Hypothetical: Background Information

Pluto entered a casino on June 16, 2023. He showed his ID upon entry to the casino, and he was allowed to enter the establishment. After playing for several hours, Pluto won big! He went to cash his winnings of $8,000.00, but upon showing his ID at the counter, he was told that the casino could not pay him his winnings because he was on the state's exclusion list and because he owed a debt to the state that the casino was required to pay before any of his winnings could be distributed to him. The exclusion list is part of the state's voluntary exclusion program where state residents can sign up to be on a list that prevents them from winning money from a casino. If an application is accepted at a lifetime commitment, placement on the exclusion list is permanent. An application cannot be accepted from an applicant who is being coerced into signing up or from an applicant who is intoxicated. On July 7, 2023, Pluto received a letter from the Gaming Commission setting out that the state had confiscated his winnings from the casino. He was alerted that the state was keeping $500.00 to pay off an outstanding debt and that the remainder of his winnings would be kept as a fine for violating the terms of the exclusion list on which he was placed. He was given 15 days to file an appeal, which he timely filed. This administrative appeal followed.

Prehearing Conference: Guided Questions

1. What are the "must include" topics for a prehearing conference?
2. How do you handle self-represented parties? What are some specific issues to consider for a prehearing conference?
3. When and how do you address stipulations of fact?

Hearing: Guided Questions

1. Sua Sponte Objections and Questions: How do you address these issues? When is it appropriate to ask a question or direct a party to rephrase without an objection pending?
2. Self-Represented Parties: What adjustments do you make to your hearing script when a self-represented party is involved?
3. Official/Judicial Notice: When it is appropriate? How do you address requests for official/judicial notice?

Prehearing Conference Script

Hearing Official: Good Afternoon, this is Hearing Official NAHO. As the parties know from the July 20, 2023 Order Scheduling Prehearing Conference, I am the Hearing Official appointed to preside over this matter, which has been captioned as the Gaming Commission v. Pluto, Case number 1234567. I'd like to start by asking each party to please introduce themselves, starting with Complainant.

Complainant Pluto: [silence]

Hearing Official: Is Complainant Pluto on the line?

Complainant Pluto: Oh, I'm sorry. I didn't know I was the Complainant. Yes, this is Mr. Pluto. I'm sorry, this is new for me, and I'm just now sure how this all goes. But I'm here.

Hearing Official: That is ok. If you have questions about procedures as we go through this process, it is ok to raise them. I cannot give either party legal advice, so I may not be able to answer every question you ask, but I encourage either party to ask questions if you need more information about how to participate. I'll give you both opportunities to do so as we move through today's conference. And who is on the line for the Agency?

Attorney June: This is Attorney June. I am representing the Gaming Commission in this matter, your honor.

Hearing Official: Thank you both. As you may recall from the notice, the purpose of this conference is to discuss the possibility of settlement, to set case management deadlines, and to generally discuss the scheduling of the hearing. I'd like to start by reviewing the issues to be decided in this case:

> Issue #1: Was Complainant on the exclusion list when he won $8,000.00 from a casino on June 16, 2023? If so, what fine, if any, should be applied?
>
> Issue #2: Did Complainant have an outstanding debt to be paid to the state, and if so, is the state entitled to confiscate $500.00 from the $8,000.00 Complainant won from a casino on June 16, 2023?

I will ask Attorney June to answer questions first, followed by Complainant Pluto as we move through this conference. Any concerns or comments as to the statement of the issues in this case?

Attorney June: None. The Agency agrees with the statement of the issues.

Complainant Pluto: I think that sounds right. I mean, I don't have any problem with what you said.

Hearing Official: Thank you both. There are a few different issues that I would like to work through today. We are going to talk about 3 different deadlines: discovery, dispositive motions, and a hearing. I will go into more detail in a moment as to what each deadline will require from each party. We will also talk a little more about the hearing itself and what to expect. Finally, we will spend some time discussing whether the parties can agree to resolve the case through a settlement agreement. Let's start with the issue of discovery.

Discovery is the stage during the case where parties can ask for an exchange information about the case. For example, if you want documents from each other or a list of witnesses, you can ask for this kind of

information. There are a few different discovery tools you will have access to during this time: 1) interrogatories, which involve providing written responses to questions, 2) requests for production, which involve providing documents to each other, 3) admissions, which are essentially true or false statements that are admitted as true, denied as false, or noted that you don't know, and 4) finally, depositions, which is where one party asks another person questions under oath before a court reporter. The issues in this case are pretty straightforward, so I am not expecting a great deal of discovery. You are not required to exchange discovery, if you believe the record is already complete. Attorney June, could you walk me through the discovery the Agency would like to take?

Attorney June: Yes, your honor. The Agency believes the record is complete at this time. You received the Agency's investigative file, which includes the following: 1) the notice sent to Complainant, 2) Complainant's appeal, 3) Complainant's notice concerning the exclusionary list, 4) Complainant's application for the exclusionary list, and 5) the Agency's record of the debt owed by Complainant to the state. The Agency does not believe any additional discovery is required.

Hearing Official: Thank you, Attorney June. Complainant Pluto, what information do you think you will need to find to present your case to me?

Complainant Pluto: So, here is the issue that I have. I did submit an application to the exclusionary list. I'm not contesting that. And I did win money at the casino. That is all correct. However, the issue was that I was forced to sign up for the list by a friend after I had been drinking, so I was not really thinking straight about the form. I really didn't understand what I was doing, or what it meant for me, until I got this notice. I don't think I should be left on the list when I didn't really know about it. I know I owed the state some money on a past tax return, but it was an issue that occurred because the taxes were submitted with an error – I submitted a correction, which is pending, that should fix the issue. I don't think I should have to pay for it yet, when the correction is still pending. So, yeah. That is what I will be arguing.

Hearing Official: Just a few follow-up questions for you: do you have a copy of the correction you mentioned?

Complainant Pluto: Yes, I've got a copy that I got as a receipt for filing my correction. I also logged into my account this morning, and the website still shows the correction is pending.

Hearing Official: Is there evidence you want to request from the Agency about the exclusion list issue?

Complainant Pluto: No, my friend is willing to testify. He feels bad he made me sign up, and he has agreed to testify that he made me do it and took advantage of the fact that I had been drinking.

Hearing Official: Attorney June, does the Agency have a copy of Complainant's tax information?

Attorney June: Yes, your honor. Complainant's complete tax file for the 2022 year is in the investigative file at page 40.

Hearing Official: Any discovery that the Agency wants to do on that point?

Attorney June: No, your honor.

Hearing Official: Complainant Pluto, have you had a chance to look at page 40 of the investigative file?

Complainant Pluto: Yes, it looks right to me. It has the same documents that I mentioned.

Hearing Official: Is there anything else you would like to add to the file or anything else you would like to find before going to a hearing?

Complainant Pluto: No.

Hearing Official: Ok, thank you Complainant Pluto. Attorney June, is the Agency also already aware of the witness Complainant mentioned?

Attorney June: Yes, Complainant was kind enough to send us the contact information as well as a statement from the witness, so we have no additional discovery we would like to do there. I'd just add that the Agency intends to introduce witness testimony from the officer who accepted Complainant's application to the exclusion list program as evidence that Complainant was aware of the application and its consequences. I've provided Complainant with the Agency's witness's name and a brief description of the expected testimony as well.

Hearing Official: Great. Any follow up discovery on the Agency's witness that you would like to do, Complainant Pluto?

Complainant Pluto: No. I think I get the gist of the issue.

Hearing Official: Ok. So I will not set any deadline for discovery, since the parties have taken some time to exchange information already. Thank you both for being so willing to share information informally and at an early stage of the case. The next deadline to discuss is a dispositive motion deadline. A dispositive motion is a motion that asks me to decide the case without going to a hearing. Usually, this kind of motion is filed when one party believes that the parties are telling the same story and the only issue for me to resolve is what the law says about the facts. If I find that there are facts in dispute, then the motion will not be granted. As long as one party wants an opportunity to file a dispositive motion, I will set a deadline. Attorney June, any request for a dispositive motion deadline from the Agency?

Attorney June: At this point, your honor, it seems clear to me that the credibility issue as to Complainant's competence to join the exclusion list program is going to be a big factor in this case. So the Agency is not requesting a deadline for filing a dispositive motion.

Hearing Official: Thank you. What about for Complainant, Complainant Pluto?

Complainant Pluto: I'd like to have my hearing, please.

Hearing Official: Alright. I am not setting a dispositive motion deadline. I do want to follow up on a couple of other issues before we move on to the hearing. It sounds like there are at least some facts that the parties do not dispute. Specifically, it sounds like the parties agree: 1) Complainant submitted an application for the exclusion list program, 2) Complainant's application was accepted, 3) Complainant's original tax filing resulted in a $500.00 debt to the state, 4) Complainant submitted a corrected tax filing that is still pending, 5) on June 16, 2023 Complainant went to a casino and won $8,000.00. Now, I know there are some nuances as to how these general facts should be interpreted in this case, but generally, do the parties agree that these facts are all true?

Attorney June: Yes, your honor.

Hearing Official: Yes, I think so.

Hearing Official: Here is what I will do. I will include this list of facts in my order. Take some time and make sure you are in agreement. I will set a deadline for DATE. If I do not hear from either party that the proposed facts need to be corrected, I will note that the parties have stipulated to the facts. That just means that the parties will not need to prove these facts because I have accepted them as true based on the parties' agreement. Any questions about this process?

Attorney June: No.

Complainant Pluto: No.

Hearing Official: The next issue we need to address is the date of the hearing. At this point, hearings are occurring in person. The next date I have on my calendar is DATE. Are the parties both free on DATE at 1:00 PM?

Attorney June: Yes.

Complainant Pluto: Yes.

Hearing Official: Alright, I will schedule a hearing for DATE at 1:00 PM. In the notice, I will include instructions about the location of the hearing. I will also include an overview of the structure of the hearing. Please review the notice carefully. The notice will be your guide as to my expectations during the hearing process. I will also give the parties ten (10) days to submit an updated witness and exhibit list.

The last topic I want to address before we close today is the possibility of settlement. Settlement is a process that is based on compromise, with the ultimate benefit to the parties that neither party has to continue to litigate the case. Attorney June, have the parties talked about settlement at all at this point?

Attorney June: Yes, your honor. I have talked internally, and I made an offer of settlement to Complainant. Right now, we are very far apart, so I don't see settlement as a possibility at this stage. The Agency has offered all it feels it can under the facts and the applicable law.

Hearing Official: Complainant Pluto, anything else you want to add?

Complainant Pluto: I think this issue is important. I think people need to hear about it. I want my hearing, and I'm not willing to give up my case unless the Agency admits it was wrong.

Hearing Official: Thank you both. I'm hearing that settlement is not on the table at this point. I encourage the parties to keep talking about the possibility. The parties can settle until the hearing begins.

That takes me through my agenda. Are there any other issues that either party would like to raise today?

Attorney June: No, your honor.

Complainant Pluto: No.

Hearing Official: Thank you all for your time. At this point, we are adjourned. Have a good rest of your day, and keep an eye out for my order, which will come to you by email.

Hearing Script

Hearing Official: Good Afternoon, it is TIME, and we are now on the record. I am Hearing Official NAHO, and I am the Hearing Official appointed to preside over this matter, which has been captioned as the Gaming Commission v. Pluto, Case No. 1234567. I'd like to thank today's participants for being here for this telephonic hearing. To begin, I'm going to ask each participant to please introduce themselves, starting with Complainant Pluto.

Complainant Pluto: Good Afternoon. I'm Mr. Pluto, here on my own behalf. I am here to argue against the notice the Gaming Commission sent me.

Hearing Official: Thank you, Complainant Pluto. And for the Agency?

Attorney June: Good Afternoon, your honor. I am Attorney June, appearing for the Agency, the Gaming Commission.

Hearing Official: Thank you both. As we proceed today, Attorney June, please answer questions first, followed by Complainant Pluto.

This hearing is commencing because Complainant appealed that Agency's June 7, 2023 notice in which the Gaming Commission notified Complainant that it was confiscating Complainant's June 16, 2023 winnings from casino. The specific issues that I will be considering are:

> Issue #1: Was Complainant on the exclusion list when he won $8,000.00 from a casino on June 16, 2023? If so, what fine, if any, should be applied?
>
> Issue #2: Did Complainant have an outstanding debt to be paid to the state, and if so, is the state entitled to confiscate $500.00 from the $8,000.00 Complainant won from a casino on June 16, 2023?

As a reminder, the Agency has the burden of proving that that forfeiture was proper. Complainant has the burden of proof on any affirmative defenses that Complainant raises. Affirmative defenses are defenses that require specific facts to be proven to support the defense.

The first issue I would like to address is the issue of the Agency's investigative file, which I am labeling Joint Exhibit 1. Does either party objected to the admission of Joint Exhibit 1?

Attorney June: No objection, your honor.

Complainant Pluto: No.

Hearing Official: Thank you both. The Agency's investigative file is admitted as Joint Exhibit 1. I also note that, as stated in the prehearing conference order, the parties have reached a number of stipulations concerning facts related to this case. I am going to read the facts into the record and ask you to confirm your agreement.

1) Complainant submitted an application for the exclusion list program, 2) Complainant's application was accepted, 3) Complainant's original tax filing resulted in a $500.00 debt to the state, 4) Complainant submitted a corrected tax filing that is still pending, 5) on June 16, 2023 Complainant went to a casino and won $8,000.00.

Are the parties in agreement as to the facts I just read?

Attorney June: Yes, your honor.

Complainant Pluto: Yes.

Hearing Official: Today, we will begin with short opening statements. Then the Agency will present the Agency's case, because the Agency has the burden of proof on the claim at issue in this matter. Then Complainant will present Complainant case. We will end with closing arguments. I will not be issuing a decision today. You will receive a decision from me in writing within 90 days of today.

During each party's case, parties may call witnesses. We have a schedule for witness testimony that the parties proposed prior to today that will serve as our road map. The party calling the witness will ask open-ended questions, followed by the opposing party, who will ask closed-ended questions. The party calling the witness will close out the questioning period by asking any clarifying questions from the witness. I may also ask questions of witnesses. Please keep in mind that when I ask questions, I am making sure that I have a complete record. It does not indicate a preference of any kind. Parties may also move for the admission of the proposed exhibits that parties submitted in advance of today's hearing. To do so, a party will ask me to consider that exhibit as part of this case. Exhibits that are not admitted into the record by me will not be considered.

Please also keep in mind that this is an administrative hearing, which means the rules of evidence will not be strictly applied. Hearsay is also admissible. If an objection is made, I will ask the party to explain the objection. The other party will have an opportunity to respond, and then I will make a ruling.

Alright. At this point, we will turn to opening statements. As a reminder, an opening statement is not evidence or testimony. You can think of an opening statement as an outline of what you plan to present to me today. We will start with the Agency, and then Complainant will present. Attorney June, whenever you are ready.

Attorney June: Thank you, your honor. The Agency contends that Complainant is a member of the exclusionary program, a consequence of which is that any winnings Complainant has at a casino in this state must be forfeited to the Agency. Complainant signed an affidavit at the time he signed up for the exclusionary program that specifically stated he was not under the influence of a substance like alcohol. He made the registration with an officer, who explained the program and also verified that Complainant appeared to understand the process. The officer will testify today as to the officer's observations of Complainant. The Agency will show Complainant was qualified for and did properly sign up for the exclusionary program. On the issue of the tax penalty, Complainant's new tax filing has not yet been processed. As a result, the Agency has to act on the law and the facts as they stand at the time of the winning. State law requires that the Agency confiscate any outstanding tax debt from any winnings made at a casino with the state. Complainant had an outstanding tax debt at the time he won, which means the Agency's confiscation of the winnings was appropriate. For those reasons, we ask that your honor find in favor of the Agency. Thank you.

Hearing Official: Thank you, Attorney June. Complainant Pluto, whenever you are ready.

Complainant Pluto: Hello. I am here today to ask that the money I won not be taken by the state. I was allowed to go into the casino to spend the money, and nobody told me I was on a list that said I could

not win. Why would they let me into the casino if I couldn't win? I mean, they looked at my ID and everything. On top of that, I did not sign up on the exclusion list voluntarily. I had been drinking, and my friend forced me to sign up. I really didn't understand what I was signing. I guess the last point I have is that I did have a tax debt, but it was a result of a filing error, that I have fixed. The new tax result is pending, but I don't think I should be punished for the state being slow. That is all, Judge.

Hearing Official: Thank you, Complainant Pluto. Now we will move into the Agency's case in chief because the Agency has the burden of proving that the forfeiture was proper. Per the schedule of witnesses, the Agency only has one witness, correct?

Attorney June: Yes, your honor. Although the Agency reserves the right to cross examine Complainant and Complainant's witnesses.

Hearing Official: And that first witness is Officer Clerk, is that correct?

Attorney June: Yes, your honor. She is outside now. Should I go get her?

Hearing Official: Yes, go ahead and bring the witness in.

Good afternoon. I'm Hearing Official NAHO, and I am the Hearing Official who is presiding over this matter. Please take a seat here. In just a moment, I will swear you in as a witness. You are giving testimony under oath, and in just a moment I will swear you in. I've got a few issues for you to keep in mind. First, please provide verbal answers as opposed to nodding or pointing. Second, if there is an objection make while you are answering, please stop your answer. I will let you know when or if you can give the rest of your answer. Any Questions?

Witness 1: No.

Hearing Official: Good. Please raise your right hand. Do you swear or affirm under the penalties of perjury that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Witness 1: Yes. I do.

Hearing Official: We will start with the Agency Attorney, Attorney June, asking you open-ended questions. Then Complainant Pluto will ask you some closed-ended questions. I may ask you some clarifying questions, and Attorney June will ask any final questions, at which point you will be dismissed from testifying.

Witness 1: Ok.

Hearing Official: Please state your name?

Witness 1: Danielle Clerk, or Officer Clerk.

Hearing Official: Attorney June, whenever you are ready.

Attorney June: Good afternoon, Officer Clerk. I'd like to start by thanking you so very much for taking time out of what must be a very busy schedule to be here today. I'd also like to thank you for your continued and valuable service—

Hearing Official: Attorney June, this period of time is reserved for questions. Please move to your first question, without commentary.

Attorney June: Apologies, your honor. Officer Clerk, how long have you served as an officer with the Agency?

Witness 1: About 15 years.

Attorney June: What is the exclusionary program?

Witness 1: It is a program that the Agency offers that can help people who believe it would be valuable to end their time in casinos.

Attorney June: During your service, have you been involved in the program?

Witness 1: Yes.

Attorney June: How so?

Witness 1: Well, I administer the sign-up portion of the program.

Attorney June: How much of your career has been involved in the sign-up process for the program?

Witness 1: I've been doing that for at least 7 years now.

Attorney June: Tell us about that process.

Witness 1: Well, it begins with me giving the potential applicant an overview of the program. I try to especially stress that the program is a permanent commitment, if the applicant selects the lifetime commitment, and that the result will be that the person will be excluded from, and unable to win at, any casino in the state.

Attorney June: What else is part of that process?

Witness 1: Well, I also have to ask about reasons that a person would not be able to sign up, like intoxication.

Attorney June: Do you recognize the person sitting to my right?

Witness 1: Yes.

Attorney June: To the best of your recollection, is that Mr. Pluto?

Witness 1: Yes.

Attorney June: How do you know him?

Witness 1: I recognize him from work. He signed up for the exclusionary program. I helped him with that.

Attorney June: Please take a look at page 23 in the exhibit, Joint Exhibit 1, that is in front of you. Do you recognize this document?

Witness 1: Yes.

Attorney June: What is it?

Witness 1: This is Mr. Pluto's sign-up application.

Attorney June: Do you remember Mr. Pluto signing up?

Witness 1: Yes, I do.

Attorney June: Tell us about his demeanor.

Witness 1: I mean, he is a very nice guy. I remember that he was very friendly and that he came in with another friend. They were laughing and joking around. He listened to what I had to say about the program, asked questions as I went through the explanation, and completed the form.

Attorney June: Did you get the sense that he was intoxicated?

Witness 1: No. And you can see from his sign-up form that he represented he was not intoxicated. I have training on the issue of intoxication, and he did not appear to be under the influence of a substance that would affect his ability to understand the process.

Attorney June: What did you think about his ability to understand you and the process?

Witness 1: I got the sense that he was paying attention. He was making light of certain parts of the program, but choices like this are hard, and so I don't judge people on how they process or come to a decision like entering the program. I convey the information, administer the form, and only get involved if I get the sense there is a real lack of understanding.

Attorney June: No further questions, your honor.

Hearing Official: Now is a time for Complainant to ask any follow-up questions. Complainant Pluto, whenever you are ready.

Complainant Pluto: I don't have a lot of questions. But, how many people do you have sign up in any week?

Witness 1: maybe 1 or 2.

Complainant Pluto: And how long has it been since I signed up?

Witness 1: about a year.

Complainant Pluto: So there have been a lot of people you have dealt with since me then.

Witness 1: Yes, I suppose.

Complainant Pluto: How clearly do you remember me, then, having dealt with all these other people?

Witness 1: Well—

Attorney June: Objection – argumentative.

Hearing Official: Response, Complainant Pluto?

Complainant Pluto: If she is going to say all this stuff about me, then I think I get to know if she remembers me. That seems fair.

Hearing Official: The objection is overruled. Officer Clerk, you can answer.

Witness 1: Pretty well. You were memorable because you and your friend were both very nice and funny. You made an impression. I might not remember everyone, but I do remember you.

Complainant Pluto: hm. Ok. No other questions.

Hearing Official: I have a few additional questions before we move into the Agency's final questions. Officer Clerk, you mentioned that you have completed training on the issue of intoxication.

Witness 1: Yes.

Hearing Official: Tell me about what that training includes?

Witness 1: Well, when I first started as an officer, I had a day-long training on signs of intoxication. What to look for, like being clumsy or slurring words. After that, each year, we do an online refresher course.

Hearing Official: Tell me about that refresher course.

Witness 1: In the last little bit it was online. Went over the same information, but more streamlined.

Hearing Official: Is there anything else you would like to add about your training?

Witness 1: No.

Hearing Official: Complainant Pluto, any follow-up questions on the issue of training?

Complainant Pluto: No.

Hearing Official: Attorney June, you can proceed with your final questions, which can also include any follow-up you have on the issue of training.

Attorney June: You testified earlier that you remember Complainant. Do you stand by that testimony?

Witness 1: Yes.

Attorney June: So strongly that you can testify as to his demeanor under oath, correct?

Witness 1: Yes. I wouldn't testify at all if I didn't have a memory of the event. I know I can say I don't remember. I do though.

Attorney June: No further questions.

Hearing Official: I have no additional questions. Does either party intend to recall Officer Clerk as a witness?

Attorney June: No.

Complainant Pluto: No.

Hearing Official: Officer Clerk, thank you for your testimony. You are dismissed from testifying at this time. You may leave the hearing room. Have a good rest of your day.

[Witness #1 leaves]

Hearing Official: Attorney June, anything further for the Agency?

Attorney June: No, your honor, the Agency rests.

Hearing Official: At this point, we will turn to Complainant's case, which means Complainant will have a chance to present witnesses and exhibits. Per the schedule of witnesses, Complainant Pluto is the first witness who will testify for Complainant. Complainant Pluto will testify in the narrative, which just means that he will not need someone to ask questions to provide his testimony – he can just make a statement. Complainant Pluto, please raise your right hand. Do you swear or affirm under the penalties of perjury that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Complainant Pluto: I do.

Hearing Official: Thank you. You can begin with your statement whenever you are ready.

Complainant Pluto: Thank you. I want to start by talking about how I ended up on the list. I was at a casino with a friend. I don't go to the casino often, and I don't consider myself someone who has a problem or anything with gambling. We had been playing for a while, just as a guy night kind of thing. I was losing – and I had overspent what I had agreed with my spouse I would spend for the night. My friend, David Rivers, was giving me a hard time about it, just the way that you do with friends. I had been drinking. At this point, I had a beer. We were getting ready to leave, and we passed the booth for the exclusionary list thing. David was nudging me and joking around that I needed to sign up because I had overspent that night. I don't know – it wasn't my smartest move, but I went along with the joke. I talked to the officer, and I did sign all the forms. But I really didn't know that it would mean I couldn't win any money again at a casino in the state. I mean, what kind of program is that? Who would expect that? I didn't really read the form carefully – and I guess that is on me. The officer did tell me about the program, but I was mostly paying attention to my friend. I just didn't think it would be a whole thing if I signed up. So I did, and now I can't even take my name off. On the tax issue, I completely agree that my tax record shows a tax debt for the state right now. I made a mistake when I turned stuff in, and I filed an amendment as soon as I got the results. I talked with one of the tax people for the state who said I would be in the clear once it goes through. I just really don't think it is reasonable to say that I have a debt, when it is going to be corrected soon. Anyway, that is what I have to say. Thank you.

Hearing Official: Attorney June, any questions for Complainant?

Attorney June: Yes, your honor. Just a few.

Mr. Pluto, please turn to page 23 of the Joint Exhibit 1, which is in front of you. You agree, do you not, that you signed the form on page 23 of Joint Exhibit 1?

Complainant Pluto: Yes.

Attorney June: And can you read what it says here at line two?

Complainant Pluto: "Are you presently under the influence of any alcoholic beverages or any other substance that would prevent you from making a sober and informed decision?"

Attorney June: And is that your signature under the "no" box?

Complainant Pluto: Yes, but if you were under the influence, would you really check yes? I mean, really?

Attorney June: Mr. Pluto, please only answer the question I have asked. I understand your answer to be yes.

Complainant Pluto: Fine.

Attorney June: And can you read from paragraph 17 on that same page?

Complainant Pluto: "Do you volunteer to forfeit any money or thing of value that you win at a casino or are owed by a casino in the state, if you are found in the gaming area of the casino while you are in the program?"

Attorney June: And again, is that your signature under the "yes" box?

Complainant Pluto: Yes, but your honor, can I please explain something else here?

Hearing Official: You will have an opportunity to make a closing comment under oath. For now, just answer the question being asked.

Complainant Pluto: Ok. I guess, yes. I will fix it later.

Attorney June: And do you see on the form where you selected the "lifetime" option?

Complainant Pluto: Yes.

Attorney June: And you testified earlier that you drank a beer?

Complainant Pluto: Yes.

Attorney June: About how long was it between when you finished your beer and the time you signed up for the list?

Complainant Pluto: Ummm…I think, maybe 2 hours? Definitely not less than that.

Attorney June: And Mr. Pluto, how much did you weigh at the time?

Complainant Pluto: Judge, can I object? I mean, do you really need to know that?

Hearing Official: Attorney June, response?

Attorney June: Well, your honor, Complainant is arguing that he was intoxicated to the point of lacking understanding on the night in question. The Agency will introduce evidence concerning blood toxicity, and Complainant's weight will be relevant to that calculation.

Complainant Pluto: But I mean, I was drinking – regardless, so does it matter?

Hearing Official: The Agency is entitled to present a defense. With that in mind, I am overruling the objection. Complainant Pluto, please answer.

Complainant Pluto: I mean, I weighed around 190ish.

Attorney June: Your honor, at this point the Agency moves for your honor to take official or judicial notice that at a weight between 180 and 200, one beer over 2 hours would have, at most, a blood alcohol concentration of .03%, which is well under the legal limit for driving, which is .08% in the state.

Hearing Official: Are you pulling this from a statute or where is this information coming from? What is the source for the official notice?

Attorney June: Well, for the .08% limit, that is coming from Code 9-30-5-1.

Hearing Official: And for the blood alcohol concentration at certain weights?

Attorney June: Umm, well, I believe that an administrative adjudicator can take notice of common knowledge. I believe that would fall under this category.

Hearing Official: Let's pause here then. Complainant Pluto, official notice is a process where I can take as fact a particular fact that is reasonably certain. Usually that includes laws, facts already established in courts, or facts that have been pulled from very reliable resources, like a state government document. I can also note, according to Code 4-21.5-3-36(f): "Technical or scientific matters within the agency's specialized knowledge." Both parties have an opportunity to weigh in on the issue before I consider it to be fact. It sounds like the Agency is moving for me to find two facts: 1) the legal limit for driving is .08% and 2) at a weight between 180 and 200 pounds, 1 beer over 2 hours would have an average blood alcohol concentration of .03%. Let's take each of these issues one at a time. Do you disagree with the legal limit being .08%?

Complainant Pluto: No, I think that is true. And if it comes from the law, I'm good with that.

Hearing Official: How about the .03% concentration issue?

Complainant Pluto: Well, I do take issue with that. You said it had to be a reliable source? The Agency didn't say where this came from, and I didn't know that, so I don't think it is common knowledge.

Hearing Official: Any response, Attorney June?

Attorney June: I think the issue of intoxication would fall within the boundaries of expertise you have.

Hearing Official: I am going to take official notice of the .08% limit in Code 9-30-5-1. However, I agree with Complainant that I don't have a source, and it is not the typical case that involves technical arguments concerning blood alcohol content, so the fact about the .03% concentration falls outside of the normal expertise required for this case. I will not take official notice of that fact. Attorney June, please continue.

Attorney June: Ok, your honor. Mr. Pluto, do you agree that at the time you won money from the casino, you had a tax debt with the state?

Complainant Pluto: Yes.

Attorney June: Give me just a moment to look over my notes here.

Hearing Official: Sure.

Attorney June: No further questions, your honor.

Hearing Official: Alright, Complainant Pluto, you may now make a closing statement under oath.

Complainant Pluto: Well, like I said Judge, I really don't think the tax issue should be counted because it was in the process of getting fixed, which the state knew. On the issue of drinking, I think if I have had any alcohol, then the sign-up should not be valid. As far as my weight and stuff, I really don't think it matters. Alcohol inhibits you – I was inhibited. End of story. That's all I have.

Hearing Official: Give me one moment to make sure I don't have any other questions. … I don't. Thank you for your testimony. At this point, Complainant Pluto, you are dismissed from serving as a witness. You will remain in the hearing as a party, but please keep in mind that any additional statements you make from this point on will not be considered evidence. I believe you had another witness you wanted to call?

Complainant Pluto: Yes. I wanted to ask David Rivers to testify. He is outside. Can he come in now?

Hearing Official: Yes, please let Witness Rivers know he can come inside.

Witness 2: Hi, I'm here to testify for Mr. Pluto?

Hearing Official: Good afternoon. I'm Hearing Official NAHO, and I am presiding over this matter. Please take a seat here. In just a moment, I will swear you in as a witness. You are giving testimony under oath, and in just a moment I will swear you in. I've got a few issues for you to keep in mind. First, please provide verbal answers as opposed to nodding or pointing. Second, if there is an objection made while you are answering, please stop your answer. I will let you know when or if you can give the rest of your answer. Any Questions?

Witness 2: No.

Hearing Official: Good. Please raise your right hand. Do you swear or affirm under the penalties of perjury that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth.

Witness 2: Yes. I do.

Hearing Official: We will start with Complainant Pluto asking you open-ended questions. Then the Agency Attorney, Attorney June, will ask you some closed-ended questions. I may ask you some clarifying questions, and Complainant Pluto will ask any final questions, at which point you will be dismissed from testifying.

Witness 2: Ok.

Hearing Official: Before we begin, can you please state your name?

Witness 2: David Rivers.

Hearing Official: Complainant Pluto, whenever you are ready.

Complainant Pluto: Hey Dave – let's get right to it. Do you remember going to a casino with me?

Witness 2: Yeah.

Complainant Pluto: Do you remember the night I signed up for an exclusionary program?

Witness 2: Yeah.

Complainant Pluto: How did that happen?

Witness 2: Well, we were walking out of the casino. I was giving you a hard time because you had lost a lot of money that night, and I knew you were going to get in trouble when you got home. I saw the sign, and I suggested that you sign up.

Complainant Pluto: Had I been drinking?

Witness 2: I mean, we had each had maybe one beer, but at that point, no.

Complainant Pluto: But I mean, you knew I was not at 100% right? Like not making great choices?

Hearing Official: Please limit your questions to one question at a time.

Attorney June: Objection – leading.

Hearing Official: Any response, Complainant Pluto?

Complainant Pluto: I'm just trying to get him to remember that I had been drinking and couldn't have made a good choice.

Hearing Official: The objection is sustained. Please remember that you need to ask open ended questions. If the question hints at the answer, then it is leading. Please rephrase.

Complainant Pluto: When I was signing up, did you think I was under the influence of alcohol?

Witness 2: I mean, not really? I'm sorry – I'm not sure what you want me to say here. We hadn't had anything to drink in a while, but I guess we had some alcohol earlier in the night. Honestly, I wasn't feeling it at that point though.

Complainant Pluto: OK. Well, why did you think I was signing up then?

Witness 2: I thought you were doing it to kind of be funny and kind of in hopes that it would help with the overspending issue – you know, to keep it from happening again.

Complainant Pluto: Do you think I was taking it seriously?

Witness 2: Probably not.

Complainant Pluto: How was I acting during the sign-up process?

Witness 2: Umm, you were goofing around. I don't think you were super focused on what was going on.

Complainant Pluto: I think I'm done. Thank you.

Hearing Official: Attorney June, any questions?

Attorney June: Yes, your honor. Good afternoon, Mr. Rivers. I'm the attorney for the Agency, and I just have a few questions for you. How much had Complainant had to drink before he signed up for the program?

Witness 2: Umm, maybe one beer. Honestly, I don't think we even finished those.

Attorney June: And about how long was it between when you finished the beer from when Complainant signed up for the program?

Witness 2: I want to say maybe around 3 hours? Might have been more than that. We were hanging out and catching up. We hadn't seen each other in a while, so we spent some time talking for a while.

Attorney June: Did you understand that the exclusionary program prevents you from winning monetary awards from casinos in the state?

Witness 2: Yeah, I got that from the information they gave us, yeah.

Attorney June: And did you understand that entry was permanent under a lifetime commitment?

Witness 2: Yeah.

Attorney June: Do you think that Complainant did not understand?

Witness 2: Uh, I don't --

Hearing Official: Attorney June, I'm going to ask you to rephrase.

Attorney June: Ok, your honor. Was Complainant acting in a way that would make you think he didn't know what was happening when he was signing up?

Witness 2: Just that he probably wasn't paying great attention. He is a funny guy – if you get to know him. So just kind of joking around.

Attorney June: No further questions.

Hearing Official: I don't have any other questions. Complainant Pluto, any other questions?

Complainant Pluto: No, I think I asked everything.

Hearing Official: I have no additional questions. Does either party intend to recall Witness Rivers as a witness?

Attorney June: No.

Complainant Pluto: No.

Hearing Official: Witness Rivers, thank you for your testimony. You are dismissed from testifying at this time. You may leave the hearing room. Have a good rest of your day. [Witness #2 leaves]

Alright. I believe we have made it through all of the witnesses who were scheduled to testify. Complainant Pluto, is there anything else you want me to know about your case, as far as exhibits or witnesses?

Complainant Pluto: No, I've presented everything I have.

Hearing Official: At this point, we are moving into a limited period of rebuttal. During rebuttal, parties can present witnesses or evidence that contradicts evidence presented by the parties during the cases you both have already put forward today.

Anything further from the Agency?

Attorney June: Nothing additional for the Agency.

Hearing Official: Anything further from Complainant?

Complainant Pluto: No. I'm done.

Hearing Official: Thank you both. I've got a few closing procedures to move through, and then we will end with closing arguments. I've noted from the record today that I only admitted one exhibit – Joint Exhibit 1, which is the investigative file. Any corrections for the Agency to the exhibits?

Attorney June: None, your honor.

Hearing Official: Any corrections for Complainant?

Complainant Pluto: No.

Hearing Official: As far as next steps, I will issue a written decision within 90 days of today. You will receive the written decision by email, at the email addresses you provided to me earlier in this case. Any corrections to either of the parties' contact information?

Complainant Pluto: No.

Attorney June: No corrections for the Agency.

Hearing Official: Thank you. At this point, we will end with closing arguments. Again, a closing argument is not evidence. This is when you can tell me what you think I should do with the case based on the evidence that the parties presented today. We will begin with the Agency and end with Complainant. Attorney June, whenever you are ready.

Attorney June: Thank you, your honor. The Agency has shown that Complainant was not intoxicated when he entered into the exclusionary program. Officer Clerk testified that Complainant was attentive and aware during the sign-up process, which is particularly important in light of Officer Clerk's training. Complainant had not been drinking enough or within a timeframe that would have rendered him intoxicated. He entered into the lifetime commitment voluntarily, and although he may not have been serious about his commitment, he understood the forms and the program itself. His perspective on his choice is not a valid reason to find he was not properly a part of the program. Additionally, Complainant has admitted that he had a tax debt at the time that he won a monetary sum from the casino. The Agency is obligated to act on the facts as they exist at the time Complainant won, which means that the Agency was entitled to confiscate the amount of the tax debt. In other words, the forfeiture was appropriate. The Agency asks that you find for the Agency and uphold the forfeiture of the entire amount of Complainant's winnings.

Hearing Official: Thank you, Attorney June. Complainant Pluto, whenever you are ready.

Complainant Pluto: Like I've said, I think that having anything to drink is enough of a problem that I shouldn't have to live with the exclusion. I also think it is unlikely the Officer actually remembered me, and even if she did, it is also clear that she remembers me joking around. She should have known I wasn't serious. On the tax issue, I just think that the state should hold itself accountable to the end result, not just what it can get by with in the moment. I really think that the Agency's approach is unfair.

It does people like me a disservice, and it feels like a trap. I would ask that you make the Agency do better, and send me back the money that I rightfully won. Thank you.

Hearing Official: Thank you, Complainant Pluto. I appreciate the parties' time and attention here today as well as the presentations that you both made concerning your cases. Please watch your emails for the written decision. At this point, it is TIME, and we are adjourned. Have a good rest of your day.