THE REGULATION OF ATHLETE AGENTS:
A 30-YEAR (OR SO) REVIEW OF LEGAL AND ETHICAL ISSUES

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"I WILL NEVER FORGET THE FIRST TIME I PAID A PLAYER..."

(As told to George Dohrmann)

By Josh Luchs

Confessions of an Agent
Norby Walters and Lloyd Bloom were sports agents who specialized in representing college football players. Walters and Bloom would recruit young players still in college and secretly sign them to exclusive representation contracts. The players would then lie about the existence of their contracts on the amateur athletic eligibility forms they submitted to their universities. The athletes would then continue to receive scholarships from these universities and play football on the schools’ teams. Walters and Bloom were convicted on charges of mail fraud, RICO violations and conspiracy for their participation in this scheme.
In the mid to late 1990’s, Myron Piggie (Piggie) created and pursued a secret scheme to pay talented high school athletes to play basketball for his "amateur" summer team. Because the athletes intended to play college basketball, the scheme produced multiple violations of National Collegiate Athletic Association (NCAA) rules which require college athletes to be amateurs. Piggie pled guilty to one count of conspiracy to commit mail and wire fraud in violation of 18 U.S.C. § 371 and one count of failure to file an income tax return in violation of 26 U.S.C. § 7203. Piggie appeals the calculation of his sentence and the amount of the
BREAKING: James Gatto, Merl Code and Christian Dawkins guilty on all counts in federal college basketball trial. Verdict just announced.

1:00 PM - Oct 24, 2018
Began 1920s with Charles C. “Cash and Carry” Pyle representing athletes like the Bears Red Grange
Regulation began in California based off of its Talent Agencies Act (enacted in 1959)

- The Talent Agencies Act is a remedial statute. Statutes such as the act are designed to correct abuses that have long been recognized and which have been the subject of both legislative action and judicial decision. Such statutes are enacted for the protection of those seeking employment, i.e., the artists. Consequently, the act should be liberally construed to promote the general object sought to be accomplished; it should not be construed within narrow limits of the letter of the law. Waisbren v. Peppercorn Productions, Inc., 41 Cal App 4th 246 (Cal. Ct. App. 1996)
Why Regulate Athlete Agents?

WI State Representative on UAAA Bill

- this bill aims to protect people who can't protect themselves. Currently, young athletes are easily overwhelmed and easy prey for unscrupulous sports agents who exploit these kids for their personal gain. This legislation establishes much-needed protections that not only will benefit student athletes, but also colleges and universities, as well as set long-overdue standards for the sports agent industry.

IL 225 ILCS 401/10

- Practice as an athlete agent in the State of Illinois is hereby declared to affect the public health, safety, and well-being of its citizens and to be subject to regulation and control in the public interest. It is further declared that the practice as an athlete agent, as defined in this Act, merits the confidence of the public, and that only qualified persons shall be authorized to engage in such practice in the State of Illinois. This Act shall be liberally construed to best carry out this purpose.
First regulations: 1980s

  • Purpose ➔ to protect athletes from potential abuse by regulating the player agent profession
    • Oklahoma ➔ 1985

UNIONS → 1983 ➔ NFLPA Regulations Governing Contract Advisors
  • NBPA ➔ 1986

NCAA → 1984 ➔ NCAA agent registration program
  • Memorandum to Individuals Acting in the Capacity of Player Agents
    • Voluntary program intended to foster communication between the Association and individuals acting in the capacity of player agent
By 1999, 28 states had their own athlete agent regulations, most a direct reaction to abuses within college athletics

- 2/3 of these had some sort of registration procedure
- No reciprocity
- No uniformity in regulations
It is beyond dispute that agents provide valuable and essential services for professional athletes. However, frequent headlines report improper or illegal contacts between agents, or would be agents, and athletes with remaining eligibility for amateur events. These instances cause loss of eligibility for the athletes and may also cause sanctions to be imposed upon educational institutions. These instances are highly publicized and inordinately time consuming and disruptive for the affected institution.
Athlete Agents Act

Description

The UAAA was adopted in 2000, and it has been enacted in 43 states. In recent years, however, there have been substantial changes in the marketplace for athletic agents, and a number of states have recently considered non-uniform amendments to the act, particularly in response to allegations in the past two years of improper conduct by agents with regard to college athletes. The Drafting Committee will draft amendments to the Uniform Athlete Agents Act that are appropriate in light of the experience with the 2000 Act.
**2000 version = 25 states - including Wisconsin**

- adopted initially in 43 states

**2015 version = 14 states**

- In 2019, this version introduced in another 9 states including Wisconsin (with some modifications as SB 117)

- **2019 version**
  - Amendment to Section 14 – Prohibited conduct
  - Reaction to NCAA changes from Commission on College Basketball
  - 8 states enacted already, at same time as 2015 version
    - CA amending Miller Ayala Act
    - 5 states have introduced (NM did not enact 2015 version)

**3 states have own regulations ➔ CA, MI, OH**

**8 states have no regulations ➔**

- AK, MA, ME, MT (repealed 2007), RI, VT, VA
- NJ ➔ 2015 version introduced 2019
Wisconsin adopted the 2000 UAAA


2. Applicable Provisions of the Wisconsin Administrative Code, from the Department of Safety and Licensing
   - Chapter SPS 1: Procedures To Review Denial Of An Application,
   - Chapter SPS 2: Procedures for Pleadings and Hearings
   - Chapter SPS 4 : Department Application Procedures and Application Fee Policies
   - Chapter SPS 6 : Summary Suspensions
   - Chapter SPS 7: Professional Assistance Procedure
   - Chapter SPS 8: Administrative Warnings
   - Chapter SPS 150: Authority and Definitions
   - Chapter SPS 151: Athlete Agent Registration
   - Chapter SPS 152: Athlete Agent Certificate of Registration Renewal
   - Chapter SPS 153: Standards of Practice
   - Chapter SPS 154: Unprofessional Conduct
Wis. Stat. § 440.99. Definitions

1. "Agency contract" means an agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional-sports-services contract or an endorsement contract.

2. "Athlete agent" means an individual who enters into an agency contract with a student athlete or recruits or solicits a student athlete to enter into an agency contract.
   - includes an individual who represents to the public that the individual is an athlete agent.
   - does not include a spouse, parent, sibling, grandparent, or guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

11. "Student athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student athlete for purposes of that sport.

Followed in 25 states
2015 UAAA expands the definition of athlete agent to include an individual who:

- (1) for compensation, procures or attempts to procure employment for a student athlete as a professional athlete;

- (2) for compensation or the anticipation of compensation, represents a student athlete as an athlete or advises a student athlete on finances, business ventures, or career management or manages the business affairs of a student athlete; or

- (3) in anticipation of representing a student athlete as an athlete, gives consideration to the student athlete or another person. The term does not include a person.

Followed in 14 states
Wis. Stat. § 440.991 Athlete agents: registration required; void contracts.

- (1) ... an individual may not act as an athlete agent in this state without holding a certificate of registration. ...

- (3) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.
  - Followed in 25 states

2015 UAAA ➔ Agents must register in each state in which they have established minimum contacts.
  - Followed in 14 states
Wis. Stat. § 440.9915

(d) A description of all of the following:

• 1. The applicants formal training as an athlete agent.
• 2. The applicants practical experience as an athlete agent.
• 3. The applicants educational background relating to his or her activities as an athlete agent.
  • Ch. SPS 151: Athlete Agent Registration
    • Wisconsin Application Materials

WI Application forms

• WI Fees
  • Initial Fee $38 (initially was $75) (code says $312)
  • Renewal Fee $107

Florida fee
  • Application = $630
Wis. Stat. § 440.9915 (j)

(j) Any instance in which the conduct of the applicant or any person named pursuant to par. (f) or (g) resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution.

Most states have similar language

- Some require 3 references
- A few do not require any disclosure of sanctions, violations, or criminal convictions.

- 2015 UAAA does not change this
Wis. Stat. § 440.9915

(2) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to sub. (1).

- (a) was submitted in the other state within the 6 months next preceding
- (b) contains information substantially similar to or more comprehensive

No assurance other state will accept (25 states)

2015 UAAA → 14 states

- Agents must register in each state in which they have established minimum contacts.
- The amended version is a true reciprocal registration provision in that if an individual registered in one state applies for registration in a second state, the second state is required to grant the registration
Wis. Stat. § 440.994

(3) An agency contract must contain, in close proximity to the signature of the student athlete, a conspicuous notice in boldface type and capital letters stating the following:

- **WARNING TO STUDENT ATHLETE**

IF YOU SIGN THIS CONTRACT:

1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT;

2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT OR BEFORE THE NEXT SCHEDULED ATHLETIC EVENT IN WHICH YOU MAY PARTICIPATE, WHICHEVER OCCURS FIRST, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

(4) An agency contract that does not conform to this section is voidable by the student athlete. If a student athlete voids an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student athlete to enter into the contract.
Subsection (b) is revised to require an agency contract to contain a statement that the athlete agent is registered in the state and a list of any other state in which the agent is registered.

Subsection (d) requires an agency contract be accompanied by a separate record signed by the student athlete that informs the athlete that signing the contract may result in the loss of eligibility to participate in the athlete’s sport. In the rare case where an agency contract involves a student athlete who is a minor, the section was revised to require the contract to be signed by the parent or guardian.

Of the 25 some have much more serious warning and consequences
Wis. Stat. § 440.9945

(1) Within 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution.

Most states similar notification (25 2000 UAAA)

2015 version → requires more advance notice and explicitly explains the type of communication that will necessitate notifying the institution.

Some statutes categorize the failure to provide the required notice as a misdemeanor, i.e. $10,000 fine / 1 year in prison (LA).
Wis. Stat. § 440.995 (same in IL, similar to CA)

1. A student athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.

3. If a student athlete cancels an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student athlete to enter into the contract.
   - Cannot force student athlete to reimburse in contract (SPS 153.05)

2015 UAAA adds parent or guardian if is a minor

All states include this in some form

- Differences = 5 days (NY), 10 days (OH), 15 days (CA), 20 days (TN)
Wis. Stat. § 440.9955 (25 states)

(1) An athlete agent shall retain all of the following records for a period of 5 years:
   • (a) The name and address of each individual represented by the athlete agent.
   • (b) Any agency contract entered into by the athlete agent.
   • (c) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract. (code includes date)

(2) Records required by sub. (1) to be retained are open to inspection by the department during normal business hours. Upon demand, an athlete agent shall provide a copy of such a record to the department.

In California this is considered “public-disclosure information” and agent must notify athletes and others of its availability (Cal. Bus. & Prof. Code §18896.6 & §18897.1)

Many states removed the requirement of making this information open for inspection
8. Disclosure

2015 UAAA (14 states)

- RUAAA expands the information required to be contained on the application to require, among other things, disclosure of financial information and, recognizing that communication between an athlete agent and a student athlete may be by electronic means, electronic mail addresses and social media accounts.

- The UAAA also contained bracketed language that an application filed under the act was a public record. The intention of the committee was not to rewrite the public record law of any state, but to default to that law, whatever it is. Thus, in some states, certain information on the application, such as a trade secret, may not be a public record, while the public record law in another state may require a different result.

- Subsection (a)(6) is not intended to require an athlete agent who is also a licensed, registered, or certified professional, to violate any privilege, including the attorney-client privilege.
Wis. Stat. § 440.996 & CH. SPS 153.08 (Similar in IL & CA)

(1) An athlete agent, with the intent to induce a student athlete to enter into an agency contract, may not do any of the following:

   • (a) Give any materially false or misleading information or make a materially false promise or representation.
   • (b) Furnish anything of value to a student athlete before the student athlete enters into the agency contract.
   • (c) Furnish anything of value to any individual other than the student athlete or another registered athlete agent.

(2) An athlete agent may not intentionally do any of the following:

   • (a) Initiate contact with a student athlete unless registered under this subchapter.
   • (b) Refuse or fail to retain or permit inspection of the records required . . .
   • (c) Fail to register when required . . .
   • (d) Provide materially false or misleading information in an application for registration or renewal of registration.
   • (f) Predate or postdate an agency contract.
   • (g) Fail to notify a student athlete before the student athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport.
SPS 154.01  **Unprofessional conduct.** The following, or aiding or abetting the following, without limitation because of enumeration, constitutes unprofessional conduct:

- **(1)** An administrative or judicial determination that the registrant has made a false, misleading, deceptive, or fraudulent representation.
- **(2)** Any instance in which the conduct of the registrant has resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution.
- **(3)** Any sanction, suspension, or disciplinary action taken against the registrant arising out of occupational or professional conduct.
- **(4)** Subject to ss. 111.321, 111.322 and 111.335, Stats., to have been convicted of a felony in this state or a crime in another state that if committed in this state, would be a felony.
- **(5)** Making a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent.
- **(6)** Engaging in conduct that would disqualify the applicant from serving in a fiduciary capacity.
- **(7)** Engaging in conduct violating ch. SPS 153.
- **(8)** Having a registration or licensure as an athlete agent suspended, revoked or limited because of professional discipline in this state or any other state.
- **(9)** Having a registration or licensure as an athlete agent denied or having a renewal of registration or licensure refused in any state.
- **(10)** Having engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student athlete or educational institution.
- **(11)** Having engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.
9. Prohibited Conduct

2015 UAAA – 14 states

- The RUAAA revises subsection (a) to prohibit an athlete agent from encouraging any other individual to take or assist another individual in taking any of the prohibited actions on behalf of the agent.

- Subsection (a)(3) prohibits an athlete agent from making any payment or providing anything of value to an individual who is in a position to influence a student athlete to enter into an agency contract unless that individual is registered as an athlete agent.

  - FBI Investigation ➔ There have been numerous instances in which an athlete agent has made payment to or provided something of value to family members, friends or roommates of student athletes to enlist their services in inducing a student athlete to sign an agency contract usually without disclosure to the student athlete.
2019 UAAA – 8 states have adopted

- Reaction to new NCAA Agent Certification System
2019 UAAA – 8 states have adopted

- The revision does not prohibit the giving of a thing of value but requires all of the following:
  - (1) The agent to notify the athlete or, if the athlete is a minor, the parent or guardian of the athlete, that receipt of the thing of value may cause the athlete to lose eligibility to participate in the athlete’s sport.
  - (2) The athlete, parent, or guardian to acknowledge that fact to the agent in a record.
  - (3) The agent, not later than 72 hours after giving the thing of value, to notify the athletic director of the educational institution the athlete is attending or the agent has reasonable grounds to believe intends to enroll.

- The revisions are not basketball specific or type of expense specific so that potential future revisions of eligibility rules by the NCAA or any other association of educational institutions governing interscholastic or intercollegiate sports will not necessarily require further amendment of the section.
Wis. Stat. § 440.997 (25 states)
- Educational institution can bring an action against agent
- No specific recovery for student athlete

CA § 18897.8
- (a) Any professional athlete, or any student athlete, or any elementary or secondary school, college, university, or other educational institution, or any league, conference, association, or federation of the preceding educational institutions, or any other person may bring a civil action for recovery of damages from an athlete agent, if that professional athlete, that student athlete, that institution, any member of that league, conference, association, or federation, or that other person is adversely affected by the acts of the athlete agent or of the athlete agent's representative or employee in violation of this chapter.

2015 UAAA (14 states)
- Removes the cause of action against a student athlete
- Gives the student athlete ability to bring cause of action against the agent
Neither have happened

1. Create a uniform registration system
   makes it a stronger requirement using “substantially similar to or more restrictive than the law of the enacting state” as part of the expanded standard

2. Registration Commission
   creates a central registration agency, the Commission on the Interstate Registration of Athlete Agents,
Registration required in 42 states
- Reciprocity in UAAA states?
- Still must pay fees to be registered in each state

Concerns/questions for attorneys
- Disclosure of records of representation
- Training
- Always possibility student athlete can cancel contract
- Enforcement?
- State laws are not UNIFORM
1. **Fee disputes between agents**

2. **Agent taking clients from other agent**

3. **Agent vs. agent**
   - Smith v. IMG Worldwide, Inc, 360 F. Supp.2d 681 (E.D. Pa 2005) (claimed agency defamed him and caused business to decline)

4. **Compensating athletes**
   - U.S. v. Piggie, 303 F.3d 923 (8th Cir. 2002) (mail and wire fraud)
5. **Unlicensed agent**

6. **Athlete vs. Agent for lost money**

7. **Agent vs. athlete**
Andy Shiffman (L’09),
Executive Vice President of
Basketball Representation, Priority
Sports and Entertainment, and
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Association, Chicago, IL

Lance Spaude (L’16),
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NV

QUESTION #1 → What is your perception of the impact of the many state laws governing athlete agents?

- It is the sense of Congress that States should enact the Uniform Athlete Agents Act of 2000 drafted by the National Conference of Commissioners on Uniform State Laws, to protect student athletes and the integrity of amateur sports from unscrupulous sports agents. In particular, it is the sense of Congress that States should enact the provisions relating to the registration of sports agents, the required form of contract, the right of the student athlete to cancel an agency contract, the disclosure requirements relating to record maintenance, reporting, renewal, notice, warning, and security, and the provisions for reciprocity among the States.
Enforced as unfair or deceptive act or practice under the Federal Trade Commission Act (§7803)

Remedy for states (§7804)

- (1) Civil actions. In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any athlete agent in a practice that violates . . . this Act . . . the State may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—
  - (A) enjoin that practice;
  - (B) enforce compliance with this Act . . .; or
  - (C) obtain damage, restitution, or other compensation on behalf of residents of the State.

No evidence that the FTC has ever enforced SPARTA against an agent or that any state or educational institution has attempted to enforce it.
Regulation by Unions: Athlete Agents

- National Football League Players Association
  - NFLPA Regulations Governing Contract Advisors (as amended through August 2016)
  - Amendments to Contract Advisor Regulations (2013)
  - Agent Regulation Stated Policies (2014)

- National Hockey League Players Association
  - Collective Bargaining Agreement, 2012-2022, Article 6: NHLPA Agent Certification

- National Basketball Players Association
  - Collective Bargaining Agreement, 2012-2022, effective as of July 1 2017, Article XXXVI: Player Agents
  - NBPA Regulations Governing Player Agents (As Amended February, 2016)

- Major League Baseball Players Association
  - MLBPA Regulations Governing Player Agents, As Amended Effective December 8, 2017)
ARTICLE 48
NFLPA AGENT CERTIFICATION

Section 1. Exclusive Representation: The NFL and the Clubs recognize that, pursuant to federal labor law, the NFLPA will regulate the conduct of agents who represent players in individual contract negotiations with Clubs. On or after the date on which the NFLPA notifies the NFL that an agent regulation system is in effect and provides the NFL with a list of the NFLPA-certified agents, Clubs are prohibited from engaging in individual contract negotiations with any agent who is not listed by the NFLPA as being duly certified by the NFLPA in accordance with its role as exclusive bargaining agent for NFL players. The NFLPA shall provide and publish a list of agents who are currently certified in accordance with its agent regulation system, and shall notify the NFL and the Clubs of any deletions or additions to the list pursuant to its procedures. The NFLPA shall submit an updated list to the NFL monthly. The NFLPA agrees that it shall not delete any agent from its list until that agent has exhausted the opportunity to appeal the deletion pursuant to the NFLPA’s agent regulation system, except: (i) where an agent has failed to pass a written examination given to agents by the NFLPA; (ii) in extraordinary circumstances where the NFLPA’s investigation discloses that the agent’s conduct is of such a serious nature as to justify immediately invalidating the agent’s certification; (iii) where the agent has failed to pay his or her annual fee; (iv) where the agent has failed to attend an annual seminar required by the NFLPA; (v) where the agent’s certification has expired due to the agent’s inactivity in individual contract negotiations; (vi) where the agent has made improper contact with a college football player in violation of any applicable NFLPA rules governing contact with players related to NCAA or NFL Draft eligibility; and (vii) where the agent has failed to sign the end of year certification required by Article 18, Section 2(b) of this Agreement. The NFLPA shall have sole and exclusive authority to determine the number of agents to be certified, and the grounds for withdrawing or denying certification of an agent. The NFLPA agrees that it will not discipline, dismiss or decertify agents based upon the results they achieve or do not achieve in negotiating terms or conditions of employment with NFL Clubs. This Section shall not limit the NFLPA’s ability to discipline agents for malfeasance or for violation of state or federal law.
Standard Representation Agreement

3. Contract Services

represent, advise, counsel, and assist Player in the negotiation, execution, and enforcement of his playing contract(s) in the National Football League. In performing these services, Contract Advisor acknowledges that he/she is acting in a fiduciary capacity on behalf of Player and agrees to act in such manner as to protect the best interests of Player and assure effective representation of Player in individual contract negotiations with NFL Clubs. Contract Advisor shall be the exclusive representative for the purpose of negotiating player contracts for Player.
How to Become an Agent

NFLPA Agent Regulations

Please click NFLPA Certification Frequently Asked Questions if you have any further questions, or email the Salary Cap and Agent Administration Department (agentservices@nflpa.com) with questions.

REQUIRED

- Non-refundable Application fee of $2,500.00
- Undergraduate AND Post Graduate degree (Masters or Law) from an accredited college/university (see FAQs)
- Authorization to perform a background investigation
- Mandatory attendance at a 2018 two (2) day seminar in Washington, D.C.
- Successful completion of written multiple choice proctored examination
- Valid Email address
- download a PDF version of the Regulations

DATE TO FILE

The open period for filing is now open and will close February 2, 2018. Absolutely no early or late filing.
Educational Requirements

NFLPA
- Undergraduate degree from accredited 4-year institution, and postgraduate degree OR 7 years sufficient negotiation experience
  - 2013 Amendment → “Accredited College or University” includes any college or university as recognized by the U.S. Department of Education and the Council for Higher Education Accreditation (CHEA), or the Office of Degree Authorization (ODA)

NBPA
- Undergraduate degree from accredited 4-year institution

NHLPA
- No requirement stated
Standard of Conduct

(1) Disclose on his/her Application and thereafter upon request of the NFLPA all information relevant to his/her qualifications to serve as a Contract Advisor, including, but not limited to, background, special training, experience in negotiations, past representation of professional athletes, and relevant business associations or memberships in professional organizations;

(14) Fully comply with applicable state and federal laws;

(15) Become and remain sufficiently educated with regard to NFL structure and economics, applicable Collective Bargaining Agreements and other governing documents, basic negotiating techniques, and developments in sports law and related subjects. To ascertain whether the

(17) Act at all times in a fiduciary capacity on behalf of players;
Prohibited Conduct

Contract Advisors are prohibited from:

(1) Representing any player in individual contract negotiations with any Club unless he/she (i) is an NFLPA Certified Contract Advisor; (ii) has signed the Standard Representation Agreement with such player; and (iii) has filed a copy of the Standard Representation Agreement with the NFLPA along with any other contract(s) or agreement(s) between the player and the Contract Advisor;

(2) Providing or offering money or any other thing of value to any player or prospective player to induce or encourage that player to utilize his/her services;

(5) Representing or suggesting to any player or prospective player that his/her NFLPA Certification is an endorsement or recommendation by the NFLPA of the Contract Advisor or the Contract Advisor’s qualifications or services;

(14) Engaging in unlawful conduct and/or conduct involving dishonesty, fraud, deceit, misrepresentation, or other activity which reflects adversely on his/her fitness as a Contract Advisor or jeopardizes his/her effective representation of NFL players;
If no union is involved, where does the information needed for representation come from?
12.02 Definitions and Applications.
12.02.1 Agent. [A] An agent is any individual who, directly or indirectly: *(Adopted: 1/14/12)*
(a) Represents or attempts to represent an individual for the purpose of marketing his or her athletics ability or reputation for financial gain; or
(b) Seeks to obtain any type of financial gain or benefit from securing a prospective student-athlete’s enrollment at an educational institution or from a student-athlete’s potential earnings as a professional athlete.

12.02.1.1 Application. [A] An agent may include, but is not limited to, a certified contract advisor, financial advisor, marketing representative, brand manager or anyone who is employed or associated with such persons. *(Adopted: 1/14/12)*

12.1.2 Amateur Status. An individual loses amateur status and thus shall not be eligible for intercollegiate competition in a particular sport if the individual: *(Revised: 4/25/02 effective 8/1/02, 4/24/03 effective 8/1/03, 4/29/10 effective 8/1/10)*

(g) Enters into an agreement with an agent. *(Adopted: 4/25/02 effective 8/1/02)*
12.3 Use of Agents. [A]

12.3.1 General Rule. [A] An individual shall be ineligible for participation in an intercollegiate sport if he or she ever has agreed (orally or in writing) to be represented by an agent for the purpose of marketing his or her athletics ability or reputation in that sport. Further, an agency contract not specifically limited in writing to a sport or particular sports shall be deemed applicable to all sports, and the individual shall be ineligible to participate in any sport.

12.3.1.1 Exception—Baseball—Prior to Full-Time Collegiate Enrollment. [A] In baseball, prior to full-time collegiate enrollment, an individual who is drafted by a professional baseball team may be represented by an agent or attorney during contract negotiations. The individual may not receive benefits (other than representation) from the agent or attorney and must pay the going rate for the representation. If the individual does not sign a contract with the professional team, the agreement for representation with the agent or attorney must be terminated prior to full-time collegiate enrollment. (Adopted: 1/15/16)

12.3.1.2 Representation for Future Negotiations. [A] An individual shall be ineligible per Bylaw 12.3.1 if he or she enters into an oral or written agreement with an agent for representation in future professional sports negotiations that are to take place after the individual has completed his or her eligibility in that sport.

12.3.1.3 Benefits from Prospective Agents. [A] An individual shall be ineligible per Bylaw 12.3.1 if he or she (or his or her relatives or friends) accepts transportation or other benefits from: (Revised: 1/14/97)

(a) Any person who represents any individual in the marketing of his or her athletics ability. The receipt of such expenses constitutes compensation based on athletics skill and is an extra benefit not available to the student body in general; or

(b) An agent, even if the agent has indicated that he or she has no interest in representing the student-athlete in the marketing of his or her athletics ability or reputation and does not represent individuals in the student-athlete’s sport.

12.3.1.4 Exception—Career Counselling and Internship/Job Placement Services. [A] A student-athlete may use career counseling and internship/job placement services available exclusively to student-athletes, provided the student-athlete is not placed in a position in which the student-athlete uses his or her athletics ability. (Adopted: 4/28/11)
COMMISSION ON COLLEGE BASKETBALL

REPORT AND RECOMMENDATIONS TO ADDRESS THE ISSUES FACING COLLEGIATE BASKETBALL

Commission on College Basketball
April 2018
12.02.1.2 NCAA Certification Requirement—Men's Basketball. [A] In men's basketball, any individual who solicits a prospective or enrolled student-athlete to enter into an agency contract or attempts to obtain employment for an individual with a professional sports team or organization or as a professional athlete must be certified and maintain active certification per the policies and procedures of the NCAA agent certification program. (See Bylaw 12.3.1.3.) (Adopted: 8/8/18) An NBPA-certified agent is considered an NCAA-certified agent until the NCAA agent certification program is operational, which will be no later than August 1, 2020.

12.02.1.2.1 Exception. [A] A family member of a prospective or enrolled student-athlete or an individual acting solely on behalf of a professional sports team or organization is not required to be certified through the NCAA agent certification program. (Adopted: 8/8/18)

12.02.1.2.2 Responsibility of NCAA-Certified Agent. [A] An NCAA-certified agent is presumed responsible for the actions of all employees who report, directly or indirectly, to the NCAA-certified agent. Improper conduct of an NCAA-certified agent’s employees shall subject the agent to disciplinary action pursuant to the NCAA agent certification program. (Adopted: 8/8/18)

Agent Certification

The April 2018 report from the Commission on College Basketball chaired by Condoleezza Rice recommended, and the NCAA adopted, legislation to allow some student-athletes to hire NCAA-certified agents so that the student-athletes can receive meaningful assessment of their professional prospects earlier in their journey. The commission focused solely on men’s basketball (MBB), and it was the commission’s belief that these student-athletes needed earlier professional advice to determine whether it is in their best interests to declare for the NBA draft or whether college basketball offers a superior pathway.

As a result, following the 2018-19 basketball season, NCAA legislation will allow a select few student-athletes to meet with and be represented by an NCAA-certified agent without losing eligibility. To accomplish this, the NCAA created an agent certification program applicable to MBB agents beginning in August 2019.
Enforcement Certification and Approvals Group (ECAG)

The NCAA enforcement certification and approvals group (ECAG) is a team within the NCAA enforcement staff dedicated to administering NCAA Bylaws 12.02.1.2, 13.14.3, 13.18, 13.19, 17.31.4. To accomplish this task, ECAG is responsible for evaluating these services/activities, ensuring that established standards are maintained and enforcing NCAA legislation and requirements. ECAG serves the membership by administering the following certification/approval programs:

- **Basketball Certification** – nonscholastic basketball events to allow Division I coaches to attend and observe prospective student-athletes; college basketball leagues to allow currently enrolled Division I student-athletes to participate; and teams participating in NCAA-certified events;

- **Recruiting/Scouting Service Approval** – to allow NCAA Division I coaches to purchase the service as a resource for the recruiting process in the sports of men’s and women’s basketball and football; and

- **Agent Certification** – to allow specific men’s basketball agents to meet with and represent a select few student-athletes (SA) without impacting the SA’s eligibility.
Many lawyer agents argue that they can work as an agent and not be a lawyer.

- Then they do not have to worry about the rules of professional conduct when they work as an athlete agent.
- Also, to level the playing field with non-lawyer agents.
SPARTA, union rules, state laws, all silent on this point

- Comments to UAAA
  - An attorney’s action as an athlete agent, however, are outside the scope of legal services, there is no privilege and the attorney must comply with the act.

- Revised UAAA
  - DEFINITION COMMENTS \(\rightarrow\) Attorneys are not excluded from the definition [of athlete agent]. An attorney does not need to comply with the provisions of this act in order to provide legal services to a student-athlete, but is required to register to perform the services of an athlete agent.
  - REGISTRATION COMMENTS \(\rightarrow\) is not intended to cause an athlete agent who is also an attorney to violate the attorney-client privilege. If an attorney’s role is limited to providing legal services to a student-athlete, the attorney is not required to register as an athlete agent or comply with this act. An attorney’s actions as an athlete agent, however, are outside the scope of legal services, there is no privilege and the attorney must comply with this act.
Courts would disagree

- In Re Dwight, 117 Ariz. 407 (1978) – “As long as a lawyer is engaged in the practice of law, he is bound by ethical requirements of that profession, and he may not defend his actions by contending that he was engaged in some other kind of professional activity.”

- In re Pappas, 159 Ariz. 516 (1988) → The duties of a lawyer who also holds other professional licenses cannot be circumscribed by the fine distinctions that we might draw between the nature of the services performed under a particular license. . . . . More importantly, how is any client to know when a lawyer cum accountant cum investment adviser removes one hat and puts on another? Respondent himself admitted that the distinctions between attorney, accountant, and tax adviser are far from clear.

- In re Jackson, 650 A.2d 675 (D.DC 1994) → A lawyer is held to a high standard of honesty, no matter what role the lawyer is filling
Cuyahoga County Bar Association v. Glenn, 649 N.E.2d 1213 (Ohio 1995)
- Lawyer athlete agent violated state ethics code by coaxing $20,000 from his client’s team with the player’s consent
- Lawyer suspended for one year

- Lawyer agent representing government in bid for Olympic Games could not avoid sanctions under ethics code claiming he was acting as agent and not lawyer
QUESTION 4: Can a lawyer function as an athlete agent?

Supreme Court offices
Office of Lawyer Regulation

The Office of Lawyer Regulation (OLR) is the agency of the Wisconsin Supreme Court that receives grievances relating to lawyer misconduct, conducts investigations, and prosecutes violations of lawyer ethics rules. Persons wishing to file a grievance, click here (en Español).

Scroll down the page to learn more about OLR or use the following shortcuts:

- Filing a grievance | Presentar una queja
- About OLR and the lawyer regulation system
- News and events
- Lawyer status and history
- Supreme Court Rules, Chapter 20 (Annotated)
- Trust Account Program
- Lawyer fees
- Pro hac vice admission
- Assistance for lawyers
- Assistance from other organizations
- Pay OLR fees and costs
SCR 20:1.1 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.

Comment [1]

- relevant factors include
  - the relative complexity and specialized nature of the matter,
  - the lawyer's general experience,
  - the lawyer's training and experience in the field in question,
  - the preparation and study the lawyer is able to give the matter
  - . . .
  - Expertise in a particular field of law may be required in some circumstances.
Office of Lawyer Regulation v. Booker (In re Booker), 2015 WI 2 ➔ Attorney found to violate competence standard where he practiced in bankruptcy court yet had a pattern of violating various sections of the Federal Bankruptcy Code

Wis. Stat. § 440.9915 (same in IL and NY)
  (d) A description of all of the following:
    • 1. The applicants formal training as an athlete agent.
    • 2. The applicants practical experience as an athlete agent.
    • 3. The applicants educational background relating to his or her activities as an athlete agent.

MLBPA documents
QUESTION 5: How do you maintain competence?
SCR 20:1.7 Conflicts of interest current clients

(a) Except as provided in par. (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
Conflicts of Interest (SCR 1.7)

- **SCR 20:1.7 Conflicts of interest current clients**
  - (b) Notwithstanding the existence of a concurrent conflict of interest under par. (a), a lawyer may represent a client if:
    - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
    - (2) the representation is not prohibited by law;
    - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
    - (4) each affected client gives informed consent, confirmed in a writing signed by the client.

- Athlete agent laws → focus on “an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport”
  - Revised “an individual who is eligible to attend an educational institution and who engages in, is eligible to engage in, or may be eligible in the future to engage in, any interscholastic or intercollegiate sport”
QUESTION 6: How do you manage conflicts?
SCR 20:5.5 Unauthorized practice of law; multijurisdictional practice of law

- (a) A lawyer shall not:
  - (1) Practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction except that a lawyer admitted to practice in Wisconsin does not violate this rule by conduct in another jurisdiction that is permitted in Wisconsin under SCR 20:5.5 (c) and (d) for lawyers not admitted in Wisconsin; . . .

ISSUE ➔

- Lawyer licensed by the WI SC, and
- Registered under California AAA,
- Does he/she violate CA rules if not licensed as lawyer in California?

(1) Every person, who without having first obtained a license to practice law as an attorney of a court of record in this state, as provided by law, practices law within the meaning of sub. (2), or purports to be licensed to practice law as an attorney within the meaning of sub. (3), shall be fined not less than $50 nor more than $500 or imprisoned not more than one year in the county jail or both, and in addition may be punished as for a contempt.

(2) Every person who appears as agent, representative or attorney, for or on behalf of any other person, or any firm, partnership, association or corporation in any action or proceeding in or before any court of record, circuit or supplemental court commissioner, or judicial tribunal of the United States, or of any state, or who otherwise, in or out of court, for compensation or pecuniary reward gives professional legal advice not incidental to his or her usual or ordinary business, or renders any legal service for any other person, or any firm, partnership, association or corporation, shall be deemed to be practicing law within the meaning of this section.

(3) Every person who uses the words attorney at law, lawyer, solicitor, counselor, attorney and counselor, proctor, law, law office, or other equivalent words in connection with his or her name or any sign, advertisement, business card, letterhead, circular, notice, or other writing, document or design, the evident purpose of which is to induce others to believe or understand the person to be authorized to practice law or who in any other manner represents himself or herself either verbally or in writing, directly or indirectly, as authorized to practice law in this state, shall be deemed to be purporting to be licensed to practice law as an attorney within the meaning of this section.
Agents must register in each state in which they have established minimum contacts.
Wisconsin sports lawyer representing athlete/entertainer, could be subject to

- State athlete agent act (42 states with slightly different laws)
- Federal athlete agent act
- Multiple Players Association regulations
- All upheld by courts & Rules of Professional Conduct
“I’m advising my client not to answer any more questions, or to even make eye contact.”