

**VERMONT SUPREME COURT**  
**ADVISORY COMMITTEE ON RULES OF PROBATE PROCEDURE**  
**Minutes of Meeting**  
**June 19, 2013**

The meeting was called to order at 9:30 a.m. in Room 216 Debevoise Hall, Vermont Law School, by Hon. Joanne M. Ertel, Chair. Present were Committee members Molly Bucci, Chris Chapman (by phone), Hon. James Mahoney (by phone), Hon. James Monette, John Newman, David Otterman, and Dianne Pallmerine. Also present were Hon. Brian Burgess (by phone); Hon. John Dooley, Supreme Court liaison (by phone); and Professor L. Kinvin Wroth, Reporter.

**1. Approval of minutes of the meeting of April 5, 2013.** On motion duly made and seconded, it was voted unanimously to approve the draft minutes of the meeting of April 5, 2013.

**2. Rules to address prevention of defalcations from estates.** Justice Dooley briefly explained that, after receiving information about the recent federal conviction of a special administrator in Bennington County for estate embezzlement and a request that the Court address the issue of defalcation by rule, the Court asked the Committee to consider the issues and provide a draft of proposed rules addressing them that could be adopted on an emergency or expedited basis.

The Committee reviewed draft amendments of V.R.P.P. 66 and 67 prepared by Mr. Newman and Professor Wroth. Discussion followed on various questions including lack of law enforcement response and light sentences when enforcement occurred, the frequency and scope of defalcation cases, cost burdens on small estates, possible exemptions from criminal records and credit checks, the availability of criminal record checks for nonresidents, confidentiality of criminal and credit information, and problems with existing statutory bond provisions. It was then agreed that the Committee should immediately consider revisions of draft Rule 67 to create a presumption that a commercial surety bond would be required of fiduciaries except in situations such as estates below a certain value, appointment of a corporate fiduciary, and consent of all heirs. When a commercial bond was not required, the court should require a personal bond after review of the applicant's credit-worthiness based on criminal records and credit checks or other information supplied by the applicant.

Mr. Newman and Professor Wroth agreed to prepare a revised draft of Rule 67 embodying these ideas, with recommendations on the promulgation process, for consideration at a special meeting at 1:30 p.m., July 17, at Vermont Law School. The Court will be advised at its administrative meeting on July 10 that the Committee will report at the Court's August 20 administrative meeting.

**3. Remainder of the Agenda.** The remainder of the agenda was deferred to a later meeting.

The meeting was adjourned at 11:35 a.m.

Respectfully submitted,

L. Kinvin Wroth, Reporter