

DEHNIS P. IAVARONE, CLERK
US DISTRICT COURT, EDNC
BY DC DEP CLK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
07-S0-2

IN RE:)
) AMENDED
PROCEDURES FOR COMMITMENTS) STANDING ORDER
) OF THE COURT
UNDER 18 U.S.C. §§ 4241-4246)

This order is hereby entered to revise the standing orders of 3 July 1991 and 20 June 1994 to comport with the court’s current practices regarding civil commitments under 18 U.S.C. §§ 4241-4246. Accordingly, the following procedures are hereby adopted:

A. REFERRAL OF COMMITMENT HEARINGS TO MAGISTRATE JUDGES

Title 28, United States Code, Section 636(b)(3) provides that United States magistrate judges “may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States[.]” In other federal judicial districts magistrate judges are assigned the duties of conducting hearings and preparing reports and recommendations for de novo review of district judges in 18 U.S.C. §§ 4241-4246 proceedings and it therefore appears that it would not be inconsistent with the Constitution and laws of the United States to assign those duties to magistrate judges. Furthermore, this court has confidence in the ability of the magistrate judges of this judicial district to competently perform those duties.

NOW, THEREFORE, IT IS HEREBY ORDERED that the district judges may in their discretion refer to the magistrate judges of this court any mental competency proceeding filed pursuant to 18 U.S.C. §§ 4241-4246 to conduct hearings and enter reports and recommendations for de novo review by a district judge. The magistrate judge’s jurisdiction shall continue through follow-up proceedings for so long as the matter is before the court unless sooner specifically terminated by a district judge.

B. INITIAL COMMITMENT PROCEDURES PRIOR TO COMMITMENT PURSUANT TO 18 U.S.C. §§ 4243, 4245 AND 4246

1. All commitment petitions under 18 U.S.C. § 4245 shall be brought as motions for hearing to determine the present mental condition of the respondent and shall be electronically filed by the government, along with an attached proposed order. The government shall submit separately by notice of manual filing an initial psychiatric assessment of the respondent.

In cases brought under 18 U.S.C. § 4246, the government shall electronically file a certificate of mental disease or defect and dangerousness signed by the director of FMC-Butner, *along with an attached proposed order*. The government shall submit separately by notice of manual filing an initial psychiatric assessment of the respondent. Where the respondent was admitted to FMC-Butner from another district by way of order under 18 U.S.C. § 4241, the government shall also file a certification that the court which ordered the § 4241 evaluation has been notified of the pending action against the respondent before this court.

2. The initial psychiatric assessment will be completed by the respondent's treating psychiatrist or psychologist at FMC-Butner and will include that health professional's assessment and recommendation concerning the respondent's mental condition and dangerousness. This will enable the court to have a concise and relevant summary of the respondent's mental condition and dangerousness at the time of the filing of the motion or certificate.

3. The proposed order will order the appointment of counsel for the respondent, order the appointment of an additional mental health examiner of the respondent's choosing under 18 U.S.C. § 4247(b), and provide a space for the court to set a hearing date.

4. The respondent's court-appointed counsel and additional mental health examiner will be

allowed to review and copy the respondent's record. The record may be shown to the respondent in the discretion of respondent's counsel or additional mental health examiner; provided, however, that the Bureau of Prisons may, by motion, seek a protective order to prevent the disclosure of any document which it contends would be harmful to the respondent or others.

5. There being no doctor-patient relationship between the additional mental health examiner and the respondent, the United States Attorney shall be permitted to communicate with the additional mental health examiner.

6. The additional mental health examiner shall submit his or her report to the court not later than 12 o'clock noon on the seventh day preceding the scheduled hearing. The fees and costs of the additional mental health examiner shall be paid by the Department of Justice.

7. It is necessary that respondent's counsel and additional mental health examiner have access to the respondent and the respondent's records in order to evaluate the respondent and prepare for the hearing. To ensure the necessary access, FMC-Butner will appoint a person to serve as a contact to coordinate visits of counsel and additional mental health examiners and procure the necessary records. FMC-Butner will make the respondent and the records available to respondent's counsel and additional mental health examiner any time during the institution's normal business hours. However, counsel and the additional mental health examiner will need to call the institution at least 24 hours prior to any intended visitation time to arrange for the appropriate staff to be available. The staff will not be responsible for copying documents but will make facilities available to the counsel and additional mental health examiner to copy the documents needed.

8. Where the respondent was admitted to FMC-Butner from another district by way of order under 18 U.S.C. § 4241, FMC-Butner will submit the § 4241 report to the court of original

jurisdiction no later than two weeks prior to the expiration of the § 4241 evaluation period. This will give the court of original jurisdiction time to determine whether to continue the respondent's evaluation and treatment under § 4241 or whether to have FMC-Butner pursue the respondent's commitment in this court under 18 U.S.C. § 4246, so that potential jurisdictional conflicts may be minimized.

9. In the case of a conditional release under 18 U.S.C. § 4243 or § 4246, the original order allowing conditional release shall contain language stating that if a request to modify or terminate the conditions of release is made, the party so requesting shall submit adequate documentation supporting the request to the court, with copies to the Supervising U.S. Probation Officer, the offices of the United States Attorney and the Federal Public Defender for the Eastern District of North Carolina, and the warden of the facility where the respondent was last housed prior to his conditional release.

SO ORDERED this 1st day of December, 2009.



LOUISE W. FLANAGAN
Chief U.S. District Judge

B. INITIAL COMMITMENT PROCEDURES PRIOR TO COMMITMENT PURSUANT TO 18 U.S.C. §§ 4243, 4245 AND 4246

1. All commitment petitions under 18 U.S.C. § 4245 shall be brought as motions for hearing to determine the present mental condition of the respondent and shall be electronically filed by the government, along with an attached proposed order. The government shall submit separately by notice of manual filing an initial psychiatric assessment of the respondent.

In cases brought under 18 U.S.C. § 4246, the government shall electronically file a certificate of mental disease or defect and dangerousness signed by the director of FMC-Butner, along with an attached proposed order. The government shall submit separately by notice of manual filing an initial psychiatric assessment of the respondent. Where the respondent was admitted to FMC-Butner from another district by way of order under 18 U.S.C. § 4241, the government shall also file a certification that the court which ordered the § 4241 evaluation has been notified of the pending action against the respondent before this court.

2. The initial psychiatric assessment will be completed by the respondent's treating psychiatrist or psychologist at FMC-Butner and will include that health professional's assessment and recommendation concerning the respondent's mental condition and dangerousness. This will enable the court to have a concise and relevant summary of the respondent's mental condition and dangerousness at the time of the filing of the motion or certificate.

3. The proposed order will order the appointment of counsel for the respondent, order the appointment of an additional mental health examiner of the respondent's choosing under 18 U.S.C. § 4247(b), and provide a space for the court to set a hearing date.

4. The respondent's court-appointed counsel and additional mental health examiner will be allowed to review and copy the respondent's record. The record may be shown to the respondent in the discretion of respondent's counsel or additional mental health examiner; provided, however, that the Bureau of Prisons may, by motion, seek a protective order to prevent the disclosure of any document which it contends would be harmful to the respondent or others.

5. There being no doctor-patient relationship between the additional mental health examiner and the respondent, the United States Attorney shall be permitted to communicate with the additional mental health examiner.

6. The additional mental health examiner shall submit his or her report to the court not later than 12 o'clock noon on the fifth business day preceding the scheduled hearing. The fees and costs of the additional mental health examiner shall be paid by the Department of Justice.

7. It is necessary that respondent's counsel and additional mental health examiner have access to the respondent and the respondent's records in order to evaluate the respondent and prepare for the hearing. To ensure the necessary access, FMC-Butner will appoint a person to serve as a contact to coordinate visits of counsel and additional mental health examiners and procure the necessary records. FMC-Butner will make the respondent and the records available to respondent's counsel and additional mental health examiner any time during the institution's normal business hours. However, counsel and the additional mental health examiner will need to call the institution at least 24 hours prior to any intended visitation time to arrange for the appropriate staff to be available. The staff will not be responsible for copying documents but will make facilities available to the counsel and additional mental health examiner to copy the documents needed.

8. Where the respondent was admitted to FMC-Butner from another district by way of order under 18 U.S.C. § 4241, FMC-Butner will submit the § 4241 report to the court of original jurisdiction no later than two weeks prior to the expiration of the § 4241 evaluation period. This will give the court of original jurisdiction time to determine whether to continue the respondent's evaluation and treatment under § 4241 or whether to have FMC-Butner pursue the respondent's commitment in this court under 18 U.S.C. § 4246, so that potential jurisdictional conflicts may be minimized.

9. In the case of a conditional release under 18 U.S.C. § 4243 or § 4246, the original order allowing conditional release shall contain language stating that if a request to modify or terminate the conditions of release is made, the party so requesting shall submit adequate documentation supporting the request to the court, with copies to the Supervising U.S. Probation Officer, the offices of the United States Attorney and the Federal Public Defender for the Eastern District of North Carolina, and the warden of the facility where the respondent was last housed prior to his conditional release.

SO ORDERED this 13th day of December, 2007.


LOUISE W. FLANAGAN
Chief U.S. District Judge