

Girardi in Federal Custody for Tests Starting Jan. 7

Daily Journal

Devon Belcher

December 23, 2024

[\[Link\]](#)

Disbarred and convicted attorney Tom Girardi, 85, is to be flown to federal facility in North Carolina for 30 days of evaluation before his sentencing.

Disbarred attorney Tom Girardi will be taken into federal custody on Jan. 7, where he is expected to remain for 30 days while he is examined at a medical facility in North Carolina, a judge ordered on Friday.

U.S. District Judge Josephine L. Staton said Girardi is to surrender to U.S. marshals on Jan. 7 and be immediately flown to Federal Medical Center, Butner. After physical and mental examinations there, Staton will either put the 85-year-old in prison for up to 14 years or in a hospital bed, presumably for the rest of his life.

Despite concerns from one of Girardi's attorneys, Federal Public Defender Samuel O. Cross, that the travel across the country from Los Angeles would put Girardi's health at a serious risk, Staton said her order was the safest way to transport him pursuant to what the law allows.

Cross argued subsections within 18 U.S.C. Section 4244 - which permits the pre-sentencing mental examination of a criminal defendant - allowed for flexibility as to where the tests would take place. Cross argued the examinations should occur at the Orange County memory ward Girardi currently resides in, similar to what happened for a pre-trial competency analysis Staton oversaw last year.

However, Staton denied Cross' requests.

"That is not what the court is looking for this time," she said. "What I'm really trying to determine is different, in part. It's similar in some ways ... but I'm trying to determine whether or not he needs to be placed in a suitable hospital facility ... in lieu of custody. The examination that needs to take place, I think, is one that needs to be one of sort of daily living. I think that his placement in a facility of the custody of the attorney general is what will provide the court with the best information for that.

"I do believe this is sufficiently a safe and humane way to transport him. I do believe that Butner is a suitable facility for these purposes. It's not for long term care, it's for examination and evaluation," she added.

Though not unprecedented, it is rare for a judge to take a scheduled sentencing hearing off calendar and order further mental evaluation to determine if a defendant is fit for prison despite claims of neurological decline, criminal experts following Girardi's wire fraud case said Friday.

Los Angeles criminal defense attorney Dmitry Gorin, an Eisner Gorin LLP partner, said Girardi's situation is an uncommon occurrence for a criminal defendant who has reached the sentencing phase of their case because of his age and the nature of his health claims.

"The mental health issues I typically see can be addressed through medication, but a neurological decline because of age, senility, dementia ... is rare," Gorin said in a phone interview.

"Very few elderly defendants are prosecuted. ... I can't think of a single case where somebody in his situation is being prosecuted for a criminal offense, and because his crimes went on for so long, he was, at the time, sane and rational. ... But when it came time to prosecute him, he had declined. Those factors in this case make it very unusual, which results in the court dealing with the sentencing process in a very unusual way," Gorin explained.

Assistant U.S. Attorney Scott Paetty, who prosecuted the case, told Staton the application of the U.S. Code 4244 was something neither he nor his colleagues often encounter. "It doesn't happen often, is my understanding," Paetty said about the procedure. "It's not something that was on our radar."

Before her ruling to grant the evaluation, Staton said she had to take extra time to study the code to ensure she was applying it fairly. She had found Girardi to be competent to aid in his defense before his trial and made the same determination at the end of the case, noting Girardi's own testimony on the stand.

Friday's status hearing replaced what would have been Girardi's sentencing after a jury found him guilty of four counts of wire fraud. He was found to have stolen over \$15 million in settlement funds intended for four injured clients between 2010 and 2020. *U.S. v. Girardi et al.*, 2:23-cr-00047 (C.D. Cal., filed Jan 31, 2023).

The government seeks a 14-year imprisonment while Girardi's counsel, led by Deputy Federal Public Defender Charles J. Snyder, seeks lifetime hospital confinement.

The defense claims Girardi, diagnosed with late-onset dementia, suffers from serious health defects that have gotten worse throughout the duration of his two-year criminal case.

Although Staton found Girardi to be mentally competent to aid in his trial defense, attorneys unrelated to the case said the post-trial evaluation the defense successfully sought contains different analysis.

Aloke S. Chakravarty - a formal federal prosecutor and current Saul Ewing LLP partner in Boston - said that although the nature of the two processes appear similar, the outcome of the post-trial examination is what makes the difference.

"Fundamentally it's a different decision than seeing whether [Girardi] is able to help in the process ... to determine where he would actually be housed, maybe for the rest of the life. Which is a question ... of whether it is humane to have somebody who can't appreciate where they are and why they are there ... in a jail versus a hospital bed," Chakravarty said in a phone interview.

Additionally, Gorin said it was even rarer for a judge to take a sentencing off calendar.

"It's unusual for a court to take sentencing off calendar. Usually, the sentencing date moves forward. To have it taken off calendar for this reason is extremely unusual. I think the judge is taking this neurological decline fact very seriously and wants to be fair and just to be able to appropriately address this very unusual situation," Gorin said. "There's fewer than 1% of criminal defendants in federal court to have this situation where because of their neurological decline, sentencing is not moving timely. It doesn't happen often."

Chakravarty added that the criteria for what is humane in Girardi's situation "is not very well tried" and put Staton in a unique position where she's able to prioritize her own experiences and judgment in her sentencing decision.

"Even though there's a law on it, there's not a lot of cases on it, so [Staton] can really draw upon her own experiences as a judge and a human in order to be able to figure out what she thinks is important in that calculus," Chakravarty said.

Once Girardi's evaluations in North Carolina are complete, he will return to his California memory ward facility, Staton said. A subsequent hearing on those evaluations will occur at a date Staton has not yet scheduled. The sentencing hearing would follow that.