

1 for the appointment of a psychiatrist or other health care professional to conduct a competency
2 evaluation in accordance with 6 CMC § 6604.¹ In his motion and at oral argument, defense counsel
3 stated that he has had limited ability to effectively communicate with his client and believes that a
4 psychological evaluation is necessary. The Government opposed the motion, arguing that there is
5 no reasonable cause to infer incompetence. As such, it opines that a competency determination is
6 not warranted and an expert should not be provided for evaluative purposes. At a prior status
7 conference, the court observed the defendant first hand and found that he was nonresponsive to
8 simple questions regarding his name, date of birth, and names of his parents.² He repeatedly
9 responded to the court's questions with "uhh" and "mmmm" as if he did not understand what was
10 being asked. He also appeared dazed and incoherent.

11 **III. DISCUSSION**

12 **a. Legal Standard**

13 "Whenever a plea of not guilty by reason of mental illness, disease or defect is entered or a
14 notice is given pursuant to the Commonwealth Rules of Criminal Procedure the court shall appoint
15 at least one qualified psychiatrist or other mental health professional [...] to examine the defendant
16 and to report upon his mental condition." 6 CMC § 6604(a). Furthermore, the court on its own
17 accord shall appoint such an expert when it believes that expert evidence concerning a defendant's
18 mental condition is or will be required by the court or either party. 6 CMC § 6604(b). Clearly, the
19 purpose of the psychiatric evaluation is to report on the defendant's mental condition.

20 The issue before the court is what a defendant must show for the court to order an
21 examination under 6 CMC § 6604(a).

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23 ¹ Defendant's motion is captioned as "Motion for Competency Determination" and may be construed as a request for a
hearing under 6 CMC § 6606 or § 6607. However, after having read the motion, it is unmistakable that the request is
one for the appointment of a psychiatrist to conduct an evaluation under 6 CMC § 6604(a).

24 ² The court observed the defendant during a status conference on September 4, 2012 and also at the hearing for the
instant motion on September 12, 2012.

1 **b. Analysis**

2 The Government opposed Defendant’s motion and argued that a “*competency*
3 *determination*” is not required until such time as a reasonable basis exists to believe that a criminal
4 defendant may be incompetent to stand trial. It also argued that the court should not appoint an
5 expert where there is no evidence presented that would provide a reasonable basis to believe
6 incompetence. It believes that criminal defendants facing long prison sentences might be motivated
7 to seek an incompetence finding as a preemptive defense. Lastly, it argued that the court recently
8 released a dangerous individual because he was found incompetent to stand trial, and doing so is a
9 disservice to the community.

10 The Government cited several United States statutes and cases in support of its position.
11 However, the majority of these statutes and cases deal with whether a competency hearing is
12 required and not whether a defendant is entitled to meet with and be evaluated by a psychiatrist.
13 The most compelling of the cases cited by the Government is *CNMI v. Camacho*, (2002) 6 NMI
14 505. However, this case is clearly disguisable. The issue in *Camacho* was whether the trial court
15 erred in failing to order a competency hearing “prior to sentencing”. *Id.* at ¶ 2. The clear inference
16 to be drawn is that the trial in *Camacho* had already commenced before a competency hearing was
17 requested. The present motion, however, is a pretrial motion seeking the appointment of a
18 psychiatrist. As discussed below (*infra* note 3), there is a distinction in this jurisdiction’s statute
19 relating to the timing of competency hearing requests. Further, the *Camacho* court cited 6 CMC §
20 6603, which discusses the standard for determining competency at trial or sentencing. The present
21 pretrial motion is not dealing with whether Defendant can be considered competent under that
22 statute. At present, there is no evidence to make such a determination. Defense counsel is not
23 qualified to make that determination, nor has he definitively stated that his client is incompetent.
24 Rather, this motion has raised the question of Defendant’s competence. In order to fully explore

1 that issue, the motion merely requests that Defendant be examined by a psychiatrist pursuant to 6
2 CMC § 6604(a).

3 The other cases cited by the Government are also easily distinguished in that they dealt
4 with the issue of competency after the commencement of trial³, at the sentencing phase, or after a
5 criminal defendant had already been examined by at least one qualified psychiatrist. The
6 Government entirely ignores 6 CMC § 6604, the CNMI statute upon which this motion is
7 predicated. In general, the Government's objection and arguments are misplaced.

8 Defendant's motion requests that a psychiatrist be appointed to evaluate his mental
9 condition under 6 CMC § 6604(a), which mandates the court to appoint a mental health
10 professional when notice is given pursuant to the Rules of Criminal Procedure. Defendant properly
11 noticed the court in writing of this motion. In answer to the issue raised in this case, the court rules
12 that under these circumstances a defendant need only provide reasonable cause in order to have an
13 expert appointed for evaluative purposes. Hence, the court may not deny a motion for a psychiatric
14 evaluation unless the motion is frivolous or made in bad faith.

15 The Government claims that there is no evidence to suggest that Defendant is incompetent,
16 that the only things the court has to rely upon are defense counsel's word and Defendant's
17 unwillingness to answer the court's questions at an earlier hearing. The court does not agree.

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19 ³ Here again, the facts of this case, in addition to our statute can be distinguished. 6 CMC § 6606(a) states that "[a]t any
20 time **before** the commencement of the trial, either party may make a motion for a hearing on the defendant's
21 competency to be proceeded against, or the court on its own motion may order such a hearing. Thereupon, **the court**
22 **shall** suspend all proceedings in the criminal prosecution and **order a psychiatric examination** pursuant to 6 CMC
23 6604." (emphasis added). Alternatively, 6 CMC § 6606(b) states that "[a]t any time **after** the commencement of the
24 trial, but before sentence, if it appears on the motion of either party or the courts own motion that there is **reasonable**
cause to believe the defendant is incompetent to be proceeded against or sentenced the court shall suspend all
proceedings in the criminal prosecution and order a psychiatric examination pursuant to 6 CMC 6604. (emphasis
added).

Given these rules, even if Defendant had requested a competency hearing, the court would have no choice but to grant
it. This jurisdiction makes a clear distinction as to when the court has discretion to order a competency hearing. It is
only after a trial has started that such a choice is within the court's discretion. The request for a competency hearing
must be granted at the pretrial phase upon request by any party.

1 This Court observed Defendant at two separate hearings and listened to counsel's statements
2 that he has been unable to have any meaningful discussion with Defendant. The court finds, based
3 on its own observations and the statements of defense counsel, that there is reasonable cause to
4 order a competency evaluation. *Drope v. Missouri*, 420, U.S. 162, 172 (1974) (as one with "the
5 closest contact with the defendant", defense counsel's representations are an unquestionable factor
6 to consider, citing *Pate v. Robinson*, 383 U.S. 375, 391 (1966); *Personal Restraint of Fleming*, 142
7 Wn.2d 853, 863 (2001) (factors a court may consider in determining whether to move forward with
8 a competency inquiry include the defendant's appearance, demeanor, conduct, personal and family
9 history, past behavior, medical and psychiatric reports, and the statements of counsel).

10 Lastly, failing to appoint a doctor to conduct an evaluation would deny a criminal defendant
11 his most basic of due process rights. The Government's position that a criminal defendant would try
12 to falsely claim incompetence indicates a lack of faith in the ability of trained health care
13 professionals to distinguish between the criminal defendant who is truly incompetent and one who
14 is merely trying to avoid trial. The court does not have this same lack of confidence in licensed
15 health care personnel.⁴ Furthermore, given the infrequency with which such motions are filed, the
16 court does not find this argument credible. Moreover, the Government's concern about the efficacy
17 of releasing criminal defendants found incompetent into the community is one that is better
18 addressed by the legislature. This court must follow the law and cannot create new standards
19 predicated on the fear of possible future transgressions. *Drope*, 420 U.S. at 172 (1974) ("the failure
20 to observe procedures adequate to protect a defendant's right not to be tried or convicted while
21 incompetent to stand trial deprives him of his due process right to a fair trial.) The
22 Commonwealth's statute is clear that the trial court must appoint a licensed health care professional

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24 ⁴ The question of the sanity of an accused is generally recognized to be best assessed by medical experts, preferably by those trained in psychiatry. As such, statutes have been enacted in many jurisdictions providing for the medical examination of an accused when a question has arisen as to his sanity. 32 A.L.R.2d 434.

1 in order to determine the defendant's ability to stand trial once the issue of competency is
2 appropriately raised.

3 **IV. CONCLUSION**

4 Based on the foregoing, a defendant need only provide reasonable cause in order to have a
5 medical expert appointed for evaluative purposes under 6 CMC § 6404(a). Here, Defendant's
6 motion and his counsel's statements at the hearing are sufficient to provide notice of a potential
7 competency issue. Defendant's Motion to appoint a psychiatrist is **GRANTED**. In accordance
8 with 6 CMC § 6606, the proceeding in this matter is stayed until a psychological evaluation of
9 Defendant has been completed.

10 **SO ORDERED this 18th day of September, 2012.**

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14 PERRY B. INOS
Associate Judge
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