
Kristopher W Zinchiak, University of Miami

Available at: https://works.bepress.com/kristopher_zinchiak/2/
Can “Show Business” and “Show Ethics” Coexist in Sports Agency?

An Examination of the Conflicts of Interests Professional Sports Agents Face Today

Written by: Kristopher Zinchiak
Table of Contents:

Section I: Introductory Identification of the Topic (Page 2)

Section II: An Examination of the History of Sports Agency (Page 2)

Section III: Analysis of the Current Issues- Conflicts of Interest and Ethical Dilemmas (Page 6)

A. Representing Multiple Players in the Same League (Page 7)

B. Representing Multiple Players on the Same Team (Page 9)

C. Representing Multiple Players on the Same Team at the Same Position (Page 13)

D. Dual Representation of Players and Coaches/Management (Page 15)

E. Reasonableness of Fees Charged by Agents (Page 18)

F. Dual Representation of Players and Events/Exhibitions (Page 21)

G. Miscellaneous Examples of Ethical Conflicts (Page 22)

Section IV: Analysis of the Current Status of the Law- Regulation of Sports Agents (Page 24)

Section V: Recommendations for Change (Page 27)

Section VI: Conclusion (Page 31)
I. **Introductory Identification of the Topic**

The role of a sports agent is to be the ultimate protector of his/her client and to represent his/her client’s interests zealously. However, as the realm of professional sports has evolved into a highly lucrative business, it has become increasingly more convenient to both overlook and undervalue the industry’s most fundamental interest, namely the protection of its players. Tempted by the lure of the almighty dollar, it is now commonplace in today’s society to cast players’ interests aside for the more appealing objectives of monetary gain and the economy of sport. In theory, sports agents exist to combat this temptation through their very definition. Yet, the ever-present ethical dilemmas and conflicts of interest inherent within the present-day sports agents’ practice, coupled with the overwhelmingly negative connotation that emanates from the mere mention of the words “sports agent”, suggests that this is most certainly not the case. Ironically, the very evil that the profession of sports agents was created to combat, is now arguably most prevalent within its own industry. So what developments have led to a profession of player protectors receiving such a bad reputation? Why have sports agents become popularly perceived by society as a sleazy, unscrupulous, and morally deficient group?¹ The answer lies within an examination of the history of sports agency, the ethical issues facing sports agents today, the decisions and justifications sports agents make in response to these issues, and the current system of regulation in place that governs the actions and behavior of sports agents.

II. **An Examination of the History of Sports Agency**

Only a few decades ago, the business of professional sports’ contracts was conducted without the existence of sports agents.² Under that system of “negotiation,” owners of professional teams were the ones that enjoyed having the upper hand, while players were often

¹ Craig Neff; *Den of Vipers, A Sports Scourge: Bad Agents*, at 1.
² Melissa Neiman; *Fair Game: Ethical Considerations in Negotiation by Sports Agents*, at 2.
left unprotected and void of any significant bargaining power. General managers and team owners made it clear that agents were not welcome during contract negotiations, deliberately choosing not to deal with players who had representation in order to maximize their own interests. Whenever agents were employed, it was usually an amateur friend or relative of the athlete who was used in other sports-related issues outside of contract negotiation. However, since these early days, the sports agency profession has incurred dramatic changes, transforming sports agents from a virtually nonexistent, insignificant group into a paramount figure to be reckoned with in the professional sports industry.

In the early 1970’s, the Major League Baseball Players Association recognized this pressing need for player protection and collectively bargained to give players the right to have representation present during contract negotiations with Major League teams. This opened the door for sports agents, facilitating the start of a profession. As prominent sports agent Leigh Steinberg revealed, “The evolution of sports (agency) stemmed from the abuse of players by

---

3 “The clubs' position at the time was very, very simple. In essence, clubs would tell players, ‘You are my potential employee, or you are my actual employee, and if you want to talk to me about a new contract or a raise, I will be glad to talk to you, by yourself, on my terms, for as long as I want to, and you cannot bring anyone with you.’ In those days, the circumstances were such that if you showed up with an agent, (if the meeting was not canceled immediately) the agent remained out in the hall. Every once in a while the player would be permitted, if his personality was strong enough, to walk out into the hall and talk to his agent. The player would try to recapitulate what had happened in the meeting so far, in an attempt to elicit advice from his agent to take back in and try to carry out individually. That is a very difficult thing to do.” Donald Fehr, The Second Annual Sports Dollars & Sense Conference: A Symposium on Sports Industry Contracts And Negotiations: Union Views Concerning Agents: With Commentary on the Present Situation In Major League Baseball, 4 Marq. Sports. L. J. 71, 72 (1993).

4 Illustrating this point is the infamous story involving former Green Bay Packers Coach Vince Lombardi (who ironically failed out of Fordham Law School after his first semester) and former Green Bay Packers star center Jim Ringo, who played in every game for the Packers over a ten year period during the 1960’s. When Ringo’s contract came up for renegotiation, he made the fatal mistake of bringing an agent to the renegotiation meeting. As Ringo sat down with the gentleman, Lombardi inquired as to who the gentleman was. Upon hearing that the man was there to assist Ringo with his renegotiation, Lombardi excused himself in order to make a phone call. When Lombardi returned, he told Ringo that he was renegotiating with the wrong team since he had just been traded to the Philadelphia Eagles. Patrick Connors; Panel III Ethics and Sports: Agent Regulation; 14 Fordham Intell. Prop. Media & Ent. L.J. 747, 747-748 (2004).

5 Scott R. Rosner; Conflicts of Interest and Consolidation in the Sports Agent Industry, at 4-5.

6 Id.
management for many, many years.”

Thus, sports agents were initially viewed in a positive light publicly, fighting for the underrepresented rights of players to ensure that they were sufficiently compensated for their services. Given this valiant objective, there was little need initially to examine the ethical parameters of the occupation.

However, the realm of sports soon developed into a business as the dynamics of the situation quickly shifted. Now, not only did the use of agents become much more customary during the negotiation process, but the balance of power had swung overwhelmingly in favor of the player to the point that it became unusual for an athlete to negotiate a contact without representation. The increased dependency on agents thereby began to multiply, allowing agents to expand their services outside of just handling contract negotiations. This involvement has evolved to the point that agents today are omnipresent in virtually every facet of their clients’ professional and personal lives. Unfortunately, a dependency upon sports agents, coupled with the profession’s minimal entry requirements, has provided an avenue for individuals with less than honorable intentions to access, manipulate, and dishonor the profession. Thus, as players’ rights became more prominent in this area, not only did their salaries increase dramatically, but so did the commissions of the agents who represented them, igniting a fierce competition within the profession. Regrettably, it has been suggested that “the biggest casualty of this competition has been ethics.”

As Harvard law professor and sports law specialist Paul Weiler explained, “The reason we had to have agents in the first place was to protect the players from owners. The problem we have now is how to protect the player from the agent. In a sense, we’ve just pushed the problem

---

7 Neff, at 1.
8 Rosner, at 4-5.
9 Ethan Lock; The Regulatory Scheme for Player Representatives in the National Football League: The Real Power of Jerry Maguire; Sports Law?, at 319-320.
However, the effects of these developments are far greater than the phrase “just pushing the problem back one stage” initially suggests. Instead of players needing protection from a group of individuals whose motives and agendas are often clear and predictable, players now need protection from their closest business associate who has an intimate knowledge and extensive familiarity with regard to several aspects of their clients’ lives. An attack from the outside is easier to prepare for and defend than an attack from within so to speak. Therefore, the “problem” has not just shifted stages, it has magnified exponentially.

While sports agents have filed an unparalleled amount of lawsuits against one another for various unlawful and unethical practices, the players are the ones that are most often the victims. Renowned sports agent Tom Reich, who has been one of the profession’s most celebrated members for over 30 years, recently stated that “The impropriety and corruption is, absolutely, as I look back, at an all-time high. It’s like Al Capone’s Chicago and it’s despicable.” Yet, this unethical behavior is arguably increasing each year as agents only continue to grow more and more powerful. In fact, the problem of ethics within the sports agent industry has gotten to be so bad that a lucrative niche has actually developed by suing sports agents in order to protect players. Ed King, a San Francisco attorney who embarked on this specialty boasts that his newly found venture has bona fide “growth potential,” remarking that, “If the worst you can say about one of them (agents) is that he’s incompetent, that probably puts him among the top five percent in the sports business.” Bill Saum, the NCAA’s director of agent, gambling, and amateur activities went even further by admonishing young lawyers that

---

10 Neff, at 1.  
11 Liz Mullen; Sleeze Factor Off the Charts, Agents Allege.  
12 Id.  
13 Lock, at 319.  
14 Neff, at 1.
not only is sports agency “a dirty, dirty business,” but he also believes that in order “for an agent to be successful, it is necessary to at least bump up against the line of (violations).”  When the problem has worsened to the point that those who regulate the profession deem its success to be dependent upon being unethical to a certain degree, it has become time for those who genuinely care about the profession to not only examine why the problem exists, but to also determine what can be done to fix it.

III. Analysis of the Current Issues- Conflicts of Interest and Ethical Dilemmas

In order to comprehend why the sports agency profession has become what it has, it is necessary to conduct a thorough examination of the most common conflicts of interest that impact its members on a daily basis. These conflicts have always existed within the profession; however, they have increased considerably with the advent of free agency, salary caps, and rookie signing pools. Many agents will readily admit that conflicts are present within their dealings, but they are almost always quick to follow with their attempted justification de jour. Too often, these justifications fail to address the fundamental reality that an agent owes a fiduciary duty of undivided loyalty to his/her client, meaning that the agent has the responsibility to avoid all of the actual and apparent conflicts of interest. Yet, arguably the larger impediment to achieving change within the industry lies in the fact that agents overwhelmingly recite these rationalizations in a subconscious, whimsical manner without truly pausing to ponder the conflict. This attitude has encouraged a pervasive concern among sports agents to protect

---

15 Mullen; Sleeze.
16 Lock, at 345; Prior to salary caps and free agency, potential conflicts of interest for agents were minimized since the team virtually owned the rights to their players and had little restriction on deciding which players they would keep. Id.
17 “Are there conflicts? Sure, but the fact is even in the pure legal world, conflicts can always be dealt with by disclosure,’ said baseball agent Jeff Moorad, in an argument repeated by many of his colleagues. Still, that does not erase the appearance -and, in many cases, the reality – of conflict.” Mark Fainaru-Wada & Ron Kroichick, Agents of Influence.
18 Neiman, at 3.
themselves, as opposed to protecting their clients. These conflicts of interest cannot possibly be resolved in a sufficient manner if most sports agents are either unwilling or unable to actually identify or address the full extent of the conflict. Thus, the following analysis of the potential conflicts of interest that sports agents face will serve to both expose and detail the depths of these specific ethical dilemmas.

A. Representing Multiple Players in the Same League

The potential conflicts of interest involved with representing multiple players in the same league is the most basic of conflicts and is merely the foundational starting point for this discussion. The general idea behind this conflict is that whenever an agent represents different players on different teams within the same league, he is representing competitors. In virtually any other field, this conflict would be improper. However, in the field of sports agency, both players and agents too often dismiss it as the cost of doing business, without ever truly ascertaining all of the ways in which this conflict might manifest itself. For example, an agent who represents more than one player in the NFL would find it impossible to provide undivided personal attention to each of his clients, especially since the annual schedules for each team are virtually identical with respect to player responsibilities. With all of the ways that sports agents are expected to service their clients these days, how can an agent possibly fulfill his duty of loyalty to each player if he/she, for example, elects to attend one client’s big game instead of another client’s big game when they are both scheduled on the same day? The first client is getting personal attention and garnering the benefits of having his agent present while the other client is left to fend for himself.

19 “Agents usually defend their conflicts by saying that their clients are fully aware of them. For example, (sports agent Alan) Eagleson has said, ‘Everything I do is out front. If the players don't like it, all they have to do is fire me.’ But this doesn't get agents off the ethical hook.” Neff, at 3.

20 Id.
Another potential conflict arises when an agent represents two big-name players who are both going on the free agency market at the same time and are both expected to be courted immediately after the start of free agency. If various team owners want to begin negotiating with both clients as soon as possible, how does the agent juggle his clients in order to serve both of their best interests, considering that a player’s value may fall with each minute that passes? Furthermore, at what point does the temptation present itself to encourage Client B to sign a deal to remain with his current team that is a little less than what he could be making in free agency, just so that the agent can devote his/her entire attention to striking a bigger jackpot, and subsequently a bigger commission, in free agency for Client A?

This potential conflict also presents itself when discussing the issues surrounding the draft. Can an agent who represents two potentially high first-round draft picks effectively fulfill his duties to both clients? One such agent apparently thought not as Jim Steiner of SFX Football willingly withdrew himself from the competition to become the agent for top draft prospect Julius Peppers because he was already close to signing another top draft prospect, Bryant McKinnie. Steiner believed that there was a potential conflict of interest present that would prevent him from executing his basic responsibilities as an agent, despite the fact that the players played different positions and were almost guaranteed to be drafted by different teams. While this is both highly ethical and refreshing, it is also unfortunately unusual in today’s business of sports agency.

At some point, the current system expects agents to be professionals, but they have hardly proven collectively that they are worthy of such a designation. Considering that an agent has “a duty to disclose any information that might impede or compromise the agent’s representation of

---

21 Liz Mullen; Adviser’s Blitz to Find Agent for Peppers Started With Hands-Off Warning. at 16.
the athlete,” how many agents realistically discuss in detail these impending hypotheticals with potential clients before they agree to represent them, especially naïve potential clients who are just getting ready to enter the professional sports industry for the first time? While these potential conflicts deserve to be given a sufficient amount of consideration, it must also be noted that even the most ethical agents face a Catch-22 situation when it comes to these dilemmas. An agent cannot maintain a long list of clients without compromising the interest of someone along the way; however, it is also very difficult for an agent to remain in business very long, let alone build up a positive reputation in the industry, with only one client per sport. Conflicts such as these are certainly worthy of being given consideration, and are only the “tip of the iceberg” when it comes to the ethical dilemmas that sports agents face.

B. Representing Multiple Players on the Same Team

Taking the initial dilemma to another level, potential conflicts of interest begin to evolve more distinctly when sports agents represent more than one player on the same team. As mentioned earlier, this is especially the case when it occurs within the confines of a sport that has a salary cap. With this fixed amount of income per team, agents are essentially bargaining against themselves when they enter into contract negotiations for two different players with the same team. Ultimately, the agent is attempting to represent two different clients that are both competing for a finite resource. Once again, a conflict of this nature is almost always considered unacceptable in other fields. For example, if an agent in this situation does his/her job effectively and negotiates a very lucrative contract for Client A, it is possible that this will result in Client B having to settle for a lesser salary, or perhaps even be released by the team.

---

22 Neiman, at 3
23 Rosner, at 23.
24 Neiman, at 2
25 Neiman, at 10-11.
Therefore, whether consciously or unconsciously, the agent has compromised the interests of one of his clients in order to better serve another client.\textsuperscript{26} This type of situation caused NFL Executive George Young, a former general manager of the New York Giants, to illustrate the severity of the situation by remarking, “The agents get into situations where the more people they represent, the more they cost people jobs.”\textsuperscript{27} Agents are also placed in a precarious position if the general manager informs the agent that the team can only offer one guaranteed contract. Which client does the agent more zealously represent? Furthermore, how does the agent maintain his/her duty of confidentiality to one client, while also remaining steadfast to his/her duty of not withholding general market information from the other client?

Arguably, the most egregious failure by an agent who represents more than one player on the same team is to not maintain a single-minded purpose for each client.\textsuperscript{28} This is often a product of agents being tempted to use their client list in order to exert leverage over a team. For example, if an agent represents both a superstar player and an average player on the same team, he/she may attempt to package the two together in order to gain power in the negotiation process. This can be accomplished regardless of whether the players are free agents or under renegotiation. These situations are obviously highly unethical since the agent is essentially using one client as leverage for another client. Sports agent Tony Pace illustrated the unethical nature of this situation in 1981 when he represented Hal McRae and Frank White, both players with the Kansas City Royals. Pace reportedly refused to come to terms with a contract for White until the Royals agreed to extend McRae’s current contract. Ultimately, the Royals refused to entertain this behavior, which caused White’s contract to be delayed by one month. When White found

\textsuperscript{26} Id.
\textsuperscript{27} Rosner, at 24-25.
\textsuperscript{28} Id.; Additionally, if an agent is more focused on how potential future clients will view the outcome of his/her negotiation, then the agent is most likely not acting in his/her current client’s best interests. Neiman, at 15.
out about Pace’s tactics, he became understandably upset that he was being used in order to leverage a contract for McRae.\textsuperscript{29} Not only can these situations harm the client that is being leveraged, but it can also harm other clients completely unrelated to the packaging scenario if the agent’s relationship with that particular team deteriorates to such a degree that the team refuses to negotiate with that particular agent in the future.\textsuperscript{30}

Rookie pools also present an opportunity for conflicts of interest to develop. Because of the way the system is set up in the NFL, negotiations for rookie contracts are essentially a “zero sum game.”\textsuperscript{31} This means that in theory, the more money that one rookie client receives, the less amount of money that there is available for another rookie client. Once again, the agent is in a position of negotiating against him/herself. While most teams attempt to provide market deals for their draft picks so that the pool of money that rookies actually have to fight over is minimized, the conflict nevertheless exists. Additionally, the conflict becomes greater when the two clients are selected relatively close to one another in the draft as opposed to being selected further apart.\textsuperscript{32}

Sports agents have attempted to offer several justifications for forging on despite the presence of these conflicts. Perhaps the most popular is the argument that the market determines the value of the player in a majority of these situations.\textsuperscript{33} This means that players who play the same position and have similar skill levels will ultimately receive similar compensation. This argument even prompted one agent to respond, “I’m not selling… they’re buying,” when asked

\textsuperscript{29} Id. at 12-13
\textsuperscript{30} Id; The current situation between Scott Boras and the New York Yankees illustrates this premise on a different level. While an act such as this would have been viewed at the inception of the sports agency profession as an outrageous example of management refusing to acknowledge player rights; it is now ironically viewed as a courageous stand by the leaders of the organization against the arrogance and greed of sports agency.
\textsuperscript{31} Id., at 346.
\textsuperscript{32} Id.
\textsuperscript{33} Neiman, at 9.
about zealously representing two clients in a salary cap situation. Yet, the fundamentals of this argument backfire on the agent since it essentially renders the agent useless in the contract negotiation process. If this were truly the case, the player wouldn’t really need an agent for business purposes. Thus, this argument is deficient on many levels. First, the market value of an athlete is not fixed throughout the league. While skill level plays a role in a negotiation setting, so does the existence of several other factors, such as the demand a particular team has for a certain position player. Furthermore, the skill level of a player is often subjective from team to team depending upon what the team is looking for and who they currently have at the position. Different teams also have different methods of negotiating players’ contacts. Thus, a skillful agent does play a critical role in obtaining a contract for more than the “perceived market value” of his/her client.

Agents also utilize an argument, founded within the Model Rules of Professional Conduct, that these conflicts of interest can be “cured” by “reasonably believing” that the agent can provide competent representation, while also obtaining the client’s informed consent. However, many experts have determined that “this cure may be inapplicable to conflicts in which the agent represents athletes on the same team, particularly in a league with a salary cap.” This purpose of this determination is to ensure that agents only undertake clients in situations where they can be assured that the agent’s judgment or loyalty to the client will not be impaired. It is also important to note that there are two components to the “reasonable belief” factor (particularly for attorneys): the subjective component which is based on the agent’s own

---

34 Connors, at 781.
35 Neiman, at 13-14
36 Id. at 9.
37 Id.
38 Id. at 10.
mental process; and the objective component which is based on what the “reasonably prudent” agent would do in the given situation.\textsuperscript{39} When agents attempt to rationalize the reasonableness of their decisions regarding potential conflicts that a certain situation may pose, their ability to formulate a truly “reasonable” belief may be clouded, and thus they have failed to satisfy the subjective component.\textsuperscript{40} Furthermore, even if the agent can perceive the conflict clearly and is able to satisfy the subjective reasonable belief standard, that belief may still conflict with what the reasonably prudent agent should do in the situation, thereby failing to satisfy the objective component. In both cases, the conflict has not been cured because both components have not been satisfied. As Director of Professional Ethics at Case Western University, Robert P. Lawry firmly believes that it is inevitable that an agent’s judgment and/or loyalty will be compromised within these situations regardless of whether the athlete is aware of the conflict or not, and that therefore, no amount of disclosure can cure this impairment.\textsuperscript{41} Thus, these conflicts need to continue to be examined in order to ensure that the ultimate protection for players is attained despite the rationalizations that agents provide.

C. Representing Multiple Players on the Same Team at the Same Position

This area of potential conflicts adopts many of the same points that the first two sections dealt with, while advancing the conflict to an ever more concrete phase. Thus, as the common threads between the clients start to increase, the potential for conflict becomes significantly less theoretical and significantly more extant. A classic example of this is when Leigh Steinberg, a sports agent who specializes in representing NFL quarterbacks\textsuperscript{42}, found himself representing all

\textsuperscript{39} Id. at 17.
\textsuperscript{40} Id. at 17.
\textsuperscript{41} Id. at 20.
\textsuperscript{42} Shockingly, at one point, Steinberg was reported to be representing 18 different NFL quarterbacks. Rosner, at 26.
three of the Pittsburgh Steelers quarterbacks in 1995. This essentially means that Steinberg had three clients who were all competing for the same job. Once again, this is an obvious conflict of interest that is intolerable in other fields. When another sports agent was asked how he felt about the apparent conflict that this situation presented, he simply replied, “Steinberg works on every side of everything.” This response begs the question: If an agent is able to be on every side of these complicated equations, how do his/her clients know when the agent is on their respective side?

Another example of this conflict is illustrated by a situation that occurred when the Denver Broncos wanted to sign free agent quarterback Gus Frerotte in the offseason in order to compete with their existing quarterback Brian Griese for the starting position in the upcoming year. A serious conflict of interest arose when it was discovered that both quarterbacks were clients of sports agent Ralph Cindrich. Cindrich addressed the conflict by announcing that he informed both clients of the situation and obtained both of their approvals. Cindrich also went so far as to say that the conflict actually benefitted his clients because it forced the team to be more candid with him regarding their intentions for his clients. However, the fact remains that it is impossible for an agent that is placed in Ralph Cindrich’s situation to fulfill his duty of loyalty to both clients in this situation. Sports agent Brian Mackler echoed the sentiments of many sports agents when he proclaimed, “We don’t make the decision who plays and who doesn’t. We don’t make the decision who drafts prospects and who doesn’t draft them. Our job is to negotiate their

---

43 Wada. (These three quarterbacks included Neil O’Donnell, Kordell Stewart, and Mike Tomczak.)
44 Id.
45 Id.
46 Id.
47 Id.
48 Id.
contract.” This once again illustrates arguably the biggest problem of all. Sports agents continue to miss the point, consciously making the decision to live in a bubble with regard to these issues instead of looking at the big picture. Regardless of whether the conflicts of interest exist or not, a more disciplined and open-minded approach to recognizing them is essential to resolving the ethical dilemmas they present.

D. Dual Representation of Players and Coaches/Management

The situation of agents who represent clients consisting of both players and coaches adds a different dynamic to the discussion of conflicts, especially if these clients find themselves employed by the same organization. While the previous sections thus far dealt with “horizontal” conflicts of interest where the clients were all within the same level of the organizational hierarchy, this section is the first to deal with “vertical” conflicts which involve conflicts of interest between different levels of the hierarchy. This is relevant because many coaches are involved in the team’s personnel decisions and have control over people below them in the hierarchy such as players. Furthermore, the interests of coaches and of players are usually on opposite ends of the negotiation spectrum, with players wanting to maximize the amount of money they make and coaches most often siding with management in their desires to pay the players less. This places agents in the uncomfortable position of battling one client for more money to give to another client. With the current trend of more and more players entering either the coaching profession or taking an ownership profession after retirement, these conflicts are likely to increase, especially for agents who have represented such players throughout their

---

49 Connors, at 778.
50 Rosner, at 28.
51 Id. at 28-29.
careers and still have other clients who are players for that particular team. In these situations, the agent is faced with the obvious ethical dilemma of literally sitting on both sides of the negotiation table. Sports agent David Falk found himself in this same quandary in 2000 when he represented both Michael Jordan (President of Basketball Operations and Part Owner for the Washington Wizards) as well as Juwan Howard and Rod Strickland (two players for the Washington Wizards). Astonishingly, Falk, Jordan, and the NBA all asserted the position that no conflict of interest was present. Once again, this begs the question as to how three well-educated and experienced business entities can fail to identify the obvious conflict of interest in the situation. Ultimately, the answer to this question reaffirms the widespread unwillingness throughout the industry to acknowledge and address these issues thoroughly.

Dual representation of coaches and players is directly analogous to representing both the buyer and the seller in a transaction, the classic conflict of interest illustration. Under these circumstances, it seems as though the agent almost becomes a mediator, in which case neither of the clients’ interests are being zealously represented. Yet, agents have somehow come up with rationalizations to justify even these conflicts. Unfortunately, former NFLPA Executive Director Gene Upshaw adopted the “agent mindset” by asserting that there is no problem as long as the player is aware of the dual representation. However, once again it is impossible for reasonable belief and informed consent to cure this conflict since disclosure alone does not dispel the existence of the dilemma. If the Executive Director of the NFL Players’ Association is able to dismiss all traces of the conflict through the mere means of notice, and agents adopt a similar

52 Id. at 30; Notable examples include: Magic Johnson, Michael Jordan, Larry Bird, Isaiah Thomas, Mario Lemieux, Wayne Gretzky, and Tony Dungy.
53 Id. at 31.
54 Id.; Noticeably absent from this list are the two players, Howard and Strickland.
55 Neiman, at 18.
56 Id. at 20.
57 Id. at 9-10.
mindset, where are the players supposed to go for protection? Furthermore, at what point is an agent required to communicate this to the client?\textsuperscript{58}

Agents who represent players have also been known to adopt the approach of refusing to represent coaches who actually negotiate contracts.\textsuperscript{59} The agent’s argument essentially is that the coach doesn’t negotiate the contract with me, the owners do.\textsuperscript{60} Sports agent Robert Fraley utilized this rationalization when he simultaneously represented Philadelphia Eagles coach Buddy Ryan and the Eagles number one draft pick Jerome Brown, at least acknowledging a part of the potential conflict.\textsuperscript{61} Yet, at least one other sports agent was able to acknowledge the entire scope of the conflict when deciding who to represent. Agent Bob LaMonte stopped representing NFL players around the same time he began to represent coaches and general managers because he didn’t think it was ethical to have two different clients on opposite sides of the negotiation process regardless of whether the coach negotiates the contract or not.\textsuperscript{62} LaMonte revealed, “I’ve turned down players over the last ten years at an enormous rate because I knew I had to police myself. The potential for conflict is clear. It’s stupid. It’s dumb. It’s an obvious conflict of interest.”\textsuperscript{63} Furthermore, while coaches are supposed to be professionals, they are also human beings who could easily be faced with temptation when choosing between two equally skilled athletes that are competing for the same position, one of whom is represented by the coach’s

\textsuperscript{58} What happens if the agent discloses the conflict to the player just before it occurs, but because of the time-sensitive nature of free agency, the player finds himself in a potential dual representation situation where the player is forced to either keep his agent and accept the conflict, or reject the conflict and procure a different agent who can actually fulfill his agency duties of loyalty, confidence, and zealous representation? In this situation, the player suffers even though he is fighting for his basic rights because although the agent disclosed the conflict at a time that was reasonable given the scenario, the player potentially loses out on a good opportunity during the time that it takes to hire a new agent, and loses out on the benefit of having an agent that is familiar with the player, represent him.\textsuperscript{59} Neff, at 3.

\textsuperscript{60} See Connors generally.

\textsuperscript{61} Neff, at 3.

\textsuperscript{62} Paul Domowitch; Agents Walk Fine Line When Representing Both Coaches and Athletes.

\textsuperscript{63} Id.
agent. Because the agent did not take preliminary precautions to ensure that the conflict did not manifest itself, the client coach now has to deal with the possibility of having his impartiality compromised. This may even cause dissension in the locker room if the non-client player feels that his teammate was named the starter because he shared the same agent as the coach. Therefore, since the myriad of problems that surface as a result of these conflicts are often greater than the agent can possibly prepare his client for, the best policy with regard to these types of conflicts is renunciation, not rationalization.

E. Reasonableness of Fees Charged by Agents

Perhaps the conflict of interest that stirs the pot of public distaste most is the issue regarding the reasonableness of fees charged by agents. Rule 1.5 of the Model Rules of Professional Conduct vaguely states that “A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.” While this does not necessarily apply to non-lawyer agents, the more defined regulations of the various Players’ Associations certainly do. For example, the NFLPA has demanded since 2003 that the maximum fee that a NFLPA certified agent can charge is 3%. After conducting a survey of over 1,500 Standard Representation Agreements (SRA’s) between draft-eligible players and agents for which the average fee amounted to 2.95%, the NFLPA took their efforts to protect players a step further by amending the SRA to include an explicit range of fees by which both

---

64 Neiman, at 18-20.
65 Neff, at 3; When Fraley represented both Bill Parcells, the coach of the New York Giants at the time, and Jeff Rutledge, the Giants second-string quarterback, Giants quarterback Phil Simms was reported to be alarmed about the dual representation until he was named the starter. Id.
66 2008 Model Rules of Prof’l Conduct, Rule 1.5; The MRPC lists several factors that are relevant to making this determination including: the time and labor required, whether the representation will preclude other employment by the lawyer, what a customary fee in the industry consists of, the amount involved, the results obtained, the time limitations imposed, the nature of the professional relationship, the experience and reputation of the lawyer, and whether the fee is fixed or contingent. Id.
67 ProAthletesOnly; NFLPA Reminds Players That NFL Agent Fees Can Be Negotiated Below Three Percent.
the player and the agent must initial.\textsuperscript{68} This has the intended effect of reminding players that 3% is only the maximum, and that players have the right to negotiate this fee with the agent.\textsuperscript{69} The NFLPA also has implemented a rule against allowing agents to receive their percentage of a multiyear contract up front.\textsuperscript{70} This arrangement is often considered unethical because not only is the money not guaranteed in the NFL, but the agent is reaping the benefit of receiving the current value, while the player must wait to receive the inflated value.\textsuperscript{71} Agents also receive a commission fee on any endorsement deals that they procure as well. Customarily, the percentage that agents charge on these contracts is substantially greater than the team contracts, and usually is somewhere between 10-20%.\textsuperscript{72} Thus, with multimillion dollar contracts becoming commonplace in today’s sports world, agents are often criticized for the unreasonable amounts of money that they “earn,” despite the common acceptance of this practice in the industry.\textsuperscript{73}

For example, when Scott Boras negotiated Alex Rodriguez’s $252 million contract with the Texas Rangers, his service fee was $12 million.\textsuperscript{74} Regardless of how much time and labor was involved, how many other employment opportunities Boras missed out on, or how great Boras’s reputation was at the time, $12 million for one contract negotiation is preposterous. Furthermore, who needs the protection in this situation: the client who just made $240 million, the agent’s future clients who may get leveraged by this precedent, or both? Another example of this outrageous practice includes the $1.8 million commission that agent David Falk received.

\textsuperscript{68} Id.
\textsuperscript{69} Id.
\textsuperscript{70} Neff, at 3.
\textsuperscript{71} Prior to the implementation of the 3% maximum percentage fee requirement, there was a situation that was illustrated by lawyer Robert H. Ruxin concerning a rookie player who received a non-guaranteed two-year deal for $50,000 along with a $10,000 signing bonus. The agent charged 10% and took his fee ($6,000) up front. When the player didn’t make the team, the agent ended up with more money than the player ($4,000). Id.
\textsuperscript{72} Neiman, at 21.
\textsuperscript{73} “A fee based on a percentage of the contract may be unreasonable and thus unethical despite the practice being common in the sports industry.” Id. at 22.
\textsuperscript{74} Id. at 21.
after spending less than ten hours negotiating a $45 million contract for NBA player Shawn Bradley.\textsuperscript{75} For agents who bill hourly, this translates into an unabashed rate of $180,000 an hour. When a high-end lawyer at a full-size firm would charge an average of $500 an hour to perform the same task outside the sports industry, how can these excessive fees possibly be considered ethical?\textsuperscript{76} Regardless of the exorbitant amounts of money that some of these athletes make, if someone offered to give them $1.795 million free and clear (the lawyer’s fee subtracted from the agent’s fee), it is highly doubtful that anyone would pass that up. Whether it is the status and pressure of having that “top” agent, or the guilt of signing such an excessively lucrative contract, that is essentially what players are doing by “buying into the current system” for compensating sports agents. Regardless of how much money they make, players still need to be protected, even if it is from themselves. This is the service that NBA agent/lawyer Lon Babby provides. Instead of working for a flat percentage fee, Babby charges his clients an hourly rate.\textsuperscript{77} Babby acknowledges that “agents don’t like (him),” but he doesn’t mind because he knows that he is “saving the athlete ‘a lot of money’ while surrounding the athlete with people who are ‘making the best business decisions for the athletes.’”\textsuperscript{78} If the profession is to have a future of nobility, it must pay more attention to ethical paradigms such as Babby who courageously challenge the current system of compensation, and less to those who rest their rationalizations on selfishly accepting it the way it is.\textsuperscript{79}

\textsuperscript{75} Stacey M. Nahrwold; \textit{Are Professional Athletes Better Served by a Lawyer-Representative than an Agent? Ask Grant Hill}, at 449.
\textsuperscript{76} Neiman, at 21.
\textsuperscript{77} Babby’s notable list of clients have included: Tim Duncan, Grant Hill, Ray Allen, and Shane Battier. \textit{Sports Agent Directory}; \textit{Lon Babby’s Profile}.
\textsuperscript{78} Neiman, at 22.
\textsuperscript{79} Agent Leigh Steinberg disparagingly describes those in the industry who bill hourly as “egg-timer agents” and contends that his practice of charging a flat fee affords him the ability to develop a more personal relationship with his clients. Even for a high-profile individual such as Steinberg, hundreds of thousands of dollars is a lot to pay for something that an agent should be striving for anyways. Neff, at 3.
F. Dual Representation of Players and Events/Exhibitions

A somewhat non-traditional type of conflict emerges when sports agents agree to represent athletes while also managing the sporting events in which these individual athletes appear. These types of conflicts are especially abundant in professional sports such as tennis, golf, and bowling. Former sports agent and founder of IMG, Mark McCormack, became so influential in this area that Sports Illustrated dubbed him at one point “The Most Powerful Man in Sports.”

McCormick would not only represent the athletes, but he would also own and manage the tournaments that they played in, making him the agent for both the payers and the payees. This essentially meant that McCormick was negotiating with himself. If one of McCormick’s players had wanted to negotiate the amount of his/her appearance money, it would have been impossible for McCormick to zealously represent them against himself. As Craig Neff, columnist for Sports Illustrated explains, “As agents, McCormack (and his colleagues) are employees. As promoters, they’re employers. The situation is inherently wrong.”

McCormick was also the one who standardized the concept of appearance fees for players to play in the tournaments. In many instances, these appearance fees are greater than the prize money that is awarded to the top finishers. This not only intensifies the conflict, but also poses an inherent threat to the sport by eliminating one of the most significant incentives to win.

It has also been noted that McCormick generally does not reveal to his clients how much money the events gross. This directly contradicts the ethical duty that an agent has to divulge relevant information to his client in order to assist him/her in making an informed decision. An

---

80 E.M. Swift; The Most Powerful Man in Sports, at 1.
81 Neff, at 3.
82 Swift, at 1.
83 Id. at 8.
84 Neff, at 3.
85 Id.
example of a lawsuit that resulted from this kind of conflict was when tennis star Ivan Lendl brought an action against his former management company, ProServ, claiming that the company packaged its other stars with Lendl’s notoriety in order to maximize its profit at Lendl’s financial expense. The case ultimately settled out of court. Yet, somehow despite the overwhelming multitude of conflicts that can result from this type of representation, sports agents such as Frank Craighill, founder of one of IMG’s competitors, still have the audacity to opine that “the conflict-of-interest issue is overplayed.”

G. Miscellaneous Examples of Ethical Conflicts

Despite all of the conflicts of interest described above, there are still a great number of other ethical dilemmas that sports agents can encounter. Take for instance the explosive situation that developed when Clear Channel Communications purchased the sports management giant SFX. In addition to owning the Texas Rangers, Tom Hicks was also the Vice Chair for Clear Channel, putting him on both sides of the table. This generated a controversy which led to two disgruntled SFX sports agents filing a $60 million lawsuit against SFX, alleging that SFX did not disclose the pending takeover or the Hicks conflict when it was acquired and that one of the agents lost a lucrative client as a result of competing agents in the industry questioning SFX’s agents’ ability to fairly represent their clients. Large scale sports management firms such as SFX and IMG also represent another basic conflict simply through their own existence. As General Manager of the Los Angeles Dodgers inquired, “At some point in time, somebody like SFX may end up representing 10 players on a team and have 25 free agents. Now how does that

---

86 Rosner, at 31-32.
87 Id.
88 Swift, at 2.
89 Wada
90 Id.
91 Id.; The player was Juan Gonzalez and the alleged agent was Scott Boras, who subsequently signed Gonzalez as a client and negotiated a $10 million deal for him with the Cleveland Indians; See also Rosner, at 18-22.
work?" While these firms have attempted to put up “Chinese walls” within the organization in order to address their conflict of interest problems, how are these sports management giants policed, and who is actually looking out first and foremost for the players’ best interests? Additionally, what happens when one of these firms partners up with a professional sports league in order to develop a minor league like SFX did with the NBA, or when they agree to a marketing deal with a team for which their clients play, like IMG did with the Yankees when they represent Derek Jeter? The bottom line is that these major sports management conglomerates create more conflicts than they prevent, and there are very few, if any, individuals involved whose sole motives are to represent the interests of the players.

Another all-too-frequent issue which tarnishes the public perception of the industry is the matter of client stealing. Unfortunately, this has become a customary practice within the industry. As attorney Alan Milstein described, “In the past, while agents competed against each other as aggressively as anyone can imagine, once the client came to an agreement with an agent, everybody in essence backed off. That was the end of the game. What is going on now is once an agent signs a client, the second game begins.” Sports agents are always looking to find some alone time with star players in the hopes of luring them away from their current representation. When asked why so many agents go to the Super Bowl and Pro Bowl, NFLPA Executive Director Gene Upshaw replied, “Because if they don’t go, they’re afraid their rivals

92 Wada
93 Id.
94 This also leads into the issue of solicitation, which lawyers are prohibited from engaging in under the MRPC. However, given the social structure and nature of the sports agency profession, it would be impossible for lawyer agents to obtain any clients and thus compete with non-lawyer agents without engaging in the practice of solicitation. Solicitation has become accepted as part of the business, yet the ethical issues behind it are rarely, if ever, mentioned because of the general acceptance that is has gained within the industry. Lock, at 333.
95 This is aided by the fact that these interference claims are not only expensive to litigate and have minimal precedent, but they are also difficult to prove without the former client’s testimony. Id. at 335-336.
96 Mullen, Sleeze.
will sidle up to their clients and use the industry’s standard client pickup line: ‘Where’s your agent?’\footnote{Id.} Reckless disregard for the image of the profession through examples such as these demonstrates why agents are often cast into the negative light that they are.

**IV. Analysis of the Current Status of the Law- Regulation of Sports Agents**

In order to fully comprehend the reasons why the above-mentioned conflicts exist within the sports agency profession, and the potential solutions that can be implemented to address them, it is imperative to briefly introduce the system of regulation, or lack thereof, by which agents are bound. The current code of conduct that governs today’s sports agents can be accurately described as ambiguous, disorganized, and incompetent. Thus, ethical dilemmas exist mostly because of the minimal qualifications necessary to become an agent, vague ethical standards, and the lack of consistency among the various forms of regulation.\footnote{Nahrwold, at 433; \textit{See also} Neff, at 2.} Given the vital importance of the protection of players, the smorgasbord of potential conflicts that exist, and the massive amounts of compensation sports agents receive, this current state of regulation is simply unacceptable. Furthermore, while the regulation of sports agents has various sources, none of these sources either individually or collectively, serve as an adequate form of governance over sports agents.

There are four main sources of regulation over sports agents.\footnote{Paul T. Dee, \textit{Ethical Aspects of Representing Professional Athletes}, 3 Marq. Sports L. J. 111, 112 (1992).} First, sports agents are regulated by the rules of their respective professions. The most common example of this is lawyers who practice as sports agents and are bound by the rules of the state bar to which they belong.\footnote{Any previous mention of the Model Rules of Professional Conduct would fall under this category of regulation.} For lawyers, this encompasses all of the lawyer’s professional activities, even those

\footnote{Id.}
that are technically outside of the scope of the legal practice.\textsuperscript{101} However, the inconsistency here is that many non-lawyer agents operate with the understanding that these regulations do not apply to them.\textsuperscript{102} These non-lawyer agents relish in the fact that they are not bound by any ethical regulations, thus illustrating the crux of the problem. As Assistant Director of Agent, Gambling, and Amateurism Activities with the NCAA Richard Hilliard notes, “You don’t have to be a lawyer to be an agent; therefore, certain individuals do not have to follow any ethical considerations.”\textsuperscript{103} Thus, a profession cannot effectively regulate itself if some of its members are bound by one set of parameters, while other members boast that they are at an advantage because they believe that they are not bound by anything.

Second, agents are constrained by the rules of the players’ association for the professional sport that their respective clients play, and in some instances, must go through a minimal certification process before he/she can represent a player in that league. Thus, an agent who represents players in the NFL is bound by the rules of the NFL Players’ Association (NFLPA) and must become “certified” in order to represent an NFL player and pass a nominal background check.\textsuperscript{104} This form of regulation has the most promise in terms of being successful; however, these associations have generally failed in reducing the types of conduct that they aim to eliminate, mostly due to an unwillingness to invest sufficient resources in this area of enforcement.\textsuperscript{105} On one hand, the NFLPA “prohibits the agent from engaging in activity which ‘creates an actual or potential conflict of interest with the effective representation of NFL

\textsuperscript{101} In re Dwight, 117 Ariz. 407, 410 (1978); Cuyahoga County Bar Ass’n v. Glenn, 72 Ohio St. 3d 299, 299 (Ohio 1995).
\textsuperscript{102} Dee, at 112.
\textsuperscript{103} Connors, at 760-761.
\textsuperscript{104} Dee, at 113; The NFL became the first of the major professional sports to regulate sports agents by creating a players association in the form of the NFLPA in 1983. Neiman, at 6-7.
\textsuperscript{105} Lock, at 329; Officially, some NFLPA officials blame the lack of evidence as reasons for their inaction. However, a more significant and more committed pool of resources would provide the players’ association with a greater ability to gather evidence. Neiman, at 7.
players,’’ yet it does not specifically prohibit an agent from engaging in some of the conflicts listed above, such as the representation of more than one player on a team. Perhaps most telling is the fact that despite the hundreds of agent misconduct complaints that the NFLPA receives annually, only thirty-three disciplinary proceedings were commenced in the seven-year period between 1997 and 2003. This has led to rampant negative speculation regarding the enforceability of these regulations.

Third, the conduct of agents is somewhat controlled by the law, whether it is federal or state, statutory or regulatory, or even case law. The major problem in this realm of regulation is the lack of national uniformity along with the weak deterrents that are currently in place. While some states have adopted legislation regulating the representatives of athletes, it is still inconsistent throughout the nation. Yet, even with a more consistent approach, it is highly debatable whether this is the most ideal approach to regulating the profession of sports agency.

The final and most indefinite form of regulation by which an agent is bound is his own personal moral code. This has proven on several occasions to be the least stringent form of regulation, since the nature of its existence is often classified as more of an optimistic idealism than a resolute realism. While many will be quick to agree that agents need to self-regulate, problems often arise when those within the industry discover that this means different things for

---

106 Id.
107 Id.
108 Id.
109 An example of federal legislation attempting to regulate sports agents is the Sports Agents Responsibility and Trust Act (“SPARTA”) which became effective on September 24, 2004. Id. at 5.
110 Dee, at 114; It is important to note that a lot of the regulation in this area governs behavior that is outside the scope of this paper.
111 Eric Willenbacher; Regulating Sports Agents: Why Current Federal and State Efforts do not Deter the Unscrupulous Athlete-Agent and How a National Licensing System May Cure the Problem; 78 St. John’s L. Rev. 1225, 1254-1255 (2004); In many cases for wealthy agents, the profit that will come from signing a superstar client will greatly exceed any penalty that is assessed for breaking the law.
112 Connors, at 763.
113 Dee, at 114.
114 Connors, at 771.
different people. Unfortunately, if professional athletes in today’s society are reduced to relying on their agent’s own sets of ethics as their sole means of protection, then arguably the abolition of the entire sports agency profession would better serve their interests.

V. Recommendations for Change

Perhaps no profession is in more desperate need of a regulatory overhaul than sports agency. The current form of regulation has allowed sports agents to refrain from being held accountable for so long that it has led some individuals to actually believe that the industry cannot be regulated.\footnote{Id. at 761.} With all due respect to these individuals, and in spite of the numerous ethical dilemmas illustrated above, I wholeheartedly disagree. As previously described, sports agency historically began as a noble profession. Thus, their members should be regulated in a similar manner to other professionals in our society. There should be an independent governing body\footnote{This is somewhat analogous to the American Medical Association (AMA) or a nationwide version of the various state bar associations to which lawyers belong.} whose purpose is to regulate the activities and behavior of sports agents while promoting the interests of professional athletes. This organization would be exclusively comprised of various individuals with experience in the realm of professional sports, thereby including a limited supply of sports agents. Most significant, this organization must have the power and authority to distribute punishments or else its existence is meaningless. Therefore, when an agent commits a violation or does not handle a potential conflict of interest situation appropriately, the player has recourse to file a complaint which could potentially result in the agent being suspended or removed from the profession, thereby providing a genuinely effective deterrent to unethical behavior.\footnote{This is similar to how a disgruntled client in Florida would notify the Florida Bar, or an unsatisfied patient would notify the AMA.} This promotes instant accountability, something that is sorely

\begin{flushleft}
\footnote{Id. at 761.}
\footnote{This is somewhat analogous to the American Medical Association (AMA) or a nationwide version of the various state bar associations to which lawyers belong.}
\footnote{This is similar to how a disgruntled client in Florida would notify the Florida Bar, or an unsatisfied patient would notify the AMA.}
\end{flushleft}
lacking in today’s world of sports agency. Furthermore, this organization would have a headquarters which plays a paternal role in overseeing its respective divisions for every professional sport, ensuring that each division was fulfilling its responsibilities. In turn, these divisions would be explicitly associated with their respective professional sports leagues, and not the players’ associations. This is crucial for the initial credibility of the organization as a whole. It is also more efficient than regulating agents’ conduct by state and having to deal with the various problems that presents. While these divisions would all be following the same universal internal policies of the organization, it would be these respective divisions that would ultimately be the main regulators of sports agents, with the headquarters merely monitoring and approving their governing actions.

For example, suppose the organization is called the Association of Professional Sports Agents (APSA). APSA would then have a respective division within the NFL, NBA, MLB, NHL, etc. which specializes in those respective sports. While the division of APSA NFL would be directly affiliated with the National Football League, it would strategically not be under the direction or control of the NFLPA. Effectively, APSA NFL would be assuming the duties of the NFLPA in the realm of sports agency regulation. Considering that the APSA organization would have an uphill battle to wage against the unethical behavior of sports agents to begin with, it is essential that they are not further disadvantaged by associating themselves with the recent regulatory failures of the players’ associations. APSA would gain its funding through the initial membership fees and annual dues of its members, thereby providing the organization with sufficient resources to accomplish its objectives.

In order to become a sports agent and represent a client in a particular professional sport, it would be required that the agent first gain membership with that respective division of APSA.
Required membership is an essential aspect of ASPA’s success. Membership to a division of APSA would be a demanding process similar to becoming a member of a state bar association. This process would take approximately one year to complete and would include: a steep membership fee, an intrusive background search, the completion of a few core classes, a rigorous exam complete with questions regarding various ethical conflicts and the sport’s collective bargaining agreement if applicable, minimal educational requirements (bachelor’s degree from an accredited university), and various community service requirements. These requirements would serve to weed out many of those who were not serious about truly contributing to the sports agency profession. Furthermore, APSA would require that once the individuals gained membership to the profession, they would be required to abide by a similar personalized APSA version of the MPRC, thereby eliminating this distinction between lawyer agents and non-lawyer agents.

Since all of these measures are being taken in the name of player protection, it is necessary to both address and dispel the argument that perhaps athletes don’t really care about some of these ethical issues as long as they make a lot of money. Therefore, I would argue that athletes would care a lot more if they were thoroughly educated with respect to the entire realm of consequences that some of these conflicts present. Thus, APSA will provide seminars to all professional players educating them on the ethical standards that are expected of their agents. As protective measures begin to be implemented, it is my belief that the players’ appreciation capacities will increase. Thus, APSA needs to be structured in a way that, at least initially, is designed to protect players from even themselves until they can comprehend and appreciate the depth of these dilemmas. This is a major reason why the affiliation with the actual professional
sports leagues themselves is crucial for APSA. Thus, professional players are forced to buy into the system while the system gains the jurisdiction it needs to thrive.

With respect to the ethical dilemmas discussed earlier, APSA would have guidelines in place to guarantee that these potential conflicts are resolved. The manner in which this is done realistically depends upon the severity of the conflict. The more serious conflicts of interest, such as the dual representation of players and coaches or the dual representation of players and events would be eliminated from existence. Other categories of conflicts that are somewhat unpreventable to a degree, such as representing more than one player in a league or more than one player on a team, would be monitored closely and APSA would ensure that these conflicts are handled by the agents in a good faith manner that is genuinely representative of the fiduciary duties they have to their clients. Exemplifying this idea would be a regulation that prohibited an agent from representing more than a certain fixed number of players in one particular league.\(^\text{118}\) This serves to minimize both conflicts since a fixed number of clients per league also reduces the likelihood that several clients of one agent play for the same team. While the argument can be made that this will ultimately result in lesser representation for less skilled athletes, I believe that with these increased requirements to become an agent, there will a much greater amount of parity among the members of the profession. Finally, it has been suggested that everyone in the sports agency business knows who is cheating and who isn’t, but that the underlying problem lies in not being able to report the agent to a reputable regulatory body.\(^\text{119}\) The existence of APSA would not only serve to remedy that problem, but as the organization quickly gained credibility, that

\(^{118}\) While agents would certainly not embrace this idea initially, that is irrelevant since APSA exists for the sole benefit of the players. Therefore, this regulation means that “ideally a smaller number of athletes per agent would allow the agent to gain experience while decreasing the likelihood of conflicts of interest which could harm the athlete. Neiman, at 15.

\(^{119}\) Connors, at 785.
would in turn encourage this form of self-regulation and facilitate APSA’s regulation of agents. Thus, as a result of all of this, players would be afforded a much greater amount of protection.

VI. Conclusion

Despite the valiant and humble beginnings of their profession, sports agents have subsequently acquired a very negative reputation in the eyes of the American public. This is due in large part to sports agents’ cavalier attitudes with respect to the various ethical dilemmas that surround their profession. While a majority of these conflicts of interest are preventable, the industry at large has become accustomed to accepting these conflicts as part of the cost of doing business. This mindset has been facilitated by the lack of effective regulation within the industry. The social degradation of such a noble profession is both unfortunate and exceedingly unnecessary. With the implementation of an organization such as APSA, the sports agency profession can regain its honor, while also restoring the type of protection that professional athletes deserve. Therefore, to answer the question presented by the title, ethics should and very easily can play a prominent role in today’s sports agency industry.
Citations (in order of appearance):

Craig Neff; *Den of Vipers: A Sports Scourge: Bad Agents*; Sports Illustrated; October 19, 1987; 

Melissa Neiman; *Fair Game: Ethical Considerations in Negotiation by Sports Agents*; 
http://works.bepress.com/cgi/viewcontent.cgi?article=1002&context=melissa_neiman.


Scott R. Rosner; *Conflicts of Interest and Consolidation in the Sports Agent Industry*; 


Liz Mullen; *Sleeze Factor Off the Charts, Agents Allege*; Street & Smith’s Sports Business Journal; 

Mark Fainaru-Wada & Ron Kroichick; *Agents of Influence*; SF Chronicle; March 11, 2001; 


Paul Domowitch; *Agents Walk Fine Line When Representing Both Coaches and Athletes*; Philadelphia Daily News; Nov. 5, 2001; 
http://www.accessmylibrary.com/coms2/summary_0286-7847637_ITM.


Cuyahoga County Bar Ass’n v. Glenn, 72 Ohio St. 3d 299 (Ohio 1995).