

The Regulation of Agents in Sports and Entertainment: Legal and Ethical Considerations



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MLB ROY (DOC) HALLADAY:
GREATEST PLAYOFF DEBUT EVER

By TOM VERDUCCI

NFL POWER, MONEY AND
THE IMPENDING LABOR CRISIS

By JIM TROOTER and PETER KING

Sports Illustrated

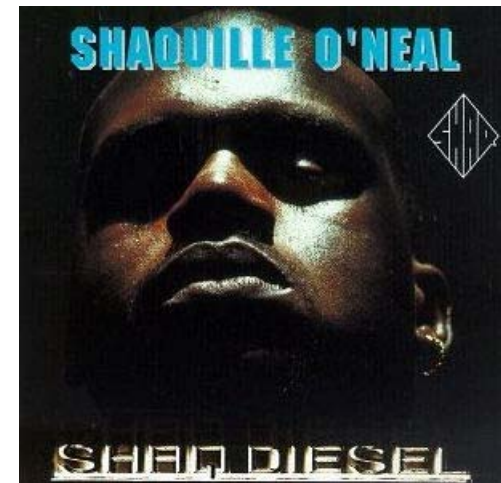
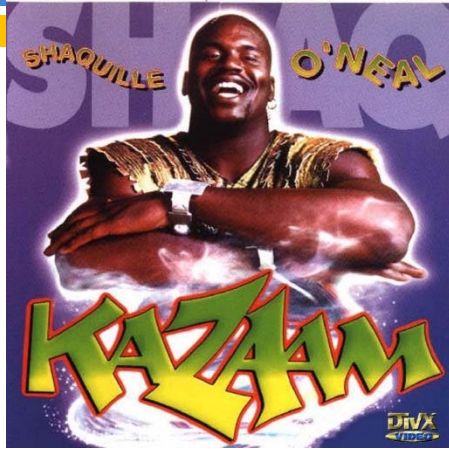
“I WILL NEVER
FORGET THE
FIRST TIME
I PAID A
PLAYER...”

(By JOSH LUCAS)

CONFESSIONS OF AN AGENT

As Told to
GEORGE DOERMANN

Overlap



Perspective

- ✎ Wisconsin sports lawyer representing professional athlete who wants to also be an entertainer, could be subject to
 1. State athlete agent acts (WI, CA, other states)
 2. State talent agent acts (CA, other states)
 3. Federal athlete agent act
 4. Sports union regulations
 5. Entertainment union regulations
 6. Judicial review of laws and regulations

- *All of this may impact their responsibilities under the Rules of Professional Conduct*

Who Regulates Athlete Agents?



NCAA Agent Rules

BYLAW, ARTICLE 12

Amateurism and Athletics Eligibility

12.01 General Principles.

12.01.1 Eligibility for Intercollegiate Athletics. Only an amateur student-athlete is eligible for intercollegiate athletics participation in a particular sport.

12.01.2 Clear Line of Demarcation. Member institutions' athletics programs are designed to be an integral part of the educational program. The student-athlete is considered an integral part of the student body, thus maintaining a clear line of demarcation between college athletics and professional sports.

12.01.3 "Individual" vs. "Student-Athlete." NCAA amateur status may be lost as a result of activities prior to enrollment in college. If NCAA rules specify that an "individual" may or may not participate in certain activities, this term refers to a person prior to and after enrollment in a member institution. If NCAA rules specify a "student-athlete," the legislation applies only to that person's activities after enrollment.

12.01.4 Permissible Grant-in-Aid. A grant-in-aid administered by an educational institution is not considered to be pay or the promise of pay for athletics skill, provided it does not exceed the financial aid limitations set by the Association's membership.

NCAA Agent Rules

12.02 Definitions and Applications.

12.02.1 Agent. 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. 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)*

12.2.4.3 Negotiations. An individual may request information about professional market value without affecting his or her amateur status. Further, the individual, his or her legal guardians or the institution's professional sports counseling panel may enter into negotiations with a professional sports organization without the loss of the individual's amateur status. An individual who retains an agent shall lose amateur status. *(Adopted: 1/10/92)*

NCAA Agent Rules

12.3 Use of Agents.

12.3.1 General Rule. 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 Representation for Future Negotiations. An individual shall be ineligible per Bylaw 12.3.1 if he or she enters into a verbal 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.

12.3.1.2 Benefits from Prospective Agents. 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.

12.3.1.3 Exception—Career Counseling and Internship/Job Placement Services. 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)*

Why Regulate Athlete Agents?



forth in Finding B-2. The head coach and members of the men's basketball staff maintained a close relationship with the representative, and the head coach and his staff were aware that the representative developed and maintained a close relationship with the prospect throughout his recruitment and was interested in someday becoming his agent. In fact, the men's basketball staff provided information regarding the prospect to the representative throughout the recruitment process. The former associate head coach stated that "[the representative] was running parallel to the recruitment doing what prospective agents try to do."

The head coach and his staff, all of whom were aware of the problems that agents can cause for prospective and enrolled student-athletes, failed to report indicators of possible recruiting improprieties to the compliance office. They also failed to take steps that may have deterred the provision of impermissible inducements. The head coach bears oversight responsibility for these failures, which establish a violation of Bylaw 11.1.2.1.

The representative is an alumnus who was considered a member of the "family" at the institution. He served as men's basketball team manager during his time on campus and maintained contact with members of the coaching staff once he graduated in 1999. On November 22, 1999, at the point where the representative's activities rendered him an agent pursuant to NCAA legislation, the institution sent him a letter reminding him that, even though he had a long-standing, preexisting relationship with the institution, he could not be involved in certain activities. Among other things, it was specifically pointed out to him that he could not provide transportation, cash, meals, entertainment, merchandise or loans to student-athletes. The head coach, who was also head coach in 1999, received a copy of the letter.

The institution knew that the representative was certified as a players' agent by the NBA in March 2006. Four months later, in July 2006, the former associate head coach observed the prospect at a summer tournament. The former associate head coach made contact with the prospect and his adult advisors shortly thereafter. In November 2006, the former associate head coach attended a tournament in which the prospect was participating and discussed the prospect with the representative, who was also attending the tournament. The representative introduced himself to the prospect and his adult advisors shortly thereafter. The following week, the prospect made an unofficial visit to the institution.

Monitoring the representative. During the time frame in which the prospect was being recruited by the institution, the focus was on compiling the information necessary for him to become eligible for admission and athletics competition. There was frequent contact during this time between the compliance office, the former associate head coach (who was the initial lead recruiter for the prospect) and the former operations director regarding those issues. However, the men's basketball staff did not communicate with the compliance office regarding the representative's connection to the prospect. This was so even though the staff participated in over 2,000 phone calls/texts with the representative from July 2006 to June 2008 and was aware that the representative was involved with the prospect and hoped to someday serve as his agent.

Further, in November 1999, the institution's athletics administration informed the men's basketball staff that, as the representative was at that time identified as a "business advisor" for a former institutional men's basketball student-athlete, the representative had to from that point forward be dealt with as an agent, even though he is an alumnus and former team manager. The institution also communicated with the representative at approximately the same time that he was considered an agent and was subject to certain NCAA rules in his dealing with the institution and its student-athletes.

Nonetheless, no member of the men's basketball coaching staff informed the athletics administration about the representative's contacts with the prospect. As a result, no institutional staff member beyond the men's basketball staff had contact with the representative until November 2007, when his name was noticed on the prospect's disability evaluation as a person to whom a copy of the report should be sent. In March 2009, after the institution learned that a media story about the representative was going to be published, it requested an interview with him. He refused.

football student-athletes had received benefits worth over \$27,000 in violation of NCAA rules governing preferential treatment based on athletics reputation and interaction with prospective agents. All seven of the student-athletes were declared ineligible for further participation, with three (including student-athletes 3 and 4) being declared permanently ineligible by the NCAA Student-Athlete Reinstatement staff. The institution decided not to seek reinstatement for a fourth.

The situation involving the agents and their "runners" supplying impermissible benefits to the seven student-athletes is a window into the often unscrupulous world inhabited by those who look to "cash in" on potentially lucrative future professional contracts to be signed by gifted and talented student-athletes. Such actions, by the professional sports agents (and their associates) as well as student-athletes, who knowingly accept impermissible benefits, are in direct contravention to the principles of collegiate athletics and, as in this case, bring harm and disrepute to innocent teammates and the institutions the student-athletes attend. This case should serve as a cautionary tale to all institutions to vigilantly monitor the activities of those student-athletes who possess the potential to be top professional prospects. It should also serve to warn student-athletes that if they choose to accept benefits from agents or their associates, they risk losing their eligibility for collegiate competition.

The third point of inquiry for the committee, the relationship between the former assistant coach and a sports agent ("sports agent 1"), was uncovered during the course of the extra benefits investigation. As the investigation proceeded, information was discovered suggesting the former assistant coach was associated with a sports agency and marketing firm dedicated to representing professional athletes ("sports agency A"). Sports agency A was run by sports agent 1, a close friend of the former assistant coach. The former assistant coach was interviewed on two occasions in August 2010 and denied numerous times that he ever worked for the sports agency. However, extensive evidence established that he had been an affiliate of the company, including a company credit card issued in his name, the listing of the sports agency on his credit report as an employer, a sports agency brochure describing him as a company vice president and news articles in which he was quoted touting the sports agency and his work with it.



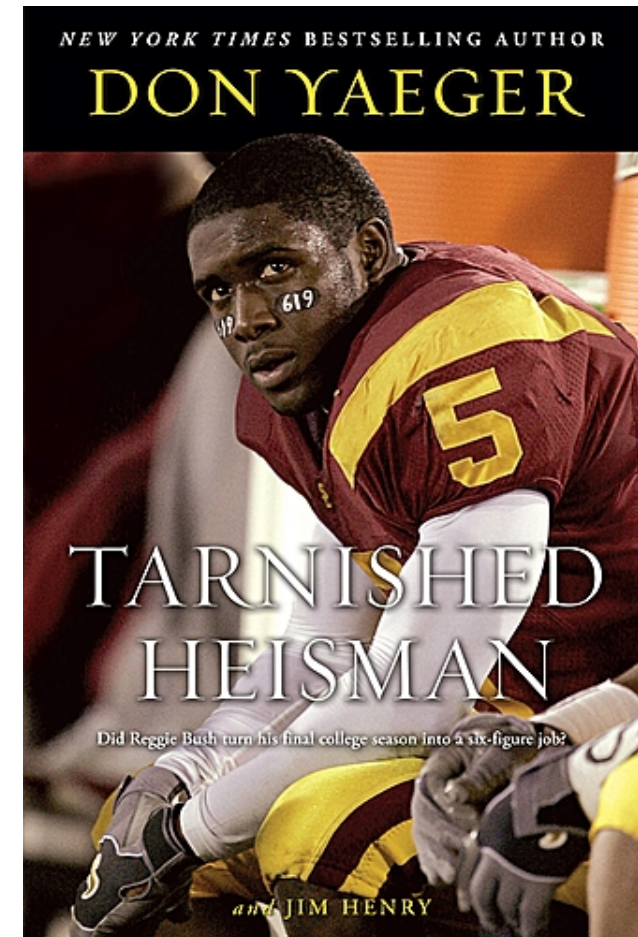
UNIVERSITY OF SOUTHERN CALIFORNIA
PUBLIC INFRINGEMENTS REPORT
June 10, 2010

A. INTRODUCTION.

In a hearing conducted during the course of three days, February 18-20, 2010, officials from the University of Southern California (USC), including the former head football coach, an assistant football coach ("the assistant football coach") along with his legal counsel and the former head men's basketball coach accompanied by his legal counsel, appeared before the NCAA Division I Committee on Infractions. The allegations here involved NCAA violations in three sports: football, men's basketball and women's tennis.

This case is a window onto a landscape of elite college athletes and certain individuals close to them who, in the course of their relationships, disregard NCAA rules and regulations. It centered on a former football student-athlete ("student-athlete 1") and a former men's basketball student-athlete ("student-athlete 2"), both of whom performed at the highest level during their intercollegiate athletics careers. Student-athlete 1 was known to be a candidate for the Heisman Trophy; student-athlete 2 was widely known to be a "one-and-done" student-athlete. In fact, as early as September 2007, student-athlete 2's only year on campus, the institution sent him a memo titled, "Information Regarding the 2008 NBA Draft, Agents and Tryouts." Their world included professional sports agents, "runners" and "handlers," "friends" and family, many of whom were eager to cash in early on expected lucrative professional contracts. The actions of those professional agents and their associates, with the knowledge and acquiescence of the athletes, struck at the heart of the NCAA's Principle of Amateurism, which states that participation in intercollegiate athletics should be "motivated primarily by education and by the physical, mental, and social benefits to be derived." Their actions also threatened the efforts of the NCAA and its member institutions to sponsor and support amateur competition at the collegiate level.

The general campus environment surrounding the violations troubled the committee. At least at the time of the football violations, there was relatively little effective monitoring of, among others, football locker rooms and sidelines, and there existed a general post-game locker room environment that made compliance efforts difficult. Further, in recent years, the NCAA has made efforts to encourage universities to curb excesses in the entertainment of prospective student-athletes making visits to college campuses so as to avoid a perception by prospects of special status or entitlement. Yet, in this case, the committee reviewed information that, during the official paid visit of a highly recruited



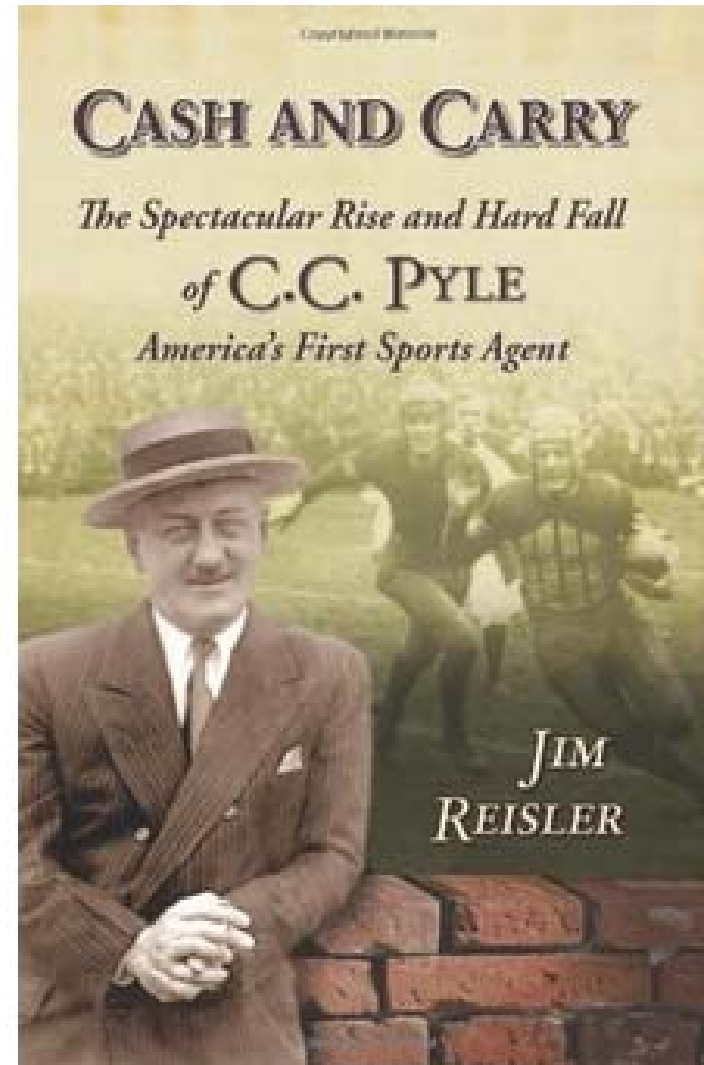
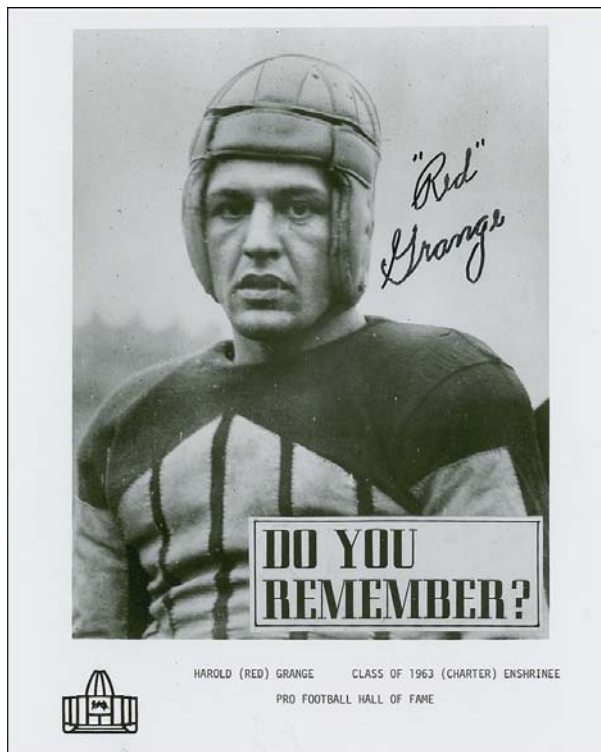
Why Regulate Athlete Agents?

2. Four years of probation from June 10, 2010, through June 9, 2014.
3. The institution's men's basketball team ended its 2009-10 season with the playing of its last regularly scheduled, in-season contest and was not eligible to participate in any postseason competition, including a foreign tour, following the season. (Institution imposed)
4. The institution's football team shall end its 2010 and 2011 seasons with the playing of its last regularly scheduled, in-season contest and shall not be eligible to participate in any postseason competition, including a bowl game, following the season. Moreover, during the two years of this postseason ban, the football team may not take advantage of the exceptions to the limit in the number of football contests that are provided in Bylaw 17.9.5.2, with the exception of a spring game as set forth in Bylaw 17.9.5.2-(a).
5. Pursuant to NCAA Bylaws 19.5.2.2-(e)-(2) and 31.2.2.3-(b), the institution will vacate all wins in which student-athlete 1 competed while ineligible, beginning in December 2004.
6. Pursuant to NCAA Bylaws 19.5.2.2-(e)-(2) and 31.2.2.3-(b), the institution will vacate all wins in which student-athlete 2 competed during the 2007-08 regular seasons. (Institution imposed)
9. Limit of 15 initial grants-in-aid and 75 total grants in football for each of the 2011-12, 2012-13 and 2013-14 academic years.



Sports Agent Profession

- Began 1920s with Charles C. “Cash and Carry” Pyle representing athletes like the Bears Red Grange



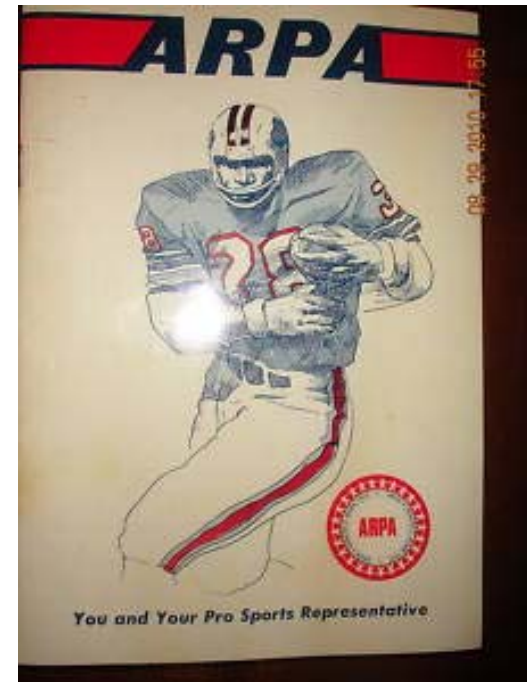
Beginning of Regulation

- ⌘ 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)

Beginning of Regulation

∞ 1978 → Association of Representatives of Professional Athletes (ARPA) → formally ended 1988

- Formed to improve standards of those who represent players
- Created Code of Ethics
 - Required agents to be competent to render services
 - Prohibited conflicts of interest
 - Prohibited charging excessive fees
- No enforcement, membership not mandatory



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

- ⌘ LAWS → 1981 → California Athlete Agents Act, Cal. Lab. Code §§1500-1547, & Cal. Bus. & Prof. Code. §6106.7
 - 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

Inconsistency in 1980s – 1990s

- ∞ 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

Push Toward Uniform Regulation (2000)

☞ UNIFORM ATHLETE AGENTS ACT: POLICY STATEMENT

- 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.



Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

Wisconsin UAAA

Wisconsin adopted the UAAA

1. Uniform Athlete Agents Act, Wis. STAT. §§ 440.99-440.999 (adopted in 2004)
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

Illinois UAAA & CA MAAAA

☞ Illinois adopted a modified version of the UAAA

- Illinois Athlete Agents Act, §§ 225 ILCS 401/1 – 401/215
- Department of Financial and Professional Regulation, Chapter VII, Subchapter b, Part 1155, ILLINOIS ATHLETE AGENTS ACT
 - Section 1155.5 Definitions
 - Section 1155.10 Qualifications for Licensure
 - Section 1155.20 Fees
 - Section 1155.30 Endorsement
 - Section 1155.40 Renewals
 - Section 1155.50 Restoration
 - Section 1155.60 Inactive Status
 - Section 1155.70 Granting Variances
 - Section 1155.80 Dishonorable, Unethical or Unprofessional Conduct

☞ State with its own agent regulation

○ California

- Miller-Ayala Athlete Agents Act, California Business and Professions Code, Chapter 2.5, Cal Bus & Prof Code § 18895, et. seq.
- Filing Athlete Agent Disclosure Statement and Amendment to Disclosure Statement, 2 CCR 21920

Pieces to Analyze

- ☞ 1. Who & What Is Covered?
- ☞ 2. Mandatory Registration
- ☞ 3. Registration Requirements
- ☞ 4. Reciprocity
- ☞ 5. Contract Requirements
- ☞ 6. Notice to Educational Institution
- ☞ 7. Student Athlete Right to Cancel
- ☞ 8. Disclosure
- ☞ 9. Prohibited Conduct
- ☞ 10. Remedies
- ☞ 11. Penalties

WISCONSIN



1848



ILLINOIS



CALIFORNIA REPUBLIC

1. Who & What Is Covered?

- ∞ Wis. Stat. § 440.99. Definitions (Same in IL, similar in CA)
 - (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.
 - also does not include an individual who provides information to a student athlete, but who does not recruit or solicit the student athlete to enter into an agency contract.

 - (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.

1. Who & What Is Covered?

- ∞ 36 states follow same basic coverage
- ∞ 6 states have different coverage, typically expanded definitions
 - Alabama, Arkansas, Florida and Texas exclusion
 - → not an athlete agent if merely providing information to a student athlete but do not recruit them to enter into an agency contract

2. Mandatory Registration

- ∞ 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.
 - *Similar provisions in Illinois, in addition,*
 - 225 ILCS 401/25 → No person without a license under this Act or who is otherwise exempt from this Act shall: (i) in any manner hold himself or herself out to the public as a licensed athlete agent; (ii) attach the title "licensed athlete agent" to his or her name; or (iii) render or offer to render to any individual, athlete or other person or entity any services or activities constituting the practice of an athlete agent
 - Cal. Bus. & Prof. Code § 18897.9. Invalidity of contract negotiated by agent in violation of chapter
 - (a) Any agent contract that is negotiated by an athlete agent who fails to comply with this chapter, or has failed to comply . . . is void and unenforceable.
- Most states have similar requirements (38)

3. Registration Requirements

- ∞ Wis. Stat. § 440.9915 (same in IL)
 - (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](#)
 - Training to be an agent → [Pro Sports Group](#)
 - WI Application forms
 - WI Fees
 - Initial Fee \$75 (code says \$312)
 - Renewal Fee \$107
 - IL Fees
 - Application = \$750
 - Renewal = \$375

3. Registration Requirements

☞ 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.

☞ SPS 153.10 Reporting administrative or judicial determinations and sanctions. An athlete agent who has been the subject of an administrative, judicial or other governing body determination or sanction shall send to the department within 30 days after the determination or sanction becomes final, an official form of notice, judgment or other record from the administrative, judicial or other governing body forum for any of the following:

- (2) Any instance in which the conduct of the athlete agent 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. Registration Requirements

- ☞ Most have similar language
- ☞ 30 states (not WI) require 3 references
- ☞ 3 states (ILL, LA, OH) do not require any disclosure of sanctions, violations, or criminal convictions.

4. Reciprocity

☞ Wis. Stat. § 440.9915 (2) (Ch. SPS 151.04)

- (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

☞ 225 ILCS 401/50

- The Department may, in its discretion, grant a license on submission of the required application and payment of the required non-refundable fee to any person who, at the time of application, **is licensed by another state or the United States or of a foreign country or province whose standards, in the opinion of the Department, were *substantially equivalent* at the date of his or her licensure in the other jurisdiction**

☞ Not found in California, Colorado, Missouri or Ohio

5. Contract Requirements

∞ Wis. Stat. § 440.994 (same in IL, similar in CA) (Ch. SPS 153.01 – 05)

- (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.
- **SPS 153.05 Return of consideration for cancelled agency contract prohibited.** **An agency contract may not provide** that if a student athlete cancels an agency contract, the student athlete is required to pay any consideration under the contract or to return any consideration received from the athlete agent made to induce the student athlete to enter into the contract.

5. Contract Requirements

- ⌘ Most states have similar requirement, a few call for even more detail
- ⌘ La. Rev. Stat. Ann. §4:423
 - "Notice to Client"
 - (a) This athlete agent is registered with the public protection division of the Department of Justice. Registration does not imply approval or endorsement by the division of the specific terms and conditions of this contract or the competence of the athlete agent.
 - (b) **When you sign this contract, you will likely immediately lose your eligibility to compete in intercollegiate athletics.** Your agent (who is an athlete agent) must give written notice that you have entered into this contract to the athletic director and the head coach of your institution or school within seventy-two hours after entering into this contract or prior to participating in intercollegiate athletics, whichever comes first. Failure by the athlete agent to provide this notice is a criminal offense.
 - (c) Do not sign this contract until you have read it or if it contains blank spaces.
 - (d) **If you decide that you do not wish to purchase the services of the athlete agent, you may rescind this contract by notifying the athlete agent in writing of your desire to rescind the contract not later than the sixteenth day after the date on which this contract is filed with the division. However, even if you rescind this contract, the federation or association of which your institution of higher education or school is a member may not restore your eligibility to participate in intercollegiate athletics.**
 - (e) **IF YOU BELIEVE YOU HAVE BEEN UNLAWFULLY INDUCED INTO SIGNING THIS CONTRACT, YOU CAN CONTACT YOUR ATHLETIC DIRECTOR OR HEAD COACH WHO CAN ASSIST YOU TO HAVE THIS CONTRACT DECLARED VOID AND UNENFORCEABLE. “**
- ⌘ Texas → requires that form of contract is also approved by players union

6. Notice to Educational Institution

- ⌘ Wis. Stat. § 440.9945 (same in IL, similar in CA) (Ch. SPS 153.03)
 - (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
- ⌘ Some statutes require advance notice as well (Ark, Miss, Tenn, Wash, Wy)
- ⌘ Some statutes categorize the failure to provide the required notice as a misdemeanor - \$10,000 fine / 1 year in prison (LA)

7. Student Athlete Right to Cancel

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**.
 - 14 day requirement not found in Code – SPS 153.04
- (2) A student athlete may not waive the right to cancel an agency contract.
- (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)

All statutes include this in some form

- Differences = 5 days (NY), 10 days (OH), 15 days (CA), 20 days (TN)

8. Disclosure

- ∞ Wis. Stat. § 440.9955 (same in IL, similar in CA) (Ch. SPS 153.06)
 - (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)
- ∞ 27 states remove the requirement of making this information open for inspection

9. Prohibited Conduct

- ∞ 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.

9. Prohibited Conduct

- ☞ **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

225 ILCS 401/75

- (5) **Professional incompetence.**
- (6) Gross malpractice.
- (7) Aiding or assisting another person in violating any provision of this Act or rules adopted under this Act.
- (9) **Engaging in dishonorable, unethical, or unprofessional conduct** of a character likely to deceive, defraud, or harm the public.
- (10) **Inability to practice with reasonable judgment, skill or safety as a result of habitual or excessive use or addiction** to alcohol, narcotics, stimulants or any other chemical agent or drug.
- (11) **Denial of any application as an athlete agent or discipline by another state**, District of Columbia, territory, or foreign nation, if at least one of the grounds for the discipline is the same or substantially equivalent to those set forth in this Section.
- (14) **Inability to practice the profession with reasonable judgment, skill, or safety as a result of a physical illness**, including but not limited to deterioration through the aging process or loss of motor skill, or a mental illness or disability.

Illinois Admin. Code, Section 1155.80 Dishonorable, Unethical or Unprofessional Conduct

- The Division may suspend or revoke a license, refuse to issue or renew a license or take disciplinary action based upon its finding of **dishonorable, unethical or unprofessional conduct** as defined by Section 75 of the Act.

10. Remedies

⌘ Wis. Stat. § 440.997 (same as in IL)

- 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.

10. Remedies

∞ 32 states allow institution to sue former student athlete

∞ Nevada Rev Stat. §398.492. Liability of person other than athlete's agent or student athlete to institution for damages caused by violation; award of attorney's fees and costs.

- 2. Damages that may be awarded against a person who causes a violation of a rule of a national collegiate athletic association, or aids in any such violation, include:
 - (a) Costs incurred by the institution relating to any investigation or hearing conducted by the national collegiate athletic association concerning the violation; and
 - (b) Lost revenues to the institution from:
 - (1) Lost contracts for televising athletic events;
 - (2) A decline in ticket sales;
 - (3) Being prohibited from participating in postseason athletic events and tournaments; and
 - (4) Other discernible opportunities through which the institution would have realized revenue if the rule had not been violated.
- 3. If an institution prevails in an action brought pursuant to this section, it is entitled to an award of reasonable attorney's fees and costs.

11. Penalties

⌘ Wis. Stat. § 440.9965 (IL similar)

- Up to \$10,000, and/or
- 9 months in prison

⌘ 225 ILCS 401/175

- (a) Any person who is found to have violated any provision of this Act is guilty of a Class A misdemeanor. On conviction of a second or subsequent offense, the violator shall be guilty of a Class 4 felony.

11. Penalties

CA § 18897.8

- (b) A plaintiff that prevails in a civil action brought under this section may recover actual damages, or fifty thousand dollars (\$50,000), whichever is higher; punitive damages; court costs; and reasonable attorney's fees. An athlete agent found liable under this section also shall forfeit any right of repayment for anything of benefit or value provided to a student athlete, and shall refund any consideration paid to that athlete agent by or on behalf of the student athlete.
- (c) It is the intent of the Legislature in enacting this section to encourage enforcement of this chapter through private civil actions.

CA § 18897.93 (effective 1/1/12)

- (a) An athlete agent or athlete agent's representative or employee who violates any provision of this chapter is guilty of a misdemeanor, and shall be punished by a fine of not more than fifty thousand dollars (\$50,000), or imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.
 - these are some of the factors that a court may use in determining whether to revoke or suspend: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, and the willfulness of the defendant's misconduct
- (b) The court shall suspend for a period of not less than one year or, where appropriate, revoke the privilege of any person convicted of a violation of this chapter to conduct the business of an athlete agent.
- (c) (1) Upon conviction of any provision of Article 3 (commencing with Section 18897.6), the court shall, in addition to any punishment imposed under subdivision (a), order an athlete agent or athlete agent's representative or employee to disgorge all consideration received in connection with the violation.

11. Penalties

- ∞ Lots of variation state to state

- ∞ Ga. Code Ann. § 43-4A-11. Penalty for violation
 - An athlete agent who violates [Code Section 43-4A-14](#) shall be guilty of a **felony** and, upon conviction, **shall be punished by a fine of not less than \$5,000.00 nor more than \$100,000.00, by imprisonment of one to five years, or both such fine and imprisonment.**

- ∞ Arkansas Uniform Athlete Agents Act modified by the ATHLETE AGENT REFORM ACT OF 2011,
 - A.C.A. § 17-16-115. Criminal penalties.
 - (a) An athlete agent who violates § 17-16-114(a) is guilty of a Class D felony. (**6 years**)
 - (b) An athlete agent who violates § 17-16-114(b) is guilty of a Class A misdemeanor. (**1 year**)

 - A.C.A. § 17-16-117. Administrative penalty.
 - The Attorney General may seek a civil penalty in any court of competent jurisdiction against an athlete agent not to exceed two hundred fifty thousand dollars (**\$250,000**) for a violation of this subchapter.

State Athlete Agent Laws

Registration required in 42 states

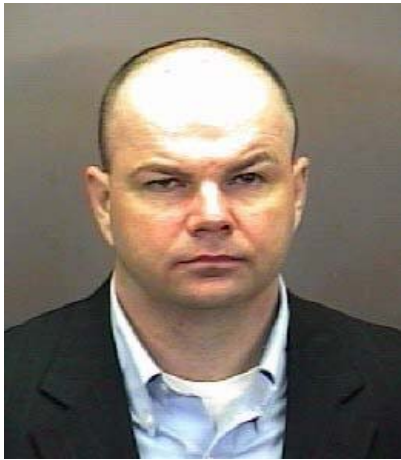
- Reciprocity in UAAA states
- Still must pay fees to be registered in each state

Concerns/questions for attorneys

- Disclosure of records of representation
- Training
- Always possibility student athlete can cancel contract
- Enforcement?
- **State laws are not UNIFORM**

The screenshot shows the website for the Wisconsin Department of Safety and Professional Services (DPS). The header includes the state name, department name, and the secretary's name, Dave Ross. A navigation menu includes Home, About Us, News, Media Room, and FAQs. A sidebar menu lists various services: Administrative Rules, Professions, Boards, Renewal Information, Verifications, Complaints, License List Orders, Order/Disciplinary Actions, Meetings (highlighted with a yellow arrow), Impaired Professionals, Other Useful Links, Monitoring, and OVS. The main content area is titled "Athlete Agent Advisory Committee Meetings" and displays "Future Meeting(s): There are no meetings scheduled" and a link for "Past Meetings".

Enforcement of State Laws?



Enforcement of State Laws?



Perceived problems with UAAA

- ⌘ STATES HAVE NOT UNIFORMLY ADOPTED ITS PROVISIONS
- ⌘ Does not govern relationship between professional athletes and their agents.
- ⌘ Conflicts of interest.
- ⌘ No private cause of action for harmed athletes
- ⌘ Concern with ability of school to sue student athlete.

Revising the UAAA



Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

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Committees

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.

Revising the UAAA

1. Create a uniform registration system

- WI and most states have some form of reciprocity
- UAAA 2015 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

- UAAA 2015 → creates a central registration agency, the Commission on the Interstate Registration of Athlete Agents,

Revising the UAAA

3. Civil Remedies

- Current UAAA in most states → university has cause of action against agent
-
- *UAAA 2015 → SECTION 16. CIVIL REMEDY. (a) An educational institution **or student athlete** has a right of action for damages against an athlete agent if the institution or athlete is adversely affected by an act or omission of the agent in violation of this [act].*

4. Notification

- Current UAAA agent/student athlete must notify athletic department after signing student athlete
- UAAA 2015 → Requiring agents to notify schools before contacting student athletes (4 states do this already)

Status

DRAFT
FOR DISCUSSION ONLY

REVISED UNIFORM ATHLETE AGENTS ACT (2015)

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FOURTH YEAR
WILLIAMSBURG, VIRGINIA
JULY 10 - JULY 16, 2015

REVISED UNIFORM ATHLETE AGENTS ACT (2015)

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By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any recommended final statutory proposal.

Judicial Review of Athlete Agents

1. Fee disputes between agents
2. Agent taking clients from other agent
3. Agent vs. agent
4. Compensating athletes
5. Unlicensed agent
6. Athlete vs. Agent for lost money
7. Claim against athlete

1. Fee disputes between agents

- ⌘ I Sports v. IMG Worldwide, 157 Ohio App. 3d 593 (Ct. App. 2004); Grillier v. CSMG Sports, Ltd., 2009 U.S. Dist. LEXIS 50476 (E.D. Mich. 2009); Luchs v. Pro Tect Management Corp., 2009 Cal. App. Unpub. LEXIS 3893 (Ct. App. Cal. 2009)

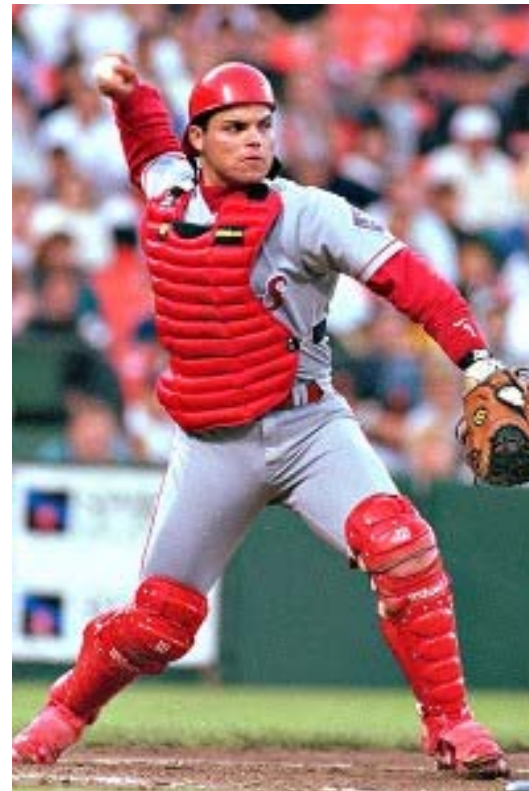


2. Agent taking clients from other agent

- ☞ Vortex Sports & Entertainment, Inc. v. Ware, 378 S.C. 197 (Ct. App. S.C. 2008); Mintz v. Mark Bartelstein & Associates, Inc. 906 F.Supp.2d 1017 (C.D.Cal. 2012) (non-compete clause); Speakers of Sport v. ProServ, 178 F.3d 862 (7th Cir. 1999) (player can leave if wants to)

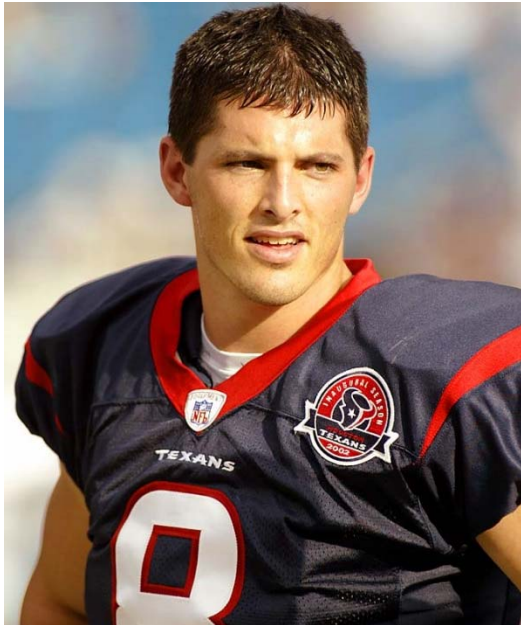
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ENTERTAINMENT

CAASPORTS



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); similar Lader v. Delgado, 941 F.Supp.2d 267 (E.D.NY 2013)
- Bauer v. Interpublic Group of Companies, Inc., 255 F.Supp.2d 1086 (N.D. Cal. 2003) & Beverly Hills Sports Council v. Wright, 2002 Cal. App. Unpub. LEXIS 9628 (Ct. App. Cal. 2002) (intentional interference with contract with athlete)



4. Compensating athletes

- U.S. v. Piggie, 303 F.3d 923 (8th Cir. 2002) (mail and wire fraud)



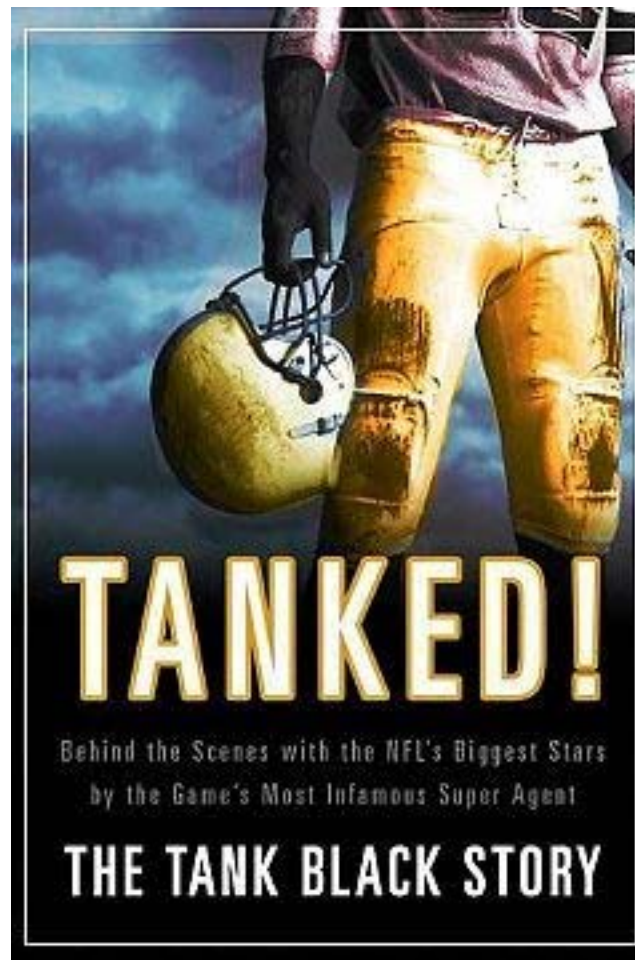
5. Unlicensed agent

- Chiapparelli v. Henderson, 2005 Cal. App. Unpub. LEXIS 6934 (Ct. App. Cal. 2005) (unlicensed MMA agent contract void); Hicks v. HSInternational Sports Management, Inc., 2009 U.S. Dist. LEXIS 103138 (D. Ore. 2009) (issue of whether agreements did not follow applicable agent laws);



6. Athlete vs. Agent for lost money

- ☞ Hilliard & Taylor v. Black, 125 F.Supp.2d 1071 (N.D. Fla. 2000)



7. Claim against athlete

- ☞ Lounsbury v. Camby, 2004 Conn. Super. LEXIS 192 (S.C. Conn. 2004) (agent suing Marcus Camby based on his promise to sign with agent while in college)
- ☞ Lake v. Griffin, 2009 Cal. App. Unpub. LEXIS 10240 (Ct. App. Cal. 2009) (agent suing Reggie Bush and his family for money given in expectation of representation)



Andrew Innerarity, AP



Judicial Review Overall

☞ Focuses on agents business practices

☞ ≠

☞ Student athlete

☞ University



Federal Law: Athlete Agents

⌘ 15 U.S.C. § 7807. Sense of Congress

- 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.

Federal Law: Athlete Agents

∞ Sports Agent Responsibility and Trust Act, 15 U.S.C. §§ 7801-7807 (SPARTA) (2004)

- Regulated by Federal Trade Commission as unfair and deceptive acts and practices (§7802)
- Same as WI & IL laws
 - Prohibited conduct (§7802)
 - Definitions of athlete agents, student athlete, and agency contract (§7801)
 - Required disclosure in contracts (§7802)
 - Notice to educational institution (§7805(a))
 - Remedy for educational institution (§7805(b))
 - No federal registration process
 - *Agents in states without agent registration, or without the UAAA still have to follow SPARTA*

Federal Law: Athlete Agents

- 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



"THAT'S THE BEST HOLD MUSIC I'VE HEARD.
I'D LIKE TO SIGN YOU UP AT ONCE!"

Why Regulate Entertainment Agents?

- ✎ 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)

Regulation of Entertainment Agents

☞ Wisconsin → no specific regulation

☞ California

- Talent Agencies Act, Cal. Lab. Code, Div. 2, Pt. g, Ch. 4: Talent Agencies (1959)
- Employment Agencies, 8 Cal. Code of Regulations 12000, et. seq.

☞ New York

- Employment Agencies, NY CLS Gen. Bus. Law §170 → 194 (1910)
- Theatrical Employment Contracts, NY CLS Art & Cult Affr (1983)

☞ Illinois

- Private Employment Agency Act, 225 ILCS 515/0.01 → 15 (1990)
- Rules And Regulations Relating To The Operation Of Private Employment Agencies, 68 Ill. Adm. Code 680 → 890 (1963)

Regulation of Talent Agents: State Law

- ⌘ 1. Who & What Is Covered?
- ⌘ 2. Mandatory License
- ⌘ 3. Registration Requirements
- ⌘ 4. Contract Requirements
- ⌘ 5. Disclosure
- ⌘ 6. Prohibited Conduct
- ⌘ 7. Penalties
- ⌘ 8. Administrative Actions

1. Who & What Is Covered?

☞ Cal Lab Code §1700.4

- (a) "**Talent agency**" means a person or corporation who engages in the occupation of **procuring, offering, promising, or attempting to procure employment or engagements** for an artist or artists, except that the activities of procuring, offering, or promising to procure recording contracts for an artist or artists shall not of itself subject a person or corporation to regulation and licensing under this chapter. Talent agencies may, in addition, counsel or direct artists in the development of their professional careers.

- (b) "**Artists**" means actors and actresses rendering services on the legitimate stage and in the production of motion pictures, radio artists, musical artists, musical organizations, directors of legitimate stage, motion picture and radio productions, musical directors, writers, cinematographers, composers, lyricists, arrangers, models, and other artists and persons rendering professional services in motion picture, theatrical, radio, television and other entertainment enterprises.

1. Who & What Is Covered?

☞ NY CLS Gen. Bus. §171 (similar to IL)

- 2. a. "Employment agency" means any person (as hereinafter defined) who, for a fee, procures or attempts to procure:
 - (1) employment or engagements for persons seeking employment or engagements, or
 - (2) employees for employers seeking the services of employees.
- 8. "Theatrical employment agency" means any person (as defined in subdivision seven of this section) who procures or attempts to procure employment or engagements for circus, vaudeville, the variety field, the legitimate theater, motion pictures, radio, television, phonograph recordings, transcriptions, opera, concert, ballet, modeling or other entertainments or exhibitions or performances, but such term does not include the business of managing such entertainments, exhibitions or performances, or the artists or attractions constituting the same, where such business only incidentally involves the seeking of employment therefor.
- 9. "Theatrical engagement" means any engagement or employment of a person as an actor, performer or entertainer in employment described in subdivision eight of this section.
 - 8&9 definitions same as in NY CLS Art & Cult Affr §37.01)

2. Mandatory License

☞ CA (IL & NY similar for employment agencies)

- Cal. Lab. Code § 1700.5. Necessity and posting of license
 - No person shall engage in or carry on the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner. The license shall be posted in a conspicuous place in the office of the licensee.
- Cal Lab Code § 1700.10 → renewed every year
- Specific requirements in 8 CCR §12000

- 2 states (CA & FL) require a talent agency license (TX repealed 2001)
- 23 states require license as employment agency

3. Registration Requirements

CA →

- Cal. Lab. Code § 1700.12 (Filing fee = \$25 | license fee = \$225) (IL \$250 | NY \$500)
- Cal. Lab. Code § 1700.15 (Surety bond of \$50,000) (IL & NY \$5,000)
- Labor Commissioner website for application materials → http://www.dir.ca.gov/dlse/talent_agency_license.html

4. Contract Requirements

☞ Cal. Lab. Code § 1700.23

- All contracts talent agency will use must be approved by the Labor Commissioner (indicated by endorsement by LC on the contract (8 CCR §12003))

○ 8 CCR §12001. Form of Talent Agency Contracts (similar NY

- Any contract in writing to be entered into between a talent agency and an artist wherein the talent agency agrees to act or function as such for, or on behalf of the artist, shall contain in words or substance in addition to any other provisions set forth therein, each of the following provisions:

(c) A provision that the talent agency may advise, counsel or direct the artist in the development or advancement of his professional career.

(d) A provision that the talent agency shall, subject to the availability of the artist, use all reasonable efforts to procure employment for the artist in the field or fields of endeavor specified in the contract in which the talent agency is representing the artist.

4. Contract Requirements

- 8 CCR §12001. Form of Talent Agency Contracts
 - (e) A provision that, in the event of the failure of the artist to obtain employment or a bona fide offer therefor from a responsible employer, in the field or fields of endeavor specified in the contract in which the talent agency is representing the artist, for a period of time in excess of four consecutive months, such failure shall be deemed cause for the termination of the contract by either party. . .
 - (f) A provision that in all cases of controversy between a talent agency and an artist arising under the Labor Code, or under these Rules and Regulations, relating to the terms of the contract, the parties involved therein shall refer the matters in dispute to the Labor Commissioner or one of his duly authorized agents

5. Disclosure

☞ CA § 1700.26 (similar NY)

- Every talent agency shall keep records in a form approved by the Labor Commissioner, in which shall be entered all of the following:
 - (1) The name and address of each artist employing the talent agency.
 - (2) The amount of fee received from the artist.
 - (3) The employments secured by the artist during the term of the contract between the artist and the talent agency, and the amount of compensation received by the artists pursuant thereto.
 - (4) Any other information which the Labor Commissioner requires.

- § 1700.27 → records open for inspection

6. Prohibited Conduct

- ☞ Cal Lab Code § 1700.32. **Prohibition against false or misleading information; Advertisements** (similar IL & NY)
 - No talent agency shall publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisement. All advertisements of a talent agency by means of cards, circulars, or signs, and in newspapers and other publications, and all letterheads, receipts, and blanks shall be printed and contain the licensed name and address of the talent agency and the words "talent agency." No talent agency shall give any false information or make any false promises or representations concerning an engagement or employment to any applicant

7. Penalties/Remedies

- ✎ CA → No specific penalties except that contracts with agents who do not follow the law are void, and artist owes no compensation under them
 - Talent Agency License Application → ANY MATERIAL MISREPRESENTATION IS GROUNDS FOR DENIAL OR SUBSEQUENT REVOCATION OF A LICENSE
 - Right to terminate if no work in 4 months (8 CCR §12001(e))
 - [§5 of sample Exclusive Contract between Artist and Talent Agency](#)
- 5. In the event that I do not obtain a bona-fide offer of employment from a responsible employer during a period of time in excess of four (4) consecutive months, during which said time I shall be ready, able, willing, and available to accept employment, either party hereto shall have the right to terminate this contract by notice in writing to that effect sent to the other by registered or certified mail.
- ✎ NY CLS Gen Bus §190
 - shall be guilty of a misdemeanor and upon conviction shall be subject to a fine not to exceed one thousand dollars, or imprisonment for not more than one year, or both, by any court of competent jurisdiction

8. Administrative Actions

- ⌘ Cal Lab Code § 1700.44 (same in NY, similar in IL) → all disputes under the TAA are referred to the Labor Commissioner
 - <http://www.dir.ca.gov/dlse/dlse-tacs.htm>

State Talent Agent Laws Summary

- ✎ WI no law (IL some regulations)
- ✎ CA and NY extensive licensing requirements
 - Focus is validity of license and form of contract
 - Disputes focus on work performed as agent and whether individual really was an agent or not
 - Possible concerns with disclosure of records of representation
 - No requirements for training or experience
- ✎ 23 other states some form of license though most as employment agency

Entertainment Cases



- ∞ Lots of cases and labor commissioner decisions involve state laws (CA/NY)
- 1) Cases focus on interpretation of talent agency laws specifically whether someone is covered by them
 - *Wachs v. Curry*, 13 Cal.App.4th 616 (Cal. Ct. App. 1993)
 - Arsenio Hall hired plaintiff to serve as manager → specifically in contract “**have not retained our personal management firm under this agreement as an employment agent or a talent agent**”
 - Hall then petitioned the CA labor commissioner claiming plaintiff had procured employment, and so was an unlicensed agent (and thus their contract was void)
 - Plaintiff sued the labor commissioner claiming the talent act was unconstitutional
 - Court upholds the act
 - **If the agent's employment procurement function constitutes a significant part of the agent's business as a whole then he or she is subject to the licensing requirement of the Act even if, with respect to a particular client, procurement of employment was only an incidental part of the agent's overall duties.**



WGA

Regulation by Unions

- ☞ Union agent regulations typically include:
 - Authority from a Collective Bargaining Agreement
 - General regulations
 - Agent Application
 - Standard Agent-Player Agreements



NFL PLAYERS
ASSOCIATION



Regulation by Unions: Athlete Agents

- ∞ [National Football League Players Association](#)
 - [NFL Collective Bargaining Agreement, \(August 4, 2011\), Article 48: NFLPA Agent Certification](#)
 - [NFLPA Regulations Governing Contract Advisors \(as amended through June 2012\)](#)
 - [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](#)
 - [NHLPA Regulations Governing Agent Certification \(Incorporating September 8, 2008 Amendments\) \(2010\)](#)

- ∞ [National Basketball Players Association](#)
 - [Collective Bargaining Agreement, December 2011, Article XXXVI: Player Agents](#)
 - [NBPA Regulations Governing Player Agents \(As Amended June, 1991\)](#)

- ∞ [Major League Baseball Players Association](#)
 - [MLBPA Regulations Governing Player Agents, As Amended Effective January 1, 2015\)](#)

Exclusive Representation (NFLPA)

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.

NFLPA Contract Advisor Regulations

☞ 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.



NHLPA Agent Services

2. Services

The Agent is hereby retained by the Player to represent, advise, counsel and assist Player:

- (1) in conducting individual compensation negotiations for the Player's services with the Player's NHL club; and
- (2) in maintaining and enforcing the Player's rights following execution of a contract with the Player's NHL club.

In performing these services, the Agent agrees to perform in such a manner so as to ensure the effective representation of the Player and to at all times protect the best interests of the Player. The Agent further agrees to comply fully with the Regulations.

It is understood and agreed that the Agent shall not have the authority to bind or commit the Player in any manner without prior written consent of the Player. In no event shall the Agent execute a Player contract for, or on behalf of, the Player.

NFLPA Application

How to Become an Agent

Please click [2015 NFLPA Certification Frequently Asked Questions](#) if you have any further questions, or email the Salary Cap and Agent Administration Department (agentservices@nflplayers.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 2015 two (2) day seminar in Washington, DC
- Successful completion of written proctored examination
- Valid Email address
- [download a PDF version of the regulations](#)

DATE TO FILE

January 5, 2015 - February 5, 2015. Absolutely no early or late filing.

APPLICATION

The application, release forms and fees must be completed electronically.

MLBPA Application

Written Exam

Following the successful completion of the background investigation, the applicant will be eligible to take the written test. There will be separate tests for General and Limited Certified Agents. The test will assess the applicant's ability to perform competently the functions of a General or Limited Certified Agent or Expert Agent Advisor including familiarity with the Basic Agreement, Major League Rules, Joint Drug Agreement and the Agent Regulations. Copies of the Basic Agreement, the Joint Drug Agreement, the Agent Regulations, and essential MLBPA forms may be found in the [Key Documents](#) section of this webpage. The tests will be open book and will be administered twice each year in English and Spanish. The next exam is scheduled to take place in August 2015. The MLBPA will make a preparatory course for the test available to applicants. Details concerning the MLBPA preparatory course and the format of the test will be announced later this year.

An Applicant who fails the test for either certification may retake the test the next time it is offered. An Applicant who fails the test twice must reapply and complete the entire application process again, and will be eligible to submit a new application no earlier than one year from the date of the second failed test.

Educational Requirements

☞ NFLPA

- Undergraduate degree from accredited 4-year institution, and post-graduate 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

Educational Requirements



§4(A) – Education, Experience and Knowledge Standards for Certification

§4(A)(1) – Player Agents – An Applicant who has not previously been certified as a Player Agent must demonstrate that he or she possesses the education or relevant professional or employment experience and knowledge to perform competently the functions of a General or Limited Player Agent. As a result, such an Applicant will be required to pass a written test. There will be separate tests for General and Limited Certified Agents. The tests will be open book and will be administered twice each year in English and Spanish.

§4(A)(2) – After a previously uncertified Applicant has submitted a complete application and successfully completed the background check process, the Applicant will be notified that he or she is eligible to take the written test for the certification sought on the next date it is administered. The MLBPA will make a preparatory course for the test available. An Applicant who passes the test for certification as a Limited Certified Agent must also pass the test for General Certified Agent certification before becoming a General Certified Agent. A Limited Certified Agent does not lose that certification if he or she fails the test to become a General Certified Agent.

§4(A)(3) – An Applicant to be a General Certified Agent who completes the background check and passes the written test is not a certified agent until he or she is designated on a *Player Agent Designation* form by at least one Player. An Applicant to be a Limited Certified Agent who completes the background check and passes the written test is not a certified agent until he or she is designated on a *Designation of Recruiter or Client Maintenance Service Provider* form by a General Certified Agent. Such Applicants become certified agents if they receive the required designation within three years of passing the written test. The application of an Applicant who does not receive the required designation within three years expires, and that person must reapply and complete the entire application process again. An Applicant who fails the test for either certification may retake the test the next time it is offered. An Applicant who fails the test twice must reapply and complete the entire application process again, and will be eligible to submit a new application no earlier than one year from the date of the second failed test.

Activities covered

∞ NFLPA

- The activities of Contract Advisors which are governed by these Regulations include: the providing of **advice, counsel, information or assistance to players with respect to negotiating their individual contracts with Clubs and/or thereafter in enforcing those contracts**; the conduct of individual compensation negotiations with the Clubs on behalf of players; and **any other activity or conduct which directly bears upon the Contract Advisor's integrity, competence or ability to properly represent individual NFL players** and the NFLPA in individual contract negotiations, including the handling of player funds, providing tax counseling and preparation services, and providing financial advice and investment services to individual players.

∞ MLBPA

Section 3 – Conduct Requiring Certification as a Player Agent or Expert Agent Advisor

§3(A) – Negotiation, Administration or Enforcement of Player Agreements and Rights

§3(B) – Recruitment or Maintenance of Players as Clients

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

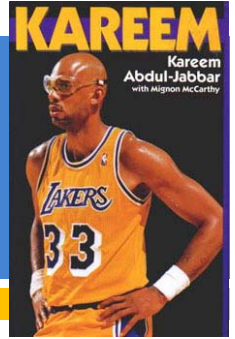
(17) Act at all times in a **fiduciary** capacity on behalf of players;

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;

Authority of Agent Regulations



- ⌘ Agent let certification lapse due to legal claim by client related to mishandled funds (settled)
- ⌘ He sought to be recertified by NBPA → union eventually denied certification finding violations of its code of conduct
 - based on the allegations against him by Abdul-Jabbar and the information gathered by the Committee, the Committee concluded that Collins was **unfit to serve in a fiduciary capacity** on behalf of NBA players and that he **made false or misleading statements** to the Committee concerning a relevant subject in connection with the investigation into his application
- ⌘ Instead of following NBPA review process he sued claiming violation of antitrust laws
- ⌘ COURT
 - The NBPA Regulations and Article XXXI of the NBPA-NBA Agreement are exempt from antitrust law.
 - As the exclusive representative for all of the NBA players, the NBPA is legally entitled to forbid *any* other person or organization from negotiating for its members. Its right to exclude all others is central to the federal labor policy embodied in the NLRA
 - The NBPA regulatory program fulfills legitimate union purposes and was the result of legitimate concerns:
- ⌘ Collins v. Basketball Players Ass'n, 850 F. Supp. 1468 (d. Col. 1991), *aff'd*, 976 F.2d 740 (10th Cir. 1991)

Authority of Agent Regulations

- 1) Some deal with claims against unions related to their regulations
 - *NFLPA v. Dunn*, SA CV 05-1000-RSWL (C.Dis. Cal. 2006)
 - NLRA provides that the NFLPA's CBA with the NFL, gives the NFLPA, as exclusive bargaining representative of the NFL players, sole discretion in choosing its agents
 - This Court finds that Dunn does not have, what he has characterized as, a license to pursue a profession, . . . Also, **Dunn's compliance with the Agent Regulations was not conditioned on his performance of actually negotiating player contracts.** Rather, while Dunn was under no obligation to actually negotiate NFL player salary contracts, **as long as he retained the status of an NFLPA certified agent, he was bound to the standards expressed in the NFLPA Agent regulations including the disciplinary procedures.** Noncompliance with the Agent Regulations including the disciplinary procedures effectively puts Dunn in breach of his agreement with the NFLPA.



Regulation by Unions: Entertainment Agents



- Bargaining Partner for Guild Agency Regulations
 - Most agents enter into ATA/NATR General Service Agreement (GSA) with entertainers
- Agents must be Franchised with the different guilds

Regulation by Unions: Entertainment Agents

- Directors Guild of America (DGA)
 - Agency Information → <http://www.dga.org/Resources/Agency-Info.aspx>
 - [Agreement between Association of Talent Agents and Directors Guild of America, Inc. of January 1, 1977 \(as restated January 1, 2004\)](#)
- Writer's Guild of America, West
 - Agency information → http://www.wga.org/subpage_whoare.aspx?id=805
- Actors Equity Association → 50,000 Actors and Stage Managers
 - [Agency Regulations \(Rule A and Interim Regulations\)](#)

Regulation by Unions: Entertainment Agents

- SAG/AFTRA → SAG-AFTRA represents approximately 160,000 actors, announcers, broadcast journalists, dancers, DJs, news writers, news editors, program hosts, puppeteers, recording artists, singers, stunt performers, voiceover artists and other media professionals.
 - [Information for Agents and Members](#)
 - 1991 Screen Actors Guild Codified Agency Regulations Rule 16(G)
 - AFTRA Regulations Governing Agents - Rule 12-C Regulations of Members' Dealings With Agents (As Amended July 1, 2002)
 - All assume compliance with and incorporate California Agency Act

Purpose

- **Section XXVII. Purpose of Regulations.**
 - These regulations have been drafted after conference and negotiation with the representative agents. They are regulations of the dealings of the members of AFTRA with such agents, and are **intended as well to promote more amicable relations between agents and artists, and to insure a higher state of ethics in the dealings between artists and agents and are intended for the benefit of such agents as well as artists.**

Exclusivity

Section I. Prohibition of Members Dealing with Agents Not Franchised.

- A. No member of AFTRA may engage, use or deal through any agent (either partially or exclusively) in the fields within the scope of these regulations, unless such agent holds an agent's franchise from AFTRA in full force and effect.

Section II. Prohibition of Members Dealing With Agents Not Franchised.

No member of SAG may engage, use or deal through any agent for representation in motion pictures, as defined herein, either partially or exclusively, unless such agent holds a franchise issued hereunder.

Services

☞ Section V

- A. An “agent” or “agency” is any person, co-partnership, association, firm or corporation who for compensation or otherwise offers to, or does, represent, act as the agent or personal representative of, negotiate for, procure employment for or counsel or advise any member of AFTRA in or about or in connection with or relating to his employment or professional career in the fields within the scope of these regulations. The terms “agent or agency” mean, and are used synonymously with, the terms “talent agent” or “talent agency.”
- D. “Artist” or “artists” mean all AFTRA members who are actors, singers, announcers, commentators, comedians, masters-of-ceremonies, quiz masters, disc jockeys, dancers, sportscasters, specialty acts, puppeteers, newsmen and analysts, models, moderators, and panel members, as to their activities within the scope of these regulations.

E. *Agency Services.* Agency services are defined as acting as the representative of, negotiating for, procuring employment for, counseling or advising any member of the SAG in and about and in connection with or relating to his employment or professional career as an actor in the production of motion pictures. The terms "talent agent services" and "agency services", as used herein, are synonymous.

Franchising

☞ Section VIII. Franchise Conditions

- A. Every person desiring to secure a franchise from AFTRA must provide AFTRA with the following:
 - (1) A signed application for an agent's franchise. . .
 - (2) A copy of the required licenses issued by the appropriate agencies in every state where the agency will conduct business;

- K. The issuance and continuance of franchises shall be expressly conditioned on the agent obtaining and maintaining those state and local licenses legally required to enable the agent to do business in the area or areas in which the agent maintains its main and principal branch offices in the United States.

Application

☞ Becoming a Franchised Agent

☞ General requirements

- ☞ Must first have license with state
- ☞ Surety bond of \$20,000
- ☞ (3) letters of recommendation from recognized industry professionals (i.e. persons/entities doing business in the entertainment industry within SAG-AFTRA's jurisdiction, e.g., recognized casting directors who have worked on Guild signatory projects, franchised talent agents, signatory companies, SAG-AFTRA members, etc.).

☞ Specific information

- ☞ 5. Applicant shall attach hereto a statement giving the names of all members of AFTRA with whom Applicant has agency contracts, giving the date of execution and term of each contract, including extended terms, if any. Applicant shall attach hereto true and correct copies of all agency contracts between Applicant and any member.
- ☞ 8. Applicant has never been convicted of a crime, involving embezzlement, theft, fraud, forgery or dishonest conduct.

Application

- ☞ **OFFICE INSPECTION** During the application process, a representative of SAG-AFTRA will visit your office to inspect its facilities. Our guidelines include (but are not limited to):
- 1. An agency must be located in a commercial office building or space.
 - 2. The office space must be used only for business purposes and not for residential purposes.
 - 3. There must be two rooms (reception area and office) or a built-in room divider.
 - 4. The agency name must appear on the building directory.
 - 5. There must be separate restroom facilities near the office.
 - 6. An agent may not share an office telephone with another business without written approval from SAG-AFTRA.

Required Contract & Termination

☞ Section X – Agency Contract

- F. Filed also with AFTRA
- Exhibit C → Standard AFTRA Exclusive Agency Contract Under Rule 12-C
 - Right of Termination
 - 5. (a) If during any period of ninety-one (91) days immediately preceding the giving of the notice of termination hereinafter mentioned in this paragraph, the Artist fails to be employed and receive, or be entitled to receive, compensation for ten (10) days' employment, whether such employment is from fields under AFTRA's jurisdiction or any other branch of the entertainment industry in which the Agent may be authorized by written contract to represent the Artist, then either the Artist or the Agent may terminate the employment of the Agent hereunder by written notice to the other party.

Duty & Experience

☞ Section X – Agency Contract

- agreements, covenants, representations and warranties with reference to all agency contracts entered into by the agent with artists
 - (6) The agent's relationship to the artist shall be that of a fiduciary. . . The agent may represent artists of the same general qualifications and eligible for the same engagements. Such representation shall not constitute a violation of the fiduciary obligation.
 - (7) To use all reasonable efforts to assist the artist in procuring employment for the services of the artist in the fields covered by the regulations.
 - (8) That the agent is equipped, and will continue to be equipped to represent the interests of the artist ably and diligently in the fields covered by the regulations throughout the term of this contract,

Duty of AFTRA Franchised Agents

The parties understand and agree that agencies franchised by AFTRA have a general duty to AFTRA to promote and enhance employment opportunities for AFTRA members at union standards and under union contracts.

The parties also agree that, consistent with a franchised agency’s fiduciary duty to its clients, this duty to AFTRA requires that franchised agents engage in specific conduct intended to carry this duty.

Pursuant to these principles, the parties agree that each AFTRA franchised agency shall undertake the following affirmative obligations:

1. To promote and enhance employment opportunities for AFTRA members under union contracts by:
 - a) Encouraging employers to produce under union contracts and at union standards; and
 - b) Identifying to AFTRA non-signatory employers and unorganized productions to the extent known and sharing information relating to future trends in the entertainment and news industries.
2. To inform and educate clients (both union and non-union) on the benefits of union standards and the detrimental effects of performing struck work, working without a union contract, or rendering services for less than union scale;
3. To support and participate in AFTRA’s educational and advocacy efforts on behalf of its members, where appropriate; and
4. To regularly participate in AFTRA events designed to provide access to agents for new members and members not currently represented by an agent.

These general obligations are not intended to establish any specific covenants on the part of individual agents, and an agent’s failure or inability to comply with any particular obligation would not constitute a violation of Rule 12C nor give rise to any private right of action by AFTRA. Instead, the parties intend for agencies to use this list of obligations as a guideline for the carrying out of their duty, provided it is not inconsistent with their fiduciary duty to clients.

Prohibited Conduct

Section VIII. Disciplinary Provisions.

A. Agents and sub-agents shall be subject to fine or to suspension or revocation of franchise in accordance with the provisions herein specified.

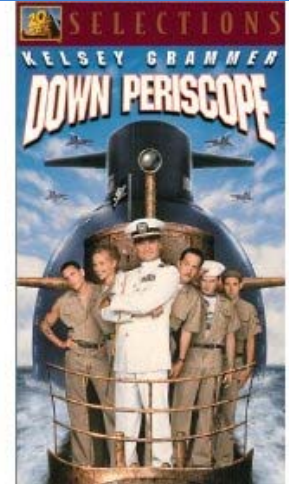
B. The following offenses are those for which an agent or sub-agent may be fined:

(1) Wilful and intentional violation of any of these Regulations;

(8) Agents shall not advertise through newspapers, magazines or mailings to the general public seeking clients for representation, registration or other forms of representation involving the payment of any fees directly or indirectly in the form of commissions, registration fees, referral fees or otherwise. It shall also be deemed a violation of this Section if any agent after notice fails to take action and desist from such activities.

Authority of Guild Regulations

- *Grammar v. Artists Agency*, 287 F.3d 886 (Cal. Ct. App. 2002)
 - Kelsey Grammar sued to try to overturn SAG arbitration award in favor of agent
 - Agents worked for Grammar from 1995, as he became more successful he wanted other agents to help with movie career
 - Entered new agreements with defendant agents in 1998, although they did not specifically comply with SAG rules, SAG approved them
 - He stopped paying commissions and agents sought arbitration under contracts
 - Arbitrator awarded agents \$2 million in commissions → **COURT FOUND REGULATIONS TO BE VALID AND UPHELD THEM**



What Does It All Mean?



Agency Regulation Overall

- ⌘ Wisconsin sports lawyer representing athlete/entertainer, could be subject to
 - State athlete agent act (42 states with slightly different laws)
 - State talent agent act (25 states with different laws)
 - Federal athlete agent act (1 law with little enforcement)
 - Multiple Players Association regulations
 - Multiple Union/Guild regulations
 - All upheld by courts
 - & Rules of Professional Conduct

Application of Ethical Rules

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"Make sure everything is done ethically. Within reason, of course."

Argument

- ✉ 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

Argument

- ∞ 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 → 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 → 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.

An Attorney is always an Attorney

∞ 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

Lawyer Agent is Still a Lawyer

- ⌘ 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

- ⌘ In re Horak, 224 A.D.2d 47 (N.Y. App. Div. 1996)
 - 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

Competence (SCR 20:1.1)

⌘ 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.

Competence (SCR 20:1.1)

- ⌘ 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.**
- ⌘ [NFLPA documents](#)
- ⌘ SAG/AFTRA information for agents & managers

Competence (SCR 20:1.1)

- ∞ Lawyer athlete/talent agent is required to have higher level of competence than non-lawyer athlete/talent agent
 - Athlete Agents
 - Knowledge of sport, salary cap and salary structures within the sport, draft rules, team management philosophy, league collective bargaining agreements, constitutions and bylaws
 - Entertainment Agents
 - Laws and union regulations focus on function of agent, not qualifications
 - Agent must know specific part of entertainment industry (film, television, music, art, theater, online entertainment, publishing, etc.)
 - Agent must know industry standards and customs that courts use to interpret the law and agent regulations
 - Difficult to acquire this knowledge in advance of representation of clients

Confidentiality (SCR 20:1.6)

⌘ SCR 20:1.6 Confidentiality

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation . . .

- Formal Opinion [§ 12.18]: Though prospective clients sometimes request information about a lawyer's experience, **information relating to representation of a client is confidential under this Rule, and should not be revealed without consent** (unless exception applies).

Confidentiality (SCR 20:1.6)

- Athlete Agent Acts require disclosure of lots of business related information by an attorney seeking to become certified
 - This is then *open for inspection* from the department, and seems to be open to potential athlete clients
 - COMMENT TO REVISED UAA → It is the intent of this section to require that records concerning representation of athletes be open to the public. The provision in subsection (a) about an application being a public record is bracketed because it is not necessary in States which have other applicable law causing the records to be open to the public.
 - Lawyers argue that some of this information should be shielded by attorney/client privilege
 - COMMENT TO REVISED UAA → not intended to cause an athlete agent who is also an attorney to violate the attorney-client privilege.
 - 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.

Confidentiality (SCR 20:1.6)

⌘ ATHLETE and ENTERTAINMENT AGENT

- Athlete Agent and Talent Agency Acts require disclosure of lots of business related information by an attorney seeking to become certified
 - This is then open for inspection from the department, and seems to be open to potential athlete clients
 - Lawyers argue that some of this information should be shielded by attorney/client privilege
 - Non-lawyer agents not an issue → often agents disclose a lot when a player leaves for another agent

Conflicts of Interest (SCR 1.7)

- 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.

Stu's Views

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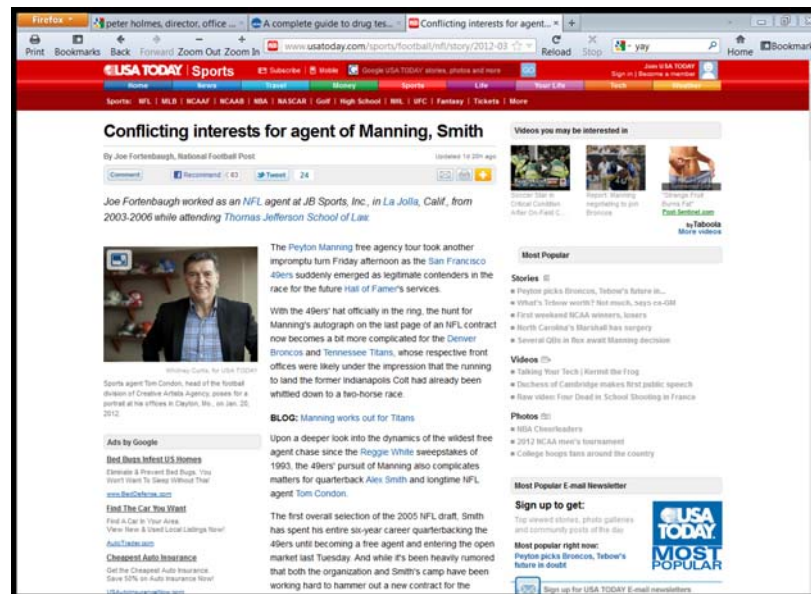
You're from the same firm-- you can't represent both sides!

Sure we can--we have waivers AND we hate each other way more than we hate lawyers at other firms.



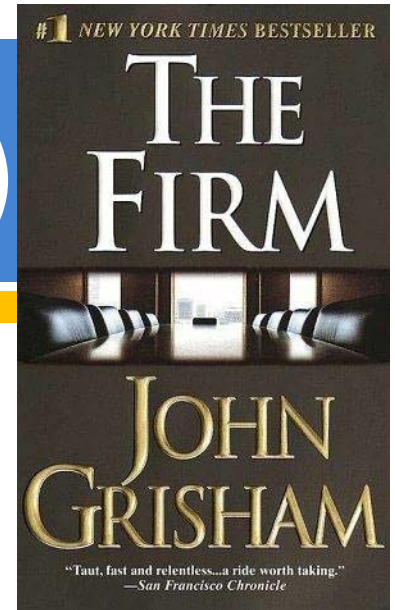
Conflicts of Interest (SCR 1.7)

- Big problem for lawyer athlete agents or large agencies → Often represent athletes on same team or at same position



- Players on same team?
 - 1) Given salary caps and other limits cannot truly represent all athletes in the same way
 - 2) Difficult for the agent to fulfill his duty to one of his clients without compromising the interests of the other.
- Representation of coaches and athletes on same team
- Representation of athlete by agent who works for corporation that also has ownership stake in team

Conflicts of Interest (SCR 1.7)



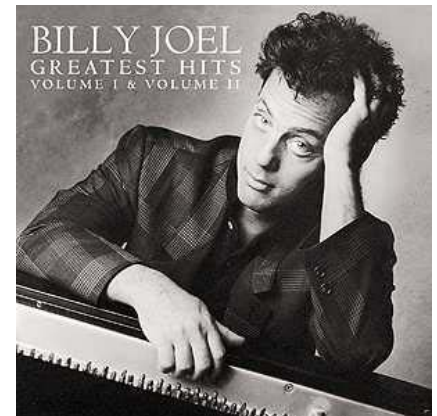
■ Problem for Entertainment Agents

■ John Grisham

- Sued his attorney for breach of fiduciary duties to Grisham and legal malpractice for failing to advise Grisham of its simultaneous representation of Grisham and his agent
- Grisham's agent suggested he hire the lawyer
- Grisham claimed that his original agency agreement was substandard to his stature, but when it came up for renegotiation his lawyer did not advise him of this and allowed it to be renewed with same terms

■ Billy Joel

- Joel sued his former lawyer for conflict in representing Joel, his manager, top executives in the record company and merchandising company
- Claimed lawyer paid kickbacks to manager to retain Joel as client
- Lawyer hired by manager (former brother in law)
- Joel claimed \$90 million in damages
- Settled for undisclosed amount

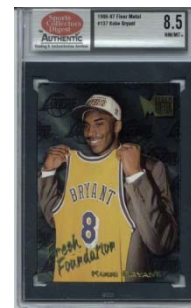


Conflicts of Interest (SCR 1.7)

- **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.**

Conflicts of Interest (SCR 1.7)

- Consider age and training of clients
 - 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
 - Athletes enter professional sports leagues at young ages
 - Talent agents → clients could be even younger
 - Nick Jonas, started on Broadway at age 7



Unauthorized practice of law



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; . . .

☞ California (Cal Bus & Prof Code § § 6125 - 6133 (2011) | Rule 1-300 California Rules of Professional Conduct) and Illinois (705 ILCS 205/1 (2011) | Rule 5.5 Illinois Rules of Professional Conduct) have similar rules

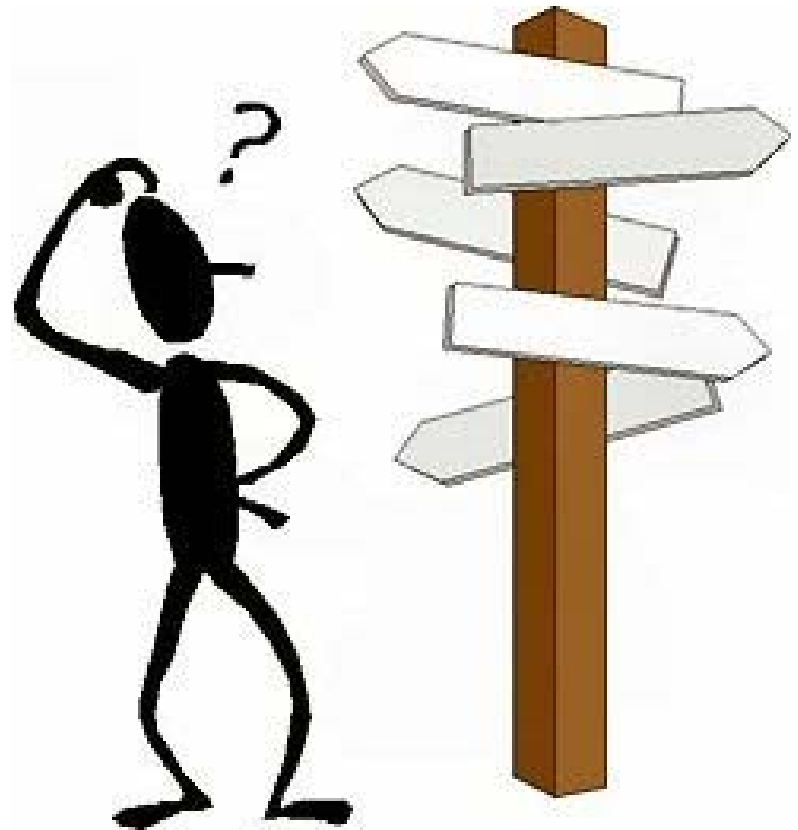
☞ ISSUE → Lawyer licensed by the WI SC, and registered under California AAA, does he/she violate CA rules if not licensed as lawyer in California?

Unauthorized practice of law

- Wis. Stat. §757.30. Penalty for practicing without license.
- (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.

Lawyer Agent?

- ⌘ Can a Wisconsin sports lawyer representing an athlete in sports and entertainment meet her obligations under these various regulations ?
 - State athlete agent act (42 states with slightly different laws)
 - State talent agent act (25 states with different laws)
 - Federal athlete agent act (1 law with little enforcement)
 - Multiple Players Association regulations
 - Multiple Union/Guild regulations
 - & Rules of Professional Conduct



QUESTIONS?

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"I'm advising my client not to answer any more questions, or to even make eye contact."