

The Reach of New Jersey's Voluntary Self-Exclusion List

by Darren Gelber

Both the New Jersey gaming industry and New Jersey gaming regulators recognize the problem of compulsive gambling. In addition to providing problem gamblers with referrals to suitable organizations for help, New Jersey has enacted a gambling self-exclusion list, whereby self-identified individuals with gambling problems can ban themselves from gambling facilities.

According to the Council on Compulsive Gambling of New Jersey, Inc.:

The average compulsive gambler is a person sixteen years old or over, is from a good home and a stable family, and often holds a steady job. He or she is likely to be clean, well-dressed and is probably at least a high school graduate. The average compulsive gambler then is well camouflaged. Unlike the alcoholic or the junkie, he does not reveal the signs of his addiction on his breath nor by tracks on his arm. He appears to be no different from the average responsible citizen. But the compulsive gambler suffers from a serious disease and, because of the nature of that disease, it is likely that the sickness will not be discovered until it is in its advanced stages.¹

The New Jersey Casino Control Act² provides for two distinct categories of individuals subject to exclusions by casinos—voluntary and involuntary.

Since 1977, the act has provided for involuntary exclusion of organized crime figures, certain convicted criminals, and other individuals whose presence in a casino establishment would be contrary to the interests of New Jersey casino regulation.³ Individuals on the involuntary exclusion list⁴ are prohibited from all areas of a licensed casino hotel facility,⁵ with violations constituting a disorderly persons offense.⁶ Involuntarily excluded individuals may seek to be removed from the exclusion list after a five-year waiting period, but in extraordinary circumstances, may seek removal from the list even earlier.⁷

In recognition of the problems associated with compulsive gambling, in 2001 the Legislature established a second category of casino exclusion—voluntary self-exclusion from gaming activities. The statute required the Casino Control Commission to enact regulations to maintain a list of individuals who identify themselves as “problem gamblers.”

The statute⁸ provides that:

- a. The commission shall provide by regulation for the establishment of a list of persons self-excluded from gaming activities at all licensed casinos and simulcasting facilities. Any person may request placement on the list of self-excluded persons by acknowledging in a manner to be established by the commission that the person is a problem gambler and by agreeing that, during any period of voluntary exclusion, the person may not collect any winnings or recover any losses resulting from any gaming activity at such casinos and facilities.
- b. The regulations of the commission shall establish procedures for placements on, and removals from, the list of self-excluded persons. Such regulations shall establish procedures for the transmittal to licensed casinos and simulcasting facilities of identifying information concerning self-excluded persons, and shall require licensed casinos and simulcasting facilities to establish procedures designed, at a minimum, to remove self-excluded persons from targeted mailings or other forms of advertising or promotions and deny self-excluded persons access to credit, complementaries, check cashing privileges[,] club programs, and other similar benefits.

Pursuant to these enabling statutes, the commission has promulgated administrative regulations implementing the self-exclusion program.⁹ As a result of recent regulatory reforms in New Jersey, the self-exclusion program is now maintained and implemented by the New Jersey Division of Gaming Enforcement.¹⁰ The program allows an individual to voluntarily¹¹ place his or her name on the self-exclusion list for a minimum period of one year, as well as for five years or for life.¹² Once on the

list, casino personnel may refuse to accept wagers and/or request the listed person leave the gaming area. If a listed person does gamble, he or she is prohibited from collecting any winnings or recovering any losses.¹³

Casinos must also cease marketing activities directed toward listed individuals, and remove them from any mailing lists and offerings for complimentary goods or services, credit or check-cashing privileges.¹⁴

Individuals wishing to place themselves on the self-exclusion list must complete the necessary forms and appear in person with photo identification to enroll.¹⁵ Once a person places his or her name on the list for a one-year or a five-year period, removal from the list is not automatic; additional action is required for the person to have his or her name dropped after the expiration of the self-exclusion period.¹⁶ The regulations contain no provision allowing a person electing lifetime self-exclusion to remove his or her name from the list.¹⁷ In fact, the application form contains an advisement that “[i]f you choose the lifetime exclusion option, your name cannot be removed from the Self-Exclusion List.”¹⁸

The Appellate Division has had occasion to interpret a legal issue arising from the self-exclusion list in *I/M/O Petition of S.D. for Removal from the Voluntary Self-Exclusion List*.¹⁹ The opinion analyzed the issue of whether a problem gambler who placed himself on lifetime self-exclusion could seek removal from the list when he learned that the presence of his name on the list had an impact on his ability to gamble in other jurisdictions. The individual, identified in the case as S.D., filed the appropriate forms to place himself on the lifetime self-exclusion list, but learned a short time later that his action had far-reaching implications when he received a letter from Caesars Entertainment “notifying him he would also be banned from their Las Vegas properties

for life.”²⁰ S.D. claimed he only sought lifetime self-exclusion from Atlantic City casinos because he lived nearby, and he would “never have banned himself if he knew it would have excluded him from gambling in other parts of the country besides New Jersey.”²¹ He then sought his removal from the lifetime self-exclusion list, but the commission denied the request.²²

On appeal, the Appellate Division upheld the commission’s decision. In so doing, the court made the following observations:

- S.D. did not challenge that he voluntarily sought lifetime placement on the self-exclusion list, acknowledging that prior to doing so he received notice that he could not request to be taken off the self-exclusion list.
- There is no fundamental right to gamble, constitutionally or statutorily. Whatever right to gamble S.D. might have had in New Jersey, he voluntarily relinquished when he placed himself on the lifetime self-exclusion list.
- Any impact upon S.D.’s ability to gamble in casinos outside of New Jersey is not a material element of the New Jersey agreement for enrollment on the self-exclusion list, but instead “falls squarely in the category of an indirect collateral consequence.”
- The inability of S.D. to legally gamble outside of New Jersey was not a function of any New Jersey statute or regulation establishing the self-exclusion list.
- S.D.’s ability to gamble out-of-state was not the result of any action by the commission.
- Consequently, the court could “discern no basis upon which to hold the Commission responsible to inform S.D. of the potential collateral national implications of evolving responsible gaming programs beyond its knowledge, jurisdiction, and control.”²³

Although both the commission and the Appellate Division found S.D.’s lack of notice of the out-of-state implications of the presence of his name on the lifetime self-exclusion list did not provide a basis to remove his name, the necessary forms were subsequently amended to provide other applicants for self-exclusion with precisely the notice S.D. did not receive.²⁴ The request for voluntary self-exclusion from casino gambling form now advises potential enrollees that:

You should be aware that casino companies might enact responsible gaming programs that are stricter than New Jersey’s Self-Exclusion program. By way of example only, Caesars Entertainment, Inc., has enacted a Responsible Gaming Program in which persons signing up for state self-exclusion lists are banned from Caesars properties worldwide for the length of their state self-exclusion terms. Caesars’ ban includes its gaming, hotel and entertainment venues. Caesars’ current policy automatically removes a person from its worldwide ban upon being notified of that person’s removal from a state self-exclusion list. The terms and existence of any such responsible gaming program could change, and the Division is not responsible for keeping you informed of such changes.²⁵

There have also been scattered decisions from other courts across the country addressing issues related to gambling self-exclusion. Although these cases do not directly impact New Jersey’s self-exclusion laws and administrative regulations, they are nonetheless instructive.

In *Merrill v. Trump Ind., Inc.*,²⁶ the Court of Appeals for the Seventh Circuit considered a claim by a compulsive gambler regarding a casino’s failure to honor a casino ban. However, the ban in *Merrill* was somewhat unique:

Merrill alleged that his rehab counselor at the [compulsive gambling] clinic contacted the casino in 1996 and formed with it an oral contract to keep Merrill off its premises. The consideration for this contract, it is alleged, was that the clinic would “publicize to the community” the casino’s support of programs to help compulsive gamblers get over their addictions. Discovery in the case, particularly a deposition given by the rehab counselor, however, disclosed that no oral contract was created. But it is undisputed that Merrill himself, in 1996, wrote to the casino asking that he be evicted from it if he ever showed up to gamble. And Merrill’s name does appear on the casino’s “eviction list.”²⁷

In addressing the plaintiff’s claims, the court noted that the relapse of which the plaintiff complained occurred prior to adoption of Indiana’s regulations enacting a self-exclusion list. Consequently, the court addressed the plaintiff’s allegations only in terms of his common law tort-related claims:

The closest analogy to Merrill’s situation is that of a tavern’s liability to exercise reasonable care to protect its patrons. In Indiana, a tavern proprietor serving alcohol can be held liable, under certain conditions, if an intoxicated patron injures another patron or a third party. But a patron who drives while intoxicated, causing his own injuries, cannot recover from the tavern that served him alcohol. Essentially, Merrill thinks that the casino should be held responsible for the destructive effects of his 1998 relapse into gambling. But Indiana law does not protect a drunk driver from the effects of his own conduct, and we assume that the Indiana Supreme Court would take a similar approach with compulsive gamblers.²⁸

Summary judgment dismissing Merrill’s claims in their entirety was upheld.²⁹ In a subsequent case, the Indiana Court of Appeals held that no private right of action existed for violating regulations requiring casinos to create and honor a self-exclusion list. The Indiana Court of Appeals held that proper enforcement of the regulations was the province of the Indiana Gaming Commission, not a private cause of action.³⁰

There are several lessons to be learned from *S.D.* and the out-of-state cases. Regulations implementing New Jersey’s self-exclusion list will be interpreted strictly by the commission, and the agency’s interpretations will be accorded the customary level of deference by the courts. Additionally, private corporate entities are free to apply their own policies and procedures that may impose more severe restrictions upon individuals who avail themselves of membership on the self-exclusion list. Because gambling has no strongly associated constitutional right attached to it, and, it may be inferred, because gambling is still considered by some to be something of a vice, courts do not appear to be favorably inclined to consider arguments based on fairness or notice, as those arguments may relate to the collateral consequences associated with membership on the self-exclusion list. Finally, courts are not likely to find any cognizable private cause of action based upon a casino’s failure to enforce exclusion based upon membership on the self-exclusion list.³¹ ¶

Endnotes

1. See www.800gambler.org/ArticleDetails.aspx?ContentID=25.
2. N.J.S.A. 5:12-1 to 210.
3. N.J.S.A. 5:12-71; N.J.A.C. 19:48-1.1 to -1.8.
4. The involuntary exclusion list, complete with names and photographs, can be accessed at www.nj.gov/lps/ge/exclude_home.htm.

5. N.J.A.C. 19:43-7.8(b).
6. N.J.S.A. 5:12-122.
7. N.J.A.C. 19:48-1.8(a) and (d).
8. N.J.S.A. 5:12-71.2.
9. N.J.A.C. 13:69G-2.1 to 13:69G-3.2.
10. See 43 N.J.R. 2483(a).
11. At least one court ordered a criminal defendant to register on the ‘voluntary’ self-exclusion list as a condition of the defendant’s sentence upon conviction. *Giblin v. United States*, 2010 U.S. Dist. LEXIS 80243 (D.N.J. Aug. 3, 2010).
12. N.J.A.C. 13:69G-2.2(c)(2).
13. N.J.A.C. 13:69G-3.2. Unlike the involuntary exclusion list, presence on the self-exclusion list involves no preclusion from the entirety of a casino hotel facility, and, while violation of the involuntary list can be prosecuted as a disorderly persons offense, the only sanction for violating the self-exclusion list is forfeiture of winnings. N.J.S.A. 5:12-71.3a and c.
14. N.J.A.C. 13:69G-2.4.
15. N.J.A.C. 13:69G-2.2. A description of the self-exclusion program can be found at www.nj.gov/oag/ge/docs/brochure_selfexclusion.pdf, while copies of the enrollment application forms may be found at www.nj.gov/oag/ge/docs/Forms/70-Request%20for%20Voluntary%20Self-Exclusion%20from%20Casino%20Gambling%20Form.pdf.
16. N.J.A.C. 13:69G-2.5. A copy of the form required to seek removal from the self-exclusion list following the expiration of the term of self-exclusion may be found at www.nj.gov/lps/ge/docs/Forms/71-Request%20for%20Removal%20from%20Voluntary%20Self-Exclusion%20List.pdf.
17. N.J.A.C. 13:69G-2.5.
18. See at Request for Voluntary Self-Exclusion from Casino Gambling Form at 2, ¶F (available at www.nj.gov/oag/ge/docs/Forms/70-

Request%20for%20Voluntary%20Self-Exclusion%20from%20Casino%20Gambling%20Form.pdf).

19. 399 N.J. Super. 107 (App. Div. 2008).
20. 399 N.J. Super. at 113-14.
21. *Id.*
22. *Id.* at 114-17.
23. *Id.* at 121-23.
24. *Id.* at 115. n.5.
25. *See* at Request for Voluntary Self-Exclusion from Casino Gambling Form at 2, ¶D (available at www.nj.gov/oag/ge/docs/Forms/70-Request%20for%20Voluntary%20Self-Exclusion%20from%20Casino%20Gambling%20Form.pdf).
26. 320. F.3d 729 (7th Cir. 2003).
27. *Id.* at 731.
28. *Id.* at 732 (internal citations omitted).
29. *Id.*
30. *Stulajter v. Harrah's Indiana Corp.*, 808 N.E.2d 746 (Ind. Ct. App. 2004).
31. For an excellent analysis of potential civil claims arising from gambling self-exclusion lists, *see* Irina Slavina, Don't Bet On It: Casinos' Contractual Duty To Stop Compulsive Gamblers From Gambling, 85 *Chicago-Kent Law Rev.* 369 (2010).

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