

Judge's Objection Leads To Wire Act Compliance Extension

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A stern message from a federal judge may have convinced the U.S. Department of Justice (DOJ) to extend the deadline from April to June for lotteries and gaming companies to comply with its new interpretation of the federal Wire Act of 1961.

The compliance deadline for the DOJ's new opinion on the Wire Act was extended by Deputy U.S. Attorney General Rod Rosenstein late Thursday, establishing a new date of June 14 for companies to fall into line with the position that the Wire Act's prohibitions on interstate wagering transmissions apply to all forms of gambling, not just sports betting.

"I can confirm there has been a 60-day extension to the [90-day deadline](#) for gambling companies to comply," Nicole Navas, a DOJ spokeswoman, told Gambling Compliance in an email on Friday.

Less than one week before the extension, U.S. District Court Judge Paul J. Barbadoro of Concord, New Hampshire, complained about the original deadline and instructed a DOJ attorney to find out if the original date of April 15 could be extended, according to sources who requested anonymity.

The 63-year-old Barbadoro was the youngest federal judge ever appointed when he was nominated in September 1992 at the age of 37 by President George H.W. Bush.

Barbadoro is presiding over a consolidated [lawsuit](#) by the New Hampshire Lottery Commission and its technology provider, NeoPollard Interactive, against the DOJ and U.S. Attorney General William Barr.

The lawsuit seeks to invalidate the January 14 reversal by the DOJ's Office of Legal Counsel (OLC) of its own 2011 opinion that limited the Wire Act to sports betting and encouraged certain states to authorize online casino and lottery operations.

In a February 22 telephone conference with attorneys in the lawsuit, Barbadoro said he would need at least one month after oral arguments to make a ruling.

Barbadoro used the terms "absurd" and "silly" to describe the DOJ's initial reluctance to extend the deadline, saying it would force him to require attorneys to rush the submission of legal briefs and other documents related to the case.

The judge also grilled DOJ attorney Steven Myers on whether the OLC's reversal on the [Wire Act](#) now means that all state lottery operations are illegal.

Myers said the [new opinion](#) addresses only whether the Wire Act is limited to sports betting and he was not in a position to say any more than the January 14 OLC opinion says.

Sources said the DOJ agreed to establish the new enforcement deadline only after originally seeking to limit the extension to the New Hampshire Lottery and those companies involved in the lawsuit.

New Hampshire attorneys argued a limited extension would have triggered an avalanche of lawsuits from other states, and cast doubt on the legality of New Hampshire's cooperation with other states in the Powerball and Mega Millions multistate games.

The New Hampshire lawsuit is key to the gaming industry's strategy to blunt the impact of the new OLC opinion, with the Granite State seen as a favorable venue for a legal challenge given a 2014 U.S. First Circuit Court of Appeals ruling that referenced how the Wire Act applies only to sports wagering.

Parties in the litigation have now proposed an April 8 deadline for written briefs in the case, with the prospect of oral arguments being held as soon as April 10, according to a court filing on Friday. Such a timeline could see a ruling issued in mid-May, or roughly one month before the DOJ's new compliance deadline.

Meanwhile, other states are being encouraged to file amicus briefs in support of New Hampshire in its lawsuit against the new Wire Act opinion, sources said.

[James Trusty](#), an attorney with Ifrah Law in Washington, D.C. who led DOJ's organized crime and gangs section from 2011 to 2018, welcomed the deadline extension.

Ifrah Law is representing the iDevelopment and Economic Association (iDEA), which is seeking to intervene in the New Hampshire lawsuit against the DOJ on behalf of its members that include DraftKings, The Stars Group, GVC, Golden Nugget and Worldpay.

“This certainly does not solve all the problems with the DOJ reversal, but hopefully it suggests that DOJ is not looking to aggressively defend the actions of the prior acting attorney general,” Trusty said.

Trusty was referring to Matthew Whitaker, who ran the DOJ on an interim basis for several months until William Barr took over as permanent attorney general on February 14.

Whitaker said he recused himself from the January 14 OLC opinion, but he defended the opinion in a hostile exchange with [Democrat Jamie Raskin](#) of Maryland in a hearing before the House Judiciary Committee on February 8.

John Pappas, a spokesman for iDEA, said that New Hampshire and other states which have legalized internet gaming or lottery sales produce significant tax revenue from their online operations.

“We will work with the DOJ to ensure that no action is taken that impedes on this state-regulated industry,” Pappas said. “We are pleased that our efforts have helped to rightfully extend this forbearance to the internet gaming industry at large.”

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