

Alabama Rules of Civil Procedure

X. CIRCUIT COURTS AND CLERKS

Rule 79.

Books and records kept by the clerk and entries therein.

(a) *Civil docket.* The clerk shall keep a book known as the "civil docket" of such form and style as the books now kept and known as the consolidated docket and fee books, and shall enter therein each civil action to which these Rules are made applicable. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, bench notes, verdicts, and judgments shall be noted in this civil docket on the folio 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. When in an action trial by jury has been properly demanded or ordered, the clerk shall enter the word "jury" on the folio assigned to that action. In the event a formal order is entered, the clerk shall insert the order in the file of the case.

(b) *Final judgments or appealable orders; minute book.* The clerk shall keep a minute entry or correct copy of every final judgment or appealable order, or order affecting title to or lien upon real or personal property, or any other order that the court may direct to be kept. This record may be maintained either as a separate minute book or on microfilm.

(c) *Indices; calendars.* Suitable indices of the civil docket and of every civil judgment and order referred to in subdivision (b) of this rule 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, which shall distinguish "jury actions" from "court actions."

(d) *Other books and records.* The clerk shall also keep such other books and records as may be required by the Supreme Court of Alabama. The documents required to be kept under this rule may be recorded by means of a photograph or photostat machine.

(e) Records required to be kept by the clerk under this rule may be maintained electronically in accordance with the orders and rules of the Supreme Court of Alabama.

(f) *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.

(g) *Transfer of files.* For administrative purposes only, and unless the court orders otherwise, the complaint or other initial pleading shall be filed in the office of the register or of the clerk in accordance with the practice prior to the adoption of these Rules. Subsequent pleadings, motions, judgments, or other papers shall be filed in the office in which the initial pleading was filed, unless and until the file in that case is transferred; thereafter pleadings, motions, judgments or other papers shall be filed in the office to which the file was transferred. If the judge at any time, in considering the pleadings or other papers, finds that the file is being kept in an office not proper under prior practice, or otherwise determining the file should be transferred, the judge may so inform the clerk or the register who shall immediately note on the sheet or folio assigned to that case in the civil docket: "transferred to the office of (the clerk) (the register)," with the date, and shall immediately turn over the file to the proper office. The official receiving the file shall change the file number to one appropriate for the official's office, first noting the original file number on the sheet or folio assigned to that case in the civil docket in the official's office, with the notation: "transferred from the office of (the register) (the clerk)" and the date thereof. Entries in the docket or records already made by one office need not be duplicated in the other on receiving the file. The transfer of the file shall in no way affect the proceedings in the case, which shall continue before the same judge in the same manner as if the file had not been transferred. Fees or costs accrued prior to the transfer shall be included in the bill of costs of the official receiving the file and collected in the same manner as fees or costs accruing after the transfer. The register and clerk shall each account to the other, periodically, for any fees or costs collected that would have belonged to the office of the other under prior practice.

(dc) *District court rule.* Rule 79 applies in the district courts except that the requirement of the keeping of final judgments or appealable orders in a minute book in Rule 79(b) is deleted.

[Amended 12-16-78; Amended eff. 10-1-95; Amended eff. 10-24-2008.]

Committee Comments on 1973 Adoption

Prevailing practice in many circuits on the law side is as follows. Each case is noted in an appearance docket and the civil docket book. All activity with respect to a particular case is noted in the civil docket. Not every act of the Court is the basis of a formal order. Every final order is noted in the minute book, a diary of court action by days. On the equity side, all orders of the Court are made

the basis of a formal order which is retained in the Court file. In all other respects the record keeping is the same.

This redraft of Rule 79 is intended to make no change in this system. The rule differs in important particulars from the corresponding federal rule, in order to preserve existing Alabama practices of a consolidated civil docket, and separate offices of the clerk and of the register. All activity is recorded in the civil docket. Any separate orders are kept with the file of the case. Final or appealable orders or orders affecting title are to be placed in a minute book.

The original file of the case stands as the final record. The onerous recording requirements are no longer applicable because of an amendment to §§ 12-20-22 and 12-20-27, Code of Alabama. See Act No. 1510, Regular Session, 1971. This Act is not superseded by these rules.

These rules abolish the distinctions between law and equity. Rule 2. But they preserve the office of the clerk and office of the register of chancery as separate offices. Rule 81(d). Subdivision (f) makes administrative provisions intended to reconcile these two stated principles of the rules. Cases are to be filed with the clerk or the register as would have been proper prior to the adoption of the rules unless the court orders otherwise. If a paper is filed with the wrong office, the remedy is to transfer the file from one office to the other, under the procedure set out in the subdivision. Filing the papers with the wrong office has no effect on the proceedings in the case.

It has been customary in Alabama to copy every paper in the file into a separate permanent record. This is an expensive procedure, which will be of no value under these rules, where each attorney in the case, by virtue of Rule 5(a), has a copy of every paper in the case. Thus the rule does not require this separate record, but instead, as is the practice in federal courts, the original file is the permanent record. This scheme is implemented by subdivision (e), which governs removal of the file from the clerk's office and thus insures the integrity of the file, and by subdivision (b), which requires a separate record of appealable judgments and orders, and of orders affecting the title to or creating a lien upon real or personal property.

The final sentence of subdivision (d) is in accord with present law. Code of Ala., § 12-20-22.

**Committee Comments to October 1, 1995,
Amendment to Rule 79**

The amendment is technical. No substantive change is intended.

District Court Committee Comments

While the provision for the maintenance of a minute book in Rule 79(b) has been deleted, certainly no harm would attend the maintenance of such a record if the clerk should so desire.

Committee Comments to Addition of Rule 79(e) Effective October 24, 2008

This amendment recognizes that the State Judicial Information System has become a repository for many records previously maintained locally by the clerk.

Note from the reporter of decisions: The order amending effective October 24, 2008, Rule 3, Rule 4, Rule 5, Rule 6, Rule 11, Rule 55, Rule 58, Rule 59.1, Rule 77, and Rule 79, and adopting effective October 24, 2008, the Committee Comments to Amendment to Rule 3(b) Effective October 24, 2008; Committee Comments to Amendments to Rule 4 Effective October 24, 2008; Committee Comments to Amendments to Rule 5 Effective October 24, 2008; Committee Comments to Amendments to Rule 6 Effective October 24, 2008; Committee Comments to Amendment to Rule 11 Effective October 24, 2008; Committee Comments to Amendment to Rule 55(a) Effective October 24, 2008; Committee Comments to Amendments to Rule 58 Effective October 24, 2008; Committee Comments to Amendment to Rule 59.1 Effective October 24, 2008; Committee Comments to Amendments to Rule 77(d) Effective October 24, 2008; and the Committee Comments to Addition of Rule 79(e) Effective October 24, 2008, is published in that volume of *Alabama Reporter* that contains Alabama cases from 994 So. 2d.