

Cheat Sheet for Non-Gaming Attorneys:

Your Advantage Play Guide to Competently Communicating with Gaming Counsel

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In a perfect world, each of us would be subject-matter experts on “the law” in its entirety; however, attorneys regularly find themselves consulting and deferring to counsel who specialize in matters unfamiliar to them. Even in Nevada, where gaming has such widespread impact on state affairs, true understanding of the gaming industry and its regulatory framework resides with only a few.

Rather than provide a deep dive into a novel legal issue, this guide serves as a primer for select gaming topics that non-gaming attorneys in Nevada may encounter in advising clients. Below are key points on the basics of Nevada’s gaming regulatory structure, restricted gaming licenses, esports, and gaming

employees—not enough to make you an expert, but just enough to help you talk shop with your peers.

Nevada Gaming Regulators

Many people know that gaming in Nevada is highly regulated but lack clarity on what that regulatory structure looks like. Such individuals often refer to the various regulatory bodies interchangeably without understanding the distinction.

Gaming regulation in Nevada is achieved by a two-tier system:

- **Nevada Gaming Commission** – The commission is a five-member, part-time body that serves as the final policymaking and licensing authority.
- **Nevada Gaming Control Board** – The board is a law enforcement agency consisting of three full-time board members and is supported by a staff of roughly 400 employees, responsible for the day-to-day regulation of the gaming industry in Nevada.¹

There are many ways in which these two bodies support one another, including:

Licensing – Applicants for gaming licenses or approvals undergo investigations by the board. The board holds a monthly public hearing on such applications and votes on a recommended action. Later that same month, the commission will hold its own hearing, where it will consider and act on the board’s recommendations.

Discipline – When the board believes a licensee has violated the Gaming Control Act in a manner warranting disciplinary action, it will file a complaint through the Office of the Attorney General. The commission serves in a judicial capacity to these complaints, acting as judge and jury.

Rulemaking – The commission has statutory authority to adopt and amend regulations as necessary to carry out the Gaming Control Act. The board plays a crucial role in this process, utilizing its insight as the day-to-day regulators





of the industry to advise and assist the commission in the creation of these regulations. The board often proposes new regulations through public workshops before submission to the commission for final consideration.²

For further introduction to the workings of the commission and board, the board’s own “Board Information Packet,” found on its website: gaming.nv.gov, is an excellent resource.

Esports

Over the last decade, esports, or competitive video gaming, has exploded in popularity among players and spectators alike. Enhanced fan engagement through social media and streaming services have transformed esports into a massive industry. As Nevada positions itself as a leading esports market, understanding the points below are crucial for attorneys working in Nevada’s hospitality sector.

- **Esports ≠ Gambling** – A common misconception about esports is the

assumption that esports is itself a gambling activity. However, esports must be thought of in the way that basketball, football, or other sporting events are—they are not themselves wagering events, but rather are events that the gaming industry can, and has, leveraged to offer wagering on their outcomes. This confusion is further compounded by esports discussions in this state taking place largely in tandem with those around skill-based gaming.³ To sum:

- **Esports** – Competitive video gaming events that exist independently from any wagering activity offered.
- **Skill gaming** – Gambling games that introduce elements of skill, often in a manner resembling video games. The video game is the gambling activity in and of itself.

- **Other Events** – Where do esports fit into the Nevada gaming regulatory framework? In addition to wagering on traditional athletic events, Nevada law provides for another category called “other events.” To offer wagering on other events, a licensee must submit a request to the board, which will then review the event and assess factors such as integrity safeguards and the reliability of processes for verifying event outcomes. Other events have included wagering on nontraditional sporting events, such the outcome of the World Series of Poker, and events such as a professional league’s draft and end-of-season awards.⁴
- **Integrity** – The primary concern for regulators regarding esports is event integrity. Esports has presented novel considerations for regulators, including assessing how stakeholders fit into the regulatory framework (e.g., who is the sanctioning league? What amount of oversight should there be of the underlying software or its developers? etc.). In 2021, the Nevada Legislature passed a bill that directs the board to empanel the Esports Technical Advisory Committee to study and advise the board on these issues. The body held its first meeting on March 1, 2022.⁵

Restricted Licenses

As any Nevadan knows, large resorts are hardly the only place to find gaming—small business owners can also avail themselves of its economic benefits. Here are some helpful points if you find yourself serving as counsel to your favorite local watering hole.

- **Restricted License** – This type of license grants the holder the ability to operate up to 15 slot machines. A key policy maxim of the restricted license is that gaming must be “incidental” to the primary business.

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- **Suitable Locations** – Only certain venues are deemed suitable for the operation of restricted gaming: convenience stores, grocery stores, drug stores, liquor stores, and taverns.⁶
- **Slot Route Operator (SRO)** – For many small business operators, the invasive and costly restricted license application and investigation process can be burdensome. Nevada law allows for a “slot machine route”—a type of license that allows its holder to operate restricted gaming at another’s place of business. When a business operator contracts with a SRO, the SRO will apply for and hold the restricted license for that business location, thus accepting the primary burdens and responsibilities expected of licensees. However, for those looking to utilize a SRO, it is crucial to note that a person may not receive revenues from gaming activity without being properly licensed or registered.⁷ As such, agreements with SROs generally take two forms:

- **Space Lease Agreement** – The SRO pays the business operator a fee to place and operate restricted gaming at the business while reaping the revenues from it. This fee generally cannot be tied to the performance of the machines.
- **Participation Agreement** – Like a space lease, the SRO will secure the restricted license, but the business itself will also apply for a finding of suitability, thus lifting the revenue restriction discussed above. Now the operator can “participate” in the revenue from the SRO’s machines. Alternatively, the business operator itself can secure the restricted license and still utilize a SRO to operate the machines.

For those looking to better understand restricted licensing, the board conducts “Restricted License Compliance Seminars,” and often conditions new restricted licenses on successful completion of such.

Gaming Employees

The board and commission also regulate the robust workforce that serves as the industry’s backbone. Because many of these jobs are held by residents unfamiliar with gaming regulation, they are often the ones most in need of counsel when confronted with the below issues.

- **Gaming Employees** – By law, all gaming employees—as listed in NRS 463.0157—must register with the board. Similarly, the board has jurisdiction over club venues located at gaming establishments with certain club venue employees also being subject to gaming employee rules and procedures.⁸
- **GER Objections** – When an individual’s gaming employee registration (GER) application is pending, the board’s Enforcement Division may object to registration. If objected to, the applicant may request a hearing to present his or her case to the board’s hearings officer, who will render a decision on behalf of the board. If the objection is sustained, the applicant may appeal the decision to the commission. If the commission further sustains the hearing officer’s recommendation, the registrant is prohibited from working as a gaming employee but may file for reconsideration after one year.⁹
- **Revocation** – If the board believes that a registered gaming employee has committed an act that warrants removal from his or her position, it may file a complaint seeking revocation of that individual’s GER. In this case, the commission will conduct a hearing that follows the more adversarial procedures of a disciplinary action. The commission has wide latitude in rendering its final decision, though statute compels it to revoke the GER if the board provides evidence of certain offenses, such as the employee cheating in a casino.¹⁰

The board’s “Gaming Employee Registrations Questions and Answers” information sheet available on its website serves as a great checklist for those looking to navigate the GER process.

Is the above a comprehensive guide with all the tools needed to represent clients on gaming-related matters? Hardly. But with the knowledge above, you will be better equipped to direct your clients in the right direction and have a base competency to better communicate with gaming counsel.

ENDNOTES:

1. See Nev. Rev. Stat. §§ 463.022 and 463.030.
2. See Nev. Rev. Stat. §§ 463.1405, 463.310, and 463.145.
3. See May 13, 2016, and Nov. 11, 2016, Gaming Policy Committee Meetings; Nev. Rev. Stat. § 463.15997.
4. See NGC Reg. 22.1201.
5. S.B. 165, 81st Leg., Reg. Sess. (Nv. 2021); Meeting Notice and Agenda, Esports Tech. Advisory Committee March 1, 2022, Agenda (Feb. 23, 2022), <https://gaming.nv.gov/modules/showdocument.aspx?documentid=18459>.
6. See Nev. Rev. Stat. § 463.0189; NGC Reg. 3.015; NGC Reg. 4.030.
7. See Nev. Rev. Stat. §§ 463.160, 463.161, and 463.018.
8. See Nev. Rev. Stat. § 463.0157; Nev. Rev. Stat. § 463.335 & NGC Regs. 5.100-5.109; NGC Reg. 5.320.
9. Nev. Rev. Stat. § 463.335(11)-(14); NGC Regs. 5.104 & 5.109.
10. Nev. Rev. Stat. § 463.337 & NGC Reg. 5.109.

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