

SPORTS AGENTS AND PROFESSIONAL ATHLETES: THE LEGAL RELATIONSHIPS SURROUNDING PROFESSIONAL SPORTS

Katrina Barnett

| | |
|---|----|
| I. <u>INTRODUCTION</u> | 2 |
| II. <u>THE RELATIONSHIP BETWEEN AN ATHLETE AND AGENT</u> | 5 |
| <i>A. Contract Formation</i> | 5 |
| 1. Motivation for the Agency Contract | 6 |
| 2. Risks Surrounding the Agency Contract | 8 |
| a. The Uniform Athlete Agents Act | 9 |
| b. The Sports Responsibility and Trust Act | 10 |
| <i>B. Mutual Obligations Set Forth in the Agency Contract</i> | 13 |
| 1. An Agent's Duties to an Athlete | 13 |
| 2. An Athlete's Rights and Duties | 18 |
| III. <u>THIRD PARTY INTERACTIONS AND LIABILITIES</u> | 23 |
| <i>A. Possible Liabilities for Athletes</i> | 24 |
| 1. Contractual Duties and Liabilities | 25 |
| 2. Tort Liabilities | 26 |
| <i>B. An Agent's Role Concerning Third Party Negotiations</i> | 27 |
| 1. Agent Liabilities | 28 |
| IV. <u>REQUIREMENTS AGENTS MUST COMPLY WITH</u> | 29 |
| <i>A. State and Federal Requirements for Agents</i> | 29 |
| <i>B. League Requirements for Agents</i> | 30 |
| V. <u>DIFFERENCES BETWEEN LAWYER AGENTS AND THOSE WHO ARE NOT LAWYERS</u> | 35 |
| <i>A. The Professional Code of Conduct</i> | 35 |
| <i>B. Compensation Differences</i> | 38 |
| VI. <u>RELATIONSHIPS AND INTERACTIONS BETWEEN A PROFESSIONAL ATHLETE, PROFESSIONAL TEAM, AND PROFESSIONAL LEAGUE</u> | 39 |
| <i>A. The Athlete's Relationship with His or Her Team</i> | 39 |
| <i>B. The Athlete's Relationship with the League</i> | 43 |
| <i>C. The Relationship Between a Professional League and Its Member Teams</i> .. | 49 |
| VII. <u>CONCLUSION</u> | 50 |

I. INTRODUCTION

Would you be willing to put yourself and your career on the line for a professional athlete? That is what sports agents do each and every day. From the recruiting process to signing contracts, the agency world is not something handed to an agent on a silver platter. Amid a sports world where athletes can be taken advantage of, let alone be involved in scandals or drug violations, it is important to know the law behind the athlete-agent relationship.

The most important legal relationship for both an athlete and an agent is the player-agent relationship. Once a player-agent relationship is formed, further legal relationships such as that between the athletes' agent and the professional league or team become pertinent. Common sense would have it that an athlete needs to trust his or her agent, but just as importantly, an agent needs to be able to trust the athlete he or she is representing.

Recently media reports and investigations have questioned the formation and consequences surrounding athlete-agent relationships. The NCAA has reprimanded many college football programs, such as those at the University of Southern California and the University of North Carolina Chapel-Hill, for their players violating the rules set forth for player-agent contact while an athlete is playing for school that is a member of the NCAA.¹ Many articles have been written detailing the NCAA rules agents and athletes have violated in pursuit of a promising career. Recently, Josh Luchs, a twenty-year veteran National Football League

¹ See National Collegiate Athletic Association, *Bowl Ban Among Penalties for Southern California* (November 26, 2010), available at: http://www.ncaa.org/wps/portal/ncaahome?WCM_GLOBAL_CONTEXT=/ncaa/NCAA/NCAA+News/NCAA+News+Online/2010/Division+I/Bowl+ban+among+penalties+for+Southern+California; See also National Collegiate Athletic Association, *NCAA Sets Reinstatement Conditions for Two UNC Football Players* (November 26, 2010), available at: <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2010+news+stories/September+latest+news/NCAA+requires+loss+of+contests,+repayment+for+Burney+and+Williams>; See also National Collegiate Athletic Association, *News Release Archive*, (November 26, 2010), available at: http://www.ncaa.org/wps/portal/ncaahome?WCM_GLOBAL_CONTEXT=/ncaa/NCAA/Media+and+Events/Press+Room/News+Release+Archive/2010/Infractions/.

(NFL) agent came clean about the violations he committed throughout the years.² Although the details of NCAA violations between athletes and agents are a discussion for another day, the rules help bring to light the difficulties and the legal relationships behind the athlete-agent relationship before it is even formed.

The NCAA aside, there are many laws agents themselves must follow as they pursue and represent athletes on the professional level. These laws govern the athlete-agent relationship from the point of formation until the contracts' dissolution. Beyond state and federal law, agents must abide by league requirements. Most professional leagues require agents to pass a league-specific exam before they can represent an athlete playing within the league. Furthermore, agents who are also lawyers must follow the Professional Code of Conduct within the state or states of their bar memberships. If an agent who is a lawyer violates the Code he or she may be disbarred or otherwise disciplined.

Outside of the athletes' and agents' relationships is the relationship between an athlete and his or her team. Although an athlete's contract consists of mostly the collective bargaining agreement of the league, each team negotiates the particulars of the contract with the athlete or the his or her agent. These particulars usually include player compensation as well as the practice and game schedule that the player must comply with.

The relationship between a professional league and its member teams also affects players and their agents. Both recent scandals surrounding the use of performance enhancing drugs in Major League Baseball (MLB), and other off-field scandals such as that surrounding NFL player Michael Vick's dog fighting being brought to light in the media has affected the relationship between a team and league. This is because the leagues have sanctioned the professional teams

² Josh Luchs, *Confessions of An Agent*, Sports Illustrated (Oct. 12, 2010), available at: <http://sportsillustrated.cnn.com/2010/magazine/10/12/agent/index.html>.

to enforce policies they have set in place concerning repercussions for athletes violating off-field or off-court policies. Teams in turn have taken the leagues sanctions seriously, and have been stricter in handing out punishments, fines and suspensions to those athletes who violate league rules.³ This cohesiveness is important because teams and leagues must stand together as they reprimand athletes who do not comply with the rules that have been set forth, either by the league or by the law. Before getting to these issues though, it is important to understand the foundations of each legal relationship an athlete or agent can be affected by.

The legal relationships between professional athletes, agents, teams, and leagues are paramount to the success of the professional sports world. It is through these relationships that not only athletes, but their agents as well, can make a living by working hand-in-hand with professional leagues and teams.

To understand the significance of these relationships, this paper will first discuss the relationship between an athlete and his or her agent. This relationship discussion explains the agency contract's formation, its importance and the risks surrounding its formation, and even the mutual obligations it sets forth for both the athlete and the agent. Third party interactions then become an integral part of the relationship between an athlete and his or her agent. While working with third parties, such as professional teams, possible liabilities arise that both an agent and athlete must be aware of. An agents' major role, after all, is to negotiate contracts with third parties on behalf of the athlete they represent. In order to negotiate with third parties though, there are many state, federal, and even league requirements agents must comply with. If an agent is in compliance with these requirements, it is also important to understand the differences

³ See Mark Maske, *Falcon's Vick Indicted In Dogfighting Case*, The Washington Post (July 18, 2007), available at: <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/17/AR2007071701393.html>.; See also ESPN – MLB, *Mitchell Report: Baseball Slow to React to Players' Steroid Use* (Dec.14, 2007), available at: <http://sports.espn.go.com/mlb/news/story?id=3153509>.

between agents who are lawyers and those who are not lawyers. This is because there are differences in the types of conduct lawyer agents can act with verse those agents who are not lawyers. Athletes may also benefit from knowing these differences because they can affect the method of compensation by which an athlete pays his or her agent. Beyond these interactions are those that concern the professional athlete's relationship with his or her team and league, and even the importance of a leagues interactions with its member teams. These relationships, overall, all affect the success of the professional sports world and help to show how the law plays a paramount role in sports.

II. THE RELATIONSHIP BETWEEN AN ATHLETE AND AGENT

Agency is the fiduciary relationship that comes about when a principal, or athlete, manifests assent to an agent for the agent to act on his or her behalf and subject to the athlete's control.⁴ In return, the agent must manifest assent or otherwise consent to represent the athlete.⁵ An athlete or agent can manifest assent or intention through oral or written words, or even through conduct.⁶ An agency relationship only arises when these elements are all present.⁷

A. Contract Formation

When an athlete and agent enter into a contract, they form a legally binding agreement in which both parties make promises that can in turn be enforced through legal remedies if either breaches the agreement. These contracts bind the athlete legally to his or her specific agent until their contract expires or is revoked. For this reason, it is important to understand why and how a contract between an athlete and agent is formed.

⁴ *Restatement Third of Agency* § 1.01.

⁵ *Id.*

⁶ *Id.* at § 1.03.

⁷ *Id.* at § 1.02.

Many athlete-agent relationships begin when an athlete is making the transition from collegiate athletics to the professional level. It is not uncommon, however, in sports such as hockey, for athletes to skip the collegiate level and jump right into their professional careers. Hockey players, for example, are able to enter into the National Hockey League (NHL) draft at the age of eighteen, thus are known to have agents recruiting them at as young of an age as fourteen.⁸

1. Motivation for the Agency Contract

Imagine you are fourteen years old and have an adult telling you that you can make a lot of money playing the sport you love. Young athletes would likely love to jump into the professional sports world after hearing that they could make a living off of playing the sport they had lived and breathed for most of their young lives. But beyond the glory of having an opportunity to follow in the footsteps of great athletes they have aspired to become, are the realities that the sports world revolves around business. It is for this reason that the contract between an athlete and agent is so important. Courts have even ruled in favor of athletes being represented by agents. In *Los Angeles Rams Football Club v. Cannon*, for instance, the court stated:

The Rams sought an injunction to keep [Billy] Cannon from playing in the AFL. In denying the Rams injunctive relief, the court permitted Cannon to breach his contract with the Rams for several reasons. The court opined that Cannon's age, business naiveté, and the fact that he was not represented by counsel during contract negotiations, made him susceptible to the sophisticated tactics of a clever general manager like Pete Rozelle. Thus, the court emphasized that amateur athletes needed agent representation in order to protect their interests and match the negotiating skill of a general manager or member of a professional team.⁹

⁸ *NFL Draft Resources*, (last visited Nov. 29, 2010), available at: http://procehockey.about.com/od/prospects/NHL_Draft_Resources.htm

⁹ Stacey M. Nahrwold, *Are Professional Athletes Better Served by A Lawyer-Representative Than an Agent? Ask Grant Hill*, 9 Seton Hall J. Sport L. 431, 437 (1999); See also *Los Angeles Rams Football Club v. Cannon*, 185 F. Supp. 717 (S.D. Cal. 1960).

Agent representation becomes even more important because an agent not only negotiates contracts for the athlete he or she represents, but also handles the athlete's media relations, endorsement deals, and finances.

Athletes greatly benefit from the relationships they have with their agents. Not only do agents take care of the nitty-gritty details of the contracts between athletes and the team they play for, but they also help athletes secure jobs outside of their time on the court or field.

Endorsement deals become a large part of any well-known athlete's life. LeBron James exemplifies how an athlete can use the influences of his or her stardom to help sell products for companies such as Nike.¹⁰ Endorsement deals also extend past the sports gear market and can even influence what the society eats and drinks. For decades Wheaties boxes have featured famous athletes helping General Mills sell its products.¹¹ Powerade and Gatorade both are well known for using athletes to promote their products as well.¹²

Beyond endorsement deals, if an athlete experiences any trouble on or off the court, his or her agent may also be responsible for clearing the air with the media. Although media relations are not always the responsibility of agents under an agency contract, they are becoming a more integral part of an athletes' career and thus are becoming more customary within the contract between an agent and athlete. When the agency contract includes a clause in which the agent is responsible for the athlete's media relations, the agent will fully support his or her athlete and make sure that the media portrays his or her athlete in the most favorable light possible.

¹⁰ The Huffington Post, *LeBron James' New Nike Commercial: 'Should I Be Who You Want Me To Be?'*, (Oct. 25, 2010), available at: http://www.huffingtonpost.com/2010/10/25/post_567_n_773646.html.

¹¹ General Mills – Wheaties, (Oct. 25, 2010), <http://www.wheaties.com/>.

¹² YouTube – Andy Roddick Powerade Commercial, (Oct. 25, 2010), <http://www.youtube.com/watch?v=k981YyayjMQ&NR=1> and YouTube – Gatorade Super Bowl Commercial 2010 – “The Journey”, (Oct. 25, 2010), <http://www.youtube.com/watch?v=63oSn12n918>.

As it can be seen, athletes need agents so that they cannot only focus on their performances on the court, but also for professional advice off the court or field. Although agents may not always represent an athlete in legal proceedings, they do usually represent their clients in every other professional circumstance the athlete encounters. In turn, agents want athletes to sign with them so that they can make a living. It is safe to say that most agents are engrossed within the sports world and greatly value the opportunity to make a living representing athletes they love to follow on television, the radio, or even on the internet.¹³ As sports become a bigger influence within the society, the role an agent plays becomes more important and prestigious.

The result of an athlete needing an agent to represent him or her, and an agent wanting to represent an athlete to make a living, is the contract that is formed between the two to make their relationship a legal obligation. With the enticing option of pursuing a professional sports career verses continuing to play at the collegiate level, many athletes decide to terminate their college careers prematurely and hire agents to represent them as they pursue their professional careers. It is thus important for both an athlete and agent to understand the consequences of signing an athlete-agent contract before they do so.

2. Risks Surrounding the Agency Contract

In response to athletes' commonly leaving college prematurely to pursue professional careers, the NCAA bylaws state that any athlete who signs a contract with an agent therefore relinquishes his or her NCAA eligibility from that moment on.¹⁴ "The student-athlete who enters into an agency contract may lose eligibility [to play at the collegiate level] and may diminish his

¹³ See *infra* Part IV(B).

¹⁴ National Collegiate Athletic Association, *Overview of NCAA Bylaws Governing Athlete Agents*, (July 29, 2010), <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2010+news+stories/July+latest+news/Overview+of+NCAA+bylaws+governing+athlete+agents>.

or her value in the professional sports market. The educational institution may also lose post-season competition revenue and may be subjected to sanctions from the NCAA.”¹⁵ These sanctions, for example, can be handed out to institutions that unfairly gain team wins or post-season play due to an ineligible athlete continuing to play at the collegiate level after signing an agency contract.

With agents enticing collegiate athletes with money and personal incentives to leave the NCAA and enter the major leagues, the NCAA felt the need to regulate what an agent was allowed to do in his or her pursuit of an NCAA athlete.¹⁶ As former agent Josh Luchs shared in his article *Confessions of an Agent*,¹⁷ many agents over the years have paid off student-athletes illegally in return for the athletes signing agency contracts with them once the athletes decide to enter the professional sports world. It is exactly these circumstances that the Uniform Athlete Agents Act (“UAAA”)¹⁸ attempts to eliminate in order to provide a more even playing field for athletes, and to protect the NCAA from agents who are willing to break the rules.

a. The Uniform Athlete Agents Act

The UAAA was released in 2000 in response to the NCAA’s concerns surrounding athlete and agent relationships.¹⁹ At the very least, the purpose of the Act was to provide uniformity to the inconsistent state legislative structure concerning sports agents.²⁰ Although the UAAA is not itself legally binding upon agents, the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) composed the UAAA so that states could have the option of adopting the Act into law.

¹⁵ 8 Vill. Sports. & Ent. at 10; Educational institutions may not allow players who are ineligible play on their sports teams. If they do so they are breaching the NCAA bylaws and are thus subject to NCAA sanctions or punishments.

¹⁶ See *supra* note 2, at 2.

¹⁷ *Id.*

¹⁸ See 8 Vill. Sports & Ent. at 3; See also The Uniform Athletes Agent Act, available at <http://www.law.upenn.edu/bll/archives/ulc/uaaa/aaa1130.htm>.

¹⁹ 8 Vill. Sports & Ent. at 3.

²⁰ *Id.* at 10.

The NCCUSL itself was organized in 1892 as a state organization made up of lawyers, judges, legislators and law school professors.²¹ After composing of the Act and putting it up for a vote, each state was able to adopt the Act into law either in part or in its entirety. Many states took advantage of this opportunity, and as of 2009, forty-one states had enacted some version of the UAAA.²²

The Act itself contains twenty-two sections.²³ Most importantly, the act regulates the conduct of individuals who contact student-athletes for the purpose of obtaining agency contracts.²⁴ Beyond the regulations it imposes upon agents seeking to sign student-athletes, it requires the athlete or agent to inform the educational institution the athlete is attending when an agency contract is signed between the athlete and an agent.²⁵ When agents fail to follow the regulations set out by the Act, the educational institution damaged by the athlete or agent is entitled to a civil remedy.²⁶ Furthermore, the Act establishes both civil and criminal penalties for violations of the Act.²⁷ Thus, in states in which the UAAA has been adopted into law, agents will be subject to civil or criminal liabilities if they do not follow the laws the Act has set forth.

b. The Sports Responsibility and Trust Act

Unfortunately, although the UAAA was a step in the right direction for the regulation of athlete and agent relationships, it did not accomplish the uniformity it set out to accomplish.²⁸

Due to the need for widespread regulations, a federal statute known as the Sports Responsibility

²¹ *Id.* at 3.

²² UAAA Refs. & Annos., *supra* note 18.

²³ UAAA, *supra* note 18.

²⁴ *Id.* at §4-§7.

²⁵ *Id.* at §11.

²⁶ *Id.* at §16.

²⁷ *Id.* at §16 & §17.

²⁸ This section lays out the importance of the UAAA and SPARTA concerning the formation of the relationship between an agent and student-athlete. For requirements set out by each describing requirements only an agent must follow in order to represent an athlete see section IV of this paper below.

and Trust Act (“SPARTA”) was enacted in 2004.²⁹ SPARTA, enacted after the UAAA, helps support the goals of the UAAA by providing federal consequences for sports agents’ illegal actions. SPARTA also acts as a form of regulation in states that have not adopted a version of the UAAA. The UAAA and SPARTA congruently have helped protect the NCAA and athletes from sports agents who attempt to sign athletes while they are still collegiate students. The UAAA and SPARTA interact in many ways in states in which the UAAA has been signed into law. In those states, both Acts can be forms of action the state can take against an agent.

A state attorney general not only has the right to bring a suit involving the UAAA, but also is designated to bring claims under SPARTA as well.³⁰ In order for SPARTA to be effective, the Federal Trade Commission was granted the authority to enforce the Act.³¹ “[A state] attorney general can bring a civil action in federal court on behalf of the state’s residents to enjoin the practice, enforce compliance with the act, or obtain damages, restitution, or compensation.”³² A “savings” clause preserves other state and federal remedies, impliedly including the UAAA, where it has been enacted.³³

SPARTA is the only federal statute specifically regulating sports agents. Although agents are subject to the general laws relating to civil and criminal liabilities, SPARTA provides an extra incentive for agents to complete their work with integrity. Under SPARTA, agents cannot recruit or solicit student athletes to enter into agency contracts by trying to entice the

²⁹ See The Sports Agent Responsibility and Trust Act, available at http://docs.google.com/viewer?a=v&q=cache:nAboTsy0KnQJ:news.findlaw.com/hdocs/docs/sports/hr361.pdf+sports+agent+responsibility+and+trust+act&hl=en&gl=us&pid=bl&srcid=ADGEEShJWPWakvIrsA1orufVYaKbL2WwF6DYnYgOI8s35DLe72DIRw2GHygmE78abEgdyUazz9xFEoryPh64q1YWUIHWSa_wB0UKJltJnwUS6yyqqjQxYrHOZZXenBZVtnXW2mF-Hjf9&sig=AHIEtbRrlsj0yyk3ANOVuYx7jQLwmmQ7MQ.

³⁰ 15 U.S.C. §7804(a)(1).

³¹ *Id.* at §7803(b).

³² *Id.* at §7804(a)(1).

³³ *Id.* at §7806.

athletes with money or other valuable presents.³⁴ Agents may not even give gifts to anyone associated with the athlete until they have already entered into an official agency contract.³⁵ Furthermore, agents may not provide false or misleading information to athletes they are trying to recruit.³⁶ The statute also requires agents make disclosures to the athletes they represent.³⁷ If an agent fails to comply with the requirements of the Act he or she will be found to have committed an unfair or deceptive act or practice and will be subject to civil liability.³⁸

Similarly to the UAAA, SPARTA requires athletes and agents to notify the educational institution the athlete is enrolled in when any agency contract is agreed upon.³⁹

The acts prohibited by the UAAA and SPARTA are essentially the same; however, SPARTA brings the acts under the scrutiny of the Federal Trade Commission (FTC). Specifically, the FTC can prosecute agents for violating SPARTA for unfair and deceptive practices. Additionally, SPARTA specifically grants state attorneys general the power to prosecute violating agents in federal court under the jurisdiction of the FTC.⁴⁰

Under both the state enacted UAAA and SPARTA, agents must be aware of the circumstances surrounding the athlete they are trying to sign. If agents are in compliance with both the UAAA and SPARTA, they can then make a contractual offer to the athlete they are pursuing. In the reverse situation, an athlete may also make an offer to a sports agent asking for the specific agent to represent him or her. Either way, the contractual offer must be made before it can be accepted. The accepting party is bound to the agreement and its terms mutually with the offering party. After the contractual relationship is set in place it is then important for both the agent and the athlete to confirm the contractual obligations before the contract is officially signed and accepted.

³⁴ *Id.* at § 7802(a).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at § 7802(b).

³⁸ *Id.* at § 7803(a).

³⁹ *Id.* at §7905(a).

⁴⁰ Glenn M. Wong, *Essentials of Sports Law*, 609 (ABC-CLIO, LLC.) (4th ed. 2010).

B. Mutual Obligations Set Forth in the Athlete-Agent Agency Contract

Every contract provides each party to the contract with mutual obligations that must be performed as part of the agreement. In an athlete-agent contract, not only do agents have rights and duties they must perform, but the athletes do as well. Although it is typical for an agent to have more duties than the athlete in a contract between the two, the athlete's performance on the court or field, and duty not to breach the contract, are very important. For any contract to work there must be trust and loyalty between the parties. Working off of a foundation of trust, the contract drafting can focus on the specific duties of each party.

1. An Agent's Duties to an Athlete

One of the most fundamental and typical duties laid out within an agency contract between an athlete and an agent, is the duty of the agent to serve the athlete to the best of his or her abilities. In order for an athlete to have a legal right to this duty though, an agency contract must be agreed upon between the athlete and his or her agent. Agency itself is "the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act."⁴¹ Normally, as part of their fiduciary duties, agents will agree to represent their clients to the best of their abilities and in the athletes' best interests. In return for this loyalty, an athlete typically agrees to perform the duties laid out for him or her within the agency contract. With this mutual understanding, the athlete and agent can begin to depend on each other.

Agents who have contractually agreed to represent athletes have a fiduciary duty they must abide by while representing their clients.

⁴¹ *Restatement Third of Agency* §1.01.

A fiduciary duty is an obligation to act in the best interest of another party...A fiduciary obligation exists whenever the relationship with the client involves a special trust, confidence, and reliance on the fiduciary to exercise his discretion or expertise in acting for the client. The fiduciary must knowingly accept that trust and confidence to exercise his expertise and discretion to act on the client's behalf. When one person does agree to act for another in a fiduciary relationship, the law forbids the fiduciary from acting in any manner adverse or contrary to the interests of the client, or from acting for his own benefit in relation to the subject matter.⁴²

For instance, in *Detroit Lions, Inc. v. Argovitz*, a professional team and one of its players brought an action claiming a contract between the player and another team was void because the agent who had negotiated the contract had breached his fiduciary duty.⁴³

Ruling in favor of the Detroit Lions, Inc. and Billy Sims, the Court found that Argovitz, Sim's agent, clearly owed Sims the fiduciary duties of an agent.⁴⁴ The Court continued, stating: "An agent's duty of loyalty requires that he not have a personal stake that conflicts with the principal's interest in a transaction in which he represents his principal."⁴⁵ Argovitz, had however, represented Sims in an agreement to play with the Gamblers even though he had a conflict of interest at stake by being a part-owner of the Gamblers franchise. "A fiduciary violates the prohibition against self-dealing not only by dealing with himself on his principal's behalf, but also by dealing on his principal's behalf with a third party in which he has an interest, such as a partnership in when he is a member."⁴⁶

Argovitz also misrepresented his negotiations with the Detroit Lions to Sims, thus further breaching his fiduciary duty. "Where an agent has an interest adverse to that of his principal in a transaction in which he purports to act on behalf of his principal, the transaction is voidable by the principal unless the agent disclosed all material facts within the agent's knowledge that might

⁴² USLegal, Inc., available at www.uslegal.com.

⁴³ *Detroit Lions, Inc. v. Argovitz*, 580 F.Supp. 542, 544 (1984).

⁴⁴ *Id.* at 548.

⁴⁵ *Id.*

⁴⁶ *Id.*

affect the principal's judgment."⁴⁷ Just because a contract negotiated by an agent may be fair to the athlete does not mean that the athlete cannot void the contract if his or her agent was in violation of his or her fiduciary duties while negotiating the contract.⁴⁸ An agent, furthermore, must inform his or her athlete of "all facts that come to his knowledge that are or may be material or which might affect his principal's rights or interests or influence the action he takes."⁴⁹ In light of all of the circumstances judgment was entered in favor of the plaintiffs, and the contract between Sims and the Gamblers was rescinded.⁵⁰

An agent must also only act under the wishes the athlete has expressed to him or her during the time the agent is representing the athlete. Although agents have the authority to act on the behalf of the athletes they represent, they must be sure to first know the athletes' objectives and goals.⁵¹ It is by knowing the athletes' objectives and goals that an agent is able to uphold his or her duty to only act within the means and wishes the athlete has expressed to him or her.

An agent may also act on behalf of an athlete in a manner that that of a reasonable person would act knowing the athletes' circumstances.⁵² An agent's understanding of the principal's objectives is reasonable if it accords with the principal's manifestation and the inferences that a reasonable person in the agent's position would draw from the circumstances of the agency agreement.⁵³ Thus, even if an athlete does not expressly state to his or her agent what he or she may negotiate, an agent is free to negotiate on behalf of the athlete as long as they are reasonably

⁴⁷ *Id.*; See also *Burleson v. Earnest*, 153 S.W.2d 869, 874-875 (1941).

⁴⁸ 580 F.Supp. at 548.

⁴⁹ *Id.*; See also 153 S.W.2d at 874-875.

⁵⁰ *Detroit Lions*, *supra* note 43, at 549.

⁵¹ *Restatement Third of Agency* at §2.02(1); See also *infra* text accompanying notes 97-103.

⁵² *Restatement Third of Agency* at §2.02; See also *infra* text accompanying notes 97-103.

⁵³ *Restatement Third of Agency* at §2.02(3).

reflecting the wishes of the athlete, or as long as a reasonable person in the agent's position would interpret the agent's acts as manifestations in favor of the athlete they are representing.⁵⁴

Once agents know the athletes' objectives and goals they are able to represent their athletes to the best of their abilities without acting ultra vires. Ultra vires is a "Latin phrase meaning 'beyond power or authority' describing an act by [an agent] that exceeds [his or her] legal powers."⁵⁵ In other words, agents must be sure not to act outside of the scope of power and authority granted to them by the athlete they are representing.⁵⁶ If agents act outside of this scope prescribed to them, they are acting ultra vires and are breaking their duty to the athletes they represent under the agency contract not to act in such a way.⁵⁷

Beyond these fundamental duties, the agency contract lays out the specific duties an agent must complete or comply with to receive compensation and be free from liability.⁵⁸ These duties that are laid out extend beyond contract negotiations, and usually include an agent's counsel for the athlete's financial obligations, taxes and media relations.⁵⁹ Once agreed upon by both parties in the agency contract, agents must follow through with their duties or they can be held liable for breach of contract.⁶⁰

While negotiating contracts on behalf of an athlete, whether individually or as coprincipals, notification is an important step in assuring a contract has been completed properly. Notification is important because it affects an agent's power to bind the athlete to a third party. This is because it influences the existence of the apparent authority an agent has to negotiate on

⁵⁴ *Id.* at §2.02(2).

⁵⁵ Answers.com – Definition Ultra Vires, available at, <http://www.answers.com/topic/ultra-vires>.

⁵⁶ See *infra* text accompanying notes 97-103.

⁵⁷ See *infra* Part III(A)(1).

⁵⁸ See NFLPA Regulations, *infra* note 82.

⁵⁹ *Id.* at §1(B).

⁶⁰ See *supra* Part II(B)(1).

behalf of an athlete.⁶¹ Notification, furthermore, between an agent and the athlete he or she represents, is an important aspect of the agent's fiduciary duties to that athlete. This notification can also be explicitly written out in the terms of the agent-athlete agency contract.⁶²

Notification must occur between the third party and the agent, and then from the agent to the athlete or vice versa. A notification is a manifestation under law with the intention of affecting the legal rights and duties of both parties of an agreement.⁶³ When an agent gives or receives notice to or from a third party, it is effective as notification to the athlete he or she represents.⁶⁴ Notice is also apparent when an athlete or agent knows a fact, has reason to know a fact, has received effective notification of a fact, or should know the fact in order to fulfill their duties owed to another party.⁶⁵ The only time notification to an agent does not pass as notification to the athlete is when the person who gives notification to the agent knows, or has reason to know, that the agent is working adversely to the athlete.⁶⁶ This works in the reverse as well, if an agent gives notification to a person on behalf of an athlete, this notification is effective unless the person knows, or has reason to know, that the agent is working adversely to the athlete he or she is representing.⁶⁷

For purposes of determining an athlete's legal relations with a third party, notice that is given to an agent from the third party must be relayed from the agent to the athlete as part of the agent's fiduciary duties unless the agent is acting adversely to the athlete, or is subject to another not to disclose the fact.⁶⁸ Even when an agent is breaking his or her fiduciary duty to an athlete by acting adversely towards him or her, notice is still considered to have been given from the

⁶¹ See *infra* text accompanying notes 97-103.

⁶² See *supra* Part II(A).

⁶³ *Restatement Third of Agency* §5.01.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at §5.02(1).

⁶⁷ *Id.* at §5.02(2).

⁶⁸ *Id.* at §5.03.

agent to the athlete when it is necessary to protect the rights of a third party who dealt with the athlete in good faith.⁶⁹

It is consequently understood that once an agency contract is formed between an agent and an athlete, the agent must comply with his or her fiduciary duties and only act for the athlete he or she represents to the extent of the authority that he or she is granted. If an agent breaches these duties, he or she will be held liable. In compliance with an agents' fiduciary duty of loyalty, an agent may also represent two or more athletes at once. When an agent is acting on the behalf of one or more athletes on the same transaction or matter he or she may be considered either as a subagent or as an agent for coprincipals.⁷⁰ "A subagent is a person appointed by an agent to perform functions that the agent has consented to perform on behalf of the agent's principal and for whose conduct the appointing agent is responsible to the principal."⁷¹ An athlete or an agent may appoint a subagent, but an agent is only allowed to do so if he or she is given actual or apparent authority to do so from the athlete.⁷² Additionally, coprincipals may appoint an agent to act for them in the same transaction.⁷³

2. An Athlete's Rights and Duties

If an agent does not comply with the terms agreed upon within the agency contract, or breaches his or her fiduciary duty to the athlete, the athlete has a cause of action he or she can pursue against the agent. For example, in *Gussin v. Shockey*⁷⁴, the principals, a father and son, sued their agent when they found out their agent, Richard Shockey, had been taking unauthorized commissions behind their backs. Shockey, who was well versed in the trade and raising of race

⁶⁹ *Id.* at §5.04.

⁷⁰ *Id.* at §3.14.

⁷¹ *Id.* at §3.15.

⁷² *Id.*; See also *infra* text accompanying notes 97-103.

⁷³ *Restatement Third of Agency* at §3.16.

⁷⁴ 725 F.Supp 271, 272 (1989).

horses, was hired by the Gussins to help them buy, raise, train, and sell race horses.⁷⁵ Shockey agreed to work as an agent from the Gussins.⁷⁶ “Shockey knew the Gussins trusted him and relied on him for advice. Nevertheless, he did not believe that his responsibilities included getting the best price for the Gussins on their purchase[s].”⁷⁷

Shockey was making deals with horse purchasers for prices far above what the sellers were willing to sell the horses for, then relaying the raised price to the Gussins. The Gussins would accept the deals, trusting Shockey, but Shockey would pay the lower amount to the sellers and then take the difference between the selling price and paid price as his own commission.⁷⁸ This extra commission Shockey was taking was on top of the five percent commission he was already receiving from the Gussins for each horse he could barter for them.⁷⁹ The United States District Court for the District of Maryland decided that:

The fundamental duties of an agent include the duty of utmost loyalty and fidelity to the interest of his principal and the duty not to put himself in a position where his own interests may conflict with the interests of his principal . . . but also the duty not to take advantage of his position as an agent. . . . If the agent instead promotes his own interest at the expense of the principal’s, he violated the agency relationship and is subject to liability for any loss occasioned to the principal by reason of the agent’s breach.⁸⁰

Importantly, this case shows that agents do have a fiduciary duty to their clients they have contracted with, in which Shockey breached. The Court therefore entered judgment in favor of the Gussins. Correspondingly, an athlete has the right to pursue a case against an agent who breaks his or her fiduciary duty, or does not act in the best interest of the athlete.

⁷⁵ *Id.*

⁷⁶ *Id.* at 273.

⁷⁷ *Id.* at 274.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 274-275.

If an agent agrees to represent an athlete to the best of his or her abilities, an athlete in return usually must agree to exclusively stay with the agent, unless otherwise decided, until the contract between the two is fulfilled or nullified. For example, in *Total Economic Athletic Management of America, Inc. v. Pickens*,⁸¹ an agent brought an anticipatory breach of contract action against a professional football player after the player had retained another agent. The player, Pickens, had agreed and signed a contract with Howard Misle, an agent for Athletic Management of America, Inc. The agency contract signed between the two was a Standard Representation Agreement Between the National Football League Players Association (NFLPA) Contract Advisor and Player.⁸² The NFL requires that for any person to represent an athlete within the league, he or she must be: 1) certified as a Contract advisor pursuant to the NFLPA regulations; 2) must have signed a Standard Representation Agreement with the player; and 3) have filed a fully executed copy of the agreement with the NFLPA, along with any other contracts between the player and the agent for other services that will be provided to the athlete.⁸³

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

⁸¹ 898 S.W.2d 98 (1995).

⁸² NFLPA Regulations Governing Contract Advisors as amended through March 2007, 6, available at, http://docs.google.com/viewer?a=v&q=cache:YVSRrqe3FpQJ:images.nflplayers.com/mediaResources/files/PDFs/CAA/NFLPA_Regulations_Contract_Advisors.pdf+Standard+Representation+Agreement+Between+NFLPA+Contract+Advisor+and+Player&hl=en&gl=us&pid=bl&srcid=ADGEESj4WESFG7AN9XwzF2AVWr0VupLmagjcFY_I m5vokqiDp9WDVjyl8imNxSaAea1m_grPIX03f16MmKyvgt1-6hIly9hqPj7CFIXAWMWiXqFk1uy_59qD6r7XxYQYEL10kVvlnjIE&sig=AHIEtbQ9GJdzjoVKBHtBNNd-Zj0ueTxXxw.

⁸³ *Id.*; See also *infra* Part IV(B).

individual players.⁸⁴

After signing an agency contract with Howard Misle, Pickens signed with another agent, Tom Condon, who had been recommended to him by his coach at the University of Nebraska. The Missouri Court of Appeals found in favor of, and rewarded damages to, Mr. Misle and Athletic Management of America, Inc. after determining Pickens had breached his contract with Mr. Misle.

In order to protect the agent from investing time and money into an athlete who will just leave the agent for another, exclusivity clauses have become common in agency agreements between athletes and agents. Usually exclusivity between an agent and an athlete is laid out under the compensation portion of that athlete-agent contract.⁸⁵ An agent, as discussed in further detail below, is usually compensated either a percentage of the athletes' total compensation package, or compensated hourly for his or her work.⁸⁶ "An athlete who is dissatisfied with the relationship with his [or her] agent can terminate that relationship. However, the athlete may not avoid the paying the percentage owed his [or her] agent. By contrast, if the athlete is paying by the hour, he [or she] can terminate the relationship at any time and need only pay for work already completed." Exclusivity between an athlete and agent can thus be determined through the compensation method agreed upon within the agency contract, or through a specific exclusivity clause.

Under the contract discussed above, Mr. Misle and Pickens had exclusively agreed that Mr. Misle would receive four percent of all money received by Pickens under his NFL player contracts, however Pickens had allowed another agent to negotiate and be compensated for his

⁸⁴ NFLPA Regulations, *supra* note 82.

⁸⁵ Nahrwold, *supra* note 9, at 450. Citing Interview with Paul H. Haagen, Professor of Law, Duke University School of Law, in Durham, N.C. (March 25, 1998) (Haagen Interview).

⁸⁶ See *infra* Part V(B).

NFL contracts and thus had breached his duty to Mr. Misle.⁸⁷ Importantly, if an exclusivity clause is left out, or not determined through the compensation clause of an agency contract, the athlete will likely face no repercussions for leaving one agent for another. In this day in age, however, it is very rare for an exclusivity clause not to be negotiated into an agency contract.

Beyond the duty to keep his or her agent throughout the term of their contract, an athlete has a duty to pay his or her agent the wages agreed upon in their contract.⁸⁸ Agency contracts almost invariably lay out the compensation an agent will receive for his or her services to an athlete. As part of their mutual obligations, athletes usually agree to pay their agents around three percent of each contract or deal the agent negotiates for them.⁸⁹ Furthermore, agency contracts usually contain clauses laying out compensation agreements for work agents complete outside of the scope of contract negotiations. These clauses ensure agents will be paid for handling athletes' finances, taxes and media relations. In return for these services an athlete must abide by the compensation clauses set forth in the agency contract or they will be held liable for breach of contract.

For instance, in *Rosenthal v. Jordan*,⁹⁰ an agent's widow sued a professional football player to enforce payment for the contracts her husband had negotiated for the player under their agency agreement. A contract between Jordan and Mr. Rosenthal had been executed stating:

I hereby agree to pay to Morris M. Rosenthal, as compensation for any and all contracts negotiated by him as follows: Ten percent (10%) of the total amount of the base compensation paid to me by the Club each football season during the term of any contract and Ten percent (10%) of the total amount of any and all bonus agreements earned, due and paid to me by the Club during the term of any contract.⁹¹

⁸⁷ 898 S.W.2d 98 at 106.

⁸⁸ NFLPA Regulations, *supra* note 82, at §4(B).

⁸⁹ *Id.*

⁹⁰ 783 S.W.2d 452 (1990).

⁹¹ *Id.* at 453-454.

After Mr. Rosenthal had negotiated four one-year contracts for Jordan he passed away. Jordan had only paid Mr. Rosenthal for the first one-year contract he had negotiated. The court found in favor of Mr. Rosenthal's widow and remanded the case for a new trial consistent with the opinion that Jordan was obligated to pay the percentages agreed upon for the contracts Mr. Rosenthal had negotiated and had not been compensated for.⁹²

As it has been shown, athletes agreeing to agency contracts must abide by the obligations set forth in the contract they sign with an agent. Not only can athletes be held liable for obtaining another agent, but they can also be held liable for not fully following through with the compensation terms they have agreed to. The agreed upon compensation that an athlete pays the agent representing him or her is usually directly related to the compensation an athlete receives from his or her team, or endorsement deals, thus making the athlete's participation on the team mandatory once an agent has secured a contract for the athlete.⁹³ As described below, an athlete also has a duty to follow through with contracts an agent negotiates for them except for in rare circumstances.⁹⁴

III. THIRD PARTY INTERACTIONS AND LIABILITIES

The relationship between an agent and athlete concerns interactions with third parties as well. For instance, when agents negotiate contracts for the athletes they represent, they are working with third parties, usually professional teams, to create those contracts. After an athlete and agent have agreed and signed an agency contract with one another, interactions both between the agent and athlete, as well as between the agent and third parties can lead to legal liability for

⁹² *Id.* at 457.

⁹³ NLFPA Regulations, *supra* note 82, at §4(B).

⁹⁴ *See infra* Part III(A).

either the agent or athlete. Athletes, in certain situations, can also be liable for the conduct of the agent they have employed.

A. Possible Liabilities for Athletes

Concerning the actual contract an agent negotiates on behalf of an athlete, it is imperative to know that the contract that is negotiated legally binds the third party and the athlete, not the agent. Agents are not parties to the contracts they negotiate between an athlete and third party unless the parties agree otherwise.⁹⁵ While negotiating contracts with third parties, the athlete's identity is always disclosed so that the teams may negotiate aspects, such as the athlete's salary, with full knowledge of the player's abilities.⁹⁶

Athletes may be bound by contracts negotiated by an agent with third parties if the agent has authority. The agent may have this authority in one of three ways: actual authority, apparent authority, or implied authority. "An agent acts with actual authority when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act."⁹⁷

Extending upon the qualifications of an agent's authority on behalf of the athlete he or she represents, when third parties are negotiating with an agent they understand that the agent has apparent authority, or a belief that the agent is acting on behalf of the athlete and the athlete's manifestations.⁹⁸ An agent has actual authority, as described above, when an athlete manifests to an agent that, as reasonably understood by the agent, the agent can take action on behalf of the athlete.⁹⁹ Dependant upon the law of the state in which a contract is negotiated, if a written contract between the athlete and the agent is required to prove an agent has actual authority to act

⁹⁵ *Restatement Third of Agency* §6.01.

⁹⁶ *Id.* at §1.04(2).

⁹⁷ *Id.* at §2.01.

⁹⁸ *Id.* at §2.03.

⁹⁹ *Id.* at §3.01.

on the athlete's behalf, this authority contract must be written and signed by the athlete, otherwise the athlete will not be bound to any contract the agent negotiates on his or her behalf.¹⁰⁰

An agent's actual authority can be terminated in any of the following ways: 1) upon the agent's death, cessation of existence, or suspension of powers; 2) upon the athlete's death, cessation of existence, or suspension of powers; 3) upon the athlete's loss of capacity; 4) in an agreement between the agent and the athlete, or the occurrence of circumstances on the basis of which the agent should reasonably conclude that the athlete no longer would assent to the agent's taking action on the athlete's behalf; 5) upon a manifestation of revocation by the athlete to the agent or of renunciation by the agent to the athlete; or lastly, 6) by the occurrence of circumstances specified by statute.¹⁰¹ It is important to note though, that the termination of actual authority does not end any apparent authority an agent holds.¹⁰² Apparent authority only ends when it is no longer reasonable for a third party to assume that the agent is acting with actual authority.¹⁰³

1. Contractual Duties and Liabilities

As described above, an athlete must follow through with his or her contractual duties. In return for following through with contractual duties, an athlete is represented by his or her agent to the best of the agent's ability. When it comes to liability on the behalf of the athlete, it is again stressed that athletes only hire agents they can trust. This is because of the liability an athlete can subject to for the actions of his or her agent. When an agent acts on behalf of the athlete in third party negotiations the athlete is a party to the contract and thus becomes liable to

¹⁰⁰ *Id.* at §3.02.

¹⁰¹ *Id.* at §3.06; For more details and explanation of each of these circumstances see §3.07-§3.10.

¹⁰² *Id.* at §3.11.

¹⁰³ *Id.*

that third party.¹⁰⁴ This is specifically true when the agent is acting with actual authority from the athlete.

If, however, an agent makes a contract with a third party beyond the scope of the agent's authority, the athlete can still be subject to liability to the third party.¹⁰⁵ If an agent makes a contract with a third party that differs from the contract that the agent had actual or apparent authority to make, only by the exclusion of a separable part, the athlete will be subject to liability to the third party to the extent that the agent had actual or apparent authority to make.¹⁰⁶ This is true only if the third party made a manifestation to the athlete of its willingness to be bound, and the athlete had not changed position in reasonable reliance on the belief that no contract bound the athlete and the third party.¹⁰⁷ Thus an agent's apparent authority may bind the athlete to duties he or she must perform to avoid liability to a third party. In the sports world though, it is not likely for an athlete to be subject to liability because of an issue surrounding an agent's implied authority because all athletes are disclosed in their dealings with third parties.

2. Tort Liabilities

An athlete can be liable for his or her agent's tortuous conduct when they are negligent in supervising or selecting the agent that represents them.¹⁰⁸ This liability extends to an athlete who "delegates performance of a duty to use care to protect other persons or their property to an agent who fails to perform the duty."¹⁰⁹ An athlete may also be subject to vicarious liability to a third party for his or her agent's conduct.¹¹⁰ This is especially true when the agent commits a tort

¹⁰⁴ See *supra* text accompanying notes 78–80.

¹⁰⁵ *Restatement Third of Agency* at §6.05(1).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at §7.03(2).

while acting within the scope of employment the agent has agreed to with the athlete.¹¹¹

Additionally, an athlete will be subject to vicarious liability when an agent commits a tort while acting with apparent authority on behalf of the athlete with a third party.¹¹²

An athlete, as the agent's employer, is bound by the legal doctrine of respondeat superior. Under this legal doctrine "the employer is liable for the injuries caused by an employee who is working within the scope of his employment relationship."¹¹³ When an agent commits a tort while working within the scope of his or her employment by an athlete, the athlete will therefore be legally responsible for the tort committed. If an athlete is furthermore unjustly enriched at the expense of another by the actions of his or her agent, the athlete will be subject to a claim for restitution by the person harmed.¹¹⁴

B. An Agent's Role Concerning Third Party Negotiations

As explained above, agents owe the athletes they represent the fiduciary duty to represent them honestly, loyally, and to the best of their abilities.¹¹⁵ An agent also must negotiate contracts with third parties in the best interests of their client. Concerning the actual contract an agent negotiates on behalf of an athlete, it is imperative to remember that the contract that is negotiated legally binds the third party and the athlete, not the agent. Agents are not a party to a contract they negotiate between an athlete and third party unless the parties agree otherwise.¹¹⁶

While negotiating contracts with third parties, principals may be identified in one of three different ways: as a disclosed principal, as an undisclosed principal, or as an unidentified

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ The Free Dictionary – Respondeat Superior, available at, <http://legal-dictionary.thefreedictionary.com/Respondeat+superior>.

¹¹⁴ *Restatement Third of Agency* §2.07.

¹¹⁵ *See supra* Part II(B)(1).

¹¹⁶ *Restatement Third of Agency* at §6.01.

principal.¹¹⁷ In the context of the professional sports world though, athletes are always disclosed principals in negotiations. This is so that teams can pick athletes to join the team that fulfill the team's needs, and be able to properly equate salaries and other contractual specificities based off of the athlete's abilities. An athlete is disclosed if the third party of an agreement has notice that the agent is acting on behalf of the athlete, and knows the identity of the athlete.¹¹⁸ In this situation, as stated above, the athlete and the third party are the parties to the contract, and the agent is not a party to the contract. An agent's role in third party negotiations therefore is to perform under his or her fiduciary and contractual duties to represent an athlete to the best of his or her abilities and in the best interests of the athlete.

1. Agent Liabilities

An agent can be subject to liability to a third party for his or her actions while negotiating contracts on the behalf of the athlete he or she represents. This can occur when two or more athletes authorize the same agent to make separate contracts for each of them.¹¹⁹ If an agent instead makes a single contract with a third party on the behalf of both athletes that combines the athletes' separate interests and calls for a single performance by the third party, the agent can be liable.¹²⁰ In these circumstances the agent can be subject to liability to the third party for breach of the agent's warranty of authority unless the separate athletes are bound by the combined contract.¹²¹ Furthermore, unless the agent acted with the actual or apparent authority to bind each of the athletes to the combined contract, neither of the athletes, nor the third party, are subject to liability on the combined contract.¹²²

¹¹⁷ *Id.* at §1.04(2).

¹¹⁸ *Id.* at §1.04(2)(a).

¹¹⁹ *Id.* at §6.05(2).

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

A person who makes a contract with a third party purporting that he or she represents an athlete, but who lacks the power or authority to bind the athlete, is still giving an implied warranty of authority to the third party, and thus is subject to liability.¹²³ This liability extends to damages for any loss caused by the breach of warranty, or loss of benefit to the third party unless the athlete ratifies the act, or the athlete makes clear to the third party there is no warranty of authority, or the third party knows the agent is acting without authority. It is important to also understand that the liability for breach of the warranty is imposed only on the agent, whereas the liability of any other breach of authority is imposed upon the athlete.¹²⁴

IV. REQUIREMENTS AGENTS MUST COMPLY WITH

Beyond the duties and liabilities pressed upon agents and their relationships with athletes, agents must also be aware of state and federal requirements.¹²⁵ As discussed above, the UAAA and SPARTA both lay out requirements and laws that agents must follow, but professional sports teams and leagues also place requirements upon agents in order for them to be allowed to represent players within the leagues. Although these requirements are updated frequently, and continuously becoming more detailed and strenuous upon agents, their current statuses are important for agents to understand and abide by.

A. State and Federal Requirements for Agents

¹²³ *Id.* at §6.10.

¹²⁴ *Id.* at §6.10.

¹²⁵ As explained above in Section II(A)(ii) of this paper, the UAAA and SPARTA regulate the conduct between an agent and an athlete while an athlete is still playing for a team that is a member of the NCAA. Beyond the importance of understanding how the UAAA and SPARTA interact before the formation of the athlete-agent relationship, it is also important to understand the specific requirements each set out that only the agent must follow in order to represent an athlete.

Under Section Four of the UAAA, an agent must register in each state in which they represent an athlete.¹²⁶ Except as otherwise provided, an agent may not act as an athlete agent in the state without holding a certificate of registration under Section 6 or 8 of the UAAA.¹²⁷ The exceptions to this rule state: “[A]n individual may act as an athlete agent in [the state] for all purposes except signing an agency contract, if: 1) a student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and 2) within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in [the state].”¹²⁸ If an agent violates these registration requirements, any contract that results from his or her actions within the state is void and the athlete must return any consideration that he or she received under the contract.¹²⁹ SPARTA similarly, as explained above, is a federal statute that designates certain conduct that agents are allowed to pursue as they work to sign contracts with student athletes. SPARTA specifically makes sure that agents will be held liable if they use unfair or deceptive acts or practices while they are recruiting athletes.

B. League Requirements for Agents

Professional sports leagues, such as the NHL and NFL, also have their own league requirements that sports agents must follow in order to represent athletes playing within the league.¹³⁰ Many of these requirements include state registration, as well as passing a league specific exam.¹³¹

¹²⁶ UAAA at §4 – Athlete Agents: Registration Required; Void Contracts, *supra* note 18, at 7.

¹²⁷ *Id.* at §4(a); *See also* §6, §7, and §8 providing requirements for registration with the Secretary of State, what the registration application must include, the suspension, revocation, or refusal to renew registration, and temporary registrations.

¹²⁸ *Id.* at §4(b).

¹²⁹ *Id.* at §4(c).

¹³⁰ *See* NFLPA Regulations, *supra* note 82, at 20.

¹³¹ UAAA at §2(a), *supra* note 18, at 6-7.

In the NFL specifically, in order to represent an athlete in the league, an agent must first be eligible for Certification as an NFLPA Contract Advisor.¹³² An agent can be certified if he or she has filed a verified Application of Certification as a Contract Advisor, completed and signed the Authority and Consent to Release Information form with the NFLPA, and has paid the required application fee.¹³³ Furthermore, certification is only granted to individuals, not to any firms or business entities.¹³⁴

To be eligible for certification, the applicant must have received an undergraduate degree from an accredited four-year college/university and a post-graduate degree from an accredited college/university. However, the NFLPA shall have the authority to grant exceptions to this requirement in cases where the applicant has sufficient negotiating experience. A new applicant shall not be granted Certification (Section 2(F)) without first attending the NFLPA seminar for new Contract Advisors to be held on an annual basis and passing a written examination. In the instance that a new applicant fails the written examination on two successive occasions, the applicant shall be barred from applying for Certification and taking the written examination again for no less than five (5) years.¹³⁵

Although each professional league has its own regulations that agents must follow in order to represent athletes within the league, most of them are similar to that of the NFL as exemplified above.¹³⁶

The four major professional leagues, the MLB, NFL, NHL, and National Basketball League (NBA), each have their own players associations known as the Major League Baseball Players Association (MLBPA), National Football League Players Association (NFLPA), National Hockey League Players Association (NHLPA), and the National Basketball Players Association (NBPA) respectfully. Under Section 9(a) of the National Labor Relations Act

¹³² *Id.* at §2.

¹³³ *Id.* at §2(a).

¹³⁴ *Id.* at 6.

¹³⁵ *Id.* at 6-7.

¹³⁶ *See* Richard T. Karcher, Fundamental Fairness in Union Regulation of Sports Agents; Connecticut Law Review, (Vol 40, Number 2, Dec. 2007).

(NLRA), the players associations for each of these professional sports “represent their player-members in negotiations with the leagues over wages, hours and other conditions of employment.”¹³⁷

The players associations have exercised this statutory authority only to negotiate a level of basic compensation that is guaranteed to *every* player, whether a rookie or superstar, in the form of minimum salaries, benefits, and job protections. The players associations have determined that it is in the best interest of the players to have a player representation system that involves the use of third party agents. Thus, the associations have delegated to third party agents the association’s authority to negotiate the individual contracts of the players with the teams.¹³⁸

The reason the players associations delegate players negotiations to third party agents is to avoid any conflict of interest the associations might have in negotiations of individual contracts, as well as to give the players a chance to have their individual interests represented by an agent of their choosing.¹³⁹ The players associations thus support athletes’ use of agents; however, they regulate agent actions by enforcing these rules agents must follow in order to represent athletes within the leagues.

Although many of the players associations’ regulations do not apply to agents who are representing rookies, they do apply to all agents representing veteran athletes in the leagues who have already signed contracts with a team who is a part of the professional league.¹⁴⁰

Athletes who have not yet signed professional contracts are not official members of the professional players' association; thus, NFLPA regulations do not apply to agents negotiating an athlete's first contract with the league.³⁰ Only agents who are representing current players come within the scope of the NFLPA regulatory coverage.¹⁴¹

¹³⁷ National Labor Relations Act § 9(a), available at, http://www.nlr.gov/about_us/overview/national_labor_relations_act.aspx; *See also* 29 U.S.C. § 159(a) (2000).

¹³⁸ Unions and the Regulation of Sports Agents 358-359, Connecticut Law Review, (Dec. 2007); *See also* Paul C. Weiler & Gary R. Roberts, Sports and the Law: Text, Cases, Problems 324 (2d ed. 1998); *See also* Black v. Nat'l Football League Players Ass'n, 87 F. Supp. 2d 1, 2 (D.D.C. 2000).

¹³⁹ Unions and the Regulation of Sports Agents, *supra* note 138, at 350.

¹⁴⁰ Nahrwold, *supra* note 9, at 436.

¹⁴¹ *Id.*; *See also* Walter T. Champion, Attorneys Qua Sports Agents: An Ethical Conundrum, 7 Marq. Sports L.J. 349, 354 (1997); *See also* United States v. Walters, 913 F.2d 388, 389 (7th Cir. 1990).

While there may not be any players' association rules applicable to agents representing rookie professional athletes, many agents represent their athletes beyond their rookie years, and thus must know and abide by these regulations after their athletes' rookie year in order to avoid legal liability.

The players associations have the power to decide who, and to what extent, they want to delegate their exclusive representational authority over the players to. Players associations are “legally entitled to forbid any other person or organization from negotiating for its members. Its right to exclude all others is central to the federal labor policy embodied in the NLRA.’ Under the NLRA, the teams ‘may not bargain with any agent other than one designated by the union and must bargain with the agent chosen by the union.’”¹⁴² By providing regulations that agents must abide by in order to represent athletes in their specific professional leagues, the players associations are able to control, to an extent, agents' conduct.

Athletes, nevertheless, are the direct employers of their agents. Because the players associations have decided to allow third party representatives in which the athletes can individually select and fire their agents, the “associations are relieved of the duty, responsibility and potential liability associated with representing individual players in contract negotiations with their respective teams.”¹⁴³ Agents, however, even though they are employed directly by the athletes, still must follow the player association's regulations.

The activities of [agents] which are governed by these Regulations include: the providing of advice, counsel, information or assistance to players with respect to negotiating their individual contracts with Clubs and/or thereafter in enforcing those contracts; the conduct of individual compensation negotiations with the Clubs on behalf of players; and any other activity or conduct which directly bears upon the Contract Advisor's integrity, competence or ability to properly represent individual NFL players and the NFLPA in individual contract negotiations,

¹⁴² Unions and the Regulation of Sports Agents, *supra* note 138, at 360; *See also* The National Labor Relations Act, available at, http://www.nlr.gov/about_us/overview/national_labor_relations_act.aspx.

¹⁴³ Unions and the Regulation of Sports Agents, *supra* note 138 at 361.

including the handling of player funds, providing tax counseling and preparation services, and providing financial advice and investment services to individual players.¹⁴⁴

Agents thus must always abide by the regulations set forth by the players association that governs the athlete they represent. This is because the leagues will not consider the contracts an agent negotiates on behalf of an athlete to be valid if the agent is not in compliance with the league and players associations' regulations. This in turn could put an agent's job in jeopardy because an athlete could lose out on an important contract if his or her agent negotiated the contract outside the regulations set forth, thus leading the athlete to possibly hire a new agent.¹⁴⁵

In the NFL, the Commissioner will disapprove any NFL player contract between an athlete and a club unless the athlete is: "a) represented in the negotiations with respect to such NFL Player Contract(s) by an agent or representative duly certified by the NFLPA in accordance with the NFLPA agent regulation system and authorized to represent him; or b) acts on his own behalf in negotiating such NFL Player Contract(s)."¹⁴⁶ The Commissioner, through means of having power over its member teams, has the authority to disprove these contracts between an athlete and its member teams.¹⁴⁷ The Clubs, or professional teams, make sure to uphold this standard laid out in the NFL Collective Bargaining Agreement (CBA) because they also can be reprimanded if an agent is not certified, or if they fail to comply with the CBA.

Under procedures to be established by agreement between the NFL and the NFLPA, the NFL shall impose a fine of \$15,000 upon any Club that negotiates any NFL Player Contract(s) with an agent or representative not certified by the NFLPA in accordance with the NFLPA agent regulation system if, at the time of such negotiations, such Club either (a) knows that such agent or representative has not been so certified or (b) fails to make reasonable inquiry of the NFLPA as to whether such agent or representative has been so certified. Such fine shall not apply, however, if the negotiation in question is the first violation of this Article

¹⁴⁴ NFLPA Regulations, *supra* note 82, at §1.

¹⁴⁵ See *supra* text accompanying notes 97-103.

¹⁴⁶ NFL Collective Bargaining Agreement, Article VI §2 – Enforcement, at 16.

¹⁴⁷ See *infra* Part VI(C).

by the Club during the term of this Agreement. It shall not be a violation of this Article for a Club to negotiate with any person named on (or not deleted from) the most recently published list of agents certified by the NFLPA to represent players.¹⁴⁸

For these reasons, it is important that every agent understands and abides by league rules and regulations when they are representing an athlete.

V. DIFFERENCES BETWEEN AGENTS WHO ARE LAWYERS AND THOSE WHO ARE NOT LAWYERS

Beyond the requirements that apply to all sports agents representing athletes in professional leagues are those requirements that apply to agents who also have law degrees and have passed the bar. Although the following requirements technically only apply to those agents who are lawyers, it is encouraged for all agents to act with the same regard for ethics and professional responsibility.

A. The Professional Code of Conduct

Agents who are lawyers must follow the Professional Code of Conduct while representing an athlete. The Professional Code of Conduct, as provided by the American Bar Association, “provides leadership in legal ethics and professional responsibility through the adoption of professional standards that serve as models of the regulatory law governing the legal profession.”¹⁴⁹ Although it is recommended that all agents follow a version of the professional code of conduct, it is not required of agents who are not lawyers. Agents who are lawyers, however, can be disbarred or reprimanded for violating the Professional Code of Conduct

¹⁴⁸ NFL Collective Bargaining Agreement, Article VI §3 – Penalty, at 16-17.

¹⁴⁹ Model Rules of Professional Conduct Preface – Center for Professional Responsibility, available at, <http://www.abanet.org/cpr/mrpc/preface.html>.

applicable within the state the lawyer is practicing in.¹⁵⁰ For this reason, agents who are lawyers offer more protection to athletes who hire them, because of the added protection of the attorney's Professional Code of Conduct responsibilities.¹⁵¹ This added protection applies only to the extent that the Professional Code of Conduct protects clients, but it still guarantees an athlete more protection than that from an agent who is not a lawyer.

The Professional Code of Conduct was constructed by the American Bar Association in order to ensure and encourage the highest standards of civility, integrity and professionalism within the practice of the law.¹⁵² "As members of the bar, all lawyers must abide by this code of ethics."¹⁵³ Primarily, lawyers are regulated by the state supreme court or by separate state bar organizations.¹⁵⁴ "In most states, one or both may have adopted the Model Rules, in parts or in [their] entirety."¹⁵⁵ Each state adopts its own version of the Code; the Code, however, is only a guideline to the professionalism standards a lawyer should follow until a state has adopted it into law.

No matter the profession a lawyer is practicing within, as a bar-certified lawyer he or she must always follow the Professional Code of Conduct adopted within the state he or she is practicing within.¹⁵⁶ For example, in the case of *In Re Dwight*,¹⁵⁷ an attorney acting as a financial advisor tried to raise the defense that he was not liable for acting improperly under the Code of Conduct because he was not practicing law while he was performing his duties for the plaintiff. The attorney argued that because he was not practicing law, the Code should not apply

¹⁵⁰ Model Rules of Professional Conduct, Rule 8, available at, http://www.abanet.org/cpr/mrpc/mrpc_toc.html.

¹⁵¹ Nahrwold, *supra* note 9, at 440.

¹⁵² Model Rules, *supra* note 150.

¹⁵³ Nahrwold, *supra* note 9, at 439; *See also* Daniel L. Shneidman, Selected Issues of Client Representation by "Sports" Lawyers Under the Model Rules of Professional Conduct, 4 Marq. Sports L.J. 129 (1993).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *See* Walter T. Champion, Attorneys Qua Sports Agents: An Ethical Conundrum, 7 Marq. Sports L.J. 349, 354 (1997). *See also* United States v. Walters, 913 F.2d 388, 389 (7th Cir. 1990).

¹⁵⁷ 573 P.2d 481 (Ariz. 1977).

to him.¹⁵⁸ The Arizona Supreme Court, however, disagreed stating: “[a]s long as a lawyer is engaged in the practice of law, he is bound by the ethical requirements of that profession and he may not defend his actions by contending that he was engaged in some other kind of professional activity.”¹⁵⁹

Overall the Code itself is composed of numerous different sections covering the following: the client-lawyer relationship, counseling and being an advocate for clients, transactions with persons other than clients, responsibilities within law firms and associations, public service, information about legal services and how to communicate this information to clients, and maintaining the integrity of the profession.¹⁶⁰ Within the duties imposed under the client-lawyer relationship, a sports agent who is also a lawyer must:

[A]bide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter.¹⁶¹

While representing an athlete, a lawyer-agent also must be sure to not make a false statement of material fact or law to a third party, or fail to disclose a material fact to a third party when disclosure is necessary except where otherwise prohibited by the Code.¹⁶² As a lawyer, an agent also must maintain the integrity of the profession as prescribed under Rule 8 of the Code, otherwise they will be subject to disciplinary actions and/or disbarment.¹⁶³ With these

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 484.

¹⁶⁰ *Id.*

¹⁶¹ Model Rules, *supra* note 150, at Rule 1.2(a) – Scope of Representation and Allocation of Authority Between a Client and Lawyer.

¹⁶² *Id.* at Rule 4.1 – Truthfulness in Statements to Others.

¹⁶³ *Id.* at Rule 8.

requirements, an agent that is a lawyer has a higher ethical and professional standard he or she must live up to, and athletes may be greatly advantaged by this raised standard.¹⁶⁴

B. Compensation Differences

The Code also frequently causes the compensation of a lawyer-agent to be different than that agreed upon with an agent who is not a lawyer. A non-lawyer agent will typically charge a flat percentage; usually around four percent is standard, of the athlete's total compensation.¹⁶⁵

For endorsement contracts, agents usually charge the athlete between 10 and 20 percent of the contract value. As players' salaries have increased dramatically over the years, agent compensation has become disproportionate to the value created. For example, professional basketball player, Shawn Bradley's agent estimated that he spent less than 10 hours negotiating Bradley's contract with the Philadelphia 76ers. The eight-year final contract had a value of almost \$45 million, giving the agent, David Falk, a fee of about \$1.8 million. Granted, negotiating Bradley's contract would not be the only activity that the agent performed, but even at the very high hourly rate, an athlete could get a lot of service for that kind of money.¹⁶⁶

As prescribed by the Code though, an agent who is a lawyer must not charge an unreasonable fee, and thus usually is compensated hourly.¹⁶⁷ In turn, because percentage fees can easily be found as unreasonable fees for the amount of contractual work an agent actually performs,¹⁶⁸ these fees will commonly violate the code. For this reason most lawyer agents are compensated on a contingent fee basis, or based off of a reasonable percentage of what an athlete actually recovers from negotiations the agent performs for him or her. Thus, an athlete who hires a lawyer-agent may financially benefit in comparison to his or her hiring of a non-lawyer agent.

¹⁶⁴ Nahrwold, *supra* note 9, at 441.

¹⁶⁵ *Id.* at 449.

¹⁶⁶ *Id.*; *See also* Interview with Paul H. Haagen, Professor of Law, Duke University School of Law, in Durham, N.C. (March 25, 1998) (Haagen Interview); *See also* Bart Hubbuch, Let's Make a Deal... Super Agent Falk slam-dunks NBA, *The Washington Times*, Oct. 4, 1994, at B1.

¹⁶⁷ *Id.*; *See also* Model Rules, *supra* note 150, at Rule 1.5 – Fees; *See also* NFLPA Regulations, *supra* note 82, at §4(B): Contract Advisor's Compensation.

¹⁶⁸ *See supra* note 160.

VI. RELATIONSHIPS AND INTERACTIONS BETWEEN A PROFESSIONAL ATHLETE, PROFESSIONAL TEAM, AND PROFESSIONAL LEAGUE

Beyond the relationship between athletes and their agents, are the relationships athletes have with their professional teams and leagues. After forming a legal relationship with a sports agent, athletes then begin to form relationships between themselves and the professional teams and leagues they play for. Separate from the relationship between a team and league lies the ability for an athlete to play in a professional sport.¹⁶⁹ In order to play on a professional team, in the NFL for example, an athlete must sign a collective bargaining agreement that the players association has negotiated with the league as well as a players' contract, which is negotiated between the player's agent and the team.

A. The Athlete's Relationship with His or Her Team

Just as there are mutual rights and duties between an athlete and agent, there are also rights and duties between an athlete and his or her professional team. Each professional team negotiates an individual contract with the athlete, or the athlete's agent. Within these individual contracts, the mutual obligations of both the team and the player are laid out. Similarly to that of the athlete-agent agency contract, these contracts set out compensation clauses detailing the amount the team will pay an athlete for his or her performance on the court or field, as well as any incentive or bonus payments.

Errick L. "Ricky" Williams, for example, had signed a contract to play football for the Miami Dolphins.¹⁷⁰ This contract contained various compensation provisions including a signing bonus and incentive bonuses.¹⁷¹ Once an athlete and team agree to a contract, the athlete must follow through with the duties he or she is obligated to perform in order to receive

¹⁶⁹ See *infra* Part VI(C).

¹⁷⁰ *Miami Dolphins Ltd. v. Williams*, 356 F. Supp. 2d 1301, 1302 (2005).

¹⁷¹ *Id.*

compensation from the team. Ricky Williams, for instance, had negotiated a new contract with the Miami Dolphins in 2002.¹⁷² This new contract included “various incentive bonuses available to Williams based on his performance in each season of the remainder of the term of the original contract.”¹⁷³

During the course of his multi-year contract with the Dolphins, Williams made the decision to stop playing football in the summer of 2004.¹⁷⁴ The Dolphins in turn filed a grievance under the collective bargaining agreement in place between the NFLPA and the NFL.¹⁷⁵ The contract between the Dolphins and Williams stated:

Upon Player's failure to perform for the above enumerated reasons under Player's contracts for the [1999-2006] seasons, Player shall forfeit all future payments and amounts not yet received, and shall immediately return and refund to the Club any of the Additional Consideration previously paid by Club in the proportionate amount of the Additional Consideration as follows: . . . K. Voluntary Breach of Failure to Perform after January 31, 2004, and before or during the 8th game of the 2004 regular season: 37.50% (\$3,316,343) . . .

In the event Player falls or refuses to report to Club, or falls or refuses to practice or play with Club at any time for any reason . . . or leaves Club without its consent during the duration of the above league years, or if Player is otherwise in breach of this Contract, then Player shall be in default (“Default”). If Player is in Default, then upon demand by Club, Player shall... return and refund to the Club any and all incentive payments previously paid by Club... relinquish and forfeit any and all earned but unpaid incentives.¹⁷⁶

Because Williams had defaulted on his obligations of the contract, the Dolphins demanded that they be reimbursed \$8,616,343.00 from bonuses Williams had collected but then later forfeited by not following through with his contract.¹⁷⁷ An arbitrator heard both Williams and the

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* citing Contract between Dolphins and Williams.

¹⁷⁷ 356 F. Supp. 2d at 1302.

Dolphins pleadings and found in favor of the Dolphins, granting them the award money they sought.¹⁷⁸ The Court then affirmed the arbitrator's decision in favor of the Dolphins.¹⁷⁹

It can thus be seen that athletes must follow through with the performances they agree to complete in order to be compensated by the team they have contracted with. This scheme, however, works in the reverse as well. If a team agrees to compensate an athlete a certain amount for his or her performance, and the athlete follows through with the performance, the team must pay the athlete or it will have breached its contractual duties and will be subject to liability.

“Athletes also have been known to file suits against their teams in relation to injuries. When an athlete signs with a professional team, a team doctor evaluates them. These team doctors are employees of the team as well. “A large team of professional athletes requires its own team of physicians, therapists, and trainers to maximize their performance capability. Each physician or therapist works in tandem with the others to keep the athletes at their peak physical condition.”¹⁸⁰ Beyond keeping athletes in their best physiques though, these doctors know the statuses of each player on the professional team they work for before the athletes are able to play each game or match.¹⁸¹ Athletes have sued their teams in connection with falsely reporting the doctor's findings to them. This is because this false reporting can in turn cause serious injuries if an athlete is misinformed, or uninformed as to the truth of their physical condition.¹⁸² In cases such as these it is not only the liability of the doctor on the line, but the team as well.

¹⁷⁸ *Id.* at 1302-1303.

¹⁷⁹ *Id.* at 1306.

¹⁸⁰ Hospital For Special Surgery, *Team Physicians for the NY Mets: HSS Professionals Discuss the Doctor-Player Relationship*, available at, http://www.hss.edu/conditions_team-physicians-mets-doctor-player-relationship.asp

¹⁸¹ *Id.*

¹⁸² See Former Titans Receiver David Givens Sues Team for \$25 Million by Chris Burke (Sept. 23, 2009), available at <http://nfl.fanhouse.com/2009/09/23/former-titans-receiver-david-givens-sues-team-for-25-million/> where “...wide receiver David Givens filed a lawsuit that is still pending decision seeking \$25 million from the Titans, alleging the team withheld information from him that could have prevented his career-ending knee injury.”; See also *Babych v.*

The relationship between an athlete and his or her team, overall, is highly influenced by the collective bargaining agreement the athlete signs when he or she first decides to sign with the professional team. It is through the individual contract a team negotiates with the athlete that suits involving the enforcement of payment, to those for an athlete failing to perform as provided by the contract, arise. For instance, in the NFL, immediately after a player is assigned to a team, the player must report to the team as promptly as possible and “shall perform services with the assignee club as prescribed in said contract.”¹⁸³ The team in response is liable to pay the athlete’s salary for the season.¹⁸⁴ Although specific differences in payment may be possible dependant on the way an athlete is assigned to the team, whether by free agency, draft, or waiver, the team must make sure that payment is indeed made to the athlete.¹⁸⁵

Teams, as stated under the Collective Bargaining Agreement (CBA) of the NFL, can punish athletes through fines for being overweight, reporting late to minicamps, team meetings, practice, transportation, curfew, a scheduled appointment with a Club physician or trainer, or scheduled promotional activities.¹⁸⁶ NFL players can furthermore be fined up to \$14,000 per day of pre-season training camp that they miss.¹⁸⁷ Athletes, in signing the collective bargaining agreement, can be fined by their team for conduct on the court or field as well. For instance, in

McRae, 41 Conn. Supp. 280 (1989) where a professional hockey player brought an action against a player and the professional club to recover for injuries sustained when the other player struck him with a stick in violation of league rules.

¹⁸³ NFL Bylaws, Article XV Player Contracts §16.2 – Player Responsibility, 69, available at, <http://www.google.com/search?q=NFL+bylaws&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-US:official&client=firefox-a>.

¹⁸⁴ *Id.* at Section 16.3 – Salary Liability.

¹⁸⁵ *Id.*

¹⁸⁶ NFL CBA, *supra* note 146, at Article VIII – Club Discipline Section 1. Maximum Dicipline (a), 19. The specific amounts of fines have increased since the 2007 league year.

¹⁸⁷ *Id.*

the NFL, a football player can be fined up to \$1,500 for throwing a football into the stands.¹⁸⁸

The CBA however, protects players from fines for not attending voluntary workouts.¹⁸⁹

No player shall be required to attend or participate in any off-season workout program or classroom instruction of a Club other than as provided in Article XXXVI (Minicamps). Any other Club off-season workout programs and classroom instruction sessions shall be strictly voluntary and take place in the manner and time period set forth in this Article.¹⁹⁰

It can therefore be seen, that although the professional leagues control many of the regulations athletes must abide by, teams in are still able to enforce separate mutual obligations between the athlete and themselves.

B. The Athlete's Relationship with the League

A professional athlete's relationship with the league they play for is essential to the understanding of the relationship that a player has with his or her team. A team, or club, is a member of the professional league they are affiliated with. This concerns the athlete because the league controls the majority of the rules and regulations that an athlete must follow if an athlete has a contract with one of the leagues' member teams. Each professional league works together with the players association of that league to compose a collective bargaining agreement that protects and binds each athlete who decides to play in the league. For instance, the NFL bylaws state that "all contracts between clubs and players shall be executed in triplicate and be in the form adopted by the members of the clubs of the League; such contract shall be known as the 'NFL Player Contract'... a club may delete portions of or otherwise amend the NFL Player Contract subject to the right of the Commissioner...."¹⁹¹

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at Article XXXV Off-Season Workouts. Section. 1 Voluntary Workouts, 172.

¹⁹⁰ *Id.*

¹⁹¹ NFL Bylaws, *supra* note 183, at Article XV Player Contracts, §15.1 Player Contract, 67.

The league may also require that an athlete present him or herself in a certain way physically while playing for the team. According to the CBA of the NFL, “Clubs may make and enforce reasonable rules governing players’ appearance on the field and in public places while representing the Clubs; provided, however, that no player will be disciplined because of hair length or facial hair.”¹⁹² The NFL further requires that any executed NFL Player Contract be filed with the League Commissioner within ten days of its signing.¹⁹³ Before allowing a player to play for a team, either in practice or in a game, a NFL Player Contract must be executed and filed.¹⁹⁴

Using the NFL as an example for the methods of most professional leagues, according to its the CBA, players are guaranteed that there will be no discrimination in any form towards them because of race, religion, national origin or activity or lack of activity on behalf of the NFLPA.¹⁹⁵ The Commissioner of the NFL is also in charge of any suspensions or fines imposed upon a player for conduct that occurs during the course of a game, unless otherwise prescribed by the CBA.¹⁹⁶ These fines can include anything from unnecessary roughness to unsportsmanlike conduct.¹⁹⁷ For instance, in October of 2010, the NFL fined more than twelve different players in one week for unnecessary roughness used in games.¹⁹⁸ Although these fines were usually only \$5,000 per player, that week a single player was fined as much as \$75,000.¹⁹⁹ A player, however, is protected from being doubly punished for his conduct by both the team and

¹⁹² NFL CBA Article VII – Player Security, §2. Personal Appearance, 18, *supra* note 146.

¹⁹³ NFL Bylaws, *supra* note 183, at Article XV Player Contracts – §15.3 - Filing, 67.

¹⁹⁴ NFL Bylaws, *supra* note 183, at §15.6- Prerequisite to Play and Practice, 68.

¹⁹⁵ NFL CBA, *supra* note 146, at Article VII – Player Security, §1. No Discrimination, 18.

¹⁹⁶ NFL CBA, *supra* note 146, at Article XI – Commissioner Discipline, §1. League Discipline, 34.

¹⁹⁷ *Id.*

¹⁹⁸ NFL, *Vikings’ Edwards Among 12 More Players Fined by League*, available at, <http://www.nfl.com/news/story/09000d5d81b87c9a/article/vikings-edwards-among-12-more-players-fined-by-league>

¹⁹⁹ NFL CBA, *supra* note 146, at 34.

the league, and the Commissioners disciplinary action will preclude or supersede any disciplinary action given by the team for the same act or conduct.²⁰⁰

Players are furthermore protected by the league CBA in circumstances in which they are injured. A player who qualifies under the outlined injuries stated in the CBA will “receive an amount equal to 50% of his contract salary for the season following the season of injury...”²⁰¹ Players thus are still compensated under their contracts even if they cannot perform if they were injured in the course of a game or practice for their team.²⁰² When players are placed on a Physically Unable to Perform list (PUP), they will still be paid their full salary as well.²⁰³ However in instances in which a player is injured in a non-football related injury or illness, they will be placed on the N-F/I list and will not be entitled to any compensation under their contract while they are still on the list except for in rare circumstances.²⁰⁴

The NFL Player Contract itself is also used for each and every NFL player, and cannot be amended without the approval of the Management Council and the NFLPA.²⁰⁵ Aside from this rule, changes may be agreed upon between a player and the team in the player’s contract or contracts consistent with the provisions of the CBA.²⁰⁶ This allows for a comprehensive and fair agreement for all players in the league, while still allowing differences in clauses such as the compensation of an athlete based on his or her performance on the court or field.

Possibly the most important part of the relationship between an athlete and the league they play for is the guaranteed league-wide salary minimums and caps as negotiated by the players associations, for example by the NFLPA, on the players’ behalf. “If in any League Year

²⁰⁰ *Id.* at §5. One Penalty, 35.

²⁰¹ *Id.* at Article XII Injury Protection – §2. Benefit, 36; *See also* Article XII §1 for a description of the injuries that fall under the protection of the CBA.

²⁰² *Id.*

²⁰³ *Id.* at Article XXXII – Other provisions, §2. Physically unable to perform, 167.

²⁰⁴ *Id.* at Article XXXII – §3. Non-football injury, 167.

²⁰⁵ *Id.* at Article XIV, NFL Player Contract – §1. Form, 40.

²⁰⁶ *Id.* at §3(a). Changes.

the total Player Costs for all NFL Teams equals or exceeds 56.074% of actual Total Revenues, there shall be a Guaranteed League-wide Salary, Salary Cap, and Minimum Team Salary....²⁰⁷

Subject to the adjustments and credits set forth below, the amount of the Salary Cap for each NFL Team in years that it is in effect shall be (1) in the 2006 League Year, \$102 million; (2) in the 2007 League Year, \$109 million; (3) in the 2008 League Year, 57.5% of Projected Total Revenues, less League-wide Projected Benefits, divided by the number of Teams playing in the NFL during such year; (4) in the 2009 League Year, 57.5% of Projected Total Revenues, less League-wide Projected Benefits, divided by the number of Teams playing in the NFL during such year; (5) in the 2010 League Year, 58% of Projected Total Revenues, less League-wide Projected Benefits, divided by the number of Teams playing in the NFL during such year; and (6) in the 2011 League Year, 58% of Projected Total Revenues, less League-wide Projected Benefits, divided by the number of Teams playing in the NFL during such year.²⁰⁸

For the 2006 League Year, there shall be a guaranteed Minimum Team Salary of 84% of the Salary Cap. For each subsequent Capped Year, the percentage set forth in the prior sentence shall increase 1.2%, but in no event shall the percentage be greater than 90%. For example, in the 2008 League Year, there shall be a guaranteed Minimum Team Salary of 86.4% of the Salary Cap. Each Team shall be required to have a Team Salary of at least the Minimum Team Salary at the end of each Capped Year.²⁰⁹

The CBA also governs how player bonuses can be offered, as well as any benefits or contract extensions.²¹⁰ When a team makes it into post-season playoffs, pay is also affected. Each player who qualifies for post-season play will be paid a minimum of \$19,000 and a maximum of \$88,000 for each game they play.

The league, again using the NFL as an example, makes sure that athletes are also reimbursed for expenses in relation to team travel. “A player will be reimbursed for meals not furnished by his Club on travel days during the pre-season, regular season, and postseason....”²¹¹

Athletes are also given a specific number of days off from their obligations to practice, play, or

²⁰⁷ *Id.* at Article XXIV Guaranteed League-Wide Salary, Salary Cap, & Minimum Team Salary. §2. Trigger for Guaranteed League-wide Salary, Salary Cap and Minimum Team Salary, 95.

²⁰⁸ *Id.* at §4. Salary Cap Amounts.

²⁰⁹ *Id.* at §5. Minimum Team Salary.

²¹⁰ *Id.*

²¹¹ *Id.* at Article XXXIX Meal Allowance – §1. Reimbursement.

otherwise endorse the team they play for. In the NFL, players are permitted four days off per month as determined by the team, commencing with the first pre-season game and continuing until the last regular season or post-season game played by the respective team.²¹² During these days off though, an injured player may be required to undergo medical treatment, and quarterbacks may be required to attend coaches meetings.²¹³

Players within the NFL are also guaranteed that the team they play for will have a board-certified orthopedic surgeon as one of the club physicians, as well as trainers and other physician's staff that will all be provided at the cost of the team.²¹⁴ "If a Club physician advises a coach or other Club representative of a player's physical condition which adversely affects the player's performance or health, the physician will also advise the player. If such condition could be significantly aggravated by continued performance, the physician will advise the player of such fact in writing before the player is again allowed to perform on-field activity."²¹⁵ Players, although evaluated by team physicians, are not limited to these physicians' opinions, and may seek secondary medical opinions.²¹⁶ Before each season each player must undergo a standard minimum pre-season physical examination that will be conducted by the club physician.²¹⁷ Teams, however, are not allowed to conduct their own individual testing for anabolic steroids and related substances or drugs of abuse or alcohol.²¹⁸ These tests are instead conducted by the league, and can be given randomly throughout the season and post-season.²¹⁹

The CBA of the NFL also guarantee's that each team, or club, will have workers'

²¹² *Id.* at Article XL Days off – §1. Rate.

²¹³ *Id.* at §2. Requirements.

²¹⁴ *Id.* at Article XLIV Players' Right to Medical Care and Treatment – §1. Club Physician, 197.

²¹⁵ *Id.*

²¹⁶ *Id.* §3. Players' Right to a Second Medical Opinion.

²¹⁷ *Id.* §5. Standard minimum pre-season physical.

²¹⁸ *Id.*

²¹⁹ *Id.*

compensation coverage.²²⁰ When a player qualifies for benefits under workers compensation, the benefits will be equivalent to those benefits paid under the compensation law of the state in which the team is located.²²¹ Whenever an athlete has a legal issue with the league, by signing the CBA, they also agree for arbitration to be their course of action for any dispute.²²²

The question of whether the parties engaged in good faith negotiations, or whether any proposed change in the NFL Constitution and Bylaws would violate or render meaningless any provision of this Agreement, may be the subject of a non-injury grievance under Article IX (Non-Injury Grievance), which shall be the exclusive method for resolving disputes arising out of this Section 2. If the arbitrator finds that either party did not engage in good faith negotiations, or that the proposed change would violate or render meaningless any provision of this Agreement, he may enter an appropriate order, including to cease and desist from implementing or continuing the practice or proposal in question; provided, however, that the arbitrator may not compel either party to this Agreement to agree to anything or require the making of a concession by either party in negotiations.²²³

Athletes however, in other circumstances have had the standing to sue the league.

Antitrust issues aside,²²⁴ in *Clarett v. The National Football League*,²²⁵ a football player sued the NFL challenging that a rule limiting eligibility for a player to enter into the NFL draft to those who had been three full college football season removed from high school graduation was a violation of the Sherman Act.²²⁶ The District Court entered judgment in favor of Clarett, but Judge Sotomayor of the Court of Appeals reversed and remanded the case stating that the NFL's eligibility rule fell within the scope of non-statutory exemption from antitrust review, and that just because the NFL and the players' union did not bargain over the rule did not exclude the rule

²²⁰ *Id.* at Article LIV – Worker's Compensation – §1. Benefits, 227.

²²¹ *Id.*

²²² *Id.* at Article III – Scope of Agreement – §2. Arbitration, 9.

²²³ *Id.*

²²⁴ See *White v. National Football League*, 972 F. Supp 1230 (1997) a class action suit against the NFL for antitrust found in favor of the players. See also *McNeil v. National Football League*, 790 F. Supp. 871 (1992); See also *Haywood v. National Basketball Ass'n*, 401 U.S. 1204, (1971); See also *Radovich v. National Football League*, 352 U.S. 445 (1957); See also *Saunders v. National Basketball Ass'n*, 348 F. Supp 659 (1972).

²²⁵ 369 F.3d 124 (2004).

²²⁶ *Id.*

from the scope of non-statutory exemption. Case such as this highlight the authority that professional leagues and their regulations have over athletes.

Off of the field, the league also can control statements athletes make to the public. The NFLPA and the Management Council have agreed to use their best efforts to “curtail public comments by Club personnel or players which express criticism of any club, its coach, or its operation and policy, or which tend to cast discredit upon a Club, a player, or any other person involved in the operation of a Club, the NFL, the Management Council, or the NFLPA.”²²⁷ Athletes and coaches alike have been fined for violating this CBA rule. For instance, after the Minnesota Vikings suffered a close loss to their division rivals, the Green Bay Packers, in the Fall of 2010 coach Brad Childress furiously stated to the media after the game that it was “the worst officiated game [he’d ever] seen.”²²⁸ For these criticisms the league fined Childress \$35,000.²²⁹ In another instance, although the comments were not about the game or its affiliates, wide receiver Chad Ochocinco was fined \$25,000 for tweeting (posting on his Twitter page) during a game.²³⁰

In the reverse, player Randy Moss was fined in October 2010 for not making himself available to the media. “The NFL fined the Minnesota Vikings’ star wide receiver on Friday for failing to cooperate with the news media. Players’ contracts specify they must make themselves available to the media at specific times each week...[Moss] declined interviews after a win over Dallas on October 17, throughout last week leading up to a loss at Green Bay, and after the defeat. Moss also declined to be available [the next] week despite being in high demand because

²²⁷ NFL CBA, *supra* note 146, at Article LV Miscellaneous – §6. Public Statements, 234.

²²⁸ ESPN, *Coach Brad Childress Fined for Ref Talk*, available at, <http://sports.espn.go.com/nfl/news/story?id=5730826>.

²²⁹ *Id.*

²³⁰ Yahoo!SPORTS, *NFL Fines Ochocinco for Timing of Twitter Use*, available at, <http://sports.yahoo.com/nfl/news?slug=ap-bengals-ochocincofined>.

the Vikings visit[ed] New England, for whom Moss played the past three seasons.”²³¹ It can thus be seen that leagues, especially the NFL, can control many aspects of a professional athlete's career and actions while they are participating in the professional sports world.

C. The Relationship Between a Professional League and Its Member Teams

Although further details regarding the relationship between a professional league and its member teams is a discussion for another day, it is important to understand the basics concerning how a professional league and team work together. Professional leagues are made up of their member teams, and provide for uniformity between the competing teams that make up the league. For instance, the NFL is made up of thirty-two different teams, or clubs.²³² Each team is allowed to have a total of fifty-three players on its roster even though they are only allowed to dress forty athletes per game.²³³ These teams are responsible for delivering to the League offices certain payments for each game they host while they are members of the league.²³⁴ Teams must also play all of their regular season games at the times and places that are provided to them by the official schedule of the league.²³⁵ The leagues themselves also enforce that every person who qualifies as a member of the teams' bench personnel must be in team gear with field credentials.²³⁶ Thus, overall, the relationship between a professional team and league is one of mutual understanding to provide for uniformity between the teams, and allow for fairness between players contracts by requiring the league CBA to apply to each player on a professional team.

²³¹ NFL, *Vikings WR Moss Among Four Players Fined Week 7*, available at, <http://www.nfl.com/news/story/09000d5d81bb71d0/article/vikings-wr-moss-among-four-players-fined-in-week-7>.

²³² See National Football League, available at, www.NFL.com.

²³³ *Id.*

²³⁴ See NFL Bylaws, Article XIX – Conduct of Regular Season Games – §19.1, 98 stating “The home club shall deliver to the league office the greater of \$30,000 for each regular season and preseason game, or 40% of the gross receipts after...” certain deductions.

²³⁵ *Id.* at Article XIX, §19.2 Conduct of Game.

²³⁶ *Id.* at Article XIX, §19.3 Bench Personnel.

VII. CONCLUSION

As it can be seen, the relationships between athletes and their agents, agents and third parties, and even those relationships concerning the professional leagues and teams are all important to the continued success of the business of professional sports.