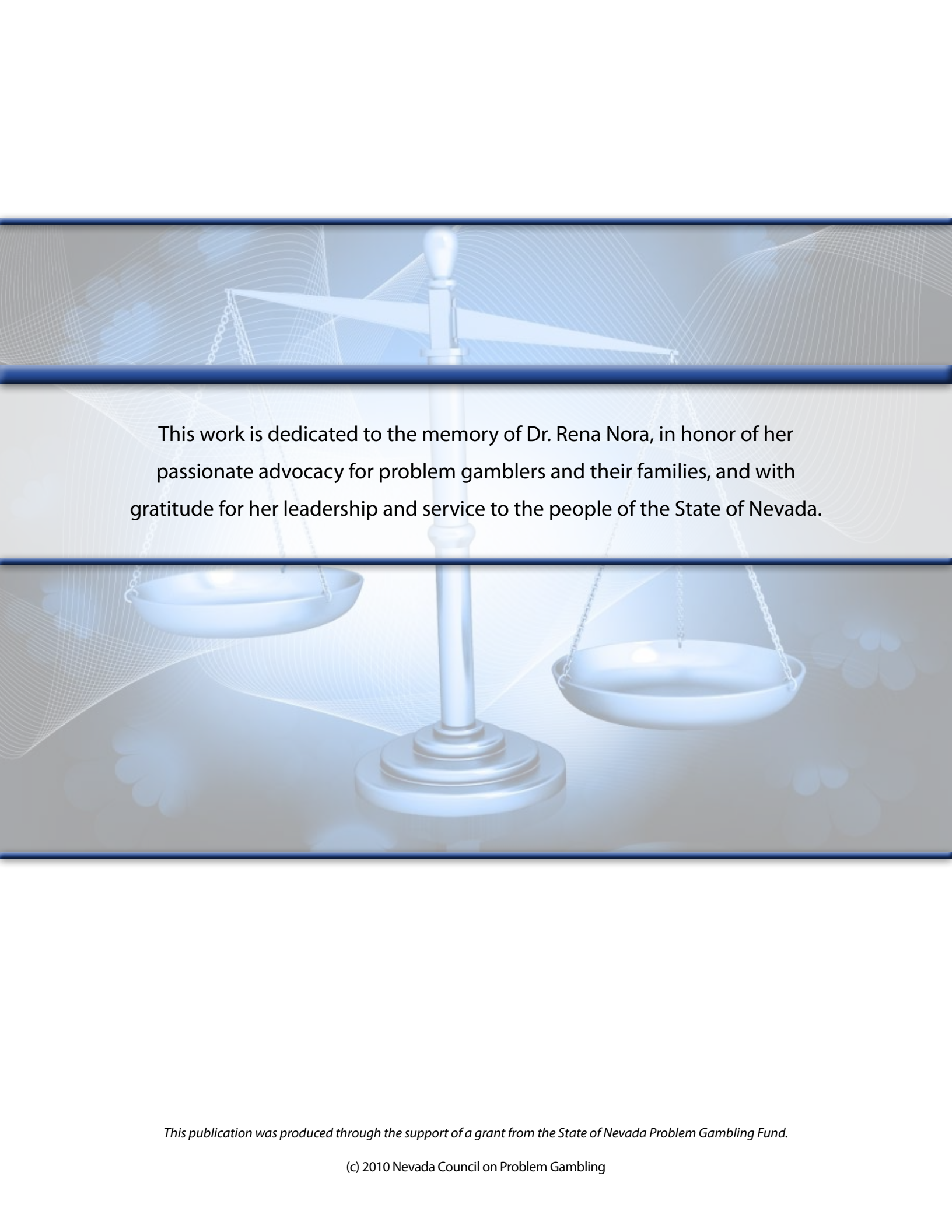




PROBLEM GAMBLING AND THE **LAW**

An Information and Resource Guide





This work is dedicated to the memory of Dr. Rena Nora, in honor of her passionate advocacy for problem gamblers and their families, and with gratitude for her leadership and service to the people of the State of Nevada.

This publication was produced through the support of a grant from the State of Nevada Problem Gambling Fund.

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PROBLEM GAMBLING AND THE LAW

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| INTRODUCTION | |
| DEFINING PROBLEM GAMBLING | 1 |
| TREATMENT APPROACHES AND FINANCIAL ACCOUNTABILITY | 4 |
| PROBLEM GAMBLING AND THE COURTS | |
| Family Court: Issues and Impact | 6 |
| Almost a Specialty Court: Problem Gambling Diversion Program | 8 |
| Guiding the Client Toward the Gambling Diversion | 9 |
| Example 1: Evaluation Summary Report | 11 |
| Example 2: Diversion Order | 12 |
| NRS 458A - Civil Commitment of Problem Gamblers Convicted of Crime | 13 |
| WHEN DIVERSION WORKS | 15 |
| ETHICAL CONSIDERATIONS | 16 |
| REFERRAL RESOURCES | 18 |
| FREQUENTLY ASKED QUESTIONS | 20 |
| ACKNOWLEDGMENTS | 21 |
| REFERENCES / RECOMMENDED READING | 22 |



INTRODUCTION

86% of Nevada adults gamble.

While most do so for recreation and experience no harmful effects, as many as

6% of Nevada adults may find themselves unable to gamble without harm.

Problem gambling refers to any gambling behavior that negatively impacts an individual's personal life.

At its most serious level, this behavior is also known as pathological gambling - a progressive mental health disorder in which people are unable to control their gambling, just as those addicted to alcohol are unable to control their drinking.

Problem gambling is not a moral issue.

It is a **Public Health, Economic, and Criminal Justice** issue.

Problem Gambling in Nevada

Although limited research has been conducted in this area, a prevalence study on problem and pathological gambling in Nevada (Volberg, 2002) reveals the significance of this issue:

- Nevada has one of the highest rates of adult problem gambling in the United States.
- Problem gambling prevalence rates are higher among those employed in the gaming industry and among Nevada's lower socio-economic groups compared to the general population.
- Problem gamblers in general are significantly more likely to experience a variety of mental health and substance abuse problems.
- Problem gamblers in Nevada are significantly more likely to have been arrested and/or incarcerated when compared to the general population.

Impact and Need for Services

Problem gambling can result in serious emotional, financial and legal consequences for the individual and their family. Early interventions with access to treatment and support services has proven to be effective in reducing the impact of these consequences. Utilizing available resources, many problem gamblers are able to arrest the gambling behavior, and begin their emotional, and financial recovery. A greater challenge exists, however, in identifying and accessing appropriate resources to address the legal issues resulting from problem gambling.

PURPOSE OF THE GUIDE

In 2007, the Nevada Advisory Committee on Problem Gambling established a Subcommittee on Legal Issues to explore strategies to better address the legal impacts of problem gambling on the individual, family and community. Recognizing the need for education in this area, the Subcommittee proposed the development of an information guide for legal professionals as a priority strategy. In 2009, the Department of Health and Human Services approved this recommendation as a grant-funded workforce development objective for the Nevada Council on Problem Gambling.

Working in collaboration with legal professionals, clinical experts, researchers, and educators, the Council developed this guide as practical tool to achieve the following goals:

1. Promote awareness and application of Nevada law regarding **Civil Commitment of Problem Gamblers Convicted of Crime**. (NRS 458A.200 to 458A.280)
2. Increase **knowledge and understanding of problem gambling**, equipping the legal community to better serve clients with gambling issues.
3. Encourage **coordination of services** between legal professionals, qualified mental health providers and members of the public affected by problem gambling.
4. Provide access to **appropriate referral and information resources** to support efforts to reduce the impact of problem gambling in Nevada

I came home late, expecting to find the rest of the kids downstairs watching movies. Instead I found that I had walked into an empty house. Most of the pictures were missing from the walls, the children's clothes and toys were all gone and the dog had been left inside all day.

I had the most horrible feeling of panic, thinking "My god! Someone's kidnapped my family." I realized that theory wouldn't explain the missing pictures, but it was the only explanation I could come up with. I frantically called my mother's cell phone expecting something horrible to happen. She answered and I cried, "Mom, where are you? Stuff is missing from the house!"

She cried and said that she was scared.

Then she told me that she decided to leave my dad and took the kids and their stuff with her. She wouldn't tell me where she was going but told me not to worry. Then she hung up.

For as long as I live I will never forget the overpowering feeling of loneliness and abandonment as I hung up that phone. I didn't know where my family was, or why my mother had left me behind. I was only 16 and as one of four children, I had never spent a night alone.

My world came crashing down as I realized that my life would never again be the same. It took another year, after chasing my mother to Las Vegas, trying to support my family and attempting to keep her from insanity, until I finally learned about gambling addiction.

When she left my father, it was not because she didn't love him anymore, it was because she had taken a \$200,000 loan against the house and she had racked up another \$50,000 in credit card debt in my father's name. She was running for her life and as her addiction progressed, she destroyed everything that got in her way.

I enabled my mother for years as I tried to save her from herself, but after 10 years of the insanity, I finally had to let her go.

I cannot fix her because I had nothing to do with her brokenness. Untreated addiction holds my mother and father hostage as they spiral further away from their children and the things they once loved.

Krista C.
Las Vegas, NV

DEFINING PROBLEM GAMBLING

*"In the beginning I gambled because it was fun. It was magical the way gambling freed me from the worries of everyday living. When I was tense, gambling relaxed me. When I was angry, gambling calmed me down. When I was happy, I celebrated by gambling. Over time, gambling became the only coping mechanism I knew. When my financial problems grew and the stress overwhelmed me, I convinced myself that **one more bet** would solve everything."*

Problem gambling is a progressive behavioral disorder in which an individual has a psychologically uncontrollable preoccupation and urge to gamble. This results in excessive gambling, the outcome of which is the loss of time, money and self-esteem. As the stress of these consequences increases, the gambler often seeks relief through even more gambling. The gambling can progress to a point at which it compromises, disrupts, and ultimately destroys the gambler's personal life, family relationships, and vocational pursuits.

Diagnosis

Pathological gambling lies at the most severe end of a continuum of problematic gambling behavior. Recognized by the American Psychiatric Association as a diagnosable and treatable disorder since 1980, pathological gambling is defined as "persistent and recurrent maladaptive gambling behavior that disrupts personal, family or vocational pursuits".

The essential features of pathological gambling are:

- continuous or periodic loss of control over gambling
- progression in gambling frequency and amounts wagered
- continuation of gambling despite adverse consequence

Associated features and disorders that may be characteristic of pathological gamblers include:

- distortions in thinking (e.g., denial, superstitions, overconfidence, or a sense of power and control)
- belief that money is both the cause of and solution to all problems.
- highly competitive, energetic, restless, or easily bored.
- overly concerned with the approval of others and may be generous to the point of extravagance.

When not gambling, pathological gamblers may be workaholics or 'binge' workers who wait until they are up against deadlines before really working hard. They may be prone to stress-related medical conditions such as hypertension, peptic ulcer disease, and migraines. Increased rates of mood disorders, attention-deficit/hyperactivity disorder, and substance abuse or dependence have been reported in individuals with pathological gambling.

To make a formal diagnosis of pathological gambling, a Certified Problem Gambling Counselor or other qualified mental health professional must conduct a clinical evaluation to determine that the individual has met five or more of the ten diagnostic criteria associated with pathological gambling as shown in Table 1.

Table 1: Diagnostic Criteria for Pathological Gambling

| | |
|---------------------------------|--|
| Preoccupation | Preoccupied reliving past gambling experiences, handicapping or planning the next venture, or thinking of ways to get money with which to gamble |
| Tolerance | Needs to gamble with increasing amounts of money in order to achieve the desired excitement |
| Withdrawal | Is restless or irritable when attempting to cut down or stop gambling |
| Escape | Gambles as a way of escaping from problems or relieving feelings of helplessness, guilt, anxiety or depression |
| Chasing Losses | After losing money gambling, often returns another day in order to get even ("chasing one's losses") |
| Lying | Lies to family members, therapists or others to conceal the extent of involvement with gambling |
| Loss of Control | Has made repeated unsuccessful efforts to control, cut back or stop gambling |
| Illegal Acts | Has committed illegal acts, such as forgery, fraud, theft or embezzlement, in order to finance gambling |
| Risked Significant Relationship | Has jeopardized or lost a significant relationship, job, educational or career opportunity because of gambling |
| Bailout | Has relied on others to provide money to relieve a desperate financial situation caused by gambling |

DEFINING PROBLEM GAMBLING

The Warning Signs

Often referred to as the **'hidden addiction'**, problem gambling is not as easily detected as alcoholism or substance abuse. As one gambler put it, **"No one could smell a deck of cards on my breath."**

But there are other clues to look for that could be warning signs of a person's gambling problem. Some signs may be more obvious than others, depending on a person's relationship to the gambler and the extent to which the gambler is able to hide the behavior or cover up the consequences.

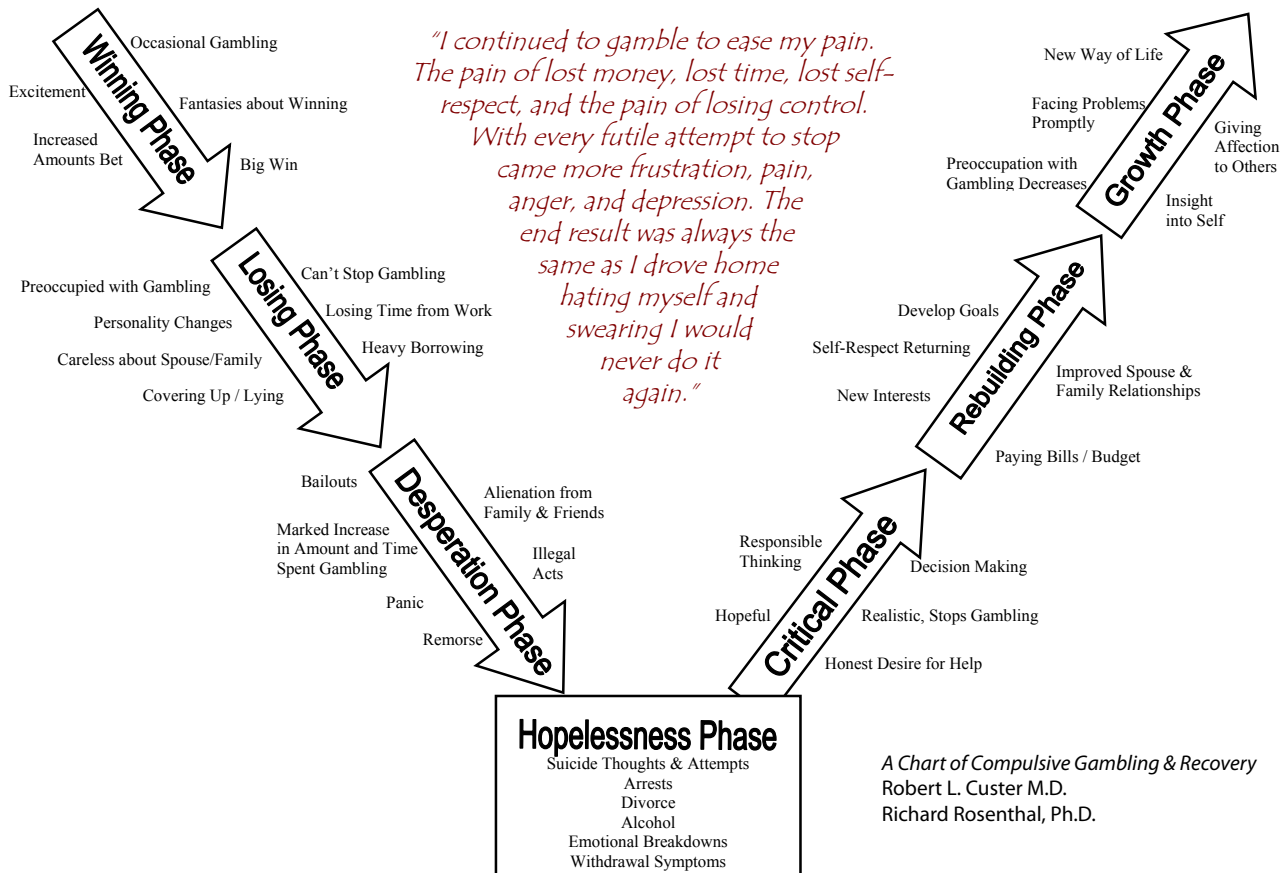
- Periods of time unaccounted for
- Unexpected expenses or financial catastrophes frequently cited as the reason for borrowing money
- Unexplained cash withdrawals from bank accounts
Overdrawn accounts, bounced checks, late payment of bills
- Extreme fluctuations in financial condition - broke one day, then spending money freely the next
- Secretive about finances or irritable when discussing money

- Defensive when questioned about gambling
- Repeated broken promises to cut down or stop gambling

Social Cost

A study of gambling among Nevada adults in March 2002 identified a combined prevalence rate of 6.4% for problem and pathological gambling, compared to a national average of 2-3%. Given Nevada's higher than national prevalence rates of problem gambling, the social costs to the state and its citizens are likely also higher than most other states.

The methods for calculating social costs are the subject of much debate, but typically include those costs related to increased crime, lost work time, bankruptcies, and increased medical costs faced by problem gamblers and their families. Those costs also affect the community as a whole. In a 2007 survey of 11,417 homeless persons in Clark County, 6% listed problem gambling as their primary reason for being homeless and nearly 21% reported that they were experiencing a gambling problem at the time of the survey.



“My days were spent in panic looking for ways to cover the checks I had written the night before, or thinking up lies to explain where I’d been. I stole from my children, neglected their needs and tried to look as if I had it all together.”

Personal, Financial and Legal Impact

Financial problems are inevitable for the person with a gambling problem. As the amount and frequency of the bets increases over time, so do the losses. The problem gambler begins juggling accounts, borrowing to make ends meet, and continues to gamble, hoping for another win big enough to solve all of the problems. As the ‘chasing’ cycle continues, the financial problems increase, and the consequences become more serious. Past due bills, bounced checks, pawning personal property, payday loans and credit card advances become ‘normal’ activities in the gamblers world.

The impact of this addiction is much greater, however, than just the money. Problem gamblers also experience employment problems, broken relationships, and other emotional, mental, and even physical health concerns that become progressively worse over time. As is the nature of addiction, problem gamblers often ignore or avoid dealing with minor issues until they become major crises with the potential for serious and sometimes life-altering consequences. These consequences affect every area of the gambler’s life, and can lead to a wide variety of legal issues.

| | | |
|-----------------|------------------------------------|---|
| FINANCES | Personal Bankruptcy | May be used as a bailout to relieve desperate financial situation |
| | Business Bankruptcy | May be the result of employee theft or mismanagement of company by owner due to gambling problem |
| | Debt Collections | Mounting losses leads to increasing reliance on credit and inability to make required payments |
| | Foreclosures | Using mortgage money to gamble or catch up on unpaid bills. Second mortgages used to bailout of financial crisis. |
| | Delinquent Taxes | Failure to file returns or pay taxes due to intentional avoidance or simple neglect |
| FAMILY | Domestic Violence | Emotional and financial stress leads to arguments and confrontations |
| | Divorce | Gambler’s spouse may see divorce as the only way out of the chaos. |
| | Child Custody | An untreated gambling problem could affect a parent’s ability to appropriately care for their child. |
| | Child Support | Payments in arrears due to losses; custodial parent may use child support payments to gamble. |
| | Community Property | Effect of gambling losses on community property may raise questions of ‘marital waste’ during divorce actions. |
| CRIME | Theft / Embezzlement | Impulsive, desperate decision to ‘borrow’ funds, planning to pay back with winnings |
| | Bad Checks / Markers | Used as temporary ‘loans’ to stay in action or cover gambling losses. |
| | Charges related to drugs / alcohol | High rates of substance abuse among problem gamblers. |
| | Traffic charges / Warrants | Emotional stress, sleep deprivation causes distraction and reckless behavior. |
| | Insurance / Tax fraud | Files false insurance claims and fraudulent tax returns to get cash after legitimate sources of money are depleted. |
| ETHICS | Impaired Professional | Problem gambling has the same disabling effects on the individual as other addictions |

All of this creates enormous pressure on the gambler, yet they still maintain the irrational belief that the only way out is to gamble more. Even though most problem gamblers have no prior criminal history, they may be motivated to commit a crime out of desperation to fund their addiction or pay off gambling debts when all legitimate sources of money have been exhausted.

TREATMENT APPROACHES & FINANCIAL ACCOUNTABILITY



Denise F. Quirk, MA
MFT, LADC, BACC-NCGC-II, CPGC-S

Diagnosing an individual as a pathological gambler only names the problem, it doesn't solve it. Many times the spouse of a problem gambler has called me frantically, having just received the shocking truth of the empty savings account and the children's college fund - which the gambler had been draining and funneling to a credit card or post office box unknown to the family.

The spouse is so traumatized by this discovery that their first thought is usually, "Should I get a divorce?" They are asking this primarily because their friends are telling them, "Throw the bum out- you can't change a gambling problem like that."

In one sense, they're absolutely right. We don't yet know any way to cure someone of pathological gambling or return that individual to a 'normal' state of play, but like other addictions, problem gambling can be treated.

Research shows that the most effective treatment approach combines Cognitive Behavioral Therapy with peer support such as Gamblers Anonymous (for the gambler) or Gam-Anon (for the family and friends). Outpatient and Intensive Outpatient groups are the most common settings for treatment, but some Residential and In-patient programs are available for individuals who need closer monitoring for reasons of co-occurring mental illness, medical conditions, or possibly suicide risk. Individual counseling for related issues can be helpful, but is not typically recommended as the best approach for the gambling problem itself.

From 2006 to 2009, Nevada's state-funded problem gambling treatment programs treated 1718 clients, and provided education and supportive therapeutic services to countless more friends, family, and employers of problem gamblers in Nevada. In follow-up surveys conducted by the University of Nevada Las Vegas, 95% of these clients reported that they reduced their gambling significantly.

Treatment addresses more than just the psychological effects of the disorder. This same research revealed that clients also saw improvements in family life, personal relationships, work performance, school performance, and financial situations.

A somewhat unique aspect of pathological gambling is the gambler's relationship to money and the devastating impact of financial and legal consequences on the problem gambler and their family. Experienced gambling counselors know that these

are significant clinical issues that can affect the client's ability to be successful in treatment, if not appropriately addressed.

Mind over Money

In nearly every case, the problem gambler will have developed an "abnormal" view of money. Their attitude towards money and its purpose in life centers completely around the need to stay 'in action' through continued gambling in order to enhance or alter their mood or avoid emotions entirely.

As their gambling progresses, the pathological gambler stops thinking about money as a medium of exchange for goods and services, and starts seeing it only as "Monopoly" money to be moved, borrowed, promised, and possibly even stolen to support their gambling. At that point the problem gambler has what we call a 'changed brain'. Once this change occurs, the brain of an addicted gambler will not so easily return to the groove of the old record that says, "you must work, save, and earn your dreams the old-fashioned way" because their brain circuitry has been rewired.

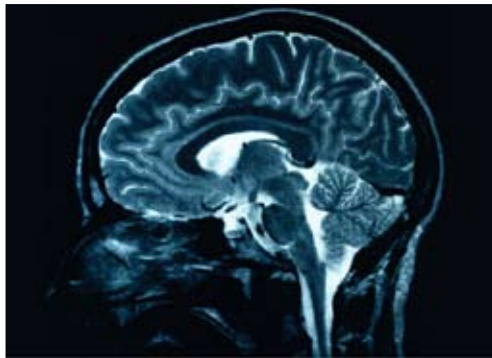
Their brain chemistry so strongly resembles that of a cocaine addict that SPECT scans comparing an active cocaine addict to that of an active gambling addict look nearly identical. This changed brain has become 'intoxicated' with the need to stay in action, distorting or suspending rational thought in order to justify making the next bet.

Gamblers Anonymous describes this distorted thinking as a magical Dream World in which:

"...A lot of time is spent creating images of the great and wonderful things they are going to do as soon as they make the big win. ...They may dream of providing families and friends with new cars, mink coats, and other luxuries."

Of course the dream can't last because the addicted gambler has lost control and, as Gamblers Anonymous goes on to say:

"...there never seems to be a big enough winning to make even the smallest dream come true. When compulsive gamblers succeed, they gamble to dream still greater dreams. When failing, they gamble in reckless desperation and the depths of their misery are fathomless as their dream world comes crashing down."



The problem gambler in treatment must learn how to recognize and refute the irrational beliefs of their dream world in order to learn how to have a normal view of money and become accountable for their financial condition.

Sounds simple - sort of - until you factor in the overwhelming financial debt and potential legal issues they may also be facing due to their gambling. For some, the amount of debt may not be possible to pay back in their lifetime. Others may be struggling to pay a smaller but more immediate debt, such as a casino marker that could result in even more costly legal action. This stress opens the door for impulsive thoughts of quick-fix solutions such as bankruptcy or irrational thoughts of returning to gambling for just one more score that will wipe it all away.

Financial Restitution

Making financial restitution is an integral part of treatment and recovery. Gamblers Anonymous groups assist their members in setting up a manageable budget through a program called "Pressure Relief". The goal is to help the gambler relieve financial stress, learn how to manage money and build self-esteem through repayment of gambling debt. Gamblers Anonymous tells its members that:

"...paying over a long period of time, while functioning and living as a human being... [is the] only avenue that will return you back to sanity and solvency."

The Pressure Relief process is a function of the Gamblers Anonymous program and may only be conducted by GA and Gam-Anon members. New members are required to abstain from gambling for 30 days before being eligible for Pressure Relief.

Professional therapists are not financial advisers, but they can help their gambling clients deal with the emotional impact and stress of their financial consequences, while directing them to reliable resources to address these issues.

When the gambler enters treatment, their family is faced with trying to stop the hemorrhaging of money for fees and fines and overdue payments caused by the gambler. Putting a stop to the bouncing checks, interest fees on payday loans, and the proverbial 'robbing Peter to pay Paul' behaviors that have become commonplace for the gambler, will likely mean that the spouse or someone else must immediately take over the family finances.

This first conversation about money in a family therapy appointment usually includes the distress and problem-solving strategies of a bunch of castaways stranded on an island, trying to figure out how they will shelter and feed themselves until the rescue boat arrives - all the while trying not to do harm to the person who caused the problem to begin with. As you can imagine, help is needed. This is the kind of problem that should not be dealt with alone.

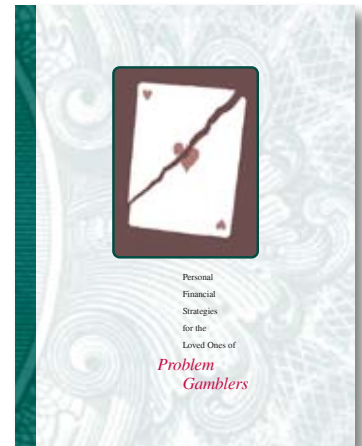
"Personal Financial Strategies for the Loved Ones of Problem Gamblers"

National Endowment for Financial Education and National Council on Problem Gambling

This financial handbook is a valuable one-of-a-kind resource for anyone who has financial concerns related to problem gambling, or for professionals who want to better understand the needs of a client dealing with a problem.

The handbook, prepared by the National Endowment for Financial Education and the National Council on Problem Gambling, provides information for problem gamblers in treatment and their family members to help stabilize and improve their financial situation.

For families with a problem gambler who is not seeking help, the handbook offers alternative approaches to traditional money management techniques and suggests steps that can be taken to financially protect the family as much as possible.



Key financial topics covered in the handbook include:

- Financial Actions to Take Immediately
- Identifying Income and Assets
- Establishing a Spending Plan
- Shifting Control of the Finances to a Non-gambler
- Repaying Debts and Avoiding Bankruptcy
- Tips for Responsible Investing

Through the collaboration with the National Council on Problem Gambling, the handbook was also written to include educational information about the warning signs of problem gambling and how to get help.

Single copies of "Personal Financial Strategies for the Loved Ones of Problem Gamblers" are available to the public free of charge from the Nevada Council on Problem Gambling. Visit www.nevadacouncil.org for additional information.

Denise F. Quirk has been an addictions counselor and marriage and family therapist in Reno, Nevada since 1992. She is presently the CEO and Clinical Director of the Reno Problem Gambling Center, a non-profit outpatient treatment center for problem gamblers and their families, and also has a private practice, Red Hawk Counseling. Denise has served on the Governor's Advisory Committee for Problem Gambling since 2005 and is a former member of the Nevada Board of Examiners for Alcohol, Drug and Gambling Counselors.

FAMILY COURT: PROBLEM GAMBLING ISSUES & IMPACT

*Honorable Cheryl B. Moss
8th Judicial District Court
Clark County, Nevada*



A VIEW FROM THE BENCH

Problem gambling can have a profound impact in family court cases. In domestic relations cases, there are two areas where a gambling problem can affect the family or the marital community. The first area is child custody, where a parent with a gambling problem may pose a risk to the children. In some instances, a parent will go to a casino for extended periods and lose track of time, while a child is left behind in a car or at home without any adult supervision. Sometimes the child is left at a casino child care facility, and the gambling parent forgets to retrieve the child.

In other cases, a parent or spouse can gamble away funds necessary to pay for groceries and household bills. Utilities are shut down, cars are repossessed, checking accounts overdrawn, credit cards are maxed out, expensive items are missing from the house, and the children's college funds are depleted.

Is There a Gambling Problem in This Family?

When a custody or divorce case is initiated in family court, one should consider requesting the judge to order a parent or spouse be evaluated to determine if there is a gambling problem, and when there is a problem, to determine its severity. Certified problem gambling counselors (CPGC) are qualified to do gambling assessments which consist of administering questionnaires and conducting one-on-one interviews.

The CPGC will then submit a report to the judge indicating whether the parent or spouse does or does not have a problem, based on the diagnostic criteria for pathological gambling. The assessment report should include a good history and objective results from the questionnaires that were administered, along with recommendations for the level and length of treatment that would be most appropriate for the gambler. In less severe cases, the recommendations may be limited to problem gambling education and regular attendance at Gamblers Anonymous meetings.

For individuals with more serious problems, outpatient treatment, intensive outpatient treatment with continuing care, or even residential treatment may be the most appropriate options. In some cases, it may be recommended that the gambler also be assessed for other

mental health issues such as depression, bipolar disorder, and substance abuse. Although the evaluator should never attempt to make a recommendation to the court regarding legal matters such as custody or visitation, including information in the report about the family impact of the parent or spouse's gambling can be helpful.

Disposition of Community Property

The second area of impact in domestic relations law, deals with issues surrounding community or marital waste in divorce actions in Nevada, particularly where the marital community once had significant cash or assets only to be dissipated by gambling habits.

Community waste becomes an issue when one spouse accuses the other of selling, destroying, encumbering, or disposing of community property. This can be a very difficult accusation to prove, because community waste must be the result of intentional misconduct by accused. The party making the accusation may argue, "He knew what he was doing every time he went to the casino so he should have to pay me back what I'm owed." The gambler's response to that would probably be, "I couldn't stop it, it was an uncontrollable urge." This creates a real dilemma for the court: If the spouse is diagnosed with pathological gambling, can it really be considered 'intentional' or an act of 'misconduct'?

NRS 125.150 requires the court to "make an equal disposition of the community property of the parties, except that the court may make an **unequal disposition** of the community property in such proportions as it deems just if the court finds a **compelling reason** to do so and sets forth in writing the reasons for making the unequal disposition."

This raises evidentiary issues with respect to problem gambling. For example, one can subpoena player card records from a casino to show how much was played on a given day, what time and for how long a gambler was using a particular gaming machine. In divorce cases, the problem lies with spouses possibly sharing the same card or swapping the other spouse's cards and inserting them in the gaming machines. Consequently, one cannot tell who was actually using the player's card at any given time (unless the other spouse can prove he or she was at work instead of gambling).

Another possible sign of a gambling problem is daily ATM withdrawals, particularly if the withdrawals are actually at a casino or bar. Again, there would be a proof problem, however, if the accused spouse alleges that the other spouse or someone else was using the ATM card. The judge might evaluate the regularity of the withdrawals, how large were the amounts that were taken out, and the total amount of money withdrawn over time.

Bank statements can be obtained to reflect the quantity and frequency of ATM withdrawals as well. Even with all of that information, there may be no way to prove that the money withdrawn was actually used for gambling.

Other forms of evidence could include:

- Credit card statements showing frequent cash advances
- Receipts of payday loans
- Pawn shop tickets
- Sworn testimony from family members who constantly loaned money to the gambler (bailouts)

In extreme cases, the problem gambler may not hit “rock bottom” until they are caught and charged with a crime. In those situations, the gambler’s criminal activities and involvement in criminal court will also come up in discussion in the family court case.

When the issue of problem gambling is brought forth before a family court judge, the judge should be considering directives such as placing the non-gambling spouse in charge of all the family finances, referring the gambler to counseling, referring the non-gambling family members to Gam-Anon meetings, and monitoring the progress of the gambler’s treatment through scheduled status checks.

Studies Show...

Children of problem gamblers may have significant behavioral or adjustment problems reflected in running away from home, committing crime, and engaging in drug, alcohol, or gambling related activities

Spouses of problem gamblers are more likely to experience depression or have suicidal thoughts.

Family members are at higher risk for developing their own addictions.

Each problem gambler affects 10-17 other people, including family and coworkers.

In every case where a parent’s addiction is an issue, it is important to encourage the addicted parent to demonstrate their motivation to change for the sake of their children. The addicted parent needs to realize that they can only choose one - their addiction or their kids. This applies to gambling addiction as well. As a judge, my goal is to guide the motivated parent to the tools that will help them make the right choice, so the relationship with their children, and the stability of the family can eventually be restored.

CHILD CUSTODY

In re Marriage of Kramer, 297 N.W.2d 359 (Iowa, 1980)
Mom’s lack of emotional stability and witness testimony outweighed Dad’s gambling problem and justified award of custody to Dad.

Steward v. Steward, 111 Nev. 295 (Nev., 1995)
Grandmother denied grandparent’s visitation; alcohol problem and gambling problem in list of factors

Roberson v. Roberson, 814 So. 2d 183 (Miss. Ct. App., 2002)
Dad, awarded custody of the child because Mom’s gambling problem would offer a less stable home environment.

O’Connor v. O’Connor, 2003 Va. Cir. LEXIS 20 (Va.Cir.Ct., 2003)
Dad’s illicit drug use and compulsive gambling - modification of child custody to SLC and PPC to Mom with supervised visits for Dad.

COMMUNITY PROPERTY

Lofgren v. Lofgren, 112 Nev. 1282, 926 P.2d 296 (1996)
The court can make an unequal disposition of community property to one spouse if there are “compelling reasons” for the unequal disposition, such as financial misconduct or secreting assets by the other spouse.

Putterman v. Putterman, 113 Nev. 606, 939 P.2d 1047 (1997)
Other compelling reasons can be hiding or wasting assets, misappropriating community property for personal gain, or making unauthorized gifts of community property.

Rodriguez v. Rodriguez, 116 Nev. 993, 13 P.3d 415 (2000)
Marital misconduct resulting in adverse economic consequences to one of the parties.

Judge Cheryl Moss was elected to the District Court, Family Division in November 2000. She has extensive knowledge in problem gambling and was the first judge in Clark County to initiate a pilot program on problem gambling assessments for parents in child custody cases. In 2009, Judge Moss was the recipient of the prestigious Shannon L. Bybee Award, presented by the Nevada Council on Problem Gambling in recognition of her dedication, advocacy and compassion for problem gamblers and their families.

Almost a Specialty Court: NEVADA PROBLEM GAMBLING DIVERSION PROGRAM

By: Anthony Cabot and Jennifer Roberts



While Nevada has drug and alcohol courts, DUI courts, and a prostitution prevention court, it has no specialty court devoted to gambling. During the 2009 session, however, the Nevada State Legislature established a criminal diversion program for problem gamblers. The program resulted from a bill sponsored by the Nevada Department of Health and Human Services, a state agency tasked to promote the "health and well-being of Nevadans through the facilitation of essential services to ensure families are strengthened, public health is protected, and individuals achieve their highest level of self sufficiency." Specifically, Assembly Bill No. 102 created a pretrial diversion alternative for certain criminal defendants whose problem gambling was a contributing factor to the crime charged.

Prevalence studies estimate that up to 6% of Nevada adults may be problem gamblers. Studies further link problem gambling as a cause of domestic issues, check fraud, theft and other crimes. The purpose of A.B. 102 was to address problem gambling as the core of a criminal defendant's problem to prevent recidivism and assist in returning the individual to a productive role in society.

Some legislators feared that individuals might abuse this program to escape punishment for crimes they committed, even if they were not problem gamblers. Senator Barbra Cegavske noted: "I want it on the record that the intent of A.B. 102 is for those people who have an identifiable problem with gambling. It is not intended for people who declare they have a gambling problem just because they want to go into the program."

To curtail those concerns, which are equally applicable to every state specialty rehabilitation program such as drug rehab programs, the bill's refined language made clear that the presiding judge must determine that the accused is a problem gambler, based on the results of an independent clinical evaluation.

Strong support came from advocates of other rehabilitation programs. Las Vegas Judge Cheryl Moss's statement to the Legislature reflected this position:

...[T]he statute is merely an extension to the availability of services allowed by the statute to criminal defendants who acknowledge they have substance abuse and alcohol problems. Often, gambling problems co-exist with substance abuse. The additional services will benefit

these individuals and hopefully keep them away from a life of crime.

Ultimately, the bill was passed 34-8 in the Assembly, unanimously in the Senate, approved by the Governor, and went into effect on October 1, 2009. The new law establishes a rehabilitation program for problem gamblers who have committed a crime in furtherance of their problem gambling. This program's intent is to help individuals with serious gambling problems. A criminal defendant is not entitled to enroll in the program; instead, involvement is at the discretion of the presiding judge. Moreover, individuals charged with certain crimes are not eligible for consideration.

The law further provides that a qualified mental health professional (NRS 641C) must willingly accept the accused into their program - professionals are not obligated to take them. Consistent with the requirement of close monitoring by the mental health professional, the program has strict rehabilitation guidelines such as status updates, potential confinement in a facility, or any other conditions the court could impose as conditions of probation.

The defendant must pay the cost of the program. If the individual cannot afford the program, however, the presiding judge can allow enrollment in a government-subsidized program to reduce the costs to something within their financial capabilities or permit them to do community service in lieu of the costs. The defendant also must pay restitution to any victims of their crimes.

Lastly, if the court decides the program cannot correct the individual's problem gambling, or that the crime was actually not done in furtherance of problem gambling, the court can revoke that individual's eligibility in the program and impose sentencing. Conversely, upon successful completion of the program, the individual's conviction relating to their problem gambling behavior may be set aside and the records sealed by the court.

In the absence of a gambling specialty court in Nevada, the problem gambling diversion program is a significant step in helping defendants to get treatment in order to prevent further criminal actions.

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GUIDING THE CLIENT TOWARD THE GAMBLING DIVERSION

*Carl F. Hylin, Chief Deputy
Washoe County Public Defender*

Nevada Revised Statutes Chapter 458A allows any court in Nevada to assign a client to a problem gambling diversion program. The gambling diversion in this chapter is a clone of the diversion found in the well established program described in Chapter 458. No language in 458A specifies the type of court to which the diversion applies; presumably each court in Nevada, be it municipal, justice or district court may assign a client to this diversion. Likewise, 458A only specifies a crime which was committed in furtherance or as a result of problem gambling but does not delineate any level of crime (misdemeanor, gross misdemeanor or felony).

Until such time as your jurisdiction establishes an actual "gambling specialty court", any court where the plea is entered may assign the client to the gambling diversion to be monitored by that same court. (NRS 458A.200).

The following presentation is intended as a practical guide for the criminal law practitioner to secure an assignment to the gambling diversion for your client.

1. Identifying Problem Gambling in the Client

Identification of your client as a problem gambler (as described in NRS 641C.110) involves disclosure by your client of his/her gambling characteristics and is a threshold issue which will usually need to be drawn out by counsel's questioning. Experience shows that problem gamblers commonly are ashamed of this addiction. Initially, query the client as to why he/she committed the offense, particularly where the offense seems odd compared to the client's background. If the client admits to frequent gambling you can employ the Lie-Bet questionnaire to determine if the client's gambling is problematic. This questionnaire consists of two queries:

- (1) Have you ever had to **lie** to people important to you about how much you gambled?
- (2) Have you ever felt the need to **bet** more and more money?

A yes answer to either of these indicates a problem, but a yes answer to both indicates a probability of more than 90% that the client has a gambling problem. Sometimes the problem is self reported, such as where the client was involved in a dispute over money and either the client or the alleged victim explains that the fight resulted from problem gambling.

2. Determining Qualification for the Gambling Diversion

A) Legal Qualification

Determining if your client is qualified under Chapter 458A in a legal sense is the next step toward entry into the diversion. To be qualified, the client must have plead guilty to a crime that was committed in furtherance or as a result of problem gambling. (NRS 458A.210)

Crimes which exclude your client are:

- (1) a gross misdemeanor or felony under chapter 200 of NRS
- (2) a crime against a child under NRS 179D.0357
- (3) a sex offense as defined by NRS 179D.097
- (4) an act which constitutes domestic violence as set forth in NRS 33.018
- (5) the client has a record of two or more prior convictions of crimes described in sections (1) through (4) or a similar crime in violation of the laws of another state
- (6) 3 or more convictions of any felony
- (7) if criminal proceedings regarding a felony are pending against the client
- (8) the client is on probation or parole, unless the Division of Parole and Probation does not object; and
- (9) the client was previously granted the gambling diversion unless the court, in its discretion, finds the client again eligible.

(Continued on next page)

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B) Qualification by Evaluation

If your client is not prohibited from participation in the diversion in a legal sense, you must now arrange for a problem gambling evaluation to be performed by a qualified mental health professional (as defined in NRS 458A.057). You can find a current listing of Nevada problem gambling treatment programs staffed by Certified Problem Gambling Counselors (CPGC) and Interns through the online Resource Locator, available at www.nevadacouncil.org/resource_locator. By selecting a qualified professional with the CPGC credential, you can be assured that the counselor has received specific training in conducting problem gambling evaluations and in treating problem gamblers.

During the evaluation, the client will undergo a thorough interview, then will be required to complete further written assessments such as the South Oaks Gambling Screen and the DSM-IV ten questions for pathological gambling diagnosis. After completion of the assessment the evaluator will provide a written report consolidating the information gained from the interview and the tests, and will conclude whether your client is a pathological gambler. (See Example 1)

3. Advocating for the Diversion Program

If the client is legally and factually (by evaluation) found to be qualified, counsel is now prepared to attend the sentencing hearing to argue for the diversion. Until such time as your jurisdiction establishes a “gambling specialty court”, you will have to convince the original sentencing judge to accommodate the client in that court. Note that some judges may require extrinsic evidence of the client’s problem gambling. This may be provided by friends, family, employers or other knowledgeable witnesses or may be substantiated by casino tracking cards or other casino records showing the frequency of gambling. It may be helpful to invite the evaluator to the sentencing to provide a presentation to the court regarding the rigors of the problem gambling treatment program and to commit to the court to provide periodic progress assessments. The client must agree to pay restitution as a condition of accepting treatment.

4. Assignment by the Court to the Diversion Program

If the court is satisfied by the presentation at sentencing, the court may assign the client to the gambling diversion pursuant to NRS 458A.220. In addition to the recommended level of treatment, the court may also assign other conditions as recommended by the evaluator, and any others that can be imposed as conditions of probation. (See Example 2) Diversion programs are usually more successful if there is close supervision by and accountability to the court. Initially, review hearings should be scheduled at least monthly, then after several months of success, less frequently.

5. Follow-up once the client is admitted to the Diversion Program

After assignment to the gambling diversion, obtain a commitment from the treatment facility to provide you copies of all evaluations and to notify counsel if the client is beginning to fail in the program. This provides an opportunity for intervention by counsel to cure any deficiencies prior to the next review hearing.

Carl Hylin began his legal career in 1986 as a judicial clerk for the Nevada Supreme Court. Since 2004 Mr. Hylin has served as a Chief Deputy trial attorney in the Washoe County Public Defender's office. He previously worked in the Reno City Attorney's office and ran a private practice for ten years that included criminal defense and various civil cases. In 2010 Mr. Hylin served as defense counsel in the first case in Washoe County to be assigned to a problem gambling diversion program under NRS458A.

BENEFITS OF TREATMENT DIVERSION FOR PROBLEM GAMBLERS

- Offenders in treatment can maintain employment, which increases likelihood of making financial restitution to their victims.
- Treatment recognizes restitution and financial accountability as essential goals of treatment.
- Treatment addresses the needs of the family as well as the gambler.
- Offenders can utilize other supportive resources that would not be available in jail, such as Gamblers Anonymous and family support.
- Offenders are highly motivated to engage in, and complete treatment to avoid negative consequence of failing the diversion program.
- Positive consequence of having criminal record sealed provides additional motivation to succeed.
- Successful outcomes reduce social costs to the community and relieve future burden on the courts

Treated offenders are less likely to re-offend.

EXAMPLE 1: EVALUATION SUMMARY REPORT

This sample evaluation report is based on the GPPC - a tool developed by a team of Nevada Certified Problem Gambling Counselors, and approved by the Nevada Board of Examiners for Alcohol Drug and Gambling Counselors for use in clinical evaluations for problem gambling. GPPC (pronounced 'gypsy') stands for "Gambling Patient Placement Criteria" which provides a standard for determining the recommended level of care for treatment of the problem gambler.

PROBLEM GAMBLING ASSESSMENT SUMMARY

Defendant: Anyone Doe

Date of Assessment: June 1, 2010

Does the defendant meet DSM-IV diagnostic criteria for Pathological Gambling? Yes No

Based on: DSM Criteria Screen: 7/10 NODS: 5/10 SOGS: 7/20

Describe: Client meets diagnostic criteria for 312.31 Pathological Gambling

GPPC Dimensional Evaluation or DSM Multiaxial Assessment:

Client evaluated as "High" severity in Gambling Patient Placement Criteria Dimension 1 (Frequency/Intensity/Duration of Disorder), Dimension 3 (Cognitive/Behavioral/Emotional Conditions), and Dimension 5 (Relapse or Continued Problem History or Potential).

DSM-IV Multiaxial Assessment indicates diagnosis of 312.31 Pathological Gambling on Axis I; No diagnosis on Axis II; Self-report of 401.9 Hypertension on Axis III; and Axis IV problems with Primary support group (currently separated from spouse), Occupational problems (recently fired, but actively seeking employment), Housing problems (evicted for non-payment), Economic problems (recent bankruptcy), and problems with legal system/crime (embezzlement); Axis V Global Assessment of Functioning Score of 41 based on suicidal ideation, marital separation, homelessness, loss of job and financial burden.

BioPsychoSocial and/or Financial Implications:

Client has progressed to daily gambling with increasing financial losses, recent job loss, and loss of housing. Client reports medical complications of hypertension. Client reports recent marital separation, recent bankruptcy, repossession of car, and foreclosure on home.

Has the defendant been convicted of a crime? Yes No

Describe: Client convicted of embezzlement from former employer, pending sentencing.

Was the crime committed in furtherance or as a result of problem gambling? Yes No

Describe: Client reports embezzling from employer to gamble and to recoup gambling losses.

Is the defendant likely to be rehabilitated through treatment? Yes No

Describe: Initial interview suggests client is well-motivated to seek help, engage in treatment and make restitution.

Does the defendant elect to submit to treatment? Yes No

Treatment Recommendation to include Level of Care:

Recommend Level 2 Intensive Outpatient treatment for minimum 6 weeks with re-evaluation at that time for adjustment in level of care. Recommend referral to concurrent marital/family therapy. Recommend minimum 1 year Transitional Care post-discharge with weekly attendance at Gamblers Anonymous.

Evaluator: Hugh DeMann, MA, CPGC-I

Report Date: June 4, 2010

Qualification: Nevada Certified Problem Gambling Counselor or Intern

Other qualified mental health professional _____

EXAMPLE 2: DIVERSION ORDER

COURT ORDERED INTERVENTIONS*

for Cases Involving Problem Gamblers

- I. Parties who are believed to have a gambling problem should first be recommended for a professional evaluation conducted by a Certified Problem Gambling Counselor (CPGC) or Intern (CPGC-I), or other qualified mental health professional (NRS 641C).

| ✓ | EVALUATION | TOTAL TIME | CONDUCTED BY |
|---|---------------------|----------------------------|-----------------------|
| | Gambling Assessment | 1 - 3 hours per evaluation | CPGC / CPGC-I / Other |

- II. Based on the results of the professional evaluation, the following levels of treatment may be recommended, and can be ordered by the court:

| ✓ | LEVEL | TREATMENT TYPE | TOTAL TIME | DESCRIPTION | FREQUENCY |
|---|-------|----------------------------|-------------|--|---|
| | .5 | Early Intervention | 1-8 hrs. | Brief Intervention Services, Outreach or Psycho-educational Groups | |
| | 1-A | Outpatient (OP) | 9-13 hrs. | Individual Counseling / Couples Counseling / Family Counseling / Group Counseling and Case Management in a combination of services. | Suggested up to: 7 hrs. per week |
| | 1-B | Outpatient (OP) | 14-26 hrs. | | |
| | 1-C | Outpatient (OP) | 27-52 hrs. | | |
| | 2 | Intensive Outpatient (IOP) | 60-100 hrs. | Program of specific outpatient services for pathological gambling provided by Certified Gambling Counselors (CPGC & CPGC-I) | Suggested Minimum: 8 hrs. per week |
| | 3 | Residential | 5-45 days | Treatment provided within a building where client resides until professionally assessed to be ready to move to lower level of service or transitional care. | Suggested Minimum: 15 hrs. per week (gambling-specific) |
| | | Transitional Care | 30-180 days | Contact maintained between treatment provider and client, following successful completion of previous treatment level. May include weekly alumni group facilitated by a therapist. | Ongoing |

- III. Additional supportive interventions and monitoring based on evaluation or determination of the court:

| | |
|--|---|
| | 12 Step Support Groups: GA AA NA Other _____ Attend _____ x per week |
| | Court Services: _____ x per _____ (week or month) |
| | Next Court Appearance: _____ (date) |
| | Probation Office Appearance: _____ x per _____ (week or month) |
| | No Gambling ____ No Casinos; Self Exclusion from _____ Casino by _____ (date) |
| | Chemical testing: _____ (type) _____ (due date) |
| | Concurrent other Counseling: _____ (type) _____ (# of sessions) |
| | Restitution plan: \$ _____ Due: _____ (date) |
| | Child Support: \$ _____ Due: _____ (date) |
| | Employment: _____ Due: _____ (date) |
| | House Arrest: Start date: _____ End date: _____ |
| | Halfway House / Transitional Living: _____ (Name/Location) |
| | Other: _____ |

*Suggested format only. Sample provided by the creators of the **Gambling Patient Placement Criteria (GPPC)**. Contact the GPPC team at rhcpgpc@gmail.com or (877) 979-4772 for additional information on resources for problem gambling assessments and court ordered interventions.

CIVIL COMMITMENT OF PROBLEM GAMBLERS CONVICTED OF CRIME

NRS 458A.200 Authority of court to establish program of treatment; conditions for assignment; administration.

1. A court may establish a program for the treatment of problem gambling to which it may assign a person pursuant to [NRS 458A.210](#). The assignment must:

- (a) Include the terms and conditions for successful completion of the program;
- (b) Require that the person assigned to the program agree to pay restitution as a condition upon the election of treatment; and
- (c) Provide for progress reports at intervals set by the court to ensure that the person is making satisfactory progress toward completion of the program.

2. A program established pursuant to this section must be administered by a qualified mental health professional and must include, without limitation:

- (a) Information and encouragement for the participant to cease problem gambling through educational, counseling and support sessions;
- (b) The opportunity for the participant to understand the medical, psychological, social and financial implications of problem gambling; and
- (c) Appropriate referral to community, health, substance abuse, religious and social service agencies for additional resources and related services, as needed.

3. Before the court assigns a person to a program for the treatment of problem gambling, the person must agree to pay the cost of the program to which he or she is assigned, to the extent of the financial resources of the person. If the person does not have the financial resources to pay all the related costs, the court shall, to the extent practicable, arrange for the person to be assigned to a program that receives a sufficient amount of federal or state funding to offset the remainder of the costs.

(Added to NRS by [2009, 1435](#))

NRS 458A.210 Eligibility for assignment to program of treatment. Subject to the provisions of [NRS 458A.200](#) to [458A.260](#), inclusive, a problem gambler who has been convicted of a crime and who committed the crime in furtherance or as a result of problem gambling is eligible to elect to be assigned by the court to a program for the treatment of problem gambling before he or she is sentenced unless:

1. The crime is:

- (a) A crime against the person punishable as a felony or gross misdemeanor as provided in [chapter 200](#) of NRS;
- (b) A crime against a child as defined in [NRS 179D.0357](#);
- (c) A sexual offense as defined in [NRS 179D.097](#); or
- (d) An act which constitutes domestic violence as set forth in [NRS 33.018](#);

2. The problem gambler has a record of two or more convictions of a crime described in subsection 1 or a similar crime in violation of the laws of another state, or of three or more convictions of any felony;

3. Other criminal proceedings alleging commission of a felony are pending against the problem gambler;

4. The problem gambler is on probation or parole, except that the problem gambler is eligible to make the election if the appropriate probation or parole authority consents to the election or the court finds that the problem gambler is eligible to make the election after considering any objections made by the appropriate probation or parole authority; or

5. The problem gambler has previously been assigned by a court to a program for the treatment of problem gambling, except that the problem gambler is eligible to make the election if the court, in its discretion, finds that the problem gambler is eligible to make such an election.

(Added to NRS by [2009, 1436](#))

NRS 458A.220 Hearing to determine whether person should receive treatment; court to advise person of conditions.

1. If the court:

(a) Has reason to believe that:

- (1) A person who has been convicted of a crime is a problem gambler; and
- (2) The person committed the crime in furtherance or as a result of problem gambling; and

(b) Finds that the person is eligible to make the election as provided in [NRS 458A.210](#),

È the court shall hold a hearing before it sentences the person to determine whether or not the person committed the crime in furtherance or as a result of problem gambling and whether or not the person should receive treatment under the supervision of a qualified mental health professional. The district attorney may present the court with any evidence concerning whether the person committed the crime in furtherance or as a result of problem gambling and the advisability of permitting the person to make the election.

2. At the hearing, the court shall advise the person that sentencing will be postponed if the person elects to submit to treatment and is accepted into a program for the treatment of problem gambling. In offering the election, the court shall advise the person that:

(a) The court may impose any conditions upon the election of treatment that could be imposed as conditions of probation;

(b) If the person elects to submit to treatment and is accepted, the person:

(1) May be placed under the supervision of the qualified mental health professional for a period of not less than 1 year and not more than 3 years; and

(2) Must agree to pay restitution as a condition upon the election of treatment;

(c) During treatment, the person may be confined in an institution or, at the discretion of the qualified mental health professional, released for treatment or supervised care in the community;

(d) If the person satisfactorily completes treatment and satisfies the conditions upon the election of treatment, as determined by the court, the conviction will be set aside, but if the person does not satisfactorily complete treatment and satisfy the conditions, the person may be sentenced and the sentence executed; and

(e) If the person's conviction is set aside pursuant to [NRS 458A.240](#), he or she may, at any time after the conviction is set aside, file a petition pursuant to [NRS 179.255](#) for the sealing of all records relating to the setting aside of the conviction.

(Added to NRS by [2009, 1436](#))

NRS 458A.230 Examination of person; determination of acceptability for treatment; imposition of conditions; payment of restitution; deferment of sentencing; payment of costs of treatment.

1. If the court, after a hearing, determines that a person is entitled to accept the treatment offered pursuant to [NRS 458A.210](#), the court shall order a qualified mental health professional to conduct an examination of the person to determine whether the person is a problem gambler, whether the person committed the crime in furtherance or as a result of problem gambling and whether the person is likely to be rehabilitated through

treatment. The qualified mental health professional shall report to the court the results of the examination and recommend whether the person should be placed under supervision for treatment.

2. If the court, acting on the report or other relevant information, determines that the person is not a problem gambler, did not commit the crime in furtherance or as a result of problem gambling, is not likely to be rehabilitated through treatment or is otherwise not a good candidate for treatment, the person may be sentenced and the sentence executed.

3. If the court determines that the person is a problem gambler, committed the crime in furtherance or as a result of problem gambling, is likely to be rehabilitated through treatment and is a good candidate for treatment, the court may:

- (a) Impose any conditions upon the election of treatment that may be imposed as conditions of probation;
- (b) Defer sentencing until such time, if any, as sentencing is authorized pursuant to [NRS 458A.240](#); and
- (c) Place the person under the supervision of a qualified mental health professional for not less than 1 year and not more than 3 years.

È The court may require such progress reports on the treatment of the person as it deems necessary.

4. If the court places a person under the supervision of a qualified mental health professional for the purpose of receiving treatment pursuant to [NRS 458A.200](#) to [458A.260](#), inclusive, the person must agree to pay restitution as a condition upon the election of treatment.

5. A person who is placed under the supervision of a qualified mental health professional shall pay the cost of the program of treatment to which the person is assigned and the cost of any additional supervision that may be required, to the extent of the financial resources of the person. The court may issue a judgment in favor of the court or the qualified mental health professional for the costs of the treatment and supervision which remain unpaid at the conclusion of the treatment. The judgment constitutes a lien in like manner as a judgment for money rendered in a civil action, but in no event may the amount of the judgment include any amount of the debt which was extinguished by the successful completion of community service pursuant to subsection 6.

6. If the person who is placed under the supervision of a qualified mental health professional does not have the financial resources to pay all of the related costs:

- (a) The court shall, to the extent practicable, arrange for the person to be assigned to a program that receives a sufficient amount of federal or state funding to offset the remainder of the costs; and
- (b) The court may order the person to perform supervised community service in lieu of paying the remainder of the costs relating to the person's treatment and supervision. The community service must be performed for and under the supervising authority of a county, city, town or other political subdivision or agency of this State or a charitable organization that renders service to the community or its residents. The court may require the person to deposit with the court a reasonable sum of money to pay for the cost of policies of insurance against liability for personal injury and damage to property or for industrial insurance, or both, during those periods in which the person performs the community service, unless, if the insurance is industrial insurance, it is provided by the authority for which the person performs the community service.

7. No person may be placed under the supervision of a qualified mental health professional pursuant to this section unless the qualified mental health professional accepts the person for treatment.

(Added to NRS by [2009, 1437](#))

NRS 458A.240 Deferment of sentencing; satisfaction of conditions for treatment; setting aside conviction; determination of transfer to another facility or sentencing.

1. Whenever a person is placed under the supervision of a qualified mental health professional, the person's sentencing must be deferred and, except as otherwise provided in subsection 4, the person's conviction must be set aside if the qualified mental health professional certifies to the court that the person has satisfactorily completed the program of treatment and the court approves the certification and determines that the conditions upon the election of treatment have been satisfied.

2. If, upon the expiration of the treatment period, the qualified mental health professional has not certified that the person has completed the program of treatment, the court shall sentence the person. If the person has satisfied the conditions upon the election of treatment and the court believes that the person will complete his or her treatment voluntarily, the court may set the conviction aside.

3. If, before the treatment period expires, the qualified mental health professional determines that the person is not likely to benefit from further treatment, the qualified mental health professional shall so advise the court. The court shall then:

- (a) Arrange for the transfer of the person to a more suitable program, if any; or
- (b) Terminate the supervision and conduct a hearing to determine whether the person should be sentenced.

È If a person is sentenced pursuant to this section, any time spent in institutional care must be deducted from any sentence imposed.

4. Regardless of whether the person successfully completes treatment, the court shall not set aside the conviction of a person who has a record of two or more convictions of any felony for two or more separate incidents.

(Added to NRS by [2009, 1438](#))

NRS 458A.250 Civil commitment not criminal conviction; sealing of records.

1. The determination of problem gambling and civil commitment pursuant to [NRS 458A.200](#) to [458A.260](#), inclusive, shall not be deemed a criminal conviction.

2. The records relating to the setting aside of a conviction pursuant to [NRS 458A.240](#) may be sealed pursuant to [NRS 179.255](#).

(Added to NRS by [2009, 1439](#))

NRS 458A.260 State or political subdivision not required to provide program for treatment. The provisions of [NRS 458A.200](#) to [458A.260](#), inclusive, do not require this State or any of its political subdivisions to establish or finance any program for the treatment of problem gambling.

(Added to NRS by [2009, 1439](#))

re·ha·bil·i·tate [ree-huh-bil-i-teyt]: *To restore to good health or useful life*

Diversion merely offers the opportunity for recovery - It is the commitment of the individual that ultimately determines what they will achieve.

The Case of Nita K.

I had moved up quickly in my accounting career and it was the first quarterly meeting that I had to present the financial statements to the company. I nervously went through the reports, fearing someone would see what was really happening. When no one noticed the discrepancies, I walked out thinking, "It will be ok, because I'm going to pay it all back." These people trusted me and I cared for them - but not enough to be able to stop me from gambling. Instead, I borrowed a little more and kept gambling, then borrowed more and gambled again. I held myself together until the guilt and shame got the best of me, eventually turning to drugs and alcohol to numb the pain.

"I borrowed a little more and kept gambling."

Then one day in 1993 it was over. I was called in to a meeting and confronted by the owners of the company. "Nita we have found some discrepancies in the books and we're hoping you can tell us what happened." To which I replied, "I took the money and I gambled it." Then said to myself, "Thank God it's over."

I estimated the total amount of my theft over the three years I worked there to be about \$15,000. They immediately let me go, and surprisingly allowed me to walk out of the building on my own. As I drove home trying to figure out what I should do, I heard that same old voice say, "Just go win it back." As irrational as that thought was, no other choices came to mind, so I took a hundred dollars and went to my favorite pub. But this time the drinking and gambling couldn't numb the pain and I knew it was really over.

My husband didn't know what I had done, so I headed home and came clean. We had almost \$60,000 equity in our house that we thought would fix what I had done. I wasn't ready to face anyone yet, so my husband went to my company the next day and offered to clear the debt. I was stunned when he came home and said the equity would not be enough. The preliminary audit results indicated that I had actually stolen more than \$300,000!

We liquidated everything we owned, and for the next 2 years I went to support group meetings and counseling and waited to be prosecuted. I no longer gambled, drank or used drugs and was eventually able to get a job at a small company - one that didn't require me to handle money. I accepted the fact that I might be going to prison, and just prayed there would be a Gamblers Anonymous meeting there. If not, I vowed I would start one.

On September 20, 1995, after pleading guilty to felony theft, I stood before the judge and was sentenced to 4 years in the Nevada Department of Corrections and ordered to pay \$263,480.61 in restitution. The sentence was suspended and I was given 5 years probation with the conditions that I pay restitution, continue counseling and refrain from the use of drugs and alcohol. Oddly, there wasn't even a mention of refraining from gambling, but that didn't change my commitment to do so.

Needless to say my victims would have been justified in demanding I go to prison, but for some reason I still can't comprehend, the judge believed I was worthy of having a second chance at life. Every day since has been a gift for which I am grateful. My priorities remain focused on maintaining my own recovery, paying back my victims and helping others who struggle to break free of addiction - one day at a time.

The Rest of the Story

Nita successfully completed treatment, and continues to be an active member of addiction support groups. From 1998 to 2004, Nita was employed as the Program Manager of the Nevada Council on Problem Gambling. While working full time she also earned her bachelors degree from the University of Nevada, Las Vegas, and became a certified gambling counselor, facilitating evening group therapy sessions for problem gamblers in treatment. In 2005, Nita moved to Minnesota, and earned her Masters in Counseling from the Hazelden Graduate School of Addiction Studies. She continues her counseling career at the Hazelden Women's Recovery Center.

Throughout her probation, Nita made monthly restitution payments to her victims however she was unable to make full financial restitution in just five years. In spite of what she accomplished personally and professionally since her crime, she was *dishonorably* discharged from probation in 2000, for having satisfied all conditions except the financial restitution. Nita was released from probation and continues monthly payments as a matter of conscience not as a mandate of the court, but as a personal commitment to her own recovery.

Nita's story is a reminder that a person's value in our society cannot be measured in dollars, nor can the dollar amount of the crime predict the person's potential for rehabilitation.

In 2005, Nita received a personal letter from her victims expressing their appreciation for her integrity and offering forgiveness and sincere wishes for Nita's health and happiness as she continues to help others.

ETHICAL CONSIDERATIONS OF PATHOLOGICAL GAMBLING

im-paired [im-paird]:

1. weakened, diminished, or damaged 2. functioning poorly or inadequately 3. deficient or incompetent

Like any addiction, pathological gambling does not discriminate - and professionals are not immune.

The effects of problem gambling can ultimately lead to professional impairment with risk of harm to clients and peers, in the same way as substance abuse, depression and other mental health disorders. Studies indicate that 10% to 30% of patients in treatment for substance abuse may also be problem gamblers. This raises concern that professionals who are currently dealing with a substance abuse issue may also have an underlying gambling problem, or be at higher risk for developing one. Professionals can be lulled into a false sense of security believing that gambling is a 'safe' distraction from the stress of the job because there's no substance ingested to impair brain function. That may be true for those who can set limits and gamble socially without harm, but for the person who develops a gambling addiction, becoming impaired is a harsh reality that will have devastating consequences.

My name is Doug

I am currently in treatment for the disorder of pathological gambling. I will have to continue treatment for the rest of my life for this incurable, progressive, pathological condition. The downward spiral caused by my gambling addiction started out the same as it does for many others. Lawyers lead hectic lives governed by the needs of clients, the courts, staff, family and many others. As the sole proprietor of a busy litigation firm practicing family law and criminal defense, I eventually found myself paralyzed by the demands of the firm. Back to back court appearances, hundreds of phone calls per week, writing endless briefs, and law office management issues began to take their toll on my psyche.

I soon found myself spending more and more time gambling, drinking and using drugs to "numb out" and avoid the pressures that always seemed to increase, never decrease. I gambled away all of my money, all the income from the practice, and eventually took money from my trust account to satisfy the overwhelming compulsion to gamble. I destroyed everything I had worked for over two decades to build, and more importantly, victimized many people who trusted me to safeguard their property.

In the last few months before I began the recovery process my life consisted of nothing more than hiding in the house all day and gambling all night. I had alienated my family, friends, colleagues and employees through my antisocial behaviors. I was alone in the universe and no longer felt any purpose or desire to live. About a week before seeking treatment I found myself lying on the floor with a loaded twelve gauge shotgun in my mouth. If it were not for the serendipitous event of my mutt peeking into the room and dropping a stuffed animal in my lap I would not be here today.

It is my sincere hope that others may learn from my story and avoid the ethical pitfalls associated with pathological gambling and other addictions. At least four of the Nevada Rules of Professional Conduct apply frequently in impaired practitioner cases. Nevada Rule of Professional Conduct 1.1 addresses the issue of competence. The Rule states:

Rule 1.1. Competence. A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Thoroughness and preparation suffer when one has the disease of addiction. During the last few months of practice before I was suspended due to ethical violations stemming from pathological gambling, I spent most of my time gambling or seeking money to gamble. Preparation for litigation suffered. Clients paid the price for my misconduct.

Rule 1.3. Diligence. A lawyer shall act with reasonable diligence and promptness in representing a client.

It goes without saying that if a practitioner is obsessed with gambling and getting funds to gamble, he or she is not acting with promptness in representing clients. I remember receiving fees and not taking action on a client's case until long after I should have. As my addiction progressed, everything took a back seat to my disease.

Rule 1.4. Communication.

(a) A lawyer shall:

- (1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules;
- (2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) Keep the client reasonably informed about the status of the matter;
- (4) Promptly comply with reasonable requests for information; and

(5) Consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

The last thing an addict thinks about is communication with others. Life for the addict becomes a never ending whirlpool of gambling and seeking more money to gamble and the client becomes an unwitting victim. One of the most important obligations of any lawyer is governed by Nevada Rule of Professional Conduct 1.15 which requires practitioners to safeguard the property of clients. The Rule states in part:

Rule 1.15. Safekeeping Property.

a) A lawyer shall hold funds or other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All funds received or held for the benefit of clients by a lawyer or firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts designated as a trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property in which clients or third persons hold an interest shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

The compulsion to gamble in most addicts eventually becomes so strong that it is irresistible. If the addict can access funds, they will be utilized. In my case, after I had exhausted my own funds and those of my business, I began to gamble with client funds from the trust account. This ultimately led to gambling with client funds from the trust account. The ultimate result is that client lives were devastated by my actions. Unfortunately, this reflects badly on the whole profession. The fact that I betrayed the trust of clients and reflected badly on the profession is my biggest regret.

For me, being "in recovery" means that I attend GA meetings regularly, participate in a treatment aftercare group on a weekly basis, and do what I can to help other gambling addicts like me. The Nevada Supreme Court issued an opinion which will eventually allow me to practice law again so long as I continue this wonderful voyage of recovery. I have reconnected to family and friends, have a full time job as a law clerk/paralegal, and am beginning to make amends for the harm I caused when practicing my addiction. It is my sincere goal to reimburse clients and the State Bar for all the harm caused by my actions. I have hope, a measure of serenity, and profound happiness as a result of what I continue to learn in recovery.

Douglas C. Crawford, J.D.*

LAWYERS CONCERNED FOR LAWYERS



Nevada's Lawyers Concerned for Lawyers (LCL) was formed in 1986 by then-Nevada attorneys Ben Graham, Michael Cherry and Coe Swobe. The organization is dedicated to helping members of the State Bar of Nevada recover from alcohol and drug addiction, compulsive gambling, stress and depression. LCL is a voluntary organization made up of attorneys who have fought similar battles and are now dedicated to helping members of the legal community succeed against these debilitating problems. Members meet regularly in Las Vegas, Reno and Carson City.

LCL offers its services with complete confidentiality and does not police or discipline attorneys; those seeking help may call, safe in the knowledge that their careers and reputations, or the careers and reputations of colleagues they are concerned about, will not be put at risk by so doing. In fact, the goal of LCL is to prevent ruined careers and reputations by providing help before the damage is done.

Confidential help from a fellow lawyer is just a phone call away and is absolutely free of charge. Just call the LCL Hotline toll-free at (866) 828-0022 for advice, referral assistance or individual telephone counseling.

If you are a lawyer or judge interested in volunteering with the LCL program, call LCL Coordinator Coe Swobe at (775)848-1154 or (775)322-2154

**In 2007 Doug Crawford was suspended from the practice of law due to ethical violations stemming from his addiction. Since 2009 he has served on the Subcommittee on Legal Issues of the Nevada Advisory Committee on Problem Gambling. Mr. Crawford participated in the formulation of NRS 458A.200 governing civil commitment of problem gamblers convicted of a crime, and testified before the State Assembly Ways and Means Committee for its passage.*

The following resources support problem gambling prevention, education and treatment efforts. Type and availability of resources may vary, depending on geographic location.

The **Nevada Resource Locator** is an online searchable database containing current listings of problem gambling peer support groups and treatment providers available throughout Nevada. Nevada Council staff verify and input current resource information as soon as it becomes available.

Basic Search: Users may select 'Support' or 'Treatment' and type in the name of the city to find listings within 100 miles.

Expanded Search: Enter a complete address and select radius to find listings in a specific area, or select a region to find listings in Southern or Northern Nevada only.

Printable Resource Lists: Download and print resource lists, which are updated automatically by the within 15 minutes of the last information update. Lists may be printed for Southern, Northern or All Nevada.



www.nevadacouncil.org

ABOUT PEER SUPPORT GROUPS

Gamblers Anonymous

Gamblers Anonymous is a 12-step program based on the same principles as Alcoholics Anonymous. Membership is open to anyone who has a desire to stop gambling. Upon entering the Gamblers Anonymous Program, new members receive a warm welcome from others who have experienced the pain of a gambling addiction, and often discover for the first time that they are not alone in this problem. Members gather for group meetings to share their experience, strength and hope in order to solve their common problem. There are no fees to join or participate in group meetings.

Gam-Anon

Gam-Anon is a 12-step support group for family members, friends, and even co-workers who are affected by someone with a gambling problem. In Gam-Anon, members experience relief from anxiety by accepting the fact that they are not responsible for the problem in the family. The energy wasted in attempts to stop loved ones from gambling is channeled into more useful methods of problem solving. Members are encouraged to use the support and problem solving suggestions of the program to rebuild their lives and learn how to give appropriate aid to the gambler. Like Gamblers Anonymous, there are no fees to join or participate in group meetings.

ABOUT PROFESSIONAL TREATMENT

Individual or group counseling conducted by trained problem gambling counselors can provide therapy for the gambler and their family. Treatment addresses stopping the gambling behavior and learning new coping skills to prevent a return to gambling in the future. Counselors may also screen for other emotional or mental health problems such as substance abuse or depression. Inpatient programs, which provide more intensive care, are available in some areas.

Treatment providers listed in the Resource Locator offer individual or group therapy, conducted by Nevada Certified Problem Gambling Counselors and Interns. The database maintains general contact information, names and credentials of program staff, and brief descriptions of services for all listed providers. Optional information such as eligibility factors and fee structures may also be available for some, but not all programs.

For Resources Outside of Nevada, contact:

Gamblers Anonymous
Phone: (213) 386-8789
www.gamblersanonymous.org

Gam-Anon
Phone: (718) 352-1671
www.gam-anon.org

National Council on Problem Gambling
Phone: (202) 547-9204
www.ncpgambling.org

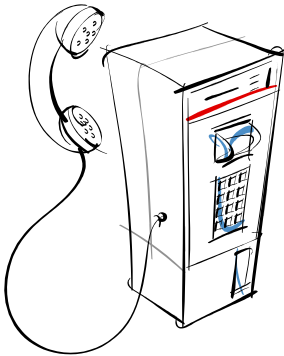
1-800-522-4700

PROBLEM GAMBLERS HELPLINE

When The Fun Stops...Help is just a phone call away.

Coming face to face with a gambling problem can be an overwhelming experience filled with fear, anxiety and confusion. At that point it is not possible to figure out all the answers, but it is vitally important to begin asking questions.

If you or someone you know is experiencing warning signs of a gambling problem, call the Problem Gamblers Helpline for 24-hour confidential assistance. The toll-free number is answered by trained helpline specialists who are available to answer questions and provide information about available treatment and support resources to assist both the gambler and the family.



The Problem Gamblers Helpline is coordinated through a nationwide network of call centers that insures every caller will have access to information and resources specific to the caller's needs and geographic area.

Key features of the Helpline include:

- 24 hour / 7 day a week service
- Assurance of confidentiality
- Trained, professional staff
- Crisis intervention protocols
- Referral to treatment, support and community resources
- Free information by mail
- Language translation capability
- Data collection & statistical reporting

COMMUNITY AWARENESS AND EDUCATION

The Nevada Council on Problem Gambling provides the following education kits free of charge to schools, churches and community agencies in Nevada to promote awareness and understanding of the impact of problem gambling.

Given the Chance

One hour interactive education session in which students learn about the risks and consequences of gambling. The core of this youth gambling awareness program is a dramatic film that takes a look at gambling and its impact, through the eyes of a high school student. The kit includes an instructor's manual with discussion guide and supporting information handouts.

Damage Done

One hour community awareness session that addresses the impact of problem gambling on the family and identifies resources available to help. At the core of the program is a dramatic film that demonstrates the impact of problem gambling on one gambler's family. The kit includes an instructor's manual with discussion guide and supporting information handouts.

Beyond the Game: Nevada Seniors & Problem Gambling

Community awareness session to educate seniors and others about the impact of gambling among older adults. The kit includes an information booklet and accompanying DVD in which Nevada seniors talk about their personal experiences with problem gambling.

Contact the Nevada Council on Problem Gambling at 702-369-9740 or visit www.nevadacouncil.org for additional information on the Council's programs and services.

FREQUENTLY ASKED QUESTIONS

Isn't problem gambling just a financial problem?

No. Problem gambling is an emotional problem that has financial consequences. If you pay all of a problem gambler's debts, the person will still be a problem gambler. The real problem is that they have an uncontrollable obsession with gambling.

Do casinos cause problem gambling?

The cause of a gambling problem is the individual's inability to control the gambling. This may be due in part to a person's genetic tendency to develop addiction, their ability to cope with normal life stress and even their social upbringing and moral attitudes about gambling. The casino merely provides the opportunity for the person to gamble. It does not, in and of itself, create the problem any more than a liquor store would create an alcoholic.

Can you be a problem gambler if you don't gamble every day?

The frequency of a person's gambling does not determine whether or not they have a gambling problem. Even though the problem gambler may only go on periodic gambling binges, the emotional and financial consequences will still be evident in the gambler's life, including the effects on the family.

How can a person be addicted to something that isn't a substance?

Although no substance is ingested, the problem gambler gets the same effect from gambling as someone else might get from taking a tranquilizer or having a drink. The gambling alters the person's mood and the gambler keeps repeating the behavior attempting to achieve that same effect. But just as tolerance develops to drugs or alcohol, the gambler finds that it takes more and more of the gambling experience to achieve the same emotional effect as before. This creates an increased craving for the activity and the gambler finds they have less and less ability to resist as the craving grows in intensity and frequency.

Are problem gamblers usually addicted to other things too?

It is generally accepted that people with one addiction are more at risk to develop another. Some problem gamblers also find they have a problem with alcohol or drugs. This does not, however, mean that if you have a gambling problem you are guaranteed to become addicted to other things. Some problem gamblers never experience any other addiction because no other substance or activity gives them the same feeling as the gambling does.

How much money do you have to lose before gambling becomes a problem?

The amount of money lost or won does not determine when gambling becomes a problem. Gambling becomes a problem when it causes a negative impact on any area of the individual's life.

What will happen when I call the Problem Gamblers HelpLine?

A counselor will listen to your concerns and answer your questions about problem gambling. The counselor may ask you questions to help determine the most appropriate resources for your situation and then they will give you information on how to access those resources (i.e. Gamblers Anonymous, treatment providers, credit counselors, etc.) Everything you discuss with the counselor is confidential and the call is free!



For additional information visit www.nevadacouncil.org



ACKNOWLEDGEMENTS

The Nevada Council on Problem Gambling gratefully acknowledges the Director and Staff of the Department of Health and Human Services and Grants Management Unit, members of the Governor's Advisory Committee on Problem Gambling, and members of the Subcommittee on Legal Issues, for their support, encouragement and involvement in this important project.

We offer our heartfelt thanks for the generous efforts and contributions of the many individuals who shared their unique knowledge, experience, time and expertise to bring this publication to life:

Hon. Harold G. Albright
Lori Ambriz
Paul Ashe
Bo Bernhard
Michael Burke

Tony Cabot
Doug Crawford
Krista Creelman
Pat Fowler
Colin Hodgen

Carl Hysin
Nita Kordonowy
Jeff Marotta
Hon. Cheryl B. Moss
Dr. Rena Nora

Carol O'Hare
Denise Quirk
Jennifer Roberts
Lynn Stilley
Coe Swobe
Aaron Weislogel



The Nevada Council on Problem Gambling is a non-profit information and referral agency whose efforts are focused on addressing the impact of problem gambling in the State of Nevada. Since 1984, the Nevada Council has served as an advocate, an information resource and a provider of programs and services to meet the needs of individuals, families and our communities affected by problem gambling. The Council is a 501(c)(3) organization, funded through fees for service, program grants, and charitable contributions from individuals and businesses. The Council is an affiliate of the National Council on Problem Gambling and does not take a position for or against legalized gambling.

OUR MISSION

It is the Mission of the Nevada Council on Problem Gambling to generate awareness, promote education and advocate for quality treatment of problem gambling in the State of Nevada.

OUR VISION

We believe that problem gambling is a community health issue, requiring a community solution that can best be accomplished through public and private collaboration. The Council is committed to working with all stakeholders to develop the most effective and comprehensive solutions possible in the State of Nevada.

For more information about the programs and services of the Nevada Council on Problem Gambling, visit our website at:

www.nevadacouncil.org

Additional copies of **PROBLEM GAMBLING AND THE LAW**, may be requested from:

Nevada Council on Problem Gambling

4340 S. Valley View Blvd., Suite 220

Las Vegas, NV 89103

Phone: 702.369.9740

Email: contactus@nevadacouncil.org

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RECOMMENDED READING

Gripped by Gambling

Author: Marilyn Lancelot

Marilyn Lancelot visited her first casino in 1984 at the age of 53, and for seven years made a four-hour trek from her home to the casino each weekend. She lied to her family and friends, and signed her employers' name to company checks. She contemplated suicide. Her world came tumbling down when she was finally caught embezzling and was sentenced to two years in prison. Her close-knit family didn't even know about her gambling addiction until her arrest. (www.grippedbygambling.com)

Never Enough: One Lawyer's True Story of How He Gambled His Career Away

Author: Michael J. Burke

Never Enough tells the shocking, true story of Michael J. Burke, who went from being a successful lawyer, loving father and husband, and respected member of his community to a closet alcoholic and gambling addict to the tune of \$1,600,000, using clients' trust funds. This succinct, powerful book will open your eyes to the reality of gambling and alcohol addiction and what it can do to any professional's life - even in the happiest and most successful of situations. Lawyer Mike Burke's addiction left a wide trail of victims from family to clients and friends. Burke's story is a compelling one, showing the gamut of events and emotions from compulsive gambling, to arrest and conviction, to recovery and service to others. (www.neverenoughthebook.com)



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