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Governor Sisolak Appoints a New Gaming Control Board Chair

The Gaming Law Section of the State Bar of Nevada welcomes J. Brin Gibson as the new Chair and Executive Director of the Nevada Gaming Control Board, joining Board Members Terry Johnson and Philip Katsaros. Chair Gibson was appointed by Governor Sisolak in November 2020 to fill a vacancy created by the resignation of Sandra Douglass Morgan. We further thank Chair Morgan for her tireless work during one of the most difficult periods in the history of gaming regulation and appreciate all of her contributions to the industry. Her guidance during the unprecedented COVID-19 pandemic provided strong and unwavering leadership that was essential for our gaming regulatory framework, industry, and state.

Chair Gibson comes to the position of Chair from Brownstein Hyatt Farber Schreck's Las Vegas office where he was a shareholder in the Gaming & Regulatory Practice Group. Prior to joining Brownstein he worked in the Nevada Attorney General's office as the Chief of its Gaming Division where he was legal counsel to the Nevada Gaming Control Board, Nevada Gaming Commission, and the Gaming Policy Committee. He has also served as Chief Legal Counsel to Governor Sisolak and provided special assistance to the Governor's office during two special legislative sessions. Prior to his service under Governor Sisolak, he was appointed by Governor Brian Sandoval to two separate terms as a Commissioner of the Colorado River Commission of Nevada. We welcome Chair Gibson and look forward to working with him as he leads the Nevada Gaming Control Board.

What Does It Mean and What's Next?

On October 19, 2019, the Nevada Gaming Control Board ("Board") filed a Complaint with the Nevada Gaming Commission ("Commission") against Steve Wynn ("Wynn"), seeking to discipline him by revoking his prior findings of suitability and declaring him to be "unsuitable to be associated with a gaming enterprise or the gaming industry as a whole," based upon four counts of sexual misconduct and harassment allegations, and a fifth count alleging that he had failed to appear and testify at a Board investigative hearing. This arose after Wynn had sold his stock in Wynn Resorts and had resigned as Chairman and CEO of Wynn Resorts, which had been the basis for his prior findings of suitability by the Board and the Commission.

In response to the Board's complaint, Wynn's lawyers filed a Motion to Dismiss, arguing that the Commission and the Board ceased to have jurisdiction over Wynn since he no longer had any control or financial interest in Wynn Resorts. The Commission denied the Motion to Dismiss, finding that it had subject matter jurisdiction over Wynn to consider the Board's Complaint, since the violations that the Board had alleged, except for his failure to appear and testify at the investigative hearing, had occurred while he was "materially involved" with Wynn Resorts, notwithstanding his subsequent resignation as Chairman and CEO, and the sale of his stock in Wynn Resorts.

Wynn's attorneys then sought judicial review of the Commission's decision denying the Motion to Dismiss in the Eighth Judicial District Court in Clark County. In November, the court ruled in favor of Wynn, finding that the sale of Wynn's stock and his resignation as Wynn Resorts Chairman and CEO had rendered the Board's Complaint moot and had divested the Board and Commission from having subject matter jurisdiction over him. In December, both the Board and the Commission unanimously voted during their respective public meetings, with no further comment, to appeal the decision.

Did Wynn fail to properly surrender his prior findings of suitability and follow the statutes and regulations that address how a Nevada gaming licensee exits the Nevada gaming industry, as the Board and Commission suggest? Or, by selling all of his Wynn Resorts stock and resigning beforehand, was the Board's Complaint rendered moot, divesting the Board and Commission of subject matter jurisdiction over him? Regardless how one views this question, the potential gaming regulatory difficulties with such divestiture of jurisdiction are apparent. Yet, a reversal on appeal or legislative proposal could resolve the potential concerns related to the integrity of the Nevada gaming industry. This is one for the gaming bar to keep an eye on.



Upcoming Events and Publications

- **May 1st:** deadline for current Gaming Law Section members to submit their resume or biographical statement, along with a letter of interest to Robert Horne, Communications Manager for the State Bar of Nevada (rhorne@nvbar.org or 702-382-2200) to be considered for nomination to the 12-member Executive Committee.
- **June 30th:** deadline for submission of draft articles for the 2021 issue of the *Nevada Gaming Lawyer* magazine (that will be published on or about September 1st).
- **November 5th:** 2021 *Gaming Law Conference* is tentatively scheduled to be held at the Red Rock Casino Resort & Spa (or, via Zoom if social distancing protocols mandate).
- *Nevada Gaming Law Practice and Procedure Manual* (1st ed. 2016) and *Nevada Gaming Law Index* (2nd ed. 2019) available for purchase by contacting Robert Horne (702-382-2200 or rhorne@nvbar.org).

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Look for the next issue on
or about April 23, 2021.



Is It Time For Nevada To Expand Interactive Gaming Beyond Poker?

Casino closures, capacity restrictions, and travel limitations dealt a substantial blow to Nevada gaming revenues in 2020. In the 12 months ending November 30, 2020, gaming revenues were down 31.3%. *Monthly Gaming Revenue Report*, Nevada Gaming Control Board (November 2020). Howard Stutz, Executive Editor of CDC Gaming Reports, recently wrote that “While the ‘Terrible, Horrible, No Good, Very Bad Year’ has ended, its effects on the gaming and tourism destination from the COVID-19 pandemic will linger throughout much of 2021. Some analysts have predicted it will be 2023 – or even 2024 – before Las Vegas returns to full health.” *For Las Vegas, 2020 is in the past, but 2021 doesn’t look any different*, CDC Gaming Reports (Jan. 2, 2021).

In Nevada, “interactive gaming” is defined as “the conduct of gambling games through the use of communications technology” The statutory definition includes “without limitation” internet poker. NRS § 463.016425. Regulation 5A.140, however, prohibits any interactive gaming wager on “any game other than the game of poker and its derivatives” Nev. Gaming Comm’n Reg. 5A.140(1)(a).

Meanwhile, Michigan became the latest U.S. state to issue iGaming licenses, joining Pennsylvania, New Jersey, Delaware, and West Virginia. Revenues from iGaming set new records in 2020, with revenues up over 200% in the first three quarters of the year. *Commercial Gaming Revenue Tracker*, American Gaming Association (2020 Third Quarter).

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With the 2021 Nevada Legislature convening February 1st and facing a significant budget shortfall, might expanded interactive gaming be one of the solutions? As noted above, the statute allows a broader variety of gambling games, but expanding interactive gaming beyond poker has been controversial, leading to the restriction in Regulation 5A. While the Nevada Gaming Commission (“Commission”) could remove that restriction by amending the regulation, a push from the Legislature would likely result in allowing other forms of interactive gaming in time to begin collecting interactive gaming revenue in the new fiscal year, which begins July 1, 2021. This could be accomplished either by adopting a specific statute clarifying that interactive gaming is not to be limited to poker, or by adopting a resolution directing or encouraging the Commission to amend the regulation.