

**AMENDMENTS PROPOSED IN THE 2011 ANNUAL REPORT OF THE  
PROBATE RULES ADVISORY COMMITTEE  
November 15, 2011**

**PROPOSED**

**STATE OF VERMONT  
VERMONT SUPREME COURT  
\_\_\_\_\_ TERM, 2012**

**Order Promulgating Amendment to the Vermont Rules of Probate 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 of the Vermont Rules of Probate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

**RULE 79.1. APPEARANCE AND WITHDRAWAL OF ATTORNEYS**

(a) **Appearance: in general.** Upon the filing of a proceeding, or the entry of a general appearance pursuant to subdivision (b) or of a limited appearance pursuant to subdivision (h), the name of the attorney ~~for the petitioner~~ shall be entered on the docket. If any party changes attorneys during the proceeding, the name of the new attorney shall be substituted on the docket for that of the former attorney. Until notice of the change of an attorney, all notice given to or by the attorney first appearing shall be considered in all respects as notice to or from the attorney's client, except in cases in which by law the notice is required to be given to the party personally. Nothing in these rules shall be construed to prevent any party in a suit from appearing pro se, in which case the party so appearing shall be subject to the same rules that are or may be provided for attorneys in like cases, so far as the same are applicable.

(b) **Same: form; service.** Except as provided in a limited appearance under subdivision (h), ~~An~~ attorney's or pro se party's signature to a pleading shall constitute an appearance. Otherwise an attorney or pro se party who wishes to participate in any action must file notice in writing with the register. An appearance, whether by pleading or formal written appearance, shall be signed by the individual in the individual's name and shall state the individual's address. For attorneys, the address shall be their office address.

(c) **Parties appearing pro se.** When a party appears pro se, the party shall be governed by Rule 11 as if the party were an attorney.

(d) **Attorneys not admitted to practice in Vermont.** Any member in good standing of the bar of any other state or of the District of Columbia who has filed a pro hac vice licensing statement form with the Court Administrator and who has paid the

required fee, in accordance with Administrative Order No. 41, § 13, may, in the discretion of the court on motion by a member of the bar of this state who is actively associated with that attorney in a particular action, be admitted to practice in that action. The motion shall designate which attorney will serve as lead counsel. The court may at any time for good cause revoke such admission. An attorney so admitted to practice in a particular action shall at all times be associated in such action with a member of the bar of this state, upon whom all process, notices and other papers shall be served and who shall sign all papers filed with the court and whose attendance may be required by the court.

(e) **Withdrawal: in general.** Except as may be otherwise agreed or ordered pursuant to a limited appearance under subdivision (h), An attorney who has entered an appearance shall remain as counsel until granted leave to withdraw by the court or until the judgment in the proceeding becomes final. Leave to withdraw after a case has been set for a hearing will be granted only for good cause shown and on such terms as the court may order. No motion to withdraw shall be considered by the court until the party who the attorney represents has been given notice of the motion and the date and time of hearing thereon by the register. The only exceptions to this shall be (1) when the attorney includes in the motion an affidavit that after diligent search the attorney cannot determine the present address of the party, and (2) when other counsel has entered an appearance for the party.

(f) **Same: notification of party.** When an attorney has been granted leave to withdraw an appearance, the register shall notify the party forthwith, by mail, of such withdrawal, and inform said party of the consequences of not appearing pro se or by an attorney.

(g) **Sanctions against attorneys.** If an attorney fails to file an inventory, accounting or other paper as required by law, without fault of the party represented by the attorney and after a direction to file by the court, or if an attorney signs a paper in violation of Rule 11, the court may, on its own motion or on motion of a party to the proceeding and a proper showing by that party, impose an appropriate sanction which may include an order to pay to other parties the amount of reasonable expenses or losses incurred because of the filing or failure to file, including a reasonable attorney's fee. A copy of the sanction order shall be sent to the party represented by the attorney.

**(h) Limited Appearance.**

(1) An attorney acting pursuant to an agreement with a client for limited representation that complies with the Vermont Rules of Professional Conduct may enter an appearance limited to one or more of the following purposes on behalf of a client who is pro se and who has entered, or will enter, an initial appearance in accordance with subdivision (a):

(A) Filing a petition or other pleading;

(B) Conducting one or more specific discovery procedures;

(C) Acting as counsel for a particular hearing or court event.

(D) Taking and perfecting an appeal.

(E) With leave of court, for a specific issue or a specific portion of a hearing.

(2) An attorney who wishes to enter a limited appearance shall do so by filing with the register and serving pursuant to Rule 5 a written notice of limited appearance as soon as practicable prior to commencement of the appearance. The purpose and scope of the appearance shall be specifically described in the notice, which shall represent that the client is pro se and has entered, or will forthwith enter, an initial appearance. The attorney's name and a brief statement of the purpose of the limited appearance shall be entered upon the docket. The notice and all actions taken pursuant to it shall be subject to the obligations of Rule 11.

(3) An attorney who has entered a limited appearance shall be granted leave to withdraw as a matter of course when the purpose for which the appearance was entered has been accomplished. An attorney who seeks to withdraw before that purpose has been accomplished may do so only on motion and notice, for good cause and on terms, as provided in subdivision (e).

(4) Every paper required by Rule 5 to be served upon a party's attorney that is to be served after entry of a limited appearance shall be served upon the party and upon the attorney entering that appearance unless the attorney has been granted leave to withdraw pursuant to paragraph (3) of this subdivision.

### **Reporter's Notes—2012 Amendment**

Rule 79.1(h) is added to permit a lawyer acting pursuant to a limited representation agreement with a pro se client to enter a limited appearance in the Probate Division in certain specific situations. The provision is adapted from V.R.C.P. 79.1(h) and V.R.F.P. 15.

The Civil Rule was adopted effective April 14, 2006, for a two year period and was extended to 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 the 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 were no reports of problems in its use. The rule had 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 of V.R.C.P. 79.1. Anticipating that greater familiarity with the rule and growing interest at the bar in providing pro bono representation would lead to increased use of the unbundling procedure, the Court made the Civil Rule permanent by order of May 7, 2009, effective July 6, 2009.

Given the great and increasing numbers of pro se litigants in Family Court, the use of the limited appearance procedure there was deemed to be potentially of even greater importance. Accordingly V.R.F.P. 15(h), with necessary variations from the Civil Rule, was adopted by order of December 10, 2009, effective February 12, 2010.

For a general explanation of the rationale and operation of V.R.P.P. 79.1(h), see Reporter's Notes to 2006 amendment of V.R.C.P. 79.1 and the 2010 amendment of V.R.F.P. 15.

Amendments to V.R.P.P. 79.1(a), (b), and (e), based on comparable provisions of V.R.F.P. 15, are intended to make clear the effect of a limited appearance under subdivision (h) on the matters covered by those provisions.

2. That this rule, as amended, is prescribed and promulgated effective \_\_\_\_\_. The Reporter's Notes are advisory.
3. 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 \_\_\_\_ day of \_\_\_\_\_, 2012.

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice

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Beth Robinson, Associate Justice