



FIVE CONSIDERATIONS

When Preparing a Gaming Employee Appeal Hearing Before the Nevada Gaming Control Board

By Chan Lengsavath and Augusta Massey

The Nevada Gaming Control Board (“Board”) is tasked with registering all gaming employees in the state of Nevada.¹ When the Board’s Enforcement Division objects to a gaming employee’s application for registration, the employee has the right to appeal to the Board’s hearings office.² If an appeal is filed, the applicant has the opportunity to appear before the Board to seek a reversal of the objection.³ This article offers general guidance on five considerations a legal practitioner should make when preparing to represent a gaming employee appealing an objection to their gaming employment registration before the Board.



1. Honesty is crucial: When an agent from the Enforcement Division of the Board objects to a gaming employee's registration, it is usually after an extensive background search. Typically, the background investigation includes information from police reports. When the investigation is complete and the Board's Enforcement Division objects to an applicant's registration, the agent notifies the gaming employee of the objection and identifies the reason(s) for the objection and the corresponding statute.⁴ The Board may suspend or object to the registration of an applicant as a gaming employee for any cause deemed reasonable by the Board.⁵ With this in mind, it is important for attorneys to thoroughly review information about any arrests,

warrants, or citations with their client before the hearing. At the hearing, it is imperative that the gaming employee is honest, transparent, and forthcoming. Lack of candor to the hearing officer is taken very seriously and damages credibility. Being honest may not necessarily result in a reversal of the objection to the employee's gaming employment registration, but it will be helpful for future hearings because a future hearing officer will review it and see that the gaming employee has been honest. Therefore, it is crucial that attorneys work closely with their clients to ensure that they are being truthful at the hearing. A hearing before the Board is an administrative matter, not criminal. Being open and candid is a must.

2. Recency of the objectionable event:

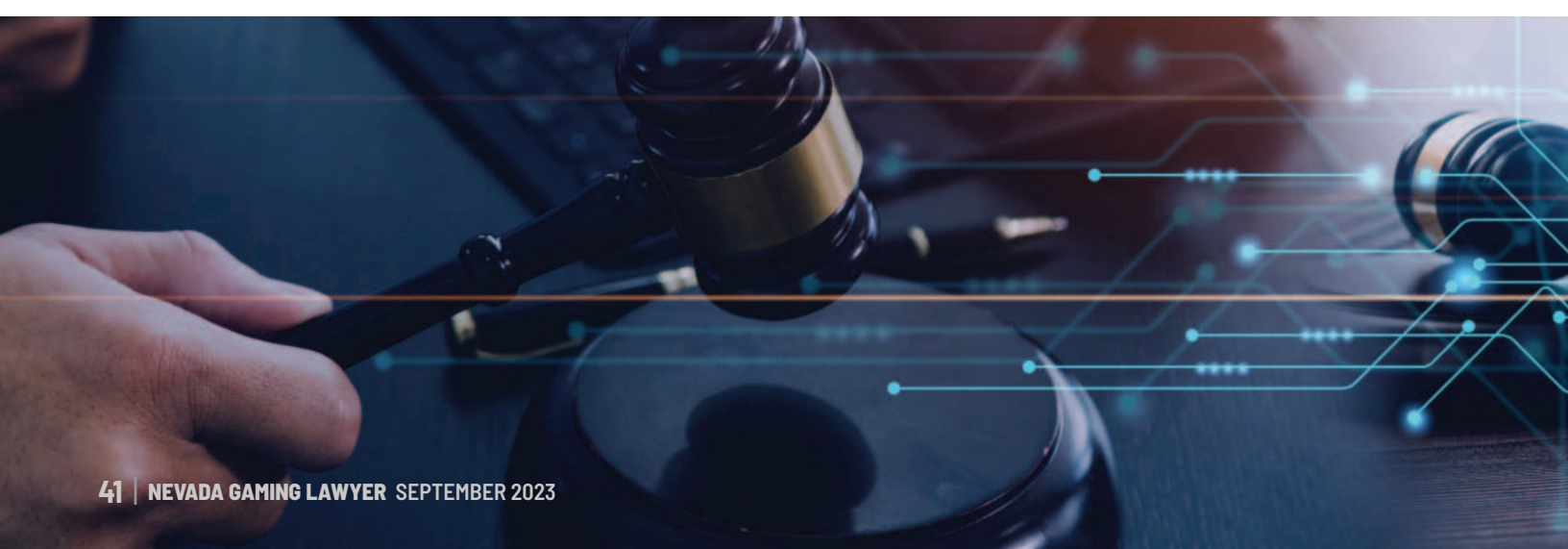
Another consideration for legal practitioners representing gaming employees is determining the recency of the objectionable event. The statutes allow the Board to analyze the severity, relevancy, and recency of the objectionable event(s) to anticipate the likelihood that a gaming employee may commit future objectionable acts. As it relates to severity of the offense, consider whether your gaming employee client has an extensive criminal background. If so, the likelihood of success may be diminished. It gets even more complicated when the gaming employee has been convicted for the same type of crime on multiple occasions. Turning to relevancy, if a gaming employee has been arrested for assault with a deadly weapon and is applying for a position as an armed security guard, it may be more likely that the Board will sustain the objection, given the close link between the position of an armed security guard and the criminal history of assault with a deadly weapon. With regard to recency, if a gaming employee was arrested less than a year ago, it may be less likely, but not impossible, that they will have a favorable result. The Board wants to see that enough time has elapsed since the objectionable event such that the gaming employee has had time to demonstrate that they will not commit similar acts in the future. However, gaming crimes, especially those involving cheating and theft, are very detrimental to an applicant's chances of success at the hearing. Prior to an amendment in 2020, Nevada Gaming Commission Regulation 5.104(4) required the Board to preclude employees that committed gaming crimes to be registered for a period of at least 10 years. The amendment has now granted the Board some flexibility to reverse an objection before the 10 year-limit, but it is still difficult to overcome such serious, relevant, and recent charges.

3. Open criminal cases and constructive custody:

The statutes unambiguously state that the Board may object to a gaming employee's registration if the employee has "[b]een placed and remains in the constructive custody of any federal, state or municipal law enforcement authority."⁶ Although Nevada courts have not specifically opined on the issue, California law provides that constructive custody includes those released on their own recognizance pending a hearing on the merits.⁷ If a criminal case is still open and pending final adjudication, it is likely that the Board will find the gaming employee is still under constructive custody of the court. Therefore, legal practitioners should have a discussion with the applicant, weighing the implications of filing an unsuccessful appeal versus the time limits outlined in Nevada Gaming Commission Regulation 5.109 regarding when another appeal can be requested.⁸

4. Active criminal warrants:

Similar to consideration number three, legal practitioners should determine whether the gaming employee has any open/outstanding criminal warrants, including warrants for failure to pay traffic tickets or failure to appear at a court hearing. If a gaming employee appears at a scheduled hearing before the Board, and still has an outstanding warrant, the employee could be arrested upon arrival. If the gaming employee is arrested, the hearing will not proceed and will be rescheduled. The Board complies with all local, state, and federal laws and cooperates with other law enforcement agencies.



5. Necessary testimony and other evidence:

Lastly, when preparing to appear before the Board, a legal practitioner should be strategic in determining what evidence will support the appeal.⁹ “At the hearing, the Board shall take any testimony deemed necessary” [emphasis added].¹⁰ As such, a legal practitioner may bring any witness or witnesses, who can offer credible testimony in support of their client’s appeal, but only if they are deemed necessary. For example, it may not be necessary to bring five individuals who will testify that the gaming employee is a hard worker. Additionally, in lieu of witnesses, a legal practitioner may present letters of recommendation (such as past gaming employers) and/or “any other evidence”¹¹ that will help the appeal. Again, the emphasis is on evidence, including testimony or any document, that is deemed necessary to bolster the gaming employee’s appeal.

In summary, legal practitioners should keep these five considerations in mind when representing gaming employees before the Board. Developing a thorough understanding of the employee’s background to offer full candor to the hearing officer is a crucial first step in preparing for an appearance before the Board. Next, a legal practitioner should determine when the objectionable event occurred and whether it is too soon to appeal the objection. Additionally, an inquiry should be made into open criminal cases, especially if constructive custody was one of the reasons the agent objected to the gaming registration. Furthermore, a legal practitioner should ascertain if the client has any active criminal warrant, as it could result in an arrest at the hearing. Finally, a legal practitioner should carefully consider if there are any credible witnesses who are necessary to the appeal and provide any other evidence that could support the appeal. ■



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¹ Nev. Rev. Stat. § 463.335(1)–(3).

² Nev. Rev. Stat. § 463.335(11).

³ *Id.*

⁴ Nev. Rev. Stat. § 463.335(12)(a)–(g).

⁵ Nev. Rev. Stat. § 463.1405(3) states: “The Board has full and absolute power and authority to recommend the denial of any application, the limitation, conditioning or restriction of any license, registration, finding of suitability or approval, the suspension or revocation of any license, registration, finding of suitability or approval or the imposition of a fine upon any person licensed, registered, found suitable or approved for any cause deemed reasonable by the Board.”

⁶ Nev. Rev. Stat. § 463.335(12)(f).

⁷ *In re Smiley*, 66 Cal.2d 606, 614 (1967).

⁸ For example, if an applicant is scheduled to complete her probation in two months, she may want to consider filing her appeal after completing probation. Otherwise, if an immediate unsuccessful appeal is filed, she would have to wait at least one year from the date of the final action.

⁹ Nev. Rev. Stat. § 463.335(11).

¹⁰ *Id.*

¹¹ *Id.*