Alabama Rules of Criminal Procedure

Rule 27. Probation and probation revocation.

Rule 27.1.   Granting probation.

If the sentencing court is given authority to suspend execution of sentence and to place the defendant on probation, the court may impose on the probationer such conditions and regulations as will promote the probationer's rehabilitation and protect the public. Community service may be required as a condition of probation. The probation officer shall issue instructions to the probationer that are consistent with the conditions and regulations imposed by the court and that are necessary for the implementation of these conditions and regulations. All conditions of probation must be incorporated into a court's written order of probation, and a copy thereof must be given to the probationer. In addition, the court or probation officer shall explain to the probationer the purpose and scope of the imposed conditions and regulations and the consequence of probationer's violation of those conditions and regulations.

Committee Comments

The rule is based on ABA, Standards for Criminal Justice, *Sentencing Alternatives and Procedures*, 18-2.3(c) (2d ed. 1986). Ala.Code 1975, § 15-22-50, gives circuit courts and district courts authority to place on probation any person convicted of a crime whose punishment does not exceed fifteen (15) years. For authority in municipal courts see Ala.Code 1975, § 12-14-13. This rule is not intended to confer upon the court power to grant probation—that power being determined by the statutes—but only prescribes the procedure for granting probation in those cases where the court has lawful authority to do so. Ala.Code 1975, § 15-22-52, gives the court broad authority initially to determine the conditions of probation to be imposed. Conditions of probation are not to be established by the probation officer. However, the probation officer is vested with the authority to provide instructions consistent with court-imposed conditions in an effort to clarify or to expand upon general conditions and to assist in the guidance of the probationer. ABA, Standards for Criminal Justice, *Sentencing Alternatives and Procedures*, 18-2.3, Comments (2d ed. 1986).

Rule 27.1 is designed to reinforce the probationer's understanding of this new status and the expectations of the court. Conditions imposed on the probationer should reflect the correctional as opposed to the punishment goals of probation. Providing the probationer with both a written copy of imposed conditions and regulations and an explanation thereof aids in the reinforcement of the probationer's understanding of probation. The rule should alleviate the court's and the probation officer's supervisory burden by eliminating some unnecessary violations caused by probationer's lack of understanding.

Conditions may appropriately include, but are not limited to, matters such as the following:

      1. Cooperating with a program of supervision;

      2. Meeting family responsibilities;

      3. Maintaining steady employment or engaging in or refraining from engaging in a specific employment or occupation;

      4. Pursuing prescribed educational or vocational training;

      5. Undergoing available medical or psychiatric treatment;

      6. Maintaining residence in a prescribed area or in a special facility established for or available to persons on probation;

      7. Refraining from consorting with certain people or types of people or from frequenting certain places or types of places;

      8. Making restitution of the fruits of the crime or reparation for loss or damage caused by the crime;

      9. Restricting contact with the victim and the family of the victim; and

      10. Prohibiting and restricting the possession or use of deadly weapons and firearms for any purpose, recreational or otherwise.

Conditions requiring payment of fines, restitution, reparation, or family support should not go beyond the probationer's ability to pay. The performance bond authorized in some jurisdictions should not be employed as a condition of probation. See *Vandiver v. State*, 401 So.2d 326 (Ala.Crim.App.1981).