

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF PROBATE PROCEDURE
Minutes of Meeting
July 17, 2013

The special meeting to consider proposed amendments to V.R.P.P. 67 was called to order at 1:35 p.m. in Room 216 Debevoise Hall, Vermont Law School, by Hon. Joanne M. Ertel, Chair. Present were Committee members Molly Bucci (by phone), Judith Joly, Mark Langan, Hon. James Mahoney, Hon. James Monette (by phone), John Newman, David Otterman, Dianne Pallmerine, and Catherine Richmond. Also present was Professor L. Kinvin Wroth, Reporter.

1. Approval of minutes of the meeting of June 19, 2013. On motion duly made and seconded, it was voted unanimously to approve the draft minutes of the meeting of June 19, 2013.

2. Rules to address prevention of thefts from estates.

The Committee reviewed a July 12 revised draft amendment of V.R.P.P. 67 prepared by Mr. Newman and Professor Wroth to reflect discussion at the last meeting. The Committee also considered the New Hampshire probate bonding statute, title 16, N.H. R.S.A. § 553:13, presented by Ms. Richmond. Under that statute a person seeking appointment as a fiduciary files a petition with an estimate of the value and nature of the assets, the court sets an amount for the bond, and the fiduciary applies for the bond. The amount of the bond can be increased or reduced after inventory. If the gross value of the estate is \$25,000 or less, only a personal bond without sureties is required. The judge may accept other forms of security or waive the requirements. In most cases, bonds are readily available and are obtained.

In discussion, questions considered included the evidence needed to establish “credit-worthiness” and the burden of producing it; the value of a determination of credit-worthiness; application of the rule in cases where the spouse is the sole beneficiary; availability of commercial surety bonds, especially for self-represented parties; and the terms and enforcement of bonds.

In further discussion, the following changes in the July 12 draft were agreed on:

- (a) Add that the applicant’s petition will show the assets and liabilities of the estate to the best of the applicant’s knowledge.
- (b)(1) In (A) reduce the amount to \$10,000. Delete (D). Add (3) to the effect that the court may impose or increase the amount of a bond at a later time on its own motion or that of a creditor or another interested person
- (c) Delete the last clause of (1)—“when the court is satisfied... .” Delete (2) and (3) concerning determination of credit-worthiness.
- (d) Begin with “The court may relieve...” and adapt the New Hampshire statutory language in initial sentence.
 - (1) Delete last clause—“that has complied with... .”

- (2) Substitute “fiduciary” for guardian” and “estate” for “assets.”
- (3) Revise first sentence to the effect that all heirs, beneficiaries, or other interested persons as appropriate ... have waived in a signed writing... after notice to them by the fiduciary including a copy of the petition. Delete rest of sentence—“fully disclosing... .”
- (4) Delete.
- (5) Renumber as (4) and add reference to 14 V.S.A. §§ 1901-1903.

(e)-(g) There were no suggestions for changes in subdivisions (e)-(g).

Professor Wroth reported that the Supreme Court would not hold its previously planned administrative meeting on August 20 but would meet on September 10. Mr. Newman and Professor Wroth agreed to prepare and circulate a further revised draft for comment and approval by e-mail in time for submission to the Court for that meeting.

Discussion followed on the process to be followed with the amendments when submitted. A number of Committee members noted that the amendments involved significant changes and that circulation for comment would serve to educate the bar on the coming changes as well as to produce comments on the changes. On motion duly made and seconded, there being no further discussion, it was voted, six in favor, one opposed, to recommend to the Court that the amendments proposed by the Committee should be sent out for comment before being promulgated.

3. Next meeting. Professor Wroth agreed to circulate to the Committee proposed dates for a September meeting to consider other pending agenda items.

The meeting was adjourned at 4:05 p.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter