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<b>District Court, El Paso County, Colorado</b> Court address: <b>270 South Tejon</b> <b>Colorado Springs, CO 80903</b> Phone Number: <b>(719) 452-5446</b>		FILED-DISTRICT & COUNTY COURTS-EL PASO CO., CO  DEC 23 2015  DIVISION 10
People of the State of Colorado, Plaintiff,  v  ROBERT LEWIS DEAR, JR., Defendant.		
Attorney or Party without Attorney (Name and Address): Phone Number:                      Email: FAX Number:                      Atty.Reg#:		Case Number: 15CR5795 Division 10 Courtroom W570
ADVISEMENT REGARDING COMPETENCY EVALUATION ORDER (C-005)		

Dated this 23<sup>rd</sup> day of December, 2015

BY THE COURT:

*Si Macho*  
District Court Judge

EC

## **ADVISEMENT REGARDING COMPETENCY EVALUATION ORDER**

1. In order to determine whether you are competent to proceed, the Court must first determine whether you have a "mental disability" or a "developmental disability." You are incompetent to proceed if, as a result of a "mental disability" or a "developmental disability," you either: (1) do not have sufficient present ability to consult with your lawyer with a reasonable degree of rational understanding in order to assist in your defense, or (2) do not have a rational and factual understanding of these criminal proceedings.
2. A "mental disability" is a substantial disorder of thought, mood, perception, or cognitive ability that results in marked functional disability, significantly interfering with adaptive behavior. A "mental disability" does not include acute intoxication from alcohol or other substances, or any condition manifested only by antisocial behavior, or any substance abuse impairment resulting from recent use or withdrawal. However, substance abuse that results in a long-term, substantial disorder of thought, mood, or cognitive ability may constitute a mental disability.
3. A "developmental disability" is a disability that has manifested before the person reaches twenty-two years of age, that constitutes a substantial disability to the affected individual, and is attributable to mental retardation or other neurological conditions when such conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation.
4. The Court may make a preliminary finding regarding your competency to proceed, which shall be a final determination, unless either party objects within fourteen days after the preliminary finding.
5. If either party objects to the Court's preliminary finding, or if the Court determines that it has insufficient information to make a



preliminary finding, the Court shall order that you be evaluated for competency by the Department of Human Services. The Department of Human Services shall prepare a report, a copy of which shall be provided to the Court, the prosecution, and your counsel. The report shall include, but not be limited to: (1) the name of each physician, psychologist, or other expert who examined you; (2) a description of the nature, content, extent, and results of the evaluation and any tests conducted; (3) a diagnosis and prognosis of your mental disability or your developmental disability; (4) an opinion as to whether you suffer from a mental disability or a developmental disability; and (5) an opinion as to whether you are competent to proceed. The competency examiner may question you regarding confessions and admissions you may have made and any other evidence of the circumstances surrounding the commission of the offenses charged, as well as your medical and social history, when conducting the examination.

6. Either party may request a hearing or a second evaluation within fourteen days of receiving the Court-ordered report. If neither party requests a hearing or a second evaluation, the Court shall enter a final determination regarding your competency based on the information available to the Court at that time.
7. If either party makes a timely request for a hearing, the hearing shall be held within thirty-five days after the request for the hearing or, if applicable, within thirty-five days after the filing of the second evaluation report. The time for the hearing may be extended by the Court after a finding of "good cause." At such hearing, you and the prosecution are entitled to: (1) be present in person; (2) examine any reports of the evaluation or other matter to be considered by the Court as bearing upon the determination of competency; (3) introduce evidence, summon witnesses, cross-examine opposing witnesses or witnesses called by the Court; and (4) make opening statements and closing arguments. The Court may cross-examine any witness called by you or the prosecution and may summon and examine its own witnesses.



8. You have the right to confer with counsel prior to submitting to a competency examination. If you are indigent and without funds to employ counsel, the Court will appoint counsel for you at State expense. Indeed, in this case, the Court has already appointed you counsel free of cost to you because the Court has found you to be in custody and indigent.

9. The location of any competency evaluation shall be determined by the Court. In determining the place where the evaluation is to be conducted, the Court shall give priority to the place where you are in custody (in this case, the El Paso County Jail), unless the nature and circumstances of the evaluation require designation of a different facility.

10. By statute, you are required to cooperate with the competency evaluator and other personnel conducting the competency examination. You have the right not to answer any questions or make any statements during the competency examination. However, such refusal may be considered noncooperation. Any statements you do make during the course of the evaluation shall be protected as described in paragraphs 11, 12 and 13 of this Advisement.

11. If you do not cooperate with the competency evaluator or other personnel, and your lack of cooperation is not the result of a mental disability or a developmental disability, the fact of your noncooperation may be admissible at any hearing to determine your competency or at any hearing to determine whether, after being found incompetent, you have been restored to competency. However, the fact of your noncooperation may only be introduced at such hearings to rebut any evidence you may offer with regard to your competency.

12. If you do not cooperate with the competency evaluator or other personnel, the competency evaluator may also offer an opinion regarding your competency based upon confessions, admissions, and any other evidence of the circumstances surrounding the commission of the offenses charged, as well as your known medical and social history, and that opinion may be admissible



into evidence at any competency hearing or competency restoration hearing.

13. Evidence acquired directly or indirectly for the first time from a communication derived from your mental processes during the course of a competency evaluation is not admissible against you on the issues raised by a plea of not guilty, except to rebut any evidence you offer regarding your mental condition to show your incapacity to form a culpable mental state.
14. Evidence acquired directly or indirectly for the first time from a communication derived from your mental processes during the course of a competency evaluation proceeding is admissible at any capital sentencing hearing held pursuant to section 18-1.3-1201 of the Colorado Revised Statutes only to prove the existence or absence of any mitigating factor.
15. If you testify on your own behalf at trial or at any capital sentencing hearing held pursuant to section 18-1.3-1201 of the Colorado Revised Statutes, evidence acquired directly or indirectly for the first time from a communication derived from your mental processes during the course of a competency evaluation may be used to impeach or rebut your testimony.
16. If, after the competency examination ordered by the Court has been completed, you wish to be examined by a competency evaluator of your own choosing, the Court, upon timely motion, shall order that the competency evaluator chosen by you be given a reasonable opportunity to conduct a second evaluation. If you are indigent and without funds to employ a competency evaluator, the Court will appoint an evaluator at State expense.
17. If you have raised the issue of your competency to proceed, or if the Court has determined that you are incompetent to proceed and has ordered a you to undergo competency restoration treatment, any claim by you to confidentiality or privilege is deemed waived, and the prosecutors, your attorneys, and the Court are granted access, without your written consent or further Order of the Court, to: (1) reports of competency evaluations,

including second competency evaluations; (2) information and documents relating to the competency evaluation created by, obtained by, reviewed by, or relied on by an evaluator performing a Court-ordered evaluation; and (3) the evaluator, for purposes of discussing the competency evaluation.

18. If the Court makes a final determination that you are not competent to proceed, the Court will suspend the proceedings, other than preliminary matters, and the Court may either release you on bond and order restoration proceedings and/or mental health treatment at a community-based program, or the Court may commit you to the Department of Human Services for treatment. If committed to the Department of Human Services, you will be committed for so long as you remain incompetent to proceed, not to exceed the maximum sentence for the crime for which you are charged.\* If you are found incompetent to proceed, and the Court orders competency restoration proceedings, any claim of privilege or confidentiality shall be deemed waived as outlined in paragraph 15 of this Advisement.

*Court in oral ADVISEMENT Added language AT \**  
*"less any earned time to which you would*  
*be entitled under Colo. Law."*

*Be matching*