

THE RECORDER

Judge Asks: Should Tom Girardi Serve Sentence in a Medical Facility or Behind Bars?

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U.S. District Judge Josephine Staton, who is scheduled to sentence Tom Girardi this Friday, ordered both sides to submit additional briefing on whether he should serve time in a medical facility.

What You Need to Know

- The judge ordered additional briefing that addresses whether to hold a hearing under Section 4244 of Title 18, which allows a criminal defendant with 'a mental disease or defect' serve his time in a hospital, rather than behind bars.
- Girardi's lawyers insisted that the judge should hold the hearing prior to sentencing.
- Federal prosecutors, who have asked that Girardi serve 14 years in prison, insisted that such a hearing wasn't necessary given the 'adequate protocols in place' at the Bureau of Prisons.

A federal judge scheduled to sentence Tom Girardi this Friday ordered both sides to provide a supplemental briefing to determine whether he should serve his time in a medical facility.

Girardi, 85, who has been in an assisted living facility for two years, is now a "broke, half-blind, incontinent, 85-year-old man with dementia," [according to his federal public defenders](#), who don't want their client to serve his sentence behind bars.

That prompted U.S. District Judge Josephine Staton, of the Central District of California, to order additional briefing that addresses whether to hold a hearing under Section 4244 of Title 18, which states that judge can sentence a criminal defendant with "a mental disease or defect for the treatment of which he is in need of custody for care and treatment in a suitable facility," such as a hospital, rather than behind bars.

In her Monday order, Staton wrote that "the court's independent research causes it to believe that a Section 4244 hearing may be necessary in these circumstances."

On Wednesday, Girardi's lawyers insisted in their brief that Staton should hold the hearing prior to sentencing.

Federal prosecutors, who have asked that Girardi serve 14 years in prison, the maximum recommended in a Nov. 1 pre-sentence report, filed their own brief insisting that such a hearing wasn't necessary given the "adequate protocols in place" at the Bureau of Prisons. Should Staton disagree, they wrote, sentencing should move forward on Friday, after which the Bureau of Prisons could do a psychological evaluation to determine whether competency is an issue warranting such a hearing.

“Ultimately, BOP has sufficient resources to address defendant’s mental state whether the court sentences defendant now or further continues sentencing to accommodate a Section 4244 inquiry,” they wrote. “However, justice in this case dictates that defendant proceed to sentencing on the currently scheduled date.”

'A Very Compelling Argument'

Justin Danilewitz, a former federal prosecutor who now chairs Saul Ewing’s white collar and government enforcement practice, said Girardi’s lawyers have the better argument on the 4244 hearing.

“The defense makes a very compelling argument for him to serve his sentence in the facility where he’s currently housed,” Danilewitz, a partner in Philadelphia, said. “This is not somebody who’s a threat to anybody anymore. What was particularly compelling was the line in the defense brief, ‘The court is not sentencing the memory of Tom Girardi. The court is sentencing Tom Girardi as he exists today.’”



That’s despite Staton’s prior conclusions finding Girardi [competent to stand trial](#) and [denying his motion for new trial](#) based on his inability to understand the proceedings. Staton found Girardi, while suffering from mental decline, was exaggerating his symptoms and that his own testimony during trial mirrored much of his legal defense.

“Even up through the time of sentencing, the court has to constantly be mindful of the competency of the defendant,” Danilewitz said. “The question is not so much a question of competency to proceed with sentencing -- it’s whether the competency of the defendant should inform the sentence, and where the defendant is going to be sentenced, where they are going to be sent.”

Under the statute, Girardi could be committed under the custody of the Attorney General, which has jurisdiction over the Bureau of Prisons, and hospitalized in a care or treatment facility, he said.

Girardi, the former owner of Los Angeles plaintiffs’ firm Girardi Keese, [was convicted on Aug. 27](#) by a federal jury of four counts of wire fraud. Prosecutors in Los Angeles had alleged he stole more than \$15 million from his clients.

Girardi’s lawyers have noted that many of those clients eventually got paid, making the actual loss much smaller. Prosecutors insisted the intended loss, which they calculated at approximately \$16.4 million, should be a factor in sentencing. But, in a Dec. 13 filing, they lowered their restitution request from \$3.78 million to \$2.3 million after finding that two clients had received their full settlement funds.