

1 30 days in custody with 26 days suspended, a \$600 fine, and one year probation. On September 22,
2 2004, Defendant was arrested and charged with assault with a deadly weapon.¹ Defendant pled not
3 guilty and was released from custody upon posting bail. Thereafter, the Government filed a motion
4 to revoke Defendant's probation, citing Defendant's violating the terms of his probation by breaking
5 CNMI laws.

6 In his motion, Defendant states that the standard of proof at a revocation hearing is clear and
7 convincing while the standard of proof for a criminal conviction is beyond a reasonable doubt.
8 Defendant also states that a Defendant in both a probation revocation hearing and at a criminal trial
9 has a right to testify on his own behalf, or may elect to remain silent. Finally, Defendant states that
10 a Defendant is not required to reveal the details of his defense prior to trial. Based on the foregoing,
11 Defendant argues that if he were required to face a revocation hearing prior to his criminal trial, he
12 would be forced to either forego presenting a defense in the probation revocation hearing, or present
13 a defense at the revocation hearing and reveal the details of his assault with a deadly weapon
14 defense.

15 DISCUSSION

16 It is well established law that a probation revocation prior to the trial of a probationer who
17 has been charged with another crime does not violate any constitutional rights. Furthermore, this
18 very Court has clarified in past published decisions that there is a distinction between a trial and a
19 revocation hearing. *See Commonwealth v. Taisacan*, Crim. No. 04-0015 (N.M.I. Super. Ct. Sept.
20 2, 2004) (Order Clarifying Standard of Proof for Revocation Hearings) (hereafter "*Taisacan*").
21 Specifically, the Court held in *Taisacan*, that:

22 [i]n placing a criminal on probation, an act of clemency and grace, the state takes a
23 risk that the probationer may commit additional antisocial acts. Where probation
24 fails as a rehabilitative device . . . the State has an overwhelming interest in being
able to imprison the probationer without the burden of a new adversary criminal trial.

25 *Id.* at 2 (internal citations and quotations omitted). As such, contrary to Defendant's assertions, the
26 standard of proof required to revoke probation is "that evidence and facts be such as reasonably []

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¹ See Criminal Case No. 04-0295.

1 satisfy the judge that the probationer's conduct has not been as required by the conditions of the
2 probation. . . . [a] conviction is not essential." *Id.* at 3 (internal citations omitted).

3 Here, Defendant's probation was predicated on Defendant not violating any CNMI or federal
4 laws. For the Government to meet its burden in revoking probation, the Government need not even
5 officially charge the probationer with a crime, and a showing of the probationer's guilt need not be
6 proven; rather, the Government need only establish that the probationer is a poor probation risk. *Id.*
7 at 3-4. Conversely, in a criminal trial, the Government must prove each and every element of the
8 crime beyond a reasonable doubt. As such, defending a new crime is a much more detailed,
9 elaborate process than a revocation hearing with a different focus. Consequently, holding a
10 revocation hearing before a criminal trial does not chill the Defendant's exercise of his constitutional
11 right to defend himself in the hearing to order to protect himself and avoid revealing the details of
12 his criminal defense. As this Court stated less than a year ago in *Taisacan*, "the frequent requests
13 of defense counsel to have a revocation hearing . . . to follow the trial of a new crime lacks any legal
14 basis." *Id.* at 6. Nothing has changed since then, and the Court once again finds no merit in the
15 Office of the Public Defender's motion.

16 CONCLUSION

17 For the foregoing reasons, Defendant's motion to delay his probation revocation hearing until
18 after his criminal trial is hereby DENIED.

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20 SO ORDERED this 14th day of June 2005.

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22 /s/
23 DAVID A. WISEMAN
24 Associate Judge
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