

Alabama Rules of Civil Procedure

X. CIRCUIT COURTS AND CLERKS

Rule 78.

Motion day.

Each circuit court shall establish regular times and places, at intervals sufficiently frequent 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 the judge 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.

To expedite further its business, unless there is a request for oral hearing, the court may enter an order denying a motion to dismiss without oral hearing. Unless the court orders otherwise, an order granting a motion to dismiss shall be deemed to permit an automatic right of amendment of the pleading to which the motion is directed within ten (10) days from service of the order.

(dc) *District court rule.* Rule 78 applies in the district courts.

[Amended 4-25-73; Amended 10-1-95.]

Supreme Court Note

Rule 78 was promulgated on January 3, 1973, to read as follows:

“RULE 78. MOTION DAY

“Unless local conditions make it impracticable, each circuit court shall establish regular times and places, at intervals sufficiently frequent 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.”

Rule 78 was modified on April 25, 1973, so as to appear in its present form.

Committee Comments on 1973 Adoption

The rule is consistent with present Alabama practice, and supersedes the less detailed provision to the same effect in Rule 21 of the Rules of Practice in the Circuit and Inferior Courts of Alabama. Equity Rule 94, which is superseded by Rule 6(d), and Code of Ala., Tit. 13, § 126(6), which is superseded by Rule 83, also related to this same subject matter.

It is to be noted that the last sentence of the rule prohibits the granting of a Motion Seeking Final Judgment such as a Motion for Summary Judgment without giving the parties an opportunity to be heard orally.

This rule departs from the Federal Rule 78 in that it contemplates regular motion dockets in order that pending actions may be moved toward final resolution. It also provides for the entry of orders denying motions to dismiss without the necessity for oral hearing. This should facilitate disposition of pro-forma motions to dismiss. In the event the court has any inclination toward the granting of the motion to dismiss, a hearing will continue to be required. The reference herein to local rules in no way authorizes the promulgation of local rules other than as provided by Rule 83, Local Court Rules.

Committee Comments to October 1, 1995, Amendment to Rule 78

The amendment is technical. No substantive change is intended.