadings and other documents and seeks to eliminate doubt about whether the defendant may answer after the specified time has expired. Proposed Rule 5 clearly states that this practice is acceptable, adopting a party-centered adversarial approach and rejecting a technical interpretation that would interfere with the overall goal of trial on the merits. Thus, the plaintiff who wishes to enforce the twenty-day deadline must proceed under Rule 21 and obtain a default; the court will not do so on its own.

148. See proposed Rule 4(B)(2).
150. See, e.g., Fair Debt Collection Practices Act, 15 U.S.C. § 1692g(a)(4) (1994) (requiring creditors to allow the debtor at least 30 days to respond to the first notice of collection).
151. See proposed Rule 5(A).
152. See proposed Rule 5.
153. See id.
154. See proposed Rule 21(A)(8). The other changes to Rule 5 are similarly dispensable for systems where most litigants and judges are trained in the law, but are needed to give clear guidance to those with less formal legal education and experience. For example, proposed Rule 5 explains in detail the procedure to be followed in filing pleadings. See proposed Rule 5(B).
5. Pleadings Generally: Rule 7

Proposed Rule 7(A) requires that the complaint state not only the facts giving rise to the action, but also the "type and amount of relief requested." This new requirement enables the defendant and court to assess whether the court has subject matter jurisdiction over the case. Because the limited subject matter jurisdiction of the justice and city courts is determined by the dollar amount of the plaintiff's claim, the plaintiff's complaint must include a statement of the amount and type of relief sought.

Counterclaims and cross-claims have been another source of controversy in the courts of limited jurisdiction because the current Rules do not address them. However, Proposed rule 7 states unequivocally that "cross-claims are not allowed." For justice and city courts—where amounts in dispute are limited and simplicity is a virtue—the complexity inherent in deciding issues between co-parties is overly burdensome. Although those co-parties will have to file a separate action to resolve other disputes, and thus may suffer some duplication of effort and expense, the speed and ease with which the case between the original opponents can be resolved greatly outweighs this inconvenience.

Counterclaims between opposing parties are allowed in the courts of limited jurisdiction. Under the current Rules, as in district court, some counterclaims are permissive while those which arise out of the same transaction or occurrence are mandatory; that is, if they are not raised in the primary action, they will be waived. The policy behind the mandatory counterclaim rule is to encourage resolution of all disputes between two parties relating to the same facts in a single lawsuit, thereby avoiding unnecessary and wasteful duplication of the resources of the courts and parties. Proposed Rule 7 rephrases this rule to make it easier to understand and apply.

Proposed Rule 7(C) also addresses the important and recurring situation in which the defendant seeks to recover in the counterclaim more than the jurisdictional limit of the justice or

158. See MONT. J. & CITY CT. R. CIV. P. 7(C); proposed Rule 7(C).
159. See MONT. R. CIV. P. 13.
160. See proposed Rule 7.
city court. The previous version of the rule did not clearly provide for this situation, and courts throughout Montana treated such counterclaims inconsistently.

However, in 1993, the Montana Supreme Court decided *Bell v. Justice Court of Rosebud County*, granting a petition for supervisory control over a justice court judge. In the underlying action, the plaintiffs sued for less than $5,000, but the defendants counterclaimed for $50,000. The justice court judge proposed trying the plaintiff's claim and the defendant's counterclaim up to $5,000 in justice court and then sending the defendants to district court to seek the rest of the alleged counterclaim damages. The Montana Supreme Court held that the justice court judge should have acknowledged that she had no subject matter jurisdiction because of the amount claimed. The court voiced concern about the possibility of a duplication of trials and the denial of complete recovery by the defendant. To avoid these problems, the court ruled that the entire case in justice court should be dismissed, and both parties should be required to pursue their claims in district court.

Proposed Rule 7(C) incorporates the *Bell* holding in part, specifying that a counterclaim which exceeds the jurisdictional limit of the court must be dismissed without prejudice. This provision also complies with the reasoning of the Montana Supreme Court in *Reynolds v. Smith*, which held that "the jurisdiction of the [justice] court is dependent not upon the amount which plaintiff might recover, but upon the amount which he demands." The proposed rule does not require that the case be

161. See proposed Rule 7(C).
163. See id.
164. See id. This procedure appears to conform to the Montana Code. See MONT. CODE ANN. § 25-31-906 (1995) (providing that "[w]hen the amount found due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess and judgment may be entered for the residue").
165. See id.
166. See id.
167. See id.
168. See proposed Rule 7(C)(1).
169. 48 Mont. 149, 135 P. 1190 (1913).
170. Id. at 151, 135 P. at 1191. At the time of the *Reynolds* decision, the justice of the peace courts were limited to cases not exceeding $300. The plaintiff's total demand was within the court's subject matter jurisdiction; however, a Montana statute imposed a penalty which made the amount in controversy greater than $300. See id. The Supreme Court affirmed the judgment for the plaintiff, citing the Revised Code of Montana (now MONT. CODE ANN. § 25-31-906) "which allows the prevailing party to remit any excess over the amount fixed as the limit of the jurisdiction of a
dismissed, but gives the defendant the option of refiling the counterclaim in district court.\textsuperscript{171} If the defendant proceeds to district court after the counterclaim is dismissed in the justice or city court, the district court may order that the plaintiff's justice or city court action be transferred to the district court.\textsuperscript{172} Problems with Rule 7(C) still remain. A defendant wishing to avoid justice or city court now has a clear incentive to counterclaim and to exaggerate the damage allegations.\textsuperscript{173} However, in the absence of empirical evidence that litigants actually abuse the counterclaim rule to avoid justice court, the subcommittee thought that the proposed Rule represented a reasonable compromise considering the clear limit to the subject matter jurisdiction of the justice and city courts.

6. Amendment of Pleadings: Rule 8

The current Rule 8, governing amendment of pleadings, is less formal than the corresponding rule in district court.\textsuperscript{174} It allows amendment “by written motion at the discretion of the court” without giving the court any guidance about when and why to exercise that discretion and without setting a limit on the number of amendments each party can make.\textsuperscript{175} Under proposed Rule 8(A), the court no longer has to struggle with whether to grant leave to amend, but rather must allow each party to amend its pleading one time.\textsuperscript{176} Allowing parties to freely amend once conforms with the policy embodied in rule 15(a) of the Montana Rules of Civil Procedure.\textsuperscript{177} Because the purpose of pleadings is to give notice and enable the opponent and the court to anticipate and meet the issues to be raised at trial,\textsuperscript{178}
the pleadings must be as accurate as possible. "[P]leadings are not an end in themselves, but are only a means to the proper presentation of a case . . ." 179 Allowing each party to amend its pleading facilitates trial of the actual issues, rather than confining the trial to what may have been a party's incomplete understanding of the issues at the beginning of the action.

On the other hand, allowing parties to file an unrestricted number of amendments at any time in the litigation might encourage parties to file misleading pleadings at the outset, then amend the pleading close to the time of trial to prejudice his or her opponent. Proposed Rule 8(A) seeks to prevent this potential abuse in two ways: (1) allowing each party only one amendment without leave of court; and (2) requiring that the amendment be filed "within 10 days after the other party's pleading has been served." 180 Because the time between pleading and trial is shorter in the courts of limited jurisdiction than in the district courts, the period of time in which a party may amend the complaint without leave of court is correspondingly shorter. 181

179. Prentice Lumber Co. v. Hukill, 161 Mont. 8, 17, 504 P.2d 277, 282 (1972) (quoting 3 JAMES W. MOORE, MOORE'S FEDERAL PRACTICE § 15.02(1), at 813 (1938)).

180. Proposed Rule 8(A). Thus, the plaintiff has the opportunity to react to the defendant's answer by filing an amended complaint. Proposed Rule 8(B), which is identical to the current Rules, requires the defendant to file an answer to the amended complaint within 20 days. See MONT. J. & CITY CT. R. CIV. P. 8(B); proposed Rule 8(B). However, proposed Rule 8(A) is harder to apply to defendants who wish to amend their answers. Under current Rule 5(A), a defendant has 20 days in which to file an answer. See MONT. J. & CITY CT. R. CIV. P. 5(A). If the defendant waits more than 10 days to file its original answer, however, he or she may not be able to amend because any amendment would be more than "10 days after the other party's pleading has been served." Id. This result is contrary to the policy allowing each party one free amendment. To accomplish the intended result, I suggest that proposed Rule 8(A) read:

A. WHEN ALLOWED

Each party may amend its pleading one time, without leave of court, if the amended pleading is filed within the following times:

a. the plaintiff's amended complaint, if any, must be filed either before or within 10 days after the defendant's answer is served upon plaintiff.

b. the defendant's amended answer, if any, must be filed within 10 days of the filing of the original answer. The amended answer may add a counterclaim consistent with Rule 7(C).

181. Compare proposed Rule 8(A) (giving parties 10 days to file without leave) with MONT. R. CIV. P. 15(a) (giving parties 20 days to file without leave).
7. Real Party in Interest: Rule 10

The real-party-in-interest rule is a slightly simpler version of the district court rule.¹⁸² The changes suggested by the 1997 amendment do not affect either the meaning or application of the rule, but simply make it easier to understand. The drafters stated the effect of naming a party who is not the real party in interest in the affirmative, rather than the more confusing negative.¹⁸³ The proposed Rule states that "the court must require an amendment of the pleading to name the real party in interest. If the real party in interest is not named within five days, the action should be dismissed without prejudice."¹⁸⁴

While proposed Rule 10(B) states that the court must require an amendment to name the real party in interest, it does not indicate how the issue is to be brought to the attention of the court. Presumably, a party will raise the issue by motion, as in district court,¹⁸⁵ but proposed Rule 10(B) also leaves room for sua sponte rulings by the court.¹⁸⁶ The technicality of the real-party-in-interest requirement and the relative lack of legal experience of pro se litigants make the proposed Rule more appropriate for the courts of limited jurisdiction.

8. Discovery: Rule 13

Discovery is an area in which civil practice in the courts of limited jurisdiction differs markedly from the district court procedure. The most extreme difference is in the most fundamental concept: in district court, discovery is a matter of right largely unregulated by the court; in justice and city courts, discovery is not allowed without prior permission of the judge and may be limited in frequency and extent. Many justice and city court judges report that attorneys who practice only sporadically in their courts appear unaware of this difference and frequently propound discovery without seeking the court approval mandated by the current Rule 13.¹⁸⁷ They then compound this error (and their subsequent humiliation) by moving to compel responses or for sanctions when, in fact, they are the parties in violation of the Rules.

¹⁸³. Compare Mont. J. & City Ct. R. Civ. P. 10(B) with proposed Rule 10(B).
¹⁸⁴. Proposed rule 10(B).
¹⁸⁵. See Mont. R. Civ. P. 17(a).
¹⁸⁶. See proposed Rule 10(B).
Proposed Rule 13 clarifies the restrictions on discovery in the courts of limited jurisdiction, stating unequivocally: "There shall be no formal discovery except as provided by these rules."\(^{188}\) Proposed rule 13 also states a new preference for informal discovery, requiring a party moving for formal discovery first to certify that it tried, but was unsuccessful in obtaining, informal discovery.\(^{189}\) These provisions reflect a policy to minimize formal discovery and, thus, prevent unlimited discovery and unnecessary expense and delay. The need to limit discovery wastes is even greater in a system where the amounts in dispute are minimal. Further, the subcommittee recognized that allowing parties to use formal discovery increases the imbalance of power that occurs where one party is represented while the other is appearing pro se.

However, even where the amount in dispute is below $5,000, the complexity of issues and need for information vary tremendously from case to case. Therefore, proposed Rule 3(A), like the current Rule 3(A), gives the justice and city courts the express authority to limit the frequency and extent of discovery depending on the availability of the information by other means and the "needs of the case, the amount in controversy, limitations on the party's resources, and the importance of the issues at stake in the litigation."\(^{190}\) While a court still maintains the discretion to refuse discovery altogether, this discretion should be used sparingly in light of the overall goal of the Rules—to secure an inexpensive, speedy and, most importantly, just determination of every action.\(^{191}\) To assure trial on the merits, rather than trial by ambush, both parties must know in advance the facts of the case and the evidence that will be introduced at trial.\(^{192}\)

Proposed Rule 13(A) also clarifies which methods of discov-

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188. Proposed Rule 13(A).
189. The rule does not define "informal discovery," but the subcommittee considered all attempts to gather relevant information without using written interrogatories, requests for production, depositions, or subpoena to be informal. Informal discovery also includes simple written or oral requests for information from the other side or from non-parties.
192. See Hickman v. Taylor, 329 U.S. 495 (1947). In that case, the supreme court stated that the new rules of discovery allow "the parties to obtain the fullest possible knowledge of the issues and facts before trial . . . . No longer can the time-honored cry of "fishing expedition" serve to preclude a party from inquiring into the facts underlying his opponent's case. Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation." Id. at 501.
ery a limited jurisdiction judge may allow. The term "motions to produce" has been changed to "requests for production" to parallel the language of the Montana Rules of Civil Procedure. More importantly, the proposed rule elucidates deposition practice in Montana's limited jurisdiction courts. Under the current Rule 13(A), parties may use motions to produce and written interrogatories with prior authorization from the court. However, current Rule 13(B), governing depositions, contains no such requirement. This format may give rise to an argument that no prior court permission is necessary for a deposition. Proposed Rule 13 clarifies that, as with requests for production and interrogatories, a party may only arrange a deposition with prior permission from the judge. If a deposition is allowed, the procedure is the same as in district court.

The subcommittee also added Rule 13(B), which provides for the award of sanctions, including attorneys' fees, for failure to comply with either a discovery order or Rule 13(A). Thus, the proposed Rules contain a sanction provision for discovery violations, but not for pleadings. There is a reason for this apparent discrepancy. The purpose of pleadings is to give notice to each side and to the court of the general nature of the dispute to be resolved at trial. Pleadings are not meant to be unduly technical or difficult for the parties to compose. On the other hand, when the court has already found that the court-ordered discovery is necessary to accomplish the goal of fair trial on the merits, any attempt to subvert the process will cause expense, time, and prejudice to the opposing party. The potential for sanctions should discourage those parties tempted to delay or derail their opponents' pretrial preparation.

193. See proposed Rule 13(A)(1).
194. See MONT. R. CIV. P. 34.
196. See MONT. J. & CITY CT. R. CIV. P. 13(B).
197. See proposed Rule 13(A)(5).
198. See id.; see also MONT. R. CIV. P. 26, 28-30 (outlining deposition procedure).
199. The Justice and City Court Rules do not lay out a specific procedure for obtaining and enforcing discovery orders, unlike Rule 37 of the Montana Rules of Civil Procedure. See MONT. R. CIV. P. 37(b). This is, in part, because the justice and city courts assess the proposed discovery beforehand.
200. See proposed Rule 13(B) (giving the court discretion to award, against the failing party, reasonable expenses, including attorney fees, caused by the failure to comply).
201. See supra section IV(B)(4).
9. Pretrial Conferences: Rule 14

Pretrial conferences in the courts of limited jurisdiction are governed by current Rule 14 and Rule 16 of the Uniform Justice and City Court Rules. Under these rules, at the request of a party, the court may but is not required to order one or more pretrial conferences. The current Rule 14(A) lists five objectives of a pretrial conference, but gives no specific guidance to judges as to how they can accomplish these objectives. This omission is particularly troublesome in a system where many judges' first exposure to the litigation process comes after they are elected or appointed to the bench. Many of the judges are unsure how to conduct a pretrial conference and, thus, are reluctant to hold them. The subcommittee believes that pretrial conferences are useful both in settling cases and expediting the trial of those cases that are not settled and should be encouraged. Thus, proposed Rule 14 lists possible subjects to discuss to provide limited jurisdiction judges with a checklist approach to pretrial conferences.

In addition, the proposed Rule 14(B) specifies the responsibilities of each party attending a pretrial conference. As in district court, one representative for each party must have authority to enter into stipulations and make admissions so that the proceedings run as smoothly and effectively as possible. The subcommittee believed it was especially important to alert pro se litigants to the fact that significant changes in the posture of the case may occur at the pretrial conference and to encourage

203. Cf. MONT. UNIF. DIST. CT. R. 5 (requiring a pretrial conference in all contested district court civil cases unless otherwise ordered by the court).
204. See MONT. J. & CITY CT. R. CIV. P. 14(A); see also MONT. R. CIV. P. 16(A) (listing identical objectives).
205. Interview with participating judges, Montana Justice Institute, at the University of Montana School of Law, Missoula, Mont. (Summer, 1994). In the civil procedure course I taught at the Montana Justice Institute, a few judges from counties with larger civil caseloads indicated that they used pretrial conferences regularly, but a majority of the judges indicated that they were hesitant to schedule them. Id.
206. Under proposed Rule 14(A), pretrial conferences are still not mandatory, but the subcommittee believed explaining their purposes and procedure would encourage judges to use them.
207. See proposed Rule 14(A). Judges are free to add or delete particular items; the list of subjects is permissive rather than mandatory. See id.
208. See proposed Rule 17(B). This rule states "at least one of the attorneys for each party." Id. I believe this should be further amended to read "each party, or at least one representative for each party," to recognize the large number of pro se litigants in these courts.
209. See proposed Rule 14(B)(9).
them to think about the subjects listed in Rule 14(B) prior to the actual conference.

10. Right to Jury: Rule 15

Obviously, both the United States Constitution and the Montana Constitution bind the courts of limited jurisdiction; therefore, these courts must preserve a party’s right to trial by jury. The current Rule 15 refers only to the Montana Constitution and statutes. The subcommittee decided to specify, for the ease of its readers, that the Constitution of the United States is one of the sources of this jury right. Another notable feature of Rule 15, which is not affected by the 1997 proposed amendments, but is different from district court practice, is that the deadline for filing a demand for a jury trial is five days after the last pleading directed to the issue, rather than the ten days allowed by the Montana Rules of Civil Procedure.

11. Judgments: Rule 21

a. Dismissal without Prejudice for Improper Venue

The current Rule 21(A) allows a defendant to obtain a dismissal by raising an objection of improper venue at trial. In order to prevent the waste of the parties’ and courts’ resources, the proposed Rule requires a defendant who believes that venue is improper to move for dismissal at least ten days prior to trial. The proposed Rule should also be amended to conform to the new version of Rule 3, governing venue.

b. Judgment on the Pleadings

Currently, judgment on the pleadings is allowed in the courts of limited jurisdiction, but proposed Rule 21 adds an

211. See MONT. J. & CITY CT. R. CIV. P. 15.
212. See proposed Rule 15(A).
213. Compare MONT. J. & CITY CT. R. CIV. P. 15(B) and proposed Rule 15(B) with MONT. R. CIV. PROC. 38(b).
216. The Rules currently before the supreme court do not conform with the proposed venue rule and should be amended before the Court publishes the rules for comment to inform litigants of the venue rule.
express standard for judges to apply when assessing whether to grant motions for judgment on the pleadings.\textsuperscript{218} Motions for judgment on the pleadings are fairly technical, and most judges do not hear them frequently. The subcommittee thought it would be more efficient to condense the common law standard into the rule than to require a judge with limited resources (and often no law library) to look to the case law for guidance. Clear expression of the standard should also help litigants decide whether to move for judgment on the pleadings.

c. Summary Judgment

While the subcommittee attempted to address all of the problems with Rule 21, judgments, one necessary addition does not appear in the 1997 amendments. The rule does not contain a specific statement granting the courts of limited jurisdiction the power to order summary judgment.\textsuperscript{219} The current Rule 21 implies that limited jurisdiction courts can grant summary judgment by stating that "if, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment and disposed of as provided in Rule 56, Montana Rules of Civil Procedure . . . ."\textsuperscript{220}

During the drafting of the proposed Rules, the subcommittee was divided on the issue of whether to allow limited jurisdiction courts to grant summary judgments. I argued that the implicit power should be made explicit and that the Rules should specifically authorize summary judgment. In November 1996, the subcommittee discussed this issue with the justices of the Montana Supreme Court and ultimately decided to remove all summary judgment language and practice from the Rules.\textsuperscript{221} Summary judgment should be available in justice and city courts, as in district courts, to prevent the courts and parties from going to trials when it becomes clear that there are no material issues of fact to be resolved. Particularly in light of the increasing caseload of the limited jurisdiction courts, judges should be familiar

\textsuperscript{218} See proposed Rule 21(A)(4) (stating that "the Court may only grant judgment on the pleadings if the pleadings themselves show that it would be impossible for the party against whom the judgment is entered to prevail at trial").

\textsuperscript{219} See proposed Rule 21(A)(5) (stating that summary judgment is not allowed).

\textsuperscript{220} \textit{Mont. J. & City Ct. R. Civ. P. 21(A)(4)}.

\textsuperscript{221} See proposed Rule 21(A)(5). I still respectfully disagree and urge those readers who will be affected to comment specifically to the Montana Supreme Court on this proposed change.
with and use both summary judgment and judgment on the pleadings.\(^{222}\)

I recommend that Rule 21 contain a subsection similar to the Montana Rules of Civil Procedure, which provides for judgment by confession.\(^{223}\) The Rule would then read: "Either party may move for, and the judge may grant, summary judgment on one or more of the issues raised by the pleadings. In so moving, and responding to the motion, and in ruling on the motion, the parties and the court shall follow the procedures specified in Rule 56, Montana Rules of Civil Procedure . . . .\(^{224}\)

d. Default Judgment

Under the current Rules, the plaintiff is neither required nor allowed to file a reply to a counterclaim, and cross-claims are not allowed.\(^{225}\) Thus, the only pleading that the defendant must file is an answer. Furthermore, the Rules do not provide for any pre-answer motions.\(^{226}\) The defendant must plead all defenses in the answer and must answer within twenty days of being served to avoid default.\(^{227}\)

In contrast, in district court, attorneys routinely file "empty" Rule 12(b)(6) motions without any supporting affidavits or briefs in an attempt to gain more time to investigate and file a substantive answer.\(^{228}\) Many attorneys who do not practice regu-

\(^{222}\) One segment of the Montana Justice Institute instructed the judges on the role and purpose of summary judgment, presented several Montana and U.S. Supreme Court cases on the subject, and required the judges to rule on a mock oral argument and prepare written findings of fact and conclusions of law. The judges at the Institute performed well on this exercise, grasping both the law of summary judgment and the application of that law to the facts of the case.

\(^{223}\) See MONT. R. CIV. P. 57 (stating, "judgment by confession must be as provided for in Title 27, Chapter 9 of the Montana Code Annotated").

\(^{224}\) If the Rules are amended to allow summary judgment, proposed Rule 21(A)(4) should be amended to reinstate its reference to matters outside the pleadings and the consequent conversion of the judgment on the pleadings to a summary judgment.

\(^{225}\) See MONT. J. & CITY CT. R. CIV. P. 7; but see proposed Rule 7(C) (providing for a reply to a counterclaim).

\(^{226}\) Cf. MONT. R. CIV. P. 12(b).

\(^{227}\) See proposed Rule 5(A).

\(^{228}\) See MONT. R. CIV. P. 12(b)(6). This practice appears to be unique to Montana and may be risky to the defendant who fails to consider and include other, more meritorious Rule 12 defenses then open to him or her. See MONT. R. CIV. P. 12(h). It, is, however, well-recognized and accepted in the district courts. See, e.g., Ass'n of Unit Owners v. Big Sky, Inc., 224 Mont. 142, 729 P.2d 469 (1986). The Advisory Committee's note to the October 9, 1994 amendment of Rule 11 of the Montana Rules of Civil Procedure specifically acknowledges this practice and states:
larly in the courts of limited jurisdiction are not aware that mak-
ing dilatory motion to dismiss is not an accepted practice in
these courts. The current Rule 21 authorizes the entry of default
and judgment when the defendant has failed to plead or other-
wise defend. The similarity between this rule and Rule 55 of
the Montana Rules of Civil Procedure may lead litigants to be-
lieve that the Rules allow a defendant to defend other than by
the answer when, in fact, they do not.

Thus, a misled or uninformed attorney who files an empty
12(b)(6) motion in a limited jurisdiction court, which is custom-
ary in district court, may expect at least a notice before a default
judgment is entered. The amendment deletes the misleading
language and states that when a party has failed to answer, the
judge or clerk must enter the default. Hopefully, this simple
change will make it clearer to those appearing in the courts of
limited jurisdiction sporadically or for the first time that they
must file a formal answer or risk default.

Rule 21 also clarifies the existing two-step process for ob-
taining a default judgment: first, the clerk may enter a default
without any judicial involvement; and, second, the court enters a
judgment based on that default. As in district court, the
clerk may enter judgment, but only if the claim is for a sum
certain. The judge must enter judgment in all other cas-
es. proposed Rule 21 should be further amended to give more
explicit guidance to limited jurisdiction judges regarding the
extent of their powers when faced with a request for default
judgment, particularly from a represented party who is opposing
a pro se defendant.

"It is not the intent of the Advisory Committee . . . to do away with this practice."

230. See MONT. R. CIV. P. 55(a). The subcommittee decided that allowing these
motions before answer would unnecessarily confuse and delay the proceedings. Be-
cause the amounts at stake are limited and the time to trial is shorter than in dis-
trict court, the defenses raised in the answer can be addressed at trial.
231. See MONT. R. CIV. P. 55(b)(2).
233. See proposed Rule 21(A)(8)(a)(1),(2). When I discussed this subject with the
judges present at the Montana Justice Institute and annual training sessions, most
did not understand that a default and a judgment based on that default were very
different.
234. See proposed Rule 21(A).
235. See proposed Rule 21(A)(8)(b).
12. Execution of Judgments

Proposed Rule 23, which governs the execution of judgments, changes the territorial limit for execution from "within the county or city" to "within the boundaries of the state" to conform with the change to statewide personal jurisdiction proposed in Rule 4.236 Thus, a justice or city court judge who enters judgment may issue a writ of execution directly to any county in the state.237 The second change to Rule 23 conforms to existing practice and is intended to simplify the execution process. Under the proposed Rule, the writ remains in effect for sixty days from the time it is issued and may be served multiple times during that period.238 The writ must be returned to the court at the end of the sixty-day period or when the judgment is satisfied, whichever occurs earlier.239

V. RECOMMENDED LEGISLATIVE CHANGES

The review and revision of the current civil procedure rules for justice and city courts has also revealed the need for some legislative changes. If the Supreme Court adopts the proposed amendments to the Rules, these statutory amendments would meld the amended rules and statutory procedure provisions together in a way that judges and litigants can easily understand and apply.

A. City Courts

In addition to the Rules and the Uniform Rules for the Justice and City Courts, statutory provisions have governed civil procedure in the courts of limited jurisdiction. The 1991 Montana Legislature repealed many of the statutes that were inconsistent

236. See proposed Rules 23(D).
237. See proposed Rule 23(A)(1). The current rule provides that the clerk of the justice court in which the judgment was entered may issue execution in any county in the state. The proposed change to Rule 23(A)(1) creates consistency in the two subsections. Cf. MONT. J. & CITY CT. R. CIV. P. 23(A) (1), (2).
238. See proposed Rule 23(B).
239. See proposed Rule 23(D). Currently, the courts are split on whether a single writ may be served more than once; several courts allow this practice, while the stricter view is that a served writ must be returned and a new one issued. Where the amount collected is only part of the judgment amount, this traditional approach wastes time and resources. Thus, proposed Rule 23(D) specifically allows the writ of execution to be served multiple times. See proposed Rule 23(D). Court supervision of the collection process occurs every 60 days when the writ must be returned even if the judgment is unsatisfied. See id.
with or redundant to the current Rules, including all of Title 25, Chapter 32, entitled "Procedure in City Courts," and most of Title 25, Chapter 33, entitled "Procedure in Justices' Courts." Several procedural provisions remain which appear to apply to justice court, but not city court, proceedings, resulting in a discrepancy between the courts that should be corrected. The statutory provisions on civil procedure in justice courts that survived the 1991 repeal effort should be renamed "Procedure in Justice and City Courts," and specific provisions which refer to the "justice" should add the phrase "or judge."

B. Personal Jurisdiction

As discussed above, the proposed Rules state that justice and city court jurisdiction is statewide, and, thus, the statutes governing personal jurisdiction should clearly state this as well. Section 3-10-304 of the Montana Code should be amended to state that the civil jurisdiction of both city and justice courts extends throughout the state of Montana. The language of the statute should also clearly allow a limited jurisdiction court to issue a summons and a writ of execution to be served anywhere in the state. Section 25-31-914 of the Montana Code already provides that a judgment of a justice court creates a lien in any county in which it is filed with the district court, but should be amended to specify that the same statewide enforcement applies to city court judgments.

C. Subject Matter Jurisdiction

The Montana Code should also be amended to clarify the difference between praying for damages that exceed the limited jurisdiction court's jurisdictional amount and receiving a judgment that exceeds the court's jurisdictional amount. Under

242. See supra notes 146-47 and accompanying text.
244. Thus, section 25-31-906 of the Montana Code should be amended to read, "in cases where a party's demand for judgment is less than the sum for which the justice is authorized to enter judgment, but the amount found due to that party
the reasoning of Reynolds v. Smith, a party who files an action in justice or city court, which contains a demand within the court's jurisdictional amount, may prosecute that action, even if the party could have demanded more. Furthermore, a party may receive an award for more than the court's monetary limit without depriving the court of subject matter jurisdiction. In that instance, section 25-31-906 of the Montana Code offers the plaintiff, or counterclaimant, two choices: (1) to accept a judgment from the justice court for the jurisdictional amount and waive any claim to the excess; or (2) to refile the entire action in district court and have a new trial. However, if either the plaintiff or the counterclaimant demands more than the jurisdictional limit in the pleading, the court does not have subject matter jurisdiction and must dismiss the claim without prejudice.

D. Representation

To clarify the status of non-lawyer and lawyer representatives in the courts of limited jurisdiction, the legislature should amend section 25-31-601 of the Montana Code. That statute currently states that "... any person, except the constable by whom the summons or jury process was served, may act as attorney" in justice court. This statute should include the restrictions placed on non-attorney representation in Sparks v. Johnson: only non-recurring representation by non-lawyer friends and relatives of parties is allowed, and recurring representation by non-lawyers, particularly for profit, is not allowed. Further, the legislature should amend sections 37-61-201 and -210 of the Montana Code to list activities that constitute "practicing law," which conform with the activities set out in Merchants' Credit Service and Sparks, and provide for a penalty for practicing without a license.

exceeds that sum, such party may remit the excess and judgment may be entered for the residue." Cf. MONT. CODE ANN. § 25-31-906 (1995).
245. 48 Mont. 149, 135 P. 1190 (1913).
247. See proposed Rule 7(C) (clarifying that when a party's demand for judgment exceeds the monetary limit, the case should be dismissed without prejudice). See supra notes 161-73 and accompanying text.
250. 104 Mont. 76, 66 P.2d 337 (1937).
251. 252 Mont. at 39, 826 P.2d at 928.
E. Venue

After adopting the current Rules, the Montana Legislature repealed all but one of the statutory provisions dealing with venue and change of venue in justice court to eliminate duplication, as the language of the rule and statute are identical. However, one statute, entitled "Actions for Forcible Entry or Unlawful Detainer," was not repealed. In view of the recommended change to Rule 3(A), allowing the plaintiff to file either in the location of the property in dispute or in the defendant's county of residence, the statute is inconsistent, as well as redundant. To eliminate these problems, the 1997 Montana Legislature should simply repeal section 25-31-205.

VI. CONCLUSION

Montana's courts of limited jurisdiction dispense more civil justice than any other court system in the state, relying on the least formal legal education. These courts, and the judges and parties who operate therein, need Rules which are easy and logical to understand and apply. The drafters of the current Rules took an admirable step toward meeting these goals, but the Rules still need improvement. With a little fine-tuning and a few major adjustments, the Montana City and Justice Court Rules of Civil Procedure can fulfill their original purpose: the beam will glow brighter, and the fog will recede. Similar small but important changes in some of the relevant statutes will allow the Rules and the statutes to work together, prevent confusion, and lessen the need to appeal to the supreme court to resolve apparent discrepancies. Procedure will be easier, less expensive, and more understandable to the large number of Montanans who rely on the people's courts for both the reality and perception of justice.
