

General Order 99-13

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
NOV - 9 1999
DAVID J. MALAND, CLERK
Mark Kefauver

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

GENERAL ORDER REGARDING REVOCATION OF PROBATION
AND SUPERVISED RELEASE CASES

The following procedures will be used by the United States Probation Office in bringing revocation of probation or supervised release cases to the attention of the Court. Such proceedings will be conducted pursuant to Rules 32.1 and 46(c) of the Federal Rules of Criminal Procedure and 18 U.S.C. §3401(i).

I. PROBATION CASES:

A. Felony Cases

1. For an arrest warrant:

The probation officer shall present the application for an arrest warrant to the U.S. District Judge who has jurisdiction of the case. If the Court agrees that a warrant should be issued, the District Judge will sign an order authorizing the U.S. District Clerk's Office to issue the warrant.

Upon arrest of the probationer, he or she shall be taken before the U.S. Magistrate Judge on criminal duty for an initial appearance. The Magistrate Judge who conducts the initial appearance will likewise conduct the preliminary hearing, if required.¹ The District Judge who has jurisdiction of the case will conduct the final revocation hearing.

2. For a summons:

The probation officer shall present the application for a summons to the U.S. District Judge who has jurisdiction of the case. If the Court agrees that a summons should be issued, the District Judge will sign an order authorizing the U.S. District Clerk's Office to issue the summons.

¹Fed.R.Crim.P. 32.1(a)(1) requires a preliminary hearing if the defendant is held in custody on the ground that he or she has violated a condition of probation or supervised release. The preliminary hearing shall be held promptly.

The Clerk's Office will then contact the U.S. Magistrate Judge on criminal duty for a date and time of the initial appearance. The Clerk's Office will thereafter file the Probation Form 12 and issue the summons. The probation officer is authorized to serve the summons pursuant to Rule 4(d)(3) of the Federal Rules of Criminal Procedure.

The Magistrate Judge before whom the initial appearance was set will advise the probationer of the revocation procedures, conduct a preliminary hearing, if required,² and advise the probationer of the date of the actual revocation hearing. The District Judge who has jurisdiction of the case will conduct the final revocation hearing.

B. Misdemeanor Cases

1. For an arrest warrant:

The probation officer shall present the application for an arrest warrant to the U.S. District or Magistrate Judge who has jurisdiction of the case. If the Court agrees that a warrant should be issued, the Court will sign an order authorizing the U.S. District Clerk's Office to issue the warrant.

Upon arrest of the probationer, he or she shall be taken before the U.S. Magistrate Judge on criminal duty for an initial appearance. The Magistrate Judge who conducts the initial appearance will likewise conduct the preliminary hearing, if required.³ The District or Magistrate Judge who has jurisdiction of the case will conduct the final revocation hearing.

2. For a summons:

The probation officer shall present the application for a summons to the U.S. District or Magistrate Judge who has jurisdiction of the case. If the Court agrees that a summons should be issued, the Court will sign an order authorizing the U.S. District Clerk's Office to issue the summons.

The Clerk's Office will then contact the U.S. Magistrate Judge who has jurisdiction of the case, or the duty Magistrate Judge if the District Court retains jurisdiction of the case, for a date and time of the initial appearance. The Clerk's Office will thereafter file the Probation Form 12 and issue the summons. The probation officer is authorized to serve the summons pursuant to Rule 4(d)(3) of the Federal Rules of Criminal Procedure.

²Ibid

³Ibid

The Magistrate Judge before whom the initial appearance was set will advise the probationer of the revocation procedures, conduct a preliminary hearing if required, and advise the probationer of the date of the actual revocation hearing.⁴ The final revocation hearing will be conducted by the Court who maintains jurisdiction of the case.

II. SUPERVISED RELEASE CASES:

A. Felony Cases

1. For an arrest warrant:

The probation officer shall present the application for an arrest warrant to the U.S. District Judge who has jurisdiction of the case. If the Court agrees that a warrant should be issued, the District Judge will sign an order authorizing the U.S. District Clerk's Office to issue the warrant.

Upon arrest of the supervised releasee, he or she shall be taken before the U.S. Magistrate Judge on criminal duty for an initial appearance. The Magistrate Judge who conducts the initial appearance will likewise conduct the preliminary hearing, if required,⁵ as well as the revocation hearing. Thereafter, a report and recommendation will be filed to which the defendant or the Government may file objections. The District Judge retaining jurisdiction of the case will thereafter enter the final order in the case.

2. For a summons:

The probation officer shall present the application for a summons to the U.S. District Judge who has jurisdiction of the case. If the Court agrees that a summons should be issued, the District Judge will sign an order authorizing the U.S. District Clerk's Office to issue the summons.

The Clerk's Office will then contact the U.S. Magistrate Judge on criminal duty for a date and time of the initial appearance. The Clerk's Office will thereafter file the Probation Form 12 and issue the summons. The probation officer is authorized to serve the summons pursuant to Rule 4(d)(3) of the Federal Rules of Criminal Procedure.

⁴Ibid

⁵Ibid

The Magistrate Judge before whom the initial appearance was set will advise the supervised releasee of the revocation procedures, conduct a preliminary hearing, if required,⁶ and conduct the revocation hearing. Thereafter, a report and recommendation will be filed to which the defendant or the Government may file objections. The District Judge retaining jurisdiction of the case will thereafter enter the final order in the case.

B. Misdemeanor Cases

1. For an arrest warrant:

The probation officer shall present the application for an arrest warrant to the U.S. District or Magistrate Judge who has jurisdiction of the case. If the Court agrees that a warrant should be issued, the Court will sign an order authorizing the U.S. District Clerk's Office to issue the warrant.

Upon arrest of the supervised releasee, he or she shall be taken before the U.S. Magistrate Judge on criminal duty for an initial appearance. The Magistrate Judge who conducts the initial appearance will likewise conduct the preliminary hearing, if required,⁷ and the revocation hearing if a District Judge retains jurisdiction of the case. Thereafter, a report and recommendation will be filed to which the defendant or the Government may file objections. The District Judge retaining jurisdiction of the case will thereafter enter the final order in the case. If a Magistrate Judge retains jurisdiction of the case, that Magistrate Judge will conduct the revocation hearing and enter the final order in the case.

2. For a summons:

The probation officer shall present the application for a summons to the U.S. District or Magistrate Judge who has jurisdiction of the case. If the Court agrees that a summons should be issued, the Court will sign an order authorizing the U.S. District Clerk's Office to issue the summons.

The Clerk's Office will then contact the U.S. Magistrate Judge who originally sentenced the probationer, or the duty Magistrate Judge if the District Court retains jurisdiction of the case, for a date and time of the initial appearance. The Clerk's Office will thereafter file the Probation Form 12 and issue the summons. The probation officer is authorized to serve the summons pursuant to Rule 4(d)(3) of the Federal Rules of Criminal Procedure.

⁶Ibid

⁷Ibid

The Magistrate Judge before whom the initial appearance was set will advise the supervised releasee of the revocation procedures, conduct a preliminary hearing, if required,⁸ and conduct the revocation hearing. Thereafter, a report and recommendation will be filed to which the defendant or the Government may file objections. The District Judge retaining jurisdiction of the case will thereafter enter the final order in the case. If a Magistrate Judge retains jurisdiction of the case, that Magistrate Judge will conduct the revocation hearing and enter the final order in the case.

III. PROBATION / SUPERVISED RELEASE REPORTS

Prior to any revocation hearing, the probation officer shall prepare a written report on the case which sets forth a description of the original offense and the grounds for revocation. The report shall also set forth the sentencing provisions that apply to the case. This report shall be served on the U.S. Attorney and the defense attorney within five days of the revocation hearing. The report should contain the sentence recommendation by the probation officer. The probation officer will also prepare a separate sentencing justification which will be for the Court's use only and will not be disclosed to either the U.S. Attorney or the defense attorney.

IV. PRIOR GENERAL ORDERS

This general order supersedes General Order 98-15 entered on October 22, 1998.

FOR THE COURT:

Signed this 9th day of November, 1999.



RICHARD A. SCHELL
Chief Judge

⁸Ibid