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2 **FOR PUBLICATION**

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5 **IN THE SUPERIOR COURT**
6 **FOR THE**
7 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

8 **COMMONWEALTH OF THE**) **CRIMINAL CASE NO. 04-0015(E)**
9 **NORTHERN MARIANA ISLANDS,**) **CRIMINAL CASE NO. 01-0347(E)**
10)
11) **Plaintiff,**)
12)
13 **v.**)
14)
15 **DENNIS A. TAISACAN,**) **ORDER CLARIFYING STANDARD**
16) **OF PROOF FOR REVOCATION**
17) **HEARINGS**
18 **Defendant.**)
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16 THIS MATTER came on for a hearing. August 19, 2004 at 9:00 a.m. in Courtroom 223A,
17 pursuant to Defendant's Motion urging the court to use a standard of proof in a revocation hearing
18 that would require proof beyond a reasonable doubt, or in the alternative, proof by clear and
19 convincing evidence. The Government was represented by Assistant Attorney General Phillip
20 Tydingco. The Defendant was represented by his counsel, Mitchell Ahnstedt, Assistant Public
21 Defender. The Government has filed an opposition to Defendant's motion.

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23 To clarify a general misconception among the bar regarding revocation hearings, the Court
24 finds it necessary to set forth some basic elements that must guide this Court with respect to
25 revocation proceedings. Therefore, the court emphasizes the distinction between a trial and a
26 revocation hearing. A trial seeks to convict a defendant of a crime, a revocation hearing is not for
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1 such purpose. The following case law may be most instructive.

2 In placing a criminal on probation, an act of clemency and grace, the state takes a risk that
3 the probationer may commit additional antisocial acts. *California v. Hainline*, 28 P.2d 16, 17 (Cal.
4 1933). “Where probation fails as a rehabilitative device, as evidenced by the probationer’s failure
5 to abide by his probation conditions, the State has an overwhelming interest in being able to
6 imprison the probationer without the burden of a new adversary criminal trial.” *Maine v. Maier*,
7 423 A.2d 235, 239 (Me. 1980). Requiring proof of probation violations by a standard stricter than
8 a preponderance of the evidence would diminish the flexibility with which probation revocation may
9 be employed by judges and could, in some instances, force our already overburdened trial judges
10 to give probationers virtually a second trial of their violations. *See United States v. Smith*, 571 F.2d
11 370, 372 (7th Cir. 1978). This could result in poor-risk, convicted criminals remaining at large, and
12 would further tax limited judicial resources by complicating and lengthening revocation
13 proceedings. *Id.*

14 Turning now to Defendant’s main contention that the Commonwealth should use the same
15 standard of proof for revocation hearings that is used in a criminal trial, that of beyond a reasonable
16 doubt, as is done in Colorado. The Colorado statute Defendant urges this Court to accept, leaves
17 much to be desired, in that it would entitle a defendant, for all practical purposes, to a full criminal
18 trial. Colorado is the only state that is contrary to federal law, and upon information and belief, to
19 all other states with respect to this issue. Furthermore, such a policy for probationers is contrary to
20 sound public policy. As such, a review of pertinent case law is necessary.

1 When the trial court, in its discretion, acts to revoke the probation of a defendant, it is well
2 settled in the Commonwealth that the proper standard of proof is far less than that required in a
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4 criminal trial. *Commonwealth v. Santos*, 4 N.M.I. 348, 350 n. 3 (1996) (citing *United States v.*
5 *Guadarrama*, 742 F.2d 487, 489 (9th Cir. 1984)). In *Guadarrama*, the Ninth Circuit Court of
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7 Appeals held, “[t]he standard of proof required is that evidence and facts be such as reasonably []
8 satisfy the judge that the probationer’s conduct has not been as required by the conditions of
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10 probation.” *Id.* The *Guadarrama* court also noted a lower standard of proof than that suggested by
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12 Defendant, stating: “[t]he judge may revoke probation when *reasonably satisfied* that a state or
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14 federal law has been violated, and conviction is not essential.” *Id.* (emphasis added). The required
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16 standard of proof is reiterated throughout case law.

17 That standard of proof is: “that evidence and facts be such as to reasonably to satisfy the
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19 judge that the conduct of the probationer has not been as good as required by the conditions of
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21 probation.” *United States v. Bonanno*, 452 F. Supp. 743, 747 (N.D. Cal. 1978), *aff’d*. 595 F.2d 1229
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23 (9th Cir. 1979) (quoting *United States v. Francischihe*, 512 F.2d 827, 829 (5th Cir. 1975)). The
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25 judge may revoke probation when “reasonably satisfied that a state or federal law has been violated,
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27 and conviction is not essential.” *United States v. Carrion*, 457 F.2d 808, 809 (9th Cir. 1972); *see*
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29 *also Kartman v. Parratt*, 535. F.2d 450, 458 (8th Cir. 1976).

30 The constitutionality of proof by a preponderance of the evidence of the facts supporting

1 probation revocation derives from the fact that “[r]evocation deprives an individual, not of the
2 absolute liberty to which every citizen is entitled, but only of the conditional liberty properly
3 dependent on observance of special [] restrictions.” *California v. Coleman*, 533 P.2d 1024, 1033
4 n.8 (Cal. 1975) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 480, 92 S. Ct. 2593, 2600, 33 L. Ed.
5 2d 484, 494 (1972)). Even though deprivation of this conditional liberty is “a serious deprivation
6 requiring that the [probationer], be accorded due process,” “revocation . . . is not part of a criminal
7 prosecution.” *Gagnon v. Scarpelli*, 411 U.S. 778, 781, 93 S. Ct. 1756, 1759, 36 L. Ed. 2d 656, 661
8 (1973); *Morrissey*, 408 U.S. at 480, 92 S. Ct. at 2600, 33 L. Ed. 2d at 494. “Accordingly, probation
9 may be revoked despite the fact that the evidence of the probationer’s guilt may be insufficient to
10 convict him of the new offense.” *In re Coughlin*, 545 P.2d 249, 252 (Cal. 1976). The revocation
11 hearing is not the equivalent of a criminal prosecution; in other words, the hearing is not a
12 proceeding which could result in a conviction. *See Price v. Georgia*, 398 U.S. 323, 329, 90 S. Ct.
13 1757, 1761, 26 L. Ed. 2d 300, 305 (1970).

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21 Finally, although a district court judge is required to preside in federal probation
22 revocation hearings, this fact does not transform the revocation hearing into a criminal prosecution.
23 *See Banks v. United States*, 614 F.2d 95 (6th Cir. 1980); FED. R. CRIM. P. 32.1(a)(2).

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25 Further, in the case of *United States v. Miller*, 797 F.2d 336 (6th Cir. 1986), the court
26 stated in part, that Miller was not officially charged with these crimes; nor was the purpose of the
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1 hearing to finally determine whether Miller, in fact, had committed these crimes. Rather, the
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3 government wished to establish that Miller was a poor probation risk. The hearing was convened
4 to determine whether Miller had violated conditions of his probation and whether his probation
5 should be revoked as a result of such violations.
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7 Despite Defendant’s assertions,

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9 [t]he correct standard of proof to be used by the trial court in assessing
10 whether there exists “reason to believe” the probationer has violated his
11 probation or committed a new offense has been variously stated . . . the
12 authorities are unanimous in concluding that the standard of proof used
13 in a criminal trial, namely the “beyond a reasonable doubt” standard . .
14 . is inapplicable to the probation revocation hearing.

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16 *In re Coughlin*, 545 P.2d at 251 (internal citations omitted).

17 Even the U.S. Supreme Court has held that a probation revocation hearing is not a
18 stage in the criminal prosecution of an individual, and reasoned that such hearings are *administrative*
19 in nature and are not conducted to determine the defendant’s guilt or innocence. *Morrissey*, 408
20 U.S. 471, 480, 92 S. Ct. 2593, 2600, 33 L. Ed. 2d 484, 494 (1972).

21 Defendant’s other argument, urging the Court to distinguish between a technical
22 violation of probation and a violation that occurs by committing a new crime, is without any
23 authority other than said Colorado statute which this Court unequivocally rejects. Sections 4105 and
24 4113(b) of Title 6 of the Commonwealth Code grant the court great discretion in whether or not to
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