



Ethical Considerations in Representing College Coaches

By Martin J. Greenberg

July 10, 2015

Presented by Marquette University
Sports Law Alumni Association



Table of Contents

1. Table of Contents
2. About Martin J. Greenberg
3. Environment of College Coaching
4. Some of the Best Sports Agents are Lawyers
5. Competent Representation
6. Fee Arrangements – Compensation
7. Prohibited Transactions
8. Conflicts of Interests
9. Confidentiality
10. Solicitation - Advertising

THERE IS
NO RIGHT WAY
TO DO
A WRONG THING.



2. Introduction

Attorney Martin J. Greenberg



CV



- Milwaukee sports and real estate lawyer
- Adjunct Professor of Law at Marquette University Law School
- Founder of the National Sports Law Institute at Marquette University Law School
- Served on Athletic Board of Marquette University
- Represented Conference USA in the negotiation of its Commissioner's Agreement, Formation Agreement, and Conference Bylaws



2. Introduction Continued

- Teaches a course at Marquette University Law School entitled Representing Athletes and Coaches in Contract Negotiations
- Greenberg's years of writing on college coaching contracts and college athletics can be seen on Greenberg's Coaching Corner: <http://www.law.marquette.edu/national-sports-law-institute/greenbergs-coaching-corner>
- Has been a featured speaker on college athletics at American Football Coaches Association (AFCA), the National Association of Collegiate Directors of Athletics (NACDA), the American Bar Association, and the NCAA Men's Coaches Academy.
- Has written books—Sport\$Biz; Sports Law Practice; and The Stadium Game, and hosted his own television show about the business of sports entitled SportsBiz.
- Has represented college coaches in contract formation/termination matters for years and had the largest deal before Nick Saban's University of Alabama deal and has acted as an expert witness in coaching and collegiate athletic issues.
- Best Lawyer – Sports Law, 2014.



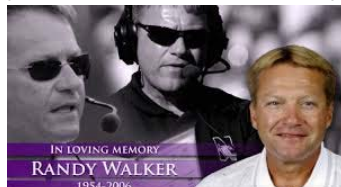
3. Environment of College Coaching

1. College coaches may be highest paid or highest profile employee of a state. In many instances, the coach's package outdistances the pay of the chancellor or the most esteemed professor.
2. Coaches receive more notoriety and media attention than the most celebrated scientific discovery of the university's lab department.
3. 24/7 job – no longer just conducting practices, teaching and coaching. New definition of coach: fundraiser, recruiter, academic coordinator, public figure, budget director, television, radio and internet personality, and alumni glad-hander.
4. Job movement. Termination clauses are more important than what you get paid. Quick job turnover, movement and relocation. Head football coaches remain on their jobs for an average of only 2.8 years. No winning – get fired.
5. Expanded meaning of coach has led to illness. Pat Kennedy, ulcers and mysterious illnesses. Mike Kryzewski, Gary Williams, Urban Meyer, Mark Dantonio, Jerry Kill, Rick Majerus.
6. Athletics Arms Race. Basketball and football support minor sports and women's athletics. There is an arms race for new and better sports facilities. No arms race – no recruits.



3. Environment, Continued

7. The coach is not a salaried employee. His money may come from multiple sources, including university foundations or booster groups. What we're talking about here is The Package - CEO in Headphones.
8. Rules, Rules, Rules. An environment of rules and enforcement. Knight Foundation Report – 54% of Division 1A institutions were penalized for major violations in the 1980s. 52% were so penalized in the 1990s.
9. Legal environment.
 - a. Much more sophisticated form of contract.
 - b. No standard contract.
 - c. No union
 - d. Coaches Contractual Bill of Rights
10. The disease of job elation.
11. Open records laws – everything is public
12. Boosters
13. Negotiations
 - a. MOU – long time
 - b. Moral turpitude 2 years (Rick Majerus)
 - c. Due process 8 months (Randy Walker)



4. Some of the Best Sports Agents are Lawyers



Drew Rosenhaus,
Duke University School of Law



Scott Boras,
University of the Pacific
McGeorge School of Law



Tom Condon,
University of Baltimore
School of Law



Ben Dogra,
St. Louis University
School of Law



Arn Tellum,
University of Michigan
Law School



Ron Shapiro,
Harvard Law School



Leigh Steinberg,
University of California –
Berkeley School of Law



***While an agent does not necessarily need to be a lawyer, a lawyer that choose to act as an agent is still held to the higher standard of legal ethics that a non-lawyer would not necessarily be.



5. Competent Representation

- I. **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.
 - A. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.
 - B. The lawyer must act with reasonable diligence and promptness. (SCR 20: 1.3, Diligence)
 - C. A lawyer has a duty to avoid neglect. Especially in the world of athletics and college coaching, lawyers acting as agents need to be careful and make certain that their representation of higher profile clients does not preclude the competent representation of his/her other clients.
 - C. Competency in the field of coaches' representation includes:
 - 1. knowledge of the marketplace – salaries – packages
 - 2. knowledge of how universities negotiate and structure contracts
 - 3. knowledge of any statutory limitations if a state school
 - 4. knowledge of the unique features of coaches' contracts including
 - i. Whereas Clauses
 - ii. MOU-LOI Compliance
 - iii. Employment Term





5. Competent Representation, Continued

- | | | | |
|--------|------------------------------------------------------------------------------------------|---------|---------------------------------------------------------------------------------------------|
| iv. | Duties and Authority | xix. | Payment of Liquidated Damages to Previous Employer (Buyouts) |
| v. | Standard of Conduct | xx. | Entrepreneurial Sharing |
| vi. | Exclusivity of Services | xxi. | Interest Free or Forgivable Loans |
| vii. | Signing Bonus | xxii. | In Kind Apparel, Athletic Equipment, and Service Allowance |
| viii. | Salary increases | xxiii. | Bonuses |
| ix. | Benefits | xxiv. | Reporting Relationship – Insubordination |
| x. | Talent Fee – supplemental annual compensation - outside marketing and promotional income | xxv. | University Authorized Use of Coach's Name and Likeness – Right of Publicity |
| xi. | Outside Income | xxvi. | Coach's Authorized Use of University Trademarks |
| xii. | Restrictions on Outside Income | xxvii. | Annual Evaluation |
| xiii. | Reporting of Athletically Related Income | xxviii. | Termination - Mutual Agreement |
| xiv. | Retention or Longevity Bonuses – Annual Stay Benefit | xxix. | Termination for Cause and basis for termination for cause |
| xv. | Perquisites | xxx. | University's Obligations re Termination for Cause – Limited Liability – Collateral Benefits |
| xvi. | Up Step Life and Disability Insurance Plans | xxxi. | Procedural and Substantive Due Process |
| xvii. | Deferred Compensation - Annuity Arrangements | | |
| xviii. | Post Retirement University Employment - Tickets | | |

5. Competent Representation, Continued



xxxii.	Other Disciplinary Actions	xlvi.	Indemnification - Hold Harmless
xxxiii.	Resignation	xlvi.	Representations and Warranties
xxxiv.	Termination as a Result of Death	xlix.	Internet - Website
xxxv.	Termination as a Result of Disability – Inability to Perform	i.	Nepotism
xxxvi.	Termination for Cause by Coach	ii.	Offset
xxxvii.	Termination Without Cause	iii.	Authorization to Investigate Background – Resume Accuracy
xxxviii.	Termination by Coach - Cut short	liii.	Reassignment
xxxix.	Termination by Mutual of Agreement	liv.	IRS Section 409(a)
xl.	Unique Services	lv.	Coach Will Not Incur University Indebtedness
xli.	Employment Opportunities	lvi.	Coach Will Not Make Statements Inconsistent with University Objectives
xlvi.	Non-solicitation of Recruits and Student Athletes	lvii.	Payroll Deductions – Withholdings - Taxes
xlvi.	Covenant Not to Disclose Trade Secrets	lviii.	University Signature and Approval – Board of Regents Approval
xlvi.	Covenant Not to Compete	lix.	Assignment to Legal Entity
xlvi.	University Records and Materials	lx.	Support of Program
xlvi.	Clawback Clause – NCAA Violations – Covenant Violations	lxi.	Sovereign Immunity

5. Competent Representation, Continued

- | | | | |
|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|---------------------------------------|
| lxii. | Legislative Funding | 7. | State agency |
| lxiii. | No Secret Agreements | 8. | Merger |
| lxiv. | Athletic Association or Third-Party Guarantee | 9. | Confidentiality – Non-confidentiality |
| lxv. | No waiver – The agreement shall not be construed to constitute as waiver by the university to claim such exemptions, privileges, or immunities as may be permitted by law. | 10. | Open records |
| | | 11. | Attorney review – Advice of Counsel |
| lxvi. | Miscellaneous | 12. | Relationship between the parties |
| 1. | Severability | 13. | Interpretation |
| 2. | Amendments | 14. | Entire agreement |
| 3. | Force majeure | 15. | Counterparts |
| 4. | Governing laws – forum selection | 16. | Time is of the essence |
| 5. | Assignment | 17. | Independent judgment |
| 6. | Notices | 18. | Survival |
| | | 19. | Mutual draft rule |
| | | 20. | No third party beneficiaries |



5. Competent Representation, Continued

II. Communication, SCR 20: 1.4

A lawyer is also subject to SCR 20: 1.4 (Communication) which requires the lawyer:

1. to consult with the client;
2. to reasonably inform the client with respect to status of the matter;
3. to comply with reasonable requests by the client for information; and
4. to explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding representation.
5. In representing college coaches, SCR 20:1.4 requires consulting with the coach re:
 - a. bargaining game plan
 - b. negotiation strategies
 - c. contract objectives - packages
 - d. target number
 - e. trade-offs
 - f. termination strategies



5. Competent Representation, Continued

III. Scope of Representations, SCR 20: 1.2

1. Competent representation also involves a limitations of the scope of representation given the lawyer's competency. (SCR 20: 1.2)
2. Services to be Rendered - What are the services to be rendered by the lawyer?
 - a. Is the lawyer retained to procure, find, and obtain coaching opportunities for his client?
 - b. Is the lawyer retained only to negotiate, draft and enforce a coaching agreement with a university employer?
 - c. On the other hand, is the lawyer retained to bring business/marketing opportunities to the coach which might include, but not be limited to:
 - i. Broadcasting
 - ii. Internet – online digital opportunities
 - iii. Speaking or public appearances
 - iv. Literary opportunities
 - v. Licensing
 - vi. Commercial endorsements
 - vii. Merchandising opportunities
 - viii. Company spokesman opportunities
 - ix. Consulting
 - x. Autograph signings



5. Competent Representation, Continued

- d. Is the lawyer retained to advise the coach on tax and financial matters and planning?
- e. Is the lawyer retained to prepare income tax returns?
- f. Is the lawyer retained for the collection of income and payment of expenses and an accounting therefor?
- g. Is the lawyer retained to provide investment advice or engage the services of an investment adviser?
- h. Is the lawyer retained to provide post-retirement counseling?
- i. The exact services to be provided and what is under the umbrella of representation must be strictly defined.

3. A lawyer may be competent to negotiate an employment contract but not an endorsement contract, summer camp agreement, outside business opportunities, or give tax or investment advice as other requested services.



5. Competent Representation, Continued

Interstate Representation:

- The representation of college coaches involves multi-state practice in most instances.
- A premier attorney who represents multiple coaches in multiple states should consider hiring local counsel in order to ensure that contracts meet any and all local law requirements, as well as university guidelines or regulations.





5. Competent Representation, Continued

WARNING: Scope of Representation

Dual secondary occupations such as accounting functions, financial planning, investment advice, and insurance placement may actually encompass the practice of law and the lawyer better make certain he is competent to provide services in these areas if he is to offer these services as part of his representation.



6. Fee Arrangements - Compensation

SCR 20:1.5 Fee Arrangements – Compensation

1. SCR 20:1.5 deals with fees a lawyer may charge his client:
 - (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
 - (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
 - (8) whether the fee is fixed or contingent.



6. Fee Arrangements – Compensation, Continued

- (b) (1) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate as in the past. If it is reasonably foreseeable that the total cost of representation to the client, including attorney's fees, will be \$1000 or less, the communication may be oral or in writing. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing to the client.
- (2) If the total cost of representation to the client, including attorney's fees, is more than \$1000, the purpose and effect of any retainer or advance fee that is paid to the lawyer shall be communicated in writing.
- (3) A lawyer shall promptly respond to a client's request for information concerning fees and expenses.
- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by par. (d) or other law. A contingent fee agreement shall be in a writing signed by the client, and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and if there is a recovery, showing the remittance to the client and the method of its determination.



6. Fee Arrangements – Compensation, Continued

2. Fees charged by lawyers for representation of coaches in contract negotiations usually are based on:

- A. An hourly fee
- B. A contingency percentage
- C. A flat fee
- D. An Incentive fee
- E. A Hybrid fee



NOTE: No matter which method is used in a fee arrangement, lawyers are bound by the rules of ethics to charge a fee that is “reasonable.”

However, most arrangements between representatives and coaches are based on a contingent or percentage basis.

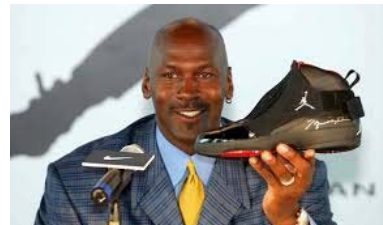
3. Examples of Contingent Fee Arrangements from Representation Agreements

A. “Prompt payment of fees.” We will bill you on an annual basis for coaching contracts we negotiate or assist in negotiating (billing generally occurs in late November or early December) and on a per-contract basis for endorsements and appearance. Our standard fee will be calculated on the gross annual compensation (e.g. salary, bonuses, deferred compensation) you receive for each year the contract is in force, including any extensions thereof. Our standard fee for a head-coaching contract is three percent (3%) of the gross annual compensation actually received. Our standard fee for negotiating an endorsement or appearance agreement is twenty percent (20%) of gross cash compensation received. We understand that some contract – particularly in the endorsements and appearance area – come with unique circumstances, and we are always happy to discuss fees on a case-by-case basis when such circumstances exist. Because our billing process occurs prior to year-end, you can take advantage of the deductibility of the fees you pay us on your current-year income tax returns (note: you should not rely solely on the prior sentence for tax advice; instead, always discuss the deductibility of agent fees with your tax advisor.)

6. Fee Arrangements – Compensation, Continued

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

- B. “Compensation: Company shall pay unto Agent for his or her services the following:
- (a) 4% of gross contract value over the life of the contract term unless gross compensation is below \$100,000.00 annually then a 2% fee will apply. (See Section 6 “Exclusions” for other compensation limitations.)
 - (b) 20% of any sponsorships, media rights agreements, licensing deals, speaking engagements or paid on air appearances.”
- C. “As compensation for its services performed under this Agreement, Agent shall be entitled to receive, and you shall pay to Agent, fees as follows:
- Coaching activities:
Four percent (4%) annual guaranteed compensation paid to you in the capacity of football coach for negotiation of coaching agreement.
 - Marketing, Merchandising and Product Endorsement Activities:
Twenty percent (20%) of all Gross Income derived from all Marketing, Licensing, Merchandising and Product Endorsement Activities.”



6. Fee Arrangements – Compensation, Continued

4. Contingent arrangements and specificity

A. If the methodology of compensation is on a percentage of gross income basis, what is encompassed within the percentage must be clearly stated and defined.

B. Gross Income.

1. The Representation Agreement should be narrowly defined as to what the percentage actually applies to and lists the forms of compensation, whether they be present, deferred, or for which the representative is entitled to a percentage therefore, including but not non-cash, limited to:

- i. Base Salary
- ii. Talent Fee – Supplemental Compensation
- iii. Signing Bonus
- iv. University Non-academic, Administrative Salary Increases
- v. Team Performance Bonuses – Personal Bonuses



6. Fee Arrangements – Compensation, Continued

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



- C. Good practice dictates written estimates of the fees that the lawyer will charge as a result of representation, and if the fee as originally provided is inaccurate, a revised written fee estimate is appropriate.



NFL PLAYERS
ASSOCIATION

6. Fee Arrangements – Compensation, Continued

- D. By way of comparison, lawyers or agents (contract advisors) who represent players are governed by regulations in that the players are unionized. By way of example, the NFLPA regulations governing contract advisors spells out the maximum compensation that a contract advisor can receive:

“B. Contract Advisor’s Compensation

(1) The maximum fee which may be charged or collected by a Contract Advisor shall be three percent (3%) of the “compensation” (as defined within this Section) received by the player in each playing season covered by the contract negotiated by the Contract Advisor, except as follows:

- (a) The maximum fee which may be charged or collected by a Contract Advisor shall be:
 - (i) Two percent (2%) for a player who signs a one (1) year tender while subject to a Franchise or Transition designation, or as a Restricted Free Agent;
 - (ii) One-and-one-half percent (1.5%) for a player who signs a one (1) year tender while subject to a Franchise or Transition designation for the second time he is tagged; and
 - (iii) One percent (1%) for a player who signs a one (1) year tender while subject to a Franchise or Transition designation for the third time he is tagged.

(2) The Contract Advisor and player may agree to any fee which is less than the maximum fee set forth in (1) above.”

6. Fee Arrangements – Compensation, Continued



The Regulations also define compensation to which the commission applies:

“(3) As used in this Section 4(B), the term “compensation” shall be deemed to include only salaries, signing bonuses, reporting bonuses, roster bonuses, Practice Squad salary in excess of the minimum Practice Squad salary specified in Article 33 of the Collective Bargaining Agreement, and any performance incentives earned by the player during the term of the contract (including any option year) negotiated by the Contract Advisor. For example, and without limitation, the term compensation shall not include any “honor” incentive bonuses (e.g. ALL PRO, PRO BOWL, Rookie of the Year), or any collectively bargained benefits or other payments provided for in the player’s individual contract.”

6. Fee Arrangements – Compensation, Continued

The Regulations also stipulate as to when the agent may receive the compensation earned:

“(4) A Contract Advisor is prohibited from receiving any fee for his/her services until and unless the player receives the compensation upon which the fee is based. However, these Regulations recognize that in certain circumstances a player may decide that it is in his best interest to pay his Contract Advisor’s fee in advance of the receipt of any deferred compensation from his NFL club. Accordingly, a player may enter into an agreement with a Contract Advisor to pay the Contract Advisor a fee advance on deferred compensation due and payable to the player. Such fee advance may only be collected by the Contract Advisor after the player has performed the services necessary under his contract to entitle him to the deferred compensation. Further, such an agreement between a Contract Advisor and a player must be in writing, with a copy sent by the Contract Advisor to the NFLPA.

For purposes of determining the fee advance, the compensation shall be determined to be an amount equal to the present value of the deferred player compensation. The rate used to determine the present value of the deferred compensation shall be the rate at which the term “Interest” is defined under Article 1 of the 2011 CBA.”



6. Fee Arrangements – Compensation, Continued

5. Example of a Contingent or Percentage Fee Agreement (use John Calipari's first contract as an example).

Lawyer enters into a contingent fee arrangement (that specifically defines gross income upon which the percentage applied) with Calipari wherein the lawyer will receive three percent (3%) of Calipari's package, defined as follows:

Signing payment	\$200,000
Salary	\$400,000
University Agreements (coach's participation in university broadcasting and endorsements payments, sometimes referred to as a talent fee or personal service fee)	\$3,300,000
Incentive compensation:	
SEC regular championship	\$50,000
SEC tournament championship	\$50,000
Sweet 16 appearance	<u>\$100,000</u>
	\$4,100,000
$\$4,100,000 \times 3\% = \$123,000.00$	

Retention incentives, perquisites, university benefits, and retirement contributions are excluded from the definition of package and from the percentage arrangement.

The lawyer will usually receive his fees when the coach receives income or on a scheduled contractual basis.



7. Prohibited Transactions

SCR 20:1.8 Client-Lawyer Relationship, Conflict of Interest: Prohibited Transactions

1. Oftentimes a lawyer who is a representative of a coach has opportunities to “go into business” with a coach, such as being a partner in summer camps, endorsement and licensing deals, business deal, television production , and investments. It is necessary to review SCR 20: 1.8 – Conflicts of Interest, Prohibited Transactions – before entering into such transactions.

SCR 20: 1.8 provides (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

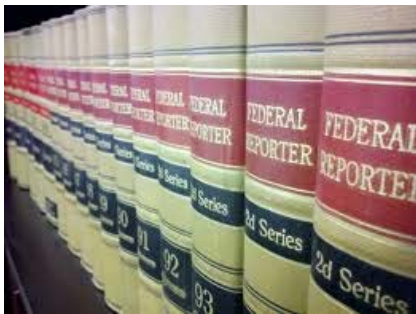
(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.



7. Prohibited Transactions, Continued

The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. The lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the clients informed consent. In some case, the lawyer's interest may be such that the Rules will preclude the lawyer from seeking the client's consent to the transaction.



7. Prohibited Transactions, Continued

Kinds of deals with clients that are suspect:

- Buying or getting stock or taking options in a client's business in lieu of a fee.
- Loaning money to clients or getting loans from clients.
- Co-investing with clients in assets or stock asset purchase sale for the clients.
- Providing compensated non-legal services to clients.
- Taking a mortgage on client-owned real estate or a security interest in client personal property.
- Allowing for a lien granted by law to secure lawyers' fees and advances for cost.



7. Prohibited Transactions, Continued

2. Brett Adams v. George Karl, 2:2013-CV-00894
(S.D. Ohio, September 11, 2013)(Justia)

A. The Complaint



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

1. Plaintiff has practiced sports and entertainment law since 1984.
2. Plaintiff has represented Defendant Karl as his personal attorney and agent for nearly twenty (20) years and has negotiated over \$50,000,000 in personal service contracts with the Milwaukee Bucks and the Denver Nuggets.
3. In 2001, for Defendant Karl, Plaintiff negotiated the highest paid professional coach’s contract in the sport at \$7,000,000 per year.
4. The contractual agreement between Defendant Karl and Plaintiff for the past ten (10) years has been a monthly payment of \$10,000.00 per month. The agreement further requires Defendant Karl to grant Plaintiff new business opportunities by introducing and/or referring him to other coaches in need of representation, including Defendant’s own assistant coaches.
5. The monthly payments were to continue until all contractual payments, including all contracted deferred payments were received by Defendant Karl, regardless of his employment status.

7. Prohibited Transactions, Continued

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

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



7. Prohibited Transactions, Continued

B. The Counterclaim

On or about January 9, 2014, Karl's attorneys filed an Answer, Counterclaim, and Third-Party Complaint. Karl, in his pleading, claims that Adams was his trusted attorney for nearly twenty years and what started as a typical attorney-client relationship expanded over time to include a close friendship and a myriad of business entanglements. Adams was vested with a General Durable Power of Attorney for Karl, acted as his financial advisor, and managed and acted as legal counsel for business entities for which both Adams and Karl had a financial interest. Adams had full control over Karl's finances, including Karl's personal and brokerage accounts, and all business entity accounts.

1. Karl claims that Adams never presented him with a written fee agreement and that there was no memorialization of the terms of their relationship. However, Adams did act under a General Durable Power of Attorney from May 13, 2004 to August 2012.
2. Adams and Karl were partners in Adams Karl Investments, LLC ("AKI"). Karl claims there were multiple lines of credit where Adams caused Karl to personally guarantee one or more of the lines of credit. Adams and Karl were also owners of a company named Sports Facilities Development, Ltd. ("SFD"). Adams served as legal counsel for the entities they created.



7. Prohibited Transactions, Continued

3. Karl is now claiming not only breach of fiduciary duties, but also misappropriation of funds. Karl is further claiming that Adams never informed him of the existence of conflicts of interests arising out of Adams' representation as attorney for Karl. No waiver of conflicts were ever signed. Karl claims he has never received a full and completed accounting of the financial transactions of which he has a personal interest. Upon the ending of their relationship, Karl alleges that Adams made numerous distributions to or for the benefit of either Adams or his law firm without Karl's knowledge or consent. As a result of the entangled relationship, Karl claims numerous causes of action against Adams including legal malpractice and negligence. Karl claims that Adams had to uphold his multiple duties of loyalty, care, and disclosure, and that Adams breached these duties by continuing to represent Karl despite obvious conflicts of interest; acting in Adams' own self-interest; mismanaging Karl's accounts; conversion; failing to properly and competently manage Karl's affairs; failing to provide adequate and accurate information to Karl; and failing to provide Karl with a full accounting as requested. Karl further claims a breach of contract.

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

Result: The case is still pending. However, a ruling on August 26, 2014 now limits Bret Adams actions against George Karl only to Breach of Contract and Breach of Fiduciary Duty.

8. Conflicts of Interests

SCR 20:1.7 Conflicts of Interests - Current Clients

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.

(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 writing signed by the client.



8. Conflicts of Interests, Continued

In a coaching representation context the following could constitute a conflict of interest:

- Representing a coach in a contract negotiation when the lawyer either represents the team, university, or team owner.
- Representing assistant coaches when the lawyer represents the head coach at the same university or team.
- Representing a paid professional player when you are also representing the coach.

Lawyers are responsible for conflicts that may arise, and must be adept at identifying any potentially conflicting representation, and must be proactive in order to avoid improprieties.

Notwithstanding the existence of a concurrent conflict of interest, a lawyer may represent a client if the lawyer believes he will be able to provide competent and diligent representation, it's not prohibited by law, and the client gives informed consent.



8. Conflicts of Interests, Continued

There may be an inherent conflict of interest between the coach and lawyer in negotiating and drafting the representation agreement. Conflicts might include:

- The term of the contract and whether it is exclusive
- The compensation and whether it is percentage or hourly basis
- What constitutes income upon which a commission is derived
- Reimbursement of expenses
- A dispute resolution process
- Publicity and the use of the coach's IP rights
- Termination and rights of the representative to receive income post-termination
- Acknowledgement of the conflict of interest and confidentiality

The coach might seek independent counsel to review the representation agreement.

See, College Coaches – Representation Agreements, Greenberg's Coaching Corner, <http://law.marquette.edu/national-sports-law-institute/greenbergs-coaching-corner>

8. Conflicts of Interests, Continued

“Inside Conflicted World of Agents Repping College Coaches, NFL Players” by Jeremy Fowler, cbssports.com, January 17, 2014.

“If the names of Alabama linebacker C.J. Mosley and Texas Tech tight end Jace Amaro are called as expected during the first round of the NFL Draft, to be held in New York on May 8, those players will stand to earn a minimum of \$3 million in bonus money.

The agents who negotiate those deals -- Jimmy Sexton in the case of Mosley and Erik Burkhardt of the Houston-based Select Sport Group in the case of Amaro -- will walk away with a commission of roughly 3 percent, which will more than likely equate to a six-figure sum before their client has even strapped on an NFL team's helmet, with the promise of many more dollars to come.

Sexton and Burkhardt are talented agents. And if Mosley and Amaro were looking for endorsements of that sentiment as they sought representation for their move to the next level, they needed only to walk across campus. Their college coaches, Nick Saban and Kliff Kingsbury, are represented by the same men.

Mosley and Amaro joined a growing list of players who, out of 800-plus agents certified with the NFLPA, chose their college head coaches' agents, a practice that is completely permissible by NCAA or NFLPA bylaws as long as it occurs after a player has played his last college game. Not that everyone is comfortable with the allowance.

“It's an absolute conflict of interest,” Big 12 commissioner Bob Bowlsby said of agents representing both college coaches and NFL players. “A rule or some sort of accepted practice to prohibit it would be appropriate.”

Added Duke coach David Cutcliffe: “That's something that needs to be looked at.”





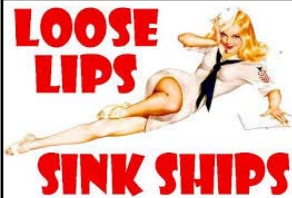
8. Conflicts of Interests, Continued

NBA Conflict of Interest Rules: The National Basketball Players Association Regulations Governing Players Agent has long forbidden certified player agents from representing coaches, general managers, or “any other management representative who participates in the team’s deliberations or decisions concerning what compensation is to be offered individual players.” The rule has been on the books for decades to guard against the obvious conflicts of interest that would arise if an agent were operating on both sides of a player-management negotiation. The NBPA is the only one of the four major pro sports unions in North America that expressly outlaws the practice.

The rule has not been strictly enforced under former union chief Billy Hunter’s regime, creating an environment in which agents have wielded unchecked power within certain organizations while allowing themselves to be places in the ethical quagmire of representing players and their negotiating adversaries simultaneously.

No better evidence of the problem in non-enforcement of this rule was Jason Kidd’s clumsy exit from his job as Coach for the Brooklyn Nets. Kidd is represented by Jeff Schwartz of Excel Sports Management, who also is a players’ agent with in excess of 36 clients. Schwartz role in brokering Kidd’s exit from Brooklyn and Kidd’s public disclosure of it, brought the widespread existence of such conflicts to the forefront and exposed the fact that the rule previously on the books is evidently not enforced.

Interestingly enough, Schwartz not only represented Jason Kidd, but his agency also represented several of the Nets’ most important players, including point guard Deron Williams, forward Mirza Teletovic and two free agents who ultimately signed elsewhere – Paul Pierce and Shaun Livingston.



9. 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.
- B. [2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0 (e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.



- C. Using the News or Social Media

Your newest client is the young upstart coach from XYZ University, 33 years old, almost a winner of the March Madness. You announce in the local newspaper, your Facebook and Twitter accounts, that your client is underpaid, that in order for XYZ University to keep him he will need a new five-year, \$15 million guaranteed contract, and that his program supports the athletic department. The athletic director joins the rhetoric on behalf of the University. The coach is offered a new three-year contract with a rollover, but the contract contained a termination for cause involving moral turpitude. You are quoted in the newspaper as indicating that XYZ University is in the Dark Ages, that its contract offer is a prehistoric package, and that you would accept only a minimum of a \$15 million, five year contract. To what extent can you publicly talk or use the newspapers or social media to negotiate a contract for your client?



9. Confidentiality, Continued

- D. SCR 20:1.6(b) permits a lawyer to reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal or fraudulent act that the lawyer reasonably believes is likely to result in death or substantial bodily harm or in substantial injury to the financial interest or property of another.

Talks hurt Derek Jeter-GM Relationship, ESPNNewYork



"The book, "The Captain: The Journey of Derek Jeter," details a Nov. 30 sit-down in which Jeter, his agent Casey Close and Creative Artists Agency attorney Terry Prince met with Cashman, team president Randy Levine and co-owner Hal Steinbrenner to iron out their differences. The Tampa summit lasted four hours, but Jeter stayed for only the first 45 minutes, telling his employers -- especially Cashman -- how angry he was that they had made details of the negotiations public.

When Jeter got up to leave the room, Cashman asked the shortstop to sit back down and hear him out. "You said all you wanted was what was fair," the GM told the shortstop. "How much higher do we have to be than the highest offer for it to be fair?"

Jeter, who had no other offers in his first pass at free agency, ultimately signed a three-year, \$51 million guaranteed deal plus an option year and incentive bonuses. But the negotiations were often difficult. When Close told Daily News columnist Mike Lupica that the Yankees' negotiating stance was "baffling," Hal Steinbrenner gave Cashman the green light to take the fight to Jeter and Close in the media. The quote that would anger Jeter the most was the one Cashman gave to ESPNNewYork.com's Wallace Matthews, who quoted the GM saying that Jeter should test the market to "see if there's something he would prefer other than this."

9. Confidentiality, Continued



E. Problems – Under SCR 20: 1.6(b) would you have to disclose if you represented the following coaches and had prior knowledge of their activities?

Baylor University basketball scandal: Conservative Baylor University was hit with a shocking scandal in 2002 and 2003 that resulted in the mysterious death of a promising athlete and serious allegations of violating NCAA regulations. Two Baylor basketball players, Patrick Dennehy and Carlton Dotson bought weapons after reporting threats made to them by other players, and shortly after, they disappeared. Dennehy's car was found in Virginia Beach a few weeks later, and police eventually arrested Dotson for the boy's murder, and he pled guilty in 2005. In addition to the murder, Baylor University President Robert B. Sloan created an investigative panel to research any alleged NCAA violations involving Dennehy's involvement with the team. They found that head coach David Bliss had ignored drug abuse by team members and was guilty of recruiting violations. Bliss resigned in 2002, and the NCAA imposed sanctions on Baylor's basketball program.

Clem Haskins, University of Minnesota: Minnesota Public Radio reports that this scandal was deemed by the NCAA as being "among the most serious cases of academic fraud in 20 years." In 1999, reporters discovered that University of Minnesota basketball tutor and office manager Jan Gangelhoff had apparently forged homework assignments for players over five years. Apparently head coach Clem Haskins was also involved, as well as academic adviser Alonzo Newby. The University of Minnesota returned 90% of money awarded to them from three NCAA tournaments, a move which saved them from severe NCAA sanctions.

John Calipari, UMass and Memphis: Men's basketball coach John Calipari has been praised for bringing teams to national championships, but was also named "the sleaziest coach" by Slate.com for two separate scandals he was involved in at two separate schools. While Calipari was at University of Massachusetts, he took his team to the Final Four, which they won in 1996. The NCAA took away the honor in 1997 after it was discovered that Calipari and player Marcus Camby had accepted jewelry, expensive cars and hookers from agents and other insiders. Calipari moved on to coach Memphis, which he brought to the championships in 2008. In 2009, however, the NCAA took away those honors and even made the school pay back tournament revenues. This time, it was because of his participation in a scandal involving SAT fraud.

9. Confidentiality, Continued

Rick Pitino, University of Louisville: University of Louisville basketball coach Rick Pitino admitted in 2009 to having had sex with a woman who was not his wife in 2003. He issued a public apology after the woman tried to extort money from him. Despite a claim that Pitino took advantage of her — and may have raped her — the police only charged the woman with extortion, and the University of Louisville president James Ramsey stuck by Pitino. In a twist reported by ESPN, however, the woman and her parents denied ever having made any extortion requests, and believe that Pitino made it all up.

Pokey Chatman, LSU: LSU women's basketball coach Pokey Chatman had to resign in March 2007, after a story was publicized about her sexual affair with one of her female players. Chatman announced her resignation quietly and did not mention the affair at first. She was allowed to coach the team during the NCAA tournament, but when the real story came out, she opted out of the tournament."

("Top 10 Coaching Scandals in College Sports History," Staff Writers, April 6, 2010, www.onlineuniversities.com/blog/2010/04/top-10-coaching-scandals-in-college-sports/)



10. Solicitation - Advertising

SCR 20:7.1 Communications concerning a lawyer's services. A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

- (a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
- (b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or
- (c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or
- (d) contains any paid testimonial about, or paid endorsement of, the lawyer without identifying the fact that payment has been made or, if the testimonial or endorsement is not made by an actual client, without identifying that fact.



10. Solicitation – Advertising, Continued

SCR 20:7.2 Advertising.

(a) Subject to the requirements of SCR 20:7.1 and SCR 20:7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may:

- (1) pay the reasonable cost of advertisements or communications permitted by this rule;
- (2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;
- (3) pay for a law practice in accordance with SCR 20:1.17; and
- (4) refer clients to another lawyer or nonlawyer professional pursuant to an agreement not otherwise prohibited under these rules that provides for the other person to refer clients or customers to the lawyer, if
 - (i) the reciprocal referral arrangement is not exclusive;
 - (ii) the client gives informed consent;
 - (iii) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
 - (iv) information relating to representation of a client is protected as required by SCR 20:1.6.

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.



10. Solicitation – Advertising, Continued

SCR 20:7.3 Direct contact with prospective clients.

(a) A lawyer shall not by in-person or live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer; or
- (2) has a family, close personal or prior professional relationship with the lawyer.



(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by par. (a), if:

- (1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer; or
- (2) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or
- (3) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any printed, recorded or electronic communication, unless the recipient of the communication is a person specified in pars. (a) (1) or (a) (2), and a copy of it shall be filed with the office of lawyer regulation within five days of its dissemination.

(d) Notwithstanding the prohibitions in par. (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

(e) Except as permitted under SCR 11.06, a lawyer, at his or her instance, shall not draft legal documents, such as wills, trust instruments or contracts, which require or imply that the lawyer's services be used in relation to that document.

10. Solicitation – Advertising, Continued

The Dangers of in-person solicitation:

- overreaching, undue influence, intimidation, and other forms of vexatious conduct.
- solicitation rules guard against lowering the status of the profession.

Permissible Solicitation:

- Solicitation from close friends, relatives, former clients, or other bar members.
- Targeted letters and direct mail to potential clients.
- Ohio Supreme Court has held that limited solicitation via text message is permissible.

Disadvantage to lawyers?

- Direct mail solicitations and letters may have little impact upon coaches in need of legal services.
- Coaches expect in-person contact and solicitation, face to face.



10. Solicitation – Advertising, Continued



- Members of the legal profession can be put at a competitive disadvantage when attempting to acquire sports clients because of the direct prohibition on direct solicitation.
- Non-lawyer agents are not held to such rules and standards and can take part in open recruiting practices that lawyers may not engage in.
- In most situations, lawyers may only send target mailings and letters to potential clients, while non-lawyer agents are free to use direct communication in person, over the phone, or internet contact.
- Because of this competitive disadvantage, there have been suggestions of a special exemption to relax solicitation rules for sports lawyers. Justifications for this potential exemption are: the nature of the representation of the industry is such that sports figures expect solicitation, sports clients are “sophisticated” persons that would likely be more adept at sifting through solicitations of various potential representatives, and that governing bodies such as players associations are not very concerned about the issue of solicitation.

So long as a lawyer is engaged in the practice of law, he is bound in the ethical requirements of that profession and he may not defend his action by contending that he was engaged in some other kind of professional activity. For only in this way can full protection be afforded to the public, i.e. – Once a lawyer, always a lawyer.

