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Fair Game: Ethical Considerations in Negotiation by Sports Agents

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I. Introduction

Over the past several decades the sports agent has emerged as an increasingly important figure in the negotiation of contracts for professional athletes.¹ Although agents may have varying backgrounds, attorneys now comprise more than 50% of all agents representing professional athletes.² This paper will focus on the attorney as sports agent. The agent is subject to regulation by the federal government, some state governments and the players associations.³ In discussing the role of the players associations the National Football League Players Association (“NFLPA”) will be focused on for exemplary purposes although other associations will be mentioned.

The agent is also bound by the Model Rules of Professional Conduct (“MRPC”) which include regulations regarding conflicts of interest and fees.⁴ Concurrent conflicts of interest may occur when an agent represents several athletes on one team or simultaneously represents athletes as

¹ Scott R. Rosner, *Conflicts of Interest and the Shifting Paradigm of Athlete Representation*, 11 UCLA ENT. L. REV. 193, 195-97 (2004).

² Charles B. Lipscomb & Peter Titlebaum, *Selecting A Sports Agent: The Inside for Athletes & Parents*, 3 VAND. J. ENT. L. & PRAC. 95, 96-98 (2001).

³ Sports Agent Responsibility and Trust Act, Pub. L. No. 108-304, 118 Stat. 1125 (2004); *Uniform Athlete Agents Act (UAAA)* at <http://www1.ncaa.org/membership/enforcement/agents/uaaa/index.html> (last visited Mar. 16, 2006); Rosner, *supra* note 1, at 239. All the major professional sports leagues in this country have players associations. *Sports Links Central Com* at http://72.14.203.104/search?q=cache:JCAO_QTJYfQJ:www.sportlinkscentral.com/professional_associations.htm+players+associations+professional+sports&hl=en&gl=us&ct=clnk&cd=1 (last visited Apr. 1, 2006).

⁴ MODEL RULES OF PROF'L CONDUCT (2004).

well as coaches or management personnel.⁵ These conflicts are magnified in leagues in which an overall team salary cap exists.⁶ Careful examination of these conflicts and application of the MRPC clearly shows that the conflicts are unlikely to be resolved even with the athlete's express informed consent.⁷

There are also ethical considerations regarding agents' fees, particularly when they are based on a percentage of the value of the contract negotiated by the agent.⁸ Arguably, these fees are not reasonable under the MRPC.⁹ Uniform rules should be established by players associations to identify conflicts of interest and prevent their occurrence. With regulations in place, ethical concerns in the negotiation process will be reduced so that the athletes' interests are more exclusively served by the agent.

II. The Emergence of the Sports Agent

Several decades ago sports franchises negotiated directly with athletes and sports agents were virtually nonexistent.¹⁰ In the 1970's the Major League Baseball Players Association ("MLBPA") collectively bargained with Major League Baseball ("MLB") for the athlete's right to be represented by an agent during the athlete's negotiation with a club.¹¹ Athletes were then able to reinforce their bargaining position and maximize salaries through skillful negotiations by their agents.¹² The

⁵ Ethan Lock, *The Regulatory Scheme for Player Representatives in the National Football League: The Real Power of Jerry Maguire; Sports Law?*, AMERICAN BUSINESS LAW JOURNAL, Jan. 1, 1998, at 319; Rosner, *supra* note 1, at 211, 214.

⁶ Rosner, *supra* note 1, at 211. The salary cap is the maximum amount of money a team can spend per year on athlete contracts and is thought to maintain a competitive balance between the teams in a league. *Best Known: Salary Cap at* http://72.14.203.104/search?q=cache:wIBRVNZMQ8gJ:en.mimi.hu/basketball/salary_cap.html+definition+salary+cap+&hl=en&gl=us&ct=clnk&cd=6 (last visited Mar. 16, 2006).

⁷ MODEL RULES OF PROF'L CONDUCT (2004); Paul Domowitch, *Agents Walk Fine Line When Representing Both Coaches and Athletes*, PHILADELPHIA DAILY NEWS, Nov. 5, 2001 at 1; Rosner, *supra* note 1, at 220.

⁸ Stacey M. Nahrwold, *Are Professional Athletes Better Served by a Lawyer-Representative than an Agent? Ask Grant Hill*, 9 SETON HALL K. SPORTS L. 431, 449 (1999); The agent's fee may be regulated by a players association. Lipscomb & Titlebaum, *supra* note 2, at 102.

⁹ MODEL RULES OF PROF'L CONDUCT R. 1.5 (2004).

¹⁰ Rosner, *supra* note 1, at 195.

¹¹ *Id.* at 196-97.

¹² *Id.* at 197.

relationship between the athlete and the agent is contractual in nature; the agent is subject to common law agency requirements in forming this relationship.¹³ Agency is defined as “the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.”¹⁴ The agent thus owes a fiduciary duty of loyalty, obedience, and reasonable care to the athlete.¹⁵ The duty of undivided loyalty means that the agent must avoid actual or apparent conflicts of interest.¹⁶

Sports agents have a wide variety of backgrounds and experiences.¹⁷ Attorneys, money managers, coaches and former athletes have entered the profession; the agent may practice solo, in a small group or in a large “full service management” firm.¹⁸ More than 50% of the sports agents representing athletes in the United States are attorneys.¹⁹ The standard representation contract between the athlete and the agent establishes responsibilities and rights between the two parties.²⁰ The contract calls for a good faith effort by the agent on behalf of the athlete.²¹ The agent also has a duty to disclose any information that might impede or compromise the agent’s representation of the athlete.²²

The agent’s main function is to negotiate the athlete’s employment contract with the team.²³ The agent should provide the athlete with the necessary information for the athlete to consider and evaluate the involved economic and non-economic factors.²⁴ Generally, the goal of the agent is to

¹³ *Id.* at 229.

¹⁴ RESTATEMENT (SECOND) OF AGENCY, § 1 (1958).

¹⁵ Rosner, *supra* note 1, at 229.

¹⁶ George Cohen, *The Second Annual Sports Dollars & Sense Conference: A Symposium on Sports Industry Contracts and Negotiations: Ethics and the Representation of Professional Athletes*, 4 MARQ. SPORTS L.J. 149, 155 (1993); Rosner, *supra* note 1, at 229.

¹⁷ Lipscomb & Titlebaum, *supra* note 2, at 96.

¹⁸ *Id.* at 96.

¹⁹ *Id.* at 98.

²⁰ Walter T. Champion, Jr., *Attorneys Qua Sports Agents: An Ethical Conundrum*, 7 MARQ. SPORTS L.J. 349, 351 (1997).

²¹ *Id.* (noting also that the agent will be the athlete’s exclusive representative).

²² *Id.*

²³ Lipscomb & Titlebaum, *supra* note 2, at 100.

²⁴ Lock, *supra* note 5, at 319.

maximize the athlete's salary for as long a period of time as possible.²⁵ This requires that the agent understand a multitude of issues including the collective bargaining agreement ("CBA") of the league in which the athlete works and, if applicable, the salary cap of a particular league.²⁶ In preparing for the negotiation the agent should know the market value of the athlete, the market value of similarly situated athletes, and prior relevant contract values, in addition to understanding the requirements, philosophies and spending patterns of the team.²⁷ Agents also may help the athlete obtain endorsement contracts, speaking engagements and trading card agreements.²⁸ Opportunities for product endorsement are usually available to only the top few elite athletes in a particular sport.²⁹ There are many other functions that the agent can provide including investment and financial counseling services, estate planning, arrangement of medical consultations, and income tax preparation.³⁰

III. Regulation of Sports Agents by State and Federal Statutes

Prior to 2000, twenty-nine states had statutes regulating sports agents.³¹ Most of these laws were instituted to protect the college athlete, while state and model legislation had largely ignored the professional athlete.³² The agent was required to comply with the requirements of each state in which he conducted business and the requirements varied widely from state-to-state.³³ In 1997 in an

²⁵ Lipscomb & Titlebaum, *supra* note 2, at 100 (noting that the agent must understand the athlete's objectives and what the athlete is willing to concede).

²⁶ *Id.* A CBA is an agreement which is reached through the negotiation of an employer or an employer's organization and a representative workers' organization. Sriyan de Silva, *Collective Bargaining Negotiations* (July 13, 1998), at <http://72.14.203.104/search?q=cache:NtfkDUFsvFUJ:www.ilo.org/public/english/dialogue/actemp/papers/1998/srscbarg.htm+collective+bargaining+agreement+defined+explained&hl=en&gl=us&ct=clnk&cd=2>.

²⁷ Lipscomb & Titlebaum, *supra* note 2, at 100.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*; Champion, *supra* note 20, at 352.

³¹ Tamara L. Barner, *Show Me the ... Ethics?: The Implications of the Model Rules of Ethics on Attorneys in the Sports Industry*, 16 GEO. J. LEGAL ETHICS 519, 530 (2003).

³² Rosner, *supra* note 1, at 239.

³³ Diane Sudia & Rob Remis, *Athlete Agent Legislation in the New Millennium: State Statutes and the Uniform Athlete Agents Act*, 11 SETON HALL J. SPORTS L. 263, 275 (2001). Typically, the state statute required that the agent register with

attempt to address the inadequacies and inconsistencies of the various state regulations the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) began to draft a model law to provide for uniformity in the regulation of sports agents.³⁴ The NCCUSL completed its work on the Uniform Athlete Agents Act (“UAAA”) in 2000 and as of March 14, 2006 the UAAA had been passed in the District of Columbia, the United States Virgin Islands and thirty-four states.³⁵ The UAAA keeps many of the basic provisions previously required by many states but also provides for reciprocity between states with a streamlined registration process for agents who have registered in another state within the past six months.³⁶

Although the Act provides for some general registration requirements the focus of the Act is on the recruitment and solicitation efforts of agents in regard to student athletes.³⁷ In essence, the Act only regulates dealings between the agent and the student athlete and fails to address the dealings of the sports agent and the professional athlete, thereby failing to protect the professional athlete.³⁸ The only federal regulation pertaining to sports agents is the Sports Agent Responsibility and Trust Act (“SPARTA”) which was passed into law on September 24, 2004.³⁹ This law prohibits the agent from giving the student athlete anything of value before the student signs the contract, requires notification of the student’s college athletic director before a contract is signed and prohibits

the Labor Commissioner, use approved contracts, pay fees, file a description of provided services and refrain from conflicts of interest. Barner, *supra* note 31, at 530.

³⁴ Rosner, *supra* note 1, at 239-40. The NCCUSL is a national organization comprised of 300 attorneys, judges, law professors and state legislators appointed by their states to draft uniform and model state laws. *Uniform Athlete Agents Act (UAAA)*, *supra* note 3.

³⁵ *Id.* The Act has been passed in Texas. Tex. Occ. Code §§ 2051.001-2051.553 (Vernon 2002).

³⁶ Sudia & Remis, *supra* note 33, at 279. Although the UAAA provides for civil and criminal liability of the agent each state is allowed to determine if the crime constitutes a felony or misdemeanor. The civil penalty against the agent is not to exceed \$25,000. *Id.* at 280; *UAAA Advocacy Materials at* <http://www1.ncaa.org/membership/enforcement/agents/uaaa/advocacy/index.html> (last visited Mar. 16, 2006).

³⁷ R. Michael Rogers, *The Uniform Athlete Agent Act Fails to Fully Protect the College Athlete Who Exhausts His Eligibility Before Turning Professional*, 2 VA. SPORTS & ENT. L.J. 63, 66 (2002); *UAAA Advocacy Materials*, *supra* note 36.

³⁸ Rogers, *supra* note 37, at 65.

³⁹ Sports Agent Responsibility and Trust Act, Pub. L. No. 108-304, 118 Stat. 1125.

the predating or postdating of any contracts.⁴⁰ Therefore, there is minimal state regulation and no federal regulation of sports agents and their dealings with professional athletes.⁴¹

IV. Regulation of Sports Agents by Players Associations

In 1983 the NFLPA was the first professional sports players association to regulate sports agents.⁴² All of these associations now require that the agent become certified by the association before the agent can negotiate a contract for an athlete in that association.⁴³ Most but not all of the associations have provisions regulating agent's fees, limits on duration of the agent's contract with the athlete and provisions for early termination of the contract by either party.⁴⁴ The NFLPA's regulations state that the agent is prohibited from "engaging in unlawful conduct and/or conduct involving dishonesty, fraud, deceit, misrepresentation, or other activity which reflects adversely on his/her fitness as a Contract Advisor or jeopardizes his/her effective representation of National Football League ("NFL") players."⁴⁵ Additionally, the regulations prohibit the agent from engaging in activity which "creates an actual or potential conflict of interest with the effective representation of NFL players."⁴⁶ The NFLPA does not prohibit an agent from representing more than one athlete on a team or from representing athletes and coaches or management simultaneously.⁴⁷

⁴⁰ *Id.*; Lloyd Zane Remick & Christopher Joseph Cabott, *Keeping Out the Little Guy: An Older Contract Advisor's Concern, a Younger Contract Advisor's Lament*, 12 VILL. SPORTS & ENT. L.J. 1, 8 (2005).

⁴¹ Remick & Cabott, *supra* note 40, at 8; *UAAA Advocacy Materials*, *supra* note 36.

⁴² Bryan Couch, *How Agent Competition and Corruption Affects Sports and the Athlete-Agent Relationship and What Can be Done to Control It*, 10 SETON HALL J. SPORTS L. 111, 132 (2001).

⁴³ Rosner, *supra* note 1, at 239 (noting that all the associations require the completion of forms and that the NFLPA requires that the agent pass a certification exam and pay a fee).

⁴⁴ Diane Sudia & Rob Remis, *Ethical and Statutory Limitations on Athlete Agent Income: Fees, Referrals, and Ownership Interests*, 27 FLA. ST. U.L. REV. 787, 799 (2000).

⁴⁵ NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS § 3B14; *National Football Players League* (Mar. 16, 2006), at <http://64.233.179.104/search?q=cache:hdApts3wI3EJ:www.nflpa.org/+National+football+league+players+association&hl=en&gl=us&ct=clnk&cd=1> (noting that the agent is referred to as a contract advisor).

⁴⁶ NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS § 3B8; *National Football Players League*, *supra* note 45.

⁴⁷ Domowitch, *supra* note 7, at 1; Rosner, *supra* note 1, at 211-12.

The NFLPA receives hundreds of complaints regarding agent misconduct every year.⁴⁸ Over a seven year span ending in 2003 only thirty-three disciplinary proceeding were initiated regarding agent misconduct.⁴⁹ Many believe the NFLPA regulations are not enforceable.⁵⁰ Arguably the regulatory language is weak, and may be overly vague, for the purpose of adequately defining violations and allowing for investigation and enforcement.⁵¹ An official for the NFLPA has asserted that the association has the resources but often lacks sufficient evidence to address the complaints.⁵²

V. Agents and the Model Rules of Professional Conduct

The agent is bound by the laws that govern attorneys despite the fact that they might attempt to avoid ethical requirements by asserting they function as agents and not attorneys in their representation of athletes.⁵³ There are many situations in which the attorney engages in general business practices and does not strictly provide legal services.⁵⁴ However, upon admission to a state bar the attorney agrees to abide by the professional responsibility rules set out by that state bar,⁵⁵ and if the attorney's general business practices violate these ethics rules the attorney may be sanctioned by the state bar authorities.⁵⁶ The MRPC were adopted by the American Bar Association's House of Delegates in 1983 and subsequently amended.⁵⁷ These rules have been the basis for regulations adopted by forty-two states and the District of Columbia to govern attorneys.⁵⁸

⁴⁸ Mark Doman, *Attorneys as Athlete-Agents: Reconciling the ABA Rules of Professional Conduct With the Practice of Athlete Representation*, 5 TEX. REV. ENT. & SPORTS L. 37, 47 (2003).

⁴⁹ *Id.* at 47-48.

⁵⁰ *Id.* at 47.

⁵¹ Doman, *supra* note 48, at 47-48.

⁵² *Id.* at 48.

⁵³ Rosner, *supra* note 1, at 217.

⁵⁴ Doman, *supra* note 48, at 41.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ MODEL RULES OF PROF'L CONDUCT (2004).

⁵⁸ Rosner, *supra* note 1, at 218.

Although some states have not addressed this issue, many courts have held that the ethical rules do govern the attorney agent in the representation of an athlete.⁵⁹ The Arizona Supreme Court held in the case of *In re Dwight* that the defendant, an attorney who was providing some legal advice, but primarily investment and accounting services to the plaintiff, was bound by the ethical requirements of the legal profession as long as he engaged in the practice of law.⁶⁰ Ohio became the first state to apply the rule in *In re Dwight* to the attorney acting as a sports agent.⁶¹ In *Cuyahoga County Bar Ass'n v. Glenn* the Ohio Supreme Court held that attorney Everett L. Glenn, while acting as an agent for NFL player Richard Dent, had violated ethics rules while negotiating a contract for Dent with the Chicago Bears team.⁶² While acting as a representative for the athlete the attorney is performing legal services and is bound by the ethics rules.⁶³

The actions taken in the course of the agent's business will likely fall within the scope of the state bar's ethics rules as long as he represents himself to some as an attorney.⁶⁴ Arguably, the scope of activities of the agent is within the practice of an attorney and the client's best interest is served by continuing the obligation of the profession.⁶⁵ Some athletes may be drawn to an agent because the agent is an attorney and the athlete may feel an attorney can provide expertise that the non-attorney agent cannot provide. Attorney agents are likely to be held to a significantly higher

⁵⁹ Barner, *supra* note 31, at 522.

⁶⁰ *In re Dwight*, 573 P.2d 481, 484 (Ariz. 1977) (noting that Dwight was disbarred for failing to maintain proper accounting records, commingled his funds with the plaintiff's funds, and taking money from the plaintiff for his own personal use). The defendant failed to prove his contention that he was not bound by the ethics rules because he was engaged in some type of professional activity other than law. *Id.*; Barner, *supra* note 31, at 522.

⁶¹ Barner, *supra* note 31, at 522; Champion, *supra* note 20, at 356.

⁶² *Cuyahoga County Bar Ass'n v. Glenn*, 72 Ohio St. 3d 299, 299 (Ohio 1995) (noting that Glenn also negotiated a contract for Dent with an insurance company regarding a damaged automobile owned by Dent, and that Glenn had violated ethics rules by failing to promptly return property belonging to Dent and by committing fraud).

⁶³ *Id.*; Barner, *supra* note 31, at 522.

⁶⁴ Doman, *supra* note 48, at 44.

⁶⁵ Champion, *supra* note 20, at 355.

standard than non-attorney agents who may not have a professional affiliation with binding ethics rules.⁶⁶

VI. Concurrent Conflicts of Interest

There are several situations in which a concurrent conflict of interest can occur in the agent's representation of an athlete during the negotiation process.⁶⁷ Most commonly this occurs when the agent represents more than one athlete on a team and this conflict is magnified in leagues in which there is a salary cap.⁶⁸ The agent may use the representation of more than one athlete on a team as leverage on the team during the negotiation process and that tactic may harm one or more of the athletes.⁶⁹ Some may argue that multiple athlete representation does not lead to a conflict of interest because the athlete's value is determined by the market.⁷⁰ Arguably, however, if that value is fixed, then the athlete would not require an agent. During the negotiation process there are many variables that are likely to come into play in the determination of the athlete's value, and the agent will have some role in determining that value.⁷¹

The MRPC prohibits the representation if there is a significant risk that the attorney's ability to carry out the representation is materially limited by the conflict.⁷² The attorney, according to the MRPC, can cure the conflict if he "reasonably believes" that he can provide competent representation to each affected client and if the attorney obtains the clients' express informed consent.⁷³ 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.⁷⁴ Similarly, such a cure will likely be

⁶⁶ *Id.* at 356; Doman, *supra* note 48, at 45.

⁶⁷ Doman, *supra* note 48, at 53; Rosner, *supra* note 1, at 212; Barner, *supra* note 31, at 526.

⁶⁸ Rosner, *supra* note 1, at 211.

⁶⁹ *Id.* at 212.

⁷⁰ Barner, *supra* note 31, at 526; Doman, *supra* note 48, at 55.

⁷¹ Lock, *supra* note 5, at 319.

⁷² MODEL RULES OF PROF'L CONDUCT R. 1.7 cmt. (2004).

⁷³ MODEL RULES OF PROF'L CONDUCT R. 1.7(b) (2004).

⁷⁴ Rosner, *supra* note 1, at 214; Domowitch, *supra* note 7, at 1.

inapplicable to conflicts arising from the agent's simultaneous representation of athletes, who are interested in maximizing their salary, and coaches or management personnel, who are interested in conserving money spent on athletes.⁷⁵ Another ethical consideration regards the reasonableness of fees charged by the agent. Most agents charge a percentage of the value of the negotiated contract.⁷⁶ With the negotiation of multimillion dollar contracts the agent's fee may come to thousands of dollars per hour, which may be considered unreasonable, and thus unethical, despite this being a widespread practice.⁷⁷

A. Agent Representation of Multiple Athletes on the Same Team

In many professional leagues there is acceptance of the practice of an agent representing more than one athlete on a team.⁷⁸ This practice can create an ethical dilemma.⁷⁹ Model Rule 1.7 addresses conflicts of interests regarding current clients and defines such a conflict as one in which “the representation of one client will be directly adverse to another client” or that there would be “a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client....”⁸⁰ The main principle behind this rule is that of unimpaired, zealous loyalty in the attorney's pursuit of his client's interests.⁸¹ If the attorney cannot consider all the appropriate courses of action or cannot pursue an action because of the attorney's other interests, then the attorney's loyalty to the client is impaired.⁸²

The representation of more than one athlete on a team is particularly problematic in the National Basketball Association (“NBA”) and the NFL because these leagues impose salary caps on

⁷⁵ Rosner, *supra* note 1, at 214; Domowitch, *supra* note 7, at 1.

⁷⁶ Nahrwold, *supra* note 8, at 449.

⁷⁷ *Id.* at 449, 451.

⁷⁸ Doman, *supra* note 48, at 53.

⁷⁹ Rosner, *supra* note 1, at 211.

⁸⁰ MODEL RULES OF PROF'L CONDUCT R. 1.7(a) (2004).

⁸¹ Barner, *supra* note 31, at 525.

⁸² *Id.* at 526.

each team which limits the amount each team spends per year on athletes' salaries.⁸³ Therefore, the teams must make difficult decisions regarding an athlete's value and the effective allocation of funds to build a winning team.⁸⁴ The agent is in essence representing athletes competing for a finite resource, an unacceptable conflict in most other fields.⁸⁵ Two athletes on the same team will invariably vie for the largest amount of compensation available from the team.⁸⁶ If an agent negotiates a very lucrative contract for one of his athletes he may well harm his other athlete on the same team who may be forced to take a lesser salary or is released by the team.⁸⁷ The agent consciously or unconsciously may compromise the demands of one athlete in order to negotiate a favorable contract for another athlete.⁸⁸

Also, the agent may allow the negotiation involving a star athlete to take precedence over the negotiation involving a less stellar athlete.⁸⁹ While discussing an agent's representation of multiple athletes on the same team, former New York Giants executive George Young noted that "agents get into situations where the more people they represent, the more they cost people jobs."⁹⁰ This ethical conflict is exacerbated when an agent represents more than one athlete on the same team competing to play in the same position.⁹¹ In 1995 agent Leigh Steinberg represented all three quarterbacks for the NFL's Pittsburgh Steelers team.⁹²

⁸³ Rosner, *supra* note 1, at 211.

⁸⁴ *Id.*

⁸⁵ Craig Neff, *Den of Vipers*, SPORTS ILLUSTRATED, Oct. 19, 1987, at 76.

⁸⁶ Barner, *supra* note 31, at 526.

⁸⁷ Rosner, *supra* note 1, at 211-12.

⁸⁸ Nahrwold, *supra* note 8, at 445.

⁸⁹ *Id.*

⁹⁰ Rosner, *supra* note 1, at 211-12. The New York Giants are one of thirty-two teams in the National Football League. *New York Giants* at <http://www.giants.com/> (last visited Mar. 18, 2006).

⁹¹ Rosner, *supra* note 1, at 212.

⁹² *Id.* (noting that Steinberg represented quarterbacks Neil O'Donnell, Kordell Stewart, and Mike Tomczak).

Other ethical conflicts may ensue from an agent representing more than one athlete on a team.⁹³ The agent may be able to exert significant leverage over that team.⁹⁴ By “packaging” a star athlete with an average athlete the agent could wield more power in the negotiation process.⁹⁵ Similarly, the agent might direct a star athlete to a certain team if that team were also willing to sign that agent’s average athlete.⁹⁶ These conflicts may also be exacerbated if the agent uses a competitive rather than cooperative negotiation approach and carefully times his actions or the sequence of his actions in order to obtain a predetermined result.⁹⁷ A team may acquiesce to the agent’s demands for one athlete knowing that the team will later have to negotiate with the same agent regarding another athlete.⁹⁸

For example, in 1981 baseball agent Tony Pace represented two Kansas City Royals players, Hal McRae and Frank White.⁹⁹ Pace was attempting to negotiate a new contract for White but the negotiation stalled when Pace refused to settle until the Royals officials extended McRae’s contract.¹⁰⁰ This refusal by Pace to exclude another athlete from the negotiation delayed the signing of White’s contract by one month.¹⁰¹ The agent representing multiple athletes may tell a team that in order to retain other athletes he represents the team must capitulate to a particular athlete’s salary demand.¹⁰² The other athletes represented by the agent may eventually suffer if the team’s

⁹³ *Id.* at 212-13.

⁹⁴ *Id.* at 212.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ RUSSELL KOROBKIN, NEGOTIATION THEORY AND STRATEGY 247 (2002).

⁹⁸ Rosner, *supra* note 1, at 212.

⁹⁹ *Id.* at 213.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* Frank White was angry when he learned he had been used “as leverage to get Hal McRae a contract.” Neff, *supra* note 85, at 76.

¹⁰² Rosner, *supra* note 1, at 213.

relationship with the agent deteriorates to the point that the team is no longer willing to negotiate with that particular agent.¹⁰³

Some in the sports industry believe there are more benefits from the potential conflicts of dual representation than drawbacks.¹⁰⁴ Athletes and agents have argued that representation of more than one athlete on a team does not create an ethical conflict because the market rather than the agent dictates the athlete's value.¹⁰⁵ In essence the argument is that the athlete will receive compensation very similar to other athletes playing in the same position, and having the same skill level and draft position.¹⁰⁶ This argument is flawed for several reasons. While the agent cannot unilaterally dictate the value of an athlete, the market value of athletes in professional sports is not necessarily uniform or static. In general, the market value for an athlete at a specific position is a factor but there are other relevant factors that come into play.¹⁰⁷ The assessment of an athlete's ability may vary significantly from team to team, and to some extent may be a matter of perception. The current availability of other athletes playing the same position impacts on the team's assessment of an athlete's value at a particular point in time.¹⁰⁸ Additionally, each team has different needs regarding athletes, different cash flow situations and different negotiating styles.¹⁰⁹ The agent may receive multiple offers for an athlete and with skillful negotiation¹¹⁰ the agent with a powerful BATNA may be able to obtain a salary for the athlete that is higher than the generally perceived market value.¹¹¹

¹⁰³ *Id.*

¹⁰⁴ Doman, *supra* note 48, at 58.

¹⁰⁵ Barner, *supra* note 31, at 526.

¹⁰⁶ Doman, *supra* note 48, at 55.

¹⁰⁷ Lock, *supra* note 5, at 319.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ ROGER FISHER & WILLIAM URY, GETTING TO YES NEGOTIATING AGREEMENT WITHOUT GIVING IN 100 Bruce Patton ed., Penguin Books 1991 (1981) (noting that the BATNA is a party's best alternative to a negotiated agreement).

In this setting the agent may use the market value as a gauge to push a team to its highest level or beyond in the process of negotiating a particular salary for the athlete.¹¹²

Hence, if the overall market dictated the value of an athlete there would be no role for the skillful agent. Most professional athletes do have agents and in the negotiation process the agent is the advocate for his athlete. A more talented agent may be able to negotiate a larger salary for an athlete than a less talented agent negotiating for that same athlete. At the outset of the negotiation there may be a salary range that a team is contemplating paying an athlete or they have likely established a reservation price. The reservation price is not necessarily static and the agent's role is to show the team the value of the athlete or how the team has undervalued the athlete.¹¹³ The agent wants to obtain a salary at the upper end of the range or provide the team with a reason to exceed the reservation price. The prepared agent will also have studied the rules regarding the league's salary cap. The NBA generally has what is considered as a "soft" cap which limits the amount of money the team may spend each year on athletes' salaries, but teams are allowed to exceed the cap in numerous situations.¹¹⁴ The "soft" cap allows for the agent to utilize integrative bargaining techniques during the negotiation. Conversely, the NFL is widely regarded to have a "hard" salary cap.¹¹⁵ There are ways to circumvent the cap but the loopholes and the exceptions are rare.¹¹⁶ The agent representing an athlete playing for the NFL will more likely be limited to distributive

¹¹² Lock, *supra* note 5, at 319.

¹¹³ KOROBKIN, *supra* note 97, at 50.

¹¹⁴ Rosner, *supra* note 1, at 211.

¹¹⁵ *Id.*

¹¹⁶ *Id.* A signing bonus may be one way to circumvent the salary cap. For example, an athlete signs a five-year contract for \$5 million plus a \$5 million dollar signing bonus. Although the athlete receives the bonus at the time he is signed it is not counted towards the salary cap for year one but instead is divided up over the length of the contract. The athlete's salary is thus considered to be \$2 million per year instead of \$6 million for the first year and then \$1 million per year for the next four years. Lock, *supra* note 5, at 319.

negotiations although the loopholes in the NFL salary cap rules may allow the shrewd agent to negotiate a deal in such a way that it is not purely a zero-sum interaction.¹¹⁷

It has also been said that barring an agent from representing more than one athlete on a team would lead to excessively far-reaching results.¹¹⁸ The argument is that this would limit the athlete's access to experienced agents.¹¹⁹ The NFLPA reported that there were approximately 1000 certified agents in 2003 and the majority of these agents did not have a single NFL athlete as a client.¹²⁰ In the past decade dramatic increases in athlete salaries have lured increasing numbers of people into the sports agent industry.¹²¹ Currently there are a small number of agents representing the majority of the athletes¹²² and numerically this increases the likelihood of ethical conflicts during the negotiation process. 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. While experience is a factor, in this era in which agents carry a stigma of being dishonest and deceitful¹²³ the integrity of the agent is essential in maximizing the goals of the athlete in the negotiation process. Finally, the athlete's interests and the agent's interest should be aligned.¹²⁴ If the agent is focused on how the results of his negotiation will be perceived by his future recruits then he may not be acting in the best interest of his client.¹²⁵

¹¹⁷ KOROBKIN, *supra* note 97, at 111 (noting that in a zero-sum negotiation the gain for one party necessitates a loss of the same amount for the other party).

¹¹⁸ Doman, *supra* note 48, at 45.

¹¹⁹ *Id.*

¹²⁰ *Media Research Documents at*

<http://72.14.203.104/search?q=cache:qZSuWYmhLnsJ:www.nflpa.org/Media/main.asp%3FsubPage%3DResearch%2BDocuments+nfl+guaranteed+contract&hl=en&gl=us&ct=clnk&cd=2> (last visited Apr. 1, 2006).

¹²¹ Rosner, *supra* note 1, at 195.

¹²² 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, 1227 (2004).

¹²³ Evan Lovett, *Agent Brings Philanthropy to Sports* (Nov. 17, 1998), at

<http://72.14.203.104/search?q=cache:823WFwloaHIJ:www.dailybruin.ucla.edu/DB/issues/98/11.17/sports.steinberg.htm++++sports+agents+cutthroat&hl=en&gl=us&ct=clnk&cd=7>.

¹²⁴ Lock, *supra* note 5, at 319.

¹²⁵ *Id.*

B. Can the Conflict be Cured?

The MRPC states that the attorney is not allowed to represent “directly adverse” clients.¹²⁶

The attorney may argue that a particular conflict, such as those discussed above do not represent “directly” adverse client interests but rather “indirectly” adverse client interests.¹²⁷ The MRPC does not define “directly adverse” but the comments for Rule 1.7(a) do provide some guidance.¹²⁸ The MRPC allows for “simultaneous representation in unrelated matters of clients whose interests are only economically adverse” by an attorney.¹²⁹ In representing several athletes on one team the agent’s negotiations for each athlete is related to the other; the athletes are competing for a limited resource derived from one entity and thus have interests which place them in “direct” adversity.¹³⁰

Further, the MRPC provides that even where there is no direct adversity, “a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests.”¹³¹ As described in the situations above, the agent representing more than one athlete on a team will likely be materially limited either consciously or unconsciously in his actions and thereby compromise the interests of one athlete while negotiating for another. Therefore, significant risk exists regarding the attorney’s ability to diligently advance his client’s interests.

The MRPC provides for the attorney to cure a concurrent conflict of interest.¹³² The attorney may continue to represent the client if “the lawyer reasonably believes that the lawyer will be able to

¹²⁶ MODEL RULES OF PROF’L CONDUCT R. 1.7(a) (2004).

¹²⁷ Rosner, *supra* note 1, at 220.

¹²⁸ MODEL RULES OF PROF’L CONDUCT R. 1.7(a) (2004).

¹²⁹ MODEL RULES OF PROF’L CONDUCT R. 1.7 cmt. (2004).

¹³⁰ Rosner, *supra* note 1, at 220.

¹³¹ MODEL RULES OF PROF’L CONDUCT R. 1.7 cmt. (2004).

¹³² MODEL RULES OF PROF’L CONDUCT R. 1.7(b) (2004).

provide competent and diligent representation to each affected client.”¹³³ Thus in the setting of a concurrent conflict of interest, the Rule’s key to curing the conflict is based partly on the attorney’s “reasonable belief.” It must be recognized that the reasonable belief factor has a subjective component based on the attorney’s thinking, and an objective component based on whether a reasonably prudent attorney would agree with him; both components must be satisfied.¹³⁴ The attorney negotiating contracts for multiple athletes on the same team has divided loyalties which may cloud his judgment and he may be unable to zealously represent each client when these conflicts exist.¹³⁵ The attorney’s reasonable belief therefore may not be reliable and he may attempt to rationalize that his position or his actions are reasonable. Such failure to satisfy the subjective component leads to failure to cure the conflict.

If the attorney reasonably believes he can represent the client he must then obtain the client’s informed express consent.¹³⁶ This involves more than a mere recitation that a conflict exists.¹³⁷ The potential ramifications of the conflict must be explained including the possible harm to the athlete, and the attorney should make an effort to determine what the athlete understands or fails to comprehend.¹³⁸ By fully disclosing the conflict the attorney risks losing a valuable athlete in an extremely competitive market.¹³⁹ If the consent is not truly “informed” consent, then the waiver is not valid.¹⁴⁰ The athlete may not be particularly knowledgeable or sophisticated regarding the impact of the agent’s conflict and some athletes may thereby be incapable of appreciating the risks.¹⁴¹ As athletes begin to play professional sports at younger ages, these situations will become

¹³³ *Id.*

¹³⁴ Rosner, *supra* note 1, at 222.

¹³⁵ Doman, *supra* note 48, at 53.

¹³⁶ MODEL RULES OF PROF’L CONDUCT R. 1.7(b) (2004).

¹³⁷ Rosner, *supra* note 1, at 222.

¹³⁸ Rosner, *supra* note 1, at 222-23, 237.

¹³⁹ *Id.* at 237.

¹⁴⁰ Doman, *supra* note 48, at 53.

¹⁴¹ Rosner, *supra* note 1, at 222-23.

more numerous.¹⁴² Many athletes are sheltered because of their status and they are accustomed to letting others take care of many aspects of their lives so that they can focus on excelling at their sport.¹⁴³ The athlete may be very trusting of the agent and overly dependent on the agent who acts in a nearly parental role.¹⁴⁴ Even if the athlete is aware of the conflict, the agent remains compromised and therefore risks continue regarding the athlete's interests. Additionally, even if a conflict can be cured the terms of a contract for one client may be confidential and disclosure of the information to another client thus becomes a breach of confidentiality.¹⁴⁵

The NFLPA prohibits the agent from engaging in activity which “creates an actual or potential conflict of interest with the effective representation of NFL players,” but the regulations do not specifically prohibit agents from representing multiple athletes on a team.¹⁴⁶ Unlike the MRPC the NFLPA regulations do not state that the agent can cure a conflict with express informed consent.¹⁴⁷ The NFLPA regulations therefore are inconsistent in that they prohibit conflicts outright, yet in practice allow conflicts such as the agent representation of multiple athletes on the same team.¹⁴⁸ The agent meanwhile continues to be bound by the state bar ethical rules regardless of the inconsistencies of the NFLPA regulations.¹⁴⁹

C. Agent Representation of Athletes and Coaches or Management

A conflict of interest can also arise when an agent represents both athletes and coaches or individuals in team management from the same league.¹⁵⁰ The conflict is even more pronounced

¹⁴² *Id.* at 237.

¹⁴³ Neff, *supra* note 85, at 76.

¹⁴⁴ *Id.* (noting that a National Hockey League (“NHL”) star staying in a hotel in Honolulu called his agent in Boston several times to complain that his hotel room did not have hot water).

¹⁴⁵ *Id.*

¹⁴⁶ NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS § 3B8; *National Football Players League, supra* note 45; Domowitch, *supra* note 7, at 1.

¹⁴⁷ NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS § 3B8.

¹⁴⁸ *Id.*; *National Football Players League, supra* note 45; Domowitch, *supra* note 7, at 1.

¹⁴⁹ Doman, *supra* note 48, at 52.

¹⁵⁰ Rosner, *supra* note 1, at 214.

when the athlete and coach/management are on the same team.¹⁵¹ Often the coach will actively participate in player personnel decisions and also may have input into contract negotiations and salaries of athletes on their team.¹⁵² The athlete is typically seeking to maximize his salary while the coach is generally aligned with the owner and management in an effort to conserve money spent on athletes.¹⁵³ The agent is in the awkward position of battling with the coach, who is also his client, over money for the athlete.¹⁵⁴ Alternatively, the agent representing an athlete and a coach on the same team may try to do a “favor” for his coaching client resulting in less money for the athlete.¹⁵⁵ Another type of conflict is one in which the coach is looking at two equally capable athletes vying for the same position on his team.¹⁵⁶ If one of the athletes is represented by the coach’s agent that representation may well compromise the objectivity of the decision-making process for the coach.¹⁵⁷ This practice of dual representation of athletes and coaches/management exists in the NFL for financial reasons.¹⁵⁸ Just as athletes’ salaries have skyrocketed, most coaches now command multi-million dollar contracts.¹⁵⁹

Agent Bob LaMonte stopped representing NFL athletes when he started to represent coaches and general managers noting that he had turned down athletes because of the “obvious conflict of interest.”¹⁶⁰ Many top NFL executives, along with Commissioner Paul Tagliabue agree, and they would like to see the NFL follow the lead of the NBA and the NHL in which agents are prohibited from representing both athletes and coaches/management.¹⁶¹ Gene Upshaw, the NFLPA’s Executive

¹⁵¹ Lock, *supra* note 5, at 319.

¹⁵² Rosner, *supra* note 1, at 214; Domowitch, *supra* note 7, at 1.

¹⁵³ Rosner, *supra* note 1, at 214.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Domowitch, *supra* note 7, at 1.

¹⁶¹ *Id.*

Director, notes that this issue has been discussed by the union in the past and states that as long as the athlete is aware the agent also represents management there should not be a problem.¹⁶² The NFLPA's indifference regarding this conflict of interest may be in part due to the fact that IMG, a very powerful marketing and sports management firm represents three interests: Gene Upshaw, athletes, and coaches.¹⁶³ The athletes see this common practice by powerful agents and organizations such as IMG and thus do not perceive the conflicts involved.

D. Can the Conflict be Managed by Disclosure

Representing athletes and coaches/management on the same team creates an irreconcilable conflict.¹⁶⁴ Rule 1.7(b) of the MRPC applies to this conflict just as it does to the agent's representation of multiple athletes on a team.¹⁶⁵ Arguably, even with disclosure, the conflict cannot be cured.¹⁶⁶ Robert P. Lawry, the director of the Center for Professional Ethics at Case Western Reserve University in Cleveland, holds that compromise of the agent's judgment in the negotiation process is inevitable.¹⁶⁷ Lawry states that disclosure cannot cure this conflict because simple disclosure does not treat the agent's impaired judgment.¹⁶⁸ Likewise, the disclosure does not treat the athlete's impaired judgment. This situation will create conflicts, some of which the agent may not even be conscious, and the agent will be unable to perform equitably.¹⁶⁹

¹⁶² *Id.*

¹⁶³ Mike Florio, *Rumor Mill Archive* (Jan. 15, 2005), at http://72.14.203.104/search?q=cache:OCWQru_vayEJ:www.profootballtalk.com/1-01-05through1-15-05.htm+dual+representation+players+coaches+NFLPA&hl=en&gl=us&ct=clnk&cd=4. IMG has seventy offices in thirty countries and is commercially involved in an average of eleven major cultural and sporting events on a daily basis around the world. *IMG* at <http://www.imgworld.com/> (last visited Mar. 26, 2006).

¹⁶⁴ Domowitch, *supra* note 7, at 1.

¹⁶⁵ MODEL RULES OF PROF'L CONDUCT RULE 1.7(b) (2004).

¹⁶⁶ Domowitch, *supra* note 7, at 1.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

E. The Percentage Fee: Ethical Considerations

The MRPC provides that “a lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.”¹⁷⁰ Several factors are used to determine the reasonableness of a fee including time and labor required, whether the work would preclude the attorney from accepting other employment, the customary fee in the locality for similar services, and the results obtained.¹⁷¹ Agents’ fees are regulated by the players associations.¹⁷² Typically agents charge a percentage, usually 3-5% of the total monetary value of the negotiated base contract, as their negotiation fee.¹⁷³ The charge for negotiating an endorsement contract is usually between 10-20% of the contract value.¹⁷⁴ As athletes’ salaries have escalated over the years the value created by the agent has become disproportionately small in comparison to the compensation the agent receives.¹⁷⁵ For example, in 2000, attorney agent Scott Boras negotiated a \$252 million contract for baseball player Alex Rodriguez.¹⁷⁶ Boras’s fee for the service was \$12 million and although it is customary for agents to charge 3-5% of the contract value¹⁷⁷ some might consider this fee excessive given the time and labor involved.

¹⁷⁰ MODEL RULES OF PROF’L CONDUCT RULE 1.5 (2004).

¹⁷¹ *Id.*

¹⁷² Lipscomb & Titlebaum, *supra* note 2, at 102. The players associations’ power to regulate agents results from their status as the players’ exclusive bargaining unit as provided by the National Labor Relations Act. 29 U.S.C. § 159(a) (2001). The NFLPA states that the maximum fee charged by an agent shall be 3% of the “compensation” received by the player per playing season covered by the contract negotiated by the agent. *National Football Players League*, *supra* note 45.

¹⁷³ Nahrwold, *supra* note 8, at 449. Three methods used for calculating agents’ fees are the percentage fee, the hourly fee and the flat fee. The percentage fee is the most commonly used method. In some instances in addition to the athlete’s base salary the percentage may also include the bonuses and incentives given to the athlete. Using the hourly fee arrangement the agent charges for time spent working for the athlete and under the flat fee arrangement the agent is paid a predetermined fee regardless of the amount of time spent negotiating the contract. Lipscomb & Titlebaum, *supra* note 2, at 102.

¹⁷⁴ Nahrwold, *supra* note 8, at 449 (noting that the players associations’ regulation of agents’ fees applies only to contracts negotiated by the agent between the team and the athlete). The players associations do not limit the fees an agent may collect to negotiate a deal outside of the athlete’s contract with the team. Sudia & Remis, *supra* note 44, at 804.

¹⁷⁵ Nahrwold, *supra* note 8, at 449.

¹⁷⁶ Barner, *supra* note 31, at 524.

¹⁷⁷ *Id.* at 524-25.

David Falk, the agent for NBA player Shawn Bradley, states he spent less than ten hours negotiating a contract for Bradley with the Philadelphia 76ers.¹⁷⁸ Falk's fee for the negotiation was \$1.8 million which translate to an hourly rate of approximately \$180,000.¹⁷⁹ An able attorney in a large, respected Houston law firm may charge \$500 per hour; consequently charging the athlete an hourly rate versus a percentage of the contract would result in a fee of \$5000 instead of \$1.8 million. It must be observed that the negotiation of a multimillion dollar contract for an athlete is no different from the negotiation of a multimillion dollar contract for a client in any other business. Whether the transaction is in the sports industry or another industry the attorney must be knowledgeable regarding the regulations in that particular industry. A fee based on a percentage of the contract may be unreasonable and thus unethical despite the practice being common in the sports industry. NBA attorney agent Lon Babby seems to agree.¹⁸⁰ Rather than charging a percentage of the contract value, Babby charges clients an hourly rate while working for the law firm of William and Connolly.¹⁸¹ Babby notes that "agents don't like us" but states 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."¹⁸²

VII. Solutions

It is clear that many conflicts can exist in the setting of negotiations involving agents and professional athletes.¹⁸³ It is debatable whether these conflicts are amenable to a cure, but if they are allowed to persist, the risk of harm to the athlete can be substantial.¹⁸⁴ Recently, complaints by NFL

¹⁷⁸ Nahrwold, *supra* note 8, at 449.

¹⁷⁹ *Id.* at 451.

¹⁸⁰ Rick Horrow, *Sports Agency Business: Cleaning Up for the Long Haul* (Mar. 5, 2003), at <http://72.14.203.104/search?q=cache:be4e1vpVv6AJ:cbs.sportsline.com/general/story/6230048+agents+representing+players+and+coaches+nfl&hl=en&gl=us&ct=clnk&cd=2>.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Rosner, *supra* note 1, at 222-24.

¹⁸⁴ *Id.* at 224.

players against agents have increased.¹⁸⁵ There may be additional conflicts leading to harm which are unreported because the athlete is unaware of the abuse or unwilling to report it.¹⁸⁶ Some athletes may forego the complaint process and simply switch agents.¹⁸⁷ The players associations are in the best position to protect the athletes and should adopt stringent uniform regulations for agents.

Players associations' regulations should preclude the practice of agents representing more than one athlete per team, and the practice of simultaneous representation of athletes and coaches/management. The agent should be required to provide a list to the players association of all athletes represented by that agent.¹⁸⁸ There are additional areas of conflict which are common in the industry.¹⁸⁹ For example, an agent representing a certain athlete may sponsor an event at which that athlete appears.¹⁹⁰ A conflict will arise when the athlete wants more money to appear at that event.¹⁹¹ The players associations should institute seminars for athletes in which the athletes are educated regarding the structuring of fees charged by agents. In addition the seminars should address the multiple situations in which a conflict of interest may occur and the possible consequences for the athlete. These conflicts need to be identified so that regulations can be implemented to prevent them or address them should they occur. Additionally, adequate resources should be allocated to investigate complaints and to enforce the regulations. Substantial penalties should be assessed for confirmed violations¹⁹² and revocation of the agent's license should also be a consideration.

¹⁸⁵ Couch, *supra* note 42, at 133.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ Doman, *supra* note 48, at 73.

¹⁸⁹ *Id.* at 59-64.

¹⁹⁰ Neff, *supra* note 85, at 76.

¹⁹¹ *Id.*

¹⁹² Lock, *supra* note 5, at 319. Currently disciplinary actions by the NFLPA include the suspension of the agent's certification for a specified period of time to be determined by the Disciplinary Committee and a fine not to exceed \$25,000. NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS § 6D.

VIII. Conclusion

The role of the agent was developed to protect the athletes' interest in relation to that of the owners.¹⁹³ The problem now, to some degree, has become the protection of the athletes' interests in relation to those of the agents.¹⁹⁴ Negotiation is the most important aspect of being an agent.¹⁹⁵ Therefore, athletes need to understand the ethical concerns in the negotiation process and become more involved in their business affairs and financial decisions.¹⁹⁶ With specific uniform regulations put in place by players associations, and with more rigorous investigation and enforcement regarding these regulations, the agent will negotiate ethically and with singular loyalty to his client in an effort to ensure the optimum outcome for the athlete.

¹⁹³ Neff, *supra* note 85, at 76.

¹⁹⁴ *Id.*

¹⁹⁵ Jessica Harvey, *How to be a Sports Agent: Roles and Responsibilities* (Nov. 22, 2005), at <http://72.14.203.104/search?q=cache:kFdqtz2g4cYJ:www.entertainmentmanagementonline.com/vnews/display.v/ART/2005/11/22/43700f3d31759+ethics+negotiation+sports+agents&hl=en&gl=us&ct=clnk&cd=8>.

¹⁹⁶ Neff, *supra* note 85, at 76.