

Serial: 103863

**IN THE SUPREME COURT OF MISSISSIPPI**  
**No. 89-R-99001-SCT**

***RE: THE RULES OF CIVIL  
PROCEDURE***

**ORDER**

This matter has come before the Court en banc on its own motion for consideration of amendments to Rule 78 of the Mississippi Rules of Civil Procedure, and the Court, having considered the matter finds that the amendment of Rule 78 as set forth in Exhibit “A” hereto will promote the fair and effective administration of justice and that the amendment should be adopted.

IT IS THEREFORE ORDERED that Rule 78 of the Mississippi Rules of Civil Procedure is amended to read as set forth in Exhibit “A” hereto.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this order upon the minutes of the Court and shall forthwith forward a true certified copy hereof to West Publishing Company for publication as soon as practical in the advance sheets of *Southern Reporter, Second Series (Mississippi Edition)* and in the next edition of *Mississippi Rules of Court*.

SO ORDERED, this the 11th day of April, 2003.

/s/ William L. Waller, Jr.  
WILLIAM L. WALLER, JR., JUSTICE,  
FOR THE COURT

McRAE, P.J. AND EASLEY, J., DISSENT  
DIAZ, J., NOT PARTICIPATING

## **EXHIBIT “A” TO ORDER**

### **MISSISSIPPI RULES OF CIVIL PROCEDURE**

#### **RULE 78. MOTION PRACTICE**

Each court shall establish procedures for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place and on such notice, if any, as he considers reasonable may make orders for the advancement, conduct, and hearing of actions.

To expedite its business, the court may make provision by rule or order for the submission and determination of motions ~~not seeking final judgment~~ without oral hearing upon brief written statements of reasons in support and opposition.

[Amended effective March 1, 1989; amended effective April 17, 2003 to allow the courts, by rule to provide for determination of motions seeking final judgment without oral argument.]

#### **Advisory Committee Historical Note**

Effective March 1, 1989, Rule 78 was amended by changing its title to “MOTION PRACTICE” and by abrogating provisions for local rules. 536-538 So. 2d XXXI (West Miss. Cas. 1989).

#### **Comment**

Rule 78 requires each court to provide for the manner of submission and determination of motions requiring notice and a hearing.

The second paragraph of the rule permits any court to expedite its business by the adoption of local rules or orders providing for the submission and determination of "motions without oral hearing upon brief written statements of reasons in support and opposition."

Motion practice has been accomplished in numerous ways in Mississippi prior to the adoption of these rules. For an idea of the variety of practices in the courts *See*, e. g, Local Rule I.C. -- E., Sixth Chancery Court District; Local Rule Designating Vacation Day, and Local Rule for Procedures for Vacation Day Hearings in Greenwood, Seventh Chancery Court District; Local Rule 13, Eighth Chancery Court District; Local Rule 2, Seventeenth Chancery Court District; Local Rule 5, Thirteenth Circuit Court District; Local Rule 7(a), Sixteenth Circuit Court District; Local Rule 5, Eighteenth Circuit Court District; Local Rule 8, Bolivar County Court.

Rule 78 does not alter any local rules governing motion practice; however, the rule must be considered in the light of MRCP 83, which requires that all local rules be forwarded to and published by the Supreme Court of Mississippi.

[Comment amended effective March 1, 1989.]