

Serial: **94884**

**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 amendment to the Comment to Rule 79(a) of the Mississippi Rules of Civil Procedure. Having considered the proposed amendment to the Comment, Court finds that it should be adopted and the proposed amendment will promote the fair and efficient administration of justice.

IT IS THEREFORE ORDERED that the Comment to Rule 79(a) of the Mississippi Rules of Civil Procedure is hereby adopted 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 forward a true certified copy hereof to West Publishing Company for publication in the next edition of the *Mississippi Rules of Court* and in the *Southern Reporter, Second Series, (Mississippi Edition)*.

SO ORDERED, this the 1st day of April, 2002.

/s/ William L. Waller, Jr., Justice

WILLIAM L. WALLER, JR., JUSTICE

FOR THE COURT

**EXHIBIT "A" TO ORDER**

**MISSISSIPPI RULES OF CIVIL PROCEDURE**

**RULE 79. BOOKS AND RECORDS KEPT BY THE CLERK**

**AND ENTRIES THEREIN**

**(a) General Docket.** The clerk shall keep a book known as the "general docket" of such form and style as is required by law and shall enter therein each civil action to which these rules are made applicable. The file number of each action shall be noted on each page of the docket whereon an entry of the action is made.

All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be noted in this general docket on the page assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. In the event a formal order is entered, the clerk shall insert the order in the file of the case.

**(b) Minute Book.** The clerk shall keep a correct copy of every judgment or order. This record shall be known as the "Minute Book."

**(c) Indexes; Calendars.** Suitable indexes of the general docket shall be kept by the clerk under the direction of the court. There shall be prepared, under the direction of the court, calendars of all actions ready for trial.

**(d) Other Books and Records.** The clerk shall also keep such other books and records as may be required by statute or these rules. The documents required to be kept under this rule may be recorded by means of an exact-copy photocopy process.

**(e) Removing the File in a Case.** The file of a case shall not be removed from the office of the clerk except by permission of the court or the clerk.

### Comment

Rule 79(a) requires that the clerk of each court maintain a general docket, which is a chronological log of activities in civil actions. The requirements of this rule add nothing new to traditional Mississippi practice. *See* Miss. Code Ann. §§ 9-5-201 (chancery clerk to maintain general docket for chancery court); 9-7-171 (circuit clerk to maintain general docket for circuit court); 9-9-29 (circuit clerk to maintain general docket for county court) (1972). Rule 79(a) also specifies that the docket entries reflect the date on which the entries are made in the general docket. Since several important time periods and deadlines are calculated from the date of the entry of judgments and orders, these entries must accurately reflect the actual date of the entries rather than another date, such as the date on which a judgment or order is signed by the judge. See, for example, Rule 58 mandating that a judgment is effective only when entered as provided in Rule 79(a), and Rule 59 which requires that motions to alter or amend judgments be filed within ten days after the entry of judgment.

The minute book required to be maintained by Rule 79(b) is also familiar to Mississippi practitioners, *See* Miss. Code Ann. §§ 9-1-33 (minutes of circuit, chancery, and county courts to be maintained by clerk of each), 9-5-135 (chancery clerk to maintain minute book for chancery court). Rule 79(b) makes no changes in minute book practices.

Rule 79(c) merely requires that clerks of court keep suitable indexes of the civil docket; again, this tracks prior practice. *See, e. g.,* Miss. Code Ann. § 9-5-201 (1972) (general docket shall be duly indexed). Subdivision (d) directs that clerks shall maintain such other records as may be required and recognizes that exact-copy photocopying is a most useful and acceptable tool for the record-keeping functions.

Rule 79(e) is intended to ensure that the removal of case files from the clerk's office is an exceptional, rather than routine, practice. Under the notice pleadings provision of the Mississippi Rules of Civil Procedure, "every order required by its terms to be served, every pleading subsequent to the original

complaint . . ., every paper relating to discovery required to be served . . ., every written motion . . ., and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served on each of the parties." MRCP 5(b). Since each party in a civil action will have copies of all such papers, their office files should be as complete as the court's file, thereby obviating any need to remove the court's file. This provision modifies Miss. Code Ann. § 9-5-165 (1972) only to the extent it limits removal of court files.