

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

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

JUN 25 1981

A TRUE COPY I CERTIFY
MURRAY L. HARRIS, CLERK
U. S. DISTRICT COURT
EASTERN DISTRICT, TEXAS

By: *Murray L. Harris*

GENERAL ORDER

MURRAY L. HARRIS, CLERK
BY DEPUTY: *Mary Barton*

The following procedures will be followed in bringing
a revocation of probation to the attention of the Court:

I. Procedures Instituting Revocation Proceedings:

To commence a revocation based on violation of¹ conditions of probation, the probation officer will file Probation Officer's Petition Form 12 with the appropriate person as follows:

- A. U. S. Magistrate² - Where an arrest warrant is requested, the United States Magistrate will issue same. The United States Marshal will serve the arrest warrant.
- B. District Clerk - Where a summons³ is requested, the Probation Officer will, prior to filing, consult with the sentencing judge for a docket setting. The Clerk will then file probation Form 12 and issue the summons, without the necessity of a court order for such filing and issuance. The Probation Officer is authorized to serve the summons pursuant to Rule 4(d)(3) of the Federal Rules of Criminal Procedure. Attached thereto shall be Probation Form 12 and forms for obtaining court-appointed counsel, with instructions that the request for counsel be returned to the District Clerk.

*Vacated by
Gen. Ord. 93-5
dated 7-9-93*

II. Procedures Following Probationer's Arrest:

- A. The probationer shall be brought before a Magistrate forthwith for an initial hearing. The Magistrate shall inform probationer of:
 - 1. The complaint against probationer, i. e., the pending revocation of probation and the basis of the revocation, and insure that he has been provided a copy of Probation Form 12.
 - 2. The right to counsel and probationer's right to request assignment of counsel if probationer is unable to obtain counsel.
 - 3. Probationer is not required to make a statement and that any statement made by probationer may be used against him.

¹ By authority of 18 U.S.C. 3653.

² "Magistrate" includes part-time Magistrates. See Rule I (j)(6), Local Rules of the Court for Assignment of Duties of United States Magistrates.

³ Probation Officers are urged to petition for summons instead of arrest warrants. Arrest warrants will be requested where the probationer absconds, is in custody in another jurisdiction, or where the probationer is

4. General circumstances under which probationer may secure pretrial release under 18 U.S.C. 3146(a) and (b).
5. A. The right to a probable cause preliminary hearing within ten days of arrest if probationer is not released from custody during the pendency of the probationary hearing before the District Court.

B. Inform probationer of the purpose of the preliminary hearing, i. e., to determine whether there is probable cause to believe that probationer has violated conditions of his probation.

B. The Magistrate will further advise the probationer that the probable cause preliminary hearing, as well as the revocation hearing, may be waived.⁴

C. The Magistrate shall allow the probationer reasonable time and opportunity to consult counsel and probationer shall be released or kept in custody pursuant to the provisions of 18 U.S.C. 3146 (a) and (b).

D. Where the probationer is released pending the revocation hearing, no probable cause preliminary hearing shall be held.⁵

E. Where the probationer is in custody for an offense other than the violation of his federal probation, e. g., custody for violation of state law or new federal charges or commitment, no preliminary hearing will be necessary.⁶ However, the Magistrate will require that the Probation Officer immediately provide the probationer with forms for obtaining court-appointed counsel together with probation form 12 filed with the Magistrate. The request forms for appointment of counsel will be returnable to the United States District Clerk.

4 Rule 32.1, Federal Rules of Criminal Procedure

5 See: Advisory Committee note, Rule 32.1, Revocation or Modification of Probation, Federal Rules of Criminal Procedure

6 Id.

7 In situations where probationer is released to federal custody pursuant to a detainer, the U. S. Marshal shall forthwith take the probationer before the nearest U. S. Magistrate

III. The Preliminary Hearing:

- A. Where probationer is held in custody and the probationer has not waived the preliminary hearing, the following action should be taken at the preliminary hearing:
- (1) Probationer shall be provided or have reviewed for him the previously filed written notice of the alleged violations of probation;
 - (2) The probationer shall be permitted to speak in his own behalf, or through counsel, to present letters, documents and witnesses who can give relevant testimony in his behalf. (Evidence in mitigation of an admitted violation should be reserved for the final revocation hearing.)
 - (3) Probationer shall be permitted to confront and question adverse witnesses, unless, for good cause, the Magistrate decides that justice does not require appearance of the witnesses.
- B. Where probationer is not in custody, there will not be a preliminary hearing.

IV. Procedures Following the Preliminary Hearing:

- A. If probable cause is not found to exist, the Magistrate shall dismiss the proceeding.
- B. If probable cause is found to exist, the Magistrate shall take the following steps:
- (1) Again consider release of probationer pending revocation hearing before the district court pursuant to 18 U. S. C. 3146(a) and (b).
 - (2) Prepare a written Report of the U. S. Magistrate together with all exhibits, evidence and all other relevant materials, and file same with the District Clerk for presentation to the District Judge.

V. Procedures for the Revocation Hearing:

- A. Where a preliminary hearing is not required, i. e., it is waived by the probationer, or probationer is not in federal custody for probation violation, the Probation Officer will bring the matter of the revocation hearing to the attention of the district court for docketing. The United States Attorney will notify all parties and witnesses of the hearing.

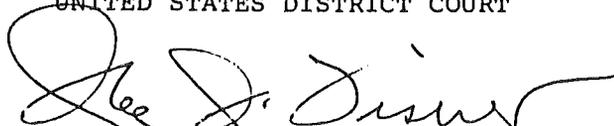
- B. Where the United States Magistrate has filed his report with the District Clerk, the Clerk will present same to the District Court for docketing. The United States Attorney will notify all parties and witnesses of the hearing.
- C. Where a summons has been issued, the Probation Officer will notify the United States Attorney of the date of the revocation hearing. The United States Attorney will notify all parties and witnesses of the hearing.

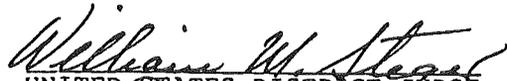
VI. The Revocation Hearing:

- A. The Probation Officer shall present the petition for revocation of probation.
- B. The United States Attorney shall act as trial attorney for the probation office.
- C. The District Court will determine whether the probationer admits or denies the alleged violations. Should the probationer deny any of the violations, the Court will provide a hearing under the guidelines of Gagnon v. Scarpelli, 411 U. S. 778 (1973), which relies on Morrissey v. Brewer 408 U. S. 471 (1972) and Rule 32.1, Revocation or Modification of Probation, Federal Rules of Criminal Procedure. See also U. S. v. Lacey F2d (5th Circuit 1981) Slip Op June 19, 1981, for due process requirements of specific finding of facts following revocation hearing.

This ORDER is effective the 26th day of June, 1981.


CHIEF JUDGE
UNITED STATES DISTRICT COURT


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE