

Chance still rules poker, judge finds
Club sought to open card parlor in Durham

By BENJAMIN NIOLET, Staff Writer

DURHAM -- You can bluff, know the odds of drawing a flush or learn how another player scratches his nose when he has a good hand. But a judge ruled Monday that no amount of skill can get around the fact that poker is a game of chance. And betting on games of chance is a no-no under North Carolina law.

So Superior Court Judge Orlando Hudson dealt a losing hand to the Joker Club, which wanted to open a cash poker parlor in Durham.

An assistant attorney general successfully argued that since the 1840s, North Carolina law has banned betting on games where the cards were dealt face down. Assistant Attorney General David J. Adinolfi II did not deny that some players were better than others, but poker was all about being lucky.

"You can be as skilled as possible. You can do all the statistical analysis, and you flip that card over and it means nothing. You lose," Adinolfi said. "You can't will the card to be an ace when it's a deuce."

The Joker Club's attorneys argued that poker played well requires years of study, practice, self-control, and physical and emotional stamina. Witnesses talked of interpreting an opponent's nervous hand or betting small to trick the other guy into a foolish raise. They talked about decades of money they won at the poker table, a living that is just not possible at house games such as craps or blackjack.

Roy Cooke, a 16-year professional poker player from Las Vegas who writes books and columns on the game, took the stand during Monday's hearing. Whit Powell, an attorney for the Joker Club, asked Cooke what might happen if the two played a single hand of poker. Cooke said Powell had a chance of winning.

"How about if we play 1,000 hands?"

"You're dead," Cooke said.

The Joker Club's lawsuit was about a Cary man's fight to open a business. But the club's would-be owner, Howard Fierman, said nothing in court Monday and wouldn't comment afterward. Most of the action Monday came from the witnesses. Besides Cooke, the judge heard from a poker tournament organizer from Florida, a casino operations vice president from the Bahamas and a Morrisville chemist who studies the game.

During the hearing, the witnesses scribbled notes and handed them to the lawyers as they presented their case. When the state's only witness, an Alcohol Law Enforcement Division agent, said that poker skill loses

GAMES IN THE GAME

Witnesses at the Joker Club hearing offered a glimpse into what they described as the skills of a poker player:

BLUFFING: Betting aggressively is one way to make other players think you have a particular hand. Roy Cooke, a former professional poker player and poker writer, said sometimes players can drink coffee to simulate the little shake that often comes from good cards. Tournament organizer Frank Martin has pretended to be a little drunk to fake out his opponents.

TELLS: Poker players work hard on eliminating "tells," gestures or habits that can betray their thoughts or hands. Touching chips is sometimes a signal that a player intends to bet. Eyes betray so much that many professional players wear sunglasses at the table.

out to luck every time, the poker experts shook their heads and snickered. After a lunch break, Fierman invited the ALE agent to a poker game.

Poker, particularly Texas Hold 'Em, has enjoyed unprecedented popularity in recent years after television producers found a way to show what cards each player holds. Poker can be played for cash on Internet sites and is legal in nearly 40 states, experts said Monday in court.

Across the Triangle, bars and restaurants have taken to holding poker tournaments, though players compete for prizes and not cash. The tournaments are technically illegal, according to ALE, but district attorneys say the games are not a priority.

Lawyers said Monday that the appellate courts have never directly addressed the legality of poker. Powell and Marcus Hill, a Durham lawyer with a penchant for wide-brimmed hats, filed the Joker Club lawsuit last year. When he came to court Monday, Hill placed on the lawyers' table more than 15 books on poker theories and strategies and a stack of poker magazines.

Hudson, who said he has watched poker on television but does not play himself, asked both sides whom they thought the legislature was trying to protect when it banned games of chance. Adinolfi said lawmakers were probably thinking of the unskilled player who would lose a paycheck to a serious student of the game.

Hill told the judge that the assumption only proved their case.

Hudson didn't buy it. Joker Club attorneys didn't know Monday whether they would appeal.

Staff writer Benjamin Niolet can be reached at 956-2404 or <mailto:bniolet@newsobserver.com>