

PROBATION OFFICERS:

Supreme Court Rule #27.07 page 43, Rules of Criminal Procedure for Missouri Courts adopted by Supreme Court of Missouri, April 14, 1952, effective January 1, 1953.

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) Rule 27.07 of Rules of Criminal procedure within meaning of Article V, Section 5 of the Constitution of Missouri Board of Probation and Parole is bound by said Rule 27.07.

December 22, 1952

12/29/52

Hon. Donald W. Bunker  
Executive Secretary  
Board of Probation and Parole  
Jefferson City, Missouri

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Dear Mr. Bunker:

We are in receipt of your recent letter in which you request an opinion of this department. Your letter is as follows:

"Rule 27.07, Page 43, Rules of Criminal Procedure for the Courts of Missouri, adopted by the Supreme Court of Missouri, April 14, 1952, effective January 1, 1953, has been called to the attention of the Board of Probation and Parole. The rule provides:

"(b) 'When a probation officer is available to any Court having original jurisdiction to try felony cases and to the St. Louis Court of Criminal Correction, such probation officer shall, unless otherwise directed by the Court, make a presentence investigation and report to the Court before the imposition of sentence or the granting of probation.'

"Section 549.270, RS 1949 states 'At the request of the Judge of any Circuit or Criminal Court of this State the Board of Probation and Parole shall assign one or more officers to act as probation officers for such Court. Upon request of such a judge, the Board of Probation and Parole shall make an investigation of any person convicted of any crime or offense before execution of sentence and shall make the report to such Judge. (L. 1945, p. 723 § 43)'"

"The Board of Probation and Parole would appreciate

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receiving your interpretation of Rule 27.07 as it relates to Section 549.270, RS 1949. For example, if a Judge of a Circuit Court requests this Board to assign a probation officer to the Court in accordance with Section 549.270, RS 1949, shall the probation officer then serving that Court 'unless otherwise directed by the Court, make a presentence investigation and report to the Court before the imposition of sentence or the granting of probation?'

Your specific question seems to be whether or not when a probation officer has been made available to a court pursuant to the provisions of Section 549.270, RSMo 1949, such probation officer shall make presentence investigations unless directed to the contrary by the court even though the Board of Probation and Parole shall not have been requested by the court to make such investigation.

In this connection we shall first consider Section 549.270 RSMo 1949 quoted in your letter above. This section contains two provisions, one for the assignment by the Board of Probation and Parole of one or more probation officers to the court upon the court's request and the other for an investigation before execution of sentence and at the court's request by the Board of Probation and Parole of any person convicted of any crime or offense and a report to the court pursuant thereto.

It is obvious that this statute provides for an investigation by the parole officer pursuant only to a request by the court.

We shall now consider the provisions of Rule 27.07 of the Rules of Criminal Procedure for the courts of Missouri quoted in your letter above. This rule provides in substance that in every instance unless otherwise directed by the court the probation officer shall make a presentence investigation and report same to the court.

It is obvious from a comparison of the provisions of Section 549.270 RSMo 1949, with the provisions of said Rule 27.07, that the rule provides for the performance of duties by the parole officer which exceed the duties set forth by said Section 549.270. We desire to point out however that while the duties of the parole officer are more extensive under rule than under the statute the duties provided for by the rule are not inconsistent with the duties required by the statute. We shall then consider the question as to whether the Supreme Court rule can create duties to be performed by the parole officer which duties although they are not inconsistent with the duties provided by the statute are nevertheless more extensive than these duties.

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Article V, Section 5 of the Constitution of Missouri gives to the Supreme Court of Missouri the power to establish rules of practice and procedure for all courts. Said Section 5, Article V of the Constitution reads as follows:

"Rules of Practice and Procedure--Duty of Supreme Court--Power of Legislature.--The supreme court may establish rules of practice and procedure for all courts. The rules shall not change substantive rights, or the law relating to evidence, the oral examination of witnesses, juries, the right of trial by jury, or the right of appeal. The court shall publish the rules and fix the day on which they take effect, but no rule shall take effect before six months after its publication. Any rule may be annulled or amended by a law limited to the purpose."

With the foregoing provision of the Constitution of Missouri in mind we are of the opinion that the Supreme Court has the power to promulgate rules of practice and procedure for the courts of Missouri. That being true we are of the further opinion that the provisions in Rule 27.07, supra, to the effect that: " \* \* \*, such probation officer shall, unless otherwise directed by the court, make a presentence investigation and report to the court before the imposition of sentence or the granting of probation", amounts to a provision, that in all cases the court shall have a presentence investigation and report by the parole officer unless the court specifically directs otherwise. We are of the opinion that this provision definitely amounts to a rule of practice and procedure in the court or courts involved and, since it does not require the performance of a duty by the parole officer, different from that set forth by Sections 549.270 RSMo 1949, but in effect provides that the court shall, unless it instructs the probation officer to the contrary, have a presentence investigation and report from such officer in each case, it at the same time comes within the purview of Article V, Section 5 of the Constitution of Missouri and does not conflict with the provisions of said Section 549.270 RSMo 1949.

#### CONCLUSION

We are accordingly of the opinion that the probation officer

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serving any Circuit or Criminal Court of this State will on January 1, 1953 the effective date of Supreme Court Rule 27.07 be charged with the duty to make a presentence investigation and report to the court before the imposition of sentence or the granting of probation in each case unless otherwise directed by the court.

Respectfully submitted

SAMUEL M. WATSON  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
ATTORNEY GENERAL

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