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| **DIDS Attorney Observation Report** | | **Reviewer** | Derrick Lopez by Zoom video |
| Date | May 16, 2025 | County | Elko |
| Court | Eastline Justice Court | Judge | Kenneth Quirk |
| Defense Attorney | Nestor Marcial Martinez  Deputy Public Defender | Prosecutor(s) | Daniel Roche  Deputy District Attorney |
| Attorney Present | In Person / Virtual / w/Client | Number of Clients | 9 |
| Defendants Present | In Person / Virtual / Off-Site | Custodial Status | IC / OOC / Blend |
| Number of Clients  In Custody | 2 | Number of Clients  Out-of-Custody | 7 |
| Cases Continued  In Custody | 0 | Cases Continued  Out-of-Custody | 3 |
| Hearing Types | Pretrial, Change of Plea, and Sentencing hearings | | |
| **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?**  Nestor appeared to be prepared for 6 of his 9 cases today. The exceptions were 3 clients that Nestor had not spoken with prior to today’s hearing. It was clear with 2 of those 3 clients that Nestor had made attempts to communicate with the client and the client made no effort to get in contact with Nestor. With the other client, I was unable to form an opinion from the court hearing whether the lack of communication was due to the client or some other factor. | | | |
| **How knowledgeable was the Attorney about their cases?**  Nestor appeared to be knowledgeable about his cases today. | | | |
| **The Attorney's courtroom advocacy skills were:**  Nestor’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 / Unknown |
| 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 / N/A |
| 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:**  Nestor represented 9 clients during today’s court session:   1. Client 1: **Pretrial hearing**. The client is out of custody and present in person.  * Nestor requested a continuance on both cases on calendar today. Nestor explained to the court that the client told Nestor that the client has information/evidence he wants to give to Nestor prior to making a decision of the State’s settlement offer. * The State had no objection to the continuance. * The court granted the continuance and set the next hearing for 7/18/2025 at 10:00 a.m.  1. Client 2: **Pretrial hearing**. The client is out of custody and present by Zoom video from a car.  * Nestor informed the court that he has not had an opportunity to speak with the client regarding this case. Nestor requested a continuance to enable them to meet and discuss the case and the settlement offer. Nestor told the client to make an appointment with the Public Defender’s Office. * The client said that he would call the Public Defender’s Office today to schedule an appointment. * The State did not oppose the request for a continuance. * The court continued the pretrial hearing to 6/20/2025 at 11:00 a.m.  1. Client 3: Pretrial hearing. The client is in custody and present by Zoom video from the Elko County jail.   A Spanish interpreter was also present by Zoom video to assist the client.   * Nestor explained to the court that there is an accompanying felony case. The client is eligible for a deferred judgment in that felony case. The Arraignment in District Court is coming up in June 2025. The current offer has this misdemeanor case being dismissed in exchange for his guilty/no contest plea in the felony case. * Nestor requested that this case be set for trial in July (in case client does not accept the settlement offer). * The court set the Trial for 7/18/2025 at 3:00 p.m.  1. Client 4: Pretrial hearing. The client is out of custody and present by Zoom video from a car.  * Nestor spoke with client in a private Zoom chat room prior to the hearing starting. * Nestor informed the court that the parties had reached a settlement. In exchange for the client’s No Contest plea to one count of Reckless Driving - First Offense, the parties will agree to defer the sentencing for 1 year on conditions of “good conduct” and no driving violations. * The client pled No Contest to Reckless Driving – First Offense. * Following the court canvass, the court accepted the No Contest plea. * Both sides jointly recommended a deferred sentencing on conditions of “good conduct” and no driving “moving” violations for 1 year. * Order: the court followed the recommendation but change the deferment period from 1 year to 6 months (11/20/2025). At the conclusion of the 6 months, the case will be dismissed. The prosecutor confirmed that he was ok with the 6-month deferment. The client does not need to appear at the review for dismissal hearing unless she has violated the terms of the deferred sentencing. * The Review hearing is scheduled for 12/12/2025 at 1:00 p.m. for dismissal.  1. Client 5: Change of Plea hearing. The client is in custody and present by Zoom video from the Elko County jail. A Cambodian interpreter Vannara Lim also appeared by Zoom video to assist the client.  * Nestor spoke with the client with the Cambodian interpreter in a private Zoom chat room prior to the case being called by the court.   **Remarks/Recommendations/Notes (continued from previous page):**   * Nestor informed the court that the parties had reached a settlement. In exchange for the clients No Contest plea to all 3 charges 3 charges in the Amended Criminal Complaint [(1) DUI-2nd Offense; (2) Eluding a Police Officer; (3) Theft], the State will dismiss a felony case not in this court today (EL-JC-CR-F-21195). The State also agrees to recommend that the client be released on this Own Recognizance on this case today. The client will need to obtain a Substance Use Evaluation prior to sentencing in this case. The State will recommend “credit for time served” and a 90 day jail sentence suspended for 1 year on the condition of “good conduct.” The parties also agreed to ask the court to confirm that it will not impose any additional active jail time. * DDA Roche said that he does not have notes regarding the agreement for an O.R. release, but that it makes sense. Roche confirmed the rest of the defense recitation of the agreement is correct. * Nestor filed an executed DUI Waiver of Rights form in open court. Nestor explained to the court that the client speaks English at a very good level. The interpreter assistance is desired because Cambodian is his primary language. Nestor told the courts that the client’s rights were discussed in English and translated into Cambodian by the interpreter. The potential adverse immigration consequences were also discussed between Nestor and the client with the assistance of the Cambodian interpreter. * When the court appeared to be about to set a Sentencing date, Nestor reminded the court that it should accept the No Contest pleas prior to setting the sentencing date. * The client pled Guilty (rather than No Contest) to DUI-2nd Offense, Eluding a Police Officer, and Theft, all misdemeanors. * Nestor put on the record that their discussions involved No Contest pleas rather than Guilty. * The court stated that it was willing to allow the client to change his plea from Guilty to No Contest. * The client stated, through the interpreter, that he would enter Guilty pleas. * Following the court canvass, the court accepted the Guilty pleas. [Note: during the court canvass, the court made several attempts to get the client to answer the question “did anyone threaten you or make any promises to you to get you to plead guilty today?” each time the client would simply answer that he definitely wanted to plead guilty today. The client never actually confirmed whether or not he had been threatened or promised anything to get him to plead guilty. Ultimately, the court stopped asking that question and moved on to discuss possible penalties for these offenses).] * The court scheduled the Sentencing hearing for 7/18/2025 at 1:00 p.m. * The court released the client on his O.R. (The court did not express that there were any conditions to the O.R. release.) The court did order the client to obtain a Substance Use Evaluation and present it to the court between now and the sentencing date. The court confirmed that it did not intend to impose any additional active jail in these cases at time of sentencing. * [Note: the client is being held in custody on the felony case. The State will dismiss the felony case pursuant to the negotiations in this case, but the felony case is not in this court. So, the client will remain in custody on the felony case until the State dismisses the felony case.]  1. Client 6: **Pretrial hearing**. The client is out of custody and appeared by Zoom video from his work.  * Nestor requested a continuance for the client to make an appointment to meet with his attorney to discuss the case and settlement offer. The client has not done so prior to today. * The client said that he did not have the contact information for the public defender’s office and did not remember the name of his attorney. * The court informed the client that he will need to appear at the next hearing in person. * The client said that it would be difficult for him to appear in person and asked for permission to appear by Zoom. The client said that he does not have any Paid Time Off at work and the summer is the busy time for his job. * The court said that it will allow Zoom appearance for the next hearing. However, the client may be required to appear in person at a future court date.   **Remarks/Recommendations/Notes (continued from previous page):**   * [Note: There was no prior substantive meeting between client and attorney due to client being unavailable and/or making no effort to contact the attorney.] * The Pretrial hearing is continued to 7/18/2025 at 10:00 a.m.  1. Client 7: **Pretrial hearing**. The client is out of custody and appeared by Zoom video from the Elko County Public Defender’s Office conference room.  * Nestor informed the court that the parties had reached a resolution of this case. In exchange for the client’s No Contest plea to Count 2, Resisting a Public Officer, the State will dismiss Count 1 Battery. The parties will jointly recommend a suspended sentence with no active jail time. The parties are free to argue regarding the amount suspended jail time. * The client pled No Contest to Resisting a Public Officer. * During the canvass, the client said that no one explained to him what the maximum possible penalty could be. The court then explained to the client that the maximum possible penalty was 6 months jail and a $1,000 fine plus fees and assessments. After the court explained the maximum possible penalty, the client apologized to the court and said that Nestor had previously explained that to him but that he had not written it down and he had forgotten. * Following the court canvass, the court accepted the client’s No Contest plea. The court confirmed that the client’s credit for time served is 1 day. * The State recommended no active jail time and a 30-day suspended jail sentence for 1 year on the condition of “good conduct.” * Nestor recommended no active jail time. Nestor argued in mitigation that the sentence should be suspended for 6 months rather than 1 year on the condition of “good conduct” but never addressed the amount of jail time that should be suspended. * The client made a statement in allocation. * Sentence: The court sentenced the client to 10 days jail, all of that time suspended for 6 months (until 11/20/2025) on the condition of “good conduct.”  1. Client 8: **Sentencing hearing**. The client is out of custody and not present in court.  * Nestor explained to the court that the client has been in contact with Nestor throughout, even as recently as yesterday. The delay in sentencing the client has been because the client could not afford the Substance Use Evaluation. The client sent a receipt to Nestor showing that the client has an appointment for the Substance Use Evaluation on Monday, May 19, 2025. Marcial requested another continuance. * The court stated that the client has never appeared in person. He has always appeared by Zoom. The court made it very clear at the last hearing that the client needed to have the evaluation by today and needed to appear in court today in person. * Nestor asks the court to not find the client in contempt for not appearing today. * The State requested a bench warrant pointing out that this is an old case. The client’s initial sentencing date was in July 2024. His sentencing hearing has been continued and continued because the client failed to obtain a Substance Use Evaluation. The State is requesting that the extradition on the bench warrant be for Nevada only. The State pointed out that since the client lives in CA, if the client does obtain the Substance Use Evaluation on Monday, May 19, 2025, and sends the evaluation to Nestor, then when the evaluation is submitted to the court, the bench warrant can be recalled and a new sentencing date can be set. * Order: the court issued a Bench Warrant in the amount of $1,840 cash only. The extradition was set at Nevada only. The court further ordered that the Bench Warrant can be recalled and a new sentencing date can be set if the client submits a Substance Use Evaluation to the court.   **Remarks/Recommendations/Notes (continued from previous page):**   1. Client 9: Pretrial hearing. The client is out of custody and not present in court.  * Nestor informed the court that he has not had contact with the client directly. He spoke with the client’s mother as recently as 2 days ago. The client is still in Utah and receiving medical treatment and recovering from a brain injury. Per the client’s mother, the client cannot currently walk or talk. Nestor said that he presented medical records to the court at the last hearing. The client was not present for the last hearing either (January 2025). The client does have an active felony warrant on another case. * The State requested that a bench warrant be issued and the extradition be set at Elko County only. The State pointed out that the last time the client has appeared in this case was in September and by Zoom. The client’s initial failure to appear for court was in December 2024. * The court issued a Bench Warrant for $890 cash only and Elko County only. | | | |