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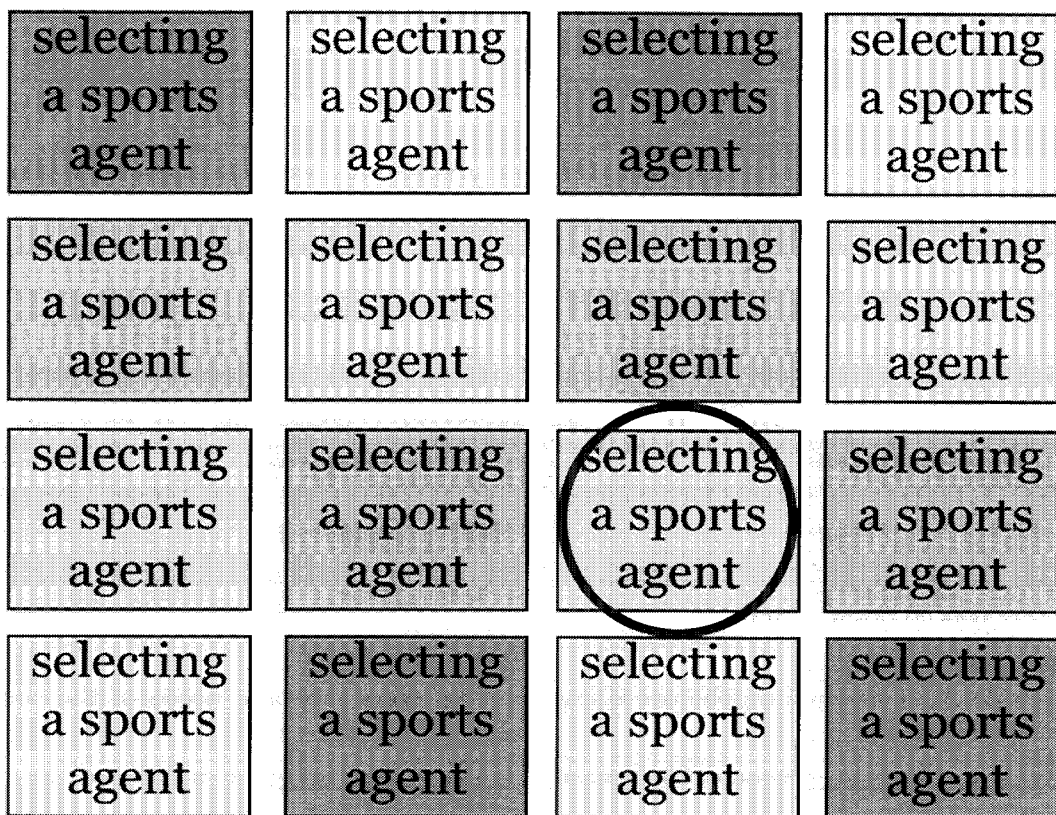
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SELECTING A SPORTS AGENT: THE INSIDE FOR ATHLETES & PARENTS

by Charles B. Lipscomb & Peter Titlebaum, Ed.D.



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Sports play a pervasive role in the everyday lives of millions of Americans. Fans of all ages devotedly attend sporting events, watch tournaments on television, view games over the Internet, and read box scores in the newspaper. Society has become fascinated by sports, as fans often idolize, and even try to emulate their favorite “superstar” athlete. Former US Supreme Court justice Earl Warren summed it up best when he stated, “I always turn to the sports page first. The sports page records people’s accomplishments; the front page nothing but man’s failure.”¹

While organized sports have been prevalent for several centuries,² the emergence of individuals representing athletes is a relatively modern phenomenon. As recently as thirty years ago,³ athletes negotiated directly with shrewd general managers. This put the athlete at a distinct disadvantage and often left him with little choice but to accept the team’s low salary offer.⁴ But things began to change in the mid-1970s⁵ as athletes started to hire sports agents⁶ to represent them in contract negotiations with management.

The enormous increases in player’s salaries and television revenue, combined with the increased exposure provided by Hollywood efforts such as *Jerry Maguire* and *Arli\$\$*, have made agents some of the most glamorous figures in sports. Attracted to the money,⁷ glory, and fame, individuals from all corners of society have rushed to become sports agents.⁸ Unfortunately, too many people have been tempted by the lucrative prospect of negotiating the next high-profile multi-million dollar contract, while very few can hope to accomplish such a feat. Nearly seventy-five percent of the agents who are registered with the National Basketball Players’ Association (NBPA) do not represent an active National Basketball Association (NBA) player.⁹ Instead, of the more than 417 agents registered with the NBPA, twenty-two represent the majority of the players in the NBA.¹⁰ In light of these numbers and with relatively few players in the potential client pool, the competition to represent the next Kevin Garnett, Brett Favre, or Ken Griffey Jr. is fierce, and at times, unprincipled.¹¹ Agents frequently ignore NCAA rules and regulations by offering cash and other incentives to entice young, inexperienced, and often immature athletes to sign.¹² In addition, some agents steal other agents’ clients, and even in rare circumstances, steal money from their own clients.¹³

Consequently, the athlete representation industry has

experienced a downward ethical and moral spiral, drawing the scorn of society. To combat this problem, the players’ associations in the major sports, the NCAA, and state lawmakers have designed standards of conduct for agents.¹⁴ However, many of these laws and regulations are conflicting, and most have not been consistently enforced, leading agents simply to ignore them. Clearly, a more effective system of laws and regulations is needed.

The goal of this Article is to educate and enlighten athletes, their families, and their coaches as to what they should know to make the best possible choice when selecting an agent. Identifying the individual best equipped to provide professional guidance to a high school or collegiate athlete contemplating a professional sports career is an extremely difficult task. Nevertheless, information is power, and that power belongs in the hands of the athlete. Thus, in the course of this Article, we will explore all the necessary topics and questions to help guide an athlete and his or her parents in selecting the best agent for the athlete.

DEFINING AN AGENT

In today’s society, agents are defined by a wide variety of names, such as sports agent, attorney-agent, athlete representative, athlete agent, player representative, student-athlete advisor, or player agent. The functions of these representatives can include counseling, contract negotiating and monitoring, financial managing, providing equipment, and working as a liaison between the athlete and the team. In some cases, agents also may take on the more personal needs of the client, handling the unexpected divorce or accusations of criminal behavior.

Due to the deficient, ineffective, and conflicting regulations governing agents, individuals with varied backgrounds and experiences have entered into the business. Lawyers, money managers, coaches, scouts, insurance agents, accountants, physicians, used car salespersons, teachers, bankers, and even former athletes have entered into the sports agent profession.¹⁵ They practice in a variety of settings, ranging from luxurious offices on Wall Street to a one-room office in a small town. Included in this mix are the growing number of full services sports management firms, financial managers, tax managers, sports psychologists, corporate law firms, and solo practitioners, all trying to create their own niche in the field of athlete representation.

SELECTING AN AGENT

As parents recognize their child has the talent to reap millions of dollars playing professional sports, they will encounter several complicated decisions. Suddenly, the enormous benefits of a four-year athletic scholarship can give way to the instant availability of millions of dollars. It can become extremely difficult for the parents and the athlete to understand and weigh all the options and then objectively make a sound decision.¹⁶ It is at this particular instance that choosing an agent who can provide quality, professional representation and with whom the player can establish a trusting, long-lasting relationship is most important. Because there is no all-encompassing definition of a sports agent, the critical task is to find someone with whom the player and his family can feel comfortable and who can provide the services needed.

AGENTS INITIAL CONTACT WITH AN ATHLETE

The business of pursuing talented young athletes has become increasingly intense every year. Sports agents are constantly searching for information, leads, and connections regarding the top athletes in the draft. To recruit the top athletes, they talk to coaches and scouts, analyze scouting reports, read the local sports pages and various sports publications, and even attend all-star showcases. Thus, for most talented athletes, the question will not be finding a sports agent, but choosing the best one.

Depending on the particular sport, initial contact can begin as early as high school and will continue until the professional draft.¹⁷ A high school athlete may decide to forego the draft and attend college. In this instance, the process starts all over again once the athlete finishes college.

The agents and firms will first contact the athletes with letters, cards, and brochures. Then, they will make numerous phone calls to the athlete, family, and coaches. Some agents will go so far as to try to foster a relationship with a relative, friend, or a classmate of the player. Another method is to hire full-time "runners" or recruiters to help the agent make contact with the athlete the agent is trying to sign. This contact is often indirect and difficult to detect. A student, dorm resident advisor, trainer, family friend, or any number of other people who have a legitimate reason to be with the student-athlete regularly may assist the agent.¹⁸ Finally, some agents even pay or induce college coaches to "deliver" clients. However, NCAA rules prohibit a coach from

receiving any compensation or favors directly or indirectly for such services.¹⁹

WHAT AN ATHLETE SHOULD DO

(1) Consult Family, Friends and the Rules

Selecting an agent is an extremely important decision in the life of a young athlete. This process should not be rushed into without the proper guidance and education. Once the agent makes the initial contact, the athlete should consult his family, coach, other players, and an attorney. If the athlete involves his family and coach in the decision-making process, he reduces the chance of the agent exerting undue influence and also reduces the possibility of jeopardizing his or her eligibility.

The athlete also should obtain a copy of the governing rules regarding agents from the players' association. For example, if the athlete is a football player, he should contact the National Football Players' Association. In addition, the athlete should obtain the NCAA rules, individual state rules, and particular collegiate rules regarding agents. If the athlete understands these rules before any direct contact is made, he will better understand what can and cannot be done by an agent and the athlete.

(2) Create a List of Important Issues

After the athlete understands the rules and regulations, the athlete and his or her family need to create a list of important attributes and skills an agent or firm must possess. Such factors include: integrity, trust, a positive reputation, education, experience, skill, proximity, comfortable fit, and the size of the firm. An athlete should develop a set of criteria for selecting an agent which best suits the needs, expectations, values, and goals of the athlete. Some athletes prefer a high-profile agent with a large client base, while others will select a lesser-known agent with whom they can develop and nurture a close relationship. Deciding which factors are most important will allow the athlete to understand his or her own goals and expectations, and therefore ask the proper questions.

(3) Ask Questions

After the agent makes initial contact with the athlete, the agent will usually ask to give the athlete and the family a presentation about himself and the services he provides. This is a great opportunity for the athlete to question the agent thoroughly. Information is the key. The more an athlete knows about an agent, the more

CRITERIA FOR SELECTING AN AGENT

- ❖ The agent's educational background, training, experience, sports associations;
- ❖ The agent's licenses in different states; Character and professional references from past and present clients;
- ❖ The agent's client list and how long the agent has represented each client;
- ❖ The length of time the agent has been representing athletes;
- ❖ The agent's role as an advisor;
- ❖ The services the agent performs (such as contract negotiations, endorsement exploration, career counseling, investment management, personal finance, taxes, and insurance);
- ❖ Assurance that the agent will attend to the athlete's needs;
- ❖ The exclusivity of the relationship;
- ❖ The agent's philosophy on contract negotiations;
- ❖ The agent's relationships with management, scouts, and coaches;
- ❖ The details of the agent/athlete contract: the length; the manner of dispute resolution; the circumstances of dismissal; and the means of renewal of the contract;
- ❖ How the fees are calculated
 - does the athlete pay a percentage of bonuses, playoff money, and awards?
 - are there different fees for different services?
 - are there separate contracts for each type of service?
 - who is responsible for the agent's expenses?;
- ❖ The highest drafted player for whom the agent has negotiated a contract;
- ❖ How many contracts the agent has negotiated;
- ❖ The different types of bonds the agent has;
- ❖ The codes of ethics, rules, and regulations that bind the agent;
- ❖ The fit between the agent and the athlete.

intelligent choice the athlete can make.

Sports panels can provide more help to an athlete. Approximately 125 Division I schools have established panels to counsel student-athletes concerning the possibility of a professional career and the athlete's professional playing aspirations.²⁰ These panels educate and inform the athlete so that he or she can objectively evaluate the agents' proposals.²¹

NECESSARY AGENT QUALIFICATIONS

Representing professional athletes has become more complicated as today's agents face a more vast and diverse set of issues than ever before. Despite the scope and complexity of these issues there are still no educational or specific skill requirements, and no minimal level of training necessary to be an agent.²² It has been said that the only qualification needed to be a player agent is to have an athlete to represent.²³

Over the past few years, league players' associations²⁴ and several states²⁵ have tried to address these deficiencies by implementing specific rules and regulations. These are designed to provide a minimal level of regulation over agents.²⁶ For instance, the state of Pennsylvania requires agents to fill out a registration form, post a \$20,000 bond, pay a yearly fee, and complete a criminal background check with the state police.²⁷ In addition, several league players associations (NFL, NHL, and NBA) require agents to take a test and pay a yearly fee before they will certify the agent.²⁸ However, the only requirement to be a Major League Baseball certified agent is to have a client on any team's 40-man roster and to have filled out a registration form.²⁹ Therefore, in such instances, individuals do not have to meet a standard minimum level of education, competence, or training to act as a sports agent.

NECESSARY SKILLS

To be a successful agent, one must provide quality professional representation. This demands a sophisticated understanding of many disciplines, including contract law, negotiation, advocacy, and counseling. The agent must possess a complete understanding of each and every provision of the collective bargaining agreement that governs the sport, and must be aware of the NCAA and specific state agency rules. The agent must have a working knowledge of all of these rules in order to interpret how each provision affects the athlete and to use each provision to the benefit of the athlete.

In addition, agents must have both the genuine interest and the ability to create and foster long-lasting relationships with the athlete and management. Moreover, they must know coaches, scouts, equipment companies, and other important individuals within the sport. They also should understand the attitude of the team's city towards a top draft pick, the team's philosophy of drafting players, and the team's economic approach to signing players. Further, the agent must possess the skills to analyze player's salaries, previous drafts, similarly situated players, and other relevant draft data. Finally, the agent must be familiar with the factors outside and inside the particular sport that may affect the athlete.

ATTORNEY-AGENTS

Due to the widespread and much publicized incidents of incompetence,³⁰ criminal abuses,³¹ and unreasonable fees in the sports representation industry, many athletes are increasingly turning towards lawyers for representation.³² Currently, over fifty percent of those actively involved as representatives in the three major professional leagues are lawyers.³³

There are several reasons why attorneys may be better trained and better qualified to represent professional athletes than non-attorneys. First, attorneys must satisfy extensive educational requirements to qualify for practice. This provides a solid foundation in contracts, legal writing, negotiation, advocacy, and counseling.³⁴ Second, from their daily practices, attorneys have developed practical expertise in drafting contracts, analyzing complex legal issues, negotiating and structuring transactions, creating concise and reasoned arguments, and counseling clients. These skills and experiences allow attorneys to understand and interpret professional sports leagues' complicated collective bargaining agreements and uniform player contracts. This knowledge in turn allows them to provide competent representation for the athletes whose financial futures are reliant upon the accurate interpretation of these agreements.³⁵ Third, attorneys are trained to ask probing questions in order to help solve their clients' problems.³⁶

Finally, and perhaps most importantly, codes of ethics established by the American Bar Association Model Rules of Professional Conduct bind attorneys.³⁷ These rules regulate their business activities and protect the public from attorney misbehavior.³⁸ These rules should insure that the attorney-agent will possess the knowledge, skills, and experience to: (1) competently represent

athletes; (2) charge reasonable fees; (3) avoid conflicts of interest; (4) act in a timely fashion; (5) not actively soliciting clients (attorneys are prohibited from contacting athletes by telephone or in person unless the player indicates they may do so); (6) have malpractice insurance; (7) not handle an issue that is not within their area of expertise (must refer the client to the right person); and (8) be professional in his/her dealings with people.³⁹ An attorney who violates these codes of ethics is subject to disciplinary action, including suspension, reprimand, or disbarment.⁴⁰ Conversely, the unregulated non-attorney sports agent can operate outside the ethical standards these codes impose.⁴¹

Furthermore, if an athlete believes that she has suffered losses due to the attorney-agent's negligent or dishonest representation, she can seek redress by filing a malpractice action or filing various complaints with the appropriate federal and state bar associations.⁴² If a non-attorney agent performed the same transgressions, the athlete would be without a similar course of protection. The only resolution would be a potential fraud claim in a civil court.

SERVICES PROVIDED

Originally, a sports agent was someone who athletes hired to represent them in contract negotiations with a professional sports team. The agent spoke on behalf of the player who was sheltered from any contact with the team. However, now sports agents do more than merely negotiate professional employment contracts. They can assist in a variety of other areas, such as protecting the athlete's rights, acting as a liaison between the team and the player, managing the athlete's income, procuring product endorsement income, and generally handling the athlete's professional and personal problems and opportunities. Through these services, the agent can help eliminate the many outside distractions that confront athletes, letting the athlete focus solely on playing the game. Nonetheless, it is important to keep in mind that this is merely a list of possible services an agent can provide.

CONTINUAL COMMUNICATION

Communication between the agent and the athlete must be incorporated into every service that is provided. While some athletes may be very knowledgeable and sophisticated, others may be poorly educated and inexperienced. An agent must take the time to explain to the

athlete the important provisions of the playing contract, the role the agent should play in the athlete's finances, and the important tax consequences of the athlete's decisions. The athlete must feel comfortable calling the agent and discussing whatever is on his or her mind.

Regular communication between the athlete and the agent is required for the athlete to reach a complete understanding of what services are being provided. Communication will help the athlete understand who is providing the services and the nature of the athlete/agent relationship. Through on-going communication, incidents of unpleasant surprise can be minimized.

For example, many contracts forbid athletes from competing in sports other than the one for which he is paid.⁴³ This can often surprise an athlete. Athletes also may be stunned to learn that they may be traded to a team in another city, be given their unconditional release, or put on waivers.⁴⁴ Having a complete understanding of all aspects of the relationship before it starts will allow both the athlete and the agent to successfully work together.

CONTRACT NEGOTIATIONS

The athlete's main source of income comes from the employment contract. Therefore, the employment contract must be negotiated with great care. The agent must possess the ability to negotiate a deal that maximizes the athlete's earning potential while creating long term financial stability during a relatively short period of time.⁴⁵ Moreover, a good agent is not just someone who can drive a hard bargain, but someone who is also attentive to such issues as making sure the athlete feels he is getting what he is worth, that the owner and the fans do not feel that the athlete is making outrageous monetary demands, and that the athlete and the team owner can live with each other when the negotiation is over.⁴⁶

While each set of contract negotiations is unique, there are four essential components to every successful negotiation. First, it is a necessity that an agent understands the rules of the sport. The agent must possess an extremely detailed knowledge of the league's collective bargaining agreement, the NCAA rules, and the state agency regulations. The agent also must have the ability to understand and synthesize how provisions such as the length of the contract, compensation, termination, and injury grievance affect the athlete. The athlete has rights and remedies available to him under his contract, about which the agent must know.

Second, in order for the agent to be an effective nego-

tiator he must have a clear idea of the athlete's needs and objectives.⁴⁷ He must understand what the athlete is willing to concede and what the athlete considers important. Knowing this will put the agent in a better bargaining position.⁴⁸

Third, the agent must know the athlete's market value. He must have conducted extensive research on prior year contracts, player statistics, scouting reports, market value of similarly situated athletes, how an athlete fits a team's needs, specific team management philosophies, and spending habits. An agent should use this information to help the athlete develop realistic expectations.

Once the market value of the athlete's services has been determined, the agent must choose an effective strategy and negotiate diligently to achieve the client's goals. By helping the client develop realistic expectations, the agent can present a logical and persuasive argument that will convince the team of the athlete's value. The hallmark of a successful negotiation is one that benefits both parties,⁴⁹ leading to more deals in the future.⁵⁰

The athlete's employment contract is not the only agreement subject to negotiation. Other contractual relations deal with player endorsements, personal appearances, and other marketing and promotional activities.⁵¹ The successful agent must possess expertise in these areas or be able to refer the athlete to someone who possesses those skills.

STUDENT-ATHLETE ADVISOR

In baseball, a college junior or a high school senior may hire an "athletic advisor".⁵² An athletic advisor is a person who is hired by an athlete or an athlete's parents to provide advice related to the athlete's professional aspirations.⁵³ An advisor cannot negotiate directly with a professional team, nor be present at the negotiations.⁵⁴ Further, an advisor must be compensated for the services that are provided to the player. The NCAA permits this type of service under Article 12.3.2 of the NCAA Rules.⁵⁵

Endorsements

Agents do more than merely negotiate player employment contracts. They also help the athlete obtain off-the-field income from product endorsements, personal appearances, clinics, speeches, trading card deals, and equipment contracts.⁵⁶ While a dedicated agent may

provide local promotional opportunities for an athlete, the opportunities for major product endorsements are very limited. These are only available to the top few athletes in a given sport.⁵⁷ Therefore, a responsible agent will try to curb an athlete's excessive expectations early in the athlete's career and not feed the athlete's ego with unrealistic promises. An athlete must be wary of an agent that tries to sell a player on the amount of endorsements they can provide. In fact, an agent's assurances of endorsement opportunities should not be a major consideration when selecting an agent.

FINANCIAL ADVISOR

Since professional athletes earn considerable sums of money during a very short career span, financial management is crucial both during and after the athlete's playing career.⁵⁸ The financial advisor must be able to balance the financial challenge of a short playing career with the athlete's youth and business inexperience. Quite often the entire life of a young athlete has been spent focusing on the perfect two-seam fastball or a deft no-look pass. Therefore, the athlete may not know or understand the financial services he or she really needs.

Because the knowledge necessary to negotiate playing or endorsement contracts differs greatly from those necessary to manage and invest money successfully, the athlete must very carefully select who manages his money.⁵⁹ Having a separate financial advisor rather than allowing the agent to handle everything sets up a system of checks and balances.

Several important factors should influence an athlete's choice of a financial advisor. For instance, the athlete must know if the financial advisor has proven experience in advising people with a high net worth. The financial advisor should have a wide range of expertise in the financial world with intricate knowledge concerning investing, banking, insurance, annuities, borrowing, and the stock market. The athlete must know which services are included with the negotiation of the contract and how the financial advisor's position in a large company or firm might impact those services. In all cases, the athlete should check to see that the financial advisor (or his or her company) possesses bonding or insurance protection against mishandled funds. Finally, and most importantly, the athlete has to feel comfortable with this individual for the same reason he or she must feel comfortable with an agent—because the advice involved will have a significant impact on the athlete's future.⁶⁰

There are several people who can provide financial services. Tax lawyers, accountants, investment counselors, a full-service athlete management firm, or other money managers such as banks or financial management firms all present viable alternative for an athlete seeking financial guidance. Some athletes will want only investment advice from their financial advisor; others may desire complete investment management. Still others will want that plus budgeting, tax advice, accounting, and advice on how to become involved in charities.

No matter whom the athlete decides is the best fit, the exact terms and provisions of the financial arrangement should be explained in a written contract. Another uninformed and unbiased lawyer should review this contract. Key provisions that an athlete may want examined in any financial agreement include those specifying who gets paid and how much, what the fee is, and for what services the client will pay.

OTHER SERVICES

There are other areas that have a direct impact on an athlete's career besides contracts and finances. An agent should also have a good familiarity with these or be able to refer the athlete to someone who does. For instance, because of the significant amounts of money athletes are making in sports, the agent must be aware of the underlying tax consequences of every financial transaction.⁶¹ Further, an agent must be able to advise the athlete regarding the types of insurance coverage necessary to meet the player's specific needs and lifestyle.⁶² Such types of insurance coverage include life, health, automobile, homeowner, and particularly, disability insurance.⁶³ The grueling life of a professional athlete can break down even the healthiest of bodies. Therefore, strict attention must be paid to disability insurance.⁶⁴

Agents have begun to offer peripheral services such as making travel arrangements, and arranging for consultations with nutritionists, sports psychologists, exercise therapists, and other qualified specialists. Most importantly, it should be recognized that all of the above represent merely a sampling of the myriad possible services an agent can provide. It is extremely difficult to possess the necessary skills to be an expert in all of these areas. Accordingly, an agent needs to recognize when he lacks the proper skills in a specific area and, in those instances, to refer the athlete to someone who does.

FEES

There are three widely used methods for calculating agent fees for contract negotiation.⁶⁵ These are a percentage fee, an hourly fee, and a flat fee.⁶⁶

The most common method is the percentage fee. With this type of fee arrangement, the agent takes a percentage of the total dollar value of the base contract negotiated. The agent must be clear as to what is included in the base contract. This can include salary, bonuses, incentives, tickets, and/or airline trips. The amount of the percentage fee typically falls between three and five percent. Several leagues, such as the National Basketball Association and the National Football League, regulate the amount that can be charged.⁶⁷

The second method is the hourly fee. The hourly fee is the method traditionally employed by attorneys. Under this arrangement, the attorney-agent charges an hourly rate for the time spent working for the athlete. There is no standard amount, but the usual rate lies between \$150 and \$400 an hour, depending upon the experience and reputation of the attorney-agent.⁶⁸

The final method is the flat fee, where the agent agrees to negotiate the contract in return for a predetermined fee regardless of the time spent or the amount of the contract. Under NCAA Rule 12.3.2, an individual acting as an athletic advisor must charge a fee for the advisor's services whether it be an hourly, or flat fee.⁶⁹

There are several advantages and disadvantages to each method. For example, the percentage method will typically lead to the highest fee arrangement, but may provide more incentive for the agent, whose own return depends entirely on the athlete's. The hourly fee will be less expensive, but may cause the athlete to think before he picks up the phone to call the agent, knowing each time that he is "on the clock." Furthermore, attorneys are hesitant to use this method because athletes think this will cost them more and thus hinder the relationship. The flat fee is perhaps the most reasonable

approach. However, the athlete must look at the other services and charges to make sure that the agent is not making up the difference elsewhere.

With any arrangement, an athlete should have the agent clearly explain which type of method the agent is using and put all the terms and provisions of the representation contract in writing. The contract should indicate the services included for the stated fee, the method and rate of charging for each category of services, and the cost of any associates who may assist or provide services to the athlete. The contract should also make it clear who is responsible for the cost of travel and other expenses. The athlete should know if he has the right to preapprove such expenses. The frequency of billing and the expected payment schedule should also be specified. It is important to establish that payment will be expected only as the athlete actually receives the compensation negotiated by the agent.⁷⁰

CONCLUSION

Sports agents have become an integral component of the increasingly complex world of sports. But even sports agents themselves are not simple; they come in all shapes and sizes. Some are big law firms or sports management groups, while others are lawyers, teachers, scouts, or even former players. Some are highly educated; others haven't finished high school. As a result, it is becoming increasingly challenging to find the sports agent who is the best fit for a given athlete.

Accordingly, the athlete should sit down with the people he or she trusts the most, and thoroughly discuss all of the issues. Each athlete will have different values, needs, goals, and economic situations that will affect their choices. The athlete needs to ask the agent many questions regarding credentials, experience, clients, education, fee structures, services provided, and more. The more educated the athlete the better choice he or she will be able to make.

¹ See Matthew J. Mitten, Symposium, *Sports Law as a Reflection of Society, Law, and Value*, 38 S. TEX. L. REV. 999, 999 (1997) (quoting ALEC LEWIS, *THE QUOTABLE QUOTATIONS BOOK* 262 (1980)).

² See *Vase Catalog Number: Philadelphia MS2444* (visited Oct. 30, 2000) <<http://www.perseus.tufts.edu/cgi-bin/vaseindex?lookup=Philadelphia+MS2444>> (describing photo of Ancient Olympic wrestling event circa 480 B.C. found at <<http://www.perseus.tufts.edu/Olympics/sports.html>>); *Lancashire County Cricket Club Museum, Old Tafford, Manchester* (visited Nov. 2, 2000)

<<http://www.drones.freeseerve.co.uk/lancs.htm>> (stating that cricket has existed in England for more than 200 years); *The British Gold Museum, St. Andrews* (visited Nov. 2, 2000) <<http://www.drones.freeseerve.co.uk/standrews.htm>> (stating that golf has existed in England since the 15th century).

³ See Curtis D. Rypma, *Sports Agents Representing Athletes: The Need for Comprehensive State Legislation*, 24 VAL. U. L. REV. 481, 481 (Spring 1990) (quoting Comment, *The Agent-Athlete Relationship in Professional and Amateur Sports: The Inherent Potential for Abuse and the Need for Regulation*, 30 BUFF. L. REV. 815 (1981)).

⁴ See Charles W. Ehrhardt and J. Mark Rodgers, *Tightening the Defense Against Offensive Agents*, 16 FLA. ST. U. L. REV. 634, 637 (Fall 1988) (quoting Neff, *Den of Vipers, A Sports Scourge: Bad Agents*, SPORTS ILLUSTRATED, Oct. 19, 1987, at 76).

⁵ See Rypma, *supra* note 3, at 481.

⁶ In this article, the terms “sports agent” and “agent” are used interchangeably.

⁷ The gross national product of the sports industry was \$213 billion in 1998. See David Broughton, *The Question: How Big is the U.S. Sports Industry*, SPORTS BUSINESS JOURNAL, Dec. 20-26, 1999, at 23.

⁸ See Dean Robert P. Garbarino, *So You Want to be a Sports Lawyer, or is it a Player Agent, Player Representative, Sports Agent, Contract Advisor, Family Advisor, or Contract Representative?*, 1 VILL. SPORTS & ENT. L.F. 11, 12 (1994) (“As sports has grown into a multi-billion dollar industry, there has been an explosion in the number of lawyers who specialize in sports law. There has been an understandably significant increase in the number of persons desiring to represent professional athletes. This increase can be explained by the high-profile status of sports and the tremendous salaries of professional athletes.”)

⁹ See ROBERT H. RUXIN, AN ATHLETE’S GUIDE TO AGENTS 4 (3d ed. 1993).

¹⁰ See *id.* at 4.

¹¹ See Garbarino, *supra* note 8, at 13. See also *id.* at 46 n.2.

¹² See Richard M. Nichols, *Agent, Lawyer, Agent/Lawyer ... Who Can Best Represent Student Athletes?*, ENT. & SPORTS LAW., Fall 1996, at 1, 22 (“[T]he agent has become the perceived problem of collegiate and professional sports. Indeed, the National Collegiate Athletic Association (NCAA) has commissioned an official task force to study ‘the agent problem.’ College coaches loathe the existence of agents. Athletic directors and university presidents shiver with the thought that an agent may ply a student-athlete with cash, cars, dinners, clothes, or some other commodity, in violation of NCAA regulations and thereby jeopardize the eligibility of an entire athletic department, souring the public image of the institution.”)

¹³ See, e.g., Ehrhardt & Rodgers, *supra* note 4, at 641 (“Apparently, there is nothing some agents would not do to induce a client: . . . they stir rumors about rival agents and cast doubt about their credibility and competence . . .”). See also Barbara Wahl, *Representation of Athletes*, ENT. & SPORTS LAW, Spring 1993, at 1, 20 (“At the heart of [1980’s tennis superstar Ivan] Lendl’s accusation was the charge that [athlete agency] ProServ, [Inc.] as his fiduciary, was improperly serving its own interest in making money for itself, and was not acting in his best interests.”).

¹⁴ See Arturo J. Marciano and David P. Fidler, Symposium, *The Globalization of Baseball: Major League Baseball and the Mistreatment of Latin American Baseball Talent*, 6 IND. J. GLOBAL LEGAL STUDIES 511, 549 (Spring 1999) (“Because of the abuses in the agent-player relationship, measures have been taken to regulate sports agents in the United States by the M[ajor] L[eague] B[aseball] P[layers] A[ssociation], the NCAA, and state legislatures.”).

¹⁵ See Ehrhardt & Rodgers, *supra* note 4, at 635.

¹⁶ See Nichols, *supra* note 12, at 22.

¹⁷ See Diane Sudia and Rob Remis, *Athlete Agent Solicitation of Athlete Clients: Statutory Authorization and Prohibition*, 10 SETON HALL J. SPORT L. 205, 215 (2000) (“Louisiana thus protects high school athletes from agent conduct that would violate rules promulgated by the National Federation of State High School Associations (NFSA) or similar organizations. This is critically important in today’s competitive sports marketplace where young athletes attending elementary and high school are being recruited not only by agents, but by universities as well.”). See also Rob Remis and Diane Sudia, *Escaping Athlete Agent Statutory Regulation: Loopholes and Constitutional Defectiveness Based on Tri-Parte Classification of Athletes*, 9 SETON HALL J. SPORT L. 1, 122 n.82 (1999) (“Even children who are not yet of school age are protected by the statute since they may have intercollegiate eligibility ‘in the future.’ It is interesting to note that it is becoming increasingly likely, in the case of a young phenom, that any agent would contact someone so young. For example, Tyson Chandler has been scouted (and provided clothes and shoes) by Nike since he was in eighth grade (age 13).”).

¹⁸ See William E. Kirwa, *Protecting College Athletes from Unscrupulous Agents*, THE CHRONICLE OF HIGHER LEARNING, Sept. 20, 1996.

¹⁹ See Ehrhardt & Rodgers, *supra* note 4, at 641.

²⁰ See *Understanding Business & Legal Aspects of the Sports Industry 2000: NCAA Regulations Related to Agents and Other Amateurism Provisions*, 592 PLI/PAT 151, 153 (2000) (“NCAA Bylaw 12.01.2 indicates that member institutions’ athletics programs are designed to be an integral part of the educational program and the student-athlete is considered an integral part of the student body, thus maintaining a clear line of demarcation between college athletics and professional sports. . . . The following legislation and interpretations relating to amateurism have been developed.”); *id.* at 157-59 (describing “Professional Sports Counseling Panels” in section II.G).

²¹ See RUXIN, *supra* note 9, at 34.

²² See 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, 432 (1999) (“Today, sports agents are targets of significant criticism. . . . There is no mechanism to prevent unqualified and unethical people from becoming sports agents because there are no minimum qualifications necessary to become a player representative.”).

²³ See RUXIN, *supra* note 9, at 13.

²⁴ See Rob Remis, *The Art of Being a Sports Agent in More Than One State: Analysis of Registration and Reporting Requirements and Development of a Model Strategy*, 8 SETON HALL J. SPORT L. 419, 451 (1998) (describing “NFLPA Regulations Governing Contract Advisors”); Jamie P. Shulman, *The NHL Joins in: an Update on Sports Agent Regulation in Professional Team Sports*, 4 SPORTS LAW. J. 181, 197 (describing the “NFLPA Agent Certification Program”); Sara Lee Keller-Smith and Sherri A. Affrunti, *Going for the Gold: The Representation of Olympic Athletes*, 3 VILL. SPORTS & ENT. L.J. 443, 487 (1996) (“The N[at]ional F[ootball] L[eague] P[layers] A[ssociation], N[at]ional B[asketball] P[layers] A[ssociation], M[ajor] L[eague] B[aseball] P[layers] A[ssociation] and N[at]ional H[ockey] L[eague] P[layers] A[ssociation] require player agents to execute standard representation agreements.”).

²⁵ See *Sudia and Remis*, *supra* note 17, at 233 n.2 (2000) (“The following statutes currently regulate athlete agents: Alabama: ALA. CODE §§ 8-26-1 to 8-26-41 (Law. Co-op 1993 & Supp. 1999); Arizona: ARIZ. REV. STAT. ANN. §§ 15-1761 to 15-1765 (West 1983); Arkansas: ARK. CODE ANN. §§ 17-16-101 to 17-16-207 (Michie 1995 & Supp. 1999); California: CAL. BUS. & PROF. CODE §§ 6106.7 (West 1990 & Supp. 2000); *id.* §§ 18895 to 18897.97 (West 1997 & Supp. 2000); Colorado: COLO. REV. STAT. ANN. §§ 23-16-101 to 23-16-108 (West 1997); Connecticut: CONN. GEN. STAT. ANN. §§ 20-553 to 20-569 (West 1999); Florida: FLA. STAT. ANN. §§ 468.451 to 468.4571 (West 1991 & Supp. 2000); Georgia: GA. CODE ANN. §§ 43-4A-1 to 43-4A-20 (1999 & Supp. 2000); Indiana: IND. CODE ANN. §§ 35-46-4-1 to 35-46-4-4 (West 1998); Iowa: IOWA CODE ANN. §§ 9A.1 to 9A.12 (West 1995); Kansas: KAN. STAT. ANN. §§ 44-1501 to 44-1515 (Supp. 1995); Kentucky: KY. REV. STAT. ANN. §§ 518.010 to 518.080 and §§ 164.680 to 164.689 (Michie 1999); Louisiana: LA. REV. STAT. ANN. §§ 4:420 to 4:433 (West 1987 & Supp. 2000); Maryland: MD. CODE ANN. BUS. REG. §§ 4-401 to 4-426 (1992); Michigan: MICH. COMP. LAWS ANN. § 750.411e (West 1991); Minnesota: MINN. STAT. ANN. § 325E.33 (West 1995); Mississippi: MISS. CODE ANN. §§ 73-41-1 to 73-41-23 (1999); Missouri: MO. ANN. STAT. §§ 436.200 to 436.212 (Supp. 2000); Nevada: NEV. REV. STAT. §§ 398.015 to 398.255 (Michie Supp. 2000); *id.* 597.920 (Michie 1999) North Carolina: N.C. GEN. STAT. §§ 78C-71 to 78C-81 (1999); North Dakota: N.D. CENT. CODE §§ 9-15-01 to 9-15-05 (Supp 1999); Ohio: OHIO REV. CODE ANN. §§ 4771.01 to 4771.99 (Banks-Baldwin 1998); Oklahoma: OKLA. STAT. ANN. tit. 70, §§ 821.61 to 821.71 (West 1998); Oregon: H.B. No. 3628, 70th Leg., Reg. Sess., §§ 1-12 (Or. 1999); Pennsylvania: 5 PA. CONS. STAT. ANN. §§ 3101-3312 (West Supp. 2000), 18 PA. CONS. STAT. ANN. § 7107 (West Supp. 2000); South Carolina: S.C. CODE ANN. §§ 16-1-90, 16-1-100, 59-102-10 to 59-102-50 (Law. Co-op. 1999); Tennessee: TENN. CODE ANN. §§ 49-7-2111 to 49-7-2121 (1996 & Supp. 1999); Texas: TEX. OCC. CODE ANN. §§ 2051.001 to 2051.553 (West 1999)).

²⁶ See *id.*

²⁷ See 5 PA. CONS. STAT. ANN. §§ 3301-3312 (West 1998). See also §§ 3101-3103; 18 PA. CONS. STAT. ANN. § 7107 (West 1988).

²⁸ See RUXIN, *supra* note 9, at 85-86 (stating that both the National Football League Players Association and the National Hockey League Players Association require agents to pay an annual fee, but that the Major League Baseball Players Association does not charge an annual fee).

²⁹ See RUXIN, *supra* note 9, at 86.

³⁰ See Nahrwold, *supra* note 22, at 433 (discussing a “misappropriation of funds case, [in which] sports agent Norman Young mishandled his athlete-clients’ funds through his agency Probus Management, Inc. [Young’s National Football League] [c]lients complained that their bills were not paid, promises of off-season employment and endorsement deals were not kept, and their phone calls were not returned.”).

³¹ See Michael A. Weiss, *The Regulation of Sports Agents: Fact of Fiction?*, 1 SPORTS LAW. J. 329, 331-32 (Spring 1994) (discussing *People v. Sorkin*, No. 46429 (N.Y. Sup. Ct. Nov. 28, 1977), *aff’d*, 407 N.Y.S.2d 772 (N.Y. App. Div. 1978), in which “a former sportswriter turned sports agent, Richard Sorkin, was sentenced to three years in jail after pleading guilty to seven counts of grand larceny after he stole money he was supposed to be investing and keeping in trust for his clients.”).

³² See Nahrwold, *supra* note 22, at 454 (stating that, in 1994, professional basketball star Grant Hill “chose a lawyer-representative to negotiate his contract with the Detroit Pistons instead of a traditional agent.”); Patrick Hruby, *Free Agents? New NBA Rules Alter Player Reps’ Roles*. THE WASHINGTON TIMES. June 29, 1999, at 1 (stating that, in 1999, professional basketball player Ray Allen hired lawyer Johnnie Cochran Jr. to examine the \$70.9 million contract extension he signed . . .”).

³³ See Robert E. Fraley and F. Russell Harwell, *The Sports Lawyer’s Duty to Avoid Differing Interests: A Practical Guide to Responsible Representation*, 11 HASTINGS COMM. & ENT. L.J. 165, 170 (1989).

³⁴ See Vanderbilt University, *Vanderbilt University Law School Catalog 2000/2001* (describing required first-year courses, required upper-level course in Professional Responsibility and elective upper-level courses in transactional and advocacy subjects).

³⁵ See Nichols, *supra* note 12, at 25.

³⁶ See *Vanderbilt University Law School Catalog 2000/2001*, *supra* note 34 (describing “examination of witnesses, functions of judges and jury in determining admissibility of evidence, and principles of relevance, hearsay, and the admission of expert testimony” taught in “Evidence” and “jury selection, opening statement and closing arguments, direct and cross examination, presentation of expert testimony, introduction and handling of exhibits, trial preparation, courtroom etiquette, motion practice, and litigation ethics” taught in “Trial Advocacy”).

³⁷ See MODEL RULES OF PROF’L CONDUCT R. 1.1-1.17 (1999) (discussing rules governing the “client-lawyer relationship”).

³⁸ See MODEL RULES OF PROF’L CONDUCT R. 8.1 (1999) (discussing “Bar Admission and Disciplinary Matters”).

³⁹ See MODEL RULES OF PROF’L CONDUCT (1999). The Model Rules of Professional Conduct were adopted by the House of Delegates of the American Bar Association on August 2, 1983, and sets out an attorney’s responsibilities to both his client and his profession.

⁴⁰ See MODEL RULES OF PROF’L CONDUCT R. 8.4 (1983) (discussing “Misconduct”).

⁴¹ See Rypma, *supra* note 3, at 507.

⁴² See Nichols, *supra* note 12, at 25.

⁴³ See RUXIN, *supra* note 9, at 156 (reproducing the May, 1990 revision of the “Uniform Player’s Contract—The National League of Professional Baseball Clubs” in which the baseball player “agrees that he will not engage in *professional boxing or wrestling*; and that, except with the written consent of the Club, he will not engage in *skiing, auto racing, motorcycle racing, sky diving*, or in any game or exhibition of *football, soccer, professional league basketball, ice hockey* or other sport involving a substantial risk of personal injury.”) (emphasis added); *id.* at 161 (reproducing the “NFL Player Contract” in which the football player agrees that, “[w]ithout prior written consent of [the] Club, . . . [he] will not . . . engage in any activity other than football which may involve a significant risk of personal injury . . . [and] that the Club will have the right . . . to enjoin [the] Player by appropriate proceedings . . . from engaging in any activity other than football which may involve a significant risk of personal injury.”).

- 44 See RUXIN, *supra* note 9, at 156 (reproducing the May, 1990 revision of the “Uniform Player’s Contract—The National League of Professional Baseball Clubs” in which the baseball player “agrees that this contract may be assigned by the Club (and reassigned by any assignee Club) to any other Club in accordance with the Major League Rules and the Professional Baseball Rules.”); *id.* at 157 (“The Club may terminate this contract upon written notice to the Player (but only after requesting and obtaining *waivers* of this contract from all other Major League Clubs) if the Player shall at any time [fail to meet enumerated conditions specified in the contract].”; *id.* at 163 (reproducing the “NFL Player Contract” in which the football player agrees that, “[u]nless this contract specifically provides otherwise, [the] Club may assign this contract and [the] Player’s services under this contract to any successor to [the] Club’s franchise or to any other Club in the League.”); Garbarino, *supra* note 8, at 40.
- 45 See Ehrhardt & Rodgers, *supra* note 4, at 638.
- 46 See Wahl, *supra* note 13, at 22; Garbarino, *supra* note 8, at 39.
- 47 See Wahl, *supra* note 13, at 22.
- 48 See Garbarino, *supra* note 8, at 39 (“A smart agent will understand the impact of [the player’s] needs and objectives on management, on the tax strategy of owners and on the other players. . . . That kind of business imagination can readily build substantial respect for the agent by management and players.”).
- 49 See Garbarino, *supra* note 8, at 38.
- 50 See *id.* (asserting that an agent’s imagination in designing contracts that satisfy the needs of both athletes and management “build[s] substantial respect for the agent” among both groups).
- 51 See James G. Sammataro, Comment, *Business and Brotherhood, Can They Coincide? A Search into Why Black Athletes Do Not Hire Black Agents*, 42 HOWARD L.J. 535, 568 (Spring 1999) (“The role of the sports agents has dramatically changed as a result of such occurrences as: . . . the opportunities for athletes to earn additional income through the endorsement of goods and services.”).
- 52 See National Collegiate Athletic Ass’n Div. I Manual § 12.3.2.
- 53 See *id.*
- 54 See *id.*
- 55 See *id.*
- 56 See *id.*
- 57 See Pamela R. Lester, *Marketing the Athlete: Endorsement Contracts (Chapter 23 of the Law of Professional and Amateur Sports*, ALI-ABA Course Materials, Jan. 1991, at 385, 394 (“[M]anufacturers have become more selective in their choice of celebrities (both athletes and nonathletes) to advertise products or services, and marketable athletes have encountered increased competition for sponsorship dollars from other celebrities and marketing vehicles. Thus, not all professional athletes receive paid athletic product endorsements.”).
- 58 See RUXIN, *supra* note 9, at 96.
- 59 See *id.* at 95.
- 60 See Wahl, *supra* note 13, at 21.
- 61 See Garbarino, *supra* note 8, at 39 (“A smart agent will understand the impact of [the player’s] needs and objectives on management, on the tax strategy of owners and on the other players.”)
- 62 See Sammataro, *supra* note 51, at 568 (“[S]ports agents perform numerous functions, the most important of which include: . . . financial management and accounting; . . . insurance, investment, tax and estate planning . . .”).
- 63 See Wahl, *supra* note 13, at 22. See also Lester, *supra* note 57, at 405 (“The termination provision which appears in Exhibit C is obviously pro-athlete. In some instances, it may be made even more beneficial to the athlete by requiring the company to purchase life or disability insurance on the athlete and denying the company termination rights in the event of the athlete’s death or disability.”).
- 64 See Wahl, *supra* note 13, at 22.
- 65 See RUXIN, *supra* note 9, at 49.
- 66 See *id.*
- 67 See Vincent D. Paragno, *To Catch a Rising Star*, N.J. LAW, May/June 1990, at 46-47 (“Most major league sports have different regulations regarding what constitutes “contract advice,” . . . and general legal, accounting and investment advice, which is not regulated by any collective bargaining agreement and for which a separate fee can be charged. For example, [the] NFLPA limits contract advisors to a salary of 10 percent of the player’s first-year contract earnings over the league-established minimum, 5 percent of the second-year contract earnings above the league-established minimum, and 20 percent of the third-year contract salary over the league-established minimum. Signing bonuses, reporting bonuses, and other salary incentives are included in the calculation of “salary,” but performance bonuses and option year benefits are not included. On the other hand, [the] NBPA permits agents to collect fees of 4 percent of the contract value if the contract is in excess of the league-established minimum. NBPA also permits its agents to charge separate fees for other advisory services such as tax planning, money management, and endorsements. The NFLPA agreement is silent on this issue.”).
- 68 But see Hruby, *supra* note 32, at 1 (“When Milwaukee Bucks guard Ray Allen hired lawyer Johnnie Cochran Jr. to examine the \$70.9 million contract extension he signed in February, he paid Cochran \$500 an hour . . .”).
- 69 See *Understanding Business & Legal Aspects of the Sports Industry 2000: NCAA Regulations Related to Agents and Other Amateurism Provisions*, *supra* note 20, at s 12.3.2.
- 70 See RUXIN, *supra* note 9, at 52.