

College Coaches – Representation Agreements

By Martin J. Greenberg

I. PLAYERS' REPRESENTATION AGREEMENTS

The representation of college coaches differs entirely from the representation of professional athletes. Professional athletes are unionized and are subject to a collective bargaining agreement, in which many of the terms of employment are already negotiated between management and the union.

A player's agent (Contract Advisor/Advisors) becomes a member of the union and must be certified. Using the National Football League Players Association ("NFLPA") as an example, no person "other than a player representing himself" shall be permitted to conduct individual contract negotiations on behalf of a player and or assist/advise with respect to such negotiations with NFL Clubs, unless the person is:

1. Currently certified as a Contract Advisor pursuant to NFLPA regulations;
2. Signs a standard representation agreement with player; and
3. Files a newly executed copy of the standard representation agreement with the NFLPA, along with any contract between the player and Contract Advisor for other services to be provided.¹

To be eligible for certification, the applicant must have received an undergraduate degree from an accredited four year college or university and a post graduate degree from an accredited college or university.² However, the NFLPA has the authority to grant exceptions to this rule in regard to cases where the applicant has significant negotiation experience, i.e. at least seven (7) years of experience.³

¹ NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS, § 1(A) (June 2012).

² *Id.* § 2(A).

³ *Id.*

Certification is also contingent on the applicant first attending the NFLPA seminar for new Contract Advisors to be held on an annual basis and the passing of a written examination.⁴ In order to retain certification, the Contract Advisor must subject himself to a “standard of conduct.”⁵ The NFLPA Regulations governing Contract Advisors also enumerates forms of prohibited conduct. The NFLPA has the right to suspend or revoke certification pursuant to the grounds as contained in the Regulations.⁶

The Representation Agreement (“Agreement”) utilized by players must be in writing, must meet the NFLPA Regulations governing Contract Advisors, and must be in the preprinted form that is attached to the Regulations as Appendix D.⁷ If those requirements are not met, then the Agreement shall not be enforceable against any player and no Contract Advisor shall have any right to assert any claim against the player for compensation on the basis of such purported contract.⁸

The Agreement attached as Appendix D indicates that it is entered into in accordance with the NFLPA Regulations concerning Contract Advisors effective September 9, 2011, as amended. The Agreement requires the Contract Advisor to represent and warrant that he/she is duly certified as a Contract Advisor by the NFLPA.⁹ The Agreement also requires a representation by the Contract Advisor as to whether or not the Contract Advisor represents or has represented NFL management personnel, any other professional football coaches, or college coaches in matters pertaining to their employment by any NFL club, other professional football leagues, clubs or colleges.¹⁰

⁴ *Id.*

⁵ *Id.* § 3(A).

⁶ *Id.* § 6(D).

⁷ *Id.* § 4(A).

⁸ *Id.*

⁹ *Id.* app. D-1, § 2.

¹⁰ *Id.*

The Agreement enumerates the services to be performed by the Contract Advisor including retention to represent, advise, counsel, and assist the player in the negotiation, execution, and enforcement of his playing contract in the National Football League.¹¹

The Contract Advisor must also represent and warrant that he/she is acting in a fiduciary capacity and in such a manner as to first protect the best interests of the player. The Contract Advisor is the exclusive representative for purposes of negotiating the player's contract.¹² The Contract Advisor agrees that once the player executes the Agreement, the Contract Advisor will sign the same and send a copy to the NFLPA and NFL Club within 48 hours of execution by player.¹³

Section 3 of the Agreement ("Contract Services") also requires disclosure as to whether the Contract Advisor and player have entered into an agreement for services other than the individual negotiating services described in Section 3.¹⁴ If additional agreements have been entered into for other services, the nature of those services covered by other agreements must be described. Both the Contract Advisor and player must acknowledge that the signing of one agreement was not conditional upon the signing of any other agreement in violation of the Regulations.¹⁵ Both the Contract Advisor and player must sign an attachment stating what additional agreements have been entered into.¹⁶

Section 4 of the Agreement ("Compensation for Services") governs the compensation for services to be received by the Contract Advisor. Section 4 defines the maximum compensation that the Contract Advisor shall charge and receive as 3% of the compensation received by the

¹¹ *Id.* app. D-1, § 3.

¹² *Id.*

¹³ *Id.* app. D-2, § 3.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

player in each playing season covered by the contract negotiated by the Contract Advisor.¹⁷ The fee prescribed in the Agreement is lesser when the player signs a one-year tender as a Franchise, Transition, or Restricted Free Agent player.¹⁸ The Contract Advisor and player may agree on any fee which is less than the maximum fee.¹⁹ Computing compensation as described in Section 4 shall include only base salaries, signing bonuses, reporting bonuses, roster bonuses, Practice Squad salary in excess of the minimum Practice Squad salary, and any performance incentives earned by the player during the term of the contract. Compensation shall not include any “honor” bonuses (i.e. – All Pro, Pro Bowl, Rookie of the Year), or any collectively bargained for benefits.²⁰

Section 5 of the Agreement (“Payment of Contract Advisor’s Fee”) deals with the timing of the receipt of remuneration by the Contract Advisor. The Contract Advisor is prohibited from receiving any fee for the performance of his/her services until and unless the player receives compensation upon which the fee is based.²¹ However, a player may pay the Contract Advisor an advanced fee for deferred compensation due or payable to the player.²² For purposes of determining the advance fee, the compensation shall be determined to be an amount equal to the present value of the players’ deferred compensation.²³ The rate used to determine the present value of the deferred compensation shall be the rate at which the term interest is defined under Article 1 of the 2011 CBA.²⁴

Section 6 of the Agreement (“Expenses”) deals with the Contract Advisor incurring expenses. The player shall reimburse the Contract Advisor for all reasonable and necessary

¹⁷ *Id.* app. D-2, § 4.

¹⁸ *Id.*

¹⁹ *Id.* § 4(B).

²⁰ *Id.*

²¹ *Id.* app. D-3, § 5.

²² *Id.*

²³ *Id.*

²⁴ *Id.* § 4(B).

communication expenses (including telephone and postage) actually incurred by the Contract Advisor in connection with negotiation of player's NFL contract.²⁵ The player shall also reimburse Contract Advisor for all reasonable and necessary travel expenses actually incurred by Contract Advisor during the term of the Agreement in the negotiation of player's NFL contract, but only if such expenses and approximate amounts are approved in advance by the player.²⁶ The player shall promptly pay all such expenses upon receipt of an itemized, written statement from the Contract Advisor.²⁷ Contract Advisors are required to prepare, and file with the player and the NFLPA, an itemized statement covering fees and expenses incurred beginning March 1st of the prior year through February 28th of the current year.²⁸

Section 8 of the Agreement ("Disputes") deals with disputes between the Contract Advisor and player: Any and all disputes shall be resolved exclusively through the arbitration procedures set forth in the NFLPA Regulations.²⁹

Section 11 of the Agreement ("Filing") deals with the filing of the Agreement which must be signed and filed in quadruplicate.³⁰ The Contract Advisor agrees to deliver two copies of the Agreement to the NFLPA within 5 days of its execution, one copy to the player, and retain one copy for his/her files.³¹

Section 12 of the Agreement ("Term") deals with the term of the Agreement. The term of the Agreement shall begin on the date on the Agreement and shall remain in effect until such time that it is terminated by either party.³² The termination of the Agreement shall be effective

²⁵ *Id.* app. D-3, § 6.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* app. D-4, § 8.

³⁰ *Id.* app. D-4, § 11.

³¹ *Id.*

³² *Id.* app. D-4, § 12.

five (5) days after written notice of termination is given to the other party.³³ Notwithstanding the above, if the Agreement is being signed by a prospective rookie player (a “rookie” shall be defined as a person who has never signed an NFL Player Contract) prior to the date which is thirty (30) days before the NFL Draft, then the Agreement shall not be terminable by player until at least 30 days after it has been signed by the player.³⁴

If termination occurs prior to the completion of negotiations for an NFL player contract acceptable to the player and signed by the player, the Contract Advisor shall be entitled to compensation for the reasonable value of the services performed in the attempted negotiation of such contract provided such services and time spent thereon are adequately documented by the Contract Advisor.³⁵ If termination occurs after the player has signed an NFL player contract negotiated by the Contract Advisor, the Contract Advisor shall be entitled to the fee prescribed in the Agreement for negotiation of such contract.³⁶

In the event the player is able to renegotiate any contract previously negotiated by the Contract Advisor prior to its expiration, and such renegotiated contract for a given year equals or exceeds the compensation in the original contract, the Contract Advisor who negotiated the original contract shall still be entitled to the fee he/she would have been paid pursuant to the Agreement as if such original contract(s) had not been renegotiated.³⁷ If Contract Advisor represents player in the renegotiation of the original contract, and such renegotiated contract for a given year equals or exceeds the compensation in the original contract, the fee for such renegotiation shall be based solely upon the amount by which the new compensation in the

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* app. D-5, § 12.

³⁷ *Id.*

renegotiated contract exceeds the compensation in the original contract, whether or not Contract Advisor negotiated the original contract.³⁸

In the event that the player renegotiates any contract and the renegotiated compensation for a given year is less than the compensation in the original contract, the fee to the Contract Advisor who negotiated the original contract shall be his/her fee percentage applied to the new compensation, but only after the new compensation is reduced by the percentage which the compensation was reduced from the original contract.³⁹ The fee to the Contract Advisor who negotiated the new contract shall be his/her fee percentage applied to the new compensation, but only after the new compensation is reduced by the compensation applicable to the original Contract Advisor's fee as calculated pursuant to the immediately preceding sentence.⁴⁰

If the Contract Advisor's Certification is suspended or revoked by the NFLPA or the Contract Advisor is otherwise prohibited by the NFLPA from performing the services he/she has agreed to perform, the Agreement shall automatically terminate effective as of the date of such suspension or termination.⁴¹

II. DIFFERENCES IN REPRESENTING COLLEGE COACHES

As previously referenced, the representation of college coaches by contract advisors, attorneys, or agents differs from that of representing unionized players in the following respects:

1. College coaches are not unionized;
2. There is no collective bargaining agreement where the terms of employment are negotiated or defined;
3. Contract Advisors do not need to be certified or become members of the union;

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

4. There is no union to provide comparative salary information;
5. Any and all salary and package information must be obtained through newspaper reports and/or open record requests to the universities;
6. There are no standardized rules and regulations as to how a Contract Advisor must act in the negotiation and representation of college coaches during contract negotiations;
7. The contract that coaches enter into are unique to the university; there are no standardized forms;
8. No two coaches contracts are alike;
9. Payment of fees and the timing therefore are not regulated, but negotiated;
10. Contract Advisors are not required to have any pre-prescribed qualifications or formal certification;
11. No two agency agreements are alike because they are individually crafted.

III. SAMPLE COACHES' REPRESENTATION AGREEMENTS

What follows are examples of four agency agreements as between Contract Advisors and college coaches:

1. AGREEMENT

This will confirm the terms of the agreement (this "Agreement") between you and [Agent] with respect to management of various income producing business opportunities and affairs. Please review this letter, and if you agree that it accurately sets forth our understanding, please sign and return the two enclosed originals to me.

1) Exclusive Representation.

- a) During the Term (as defined below and at your request, [Agent] will assist you in the negotiation and/or renegotiation of any agreements relating to, but not limited to, the following areas: coaching, broadcasting, speaking and/or appearances, literary, licensing, endorsement and merchandising opportunities throughout the world. [Agent] shall undertake to seek and assist in the development and negotiation of such income producing opportunities available to you as a result of your reputation as a world class

basketball coach and celebrity. [Agent] will be your sole and exclusive representative in this regard throughout the world.

- b) The parties acknowledge and agree that local, non-national commercial opportunities not solicited by you or any non-[Agent] person acting on your behalf (collectively, the “Local Opportunities”) may be available to you from time to time (for example, local automobile dealership, local furniture store, etc.). It is therefore agreed that [Agent] will not commission the unsolicited Local Opportunities into which you enter provided that you keep [Agent] promptly and regularly advised of all prospective and completed Local Opportunities so that conflicts do not arise between such Local Opportunities and [Agent]’s representation of you.
- c) [Agent] shall not have the authority to bind or commit you in any way. Contracts binding you or committing you are to be set forth in a writing signed by you and may be reviewed by your personal attorney if you so choose.

2) Term.

The Term of this Agreement (“Term”) shall commence as of _____ and end on _____, subject to the following provisions. The Term shall renew automatically for successive one year periods and be governed by the terms of this Agreement, unless either party delivers written notice to the other at least 30 days prior to the end of that then-current Term.

3) Commissions to Agent.

- a) You agree to pay [Agent] 1.5% of all “Coaching Income” (hereinafter defined) received by you or on your behalf pursuant to that certain _____ employment agreement between you and the [University] (the “Agreement”). This provision (i) relates to all Coaching Income under the Agreement, including Coaching Income that pre-dates the Term hereof and (ii) amends Paragraph 3(a) of that certain _____ representation agreement between you and [Agent] (the “Original [Agent] Agreement”).
- b) Furthermore, you also agree to pay [Agent] 2% of all Coaching Income received by you or on your behalf as a result of agreements substantially negotiated or executed during the Term and from extensions, modifications and renewals (that is, a new agreement with the same party) thereof (including, without limitation, any extensions, modifications and/or renewals of the Agreement), regardless of whether or not [Agent] was involved in the negotiations thereof and regardless of whether such income is received during the Term or after the expiration/termination of the Term.
- c) With respect to all other income received by you or on your behalf (including but not limited to licensing, literary works, broadcast, speaking or appearance, endorsement and merchandising), you agree to pay [Agent] a commission of 20% of all such income (excluding income received from agreements executed by you prior to _____).
- d) “Coaching Income” shall mean the gross sums payable to you from any professional organization or team or college or university for which you coach (excluding deferred income from pre-existing agreements that may be received by you during the Term.)

- e) (i) All income described in this Paragraph 3 shall mean the gross sums payable to you (whether directly or indirectly), and inclusive of real or personal property, tangible or intangible property, as the result of agreements substantially negotiated or executed during the Term and from extensions, modifications and renewals (that is, a new agreement with the same party) thereof, regardless of whether or not [Agent] was involved in the negotiation and regardless of whether such income is received during the Term or after the expiration/termination of the Term. For the purposes of clarity, [Agent] acknowledges that income derived from the “Local Opportunities,” as defined in Paragraph 1(b) above, shall not be subject to any commission for [Agent].
(ii) With respect to your literary activities, [Agent] shall be entitled to its commission on compensation payable to you throughout the life of the copyright in any literary works you create or which are created about you and any renewals, sequels and/or revisions thereof, regardless of whether the Term has expired or been terminated by the parties.
 - f) You agree that all income in the form of cash described in this Paragraph 3 (other than Coaching Income) shall be paid directly to [Agent]. [Agent] agrees to pay you the balance of such income after deducting its applicable commissions as provided in Paragraph 3(a) and 3(b) above.
 - g) Commissions to [Agent] based on non-cash income such as securities, general partnership interests or other equity or ownership interest in a business entity shall be paid in kind. In the event that such non-cash income is not easily divisible, the parties will come to an equitable agreement in order to achieve the goals of this Agreement. Commissions to [Agent] based on non-cash income other than securities, general partnership interests or other equity or ownership interest in a business entity (e.g., automobiles) shall be valued at its fair market value as of the date paid to you and shall be paid in cash. Non-cash income shall not include compensation to you in the form of travel, accommodations or collectible holdbacks given to you by a third party for whom you are providing services.
- 4) Other Representation; Disclosure. You acknowledge that [Agent] performs services for individuals in the areas of coaching, broadcasting, speaking and/or appearances, literary, endorsements, licensing and merchandising other than for yourself. You agree that nothing herein contained shall restrict the right of [Agent] to continue all such activities.
- 5) Publicity. You hereby grant to [Agent] and its affiliates the right to use your name, nickname, voice, performance, services, biography, autograph and likeness in perpetuity in connection with promoting you and carrying out the responsibilities under this Agreement and in [Agent]’s and its affiliate’s corporate brochures, newsletters and presentations and for general internal use. [Agent] acknowledges that it cannot use the logos and/or trademarks of [University] without its proper authorization.
- 6) Governing Law; Arbitration. This Agreement shall be governed and construed in accordance with the laws of the State of [state], without giving effect to the principles of conflicts of law thereof. In the event a dispute arises under this Agreement which cannot be resolved, each dispute shall be submitted to arbitration and resolved by a single arbitrator (who shall be a lawyer) in accordance with the Commercial Arbitration Rules of the American Arbitration

Association then in effect. All such arbitration shall take place at the office of the American Arbitration Association located in [City, State]. The award or decision rendered by the arbitrator shall be final, binding and conclusive and judgment may be entered upon such award by any court.

- 7) Successors and Assigns. This Agreement is binding upon and inures to the benefit of each of us and our respective successors, heirs and personal representatives, as the case may be. However, this Agreement may not be assigned by either party unless the non-assigning party has approved such assignment in writing.
- 8) Confidentiality. All of the provisions of this Agreement shall be strictly confidential. Neither party shall disclose any information about the provisions of this Agreement without the prior written permission of the other. If you breach or threaten to breach the provisions of this Paragraph 8, [Agent] shall have the right to immediately terminate this Agreement and unilaterally rescind all of its commitments and obligations owed to you hereunder, rendering this entire Agreement (except for any obligations you may have to [Agent]) null and void.
- 9) Entire Agreement. This writing constitutes the entire agreement between the parties hereto and may not be changed or modified except by a writing signed by the party or parties to be charged thereby. As of the effective date hereof, this Agreement supersedes the Original [Agent] Agreement, which will be deemed to have expired as of ____ day of _____, _____.

Sincerely,

Accepted and Agreed:

[Agent]

By: _____

2. AGENCY AGREEMENT

Dear _____:

This shall confirm and memorialize the terms of the agreement (the "Agreement") between _____, or that of any entity having a right to supply your professional services as described herein ("you" or "You"), and [Agent] ("Agent"). The terms and conditions of this Agreement are as follows:

1. This Agreement shall commence as of the date hereof and shall continue for a term of three (3) years (the "Term"). Thereafter, the Term shall be automatically renewed for successive three (3) year periods unless terminated by either party upon written notice delivered at least sixty (60) days prior to the expiration of the then current Term.

2. You hereby appoint Agent, and Agent hereby accepts such appointment, as your exclusive, worldwide representative in connection with your professional activities in the “Coaching Industry” and “Marketing, Merchandising and Product Endorsement Industry.” The “Coaching Industry” which is defined to include, but not be limited to: coaching contract negotiations and business affairs related thereto. The “Marketing, Merchandising and Product Endorsement Industry” is generally defined (without limitation) as: opportunities and activities available to you as a result of your reputation as a professional coach (e.g., licensing, internet, digital, endorsement, television, speaking, appearances, exhibitions, and other merchandising opportunities.) As such, Agent will advise and counsel you in any and all matters regarding the general practices and dealings of all appropriate contractual representation activities. If, during the Term of this Agreement, you enter into and complete negotiations for any position or activity with respect to Coaching and/or Marketing, Merchandising and Product Endorsement Industry, without Agent’s representation, Agent shall nevertheless be entitled to and you shall pay Agent its fees in accordance with the formula and terms contained in Paragraph 5 below.
3. During the Term of this Agreement, you shall refer to Agent any and all inquiries made in connection with your prospective employment and/or professional activities in the Coaching Industry, and all inquiries in the Marketing, Merchandising and Product Endorsement Industry.
4. As compensation for its services performed under this Agreement, Agent shall be entitled to receive, and you shall pay to Agent, fees as follows:

Coaching activities:

Four percent (4%) of annual guaranteed compensation paid to you in the capacity of football coach for negotiation of coaching agreement

Marketing, Merchandising and Product Endorsement Activities:

Twenty percent (20%) of all Gross Income derived from all Marketing, Licensing, Merchandising and Product Endorsement Activities

5. Fees shall be paid within a reasonable time frame as monies are received, or at such other intervals to which we may otherwise mutually agree in writing. You further agree to pay our fees, as defined herein, on all Income generated by negotiations that have commenced during the Term of this Agreement regardless whether such Income is received before any termination of this Agreement. Additionally, if within nine (9) months of the effective date of the termination of the Term of this Agreement, you shall accept employment, or otherwise agree to provide services, with a Coaching Industry entity to which Agent, incidental to its management and representation of you, has submitted you as a candidate during the last nine (9) months of this Agreement, then Agent shall be entitled to receive fees pursuant to Paragraph 5 hereinabove.

As used herein, "Gross Income" shall mean the total amount of money and/or other consideration (in whatever form) paid or accrued to you, or on your behalf, directly or indirectly, during the Term and thereafter pursuant to any agreement, arrangement, commitment, or contract (including any renewal, extension, or modification thereof or substitution therefore with the same or affiliated or related party(ies), regardless of whether consummated during or after the Term), which is introduced, negotiated or created during the Term of the Agreement, regardless of whether or not Agent was involved in the procurement thereof, and regardless of whether such Gross Income is paid during or after the Term.

6. You acknowledge that Agent has been retained for the purposes as stated in Paragraphs 2 and 3 hereinabove and that any solicitation of employment by Agent on your behalf shall be incidental to our primary managerial function. Agent shall not be required to provide any services which would obligate Agent to register with, or seek licensing as an employment or theatrical agency from, the State of New York or any other jurisdiction.
7. Any dispute or claim arising out of or relating to the terms of this Agreement shall be submitted to arbitration and such arbitration shall comply with and be governed in accordance with the laws of the State of New York and by the provisions of the American Arbitration Association (without regard to any choice of law provision), as both are applicable to contracts made and performed entirely within the State of New York,. Such arbitration shall be binding on the parties and the location of the arbitration shall be in the office nearest to Agent's offices in the State of New York. The cost of arbitration shall be borne by the losing party or in such proportion, as the arbitrator shall decide. Judgment on the award rendered by the arbitrator may be entered in any court in the world having jurisdiction.
8. This Agreement shall not be modified except by written agreement duly executed by the parties hereto. Agent may assign this Agreement and/or any of its rights hereunder in whole or in part to any subsidiary, parent company, and affiliate or to any third party acquiring a substantial portion of Agent's assets.
9. Any waiver by Agent of a breach by you of this Agreement shall not be considered a waiver of any subsequent breach. Agent shall not be liable for any breach of contract or act or omission on the part of anyone with whom any engagement or contract is negotiated, arranged, or secured. You hereby indemnify and hold Agent harmless from and against any costs, expenses, and damages sustained by Agent as a result of any claim made against Agent by any third party arising out of any breach or alleged breach by you of any of your obligations or any of your actions.
10. Without limitation, in the event of any breach of this Agreement by Agent, You agree to provide written notice of the same to Agent, and no breach shall be deemed to have occurred if Agent cures said notified breach within one hundred twenty (120) days of Agent's receipt of said notice from You. Absent such written notice, You waive your right to claim such said breach at any other time. Each of the parties has participated in the negotiation and preparation of this Agreement and therefore waives any rule of law or judicial precedent that

provides that contractual ambiguities are to be construed against the party who shall have drafted the contract in question.

Sincerely yours,

Agent

AGREED TO AND ACCEPTED:

By: _____
Printed name

Printed name

3. LETTER OF UNDERSTANDING

Dear _____:

We are excited that you have chosen to use the services of Agent (“Agent”), and we look forward to providing you with valuable service, information, and assistance for many years. We believe the resources we offer our coaching clients can make a significant difference in a variety of ways – from very easily defined financial aspects to the more difficult to define “peace of mind” aspects. The purpose of this letter is to introduce some of those resources to you and to outline for you the general terms and conditions of our understandings, obligations, and expectations.

WHAT RESOURCES DOES AGENT OFFER?

- A. Contract review and negotiation. Basic and in-depth review of your coaching contracts – and direct negotiation or assistance with the negotiation of new contracts or extensions of existing ones – is the lifeblood of our firm’s services to its coaching clients. While we cannot offer any guarantees, we will use our best efforts to insure that any contract we negotiate or assist with on your behalf will be the best possible contract for you, under the particular circumstances in which the contract is negotiated. You will always have the final and ultimate authority to choose to execute, or not execute, any contract we negotiate on your behalf, and we will make every effort to keep you integrally involved in all aspects of the process.

- B. Endorsements and appearances. We offer a full-time staff of professionals to assist you in earning “off the field” income and exposure to national, regional, and local audiences in the area of endorsements and appearances. If you have an interest in such activities, please let us know and we will have a member of our staff contact you for the purpose of discerning your desires, interests, and track record in this area.

- C. Future employment assistance. We will work closely with you to monitor employment opportunities at all levels of coaching – whether in the professional or collegiate ranks – and

will help keep you apprised of current employment patterns and potential opportunities, according to your directions. Notwithstanding our role in this particular area, please know that our experiences have taught us that the most important part of the “job-finding” process is related to your coaching abilities, your efforts in networking within the coaching community, and your role in successfully representing yourself as a viable candidate for a position.

WHAT DO WE EXPECT FROM YOU?

- A. Communication. Communicating with us is vital to our ability to best serve your needs. There is no such thing as “too much” communication in our industry and you should always feel free to pick up the phone and call whenever a question or issue arises. A significant portion of the success we enjoy in working with our coaching clients is dependent on a constant communication process.
- B. Confidentiality. The communication process works best when both parties understand that sensitive information will be shared only with those who have a legitimate reason or need to know such information. You can rest assured that we treat information we’ve gained access to regarding you and your coaching situation with the strictest degree of privacy.
- C. Prompt payment of fees. We will bill you on an annual basis for coaching contracts we negotiate or assist in negotiating (billing generally occurs in late November or early December) and on a per-contract basis for endorsements and appearances. Our standard fee will be calculated on the gross annual compensation (e.g. salary, bonuses, deferred compensation) you receive for each year the contract is in force, including any extensions thereof. Our standard fee for a head-coaching contract is three percent (3%) of the gross annual compensation actually received. Our standard fee for negotiating an endorsement or appearance agreement is twenty percent (20%) of gross cash compensation received. We understand that some contracts – particularly in the endorsements and appearance area – come with unique circumstances, and we are always happy to discuss fees on a case-by-case basis when such circumstances exist. Because our billing process occurs prior to year-end, you can take advantage of the deductibility of the fees you pay us on your current-year income tax returns (*note: you should not rely solely on the prior sentence for tax advice; instead, always discuss the deductibility of agent fees with your tax advisor.*)

When you sign this letter agreement, you will be indicating your acknowledgment and agreement that unless other arrangements have been made, you will execute your fee payment in a prompt and timely manner subsequent to the receipt of an invoice.

IN GENERAL, WHAT OTHER TERMS APPLY TO THE RELATIONSHIP BETWEEN US?

- A. Understand that we represent other coaches and athletes. You should be aware that we currently represent other coaches, executives, and athletes in the sports industry. By signing this letter, you will be acknowledging such an understanding. We will notify you if a potential conflict of interest situation arises and offer you an opportunity to take steps to

avoid the conflict, including the use of another person, firm, or entity to serve as your representative.

- B. Relationship Guidelines. By signing this letter, you will be acknowledging that there have been no promises or guarantees made with regard to us acting in a fiduciary capacity for you. This letter will also not create a legal association, partnership, joint venture, employer-employee, or principal-agent relationship. Instead, we will simply be acting as an independent contractor in our dealings with you while performing a variety of services hereunder.
- C. Entire Understanding. This letter agreement embodies the full and complete agreement between us regarding our relationship, and its execution means there are no other agreements or understandings between us. Modifications or amendments to this letter agreement will not be deemed valid or enforceable unless and until the modification(s) or amendment(s) has (have) been reduced to writing and signed by both parties.

We realize a short letter like this may not cover every situation that may arise in our relationship; however, we're confident in our ability to represent you in the best way possible and trust that any situation that does arise will be handled in a way satisfying to you. We're proud of the coaches we've been privileged to work with and are excited that you have chosen to be part of that group. We hope that if you're ever in the Memphis area you'll drop by the office for a visit. Thanks again for choosing Agent as your representative agency.

Sincerely,

AGENT

President

Acknowledgment: By my signature below, I acknowledge that I have read and understand the foregoing Letter of Understanding and agree to abide and be bound by the terms and conditions contained therein.

Coach's signature

Date

4. **EXCLUSIVE AGENCY AGREEMENT**

This agreement is entered into by and between CLIENT at ADDRESS hereinafter referred to as "Client" and AGENT at ADDRESS hereinafter referred to as "Agent."

For and in consideration of the mutual promises contained herein, the Client and Agent do hereby covenant, contract and agree as follows:

1. AGENCY: Subject to the terms of this agreement, the Client does hereby appoint Agent as its exclusive agent for the following purposes:
2.
 - (a) Develop and implement an overall brand-career strategy for the Client inclusive of resume and personal biography, mission statement, goals and objective and coaching philosophy.
 - (b) Identify and seek out appropriate on field and off the field career opportunities for the Client including coaching positions (NCAA, NFL, CFL), media consultancies, endorsements, in-kind partnerships and speaking engagements.
3. RELATIONSHIP: The Client and Agent agree that agent is an independent contractor and shall pay his own employment, income and other taxes as well as all insurance.
4. DUTIES: Agent shall perform the following duties in reference to this agreement:
 - (a) Career Consultation, Brand Packaging, and endorsement solicitation where allowable.
 - (b) Use his or her best efforts and abilities to develop an impactful market presence and dynamic relationship circle to grow visibility and consideration in the critical job placement periods.

Agent shall represent, advise and assist the Client in respect to career strategy, relationship building and market presence.

Agent shall not be authorized to bind the Client to any agreements until Agent obtains the written consent to same by the client.
5. COMPENSATION: Company shall pay unto Agent for his or her services the following:
 - (a) 4% of gross contract value over the life of the contract term unless gross compensation is below \$100,000.00 annually then a 2% fee will apply. (See Section 6 “EXCLUSIONS” for other compensation limitations.)
 - (b) 20% of any sponsorships, media rights agreements, licensing deals, speaking engagements or paid on air appearance.
6. EXPENSES: From time to time as approved by the Client in writing, as compensation to Agent, the Client may be required to reimburse for the following *approved* expenses:
 - (a) Legal Expense, Travel related expenses, air, hotel, rental car, meals, marketing and PR Services.

7. EXCLUSIONS: Excluded from this agreement are all existing agreements in place at the time of the execution of this agreement. 1) Prior relationships as it pertains to Client obtaining his own position without the help of Agency no fees will be rendered, but will still remain agent of client. This does not apply if Agent negotiates terms of said contract for Client.
8. TERM: This agreement shall extend for a period of one (1) year from the date hereof.
9. RENEWAL: This agreement shall automatically renew after one (1) year unless the parties give written notice prior to the renewal of the contract period of their intent not to renew in writing.
10. MODIFICATION: This agreement may not be modified except by amendment reduced to writing and signed by both the Client and Agent. No waiver of this agreement shall be construed as a continuing waiver or consent to any subsequent breach thereof.
11. NOTICES: All notices hereunder shall be effective if sent by certified mail, postage prepaid, return receipt requested to Client at [Address] or to Agent at [Address].
12. ENTIRE AGREEMENT: This agreement constitutes the entire agreement between the parties hereto and replaces and supersedes all prior agreements between the parties relating to this same subject matter.
13. GOVERNING LAW: This agreement shall be construed in accordance with the laws of the State of _____.
14. PARTIAL INVALIDITY: In the event any provision hereof shall be for any reason illegal or unenforceable, the same shall not effect the validity or enforceability of the reaming [sic] provisions.
15. ATTORNEYS FEES: In the event that the agreements become subject to litigation between the parties hereto, the parties agree that the prevailing party shall be entitled to an award of attorney's fees, costs and the prevailing statutory interest from the other party.
16. INDEPENDENT COUNSEL: The parties hereto further represent that they have had the opportunity to obtain independent legal counsel before entering this agreement.
17. FURTHER DOCUMENT: The parties further agree that if any other provisions or agreements are necessary to enforce the intent of this document, that both parties will execute same upon request.

This agreement entered into this the _____ day of _____, 2014.

CLIENT

[date]

AGENT

[date]

IV. COMMENTARY – COACHES’ REPRESENTATION AGREEMENTS – A CHECKLIST

After a review of several representation agreements used in the industry and after having negotiated several myself, what follows is a checklist of those terms that are essential in negotiating a Representation Agreement between a college coach and agent (representative):

1. Representations and Warranties

a. By Representative

- i. The representative must represent and warrant that he/she has the requisite skills, qualifications, knowledge, and experience to competently negotiate, draft, and enforce a coach’s contract.
- ii. The services to be performed pursuant to the Representation Agreement shall be performed consistent with industry standards.

b. By Coach

- i. Coach represents and warrants that he/she has not entered into an agreement with any other person or firm for the performance of the services to be rendered by the representative pursuant to the terms of the Representation Agreement that would in any way negate, conflict, or limit the obligations or services to be performed.

2. Definitions. The Representation Agreement should contain a defined terms section that should assign a meaning to the terms and provisions used in the Representation Agreement including, but not limited to:
 - a. Agreement
 - b. Business opportunities
 - c. Marketing opportunities
 - d. Compensation
 - e. Coaching income
 - f. Non-cash income
 - g. Services
 - h. Term
 - i. University Employment Agreement
 - j. Expenses
 - k. Local opportunities
 - l. Dispute resolution
 - m. Governing law

3. Term: The term of the Representation Agreement should be a fixed term. In the alternative, the term shall begin on the date the Agreement was signed and shall continue until the expiration date of any coach's university employment contract executed pursuant to the Representation Agreement and any renewal or modification made thereof.
 - a. Does the term automatically extend, and if so is there a notice requirement of automatic renewal?

- b. Does the term extend in the event the university employment contract has a mutual extension or rollover provision?

4. Exclusivity.

- a. Are the services to be rendered by the representative on an exclusive or non-exclusive basis?
- b. For contract negotiation services, is the representative the sole and exclusive representative for the coach?
- c. With respect to marketing/business opportunities, is the representative one of other firms, representatives, advisors or managers that has the right to bring the coach marketing/business opportunities?
- d. An obligation of the coach to refer all inquires made in connection with coach's prospective employment and marketing/business opportunities to the representative.

5. Services to be rendered

- a. What are the services to be rendered by the representative?
- b. Is the representative retained to procure, find, and obtain coaching opportunities for his client?
- c. Is the representative retained only to negotiate, draft and enforce a coaching agreement with a university employer?
- d. On the other hand, is the representative retained to bring business/marketing opportunities to the coach which might include, but not be limited to:
 - i. Broadcasting

- ii. Internet – online digital opportunities
 - iii. Speaking or public appearances
 - iv. Literary opportunities
 - v. Licensing
 - vi. Commercial endorsements
 - vii. Merchandising opportunities
 - viii. Company spokesman opportunities
 - ix. Consulting
 - x. Autograph signings
- e. Is the representative retained to advise the coach on tax and financial matters and planning?
 - f. Is the representative retained to prepare income tax returns?
 - g. Is the representative retained for the collection of income and payment of expenses and an accounting therefor?
 - h. Is the representative retained to provide investment advice or engage the services of an investment adviser?
 - i. Is the representative retained to provide post-retirement counseling?
 - j. The exact services to be provided and what is under the umbrella of representation must be strictly defined.

6. Compensation

- a. The Representation Agreement must define as to how the representative is being compensated, i.e. on an hourly or a flat fee basis or a percentage of gross income or some combination thereof.

- b. Whether or not some form of retention or upfront payment fee is required to execute the Representation Agreement and undertake the contractual services and whether the retention fee offsets other compensation earned.
 - c. If the methodology of compensation is on a percentage of gross income basis, the percentage must be clearly stated and defined.
7. Gross Income. What constitutes gross income for purposes of determining a percentage therefore?
- a. The Representation Agreement should be narrowly defined as to what the percentage actually applies to and lists the forms of compensation, whether they be present, deferred, or non cash, for which the representative is entitled to a percentage therefore, including but not limited to:
 - i. Base Salary
 - ii. Talent Fee – Supplemental Compensation
 - iii. Signing Bonus
 - iv. University Non-academic, Administrative Salary Increases
 - v. Team Performance Bonuses – Personal Bonuses
 - vi. Retention Bonus
 - vii. Performance Bonus
 - viii. Status Bonus
 - ix. Deferred Compensation
 - x. University Benefit Plans

- xi. Radio Income
- xii. Television Income
- xiii. Fundraising Bonus
- xiv. Summer Camp Income
- xv. Vehicle
- xvi. Club Membership
- xvii. Up step Life Insurance – Disability Insurance
- xviii. Tickets
- xix. Relocation Stipend
- xx. Phone – Technology Allowance
- xxi. Support Pool
- xxii. Buyout Payment
- xxiii. Liquidated Damages in the event of termination without cause by the University.

8. When is payment due?

- a. If a retainer or advanced payment is required, then the retainer or advanced payment should be due at the execution of the Representative Agreement.
- b. If payment is based on an hourly or flat fee basis, the time at which the full payment is earned by the representative should be specified.
- c. If the payments are percentage based, then when are the percentage payments to be made, i.e. on a monthly basis or at the end of the

playing season when bonuses and the full compensation are known, or some other accounting period or methodology?

- d. Normally the representative will receive compensation when the coach receives income or within a specified period thereafter.

9. How the coach receives income.

- a. Does the coach receive income directly from all sources, including the university and all third-parties, and the representative fees are paid from the income that is paid directly to the coach; or
- b. Does the representative receive all income on behalf of the coach and distribute the income directly to the coach after deducting the representative's fees?

10. Reimbursements/Expenses

- a. There should be a contractual listing as to what constitutes a reimbursable expense, i.e. – travel, lodging, communication, entertainment, postage, document preparation, etc.
- b. The coach will want to retain prior approval for any expenditure undertaken on his behalf by the representative.
- c. The coach should require receipts or other proof of payment of reimbursable expenses.
- d. The Representation Agreement should reference when the expense is to be reimbursed.
- e. The representative should provide coach an annual account of the expenses incurred for accounting and tax purposes.

- f. Any fees or expenses incurred by the representative on behalf of coach for tax consultants, lawyers, or other professionals, should first require the written consent of the coach.
- g. Representative may require that the payment of said costs and expenses shall be cross-collateralized against any income generated for coach by representative.

11. Independent Contractor

- a. The Representation Agreement should recite that the representative is an independent contractor and not an employee of the coach.
- b. In the representative's capacity as an independent contractor, the representative may:
 - i. Perform similar representation services for individuals or entities other than the coach and the terms of the Representation Agreement shall not restrict the right of representative to continue all such activities.
 - ii. Control and direct the means, manner and method by which the services required by the Representation Agreement shall be performed.
 - iii. Perform the services required by the Representation Agreement at any place or location and at such times as representative may determine.
 - iv. Retain as many employees as representative requires and such retention solely lies within the representative's discretion. The

coach need not be advised of the employment of such persons, who will be deemed employees of the representative. The representative shall be solely responsible for all necessary insurance and payroll deductions for such persons, including, but not limited to, federal, state, and local income taxes, Social Security taxes, unemployment compensation taxes, and workers' compensation coverage.

12. Disputes

- a. Rather than a representative taking a coach to court, most disputes or claims arising out of the terms of a Representation Agreement are submitted to binding arbitration.
- b. The Representative Agreement may require that any claims between the parties shall first be submitted to an impartial mediator selected jointly by the parties requiring a mediation conference before any matter goes to arbitration.
- c. The arbitration is usually conducted pursuant to the rules and provisions of the American Arbitration Association.
- d. The arbitration provision shall recite whether a single arbitrator or a panel of three arbitrators shall make the ultimate decision.
- e. The arbitration costs are either borne equally by the parties or borne by the losing party.
- f. The arbitration award shall be final, binding, and conclusive of the matter.

- g. The location of the arbitration should be stated.
- h. Any judgment rendered by the arbitrator may be entered in any court having jurisdiction over the matter.

13. Grant of right to publicity and intellectual property rights

- a. The coach will normally grant to the representative the right to use the coach's name, nickname, voice, performance, services, biography, autograph, and likeness in connection with promoting the coach and carrying out the business-marketing responsibilities under the Representation Agreement.

14. Termination

- a. Either the representative or the coach shall have the right to terminate the Representation Agreement by giving the other party prior written notice in advance.
- b. The notice shall be effective from the date the termination notice was mailed, served, faxed, or hand delivered, whichever occurs first.
- c. In the event the termination occurs prior to the finalization of a contract, the representative shall be entitled to compensation equal to the reasonable value of the services performed.
- d. In the event that the termination occurs during the term of the contract, the representative shall be entitled to the compensation prescribed in the Representation Agreement for contract negotiations.
- e. The Representation Agreement should address whether the representative is entitled to compensation in the event that services

enumerated in the Representation Agreement are subsequently renewed.

- f. Coach shall remain obliged to pay representative compensation as provided under terms of the Representation Agreement for any contract entered into during the term, even if the compensation is not received by coach until after the expiration of the term. A contract shall be deemed “entered into” during the term if the coach enters into the contract within one year after the expiration of the term but the essential terms of the contract were procured by representative before the expiration of the term. At the conclusion of the contract, representative shall provide to coach a written list of all pending negotiations and leads of prospective playing, endorsement and marketing opportunities. Should coach sign a contract with any team or company identified by representative within six months of the termination of the contract, coach shall pay compensation to the representative a sum equal to an agreed percentage of the total contract price. Coach and representative understand that representative would be entitled to receive compensation on any contracts identified by representative on a quantum meruit basis and coach and representative agree that, rather than have uncertainty on the amount of representative’s compensation, coach shall pay and representative shall accept the compensation specified as liquidated damages; or

- g. Representative shall be entitled to receive compensation after termination of the Representation Agreement by either party for as long a period thereafter as coach shall continue to receive consideration pursuant to any agreement(s) or employment contract(s) entered into during the term hereof, or which Coach entered into after the term hereof, which agreement(s) or contract(s) result from the authorized effort of representative on behalf of coach during the term thereof or any substitution contract; or
- h. The representative's right to receive compensation after termination of the Representation Agreement shall continue during the extended term(s) of any agreement(s) or employment contract(s) entered into by coach during the term thereof in the event such extended term(s) result from the exercise by coach or his employer(s) of an option or options contained in said agreement(s) or employment contract(s), regardless of whether the date or actual exercise of said option(s) is before or after the termination of the Representation Agreement; or
- i. Representative shall further be entitled to receive compensation after the termination of the Representation Agreement from any subsequent renewal(s) of any agreements negotiated during the term of the Representation Agreement or any new agreement(s) entered into by coach with parties with whom coach had entered into an agreement through the efforts of representative during the term of the Representative Agreement; or

- j. If, after the termination of the Representation Agreement and during the period in which the representative is entitled to compensation, an agreement or employment contract of coach is terminated before its expiration, or if said agreement or employment contract is renewed in any form or extended by the exercise of options therein contained, by joint action of coach and employer, or by the action of either of them, and then is terminated and coach enters into a new agreement of employment contract with said employer with a period of one (1) year, such new agreement or employment contract shall be deemed to be in substitution of the agreement or employment contract terminated aforesaid (“substitution contract”). No agreement or employment contract entered into after said one (1) year period shall be deemed to be in substitution of the agreement or employment contract terminated as aforesaid; or
- k. Substitution contracts shall have the same effect as contracts for which they were substituted, provided, however, that any increase or additional salary, bonus or other compensation payable to coach (either under such contract of substitution or otherwise) over and above the amounts payable under the agreement or employment contract entered into prior to the termination of the Representation Agreement shall be deemed an adjustment, and shall be fully commissionable by representative.

1. A change in form of coach's employer for purposes of evading this provision, or a change in the corporate form of coach's employer, resulting from reorganization or otherwise, shall not exclude the application of these provisions.

15. Confidentiality

- a. The coach and the representative may want to make the terms of the Representation Agreement strictly confidential.
- b. In such an event, neither party shall disclose any information about the provisions of the Representation Agreement without the prior written consent of the other.

16. Governing Law

- a. The state in which the agreement is to be governed and construed shall be listed and acknowledged in the Representation Agreement.

17. Acknowledged Conflict

- a. The coach should acknowledge that the representative has represented other individuals in the area of coaching contracts and marketing-business opportunities as part of representative's business which at times will be in competition or conflict with the representation of coach. However, the coach acknowledges that the execution of the Representation Agreement shall not restrict the representative to continue such activities.
- b. Both representative and coach acknowledge, understand, and agree that coach and representative are participants in an industry that is

highly competitive. As such, the representative may have in the past, may currently, and may in the future—represent other individuals who, at times, may be in competition with coach for coaching positions and/or marketing-business opportunities. At all times, representative will act in coach's best interests in the negotiation and analysis of contracts for coach. However, representative might, in the course of its representation of coach and others, submit or recommend other of representative's clients for a position that is also sought by coach. Alternatively, representative may submit or recommend coach for a position that is also sought by other of representative's clients. In such instances, representative will not at any time recommend that coach not be hired for a particular position, unless expressly instructed to do so by coach.

- c. By signing the Representation Agreement, coach acknowledges and agrees that coach has been advised of such potential and/or actual conflicts, that coach understands such conflicts, that coach has had the opportunity to consult independent legal counsel regarding such conflicts and their waiver, and that coach hereby waives any and all such potential and/or actual conflicts. Accordingly, representative shall be free to represent any other individual, regardless of whether any such individual is a direct or indirect competitor of coach.

18. Representative Liability

- a. In some Representation Agreements, the representative is only liable for damages, costs and expenses regardless of cause, which shall not exceed the total amount of compensation paid to the representative under the Representation Agreement.
- b. In no event shall the representative be liable to coach for lost income, special, incidental, or consequential damages.

19. Indemnification

- a. Coach agrees to indemnify representative against all claims, liabilities and costs including reasonable attorneys' fees for defending any third-party claim or suit, for the infringement of intellectual property rights, or rights in connection with coach's performance under the Representation Agreement.

20. Other contracts not negotiated by representative during the term

- a. In some Representative Agreements, the coach agrees to pay a percentage of income received by the coach as a result of agreements substantially negotiated or executed during the term of the Representation Agreement from modifications, extensions and renewals, other existing agreements whether or not the representative was involved with the negotiations and regardless of whether the incomes received are during the term or after expiration of the term.

21. Acknowledgement

- a. Coach should acknowledge in the Representation Agreement that he/she has read and understands the Agreement and that he/she has been given the opportunity to consult with an attorney if he/she so desires and he/she intends to be legally bound by the promises set forth in the Representation Agreement, and enters the contract freely without duress or coercion. Coach also should acknowledge that he/she has retained a copy of the Representation Agreement for his/her own personal records.

22. Miscellaneous Provisions

- a. Severability
- b. Amendments
- c. Force majeure
- d. Governing laws – forum selection
- e. Assignment
- f. Notices
- g. Merger
- h. Confidentiality – Non-confidentiality
- i. Relationship between the parties
- j. Interpretation
- k. Entire agreement
- l. Counterparts
- m. Time is of the essence

- n. Independent judgment
- o. Advice of counsel
- p. Survival
- q. Mutual draft rule
- r. No third-party beneficiaries

V. LAWSUITS BETWEEN COACHES AND REPRESENTATIVES

While certainly confusion can arise out of the simplest terms of a Representation Agreement, there are few reported cases of disputes or lawsuits between coaches and their representatives.

Ron Prince's initial five year contract at Kansas State University ("Kansas State") earned him approximately \$750,000 per season.⁴² When Prince started his first season at Kansas State in 2006, he was 36 years old and the third youngest head coach in Division 1 bowl subdivision history. The contract was negotiated by Barry Terranova of Executives Sports Management. Prince fired Terranova in October 2007.⁴³ Terranova filed suit in 2007 to collect his three percent commission for the final three years of Prince's contract, a sum of approximately \$67,500.00.⁴⁴

The suit was filed in Riley County District Court in Manhattan, Kansas. Terranova contended that, as Prince's agent, he was instrumental in negotiating Prince's first deal at Kansas State and Prince violated the terms of their agreement for failing to compensate Terranova for the full five year contract.⁴⁵ However, both Prince and Terranova acknowledged that there was

⁴² *Will Ron Prince get a raise?*, THE WICHITA EAGLE (Jul.16, 2008, 12:21 PM), <http://blogs.kansas.com/kstated/2008/07/16/will-ron-prince-get-paid/>.

⁴³ Austin Meek, *Coach, former agent still at odds over first contract*, TOPEKA CAPITAL-JOURNAL (Aug. 8, 2008), http://cjonline.com/stories/080808/cat_315641342.shtml.

⁴⁴ *Id.*

⁴⁵ *Id.*

no signed representation agreement as between Prince and Terranova.⁴⁶ Prince's attorney maintained that there was no written agreement in this case and that Terranova was attempting to enforce an oral understanding.⁴⁷ The issue of this case was simple: what were the terms of the agreement between Terranova and Prince.⁴⁸ On the other hand, Terranova's attorney framed the issue slightly different.⁴⁹ This litigation hinges on one point, and that is whether or not there was an agreement between the parties and what the terms of the termination provision of that agreement were.⁵⁰

On September 11, 2013, Bret Adams ("Adams"), Plaintiff, filed a lawsuit against former Denver Nuggets coach George Karl ("Karl"), Defendant, in the United States District Court, Southern District of Ohio, Eastern Division.⁵¹ The lawsuit involves an alleged breach of contract by Defendant Karl. Adams alleges in the lawsuit that:

1. Plaintiff has practiced sports and entertainment law since 1984.
2. Plaintiff has represented Defendant Karl as his personal attorney and agent for nearly twenty (20) years and has negotiated over \$50,000,000 in personal service contracts with the Milwaukee Bucks and the Denver Nuggets.
3. In 2001, for Defendant Karl, Plaintiff negotiated the highest paid professional coach's contract in the sport at \$7,000,000 per year.
4. The contractual agreement between Defendant Karl and Plaintiff for the past ten (10) years has been a monthly payment of \$10,000.00 per month. The agreement further requires Defendant Karl to grant Plaintiff new business opportunities by introducing

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Compl., Adams v. Karl, No. 2:2013-CV-00894 (S.D. Ohio Sept. 11, 2013) (Justia).

and/or referring him to other coaches in need of representation, including Defendant's own assistant coaches.

5. The monthly payments were to continue until all contractual payments, including all contracted deferred payments were received by Defendant Karl, regardless of his employment status.
6. Defendant Karl's employment with the Denver Nuggets was terminated on June 6, 2013. At the time of his termination he still had a year remaining on his contract, meaning he would continue to draw a salary from the team even though he was no longer coaching.
7. Defendant Karl is currently not employed as an NBA head coach.
8. Under the most recent agreement negotiated by Plaintiff, Defendant Karl was to be paid deferred payments through the 2018 season.
9. Since January 1, 2013, Defendant Karl has refused to pay Plaintiff.⁵²

Adams seeks a judgment against Karl for breach of contract claiming compensatory damages in excess of \$75,000, which amount is to be determined at trial, along with attorneys' fees and costs.⁵³

On or about January 9, 2014, Karl's attorneys filed an Answer, Counterclaim, and Third-Party Complaint.⁵⁴ Karl, in his pleading, claims that Adams was his trusted attorney for nearly twenty years and what started as a typical attorney-client relationship expanded over time to include a close friendship and a myriad of business entanglements.⁵⁵ Adams was vested with a General Durable Power of Attorney for Karl, acted as his financial advisor, and managed and

⁵² *Id.* at 2.

⁵³ *Id.* at 3.

⁵⁴ Answer, Countercl., and Third-Party Compl., Adams v. Karl, No. 2:2013-CV-00894 (S.D. Ohio Jan. 9, 2014) (Justia).

⁵⁵ *Id.* at 5.

acted as legal counsel for business entities for which both Adams and Karl had a financial interest.⁵⁶ Adams had full control over Karl's finances, including Karl's personal and brokerage accounts, and all business entity accounts.⁵⁷

Karl claims that Adams never presented him with a written fee agreement and that there was no memorialization of the terms of their relationship.⁵⁸ However, Adams did act under a General Durable Power of Attorney from May 13, 2004 to August 2012.⁵⁹

Adams and Karl were partners in Adams Karl Investments, LLC ("AKI").⁶⁰ Karl claims there were multiple lines of credit where Adams caused Karl to personally guarantee one or more of the lines of credit.⁶¹ Adams and Karl were also owners of a company named Sports Facilities Development, Ltd. ("SFD"). Adams served as legal counsel for the entities they created.⁶²

Karl is now claiming not only breach of fiduciary duties, but also misappropriation of funds.⁶³ Karl is further claiming that Adams never informed him of the existence of conflicts of interests arising out of Adams' representation as attorney for Karl.⁶⁴ No waiver of conflicts were ever signed.⁶⁵ Karl claims he has never received a full and completed accounting of the financial transactions of which he has a personal interest.⁶⁶ Upon the ending of their relationship, Karl alleges that Adams made numerous distributions to or for the benefit of either Adams or his law firm without Karl's knowledge or consent.⁶⁷ As a result of the entangled relationship, Karl

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 7.

⁵⁹ *Id.* at 9.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 10.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 13.

⁶⁷ *Id.*

claims numerous causes of action against Adams including legal malpractice and negligence.⁶⁸ Karl claims that Adams had to uphold his multiple duties of loyalty, care, and disclosure, and that Adams breached these duties by continuing to represent Karl despite obvious conflicts of interest; acting in Adams' own self-interest; mismanaging Karl's accounts; conversion; failing to properly and competently manage Karl's affairs; failing to provide adequate and accurate information to Karl; and failing to provide Karl with a full accounting as requested. Karl further claims a breach of contract.⁶⁹

While Karl paid Adams \$10,000 monthly for his services, the monthly stipend was never tied to Karl's personal services contracts.⁷⁰ Rather in August 2012, Karl alleges that Adams agreed that beginning in September 2012 his fees would be reduced to \$7,500 a month for the next four months, then \$5,000 for the following four months, then \$2,500 for the next four months, and that would be the end of payments pursuant to the relationship.⁷¹

Shortly after Karl filed his Answer, Counterclaim and Third-Party Complaint, Adams amended his complaint on February 28, 2014.⁷² The First Amended Complaint details the dealings with Karl and AKI and the relationships between Karl, Kim Van Deraa ("Van Deraa"), the former wife of Karl, and Chuck Kissee ("Kissee"), who was a financial advisor to Karl.⁷³

The First Amended Complaint, in addition to breach of contract for non-payment of the \$10,000 monthly fee, lists other causes of action with respect to these financial dealings, including breach of fiduciary duty, fraud, and defamation of character by Karl.⁷⁴ Adams also

⁶⁸ *Id.* at 14.

⁶⁹ *Id.* at 13-15.

⁷⁰ *Id.* at 14.

⁷¹ *Id.*

⁷² First Am. Compl., Adams v. Karl, No. 2:2013-CV-00894 (S.D. Ohio Feb. 28, 2014) (Justia).

⁷³ *Id.* at 4.

⁷⁴ *Id.* at 13-14.

cites similar causes of action against Defendants Van Deraa and Kissee.⁷⁵ On August 26, 2014, United States Magistrate Judge Norah McCann King issued an Opinion and Order in the Adams vs. Karl case.⁷⁶ Defendant Karl moved to dismiss Count II-Breach of Fiduciary Duty, Count III-Fraud, and Count IV-Defamation of the Amended Complaint for failure to state a claim upon which relief can be granted.⁷⁷ Defendants Van Derra and Kissee moved to dismiss all claims against them for lack of personal jurisdiction and failure to state a claim upon which relief can be granted.⁷⁸ Adams filed a motion for leave to file a second amended complaint.⁷⁹ The court, in a written opinion, determined that Defendant Karl's motions to dismiss are granted, that Defendants Van Derra and Kissee's motion is granted, and Adam's motion to amend the complaint was denied.⁸⁰ The case is currently pending.

The primary purpose of this article is to discuss coaches' representation agreements. The Karl case brings to light a fact that lawyers must always remember: once a lawyer, always a lawyer. As such, we as lawyers are subject to the Rules of Professional Conduct in the state in which we are licensed to practice. These rules in most instances require written memorialization of agreements or arrangements between attorneys and clients. If not, they should.

There should always be the avoidance or the appearance of a conflict of interest. The Rules regulate and prohibit certain types of concurrent conflicts of interest, most of which are conflicts when an attorney enters into a business arrangement with a client. "There is an inherent imbalance in the lawyer-client relationship. A lawyer's legal skill and training, together with the relationship of trust and confidence between the lawyer and client, create the possibility of

⁷⁵ *Id.* at 15-17.

⁷⁶ Opinion and Order, Adams v. Karl, No. 2:2013-CV-00894 (S.D. Ohio Aug. 26, 2014) (Justia).

⁷⁷ *Id.* at 1.

⁷⁸ *Id.* at 2.

⁷⁹ *Id.* at 2.

⁸⁰ *Id.* at 3.

overreaching when the lawyer participates in a business, property, or financial transaction with their client.”⁸¹ This may occur when the attorney acquires an interest in the client’s business as part of a fee arrangement, or when the attorney takes an ownership interest from a client in exchange for legal services, or when the lawyer takes an ownership interest for fair consideration but also acts as the client’s attorney.

Lawyers have a fiduciary relationship with their clients and must always put their clients’ interest ahead of their own. In applying positions of influence over clients, we must always watch out for the best interests of our clients. The interests of our clients must be placed above our own. As a result, business transactions that are entered into by a lawyer and a client, although not prohibited, are inherently suspect and fraught with danger.

In entering into a business relationship with a client, as Adams did with Karl, one must ask if there is a lawyer/client relationship. One must also consult the Rules of Professional Conduct as to the regulation of lawyer/client business transactions. In most instances the lawyer should not enter into a business transaction with a client or knowingly acquire an ownership, possessor, security, or other pecuniary interest adverse to a client unless:

- (1) The transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
- (2) The client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

⁸¹ Jay Reeves, *Doing Business With a Client Creates a Conflict of Interest*, LAWYERS MUTUAL INSURANCE COMPANY 1, 5 (September 26, 2012), <http://www.lawyersmutualinc.com/risk-management-resources/articles/doing-business-with-a-client-creates-a-conflict-of-interest>.

- (3) The client makes an informed decision, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.⁸²

A lawyer has a duty to explain potential conflicts of interest in sufficient detail to allow the client to make an informed decision about whether or not the client wants to continue a lawyer/client relationship or whether these relationships are ethically permissible. Business transactions are both disfavored and a recipe for trouble; and create a greater possibility for malpractice claims.

VI. LESSONS TO BE LEARNED

1. The relationship between a coach and his representative must be memorialized in writing.
2. The coach may want to consult his/her own personal lawyer for a review of the contractual relationship.
3. Because representatives are not required to be certified or have formal training, the coach should require the representative to represent that he has the requisite education, skills, or qualifications to properly negotiate, draft, and enforce a coach's contract.
4. The representative will want the relationship to be exclusive; that is, the coach is employing the representative as his exclusive or sole agent, not only for the negotiation of employment contracts, but also marketing.

⁸² ABA MODEL RULES OF PROF'L CONDUCT R. 1.8.

5. The representative should require a representation and warranty from the coach that there are no other agreements that would negate, conflict, or impair the services that are to be performed on an exclusive basis.
6. The representation agreement ought to be fixed, may have automatic renewal provisions, or may be tied to the term of the coach's employment agreement.
7. The representation agreement needs to define the services that are to be performed on an exclusive basis by the representative, including contract negotiation, business, and marketing opportunities, etc.
8. If the representation agreement is exclusive, the coach should be required to refer all inquires with respect to potential employment and/or other business or marketing opportunities to the representative.
9. The representation agreement must address the specific duties and undertakings by the representative, including whether or not the representative is expected to be actively involved in job procurement, placement, strategies, tactics, and interviewing for the coach.
10. It appears that the predominant method in which coaches compensate their representatives is through a percentage of the coach's gross compensation. As a result, the compensation to which the percentage applies must be specifically defined as to present income, bonus income, deferred income, non-cash income, and perquisites.
11. The compensation to the representative is usually tied to payment received by the coach from the employment contract.

12. Reimbursable expenses need to be specifically outlined as far as what expenses the representative can incur, whether prior written consent is needed, what is reimbursable, and providing some form of accounting as to expenses incurred.
13. While the relationship between coach and representative seems to be terminable at will with notice, the real question is whether compensation contracted for continues to be paid to the representative post termination.
14. While there are few reported disputes or lawsuits between coaches and their representatives, it would appear that the best methodology for resolution as it relates to the interpretation or enforcement of the representation agreement is through some form of arbitration, i.e. back room resolution rather than courtroom.
15. The few lawsuits that have occurred between coaches and their representatives involved a misunderstanding of compensation and the parameters of the services to be rendered because there was no written memorialization of the relationship.
16. The Adams v. Karl case reminds us that once a lawyer, always a lawyer, and lawyers are subject to the Rules of Professional Conduct.
17. Going into business with your clients is extremely dangerous.
18. Powers of attorney should probably be avoided.
19. Conflicts of interest spell M-A-L-P-R-A-C-T-I-C-E.

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