

Op-Ed/Editorials - In Nevada, It's Pay Your Markers Or Go To Jail

October 17, 2001

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The District Attorneys' offices in Nevada are threatening to charge gamblers who don't pay off their markers to local casinos, with felonies.

Law enforcement officials do not normally act as collection agencies.

But two recent decisions from two different courts in Nevada have indicated this practice may be legal, or at least there is nothing patrons can do about it.

The first case arose when Matthew H. Fleeger began a series of disastrous gambling trips in November 1997 to Caesars Palace in Las Vegas and Caesars Tahoe. Fleeger filled out a credit application and obtained a line of credit. He occasionally borrowed casino chips for gambling by filling out markers. By April 1998, Fleeger had run up a debt of approximately \$183,856.00.

Caesars tried to collect the unpaid markers through its normal processes. Because markers are designed to look like checks, Caesars deposited them for collection. But Fleeger's banks bounced them, with the notations "NSF" (Not Sufficient Funds) and "Returned Not Paid."

Caesars sent collection letters to Fleeger, who lived in Texas, but apparently got nowhere.

Then the situation turned ugly.

Caesars contacted the District Attorneys of Clark County, Stewart L. Bell, and of Douglas County, Scott Doyle. A federal court later would describe Caesars' actions as a "request... to collect the debt as a 'bad check.'"

The D.A.s issued arrest warrants. When a law enforcement officer receives an arrest warrant from another state, he does not question it. He simply makes the arrest.

So, Fleeger was arrested and detained in both Dallas and Colin, Texas.

Fleeger struck back by filing a class action in federal court in Las Vegas, claiming violations of his civil rights and the federal Fair Debt Collection Practices Act. He named Caesars and the two D.A.s as defendants.

In mid-2000, U.S. District Court Judge Philip M. Pro dismissed Fleeger's lawsuit.

Judge Pro found many problems with Fleeger's complaint. Some were technicalities. But, in the heart of his opinion, Judge Pro held that markers were "checks" under Nevada law, that in turning to the D.A.s for collection, Caesars was merely reporting suspicious criminal activity, and that the D.A. did have the power to prosecute Fleeger for writing bad checks.

The second case involved another gambler from Texas, Tuan Ngoc Nguyen. On December 9th and 10th, 1995, Nguyen received markers for \$5,000 from Harrah's Las Vegas, \$5,000 from the Luxor and \$2,500 from the Excalibur. He apparently lost the casino chips and returned to Texas, without paying.

All of Nguyen's markers were bounced by his bank, with the notation: "Account Closed." The casinos' representatives apparently were not even able to contact Nguyen in person, so they turned the unpaid markers over to the Clark County D.A.

This time the case went all the way to a criminal conviction and all the way to the Nevada Supreme Court.

The Court had little trouble finding that markers were checks. Gamblers may think that these papers are only indications of a debt owed to a casino. But Nevada's justices declared that just because casinos will allow losing gamblers to pay off outstanding markers with new checks does not mean markers are like I.O.U.s.

Worse, the Supreme Court found that criminal intent to defraud the casino may be presumed if the bank bounces the check.

Legally, there are problems with casinos using the D.A.'s office to collect bum markers, particularly because government attorneys are contacting deadbeat patrons and threatening them with criminal prosecutions, unless the markers are

paid in full.

In many states, including Nevada, it is actually a new crime, called "compounding a crime" or "compounding a felony" to pay off the victim of a crime to prevent the first criminal charge from going forward.

Under the Nevada statute, 199.290, "A person who asks or receives, directly or indirectly, any compensation . . . upon an agreement . . . that he will . . . delay a prosecution . . . " is guilty of compounding. Casinos and D.A.s may not fall under this criminal statute, but the issue was not discussed by either the federal or state court.

It is, at least, unseemly to have prosecutors act like collection agents. In one case, lawyers from the D.A.'s office have gone after a player who actually filed bankruptcy. The penniless former patron was told to pay up or be charged with a felony, because bankruptcy does not protect a person from criminal prosecution.

For the patron in trouble, there still may be ways out. The Nevada bad check law only applies if all of the following are true:

- The patron must act "willfully, with an intent to defraud," at the time he obtains casino chips.
- The player must have insufficient funds in the bank, at the time the casino credit is extended.

So, a player who does have sufficient funds at the time, even if he is later bankrupt, is simply not guilty of the crime.

Of course, the best advice, as always, is never to gamble on credit.