

# Nevada's Casino-Patron Dispute Process: The Next Generation



**By Richard A. DeGuise, Jr.  
Hearing Examiner  
Nevada State Gaming Control  
Board**

The statutory framework comprising the Nevada Gaming Control Board's Casino-Patron Dispute Process was added to the Nevada Revised Statutes in 1983, and aside from limited language revisions, remained virtually unchanged until the 2007 legislature revised/updated NRS 463.362. This "Next Generation" of the process now encompasses casino operations formerly viewed as marketing promotions and/or non-gaming activities not involving wagers or wagering-related activities. These events were historically not considered "gambling" and therefore not under the jurisdiction of the Board as a Casino-Patron Dispute. Under Nevada Gaming Commission Regulation 5, the Board previously investigated complaints not directly tied to a wager or ancillary to wagering events as an

Unsuitable Method of Operation. The new language is worth a close inspection as it relates to any casino's current offerings. The current statutory language defining a patron dispute went into effect July 1, 2007 and reads as follows:

## **NRS 463.362 Resolution of disputes.**

1. Whenever a patron and a licensee, or any person acting on behalf of or in conjunction with a licensee, have any dispute which cannot be resolved to the satisfaction of the patron and which involves:

(a) Alleged winnings, alleged losses or the award or distribution of cash, prizes, benefits, tickets or any other item or items in a game, tournament, contest, drawing, promotion or similar activity or event; or

(b) The manner in which a

game, tournament, contest, drawing, promotion or similar activity or event is conducted, the licensee is responsible for notifying the Board or patron in accordance with the provisions of subsection 2, regardless of whether the licensee is directly or indirectly involved in the dispute.

#### Common Pitfalls:

- **Failure to Promptly Report disputes over \$500** must be immediately reported to the Board's Enforcement Division; whereas, in disputes under \$500, the patron must be informed that involving the Board is an option they may choose.
- **Failure to Preserve Evidence** as memories fade quickly over time, compile statements or notes accurately contemporaneous with the dispute and preserve video evidence. Physical evidence may be collected by the responding agent or they may seal a slot machine for technical inspection by the Board's Technology Division.
- **Failure of a Party to Recognize Their Role** the casino and the patron form an adversarial relationship as the only involved parties, the Board is not a party to the dispute. Never assume the Board agent will side with any party regardless of how you view the evidence. Approach every case with the same protocol.
- **Failure to Promptly Appeal** either party aggrieved by the agent's decision should appeal immediately upon receipt of the decision letter if an appeal is desired. The time frame to appeal is 20 days from the

receipt of the agent's decision. This does not include five days for mailing regardless of the distance. Therefore, 25 calendar days from the date the letter was mailed as reflected on the attached Certificate of Service is the deadline. This is a mandatory, jurisdictional requirement that will not be waived nor extended for any reason. Late is late and your appeal will be denied.

#### The Appeal Process:

The appeal and hearing process are outlined in Commission Regulation 7A. Once the Petition for Reconsideration is filed, it can always be updated, amended or withdrawn. The key element is to file on time. Once the statute clock stops, more than adequate time can be granted to compile additional evidence, depose witnesses or conduct whatever investigation is desired (within reasonable







limits). Discovery in these cases is not codified in either statute or regulation, but is granted so long as no proprietary or trademark restricted information is requested. In more complex cases, a Scheduling Order, subpoenas, Discovery Conferences and Protective Orders may be utilized. Casino surveillance evidence, if available, is not necessarily subject to discovery. Either party can introduce evidence on their behalf up to and including the day of the hearing.

#### The Hearing:

The hearing is considered open to the public unless the Board or Hearing Examiner determines otherwise. The hearing date is typically set with sufficient advance time for all parties and witnesses to attend. Continuances can be granted upon good cause shown. The investigating Board agent will be present. Out of state parties or witnesses may participate via telephone. In lieu of witness' attendance,

depositions or written statements may be introduced. Witnesses may be subject to subpoena, but the requesting party may be responsible for their travel and per diem expenses. The Hearing Examiner opens the hearing and swears all parties and witnesses present. Hearings are digitally recorded. Court reporters are not used but if a party wishes to have a transcript prepared, they may do so at their own expense. In any event, the Hearing Examiner's recording remains the official record of the hearing. The dispute is identified with the documents and evidence entered into the record. The statutory authority for conducting the hearing is announced as well as the anticipated date of the final decision to be rendered by the Board. If discovery was not conducted, the investigating agent makes a presentation of the evidence and the facts supporting their decision. The petitioning party, who bears the burden of proof, makes a presentation to affirm, reverse or modify the agent's

decision. The standard of review is a preponderance of the evidence. The respondent party then presents their case. Once all issues are addressed, each party is allowed a closing argument. In complex cases, closing arguments can be submitted in the form of a Memorandum of Points and Authorities. A short closing by the Hearing Examiner reminds the parties of the statutory provisions and the date the Board is scheduled to hear the matter and render a final decision. A written recommendation is prepared by the Hearing Examiner that is forwarded to the Board members along with a complete copy of the hearing record for their independent review.

#### The Board's Final Decision:

The Board meets each month alternating between Las Vegas and Carson City and the agenda is set about two weeks in advance of the meeting. Disputes are heard by the

Board on the second day of their meeting towards the end of the agenda but can be taken out of sequence. No testimony or new evidence is taken at the meeting and the Board votes strictly on the information in the hearing record. The Hearing Examiner's recommendation is not binding and only a majority vote of the Board is required to render a decision. The Board has the option of remanding the matter back to the Hearing Examiner if they feel additional evidence or testimony is warranted. If the Board is in unanimous agreement with the recommendation, there typically is very little or no discussion on the public record and the Hearing Examiner's recommendation becomes an Order upon being signed by the Board members. A copy of the signed Order is then mailed to each party at their last known address or to their attorney of record.

#### Judicial Review and Beyond:

Since the Board is not a party to the dispute, the Commission does not have any oversight to the process and, therefore, cannot hear the matter on appeal. Any party aggrieved by the final decision of the Board may petition the District Court serving the jurisdiction where the dispute occurred for a review of the Board's decision. Judicial review is limited to the elements listed in NRS 463.3666(3). The review must be conducted by the court sitting without a jury, and must not be a trial de novo but is confined to the record on review. Again, time restraints are narrow (20 days) and the petitioning party must act quickly. Once a timely petition is filed, copies must be served on the Board and the opposing party. The Hearing Examiner will then estimate the costs of preparing the Record on Review and the transcription of the official record. These costs will be sent to the petitioning party via letter. Once these expenses are paid in full, the Record on Review is prepared and

filed with the District Court. From that point forward, the Board has no further involvement with the matter.

#### Summary:

The statute revision provides for a broad expansion of regulatory oversight of casino operations that may catch some licensees off guard. A thorough top down review with an emphasis towards involvement in the dispute process should enable your gaming client to eliminate any surprise when an event as simple as a prize drawing suddenly comes before the Board for review. **NGL**

