



David S. Forman Esq.

Protect. Oversee. Advise.

ADDRESSING THE NEEDS OF INDIVIDUAL PROFESSIONAL ATHLETES AND PLANTING THE SEEDS FOR A SECURE FUTURE.

The Role of the Sports Lawyer

The role of the sports lawyer has greatly expanded in past years. This expansion has been both in the capacity of individual client representation, and in the many other areas falling in the category of "sports law." One factor impacting the growth in the personal representation area is the escalating salaries of professional athletes.

The day has come when superstars can meet face-to-face with an activist owner and without an agent reach the basics of an agreement. However, this perspective seems too drastic, as it ignores the possible benefits an agent can bring to an athlete. Perhaps a better solution is hiring an attorney. Prominent players such as NBA basketball greats Tim Duncan and Grant Hill hire attorneys to negotiate contracts, paying thousands of dollars,

instead of millions for legal services. Grant Hill's attorney charged him \$100,000 to negotiate his first contract. Had he paid the standard agent commission, Hill would have expended \$1.8 million. As Boston Celtic Ray Allen noted, hiring an attorney is "merely a good business decision."

Recent years have shown that sports clients are increasingly turning to the legal profession for services formerly provided by agents. This undoubtedly is due, at least in part, to agent abuses, which have been both flagrant and highly publicized. The sports agent is a figure known for such unethical behavior as overly aggressive recruitment practices and "early signing," unreasonable fees, and financial mismanagement.



EDUCATION & TRAINING

Athletes should take note that attorneys are trained in contracts, negotiation, anti-trust, and agency law. This set of skills and additional education allows an attorney to help his or her client obtain the best possible contract. Moreover, a player can rest easy knowing that an attorney is held to a strict code of ethics and may face severe penalties if he or she is found to act unethically or illegally. Unfortunately, players are often swayed by agents who claim they can obtain the most lucrative deal for a client rather than paying attention to who is the most qualified to negotiate.

Attorneys have a legal background, enabling them to competently navigate complex contract provisions. It could be argued that attorney receive valuable training in law school that agents never learn, including ethical training. For this reason, many argue that an attorney is more beneficial to a client than an agent. With these expanded roles, there are several values retaining an attorney.

EDUCATION & TRAINING

These attributes including the chance to develop a "trained eye to catch small but important contract details that might not be in the best interests of your client. More specifically, and attorney with legal training as a transactional attorney may benefit pro athletes with "property sales and purchases, investment oversight, formulation of trust, wills, and LLCs, prenuptials, and other needs that high-income earners may have." The agent may not possess the same skill set to help safeguard the athlete's assets. Too often, there are stories of athletes who made millions of dollars and squandered the money before the end of their careers, because these athletes didn't have the instruction of a trained professional to help them make better financial and life choices and any agent in their life may not taken the appropriate steps to help them.



LICENSE, SCREENING/BACKGROUND & CHARACTER CHECKS



Another big problem with agents is that outside of passing a licensing test, sports agents licensing requires little to no requirements or background checks. This problem, in turn, creates the problem of inability to seek redress against negligent agents. Agent licensing does not provide training sessions or specific ethical instructions. Unlike state bar associations that conduct rigorous background and character checks on each lawyer before admitting them, a players' association may not take the time or resources to conduct a comprehensive investigation. Similarly agent licensing does not include any assessment of skill level or character. Last, because of the sparse standards and nominal set expectations for agents, is that it is more difficult to sue an agent. If no expectations are set, it becomes hard to prove an agent did not perform an adequate job.

The relationship between athlete and agent is based on trust. Most athletes spend a great deal of time evaluating representatives in attempting choose the right one. Unfortunately, sometimes vetting is not enough and athletes often find themselves misguided, misled and defrauded.

Picking the wrong agent can adversely affect the rest of an athlete's life, wasting the athlete's life's work and earnings and threatening his family's welfare.

ETHICAL RULES

Ethics play a large part in the legal industry. Unfortunately, for clients with agents, there are no mandated ethical codes of conduct. Sports attorneys must form to the applicable state ethical code, whether it be the Model Code of Professional Responsibility ("ABA Code"), the Model Rules of Professional Conduct ("Model Rules"), or some variation of the above and failure to comply with the rules of ethical codes result in disciplinary action. This is not the case for the agent.

The amount of money typically made by professional athletes has caused several agents to go to unscrupulous measures to make the most money possible. In some instances, agents are not interested in the best possible playing scenario for their client, but instead, how they personally can make the most money.

For example, William "Tank" Black is an example of a non-attorney sports agent who allowed greed and unethical behavior to interfere with the job he was hired to perform. ' Black was certified as a player-agent with both the NFL and NBA. Yet, he misappropriated more than \$14 million from his clients.' Black was convicted in Florida of fraud, conspiracy, and obstruction of justice charges, for which he spent five years in prison.

One of Black's clients, Fred Taylor, was drafted ninth by the Jacksonville Jaguars in the 1998 NFL Draft. Taylor selected Black because of his ability to work with people and foster personal relationships. At Black's trial, Taylor, who had been swindled out of his \$5 million signing bonus, sat on the witness stand crying, "I agreed with everything he said ...I trusted him with my life, with my daughter's life. Black abused the position of trust and confidence that he enjoyed with his clients and acted as an unregistered investment adviser and unregistered broker-dealer, in violation of regulations promulgated by the Securities and Exchange Commission.

On another level involving ethical dealings, many agents seek to foster a sense of dependency in their clients: "They don't want players to be able to think for themselves. It's sort of like an addiction to drugs. A lot of things that normal people doing the course of life, they never experience because they have somebody doing it for them."



Ethical Rules

Many athletes blindly accept their agents' advice, thinking that the agent is only looking out for their best interests, not realizing the agents other possible self-concerns such as pride, image and money. These clients are often young and do not realize the possible damage that an agent can do. Additionally, many athletes act in the moment, not anticipating the possible future repercussions or rash or self-ish behavior.

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Fee



In the absence of an established agents' ethical code, players may also be wise to retain licensed attorneys on a set fee instead of unlicensed representatives on a contingent fee. While this may not be a popular approach with the certified sports agent, a player with a limited shelf life should welcome the opportunity to save millions of dollars. Moreover, while the player may no longer receive the lavish expensive gifts such as cars from their agents, the reality is, that with the millions of dollars saved by athletes utilizing an attorney, the athlete can go out and buy ten cars. Additionally, for tasks that an athlete feels he or she cannot handle on his/her own (such as travel arrangements, personal appearances, etc), the athlete can hire a personal assistant or manager at a fee far less than the commission on a contract.

NEGOTIATION CONSTRAINTS

Collective bargaining agreements present another potential contractual hindrance for players and agents. Salary terms and other conditions of employment bind all members of the collective bargaining unit under the terms of one contract. Therefore, an existing collective bargaining agreement constrains the ability of an agent to negotiate for an individual player,

An example of one such constraint is the NFL's rookie pool. In the NFL rookie pool, the NFL establishes an amount of money that may be used for first-year players. In this rookie pool, while agents are helpful in negotiating roster or signing bonuses, the collective bargaining agreement uses a defacto slotted pay scale. This scale "involves paying draft choices the same amount of money received by the player drafted in the same position or slot in the previous draft, plus a percentage raise to reflect inflation. An agent who touts that he or she can get an NFL draftee the most amount of money is not being entirely truthful with the client, because the funds are coming from a finite pool that is largely predetermined based on draft number; perhaps the agent could negotiate for a contract that offered more than the team originally intended, but each team still has a salary cap.

Players are constantly expecting more from their agents, but many do not realize that a contract has very little to do with the agent's negotiating talents. It is the player's success on the field, court, or ice, rather, that leads to a more lucrative contract.





Conclusion

A sports agent's job should be to "vigorously safeguard and advance his client's interest with the undying loyalty of a fiduciary." Also players, who have a short professional career, need to have an idea of how to successful move on with their life. However, agents, who are often more sophisticated in business, usually cultivate the dependency of the naive young athlete. For many agents, once a client's playing career is over, the agent has no inclination to help a client with their mundane life activities.

Players and owners generally agree that there is a problem in the player representation business. "Lack of competence, client stealing, and overly aggressive negotiating tactics are all common. Everyone, including players, heads of the players associations, and even many agents, universally agrees that such behavior is a problem. "NFL Hall of Fame player Kel-

len Winslow Sr. said that anyone paying a three percent commission to his agent is being ripped off.

This should remain as a word of caution to professional athletes to remain smart when deciding on their representation. In the growing era of "show me the money," it would be wise for athletes to hire an attorney to help them maximize their potential earnings.

To read the full article written by Stacey B. Evans, *Ethical Representatives or Overly Aggressive Adversaries*, please see, Evans, Stacey B. (2010) "Sports Agents: Ethical Representatives or Overly Aggressive Adversaries," Jeffrey S. Moorad Sports Law Journal: Vol. 17: Iss. 1, Article 3. Also available at: <http://digitalcommons.law.villanova.edu/mslj/vol17/iss1/3>

SMARTER DECISION:
Experience vs. Discipline



CLUELESS IS NO EXCUSE:
when deciding on representation

David S. Forman, Esq.

David S. Forman, Esq., has been providing its clients with countless years of sophisticated range of knowledge and experience representation in virtually every aspect of the business of sports and entertainment that is unique and unparalleled in the industry.

David S. Forman, Esq., has been a key industry player in the creation and evolution of complex sports and entertainment transactions predicated on its in-depth industry knowledge, its extensive experience, and its rich tradition of approaching every deal with diligence, perspective and innovation.

David S. Forman, Esq., is well educated, well trained and ethical, and most importantly, he seeks to promote his client and not himself. "The client is the story, not the agent We make money by helping the client make money. The second you become more important than the client you represent is the moment you need to get out of this business."

Few law firms can match David S. Forman, Esq., track record in high-profile sports and entertainment transactions. David S. Forman, Esq., has a proven track record of success representing various sports and entertainment clients in cutting edge matters.

David S. Forman, Esq., can shield clients from many of the dangers associated in dealing with the predators in today's industry.

