

RULES OF CRIMINAL PROCEDURE:

A magistrate is not required to keep a record of bonds taken by him in connection with preliminary examinations in felony cases.

MAGISTRATES:

April 3, 1953

Mr. W. C. Whitlow  
Prosecuting Attorney  
Callaway County  
Fulton, Missouri



Dear Mr. Whitlow:

We have given careful consideration to your request for an opinion, which request is as follows:

"At the request of Judge John Yates, Magistrate of Callaway County, Missouri, I would like some information regarding the records the Magistrate Court is required to keep pertaining to the felony bonds the Magistrate takes in felony cases.

"Judge Yates is of the opinion that he is not required to keep a record of these bonds under the new criminal code and believes that your office has previously rendered an opinion to this effect.

"Your assistance in this matter will be appreciated."

The question contained in your request is grounded in the Rules of Criminal Procedure, adopted by the Supreme Court of Missouri, and made effective January 1, 1953.

Rule 32.10 is as follows:

"(a) When a bail bond is taken in a misdemeanor case, the clerk of the court in which such bond is filed shall cause the original bond to be

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kept in a safe place which is not accessible to the public, and shall cause a true copy of such bond to be entered in a bound, permanent record which shall be properly indexed.

"(b) When bail is taken prior to a preliminary examination, the clerk of the court in which such preliminary examination is to be conducted shall keep the original bail bond in a safe place until the defendant is discharged or bound over. If the defendant is bound over, the bail bond, together with the security therefor if cash or bonds, shall be delivered to the clerk of the court in which the charge is to be tried.

"(c) If bail is taken during or subsequent to a preliminary examination, the bail bond, together with the security therefor if cash or bonds, shall be immediately transmitted to and filed with the clerk of the court in which the case is to be tried.

"(d) Original bonds filed with the clerk of the court in which a felony charge is to be tried shall be kept by the clerk in a safe place which is not accessible to the public, and the clerk shall cause a true copy of such bond to be entered in a bound, permanent record which shall be properly indexed."

In accordance with this rule a bail bond filed with a magistrate in preliminary examination of a felony charge is governed by subsections (b) and (c) of the rule. The bond must be kept in a safe place and delivered or transmitted to the clerk of the trial court in case the defendant is bound over. No record of the bond is required to be kept in magistrate court. The record, when required to be kept, must be entered by the clerk of the court in which the charge is to be tried, as provided in subsection (d) of the rule.

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CONCLUSION.

It is the opinion of this office that a magistrate is not required under the new Rules of Criminal Procedure to keep a record of the bonds taken by him in connection with preliminary examinations in felony cases.

This opinion, which I hereby approve, was prepared by my Assistant, Mr. B. A. Taylor.

Very truly yours,

JOHN M. DALTON  
Attorney General

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