

# ARE PROFESSIONAL ATHLETES BETTER SERVED BY A LAWYER-REPRESENTATIVE THAN AN AGENT? ASK GRANT HILL

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"I just want to win." —Grant Hill

Over the past two decades, the sports industry has evolved into a top grossing business.<sup>1</sup> Parties involved in the industry, such as players associations, athletes and television networks have benefited from this growth and the accompanying influx of wealth. Big money has also lured many agents into the sports industry to try to capture its profits through athlete representation. A sports agent is typically defined by state laws as "someone who, for compensation, recruits or solicits an athlete to enter into an agent contract, professional sports services contract or financial services contract or, for a fee, offers, promises or attempts to obtain employment for an athlete with a

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1. See Richard M. Nichols, *Agent, Lawyer, Agent/Lawyer... Who Can Best Represent Student Athletes?*, 14 ENT. & SPORTS LAW. 1, 22 (1996) (citing the gross national product of the sports industry as \$63.1 billion in 1988.)

professional sports team."<sup>2</sup> Traditionally, professional and student athletes have turned to sports agents for their representational needs. As professional sport has evolved, however, so have athletes' needs. In current times, the best people to provide athletes with necessary representational services may not be agents, but lawyer-representatives.

There are many reasons why a veteran athlete or a student-athlete turning professional would benefit from retaining a lawyer for representation rather than a non-lawyer agent. This paper examines this subject in greater detail than existing literature<sup>3</sup> by conducting an in-depth analysis of the differences between lawyer-representatives and agents as representatives for both experienced professional athletes as well as student-athletes turning professional. Specific issues of ethics, competence, accountability, conflict of interest, solicitation, fees and education will be investigated. Finally, Grant Hill will serve as an example of an athlete who chose a lawyer for most of his representational needs.

## I. THE PROBLEM WITH AGENTS

Today, sports agents are targets of significant criticism. As player contracts increased in dollar amount over the past two decades, the number of agents increased, bringing more qualified and unqualified, ethical and unethical people into the business.<sup>4</sup> 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.<sup>5</sup> Moreover, states that have chosen to regulate agents have differing laws and regulations.<sup>6</sup>

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2. See Sally Huggins, *Chaos the Rule with State Agent Laws*, The NCAA NEWS & FEATURES (visited Aug. 18, 1997) <<http://www.ncaa.org/news/19970818/active/3430n01.html>>.

3. See Nichols, *supra* note 1; Champion, *infra* note 58.

4. See Alec Powers, *The Need to Regulate Sports Agents*, 4 SETON HALL J. SPORT L. 253, 254 (1994).

5. See Mike Gottfried, *Coaches Say Agents Are Amongst Toughest Foes*, CHI. TRIB., Aug. 26, 1988, at C1.

6. See Powers, *supra* note 4, at 269-74. For example, in Arkansas, Louisiana, Mississippi, North Carolina and Texas, sports agents are required to register with the state's secretary of state; in Florida, agents register with the Department of Professional Registration; in California they register with the Labor Commission.

Research by the National Collegiate Athletic Association (NCAA) federal relations office shows that little or no consistency exists among state law definitions of agents and student-athletes, in registration requirements, or in penalties for violating the law.<sup>7</sup> The end result is that there are no comprehensive, minimum objective standards for agents.<sup>8</sup>

Lack of agent regulation has led to many incidents of what has been termed "agent abuse."<sup>9</sup> For example, in August 1996, four National Football League (NFL) players filed a joint civil suit against their former agent, Joe Courrege.<sup>10</sup> The lawsuit alleged that Courrege solicited the athletes by preaching Christian principles and then defrauded them by using fictitious names and corporations to complete fourteen questionable real estate deals. They claimed total damages of \$200,000.<sup>11</sup> In another misappropriation of funds case, sports agent Norman Young mishandled his athlete-clients' funds through his agency Probus Management, Inc.<sup>12</sup> Clients 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.<sup>13</sup> The National Football League Player's Association (NFLPA) sued Probus on behalf of some of his athlete-clients. Unfortunately, because Probus had court judgments totaling hundreds of thousands of dollars and no discernable assets, the athletes did not recover any of their

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*See Powers, supra* note 4, at 269-74. Many states do not require any type of registration. *See Powers, supra* note 4, at 269-74. Some states require sports agents to post a bond or cash ranging from \$25,000 to \$100,000 to insure the recovery of costs in cases of violations. *See Powers, supra* note 4, at 269-74. States also differ on whether agents must file their fee schedules and what criminal or civil penalties may be assessed against sports agents if violations occur. *See Powers, supra* note 4, at 269-74.

7. *See Huggins, supra* note 2.

8. *See Powers, supra* note 4, at 266.

9. *See David Lawrence Dunn, Regulation of Sports Agents: Since at First it Hasn't Succeeded Try Federal Legislation*, 39 HASTINGS L.J. 1031, 1035 (1988).

10. *See id.* at 1031. The four players were Bill Bates and Jeff Rohrer of the Dallas Cowboys, Steve Wilson of the Denver Broncos, and Anthony Dickerson of the Buffalo Bills. *See id.*

11. *See id.*

12. HOUSE SELECT COMM. ON PROFESSIONAL SPORTS, INQUIRY INTO PROFESSIONAL SPORTS, FINAL REPORT, H.R. REP. NO. 94-1786, at 74 (2d Sess. 1977).

13. *See id.*

mishandled money.<sup>14</sup>

Agent Richard Sorkin also used his clients' money to increase his personal wealth. Sorkin's agent-athlete agreements provided that his clients' paychecks would be sent directly to him, and although he had no experience in money management, he handled all of his clients' financial affairs.<sup>15</sup> Previously dismissed from his job as a sports writer for misdealings with a horse jockey, Sorkin was a poor investor and a gambler.<sup>16</sup> His actions resulted in stock market losses of at least \$271,000 and gambling debts of \$626,000.<sup>17</sup> Sorkin pleaded guilty to seven counts of grand larceny. However, his victimized athlete-clients were unable to recover much of their lost money.<sup>18</sup>

In a widely publicized scandal, agent Norby Walters and his associate Lloyd Bloom violated NCAA rules by paying college athletes and signing them to agent representation contracts before their college eligibility expired.<sup>19</sup> The financially induced early signings rendered fourteen players ineligible to continue playing college football.<sup>20</sup> Ineligible players included All-American Chris Carter from Ohio State<sup>21</sup>

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14. See *id.*

15. See Montgomery, *The Spectacular Rise and Ignoble Fall of Richard Sorkin, Pro's Agent*, N.Y. TIMES, Oct. 9, 1977, sec. 5, at 15.

16. See *id.*

17. See *id.*

18. See *People v. Sorkin*, No. 46429 (Nassau County, N.Y. Nov. 28, 1977), sentence *aff'd*, 64 A.D.2d 680 (1978).

19. See *The Agents Scandal of 1987: A Chronology*, THE ATLANTA JOURNAL-CONSTITUTION, Dec. 27, 1987 at D27. Walters and Bloom were indicted in federal district court in Chicago for allegedly inducing college athletes to sign professional contracts in violation of NCAA rules. See *United States v. Walters*, 711 F. Supp. 1435 (N.D. Ill. 1989). Walters and Bloom would "wine and dine" undergraduate football players, give them and their families cash, cars and gifts, provide the athletes with sexual companionship, and thereby induce them into signing agency contracts. *Id.* at 1437 n.1. NCAA bylaws provide that an individual will lose eligibility if he or she enters into a verbal or written agreement with an agent for representation in future professional sports negotiations that are to take place after the individual has completed his or her eligibility in that sport. See NCAA OPERATING BYLAWS art. 12.3.1, reprinted in NCAA, 1993-94 NCAA MANUAL (Laura E. Bollig ed., 1993).

20. See Chris Mortensen, *Agent Signings Lead to a Year of Scandal, 14 Athletes Were Stripped of Their Collegiate Eligibility*, ATLANTA JOURNAL-CONSTITUTION, Dec. 27, 1987 at D21.

21. See Michael Goodwin, *The Receiver and a Possible End-Around Play*, N.Y. TIMES, July 23, 1987, at B5. Carter received a \$5,000 interest-free loan from Walters and Bloom and a monthly stipend. See *id.*

and the Southeastern Conference's basketball player of the year, Derrick McKey of Alabama.<sup>22</sup> Players claimed that Walters and Bloom offered them drugs and prostitutes as inducements to accept the agents' representation and threatened players and other agents with violence if an athlete-client switched to another agent.<sup>23</sup>

Agent abuse has not gone unrecognized by player's associations; however, their attempts to increase regulation have mostly proven unsuccessful. For example, the NCAA expressed concern about the lack of agent regulation and commissioned a "Special Committee on Agents and Amateurism" in hopes that its efforts would stimulate further action addressing the lack of standards for sports agents.<sup>24</sup> The Special Committee was composed of university presidents, athletic directors, faculty athletics representatives, coaches, and legal counsel. The Special Committee conducted meetings and heard presentations from agents, university presidents, and former student-athletes. In August 1997, the Special Committee made several recommendations to the NCAA Division I Management Council on agent control and urged the NCAA to "assign a high priority to a continuing active effort on this fundamentally important matter."<sup>25</sup> In its final report, the Special Committee recommended addressing agent issues and problems through an integrated program involving three fundamental themes: (1) a comprehensive program of education; (2) attention to the financial needs of student-athletes as well as student-athlete welfare; and (3) increased sanctions for agent-related violations.<sup>26</sup> Although these recommendations were an important step, the NCAA Committee did not increase agent regulation or establish minimum levels of conduct for agents.

The NCAA is the first association to address the agent problem in any significant depth. Generally, however,

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22. See Mortensen, *supra* note 20, at D21.

23. See Dunn, *supra* note 9, at 1032.

24. See *Committee Suggests Three-Part Approach on Agent Control*, The NCAA NEWS & FEATURES (visited Aug. 4, 1997) <<http://www.ncaa.org/news/19970804/active/3429n02.html>>.

25. *Id.*

26. See *id.*

previous regulations established by the NCAA, NFLPA, and the National Basketball Players' Association (NBPA) have been only minimally successful in imposing standards on sports agents.<sup>27</sup> The reason for this limited success is each players' associations' regulatory reach is controlled by the sport in which its members participate.<sup>28</sup> Additionally, the NFLPA regulations do not apply to agents who represented rookies or student-athletes.<sup>29</sup> 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.<sup>30</sup> Only agents who are representing current players come within the scope of the NFLPA regulatory coverage.<sup>31</sup> Finally, the enforceability of players associations' regulation plans is questionable.<sup>32</sup>

Case law addressing the regulation of sports agents is sparse. One case that did address the issue, *Los Angeles Rams Football Club v. Cannon*,<sup>33</sup> dealt with an amateur athlete's need for professional representation in order to protect the athlete's interests before he turned professional. The athlete in that case was Billy Cannon, a senior all-American football player at Louisiana State University who expected to play professionally the following season.<sup>34</sup> Pete

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27. See Powers, *supra* note 4, at 255.

28. See Dunn, *supra* note 9, at 1049.

29. See Dunn, *supra* note 9, at 1045. The NFLPA regulations did not cover rookies in the league who were not yet members of the NFLPA. See Dunn, *supra* note 9, at 1045. The NBPA made provisions to close this loophole. See Dunn, *supra* note 9, at 1047.

30. See Dunn, *supra* note 9, at 1047.

31. See Powers, *supra* note 4, at 266.

32. See Dunn, *supra* note 9, at 1046. Currently the issue is unresolved as to just how far players' associations' power extends to licensing and restricting agents. See Dunn, *supra* note 9, at 1045-46. Players' associations look to the federal labor laws for their authority to regulate agents. See Dunn, *supra* note 9, at 1046. For example, the National Labor Relations Act gives the NFLPA the exclusive right to bargain collectively for NFL players, but it does not give the NFLPA the right to bargain individually for its members. See Dunn, *supra* note 9, at 1046. Without this individual bargaining power, the NFLPA cannot require its agents to become certified. See Dunn, *supra* note 9, at 1046. Thus, NFL player agents can basically ignore the regulations. See Dunn, *supra* note 9, at 1046.

33. 185 F. Supp. 717 (S.D. Cal. 1960).

34. See *id.* at 719. The case makes no mention of Billy Cannon's exact age; however, he was a senior in college and can be assumed to be about 21 or 22 years old.

Rozelle, General Manager of the Los Angeles Rams, invited Cannon to discuss a possible contract on November 28, 1959.<sup>35</sup> Two days later at the NFL draft, the Rams named Cannon their first draft choice.<sup>36</sup> Following a press conference, Rozelle had Cannon signed three sets of standard NFL player contracts.<sup>37</sup> Later, a representative from the Houston Oilers contacted Cannon about possibly playing in the newly formed American Football League (AFL).<sup>38</sup> As a result, Cannon sent the Rams a letter advising that he no longer wished to play for the team and returned the two checks he received as part of his deal.<sup>39</sup>

The Rams sought an injunction to keep Cannon from playing in the AFL.<sup>40</sup> In denying the Rams injunctive relief, the court permitted Cannon to breach his contract with the Rams for several reasons.<sup>41</sup> 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.<sup>42</sup> 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.

The relationship between an athlete and an agent was

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35. *See id.*

36. *See id.*

37. *See Los Angeles Rams Football Club*, 185 F. Supp. at 719. The contract contained a provision stating it would be valid only when it was approved by the commissioner. *See id.* at 721.

38. *See id.* at 720.

39. *See id.* at 719. Rozelle gave Cannon checks for \$10,000 and \$500. *See id.*

40. *See id.* at 718.

41. *See Los Angeles Rams Football Club*, 185 F. Supp. at 721.

42. *See id.* at 725-26. The court noted that Cannon was "anything but an astute business man." *Id.* at 725. The court further emphasized the absence of representation, stating

"[w]hile [Cannon] had entertained ambitions for years to get into professional football the proposition submitted to him by the Rams came by telephone apparently without prior notice while he was away from home and in New York. . . . He was without counsel or advice and the whole transaction, including the signing of the alleged contracts, was completed in less than 48 hours."

*Id.* at 726.

further examined in *Zinn v. Parrish*.<sup>43</sup> In *Zinn*, professional football player Lemar Parrish contracted with agent Leo M. Zinn to negotiate contracts, furnish advice on business and tax matters, seek endorsements and assist with off-season employment.<sup>44</sup> Zinn performed most of these agent duties; however, he sent Parrish to an accounting firm for tax advice.<sup>45</sup> After four years of representation, the football player terminated his agreement with Zinn stating he "no longer needed his services."<sup>46</sup> Zinn sued to recover his contractual fee for obtaining at least three contracts for his client with the Cincinnati Bengals and performing other representational duties.<sup>47</sup> The court held in favor of Zinn and reasoned that tax and investment advice were incidental to the main purpose of the contract and that an agent satisfies his obligations by performing his duties in good faith.<sup>48</sup> Thus, Zinn was entitled to recover his fee from Parrish for services rendered.<sup>49</sup>

*Detroit Lions, Inc. v. Argovitz*<sup>50</sup> illustrated the need for sports agent regulation. The Detroit Lions and Billy Sims, a Lions running back, sued Sims' agent, Jerry Argovitz, for breach of fiduciary duty.<sup>51</sup> Sims asserted that he was coerced by Argovitz to break his NFL contract and join the United States Football League's (USFL) Houston Gamblers. Argovitz was a co-owner of the Houston franchise and earned a salary of \$275,000 as president of the team.<sup>52</sup> The court, relying on equity principles rescinded Sims' contract with the Houston Gamblers. In concluding that rescission was the

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43. 461 F. Supp. 11 (N.D. Ill. 1977), *rev'd without opinion*, 582 F.2d 1282 (7<sup>th</sup> Cir. 1978), *appeal after remand*, 644 F.2d 360 (7<sup>th</sup> Cir. 1981).

44. *See Zinn*, 644 F.2d at 361.

45. *See id.* at 362. Zinn arranged for Parrish's taxes to be prepared by H & R Block. *See id.* at n.2.

46. *Id.* at 362.

47. *See id.* Zinn negotiated an endorsement contract for Parrish and assisted him in purchasing both a home and a four-unit apartment building to provide rental income. *See id.* Zinn also helped manage the apartment building and attempted unsuccessfully to negotiate additional endorsement deals and an appearance on the Mike Douglas Show for Parrish. *See id.*

48. *See Zinn*, 644 F.2d at 361, 364, 366.

49. *See id.* at 366.

50. 580 F. Supp. 542 (E.D. Mich. 1984), *aff'd in part and remanded in part*, 767 F.2d 919 (6<sup>th</sup> Cir. 1985).

51. *See id.* at 543.

52. *See id.* at 544.



appropriate remedy, the court stated, "[w]e are dismayed by Argovitz's egregious conduct. The careless fashion in which Argovitz went about ascertaining the highest price for Sims' service convinces us of the wisdom of the maxim: no man can faithfully serve two masters whose interests are in conflict."<sup>53</sup> This case shows the need for professional athletes to be mindful of conflict of interest issues, unethical practices of sports agents and abuses that can result from the lack of sports agent regulation.

Of course, not every agent is as irresponsible and unethical as the examples previously cited. These cases are simply an illustration of the potential problems that athletes employing agents may encounter due to the lack of universal industry standards and regulations. Although a relatively small percentage of sports agents are responsible for the abuses that have tarnished the profession's image, the overabundance of people claiming to be agents makes it difficult for athletes to know who is qualified and who has their best interests at heart.<sup>54</sup>

## II. WHAT MAKES A LAWYER A BETTER ATHLETE REPRESENTATIVE THAN AN AGENT

Lawyers are members of a profession. As professionals, all lawyers are bound by the Model Rules of Professional Conduct which are researched and written by the American Bar Association (ABA).<sup>55</sup> As members of the bar, all lawyers must abide by this code of ethics. Primarily, lawyers are regulated by the state supreme court or State Bar Associations. In most states, one or both may have adopted the Model Rules, in parts or in its entirety.<sup>56</sup> The Model

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53. See *id.* at 549.

54. See Dunn, *supra* note 9, at 1039. Even successful agents such as Leigh Steinberg concede that their vocation is seen as a "sleazoid" profession with many unqualified people just looking to make fast money. See Joan M. O'Connell & Brenton Welling, *How Leigh Steinberg Rises Above His 'Sleazoid Profession,'* BUS. WK., Jan. 14, 1985, at 62 (quoting agent Leigh Steinberg). Agent Lloyd Bloom deemed the profession to be composed mostly of "slime," and agent David Falk noted that stating that you are an agent is "like saying you're a bank robber or a rapist." Ben Brown, *Agents Find Their Methods Under Attack*, USA TODAY, June 22, 1987 at C1.

55. See Nichols, *supra* note 1, at 25.

56. See Daniel L. Shneidman, *Selected Issues of Client Representation by*

Rules hold lawyers to minimum standards of conduct and gives athletes a means for redress should their lawyer-agent act unethically or unfairly. Therefore, an athlete is better served by an attorney-agent because of the added protection of the attorney's code of professional responsibility.<sup>57</sup>

An attorney's obligations under the Model Rules of Professional Conduct do not change with the industry in which she practices or with the client she represents.<sup>58</sup> This ethical code accompanies attorneys even when they work in another profession. For example, in the case of *In re Dwight*,<sup>59</sup> an attorney acted as a financial advisor in a transaction for a client. The client alleged that the attorney acted improperly and filed a complaint with the Arizona Bar to seek redress.<sup>60</sup> The attorney defensively argued that at the time of the complaint and while involved in the allegations that formulated the basis of the complaint he was not practicing law, but was acting in the capacity of a financial advisor. Thus, the attorney argued that the Model Rules did not apply. The Arizona Supreme Court disagreed, stating, "[a]s long as a lawyer is engaged in the practice of law, he is bound by 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."<sup>61</sup>

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"Sports" Lawyers Under the Model Rules of Professional Conduct, 4 MARQ. SPORTS L.J. 129 (1993).

57. See 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, 33 (1994).

58. 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 (7<sup>th</sup> Cir. 1990).

59. 573 P.2d 481 (Ariz. 1977).

60. See *id.*

61. See *id.* at 484. The court reasoned that holding an attorney accountable to the Model Rules regardless of the type of professional activity in which he was engaged was the only way full protection could be afforded to the public. See *id.* See also *Cord v. Smith*, 338 F.2d 516, 523-24 (9<sup>th</sup> Cir. 1964). The *Cord* court held that an attorney who was disqualified from representation because of conflict of interest could not defend that he was not acting as a lawyer for that particular transaction. See *id.* Further, the court noted that it was immaterial that the transaction handled for the client was one that could have been done by "a layman." *Id.* at 524. See also *In re Soale*, 159 P.2 1065, 1069 (Cal. Ct. App. 1916) (stating a client is entitled to rely on a lawyer as a lawyer, even if he was advising on a personal business transaction that required no skill of attorney and no knowledge or understanding of the law).

Likewise, a client-athlete's interests are best protected when represented by an attorney because his ethical obligations extend beyond the scope of the pure practice of law. The often quoted adage that a lawyer is a lawyer 24-hours a day, seven days a week appears to be true. As such, athletes represented by lawyers are greatly advantaged by this. If a lawyer performs services for an athlete such as drafting and negotiating a contract, which do not necessarily require legal skill and could be performed by a layperson, the lawyer will still be bound by the professional standards articulated in the Model Rules.

### *A. Competence*

Under the Model Rules, lawyers have the general duty to be competent. Competence is defined as the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.<sup>62</sup> Competence involves knowing the law to the extent necessary for the complexity of the matter, and if possible, a lawyer is required to consult with another lawyer specializing in the matter if he feels he does not have the necessary knowledge.<sup>63</sup> Competence also requires participating in continuing study and education.<sup>64</sup> One academic believes that lawyers representing athletes are obligated under their duty of professionalism to know the contents of the Civil Rights Act and Title VII Amendments to the Act, the Americans With Disabilities Act (ADA), the Federal Rehabilitation Act of 1973, and the Discrimination in Employment Act.<sup>65</sup> Knowledge of these laws makes an attorney a better advisor to both athletes and team managers for situations involving medical leave and possible discrimination.<sup>66</sup>

A non-lawyer agent has no formal competency

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62. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.1 (1995).

63. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.1 (comment 1995).

64. See *id.*

65. See Shneidman, *supra* note 56, at 133. The Civil Rights Act of 1964, 42 U.S.C.A. § 2000a (West 1998); The Americans with Disabilities Act of 1990, 42 U.S.C.A. § 12112 (West 1998); The Federal Rehabilitation Act of 1973, 29 U.S.C.A. § 701 (West 1998); The Age Discrimination in Employment Act of 1967, 29 U.S.C.A. § 621 (West 1998).

66. See Shneidman, *supra* note 56, at 133.

requirement such as those contained in the Model Rules. Under common law, an agent is under the legal duty to represent an athlete with competence identical to that displayed by others who represent athletes.<sup>67</sup> If an agent fails to act with that degree of competence, an athlete may bring a negligence or related claim against the agent. However, there are two problems with the common law standard. First, the level of competence found in the industry may not be very high.<sup>68</sup> Second, a negligence claim may be difficult to prove, particularly in cases in which the agent's incompetence is not egregious.<sup>69</sup> Moreover, because an agent may not have the financial reserves necessary to pay a judgment, his potential liability for malpractice is not a strong remedy for damages suffered by an athlete resulting from agent incompetence.<sup>70</sup>

### *B. Accountability*

Unlike agents, lawyers are bound and held accountable to the aforementioned "higher authorities" for violations of professional conduct.<sup>71</sup> If an athlete feels his interests have not been adequately served by his lawyer-representative, he can (and is encouraged to) hold his lawyer accountable under various state bar association rules and the ABA Model Rules of Professional Conduct.<sup>72</sup> The athlete can also file a malpractice suit against his lawyer-representative.<sup>73</sup> Additionally, an athlete has an avenue of recourse if the lawyer is only negligent but does not act in bad faith. For example, if a lawyer misinterprets a collective bargaining agreement and the athlete's final contract inaccurately reflects the salary cap provisions, the athlete may file a malpractice action or file various complaints with

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67. See GEORGE W. SCHUBERT ET AL., SPORTS LAW 128 (1986).

68. See *The Agents Scandal of 1987: A Chronology*, *supra* note 19; see also *supra* text accompanying notes 20-23.

69. See SCHUBERT, *supra* note 67, at 128.

70. See SCHUBERT, *supra* note 67, at 128.

71. See Nichols, *supra* note 1, at 25. These authorities include state bar associations, state supreme courts, and state bar disciplinary committees. See Nichols, *supra* note 1, at 25.

72. See Nichols, *supra* note 1, at 25.

73. See *id.*

appropriate federal and state bar associations.<sup>74</sup>

Conversely, if an athlete has hired a sports agent who is not a lawyer, the athlete may only bring a malpractice claim against his agent if he feels inadequately represented.<sup>75</sup> As previously noted, however, an agent is only required to act with the same degree of competence as the industry standard.<sup>76</sup> This makes a malpractice action hard to prove, especially in marginal cases where the incompetence is not extreme. Thus, this may be an inadequate remedy for the athlete. On the other hand, a lawyer-representative is held to a higher standard of competence and more avenues of recourse are available to hold the lawyer-representative accountable for inadequate representation.<sup>77</sup>

Furthermore, the Martindale-Hubbell Law Directory rates attorneys from each state based on reviews of the attorney conducted by attorneys who practice in the same county.<sup>78</sup> This gives the athlete a means to research a lawyer he is considering hiring for representation. Martindale-Hubbell does not rate attorneys according to their specialties, and it will not inform an athlete if a lawyer-representative did a bad job negotiating a previous contract, the directory merely provides a peer review from an attorney's local area.<sup>79</sup> In order to further investigate a lawyer-representative, athletes can inquire with the state bar or other governing bodies in the state where the attorney practices to make sure the attorney is a member in good standing.<sup>80</sup> Thus, an athlete has access to information about a potential lawyer-representative before the athlete hires her.<sup>81</sup>

Formal evaluations of non-lawyer agents are not available for professional athlete consideration. Athletes must rely primarily on an agent's reputation when deciding whom to select for representation. An agent's reputation may provide

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74. See *id.*

75. See SCHUBERT, *supra* note 67, at 128.

76. See *id.*; see also *supra* text accompanying notes 19-23.

77. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.1 (comment 1995). See also Nichols, *supra* note 1, at 25.

78. See Martindale.com, *About Martindale-Hubbell* (visited Oct. 3, 1999) <<http://www.martindale.com>>.

79. See Garbarino, *supra* note 57, at 33.

80. See *id.*

81. See *id.*

all the information necessary for an athlete's decision. However, if more information is desired, there are resources available to investigate those representatives who are lawyers.

### C. *Conflict of Interest*

A lawyer may not represent a client if that representation will be a conflict of interest with representation of another client.<sup>82</sup> In the sports law context, it could be potentially unethical for a lawyer to represent multiple athletes who engage in the same business. Therefore, a lawyer-representative who has two or more professional athlete-clients in the same athletic field must be able to zealously represent each of them to the same degree. If a conflict of interest is present, a lawyer-representative must fully disclose the conflict to the athletes and obtain an acknowledgment of the conflict and an express waiver of the conflict of interest from each athlete.<sup>83</sup> Only then may the attorney continue to represent both athletes for when a conflict exists. Absent full disclosure and receipt of a waiver from each athlete-client, the lawyer-representative may be subject to severe discipline by the state bar association.<sup>84</sup>

Because lawyers are subject to the Model Rules, they are aware of the potential for conflict of interest in representing different athletes. Non-lawyer agents are not as cognizant of possible conflicts of interest as lawyer-representatives.<sup>85</sup>

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82. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.7 (1995).

83. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.7(b) (1995). The Rule states that

[a] lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless: (1) the lawyer reasonably believes the representations will not be adversely affected; and (2) the client consents after consultation.

*Id.*

84. See *id.*

85. See Interview with Paul H. Haagen, Professor of Law, Duke University School of Law, in Durham, N.C. (March 25, 1998) (Haagen Interview). Agents tend to be quite insensitive to conflicts of interest. See *id.* Conversely, lawyers are professionally climatized to disclosure in general, and to the Model Rules. See *id.* It should be noted, however, that several agents who are lawyers specifically make clear that their representative contracts with athletes are not within their lawyer capacity. See *id.* This is because they do not want to be held accountable to the

Further, non-lawyer agents are not accountable for conflicts of interest. In athlete representation, there are many different areas in which conflicts of interest could occur. First, a conflict of interest could arise between two athletes playing for or seeking contracts from the same team. This may put the agent in the position to consciously or unconsciously compromise the demands of one client to obtain a more favorable contract for the other.<sup>86</sup> This conflict is further illustrated when the agent represents multiple clients seeking compensation from a limited fund. For example, in the NBA the aggregate salaries of each team may not be greater than the salary cap. Two athletes on the same team inherently seek the largest amount of compensation from a limited pool of resources. If one athlete is compensated more, less funds are available for the other members of the team. An agent has a conflict of interest when negotiating salaries for different clients on the same team because securing a higher salary for one client effectively decreases the potential salary for the other client.<sup>87</sup> Also, an agent representing top players may treat their deals with precedence over average players, leading to inadequate representation for the athlete-clients who are not "big stars."<sup>88</sup>

A second conflict of interest may arise in the area of athlete endorsements. Agents generally bill athletes based upon a percentage of all endorsements (usually 10-20%).<sup>89</sup> It is possible that an endorsement contract may be inadvisable due to potential dilution of the athlete's future marketability.

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Model Rules. See *id.* For example, in 1994, super agent David Falk represented five Philadelphia 76ers as clients, as well as their coach/general manager John Lucas, a glaring conflict of interest. See Bart Hubbuch, *Let's Make a Deal... Super Agent Falk slam-dunks NBA*, THE WASHINGTON TIMES, Oct. 4, 1994, at B1.

86. See Jamie E. Brown, *The Battle the Fans Never See: Conflicts of Interest for Sports Lawyers*, 7 GEO. J. LEGAL ETHICS 813, 816 (1994).

87. See *id.* at 817.

88. See Lynn Hirschberg, *The Big Man Can Deal*, N.Y. TIMES, Nov. 17, 1996, sec. 6, at 46. Agent David Falk, represents top NBA player Juwan Howard and handled his tough negotiations and contract with the Miami Heat and subsequently the Washington Bullets when the deal with the Heat fell apart. See *id.* In so doing, Falk neglected to get Rex Chapman, an average player, re-signed with the Miami Heat. See *id.* This conflict of interest example is illustrative of an agent representing top stars to the detriment of other clients. See *id.*

89. See Haagen Interview, *supra* note 85.

However, an agent may recommend that the athlete accept the endorsement in order to collect a fee.<sup>90</sup> This personal interest in the transaction could infringe on an agent's duty of loyalty to best serve his client's interests. A lawyer-representative is held accountable in this circumstance.<sup>91</sup> Furthermore, an agent may receive one endorsement offer for two or more clients. In this situation, the agent may be forced to choose between clients.<sup>92</sup> Even if the agent can effectively represent both of her athlete-clients, the athletes might have been better served by separate agents. If true, a lawyer-representative violates the Model Rules.<sup>93</sup>

Generally, non-lawyer agents are less aware of the potential conflicts of interest that occur in representing several athletes. There is also no recourse against non-lawyer agents if athletes feel victimized by conflicts of interest. Lawyer-representatives are educated in the Model Rules and are more attune to conflicts of interest than their non-lawyer agent counterparts.<sup>94</sup> Finally, an athlete can hold a lawyer-representative responsible under the Model Rules should a violation occur.

#### D. Solicitation

Lawyer-representatives, unlike agents, are also prohibited from actively soliciting clients.<sup>95</sup> Solicitation can result in severe monetary and disciplinary sanctions including

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90. See Brown, *supra* note 86, at 819.

91. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.7(b) (1995). The rule states in part that "[a] lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's . . . own interests." *Id.*

92. See Brown, *supra* note 86, at 819.

93. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.3 (comment 1995) ("[a] lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf").

94. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.7(b) (1995), *supra*, note 91 and accompanying text. In order to be admitted to the bar, most states require a passing score on the Multistate Professional Responsibility Examination (MPRE), which tests knowledge of legal ethics under the Model Rules. See NATIONAL CONFERENCE OF BAR EXAMINERS, THE MPRE 1999 INFORMATION BOOKLET 1 (1998).

95. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 7.3 (1995). Under Rule 7.3, a lawyer "may not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship," by mail, in-person, or otherwise, "when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain." *Id.*



suspension or revocation of a license to practice law.<sup>96</sup> Policy rationale behind legal solicitation rules indicates that certain people may be vulnerable to overreaching lawyers.<sup>97</sup> Lawyers are prevented from engaging in this kind of abuse under the Model Rules because the bar desires to protect the public from potentially coercive sales tactics.<sup>98</sup> In addition, solicitation allegedly decreases the legal profession's status.<sup>99</sup>

In a major case addressing lawyer solicitation, *Ohralik v. Ohio State Bar Ass'n*,<sup>100</sup> a personal injury lawyer solicited a person hospitalized following an accident, who, at the time, was likely to be susceptible to the lawyer's overreaching.<sup>101</sup> *Shapero v. Kentucky Bar Ass'n*<sup>102</sup> has subsequently modified the prohibition on solicitation. In *Shapero*, the Court ruled that states may not prohibit lawyers from sending letters to potential clients with known legal problems, provided the letters are truthful and non-deceptive.<sup>103</sup> Therefore, a lawyer could send letters to athletes soliciting their business as long as the letters were labeled as advertisements.<sup>104</sup> In addition, lawyers may place advertisements in newspapers and on television.<sup>105</sup>

Sports agents have been noted to actively solicit athletes and take part in what have been broadly categorized as "overly aggressive client recruitment practices."<sup>106</sup> These practices involve the use of illegal inducements such as sex or drugs to recruit, or causing athletes to violate NCAA eligibility rules by giving or lending players such things as cash or cars.<sup>107</sup> Another example of overly aggressive

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96. See Nichols, *supra* note 1, at 25.

97. See *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 454 (1978).

98. See *id.* at 457-59.

99. See Robert E. Fraley and F. Russell Harwell, *Sports Law and the "Evils" of Solicitation*, 9 LOY. ENT. L.J. 21, 24 (1989).

100. 436 U.S. 447 (1978).

101. See *id.* at 449-51. This mode of solicitation has been popularly termed ambulance chasing. See *id.* at 459 n.16 (citing *Railroad Trainmen v. Virginia Bar*, 377 U.S. 1, 6 (1964)).

102. 486 U.S. 466 (1988).

103. See *id.* at 476-79.

104. See Shneidman, *supra* note 56, at 136.

105. See *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 633-35 (1995).

106. Lionel S. Sobel, *The Regulation of Sports Agents: An Analytical Primer*, 39 BAYLOR L. REV. 701, 714-16 (1987).

107. See *The Agents Scandal of 1987: A Chronology*, *supra* note 19; see also text accompanying notes 20-23.

recruiting is the signing of players to representation agreements before their NCAA college eligibility has expired.<sup>108</sup> A former agent estimated that 80% of the top college football players in the late 1980's accepted money from agents and that no college program was completely innocent of violations.<sup>109</sup>

Of course, there is no guarantee that a lawyer will not aggressively solicit business like the agents previously described. However, the lawyer has much more to lose if he is caught.<sup>110</sup> The fact that lawyers are prohibited from soliciting clients protects student-athletes who may be unaware of the strict eligibility rules and may not realize exactly how far they can go to hire a representative before they can be disciplined.<sup>111</sup> It also protects student athletes who may be taken in by a smooth-talking agent who loans money and gives a car to an athlete in order to "lock-up" the athlete as a client. Finally, if an athlete is solicited by a lawyer-representative, agrees to a contract and is subsequently disciplined or loses his eligibility, the athlete has recourse against the lawyer-representative for lost earnings or damage to reputation or career. Agents who are not lawyers are not subject to the Model Rules, therefore, it is more difficult to hold them responsible for aggressive solicitation of athletes.<sup>112</sup>

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108. See Sobel, *supra* note 106, at 715.

109. See John Bannon, *Ex-Agent: 'No Clean Programs,'* USA TODAY, Dec. 17, 1987, at C1. Former agent Jim Abernethy claimed to have signed and paid nine athletes while they were still in college, a clear violation of NCAA rules. See *id.* He charged that 80% of college football's top 330 senior players had accepted money from agents. See *id.* Another agent, Jim Solano, estimated that substantially more than half of athletes had deals set with agents while the athlete was still in school. See *id.*

110. See, e.g., N.J. CT. RULES of GENERAL APPLICATION Rules 1:20-15, 1:20-16 (1999). Generally, sanctions by a state bar range from a disciplinary letter, to a fine, to suspension, to permanent disbarment. See *id.*

111. See Bannon, *supra* note 109, at C1. Of the nine athletes former agent Jim Abernethy claimed to have signed and paid while still in college, five were suspended by their schools at the time this article was written. See Bannon, *supra* note 109, at C1.

112. See SHUBERT, *supra* note 67, at 128. If aggressive solicitation could be shown to be common law agent malpractice, the agent is liable. See SHUBERT, *supra* note 67, at 128. However, an agent is only held to the standards of competence of similar agents. Such a claim is difficult to prove. See SHUBERT, *supra* note 67, at 128.

### E. Fees

A significant distinction between lawyer-representatives and agents occurs in the area of fees. Agents typically charge a flat percentage – four-percent is standard – of the athlete's total compensation package.<sup>113</sup> For endorsement contracts, agents usually charge the athlete between 10 and 20 percent of the contract value.<sup>114</sup> As players' salaries have increased dramatically over the years, agent compensation has become disproportionate to the value created.<sup>115</sup> 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.<sup>116</sup> The eight-year final contract had a value of almost \$45 million, giving the agent, David Falk,<sup>117</sup> a fee of about \$1.8 million.<sup>118</sup> Granted, negotiating Bradley's contract would not be the only activity that the agent performed<sup>119</sup> but even at a very

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113. See Haagen Interview, *supra* note 85. A few of the very top athletes can negotiate a lower fee than the standard four-percent. See *id.* In Grant Hill's case, he received an offer as low as one-and-a-half-percent. See *id.* Also, if an athlete looks like he may have considerable endorsement potential, he may be able to negotiate a lower fee with his agent. See *id.* However, this assumes first, that the athlete has the sophistication to know of this possibility. See *id.* Second, the athlete must have sufficient negotiation skills to convince a savvy agent to change his fee. See *id.*

114. See *id.* For example, in the area of basketball, agents generally charge their athlete-clients 10 percent for endorsement contracts involving shoes or basketball-related products. See *id.* For other endorsements, the standard fee is 20 percent. See *id.*

115. See *id.* Prof. Haagen stated that he became convinced of this relatively early in his dealings with athletes. See *id.*

116. See *id.*

117. See Bart Hubbuch, *Let's Make a Deal... Super Agent Falk slam-dunks NBA*, THE WASHINGTON TIMES, Oct. 4, 1994, at B1. David Falk is the reputed king of basketball agents and arguably the most influential agent in the NBA. See *id.* His elite clientele include Michael Jordan, Patrick Ewing, Juwan Howard, Alonzo Mourning, and Glen Rice, to name only a few. See *id.* Falk created and heads Falk Associates Management Enterprises, which is based in northwest Washington D.C. See Hirschberg, *supra* note 88, at 46. He has a law degree; however, Falk operates as a traditional agent, charging his athlete-clients a percentage fee of the negotiated contract and he is responsible for being the sole provider of services for his athlete-clients. See *id.*

118. See Johnette Howard, *Feeling Like a Million*, THE WASHINGTON POST, Oct. 23, 1994, at D6. See Bart Hubbuch, *Let's Make a Deal... Super Agent Falk slam-dunks NBA*, THE WASHINGTON TIMES, Oct. 4, 1994, at B1.

119. See Haagen Interview, *supra* note 85. Most agents provide a variety of services, such as helping the athlete buy a house by going over the agreement with

high hourly rate, an athlete could get a lot of service for that kind of money.

Even though the traditional agent performs a variety of functions for his percentage fee, as a general rule, an athlete should not look to have one person manage all their affairs.<sup>120</sup> Without strong evidence that an agent can produce value for an athlete over and above what the athlete would otherwise expect, the assumption ought to be that an athlete wants control and the ability to get the full services he needs by paying an hourly or flat rate. This is also important if an athlete wishes to retain control over his relationship with his representative. An athlete who is dissatisfied with the relationship with his agent, can terminate that relationship. However, the athlete may not avoid the paying the percentage owed his agent. By contrast, if the athlete is paying by the hour, he can terminate the relationship at any time and need only pay for work already completed.<sup>121</sup>

Lawyers' fees must also be reasonable.<sup>122</sup> Typically, a lawyer-representative bills by the hour and charges the athlete a final fee resultant of the amount of time spent on the case. Agents, as mentioned above, traditionally charge their athlete-client four percent of the final contract package

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the athlete, or managing the athlete's money. *See id.* If an agent actually invests an athlete's money, the agent will charge extra for this service. *See id.* Some agents do their athlete-client's taxes; however, sometimes there is an extra charge for this, as athletes must file a tax return in each city and state in which they play. *See id.*

120. *See id.* In Professor Haagen's experience this is a primary source of many athlete-agent disputes. *See id.*

121. *See id.*

122. *See* MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.5 (1995). Factors to be considered when deciding the reasonableness of a fee include:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

*Id.*

negotiated for the athlete. In the case of Shawn Bradley's agent, this resulted in total compensation of \$1.8 million for approximately ten hours of labor. That works out to \$180,000 per hour. A senior partner at a top New York or Washington D.C. law firm charges around \$450 per hour, giving the athlete a total bill of approximately \$4500 for the same transaction.<sup>123</sup> Because non-lawyer agents are not subject to the Model Rules, an athlete has absolutely no recourse if, in retrospect, he feels like he was charged an unreasonable fee. Athletes pay less and get more with an attorney-representative as opposed to an agent.

#### *F. The Lawyer's Education*

Another advantage for an athlete who hires a lawyer-representative is that the lawyer-representative will have an undergraduate degree and a Juris Doctor, an advanced degree requiring three additional years of study at an accredited law school. This study includes courses specifically related to athlete-representation including "Contracts" and "Legal Writing," and may include upper-class electives such as "Negotiation and Mediation," "Collective Bargaining," "Athletics and Antitrust," "Employment Discrimination," "International Sports Law," "Labor Relations," and "Entertainment Law."<sup>124</sup>

Substantively, this additional education better equips

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123. See Mary Chao, *Shift Away from Hourly Law-Firm Billing Grows*, ROCHESTER BUS. J., Aug. 29, 1997, at 12.

124. *Duke University School of Law: Curriculum* (visited Jan. 26, 1999) <<http://www.law.duke.edu/curriculum/titles.html>>. Other core curriculum classes related to athlete representation may include "Criminal Law" and "Torts," depending upon the extra-curricular activities of the athlete-client being represented. For example, "Criminal Law" would have been useful for Charles Barkley who was arrested for assault and battery after punching a heckler outside a Milwaukee bar in March 1992. See Lacy J. Banks, *Robinson Adds to List of Top Stars Running Into Problems This Season*, THE CHICAGO SUN-TIMES, Mar. 29, 1992, at 22. Barkley was later acquitted of the charges. See John Jackson, *Barkley Deal A Suns Steal?*, THE RECORD, June 18, 1992, at E1. Criminal law knowledge benefited Chris Webber's representative. See Roscoe Nance, *Wizards Trade Webber to Kings*, USA TODAY, May 15, 1998, at 1C. Webber was arrested on charges of marijuana possession, second-degree assault, resisting arrest and several other traffic-related charges after he was stopped en route to practice in January 1998. See *id.* Webber was also recently convicted of marijuana-possession. See Jackie MacMullan, *Inside the NBA*, SPORTS ILLUSTRATED MAGAZINE, Mar. 30, 1998, at 90.

lawyers to understand varying professional sports leagues' collective bargaining agreements (CBAs). These CBAs are often complicated and contain standardized contracts providing the base agreement between an athlete and his team.<sup>125</sup> In order to adequately represent a professional athlete, an agent must have total comprehension of the CBAs, especially veteran player and team salary cap provisions, as well as rookie salary cap rules.<sup>126</sup> The various leagues' complicated CBAs were originally drafted by lawyers, who are best able to decipher, interpret, and use them creatively to benefit their athlete-clients.<sup>127</sup> Thus, lawyers are better equipped to represent athletes whose financial futures are dependent upon an accurate interpretation and implementation of CBAs.<sup>128</sup>

There are no educational requirements to become registered as a sports agent, and some states do not require registration at all.<sup>129</sup> Common law also holds that an agent does not need any particular training or experiences; he could be anything from a high-school drop-out to a Rhodes scholar.<sup>130</sup> Of course, agent competence includes more than a general educational background; it requires a thorough comprehension of a particular sport, its management, and the aspects of the business.<sup>131</sup> However, it is difficult to hold an agent to the same degree of competence as a lawyer

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125. See SCHUBERT, *supra* note 67, at 140-42. Almost all professional sports teams are governed by a CBA between management and the players union. See *id.* The standardized contracts found in the CBAs cover many terms of the player-club relationship. See *id.* However, substantial latitude exists for supplementing the standard contract. See *id.* For example, items available for negotiation include the length of the contract, renewal provisions, signing bonuses, base salary, incentives or bonuses, and the tax risks of the athlete's compensation packages. See *id.*

126. See *id.* at 141. Some leagues (e.g., the NBA) have salary caps limiting the total compensation players are entitled to. See *id.* An athlete's base salary is negotiable, subject to a minimum required under the CBA. See *id.* An agent's job is to negotiate the maximum amount he can for his player within the team's salary cap provisions. See *id.* Knowledge of the exact salary cap rules, and how to legally take advantage of loopholes, is essential for securing maximum compensation for an athlete. See *id.*

127. See Nichols, *supra* note 1, at 25.

128. See *id.*

129. See *id.* at 24. To qualify as a sports agent an individual need only have a client. See *id.*

130. See Champion, *supra* note 58, at 353.

131. See SCHUBERT, *supra* note 67, at 128.

because when an agent advises an athlete-client on CBAs or other matters, he only owes his athlete-client the duty to perform each assignment with the same expertise or aptitude generally possessed by others in that industry.<sup>132</sup> This lesser standard for agents demonstrates why a lawyer is a better choice for athlete representation.

### III. THE GRANT HILL STORY

National Basketball Association All-Star, Grant Hill, is nothing short of a class act.<sup>133</sup> His popularity is evidenced by his receipt of more All-Star votes than any other player in the league his first two seasons.<sup>134</sup> He was the first rookie to lead All-Star balloting – not even Michael Jordan was the top vote-getter his rookie year.<sup>135</sup> The 6-foot, 8-inch, 225-pound Detroit Piston forward is a role model for children and a respected, talented athlete.<sup>136</sup> He also uses a lawyer for most of his representational needs.

Grant Hill played basketball for South Lake High School in suburban Virginia and went straight into the lineup at Duke University his freshman year.<sup>137</sup> During his four years at Duke, Grant averaged 14.9 points and 6 rebounds per game; he hit 53% of his shots and 70% of his free throws.<sup>138</sup> When he graduated, he was ninth on Duke's all-time scoring list, sixth in assists and fourth in both steals and blocks. The Duke Blue Devils went 118-23 during Hill's four years on the team – the best four years the program has ever seen.<sup>139</sup>

Drafted as the number three pick in 1994, Grant has continued to impress in the NBA as a Detroit Pistons forward. Since his professional career began, Grant has been a member of Olympic Dream Team III, was selected NBA Co-Rookie of the Year in 1994-5 (with Jason Kidd), and

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132. See *id.* at 144; see also *supra* text accompanying notes 68-70.

133. See *GrantHill.com, Biography, The Story So Far*, (visited Sep. 29, 1999) <<http://www.granthill.com>>.

134. See *id.* See also Christopher John Farley, *Gentleman Slam Dunker*, *TIME*, Feb. 13, 1995, at 78.

135. See Farley, *supra* note 134, at 78.

136. See *id.*

137. See *GrantHill.com, supra* note 133.

138. See *id.*

139. See *id.*

led the NBA in All-Star votes in 1994-5 and 1995-6.<sup>140</sup> During his rookie year with the Pistons, Grant led the team in scoring average of 19.9, total points of 1,394, and steals of 1.77 per game.<sup>141</sup>

Clearly, Grant Hill is a top caliber player. He is also smart and responsible. Despite the lure of NBA dollars, he stayed at Duke for four years to complete his B.A. in History, and he chose a lawyer-representative to negotiate his contract with the Detroit Pistons instead of a traditional agent. Lon S. Babby,<sup>142</sup> Grant's lawyer-representative, negotiated a deal worth \$45 million over 8 years. Grant has also secured a lucrative endorsement contract with Fila that has been recently renewed for \$80 million.<sup>143</sup> Grant provides an example of advantages that an athlete will realize when he hires a lawyer instead of an agent for representation. In addition to retaining more money from the Pistons and from Fila because he did not pay an agent a large, flat percentage, he also has more control over his affairs.

Initially, it should be noted that Grant Hill had plenty of good guidance from his parents. His father, Calvin Hill, was an All-Ivy football running back at Yale and became a Pro Bowl and star running back in the NFL for the Dallas Cowboys.<sup>144</sup> Currently, he is an independent consultant whose clients include the Dallas Cowboys, and he heads a group of investors seeking to bring Major League Baseball back to Washington D.C. Grant's mother, Janet Hill, is a partner in a Washington, D.C. consulting firm where she advises Fortune 500 clients. Together, the Hills serve on a total of five corporate boards including Wendy's, Progressive

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140. See *id.*

141. See *GrantHill.com, Biography, Career Highlights*, (visited Sep. 29, 1999) <<http://www.granthill.com>>.

142. See Haagen Interview, *supra* note 85. Babby is a member of Williams & Connolly, Washington, D.C., and also represents NBA players Cherokee Parks and Tim Duncan. See *id.*

143. See *Hill's Shoe Deal Worth \$80 Million*, N.Y. TIMES, Sept. 24, 1997, at C7. Grant Hill first signed with Fila in 1994 after he graduated from Duke. See *id.* That five-year contract paid him an average of \$6 million a year. See *id.* Grant's new deal with Fila will pay him an average of \$11 million a year and runs through the year 2004. See *id.* Grant currently handles all of his own endorsement contracts. See Haagen Interview, *supra* note 85.

144. See Farley, *supra* note 134, at 78; see also Shelly Branch, *All in the Family*, FORTUNE, Aug. 4, 1997, at 76.



Insurance, and Toys "R" Us.<sup>145</sup> According to Grant, his parents taught him not only, "just how to be an athlete, but how to do things right."<sup>146</sup> Upon the Hill's advice, Grant is forgoing agents and handlers. Janet Hill explained that, "Grant understands that he owns his relationships with the Pistons, with Fila, and all the rest."<sup>147</sup> As his parents wisely understood, it is the use of a lawyer-representative that has allowed Grant a great degree of control over his affairs.<sup>148</sup>

Not only did Grant get guidance and wise advice from his parents, he also had the resources of Duke's Student-Athlete Counseling Committee<sup>149</sup> (Committee) to assist in his decision. The Duke Committee's role is to advise the athletes at the University who are considering professional sports careers.<sup>150</sup> Under the leadership of Professor Paul D. Haagen, the Committee generally endorses the proposition that student-athletes should not rely on one agent to handle all aspects of their careers.<sup>151</sup> The Committee to addresses relevant issues such as cost and flexibility of representation, yet stops short of making clear recommendations to student-athletes.<sup>152</sup>

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145. See Branch, *supra* note 144, at 76-77.

146. Farley, *supra* note 134, at 72.

147. Branch, *supra* note 144, at 76-77.

148. See Haagen Interview, *supra* note 85; see also *infra* notes 167-169 and accompanying text.

149. See Haagen Interview, *supra* note 85. Duke School of Law Prof. Paul Haagen has been the chair of the Student-Athlete Counseling Committee (Committee) from 1990 until the present. See *id.* The other current members are Chris Kennedy, a member of Duke's Athletic Department who handles academic compliance for the athletes and sets up Committee meetings, and Mike Moore, a professor at Duke's FUQUA School of Business. See *id.*

150. See *id.* The Committee provides help for student-athletes on a voluntary basis. See *id.* The degree of assistance that student-athletes pursue ranges from minimal suggestions to complete involvement. See *id.* For example, one Duke basketball player merely wanted to verify that there were no problems with the agents he was considering; he did not, however, want advice or interference with his selection by the Committee. See *id.* The Committee performed background checks and informed the athlete that one of his choices had a record of incompetence. See *id.* The athlete subsequently ceased consideration of that particular agent. See *id.* Other Duke athletes have wanted more help. See *id.* Basketball players who wanted complete involvement include Cherokee Parks, Grant Hill, Christian Laettner and Bobby Hurley. See *id.* Some Duke football players also wanted substantial Committee involvement while others did not want much help. See *id.*

151. See *id.*

152. See *id.*

In general, a student-athlete turning professional gets more value from hiring different representatives than hiring a single agent to perform all the athlete's services for a percentage of his earnings. Using different representatives allows the athlete to retain control over his career. This control gives the athlete the ability to fire his representatives if he feels he is being taken advantage of, or if he feels dissatisfied with the relationship for any reason. An athlete is permitted to terminate his agent at any time. However, the athlete is required to pay the agent for all services rendered.<sup>153</sup>

When the Committee discussed Grant's options for representation with the Hills, it was something they had already thought about a great deal.<sup>154</sup> Calvin Hill's experience playing for the Cowboys, the Cleveland Browns, and the World Football League led him to conclude that athletes ought to be centrally involved in their own representation. In addition, Mr. Hill felt it was unhealthy for athletes to simply turn over their affairs to other people.<sup>155</sup> The Committee and the Hills began with that proposition, always keeping in mind the possibility that the people they most wanted to hire might insist on other kinds of arrangements.

The Hills were thorough in their investigation of a variety of possibilities for Grant. They considered using the William Morris Agency, a firm that represents a variety of entertainers, actors and models.<sup>156</sup> The Committee also brought in several traditional agents and several lawyers, and each of them made a presentation and talked with the Hills. One of the presenting lawyers, Lon S. Babby,<sup>157</sup> had a prior relationship with the Hills. This relationship dated

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153. See Haagen Interview, *supra* note 85. For example, if an agent negotiated a \$10 million contract for a player and the player then terminated the agreement, the player would be contractually bound to pay the agent his four percent (\$400,000) fee, even though the agent no longer represented the athlete.

154. See *id.*

155. See *id.* Prof. Haagen noted that in advising the Hills, it turned out that he was, "preaching to the choir." *Id.*

156. See *id.* Kobe Bryant, drafted in 1996 by the Charlotte Hornets, elected to use this agency for representation. See *id.*

157. See Haagen Interview, *supra* note 85; see also *supra* text accompanying note 142.

back to the time when Babby was general counsel for the Baltimore Orioles and Calvin Hill was involved with player relations for that organization.

The Student-Athlete Counseling Committee members were well disposed to Lon Babby and his presentation in Grant's case, especially in light of Grant's strong family support and resources.<sup>158</sup> However, as previously mentioned, the Committee generally tries not to make clear recommendations to athletes. They rank what they regard as the factors involved and try to assist the athlete in reaching his or her decision.<sup>159</sup> In assisting Grant Hill, as with other athletes, the Committee discussed issues of cost, control, conflict of interest, and flexibility. Also, as standard procedure, the Committee spent a fair amount of time discussing with Grant what exactly he wanted his contract to accomplish. The Committee believes that an athlete must consider the trade-off between financial security provided by a long-term agreement and a potentially inflated monetary gain from a short-term contract.<sup>160</sup> If an athlete were a top performer in the professional league, and didn't get hurt, then he would make more money if he became a free agent after a short number of years. Factors involved are how good the athlete believes he will be in the professional league and how much risk the athlete is willing to undertake.<sup>161</sup>

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158. See Haagen Interview, *supra* note 85.

159. See *id.* The structure of Student-Athlete Counseling Committee meetings varies a good deal. See *id.* Usually the committee meetings consist of the three committee members and the athlete. See *id.* In Grant's case, in addition to the committee members, the head of a major investment house, the former secretary of the Army, Grant's parents, and Duke basketball coach Mike Krzyzewski were involved in the meetings. See *id.*

160. See *id.* This issue is no longer as relevant for student basketball players turning professional because under the CBA, all rookies must have at least three-year contracts with their team. *The Agreement at a Glance*, SEATTLE TIMES, Jan. 7, 1999, at C4. However, when Grant turned professional in 1994, rookie contracts could be for any length of time. See Haagen Interview, *supra* note 85.

161. See Haagen Interview, *supra* note 85. For example, if an athlete feels there is a serious question whether he will last in a professional league, he will want a contract that reflects this. See *id.* One such athlete negotiated a shoe contract that was very front-loaded. See *id.* This allowed the athlete to be paid a lot of money up front, so if he did not make it in the league, he would still reap substantial rewards. See *id.* Although the athlete took less total compensation for this contract feature, it was clearly a rational decision for him given his personal views of his chances for success in the league. See *id.*

Throughout the Committee's advisory process, the Hills were cautious and conservative. They took an extended period of time to reach a decision. The Hills initially retained Babby merely to negotiate Grant's trading card deal. The Hills were pleased with his performance.<sup>162</sup> The Hills then had Babby take over negotiation of Grant's shoe contract. When that went well, the Hills hired him to perform other kinds of representation. Lon Babby is now the general personal attorney for Grant and his affairs.<sup>163</sup>

Hiring a lawyer, as the Hills did, allows an athlete to "test" or "try out" the lawyer's services by retaining him to negotiate smaller contracts and projects before deciding whether to hire him for larger matters of representation. If the athlete is pleased with the lawyer's work he can continue to use him for needed services. If the athlete is not satisfied with the lawyer's performance for any reason, or finds the relationship unproductive, the athlete retains ultimate control over the relationship. This allows the athlete to terminate the relationship quickly, if necessary. After all, the athlete is paying the lawyer by the hour to do a specific service. The downside of this type of representation is that the athlete must seek the lawyer's service for each separate representational need that he has. The athlete may want the simplicity of giving complete control of all his affairs to one agent who will negotiate contracts, promote the athlete, and handle all of his matters.

When an athlete signs with an agent, he usually contracts the agent to handle all of his affairs. Arguably, an athlete could negotiate a different arrangement with an agent. For example, an athlete could contract with an agent to negotiate one agreement only. However, this is not standard practice in the industry and it assumes that the athlete has both sufficient business savvy to recognize that this might be a good option and the negotiating skills to achieve it. Regardless of the scope of the agreement, the athlete is bound to pay the agent his contractual fee. In most agent contracts, the athlete is not able to determine the quality of the representation until the agent does actual work for the

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162. *See id.*

163. *See id.*

athlete, and if the athlete is not satisfied with the agent, termination of the entire contract is the remedy. Because of industry practice, lawyers are familiar with retainers for separate tasks. Thus, it is easier to "try out" a lawyer-agent's negotiating skill than a non-lawyer agent's negotiating skills. By hiring Lon Babby to do small deals initially, Grant Hill was able to decide how he liked working with the lawyer and whether he wanted Babby to represent him again on larger issues.

In addition to Lon Babby's representation, initially Grant hired a traditional agency, Advantage, Inc., to do his endorsements for products other than shoes and cards.<sup>164</sup> Grant has recently terminated that arrangement, and he currently does his own endorsement work and negotiation.<sup>165</sup> Because all of his affairs were not tied to one individual agent, Grant was able to hire an agency that he thought would do the best job promoting him and negotiating his endorsement contracts. When he decided he wanted to personally handle all of his endorsement work, there was no problem terminating the relationship with Advantage. Having an agent would have prevented this type of flexibility and control, as the athlete is locked-in to the agent for all endorsement work and paying the agent a 10-20% fee for each contract for the duration of the representation.

The Committee also advises student-athletes turning professional about the types of services needed to keep their affairs in order. The Committee also advises the athlete about the types of people an athlete can expect to approach him – the more money the athlete makes, the more likely he is of being solicited.<sup>166</sup> Top athletes like Grant Hill with a multi-million dollar contract and many endorsements need a lot of help to keep their affairs in order. Grant and the committee compared the cost of hiring specialists in different areas to perform needed services to the cost of an agent who

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164. See *id.* Located in northern Virginia, Advantage's clients include skater Bonnie Blair and NBA player David Robinson. See *id.*

165. See Haagen Interview, *supra* note 85. Grant Hill's endorsements, in addition to Fila, include Sprite and GMC trucks. See Stuart Elliot, *A Poetic Sneaker Campaign Features a Stylish NBA Star Turn*, N.Y. TIMES, Oct. 27, 1995, at D7. He also has appeared on packages of Frosted Mini-Wheats cereal for Kellogg's and was featured in an ESPN commercial. See *id.*

166. See Haagen Interview, *supra* note 85.

would perform all his services. At Grant's level of wealth, there is no question that it is more cost-effective to hire the best representatives for each specialized task rather than hire an agent who attempts to do everything.<sup>167</sup>

Grant has retained a variety of people to help him manage his affairs and transactions. He hired Cherie Greer as a personal representative and administrative assistant.<sup>168</sup> As his personal assistant, she is his scheduler and handles all of his correspondence. He has his lawyer, Lon Babby, who does all of his legal representation and generally looks over everything he does. In terms of marketing representation and endorsements, Grant has brought those activities in-house. Cherie does a lot of it, but he also contracts out with various people to do things. Grant has separate investment counselors who manage his finances. As previously mentioned, this system is more cost-effective for Grant because his income is sizable. Equally relevant, Grant is able to hire exactly the people he wants to do exactly what he wants.<sup>169</sup>

Part of the Committee's role in advising top athletes who are expected to be high draft picks is to help them recognize that they are about to become wealthy people. Therefore, they ought to behave as wealthy people do. Corporate executives do not have agents, and they do not turn over all of their affairs to a single individual. Ideally, that is the way the athletes ought to come to think about themselves. Exactly who the athlete hires to handle his affairs becomes a matter of personal style depending upon the kind of image the athlete wants to project, how much control the athlete wants, and how much involvement the athlete wishes to have in his transactions.<sup>170</sup>

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167. See *id.*

168. See *id.* Cherie is Hal Greer's daughter. See *The Archives, Player Profile: Cherie Greer* (visited Oct. 1, 1999) <<http://www.lacrosse.com/fea/archives.html>>. Hal Greer is a Basketball Hall of Fame guard who played for the Philadelphia 76ers in the 1960's and '70's. See L. Jon Wertheim, *Perfectly Awful, The 1972-73 Sixers Weren't Just Bad—They Were Horrid*, SPORTS ILLUSTRATED MAGAZINE, Jan. 26 1998, at 55.

169. See Haagen Interview, *supra* note 85. Haagen noted that agents generally are able people but are hesitant to let competent people work for the athlete, and they try to keep the athletes away from people who might provide them with better service. See *id.*

170. See *id.*

## IV. CONCLUSION

Grant Hill's case is a concrete example of all the benefits a professional athlete realizes when he chooses a lawyer-representative instead of a traditional agent. A lawyer-representative is more accountable to his client, costs less, and is bound by more stringent ethical standards. In addition, using a lawyer allows an athlete to set up an organizational structure for managing his affairs that results in the best people available performing each separate service. Currently, the representatives who are most responsive to independent and self-sufficient athletes such as Grant Hill are people who operate as lawyers.<sup>171</sup> An athlete must determine whether retaining control and being cost-effective are important to him, if so, he should consider retaining a lawyer to represent him as his best option.

For those athletes who do not have the resources and support network of Grant Hill, but still want the cost-effectiveness and flexibility of non-agent representation, there is an emerging option. Representational agencies such as the William Morris Agency, CAA, and Athletes & Artists are becoming more prominent in athlete representation.<sup>172</sup> Recognizing that the athletic industry is becoming more and more like the entertainment industry, these agencies provide services and promotion for top professional athletes in the same manner that they have traditionally done for performers, actors and entertainment personalities. For example, ELG Sport & Entertainment, is an international management organization which provides management, career guidance, contract negotiations, financial services,

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171. See *id.* Prof. Haagen told an anecdote of two young Duke players, one of who hired a traditional agent, the other who signed with a lawyer-representative. See *id.* Both made plans to be married (not to each other), and when the agent heard of this, he sent a wedding present to his client. See *id.* When the lawyer became aware of his athlete's pending wedding, he called his client to discuss the range of possible prenuptial contracts that the athlete might want to consider. See *id.* This athlete actually chose to not have a prenuptial agreement; however, he was informed about his range of options and made his choice. See *id.* This illustrates the different types of relationship the athlete will have with his representative, dependent on whether he hires a traditional agent or a lawyer. See *id.*

172. See *id.* Traditionally these agencies have represented entertainers, but are now expanding to include athletes as clients. See *id.*

and endorsement marketing.<sup>173</sup> The organization provides services to professional athletes, musicians, producers, actors, sportscasters, newscasters, artists, directors, authors, professional teams, and universities.<sup>174</sup>

Because these management organizations provide all the services a professional athlete needs under one roof, the athlete receives the benefit of having different specialists handle his affairs without having to locate and hire separate professionals individually. Typical services provided by a management agency include contract negotiations, financial services that may include tax advice, endorsements and marketing. As their popularity and prevalence increases, agencies may provide an additional option for a professional athlete's representational needs.

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173. See *Freetown* (visited Jan. 10, 1999) <<http://www.freetown.com/Downtown/Broadway/090/page2.html>>

174. See *id.* Other examples of management agencies include Elite Athlete Management in Atlanta (see *Elite Athlete Management* (visited Oct. 1, 1999) <<http://astro.hpd.net/clients/elite>>); The 40-40 Sports Council, run by Jose Canseco (see Rod Beaton, *Canseco Takes Cut at Being Sports Agent*, USA TODAY, Feb. 20, 1995, at 4C); ProServ (see Evan Charkes, *Dell: 20-25 Players Accept Guarantees*, THE WASHINGTON POST, June 18, 1993, at D1); Players in Action, Inc. (see *Trenton St. Names Basketball Coach*, THE RECORD, June 19, 1989, at D9).