

**STATE OF VERMONT
VERMONT SUPREME COURT
MAY TERM, 2009**

**Order Promulgating Amendment to the Vermont Rules of Civil and Appellate
Procedure**

Pursuant to Chapter II, Section 37, of the Vermont Constitution and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 79.1(h) of the Vermont Rules of Civil Procedure, as originally adopted by order of February 6, 2006, effective April 14, 2006, for a period of two years, and extended until April 10, 2009, by order of March 13, 2008, be made permanent.

Reporter's Notes—2009 Amendment

Rule 79.1(h), permitting a lawyer acting pursuant to a limited representation agreement with a pro se client to enter a limited appearance in the Superior Court (“unbundling”), is now made permanent. The rule was originally adopted by order of February 6, 2006, effective April 14, 2006, for a period of two years, extended until April 10, 2009, by order of March 13, 2008. At the direction of the Supreme Court, the Advisory Committee on Rules of Civil Procedure inquired about use of the rule and, with the assistance of the Vermont Bar Association, conducted a survey of practice under it. While the survey reflected relatively little use of limited appearance, a significant number of lawyers who used the procedure found it helpful, and there have been no reports of problems in its use. The rule has proven effective in achieving its original purposes of providing assistance of lawyers to courts and litigants at critical stages in trials or other proceedings and encouraging lawyers to take on pro bono representation. See Reporter's Notes to 2006 amendment adopting the rule. It may be anticipated that greater familiarity with the rule and growing interest at the bar in providing pro bono representation will lead to increased use of the unbundling procedure.

2. That Rule 31(e)(2) of the Vermont Rules of Appellate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 31. FILING AND SERVICE OF BRIEFS; DISQUALIFICATION

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(e) Motion for Disqualification.

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(2) Prior to any further proceeding in the case the justice whose disqualification is sought shall either:

(~~a~~A) disqualify himself or herself, or

(~~b~~B) without ruling on the motion, certify the matter to the other members of the Court for decision.

Three justices will constitute a quorum to ~~finally~~ rule on the motion. The challenged justice shall not sit to consider the motion. If three or more ~~than two~~ justices are challenged, the Chief Justice shall appoint and assign the number of judges, retired justices or retired judges ~~as are~~ that is necessary to comprise a quorum to hear and decide the motion, ~~and~~. If the number of judges, retired justices, or retired judges available or eligible to sit is insufficient to comprise a quorum, the a challenged justice shall be eligible to sit if necessary to prevent the failure of a quorum.

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Reporter’s Notes—2009 Amendment

Rule 31(e)(2) is amended to clarify its language and to resolve an ambiguity that could lead to an unacceptable result. The present rule provides that ordinarily a quorum of three of the five justices of the Supreme Court may decide a motion to disqualify another justice. A challenged justice may not form part of that quorum. If more than two of the five justices are challenged, however, the Chief Justice may appoint a sufficient number of sitting or retired judges or justices to make up a quorum of three from a pool that includes the challenged justice or justices. The amendment is intended to recognize the common-law rule of necessity by making clear that a challenged justice may sit to hear a motion to disqualify that justice only to prevent the failure of a quorum in the unlikely event that insufficient trial judges or retired justices or judges are available or eligible.

3. That these rules, as adopted or amended, are prescribed and promulgated to become effective on July 6, 2009. The Reporter's Notes are advisory.

4. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 7th day of May, 2009.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice