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| **DIDS Attorney Observation Report** | | **Reviewer** | Derrick Lopez |
| Date | May 28, 2025 | County | Elko |
| Court | Elko Justice Court – Department B | Judge | Bryan Drake |
| Defense Attorney | Tim Havens  Deputy Public Defender | Prosecutor(s) | Justin Barainca, Deputy DA, and  No prosecutor for some hearings |
| Attorney Present | In Person / Virtual / w/Client | Number of Clients | 8 |
| Defendants Present | In Person / Virtual / Off-Site | Custodial Status | IC / OOC / Blend |
| Number of Clients  In Custody | 5 | Number of Clients  Out-of-Custody | 3 |
| Cases Continued  In Custody | 0 | Cases Continued  Out-of-Custody | 1 |
| Hearing Types | 48-hour Bail Hearing, Arraignment, Pre-Preliminary Hearing, and Preliminary Hearing | | |
| **Attorney's Preparedness** | | | |
| Did the Attorney appear for court? | | | Yes / No / N/A |
| Did the Attorney have the file? | | | Yes / No / N/A |
| Did the Attorney appear to have had a substantive, confidential meeting with  each client before court? | | | Yes / No / N/A |
| Did the Attorney appear prepared to handle their clients' cases? | | | Yes / No / N/A |
| **How prepared did the Attorney appear?**  Tim appeared to be prepared for 7 of his 8 cases today. The one case was appointed the Public Defender’s Office that day during the client’s out of custody arraignment hearing. The client requested the appointment of an attorney, the PD Office was appointed, Tim was present and assisted the client who pled guilty to both charged counts. It did not appear that Tim would have had time to obtain and review the discovery and discuss it with the client. | | | |
| **How knowledgeable was the Attorney about their cases?**  Tim appeared to be knowledgeable about his 7 of his 8 cases today. (See the note above regarding the one case). | | | |
| **The Attorney's courtroom advocacy skills were:**  Tim’s advocacy skills were good. | | | |
| **How was the Attorney/client communication?**  The attorney-client communication appeared to be good. | | | |
| **Case Stage-Specific Issues** | | | |
| Did the Attorney argue for pretrial release/OR, or for reasonable bail? | | | Yes / No / N/A |
| Did the Attorney counsel each client to refrain from waiving trial rights until the  attorney completed investigation of the case? | | | Yes / No / Unknown |
| Did the Attorney appear to have counseled clients to refrain from waiving any  rights at arraignment? | | | Yes / No / N/A |
| Did the Attorney appear to adequately advise clients of the consequences of  accepting a plea or going to trial, including any collateral consequences? | | | Yes / No / Unknown |
| Did the Attorney present mitigating evidence and provide argument at  sentencing? | | | Yes / No / N/A |
| Did the Attorney address the Presentence Investigation Report (PSI) and/or  Psychosexual Evaluation/Risk Assessment appropriately? | | | Yes / No / N/A |
| Did the court require defendant(s) to reimburse the entity for representation? | | | Yes / No / N/A |
| **Overall Assessments** | | | |
| Does the Attorney appear to have a sustainable workload? | | | Yes / No / N/A |
| Overall, does the Attorney appear to be providing effective representation to  their clients? | | | Yes / No / N/A |
| **Remarks/Recommendations/Notes:**  Tim had 8 clients scheduled for today’s court session:   1. First client: **Arraignment hearing**. The client was out of custody and present in person. No prosecutor was present for this hearing. Tim was present in the courtroom with the client.  * The client was arraigned on the charge of DUI. The client pled Not Guilty and requested that a Pretrial hearing be scheduled. * The court scheduled a Pretrial hearing on 8/28/2025 at 10:00 a.m.   Concern: there was no mention in court of the client’s right to a trial in 60 days or waiver of that right.   1. Second client: **Arraignment hearing**. The client was out of custody and present in person. No prosecutor was present for this hearing. Tim was present in the courtroom with the client.  * The client applied for the appointment of a public defender. The court reviewed the financial declaration and verbally canvassed the client regarding the client’s financial situation. * The court appointed the public defender’s office. The court took a recess to allow Tim to speak with the client. * Following the recess, the court arraigned the client on the criminal complaint charging DUI and Open Container. * The client pled guilty to both counts. * The court took another recess to allow Tim to review the court’s DUI Waiver of Rights form. * Following the second recess, Tim presented to the court the signed DUI Waiver of Rights form. * Following the court canvass, the court accepted the client’s guilty pleas. * Tim requested the court to impose the statutory minimum penalties and to allow the client to perform community service work in lieu of active jail time. * The client made a statement of allocation. * The court sentenced the client on the DUI charge to: 48 hours jail with credit for 22 hours time served. The 26-hour balance of the jail time may be completed through community service work. The court imposed the statutory minimum fine of $400 plus the assessment fees for a total due of $585. [The client requested to be able to pay the $585 at a rate of $50 per month beginning in June 2025.] The court ordered the client to pay $50 on the 5th of each month beginning on 6/5/2025 and continuing on the 5th of each month until the $585 is paid in full. The court ordered the client to complete a DUI school, attend a Victim Impact Panel, and install an Interlock Device on his vehicle for 185 days. The court sentenced the client to an additional 2 days jail, suspended those 2 days for 1 year on the conditions that the client complete all the terms of his sentence as described above and that he maintain “good conduct.” * I did not hear the court impose a sentence for the Open Container charge.   Concern: Did Tim receive and review the discovery and discuss it with his client prior to his client pleading guilty?   1. Third client: **Arraignment hearing**. The client was out of custody and not present in court. No prosecutor was present for this hearing. A Spanish interpreter was present to assist the absent client. Tim was present in the courtroom.  * Tim requested a continuance expressing concern that the client may have misunderstood the court date due to a language barrier. * The court issued an Order to Show Cause rather than a bench warrant and set the next hearing for 7/16/2025 at 1:30 p.m.  1. Fourth client: **Arraignment hearing**. The client was in custody and present by Zoom video from the Elko County Jail. No prosecutor was present for this hearing. Tim had left the courtroom and gone to the jail and was now present in the jail video room with the client.   **Remarks/Recommendations/Notes (continued from the previous page):**   * Tim informed the court that the Public Defender’s Office represents the client in another case. The client is pending a competency determination in that other case. Tim asked the court to stay these proceedings until the competency evaluation is complete. * The court ordered that these proceedings are stayed pending a competency determination. * In response to a question from Deputy Public Defender Thomas O’Gara, who was also present in the jail for another client, the court will rely on the evaluations already being conducted to determine competency rather than order separate evaluation.  1. Fifth client: **Preliminary hearing**. The client was in custody and present by Zoom video from the Elko County Jail. Tim was present in the jail video room with the client. Deputy District Attorney Justin Barainca was present on behalf of the State.  * Tim informed the court that the parties had reached a resolution of the case. However, there are still a few details that need to be finalized. Tim asked that the preliminary hearing scheduled for today be vacated and that a pre-preliminary hearing be scheduled. Tim explained that the client is willing to waive his right a speedy preliminary hearing today. The expectation is that the parties will have finalized their agreement and the client will waive his right to a preliminary hearing at the next court hearing to have the case bound over to the District Court. * The client waived his right to a speedy preliminary hearing. * The court vacated today’s preliminary hearing and scheduled a pre-preliminary hearing for 6/12/2025 at 9:00 a.m.  1. Sixth client: **Arraignment hearing**. The client was in custody and present by Zoom video from the Elko County Jail. Tim was present in the jail video room with the client. Deputy District Attorney Justin Barainca was present on behalf of the State.  * The State had not filed a Criminal Complaint. * The State informed the court that it does not oppose an Own Recognizance release of the client with conditions of no contact with the victim, supervision by Pretrial Services, testing for sobriety 3 times per week, and “good conduct.” * The court ordered the client released on her own recognizance with the conditions requested by the prosecutor plus two additional conditions: maintain contact with the Public Defender’s Office at least 1 time per week and attend all future court hearings. * The next court hearing will be set through judicial calendaring.   Concern: if the court waits for the District Attorney’s Office to file a Criminal Complaint before it schedules the next hearing, and the DA does not file a Criminal Complaint soon, for whatever reason, will the Court or Public Defender’s Office schedule a review hearing to address the client’s conditions of release in light of no Criminal Complaint being filed yet?   1. Seventh client: **48-hour Bail hearing**. The client was in custody and present by Zoom video from the Elko County Jail. Tim was present in the jail video room with the client. Deputy District Attorney Justin Barainca was present on behalf of the State.  * The State argued for monetary bail. The client is currently in custody following an arrest for 3 felony drug charges. The bail was set at $100,000 prior to this hearing. The State pointed out to the court that, in addition to other factors mentioned by the prosecutor, the client has 4 other open criminal cases pending at the time of these new offenses. * Tim argued that the State failed to meet its burden of proof for monetary bail. Tim stated that the client has lived in the area his entire life, has always shown up for his court hearings, that his parents live in the area, that he was cooperative with the law enforcement officers at the time of his arrest, and that he will abide by any conditions of release that the court deems necessary. Tim also informed the court that the client has a District Court sentencing hearing in June. Tim asked for an O.R. release or in the alternative a $1,000 bail bond.   **Remarks/Recommendations/Notes (continued from the previous page):**   * The client made a statement regarding the bail/custody issue. The client said that he is not a threat to society, that he is waiting for a bed at the Bristlecone residential treatment program in Reno, and that he will not get any more cases. * The court found that the State had met its burden of proof for requiring monetary bail. The court, however, did lower the bail from $100,000 to $45,000 cash or bond. * The court did not set the next court date during the court hearing.   Concern: Since no Criminal Complaint has been filed yet, there has been no arraignment, the right to a preliminary hearing within 15 days has not been triggered. How long will the court keep the client in custody waiting for the State to file a Criminal Complaint?   1. Eighth client: **Arraignment hearing**. The client was in custody and present by Zoom video from the Elko County Jail. No prosecutor was present for this hearing.  * The defendant initially told the court that he wanted to waive his right to an attorney and plead guilty to both counts charged in the Criminal Complaint: (1) DUI and (2) Open Container. * The court explained the maximum possible penalties for both offenses and the statutory minimum penalties for the DUI offense. The court also explained that the State requested that, in the event the defendant pled guilty, the sentencing hearing be set out so that the prosecutor can be present at the sentencing hearing. The court informed the client that whether he pled guilty or not guilty the sentencing would not occur today and would be scheduled for a future date. * The court took recess for the defendant to review and sign the DUI Waiver of Rights Form. * After reviewing the DUI Waiver of Rights form, the client informed the court that he had changed his mind and would like to apply for appointed counsel. * After a verbal canvass by the court regarding the financial status of client, the court appointed PD Office. * Tim, who was still present in the jail video room, joined the client at the jail table. * Tim requested that not guilty pleas be entered on behalf of the client and that the case be set for a bench trial. The client did not waive his right to a trial within 60 days. Tim also requested that a Pretrial hearing be scheduled. * The court did not set a trial date during this court hearing but did schedule a Pretrial hearing for 6/5/2025 at 2:00 p.m. * The client’s custody status was not addressed. | | | |