Tenth Annual
Sports and Entertainment Law
CLE Symposium

Friday, March 31, 2017

9:00 am – 4:00 pm

Widener University Delaware Law School
Ruby R. Vale Moot Courtroom
Main Law Building
Wilmington, Delaware

Widener University
Delaware Law School

Tenth Annual Sports and Entertainment Law

CLE Symposium

Hosted by the Sports and Entertainment Law Association (SELA) of Widener University Delaware Law School

This Symposium is an annual Continuing Legal Education event featuring some of the country's most prominent, innovative, and successful sports and entertainment attorneys. Covering the topics of music, sports, and ethics, with a cutting-edge analysis of contemporary sporting issues and the ever-changing industry of entertainment, this is a conference you will not want to miss!

Friday, March 31, 2017
9:00 am – 4:00 pm

Delaware Law School
Ruby R. Vale Moot Courtroom
Main Law Building
Wilmington, Delaware

FIVE (5) CLE credits in DE & PA (including one ethics credit).
NJ attorneys can self-report with Delaware Law's Certificate of Attendance.

Agenda

9:00 – 9:20 am — Registration and Continental Breakfast
(included with registration)

9:20 – 9:30 am — Welcome and Introductions: Sports and Entertainment Law Association

Moderator for All Panels: Alexander Murphy, Jr., Esquire
Law Offices of Alexander Murphy, Jr., West Chester, PA/New York, NY
Adjunct Faculty, Widener University Delaware Law School

9:30 – 10:30 am — **Music Panel:**

"Protecting Your Intellectual Property in the Entertainment Business" and "Producers and Production Agreements in the Music Industry"
Kaitlyn M. O'Neill, Esquire
Law Office of Remick Cabott/Zane Management, Inc., Philadelphia, PA

"The Evolution (Then and Now) of the Entertainment Law Industry" and "19 Words that Will Help Your Success in the Entertainment Law Practice"
Lloyd Z. Remick, Esquire
Law Office of Remick Cabott/Zane Management, Inc., Philadelphia, PA
Adjunct Professor, Temple University Beasley School of Law

"How to Protect Yourself, How to Apply as Much Time (or Almost as Much Time) Towards the Business End as the Creative End, and Why"
Simon Rosen, Esquire
Law Office of Simon Rosen, Philadelphia, PA

10:30 – 10:45 am — **Refreshment Break**

10:45 – 11:45 am **Sports Panel: "Sports Agent Certification, Licensing and State Registration Requirements"**
Casey Muir, Esquire
Tier 1 Sports Management LLC, Wayne, PA

Brett W. Senior, Esquire
Brett Senior & Associates, P.C.
Brett Senior Tax Services, LLC
Senior Management Group, LLC, Wayne, PA

11:45 am – 12:20 pm **Lunch - Barristers' Club (included with registration)**

12:30 – 1:30 pm **TV Panel: "Taming the Wild World of Unscripted/Reality-Based Programming"**
Dom F. Atteritano, Esquire
Senior Vice President – Legal and Business Affairs
AMC Networks Inc. – BBC America & WE tv

Michael J. Budicak, Esquire
Assistant General Counsel
QVC, Inc.

Lori Landew, Esquire
Fox Rothschild LLP, Philadelphia, PA/New York, NY

1:30 – 1:45 pm **Refreshment Break**

1:45 – 2:45 pm **Film Panel: "Legal and Business Issues in the Making of "Larry and Teresa," a Documentary Feature Film**
Mark Moskowitz
Producer/Director
Point of View Productions, Inc., Chester Springs, PA

Alexander Murphy, Jr., Esquire
Law Offices of Alexander Murphy, Jr., West Chester, PA/New York, NY
Adjunct Faculty, Widener University Delaware Law School

2:45 - 3:00 pm **Refreshment Break**

3:00 – 4:00 pm **Ethics Panel: "Ethics Landmines Navigation for Sports & Entertainment Lawyers"**

Mary E. Cavallaro, Esquire
Chief Broadcast Officer
News & Broadcast, SAG-AFTRA, New York, NY

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WIRELESS ACCESS INFORMATION AS A "WIDENER GUEST"

WIDENER UNIVERSITY DELAWARE LAW SCHOOL
RUBY R. VALE MOOT COURTROOM
FRIDAY, MARCH 31, 2017

Username: sports
Password: entertainment

Course materials are available for download as a pdf at delawarelaw.widener.edu/cle

BIOGRAPHIES

Dom F. Atteritano, Esquire

As Senior Vice President of Legal and Business Affairs, Dom Atteritano oversees all aspects of the day-to-day legal and business affairs of BBC America and WE tv. Atteritano is responsible for negotiating and managing contracts across all areas for the networks from programming and development to talent, press and marketing, along with managing litigation. He was named to this post in 2013.

Atteritano joined AMC Networks in 2005, where he served as legal affairs counsel before becoming legal affairs senior counsel in 2008, and Vice President of Legal and Business Affairs in 2010.

Prior to joining AMC Networks, Atteritano was a Business Transactions Associate at Schulte Roth and Zabel LLP and with Mintz Levin as a Corporate & Securities Associate.

He received his BA in political science from Boston College and his JD from the Maurice A. Deane School of Law at Hofstra University.

Mary E. Cavallaro, Esquire

Mary E. Cavallaro is the Chief Broadcast Officer for the SAG-AFTRA News & Broadcast Department. Cavallaro is responsible for overseeing the negotiation and administration of more than 250 labor agreements between SAG-AFTRA and network and local broadcast employers nationwide, and chairs national negotiations for the network news agreements, as well negotiations with employers with operations in multiple markets. Cavallaro works with the Broadcast Steering Committee on policy and matters of concern to broadcast members.

Cavallaro has served SAG-AFTRA members for more than 15 years, starting with the Philadelphia AFTRA Local where she served as business representative/staff counsel for the AFTRA Local and SAG Philadelphia Branch, and later as a national representative/staff counsel for AFTRA. Cavallaro was Of Counsel with the firm of Montgomery, McCracken, Walker & Rhoads in Philadelphia, representing media talent and creative professionals regarding personal services contracts, production development, copyright, licensing and other intellectual property matters. She received her law degree from Villanova University School of Law and her BA from the University of Southern California.

Lori Landew, Esquire

Lori Landew, administrative partner of Fox Rothschild's Entertainment Department, is a media and entertainment lawyer whose practice spans the film, television, music, publishing, sports and fashion industries. A seasoned negotiator with more than two decades of experience, she handles deals that involve all aspects of content creation, production, and distribution, as well as matters centered on brand awareness, cultivation, integration and promotion.

Splitting her time between New York and Philadelphia, Lori focuses on the negotiation, drafting and enforcement of complex agreements that protect and promote her clients' business interests including, among others:

- recording agreements
- music publishing agreements
- content licenses
- merchandise agreements
- management agreements
- representation agreements
- producer agreements
- collaboration agreements
- sponsorship agreements
- endorsement agreements
- talent agreements
- production services agreements
- film finance agreements
- distribution agreements

Lori also routinely shares her business savvy and insights with her clients who seek her advice on the entertainment industry.

Media companies, universities, cultural institutions, performance venues, restaurants, and sports teams are among the many clients that turn to Lori for guidance in protecting their intellectual property and in building their brands. Lori is also frequently called upon to evaluate and advise companies on the value of their intellectual property rights and assets, particularly in advance of major acquisitions or mergers.

Variety magazine named Lori to two of its most prestigious lists — the Dealmaker's Impact Report and the New York Women's Impact Report. And she has been repeatedly recognized by *Best Lawyers* in the category of Entertainment Law.

A former general counsel and senior executive at two successful international entertainment companies, Lori is a trusted adviser to startups and established companies on legal and business matters. For many clients, Lori serves in a role akin to an outside general counsel, providing guidance on a broad range of issues as they arise and sometimes joining in conversations about longer term business strategy. Lori is frequently quoted in *Forbes*, *Law360* and other media outlets on topics relating to the music industry and other entertainment business issues.

Lori is also quickly becoming a go-to source in the emerging world of drone law having presented at the prestigious 2nd Annual New York City Drone Film Festival on the topic of "Integrating Drones Into a Production Workflow," which offered guidance to producers on how to identify whether drones are a viable option in a film project.

Representative Matters

- Negotiated deals for production companies specializing in developing programming in the non-scripted reality space. Led discussions with several cable networks, including A&E, AMC, The Food Network, Tribune, The Travel Channel, Oxygen, and Viacom. Also represented the production companies in its negotiations with the talent featured in the programming to secure rights to their performances.
- Represented a top fashion model in all facets of her professional activities including negotiating her agreements with her agent and her publicist, and in cross-branding activities, including a television series, a fashion line and endorsing fashion merchandise.
- Counseled a major home shopping channel in cross-branding opportunities through various entertainment platforms. Assisted in efforts to secure rights to content with owners and distributors, including Fox Television, Columbia Records and the Warner Music Group.
- Represented a multinational music publishing company in its acquisition of several music libraries. Managed the music rights due diligence in each transaction to determine and confirm the nature, scope and validity of the rights being acquired, including the drafting of comprehensive due diligence reports used by the client in its final acquisition analysis.
- Handled the negotiation of a documentary production agreement and distribution agreement for one of the country's preeminent noncommercial radio stations.
- Represented multiple chef and restaurant clients in connection with activities outside their restaurants, such as special appearances, speaking engagements, cookbook publishing and recurring roles on television shows, including "Chopped."

Before Fox Rothschild

Prior to joining the firm, Lori was a key member of the Media, Entertainment & Sports Law practice at a national law firm, where she built and expanded the scope of commercial transactions for media and entertainment companies as well as businesses venturing into content creation and acquisition.

Lori was also previously president of Landew Entertainment Business Associates, LLC, where she led business development initiatives and negotiated sophisticated deals for clients in entertainment and related industries.

Lori also served as general counsel for the Ryko Corporation, a multinational entertainment company, where she was one of a small executive management team that worked to develop business opportunities, form strategic partnerships and structure favorable deals that led to the company's acquisition by the Warner Music Group.

Additionally, Lori formerly served as vice president of business affairs for Zomba Recording Corporation, the most successful independent music company in the world at the time, where she led several initiatives to realize substantial cost-savings and revenue growth for the company including building, training and managing an experienced licensing team that generated considerable revenues to the company's bottom line.

Lori began her legal career as an associate in top New York law firms, representing clients in the entertainment and advanced technology industries in connection with their intellectual property and commercial litigation needs.

While in law school, Lori served as executive editor of the *Columbia-VLA Journal of Law and the Arts* and as president of the Columbia Advocates for the Arts.

Beyond Fox Rothschild

Lori currently sits on the Board of Governors of the Philadelphia Chapter of the Recording Academy (the Grammy organization) and is a founder and member of the Board of Directors of LiveConnections.org, the organization that connects all kinds of people through all kinds of music.

Honors & Awards

- Named among the "Women on the Move" by *Main Line Today* (2016)
- Named to *Variety's* Dealmakers Impact Report (2015)
- Named to *Variety's* New York Women's Impact Report (2016)
- Selected for inclusion in "The Best Lawyers in America" for Entertainment Law (2015-2017)
- Winner of the "Top Entertainment Attorney" poll conducted by *Rock On Philly* (2014)

Client Resources

Pay or Play

Authored by the attorneys in the firm's Entertainment Department, the **Pay or Play blog** provides a legal perspective on the latest issues and trends affecting the entertainment industry, including digital content, multichannel networks, celebrity branding and artist and performer management as well as commentary on music law and media distribution law.

PRACTICE AREAS	**BAR ADMISSIONS**
Entertainment	Pennsylvania
Corporate	New York
Executive Compensation	
Intellectual Property	**EDUCATION**
Mergers and Acquisitions	Columbia Law School (J.D.)
Sports Industry	University of Pennsylvania (B.A.)
Drone Law	

Casey Muir, Esquire

Casey Muir is the founder and President of CRM Sports Management. Prior to CRM, Casey was the Senior Contract Manager for a Fortune 200 Company, where he regularly negotiated contracts valued at over $100 million.

Casey's prior sports industry experience includes working as an associate at GoPro Sports, where he oversaw the recruiting department and was the lead negotiator of NFL free agent contracts for dozens of NFL players.

Casey's prior experience in the sports industry working with NFL players, the NFLPA, NFL Club Personnel Departments, and various CFL and UFL Clubs provided Casey a wide web of critical industry contacts. Casey is a certified contract advisor with the National Football League Players Association, Canadian Football League Players Association and the United Football League Players Association.

ALEXANDER MURPHY JR., ESQ.

Alexander Murphy Jr. received his B.S. in Music with Honors from the highly acclaimed College of Visual & Performing Arts, School of Music, West Chester University, West Chester, PA and was a graduate teaching assistant at the School while undertaking post-graduate work in music theory, composition and orchestration. He graduated with a J.D. from the Delaware Law School Widener University. With over thirty-five years experience as an entertainment lawyer, Mr. Murphy now maintains his principal office in West Chester, PA after many years being primarily based in New York City. He is admitted to practice in New York and Pennsylvania and also maintains an affiliate New York office with fellow entertainment attorney, Peter M. Thall, Esq.

Mr. Murphy's practice has included entertainment litigation but is now exclusively entertainment business affairs transactions and related matters, including intellectual property. His varied practice encompasses representing major and independent award winning entertainment companies, projects, productions (narrative and documentary) and financiers from development and financing through production, distribution and other forms of exploitation along with individual producers, performers, writers, authors, life story subjects, musicians and other talent throughout the U.S. and internationally, in the motion picture, television, book publishing, theatrical, and music industries.

He is a frequent panelist and lecturer on entertainment law at entertainment industry programs and seminars at law schools, film festivals, film schools, bar associations, and other educational institutions and associations, including for continuing legal education courses, was an adjunct professor at Rutgers University School of Law (Camden) for several years, and has been an adjunct professor at the Delaware Law School for over fifteen years, where he teaches entertainment law, and is the faculty advisor for its Sports and Entertainment Law Association (SELA), for which he moderates its annual "Sports and Entertainment Law CLE Symposium". He is also a member of the Law School's Alumni Network Mentoring Program and of its First Generation Law Student Association (FGLSA).

Mr. Murphy is a two term past member of the Board of Directors of the West Chester University Alumni Association, is a member of the University's Law Alumni Chapter, a member of the Chester County Chapter, and a WCU Professional Network (PRONET) student mentor. He also has substantial accomplishments as an artist. His capabilities span the world of music to include jazz, classical, popular and choral works. He has been a freelance musician and arranged and performed with a number of well known popular and jazz groups during and after his college years.

Mr. Murphy lives in West Chester (Birmingham Township), Chester County, PA. His daughter, Mackenzie, is a graduate of Dartmouth College and is currently an investment associate with Bridgewater Associates, a hedge fund, located in Westport, Connecticut.

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West Chester, PA 19382
610/399-9033

www.murphyentertainmentlaw.com

Kaitlyn M. O’Neill, Esquire

Kaitlyn M. O’Neill, Esquire is an entertainment and media attorney with Remick Cabott Law Offices and Zane Management, Inc., who concentrates her practice in the areas of music, film, television and book publishing. She received her B.A. from Saint Joseph’s University and her J.D. from Widener University School of Law. She is licensed to practice law in the Commonwealth of Pennsylvania as well as the States of New Jersey and New York.

While in law school, Attorney O’Neill was a member of Phi Alpha Delta, the Alternative Dispute Resolution Society, and the Sports and Entertainment Law Association. She earned a scholarship to the Practising Law Institute in New York for an entertainment law conference and participated in the study abroad program in Argentina.

Ms. O’Neill has negotiated various and sundry agreements for recording artists, gold and platinum songwriters and producers, musicians, composers, managers, record labels, production companies, publishing companies, as well as agreements for featured and guest talent in reality and scripted television shows, directors for the same, agreements for social media influencers, editors, writers, the life rights of individuals for film productions, and the like. She has also been lead counsel in lawsuits on behalf of producers against record labels for recovery of producer royalties.

Lloyd Z. Remick, Esquire

Lloyd Z. Remick, Esquire is an attorney who concentrates his practice in the areas of entertainment, sports, hospitality and communications law. He is also President of Zane Management, Inc., a Philadelphia based sports, entertainment and communications consulting and management firm.

Mr. Remick represents several award winning recording artists, writers, and producers, as well as a number of television, radio, and entertainment personalities. In addition, he represented and managed the late Grammy Award winning Grover Washington, Jr. for over 20 years. Mr. Remick is a registered contract adviser with the National Football League Players' Association and the NCAA. He has also represented athletes in variety of other sports, including basketball, baseball, ice-skating, crew, boxing, soccer, and track and field. Mr. Remick received his B.S. from Wharton School in 1959, his J.D. from Temple University School of Law in 1962, and a L.L.M. in tax law from Villanova School of Law in 1984.

Professor Remick teaches entertainment and sports law at Temple University School of Law and "The Legal Aspects of Hospitality and Tourism" at the Temple University School of Hospitality and Tourism. He also guest lectures at various organizations and universities throughout the country on a host of entertainment, sports, hospitality, and business related topics. Professor Remick co-wrote Keeping Out the Little Guy: An Older Contract Advisor's Concern, a Younger Contract Advisor's Lament, 12 Vill. Sports & Ent. L.J. 1, and The Personal Manager in the Entertainment and Sports Industries, 3 U. Miami Ent. & Sports L. Rev. 57.

Attorney Remick was general counsel for Sunoco Welcome America, Philadelphia's annual ten-day Fourth of July celebration, for over a decade. He was also legal counsel for the Philadelphia Convention and Visitors' Bureau, the City Representative's Office, "We the People 2000", and the Fight Against Drugs, a non-profit organization dedicated to combating the use of drugs in the sports industry. Mr. Remick is a member of a number of associations and clubs, serves on the Board of Governors and Executive Committee of the Maxwell Football Club, and served on the Board of Directors for the Philadelphia Music Foundation and Philadelphia Bar Association. He also spent six years as a Hearing Member and Chairperson for the Disciplinary Board of the Pennsylvania Supreme Court. Mr. Remick was voted one of the "best, brightest, wiliest, winningest, most tenacious and efficacious attorneys" as well as "Best Entertainment and Sports Attorney in Philadelphia" by Philadelphia Magazine in 1999. Elected to Super Lawyers for Entertainment and Sports Law 2005 – 2016. Elected International Entertainment Lawyer Of The Year 2012-2016. He has also been elected to the 2007-2016 editions of Best Lawyers in America. Selected for Peer Review Rating 1981-2016, rated AV preeminent by Martindale-Hubbell. Selected for AVVO Superb Rating 10/10. He is listed in Who's Who in American Law and Who's Who in American Poetry.

Mr. Remick is the recipient of many prestigious awards, including the Philadelphia Achiever Award, the Golden Slipper Club's Distinguished Service Award, the Liberty Bell Award, BMA's Distinguished Music Award, the Duke Ellington Humanitarian Award and Wharton Club's "Man of the Year Award." On April 30, 1999, the Honorable Edward Rendell, Governor

of the Commonwealth of Pennsylvania, and the Pennsylvania Bar Association honored Mr. Remick for his service to the legal profession.

Most recently, Mr. Remick was a recipient of the 2014 Lifetime Achievement Award, presented by The Legal Intelligencer, recognizing Mr. Remick for his consistent and significant contributions to the legal profession in Pennsylvania. In 2015, Mr. Remick was selected as one of twelve recipients by the Philadelphia Business Journal as a “veteran of influence” award. In 2016, on the international level, he received several awards worldwide as “Entertainment Advisor of the Year” award and “Entertainment Lawyer of the Year” internationally award.

SIMON ROSEN, ESQ.

From early childhood through Age 58 (born Sept. 5, 1958, same birthday as Raquel Welch), Simon Rosen has possessed a love, devotion, passion, respect and understanding of music, and of people who comprise the "music business". His respect for not only the "stars", but the human backline- musicians, vocalists, producers, engineers, arrangers, writers, publishers, promoters, publicists, etc.- has been his motivating force for 33+ years. Rep'ing A-list talent is great, but 99% of the industry is comprised of the backline.

Rosen's late father and grandfather were musical performers. Simon began studying classical piano in his early childhood, and his abilities shifted towards popular music during his college years. In 1983, fresh out of law school at age 24, he joined Philadelphia Volunteer Lawyers for the Arts. At age 25, he commenced representing such luminaries as legendary rock n roll manager David Krebs of Contemporary Communications (Aerosmith, The Scorpions, et al.). Rosen has continued to strive to protect and advance the rights of those in the music community.

His artist client roster has been as diverse as the music world itself- including pop, r&b, rock n roll, jazz, blues, goth, gospel and classical. Rosen is as comfortable being involved in the careers of the likes of John Legend, Cassidy, Britney Spears, Pink, Aerosmith, Brashere Gray/Yazz (rapper "Hakeem" on "Empire") … as he is trying to break the youngblood 14 year old rapper in a local park. Whether working on a new joint with CeeLo Green, booking afterparty gigs for Pink, prodding Vernon Reid (Living Colour) to name his favorite guitarists (Michael Hedges, for one, handling the division of the greatest heavy metal catalogue in the world (Jon and Marsha Zazula's Megaforce Records/MRI Distribution- (Metallica, Anthrax, Ministry, etc.), battle rap virtuoso Cassidy, jazz guitarist Jimmy Bruno (Concord Records), r&b diva Regina Belle ("Alladin's Theme: A Whole New World"), latin legend Miradalia Hernandez (Cuatro Cuarenta), Phila. Gospel Music Seminars, gospel great Shawn McLemore, The Delfonics, Ray Charles- Rosen thrives on the pulse of the music business.

Rosen specifically chose to reside and raise his family in Philadelphia, outside the higher pressure cookers of NYC and Los Angeles. Easier to chill, and easier to avoid being swallowed up by the business.

Attorney Rosen reviews and negotiates entertainment-related agreements on a regular basis-music, television, film, media. It is not uncommon to play a dual role as "de facto" personal manager. He regularly counsels record labels, investors, recording studios, producers, promoters, agents, venues, publishers, songwriters, engineers, arrangers, screenwriters, and filmmakers.

His professional associations have included membership in the National Academy of Recording Arts & Sciences, Songwriters Guild of America, B.M.I., Philadelphia Volunteer Lawyers for the Arts, and legal counsel for S.P.A.R.S. (Society for Producers and Recording

Studios.

In the 1990's, Rosen authored a column in the seminal bi-weekly rap and hip hop music tip sheet, "IMPACT", entitled: "LEGAL CORNER: SIMON SEZ", providing a mix of legal and practical advice, and wit. IMPACT paved the way for those genres.

Rosen has lectured across the United States on a wide range of music business topics, including entertainment law, setting up your own record company, publishing, urban music, production deals, joint venture label deals, putting out your own CD, and management contracts. He taught Copyrights in The Music Business as an Adjunct Professor at Drexel University, and has lectured on drafting entertainment contracts at Rutgers School of Law and elsewhere

In addition to his law practice, Rosen moderates a monthly NYC gig called, The New Pro Shop, which had been moderated for more than 30 years by the late great music titan Ann Ruckert. Ann passed away in October 2014 and Rosen has been fortunate enough to lead a pack of crazy talented songwriters in a monthly networking and support group workshop. The New Pro Shop is an offshoot of the Songwriters Guild of America, a songwriters' rights organization founded in the 1930's by Irving Berlin and the top composers of that era. That candle still flickers. Rosen is also in pre-production of his own reality television show.

Simon's efforts in the music industry are in memory and honor of his parents, Bernard and Rita Rosen. Bernie Rosen was a gifted singer, performer, and Emcee, and his mother made an amazing couple. Much props to Simon's wife, Kim- who has put up with the 24/6 lifestyle of endless studio sessions, late night calls from frazzled artists, showcases and teleconferences, et; also Simon's two wonderful sons, Ryan and Michael. Kim is a noted special events producer, Ryan is a composer who just formed Harmonizor Music Publishing, dedicated to soundtracks and licensing, and Michael is pursuing his dream as a physicist/scientist.

Simon strives to remind everyone that music is, indeed, the universal language, and it relentlessly makes us happier, healthier and better human beings.

Simon Rosen, Esq.

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BRETT W. SENIOR

Brett W. Senior is the senior partner in the Philadelphia law firm of Brett Senior & Associates, P.C. Brett specializes in tax, estate and financial planning for high net worth individuals and closely-held corporations. A significant portion of his practice involves business and executive management services including contract negotiations and tax planning for professional athletes, coaches, entertainers and business executives. He has negotiated over a thousand contracts in these fields over the past twenty-five years.

Brett spent five and one-half years in the Philadelphia office of the international public accounting firm of Coopers & Lybrand as a tax manager specializing in estate and financial tax planning. While at Coopers & Lybrand, he headed the estate and financial planning group for high net worth individuals and closely-held corporations.

He has a B.A. degree in accounting from Franklin & Marshall College, where he received numerous academic awards and honors; graduating second in his class. He received his J.D. degree from Emory University in 1979; graduating in the top ten percent of his class. He is a member of the Pennsylvania and American Bar Associations.

Brett was an outstanding intercollegiate athlete at Franklin & Marshall College, where he captained the wrestling team his junior and senior years and was selected twice as the team's outstanding wrestler. He continued a successful career in amateur AAU and Olympic freestyle competitions during law school.

He has authored numerous articles on contract negotiations and estate and tax planning, including the chapter entitled "Taxation in the United States" published in the book A Guide for the Foreign Investor. Mr. Senior has appeared before various professional and community organizations as a speaker on a variety of subjects involving contract law, tax and estate planning.

Brett is a certified contract advisor with the National Football League Players Association and Canadian Football League Players Association. He has represented over 750 professional athletes and coaches, both on a national and international basis, since 1976.

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COURSE MATERIALS

MUSIC PANEL

PRODUCTION AGREEMENT

This Production Agreement ("Agreement") is made and entered into as of this ___ day of _____ 2012, by and between _____ ("Artist"), located at _____ and _____ ("Producer") located at _____.

BACKGROUND

A. Artist has engaged Producer to record and produce the master sound recording tentatively titled _____ (the "Master") for commercial release as a single and possible inclusion on a forthcoming album (the "Album").

B. Producer hereby agrees to render services to Artist as an independent producer for purposes of recording and producing the Master.

Now, therefore, in consideration of the mutual promises set forth below, Artist and Producer agree as follows:

1. ***Services and Term***. Producer shall render services to Artist on a non-exclusive basis for purposes of recording and producing the Master. Subject to a deadline of _____, 2012, the term of this Agreement shall commence as of the date first written above and continue until Producer completes the foregoing services in a manner that is technically acceptable to Artist.

2. ***Compensation***.

a. In consideration of Producer's services hereunder, Artist shall pay Producer a maximum all-inclusive production fee of _____ dollars ($____, the "Fee") in two installments. The first installment of the Fee shall be _____ dollars ($____), which Artist shall pay to Producer upon full execution of this Agreement. The second installment of the Fee shall be _____ dollars ($____), which Artist shall pay to Producer upon the delivery of the Master and all related session files to Artist in a form that Artist deems, in its sole discretion, to be technically satisfactory and suitable for final mixing and mastering.

b. After Artist recoups all recording, production, background vocal, musician, studio, engineering, marketing, promotion, distribution, mixing, mastering and other costs related to the Master (collectively "Master Costs"), Artist shall pay Producer a three percent (3%) retail royalty (the "Base Rate") on the retail selling price of individual downloads and retail sales of the Master and the portion of the Album embodying the Master. The latter shall be computed by multiplying the Base Rate by a fraction, the numerator of which shall be the number of the master recordings embodied on the Album that Producer has produced and the denominator of which shall be the total number of royalty-bearing master recordings on the Album. Artist hereby agrees that Producer shall receive a one-half (½) percent increase on the Base Rate to three and one-half percent (3 ½%) for "gold" digital or physical sales of the Master

and/or the Album (500,001 to 999,999 units sold) and an additional one-half (½) percent increase on the Base Rate to four percent (4%) for "platinum" digital or physical sales of the Master and/or the Album (1,000,000 plus units sold).

c. Artist shall pay Producer's production royalties retroactive to the first sale of the Master, whether sold digitally or physically, after Artist recoups all Master Costs. Producer shall receive one-half (½) of the applicable Base Rate and any applicable increases as a royalty on sales of audio-visual recordings embodying the Master.

d. All royalties owed to Producer hereunder shall be computed and paid on one hundred percent (100%) of the "net earnings" that Artist receives from sales of the Master and sales of audio-visual recordings embodying the Master, without cross-collateralization of the two income streams. For purposes of this Agreement, "net earnings" shall be determined by subtracting all Master Costs from gross revenues generated from digital and physical sales of the Master. "Net earnings," as it applies to sales of audio-visual recordings embodying the Master, shall be determined by subtracting video production expenses incurred by Artist from gross revenues generated from sales of such audio-visual recordings.

e. Notwithstanding anything to the contrary, Artist shall not pay any royalties for phonorecords containing the Master that are furnished as free or bonus records (i) to members, applicants or other participants in any record club or other direct mail distribution method; (ii) on singles or Albums distributed for promotional purposes to radio stations, television stations or networks, record reviewers or other customary recipients of promotional records; and (iii) on so-called "promotional sampler" singles or Albums.

f. Producer shall also receive compensation from royalties paid to Artist from SoundExchange. The necessary rider and letter of direction is attached hereto and made a part herewith as Appendix A.

3. ***Recording Procedure***. Artist hereby engages Producer as an independent contractor. Producer agrees to assume full responsibility for the payment of all taxes associated with the compensation set forth in paragraph 2 above. All recording sessions for the Master shall be conducted at a studio of Artist's choosing. The Master shall be deemed "technically acceptable" to Artist, provided that the Master and all related session files are suitable for final mixing and mastering. Producer shall deliver to Artist a two-track stereo tape and/or electronic session file suitable for duplication and manufacture of phonorecords for the Master. All original session tapes or files, rough mixes and any derivatives or reproductions shall also be delivered to Artist, or, at Artist's election, maintained at a location designated by Artist, in Artist's name and subject to Artist's control.

4. ***Rights in the Master***. Producer's service hereunder shall be a "work made for hire" as defined by United States Copyright Law, with Artist being the sole, exclusive and perpetual owner of the copyright in and to the sound recording of the Master. In the event that the service Producer renders relative to the Master is determined not to be a "work made for hire," Producer hereby irrevocably and perpetually assigns all rights, including copyright, in and to the sound recording of the Master to Artist. Artist shall have the right to secure registration

for the copyright in and to the sound recording of the Master as the owner of such right. Artist shall have the sole and exclusive right to use the Master throughout the universe to manufacture, advertise, sell, distribute, lease or license digital or physical pressings of the Master as a single or as a recording embodied on the Album and/or music videos. Artist shall have the right to use Producer's name, approved image, approved voice, approved likeness, approved photograph and approved biography in connection with the promotion, exploitation and sale of the Master as a single or as a recording embodied on the Album and/or in music videos.

5. ***Credits; Rights in the Compositions***. Artist shall issue the following credit, to be of same size, type and placement as other producers, in all digital metadata, on all physical copies of the Master and in half page or larger trade and consumer advertisements: "*Produced by* _____." Producer hereby agrees that any inadvertent failure on the part of Artist or any third party distributing the Master to afford the foregoing credit shall not be deemed a material breach of this Agreement, and that Artist's sole obligation in such an event shall be to request that the credits be added to the next physical pressing of the Master. Producer hereby grants an irrevocable and perpetual mechanical license to Artist to manufacture digital and physical copies of the Master and its underlying musical composition (the "Composition") in any and all forms. Artist shall pay Producer mechanical license royalties on a quarterly calendar-year basis within sixty (60) days after the close of each respective quarter at the lesser of one hundred percent (100%) of the minimum statutory rate or the rate and caps set forth in any distribution agreement that Artist enters into at Artist's sole discretion. Producer agrees to be bound by the terms of any Controlled Composition clause to which Artist is bound under such distribution agreement. Pending pro rata reductions for any "sample," "interpolation" or "replay" (collectively "Third Party Works") clearances, if applicable, the splits of the Composition are as follows:

_____/_____ (ASCAP, BMI or SESAC) -- ___%
_____/_____ (ASCAP, BMI or SESAC) -- ___%
_____/_____ (ASCAP, BMI or SESAC) -- ___%
_____/_____ (ASCAP, BMI or SESAC) -- ___%
_____/_____ (ASCAP, BMI or SESAC) -- ___%

6. ***Representations and Warranties/Indemnity***. Producer and Artist each hereby represent and warrant that they are not legally prohibited from entering into this Agreement and that such entry shall not violate the rights of any third party or contract, agreement, arrangement or understanding to which Producer is a party. Producer hereby represents and warrants that Producer is under no disability, restriction or prohibition with respect to the rights granted to Artist hereunder and that Artist is not obligated to commercially release the Master. Producer further represents and warrants that the Master does not contain any Third Party Works embodied by Producer. In the event that the Master does contain Third Party Works, they must be disclosed to Artist prior to signing this Agreement. Otherwise, Producer will be deemed to be in material breach of this Agreement. Producer furthers represents and warrants that any musician that plays on the Master or vocalist that performs on the same shall be engaged under a "work made for hire" agreement that is provided by Artist, and that Producer grants such rights to Artist hereunder as a "work made for hire," or as an irrevocable, perpetual assignment if such rights are deemed not to be a "work made for hire." Producer further represents and warrants

that Producer is responsible for all payments and costs due and owed to any musicians and vocalists (including, but not limited to, AFM, AFTRA and other union payments) and that such payments and costs shall be paid from the all-inclusive budget set forth in paragraph 2 above. The parties hereby agree to indemnify and hold each other harmless from and against any and all actions, losses or damages (including reasonable attorneys' fees and court costs) attributed to their respective intentional or negligent acts, breaches of this Agreement, and breaches of their respective representations and warranties above.

7. ***Accounting and Auditing***. Artist shall calculate all revenues received by Artist hereunder during the semiannual period ending on December 31st and June 30th of each year and shall submit a statement and pay monies due to Producer by March 31st and September 30th of each year respectively. Said statements shall identify any royalties due to Producer after deducting any applicable unrecouped Master Costs. All such statements rendered by Artist shall bind Producer and are not subject to any objection for any reason unless Producer sends a specific written objection to Artist, stating the basis for such objection, within two (2) years of the date rendered. Producer shall also have the right to audit Artist's books and records in connection with those statements if Producer's rights to object have not expired pursuant to the preceding sentence. Any audit shall take place only after seven (7) days prior written notice, during reasonable business hours, and no more than once during any semi-annual period.

8. ***Miscellaneous***. Producer shall not have the right to assign this Agreement, or assign, lend, lease or sell any of Producer's full or partial rights or obligations hereunder, to any third party. In the event that any part of this Agreement is ruled invalid or unenforceable, notwithstanding said occurrence, Producer and Artist hereby agree that this Agreement shall be deemed severable and that the balance of the terms hereof shall remain in full force and legal effect. Producer and Artist hereby agree that all notices sent pursuant to this Agreement shall be written and sent to the intended party at the applicable address set forth above by either personal delivery or certified or registered mail, return receipt requested. Notices shall be deemed received upon personal delivery or the date on the return receipt. This Agreement shall be deemed the entire understanding, arrangement and agreement between Producer and Artist concerning the Master and shall supersede all existing or collateral oral or written agreements regarding the same. This Agreement shall only be modified through a dually signed written instrument. Nothing contained herein shall constitute a partnership or joint venture between Artist and Producer. No one particular waiver by either Producer or Artist of any right or obligation under this Agreement shall be deemed a waiver of any other right and/or obligation. Producer and Artist hereby represent that each has had the opportunity to read, review and understand this Agreement and that each has been advised to seek independent counsel to review and negotiate its terms. In the event that either Producer or Artist fails to obtain independent counsel for purposes of this Agreement, Producer and Artist hereby acknowledge and agree that such failure shall cause that particular party to have voluntarily waived its right to have this Agreement reviewed by counsel and, as a result, that party shall be deemed to have entered into this Agreement with full knowledge and understanding of the terms and conditions hereunder. The laws of the State of Texas shall govern this Agreement. The parties agree to first attempt to resolve any and all disputes through mediation. In the event that litigation is necessary, the applicable state and federal courts of the State of Texas shall have jurisdiction over all disputes. This Agreement may be executed via facsimile or electronic mail copies and in counterparts, each of which shall, when executed, be deemed to be one and the same instrument.

With exception to the material breach described in paragraph 6 above, no breach of this Agreement by either party shall be deemed a material breach unless the non-breaching party has provided the breaching party with written notice of the breach and such party fails to cure that breach within thirty (30) days of receiving the applicable notice.

In witness whereof, Artist and Producer execute this Agreement as of the date first written above.

_____	_____
("Artist")	("Producer")
By: _____	By: _____
_____, *Authorized Representative*	
	Tax ID#: _____

APPENDIX A

This Appendix A is attached to and made a part of the Producer Agreement by and between _____, and _____ dated _____, 2012.

SOUNDEXCHANGE, INC.
LETTER OF DIRECTION

Solely as a service and accommodation to those featured artists entitled to royalties under 17 U.S.C. § 114(g)(2)(D) who specifically authorize SoundExchange to collect and distribute royalties on their behalf, SoundExchange permits such featured artists to designate that a percentage of the royalties due them from SoundExchange relating to certain sound recordings be remitted to creative personnel credited or recognized publicly for the commercially released sound recording on which the featured artist performs or other usual and customary royalty participants in such sound recording.

To make such a designation, the featured artist submitting this Letter of Direction must submit to SoundExchange a (1) Designation & Authorization for Featured Artist and (2) completed Internal Revenue Service ("IRS") Form W-9 Request for Taxpayer Identification Number and Certification.

Please note that a **featured artist need not execute this Letter of Direction in order to be paid statutory royalties by SoundExchange**.

Name of Featured Recording Artist ("Artist"):

Artist's SoundExchange ID Number (if known):

Name of Payee ("Payee"):

Payee Address: _____

Payee Telephone Number:

Payee Fax Number: _____

Payee E-Mail:

Payment Percentage ("Percentage"):

___ New Letter of Direction ___ Amendment Revoking Previous Letters of Direction

By signing this Letter of Direction and submitting it to SoundExchange, Artist agrees as follows:

1. Artist represents and warrants that Artist is the featured recording artist who performed on the sound recording(s) identified on the "Repertoire Chart" attached hereto as Schedule 1 (the "Recordings").

2. Artist represents and warrants that Payee is an individual credited or recognized publicly for the commercially released sound recording identified on the Repertoire Chart or is another usual and customary royalty participant in such sound recording.

3. Artist requests and authorizes SoundExchange to pay to and in the name of Payee an amount equal to Percentage of the royalties otherwise payable by SoundExchange to Artist in respect of the Recordings, thereby reducing the payments from SoundExchange to Artist. If the box above labeled "Amendment Revoking Previous Letters of Direction" has been checked or if a previous "Royalty Distribution Information for Featured Artist" or other letter of direction has been provided to SoundExchange that conflicts with this Letter of Direction, then any and all previous letters of direction or similar documents conflicting herewith are hereby revoked.

4. All monies becoming payable under this Letter of Direction shall be remitted to Payee at the address identified above or as Payee otherwise directs SoundExchange in writing. If SoundExchange requires additional information (e.g., Payee tax information) to remit payments under this Letter of Direction, then Artist and Payee shall be responsible for providing SoundExchange with such information promptly. To the extent SoundExchange is not provided with sufficient or correct information to remit payment to Payee, or checks mailed to Payee's last known address are returned, SoundExchange may hold the monies pending receipt of such information or pay the royalties to Artist.

5. SoundExchange will honor a written revocation by Artist of the designation made by this Letter of Direction. In the event of such a revocation, SoundExchange may, but need not, mail notice of the revocation to the last known address of Payee. The foregoing is without prejudice to any other contractual arrangements between Artist and Payee requiring payment of the Percentage by Artist. SoundExchange has no responsibility for Artist's performance or nonperformance of any such obligation.

6. SoundExchange may discontinue making payments under this Letter of Direction at any time, including if checks mailed to Payee's last known address are returned, Artist ceases to be a member of SoundExchange, or SoundExchange modifies its policies concerning letters of direction. If it does so, then SoundExchange may, but need not, mail notice thereof to the last known address of Artist and Payee, and monies that otherwise would have been payable under this Letter of Direction will be paid to Artist.

7. Artist acknowledges that SoundExchange is providing payments to Payee solely as an accommodation to Artist but that all royalties distributed by SoundExchange to Payee are taxable to Artist. Artist shall be solely responsible for providing Payee with tax paperwork required by any governmental agency, including the Internal Revenue Service, and SoundExchange shall have no obligation to provide such information to Payee.

8. SoundExchange may rely conclusively, and shall have no liability when acting, upon any written notice, instruction, other document or signature that is reasonably believed by SoundExchange to be genuine and to be authorized by Artist. SoundExchange shall not be responsible for failure to act as a result of causes beyond the reasonable control of SoundExchange. SoundExchange shall not be liable to Artist, Payee or to any third party for, and Artist agrees to defend (with counsel satisfactory to SoundExchange), indemnify and hold harmless SoundExchange from, any damages or loss (including reasonable attorney's fees) in any way related to this Letter of Direction, unless such loss is caused by SoundExchange's gross negligence or willful misconduct. The provisions of this Paragraph 8 shall survive the revocation or other termination of this Letter of Direction.

9. This Letter of Direction shall be governed by and construed in accordance with the substantive laws of the District of Columbia. Any dispute relating to or arising from this Letter of Direction shall be subject to the exclusive jurisdiction of courts sitting in the District of Columbia.

ACKNOWLEDGED AND ACCEPTED BY: ARTIST

Signature: _____

Printed Name:
Address:

Date: _____

Return the original of this form to:
SoundExchange, Inc.
1330 Connecticut Ave., N.W. Suite 330
Washington, DC 20036

If you have questions, please call 202.828.0120 or E-mail info@soundexchange.com.

SoundExchange Letter of Direction
Repertoire Chart Schedule

Song Title	Album Title	Record Label	Catalog Number	Release Date
TBD	TBD	TBD	TBD	TBD

Volume 12 | Issue 1 Article 1

2005

Keeping out the Little Guy: An Older Contract Advisor's Concern, a Younger Contract Advisor's Lament

Lloyd Zane Remick

Christopher Joseph Cabott

VILLANOVA SPORTS & ENTERTAINMENT LAW JOURNAL

VOLUME XII 2005 ISSUE 1

Article

KEEPING OUT THE LITTLE GUY: AN OLDER CONTRACT ADVISOR'S CONCERN, A YOUNGER CONTRACT ADVISOR'S LAMENT

LLOYD ZANE REMICK*
CHRISTOPHER JOSEPH CABOTT**

I. INTRODUCTION

Imagine Jane, a twenty-six year-old attorney who just passed the Pennsylvania Bar exam and the National Football League Players' Association ("NFLPA") contract advisor's certification exam. Having passed these exams, Jane now seeks to pursue her dream of becoming a contract advisor.[1]

Luckily, Jane's monthly expenses are low. Her combined rent, student loans, car payments and office overhead, including bills and utilities, only

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** Christopher Joseph Cabott received his B.A. from La Salle University in 2001 and is currently a third year law student at Widener University School of Law in Wilmington, Delaware. Mr. Cabott is President of the Student Bar Association and a member of the Moot Court Honor Society. He is a law clerk for Lloyd Z. Remick, Esq., and seeks to practice entertainment and sports law upon passing the Pennsylvania bar. Special thanks to Ariana Holder who aided in the preparation of this article.

1. Although one does not have to be a lawyer to be an agent or a contract advisor, a substantial portion of agents and contract advisors are sports lawyers as there is great demand for legal advice in the relationship amongst agents, athletes, college teams and professional franchises.

total $2,500 a month. The only expenses remaining before she starts practicing are state registration fees and practice costs. Being the well-organized person she is, Jane jots down the following expenses and notes, all of which are independent of her aforementioned personal expenses and practice overhead.

1. *$1,600 – NFLPA certification fee.*
2. *$200 – Roundtrip ticket to the NFLPA annual seminar.*
3. *$200 – Lodging/Cab fare for the seminar.*
4. *State registration fees (Note to self - only register in states within driving distance. If I provide great individual service, the practice will grow):*
   a. *Pennsylvania - $200 plus $100 underwriter's fee for the bond.*
   b. *Maryland - $1,000*
   c. *New York - $100*
   d. *Connecticut - $200*
   e. *Ohio - $500*
   f. *New Jersey - $0 (No athlete agent laws there yet, so no fee!)*
   g. *Delaware - $2,500*
   h. *West Virginia - $50*
5. *Annual transportation (gas, tolls, etc.) - $1,000*
6. *Malpractice Insurance - $3,000*

TOTAL - $10,650 for year one, before personal expenses or practice overhead.[2]

After compiling this list, Jane pays these fees and sets forth in pursuit of her dream. Six months later, Jane has yet to secure a client. She did have one player, but he was only on the practice squad and his team cut him during the pre-season. Consequently, she is behind on her car payments and cannot afford the upcoming NFLPA annual renewal fee of $1,200. If things continue this way, she will not be able to renew her registration in the foregoing states, even if she excludes Delaware and/or Maryland.

A month later, Jane's struggles continue. Fortunately, she was able to move back in with her parents, but her debt and bills are mounting. With no hope in sight, Jane is forced to abandon her ailing practice. As she walks out of her office for the last time, she glances back with tears in her eyes and promises herself that one day she will be a successful contract advisor.

It is not fair that Jane could not afford to compete in the field of her choice. Unfortunately, it is a reality that aspiring NFLPA

2. This list is for illustration purposes only. It does not include the registration fees associated with representing clients in Major League Baseball, professional hockey or professional basketball.

contract advisors face at the hands of the Uniform Athlete Agents Act ("UAAA"), the Sports Agent Responsibility and Trust Act ("SPARTA"), Section 2(g) of the NFLPA's Rules Governing Contract Advisors ("Section 2(g)"), and the myriad of state registration fees.[3]

These regulations and the fees they produce are unfair, because they bar young contract advisors from the industry.[4] Simultaneously, that unfairness reduces professional business intimacy. The solution to these problems is creating an affordable federal licensure for athlete agents. To establish licensure, we must modify the UAAA, amend SPARTA and revise Section 2(g).

This article reviews the background of the athlete agent industry, depicts the problems associated with the aforementioned regulations and fees, and details the foregoing solution.

II. BACKGROUND

In the last thirty-five years, the athlete agent industry has changed dramatically. Early on there were a handful of sports lawyers and agents. Today, professional sports and its promotion dominate American popular culture. Consequently, agents have the potential to earn handsome livings. As a result, law schools and undergraduate institutions are filled with young men and women, seeking to become the next super sports agent to the stars and receive the fame of HBO's Arliss or the fabled "Show Me the Money" Jerry McGuire.

During this boom, a handful of agents put their pecuniary interest ahead of their clients' better interest. Armed with cash, cars, plane tickets and jewelry, these agents duped a number of naïve student-athletes into signing agency contracts prior to the expiration of their collegiate eligibility. In turn, several of these student-athletes became ineligible.[5] Simultaneously, the National Collegiate Athletic Association ("NCAA") sanctioned their academic

3. For a complete breakdown of the registration and renewal fees associated with each UAAA and non-UAAA state and territory, see *Appendix B.*

4. Despite this article's focus on the contract advisor industry and the NFLPA, the inherent problems caused by the UAAA, SPARTA and state registration fees apply equally, if not greater, to those who represent professional basketball, baseball and hockey players. This article's focus on football illustrates a point that is widely applicable in sports and entertainment law.

5. *See* William E. Kirwan, *Protecting College Athletes from Unscrupulous Agents, at* http://www1.ncaa.org/membership/enforcement/agents/sa_info/agentPacket.html#chronicalArticle (Sept. 26, 1996) (indicating how some student athletes lost their eligibility to unscrupulous agents). The NCAA bylaws that are most relevant to ineligibility are the following:

institutions for playing them in intercollegiate competition despite

12.1.1 Amateur status. An individual loses amateur status and thus shall not be eligible for intercollegiate competition in a particular sport if the individual: . . .

(d) Receives, directly or indirectly, a salary, reimbursement of expenses or any other form of financial assistance from a professional sports organization based upon athletic skill or participation, except as permitted by NCAA rules and regulations.

12.2.4.3 . . . An individual who retains an agent shall lose amateur status.

12.3.1 General Rule. An individual shall be ineligible for participation in an intercollegiate sport if he or she ever has agreed (orally or in writing) to be represented by an agent for the purpose of marketing his or her athletic ability or reputation in that sport. Further, an agency contract not specifically limited in writing to a sport or particular sports shall be deemed applicable to all sports, and the individual shall be ineligible to participate in any sport.

12.3.1.1 Representation for Future Negotiations. An individual shall be ineligible per Bylaw 12.3.1 if he or she enters into a verbal or written agreement with an agent for representation in future professional sport negotiations that are to take place after the individual has completed his or her eligibility in that sport.

12.3.1.2 Benefits from Prospective Agents. An individual shall be ineligible per Bylaw 12.3.1 if he or she (or his or her relatives or friends) accepts transportation or other benefits from: . . .

(b) An agent, even if the agent has indicated that he or she has no interest in representing the student-athlete in the marketing of his or her athletic ability or reputation and does not represent individuals in the student-athlete's sport.

31.2.2.4 Participation While Ineligible. When a student-athlete competing as an individual or representing the institution in a team championship is declared ineligible subsequent to the competition, or a penalty has been imposed or action as set forth in Bylaw 19.5.2.2-(e) or 19.7 of the NCAA enforcement program, the Committee on Infractions may require the following:

(a) *Individual Competition.* The individual's performance may be stricken from the championship records, the points the student has contributed to the team's total may be deleted, the team standings may be adjusted accordingly, and any awards involved may be returned to the Association. For those championships in which individual results are recorded by time, points or stroke totals (i.e., cross country, golf, gymnastics, indoor track and field, outdoor track and field, rifle, swimming and skiing), the placement of other competitors may be altered and awards presented accordingly. For those championships in which individual results are recorded by advancement through a bracket or head-to-head competition, the placement of other competitors shall not be altered.

(b) *Team Competition.* The record of the team's performance may be deleted, the team's place in the final standings may be vacated, and the team's trophy and the ineligible student's award may be returned to the Association.

2003-04 NCAA DIVISION I MANUAL: CONSTITUTION, OPERATING BYLAWS, ADMINISTRATIVE BYLAWS, August 1, 2003 [hereinafter *2003-04 NCAA Manual*], *available at* http://www.ncaa.org/library/membership/division_i_manual/2003-04/2003-04_d1_manual.pdf.

their ineligibility.[6] In a few cases, unethical agents defrauded their clients out of millions.[7] In order to prevent further ineligibility and sanctions, a number of states enacted athlete agent regulations.[8] Unfortunately, a majority of these laws lacked registration requirements and enforcement penalties.[9] Thus, dubious agents often went unidentified and unpunished.

In response to the need for efficient agent regulation, the National Conference of Commissioners on Uniform State Laws ("NCCUSL") drafted the UAAA.[10] Soon thereafter, Congressmen Tom Osborne and Bart Gordon authored SPARTA. Additionally, the NFLPA enacted the Rules Governing Contract Advisors ("RGCA"). The background of each regulation is discussed below.

A. UAAA

In 1997, the NCAA and several major universities asked the NCCUSL to draft a model uniform agent regulation.[11] In response, the NCCUSL drafted the UAAA in Fall 2000. The purpose of the UAAA is to regulate agents, protect academic institutions from

6. *See* Kirwan, *supra* note 7 (discussing NCAA sanctions on academic institutions for playing ineligible student athletes in intercollegiate competition). The NCAA bylaw that is most relevant to sanctions is *31.2.2.5 Institutional Penalty for Ineligible Participation*, which states: "When an ineligible student-athlete participates in an NCAA championship and the student-athlete or the institution knew or had reason to know of the ineligibility, the NCAA Committee on Infractions may assess a financial penalty." *2003-04 NCAA Manual*, *supra* note 7.

7. *See* Marc Jenkins, Note, *The United Student-Athletes of America: Should College Athletes Organize in Order to Protect Their Rights and Address the Ills of Intercollegiate Athletics?*, 5 VAND. J. ENT. L. & PRAC. 39, 42 (2003) (discussing Tank Black-University of Florida scandal).

8. *See* UNIF. ATHLETE AGENTS ACT, Prefatory Note, 7 U.L.A. 191 (Supp. 2000) (noting approximately twenty-eight states enacted statutes regulating athlete agents).

9. *See id.* (indicating regulatory laws do not have uniform registration requirements and penalties). "There are substantial differences in the registration procedures, disclosures required and requirements relating to record maintenance, reporting, renewal, notice, warning and security." *Id.*

10. *See Uniform Athlete Agent Act (UAAA) History and Status*, *at* http://www1.ncaa.org/membership/enforcement/agents/uaaa/history.html (last visited Nov. 21, 2004) [hereinafter *UAAA History*] (noting what NCCUSL is and its purpose). "NCCUSL is a national organization that drafts uniform and model state laws and comprises more than 300 lawyers, judges, state legislators and law professors appointed by their respective states." *Id.*

11. *See id.* (noting number of states and territories adopting UAAA as their primary form of agent regulation). The NCAA and several universities were prompted by the lack of uniformity and lack of reciprocity. *See* UNIF. ATHLETE AGENTS ACT, Prefatory Note, 7 U.L.A. 191 (Supp. 2000) (describing genesis of UAAA).

sanctions and reduce student-athlete ineligibility.[12] As of Fall 2004, twenty-eight states and two territories have adopted the UAAA as their primary form of agent regulation.[13]

To regulate agents, the UAAA imposes numerous requirements. First, agents must register with the state prior to contacting a student-athlete.[14] Second, they must disclose their professional and criminal history.[15] Third, agents must grant the Secretary of State the authority to issue subpoenas if compliance information is needed.[16] Finally, the UAAA prohibits agents from funneling money or tangible benefits to student-athletes.[17] Those who violate these regulations are subject to criminal and administrative penalties.[18]

The UAAA protects academic institutions by allowing them to seek civil remedies from both agents and student-athletes if they are sanctioned due to an agent, or a student-athlete's failure to notify their athletic director regarding a signed agency contract within the appropriate period of time.[19]

To reduce ineligibility, agents must provide student-athletes with an ineligibility warning at the bottom of every agency contract.[20] Once an agency contract is signed, the agent and the student-athlete must forward written notice of the contractual

12. *See* UNIF. ATHLETE AGENTS ACT, Prefatory Note, 7 U.L.A. 191 (Supp. 2000) (discussing UAAA purpose).

13. *See UAAA History, supra* note 12 (noting number of states and territories adopting UAAA as their primary form of agent regulation). For a further list of states adopting the UAAA, see *Appendix A.*

14. *See* UNIF. ATHLETE AGENTS ACT § 4(a), 7 U.L.A. 200 (Supp. 2000) (stating agents must register with state prior to contacting student-athlete). On the other hand, under § 4(b)(1) and (2), if the student-athlete initiates the contact, the agent may still discuss representation with the athlete, providing that he or she registers in the state of the student-athlete's academic residence within seven days. *See* § 4(b)(1)-(2), 7 U.L.A. 200.

15. *See* §§ 5(a)(3), (8), 7 U.L.A. 201-02 (explaining agents must fully disclose professional and criminal history).

16. *See* § 3(b), 7 U.L.A. 198 (showing agents must grant secretary of state authority to issue subpoenas).

17. *See* § 14(a)(2)-(3), 7 U.L.A. 219 (noting agents must not induce student-athlete into contract).

18. *See* §§ 15, 17, 7 U.L.A. 221, 224 (describing agents who violate UAAA regulations are subject to penalties).

19. *See* § 16, 7 U.L.A. 223 (stating civil remedies available to academic institutions against student athletes and agents).

20. *See* § 10(c), 7 U.L.A. 213-14 (stating agency contract must contain conspicuous notice in boldface type in capital letters). The agency contract must state:

WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;

relationship to the athletic director at the student-athlete's academic institution, or to any institution the agent reasonably believes the student-athlete will attend.[21] Such notice must be given within the lesser of 72 hours or the student-athlete's next scheduled athletic event.[22] Simultaneously, the UAAA gives student-athletes the right to cancel agency contracts within fourteen days of execution.[23]

Ironically, the UAAA does not provide student-athletes with a right to seek civil remedies from agents if they are rendered ineligible due to an agent's failure to abide by UAAA regulations. Additionally, its safeguards do not apply to student-athletes who have exhausted their eligibility.[24] Lastly, registration fees vary amongst member states because the UAAA fails to establish a uniform registration fee.

B. SPARTA

The House of Representatives passed SPARTA on June 4, 2003.[25] Soon thereafter, Senator Ron Wyden (D-Or.) filed an identical bill in the Senate.[26] On September 24, 2004, President George

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(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS OF ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

Id. (emphasis in original).

21. *See* § 11(a)-(b), 7 U.L.A. 216 (noting written notice must be forwarded to academic institution).

22. *See id.* (indicating notice requirement time limit).

23. *See* § 12(a), 7 U.L.A. 217 (indicating right to cancel).

24. *See* R. Michael Rogers, *The Uniform Athlete Agent Act Fails to Fully Protect the College Athlete Who Exhausts His Eligibility Before Turning Professional*, 2 VA. SPORTS & ENT. L.J. 63, 69-73 (2002) (explaining how UAAA affects "Exhausted Eligibility Athlete[s]"). The exhausted eligibility student-athlete is one who has used all four years of eligibility in his or her sport, but still remains on campus as a student. *See id.* at 69 (stating UAAA provides that if "an individual is permanently *ineligible* to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport") (emphasis in original). For example, Brian Westbrook, now a running back with the Philadelphia Eagles, was an exhausted eligibility student-athlete during the spring semester following his last season of college football at Villanova. *See id.* at 70.

25. *See* Gary Roberts, *An Overview of the Recent Legal Developments in Sports*, SPORTS LAWYERS ASSOC. CONFERENCE 5 (Sports Lawyers Assoc. Tul. Law), May 20-22, 2004 (indicating how SPARTA came about in Federal legislature).

26. *See id.* (referring to bill in Senate that resembles Sports Agent Responsibility and Trust Act).

W. Bush signed SPARTA into law.[27] SPARTA serves as a "federal backstop" to the UAAA, as it focuses on regulation and enforcement.[28]

In terms of regulation, SPARTA makes it unlawful for an agent to provide student-athletes with false or misleading information, promises or representations, or anything of value.[29] Additionally, agents must warn student-athletes in a disclosure form that they may lose their eligibility if they sign an agency contract or falsify its date.[30] Before entering into the agency contract, student-athletes must sign the disclosure form.[31] Once the agency contract is signed, both the agent and the athlete must contact the institution's athletic department within the lesser of 72 hours or the student-athlete's next scheduled athletic event.[32]

Seeking strict enforcement, SPARTA has the Federal Trade Commission ("FTC") enforce its agency contract regulations.[33]

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27. Sports Agent Responsibility & Trust Act, Pub. L. No. 108-304, 118 Stat. 1125 (2004) (enacted 108 H.R. 361).

28. *Federal Legislation Restricting Sports Agents Moves Forward*, LEGAL ISSUES IN COLLEGIATE ATHLETICS, Aug. 2002, at 1 (quoting U.S. Representative Tom Osborne who was University of Nebraska football coach before serving in Congress). SPARTA is an "attempt to prevent agents from bribing student-athletes with expensive gifts and cash in exchange for the student's signing of a representation contract." *Id.* (indicating central goal of legislation).

29. *See* H.R. REP. NO. 108-24, pt. 2, at 2 (2003) (discussing § 3(a)(1)(A)-(B) and agent regulation regarding misleading information). Prohibitions include "any consideration in the form of a loan, or acting in the capacity of a guarantor or co-guarantor for any debt . . . ." *Id.* (discussing extent of statute).

30. *See id.* at 2-3 (discussing § 3(b)(3) and disclosure forms). The warning must be conspicuous and in boldface type state the following:

> Warning to Student Athlete: If you agree orally or in writing to be represented by an agent now or in the future you may lose your eligibility to compete as a student athlete in your sport. Within 72 hours after entering into this contract or before the next athletic event in which you are eligible to participate, whichever occurs first, both you and the agent by whom you are agreeing to be represented must notify the athletic director of the educational institution at which you are enrolled, or other individual responsible for athletic programs at such educational institution, that you have entered into an agency contract.

Id.

31. *See id.* at 2 (describing § 3(b)(2) and relevant disclosure forms). If the student-athlete is under the age of 18, the parent or guardian must sign the contract. *Id.* (indicating consent required by SPARTA).

32. *See id.* at 4 (explaining § 6(a) and its instructions on contacting student institutions).

33. *See id.* at 3 (setting forth § 4(a) and pertinent FTC regulation). "The Commission shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. § 41 *et seq.*) were incorporated into and made a part of this Act." *Id.* (providing instructions for the appropriate government agency under § 4(b)).

Specifically, SPARTA gives the FTC the authority to "enforce [SPARTA] in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the [FTC] Act were incorporated into and made a part of this Act."[34] Accordingly, the FTC fines agents $11,000 per incident for unfair or deceptive acts or practices that violate SPARTA.[35] The revenue generated from such fines is forwarded to the U.S. Treasury.[36]

SPARTA also permits state attorney generals to act in federal court on behalf of the FTC.[37] In these cases, all damages, restitution and other compensation go to the state.[38] A state also has a cause of action on behalf of its residents if it has reason to believe that an agent has threatened or adversely affected a resident's interest.[39]

Academic institutions may also seek remedial damages from student-athletes or agents if their behavior causes it to incur expenses.[40] These expenses include losses resulting from penalties, disqualification, suspension and/or restitution for losses suffered due to self-imposed compliance actions.[41] Remedies for such suits include enjoinder, enforcement, damages and restitution.[42] SPARTA does not, however, address registration fees or provide student-athletes with a cause of action if they are injured due to an agent's misconduct.[43]

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34. H.R. REP. NO. 108-24, pt. 2, at 3 (noting § 4(b) and FTC authority concerning enforcement of SPARTA).

35. *See* Crissy Kaesebier, *Federal bill designed to provide second line of agent defense*, NCAA NEWS, *at* http://www.ncaa.org/news/2002/20020527/active/3911n37.html (May 27, 2002) (discussing FTC fines and SPARTA).

36. *See id.* (indicating where money netted from fines gets placed).

37. *See* H.R. REP. NO. 108-24, pt. 2, at 3 (2003) (discussing § 5(a)(1) and state attorney general abilities to enforce FTC fines).

38. *See id.* (referring to § 5(a)(1)(C) and state damages).

39. *See id.* (describing § 5(a)(1) and state causes of action). "In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any athlete agent in a practice that violates section 3 of this Act . . . ." *Id.*

40. *See id.* at 4 (describing § 6(b)(1) and remedial damages). "An educational institution has a right of action against an athlete agent for damages caused by a violation of this Act." *Id.*

41. *See id.* (discussing § 6(b)(2) and damages).

42. *See* H.R. REP. NO. 108-24, pt. 2, at 3 (2003) (discussing § 5(a)(1)(A)-(C) and remedies for academic institutions).

43. *See* Scott Boras, *Agent reform plan just a first step*, STREET & SMITH'S SPORTS BUS. J., Jan. 26 – Feb. 1, 2004, at 25 (noting downfalls of SPARTA). Recently, athlete agent Scott Boras was called before Congress to testify in regard to SPARTA. *See id.* Boras stated that while he supports the bill, he is calling for an

C. RGCA

In 1994, the Officers and Player Representatives of the NFLPA adopted the RGCA for persons who desired to assist or represent players in their contract negotiations with NFL Clubs.[44] The NFLPA refers to these persons as contract advisors. The RGCA were adopted and amended pursuant to the authority and duty conferred upon the NFLPA as the exclusive collective bargaining representative of NFL players, under Section 9(a) of the National Labor Relations Act.[45]

To be eligible for contract advisor certification, the following requirements must be met. One must file a verified application for certification, execute an information release with the NFLPA, and pay the required application fee.[46] Currently, that fee is $1,600.[47] In addition, one must have received a degree from an accredited four-year college or university.[48] The NFLPA will grant an exception, however, if the applicant has sufficient negotiating experience.[49] Furthermore, new applicants must attend the annual NFLPA seminar for new contract advisors and pass a written certification exam.[50]

Certification is only granted to individuals and not firms, corporations, partnerships, or other business entities.[51] There is no limit, however, on the number of individuals in any one firm, corporation, partnership or other business entity who may be eligible

expansion to provide relief directly to the student-athlete in addition to the university. *See id.*

44. *See generally* NAT'L FOOTBALL LEAGUE PLAYERS ASS'N (NFLPA) REGS. GOVERNING CONTRACT ADVISORS (amended Nov. 2003) [hereinafter *NFLPA Regulations*] (describing origin of RGCA), *available at* http://www.nflpa.org/Agents/main.asp?subPage=Agent+Regulations.

45. *See id.* (describing RGCA origin). Section 9(a) of the National Labor Relations Act ("NLRA") states:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rate of pay, wages, hours of employment, or other conditions of employment.

29 U.S.C. § 159(a) (2004).

46. *See NFLPA Regulations, supra* note 46, at § 2 (describing process to become eligible for contract advisor certification).

47. *See NFLPA Application for Certification Checklist, at* http://www.nflpa.org/PDFs/Agents/AgentApplicationOnline.pdf (last visited Nov. 22, 2004) (noting application fee).

48. *See NFLPA Regulations, supra* note 46, at § 2(A) (describing another requirement for new contract advisors).

49. *See id.* (stating exception to college degree requirement).

50. *See id.* (noting another requirement for new contract advisors).

51. *See id.* (stating who is eligible for certification).

for certification.[52] Once certified, one must pay an annual fee, which is currently $1,200.[53]

The RGCA seek to ensure that players make informed decisions when they select a contract advisor; therefore, they establish contract advisor standards and regulations.[54] Contract advisors must adhere to the following standards. First, they must disclose their qualifications on their certification applications, permit outside audits, and act at all times in a fiduciary capacity on behalf of players.[55] Second, they may only conduct individual negotiations on behalf of a player if they sign a Standard Representation Agreement with the player, file a fully executed copy of that agreement with the NFLPA and receive certification from the NFLPA.[56] These standards also govern providing players with advice, counsel, information and/or assistance with respect to their Club contracts, as well as their conduct during compensation negotiations and any other activity that bears directly upon the contract advisor's integrity, competence or ability to negotiate contracts.[57] Such activities include wealth management, tax counseling and preparation, financial advice and investment services.[58]

Turning to regulations, the RGCA regulate agency contracts heavily. Accordingly, any agreement which does not meet NFLPA standards is unenforceable and the contract advisor does not have a right to receive compensation from it.[59] Further, the Standard Player Agreement caps contract advisors' commission at three percent of the player's performance compensation.[60] Simultaneously, a contract advisor may not receive his or her commission until after

52. *See id.* (noting loophole in certification process).

53. *See NFLPA Regulations, supra* note 46, at § 2(H)(2) (noting annual fee requirement); *see also* NAT'L FOOTBALL LEAGUE PLAYERS ASS'N ANNUAL RENEWAL APPLICATION (2004) (stating annual fee) (on file with author).

54. *See NFLPA Regulations, supra* note 46, at § 3 (explaining purpose of RGCA).

55. *See id.* at § 3(A)(1)-(17) (describing standards contract advisors must meet).

56. *See id.* at § 1(A) (explaining standards contract advisors must follow).

57. *See id.* (noting RGCA standards apply to many contract advisor activities concerning their clients).

58. *See id.* (explaining various contract advisor activities that are governed by RGCA standards).

59. *See NFLPA Regulations, supra* note 46, at § 4(A) (explaining effect when NFLPA standards are not met).

60. *See id.* at § 4(B) (noting performance compensation includes salaries, signing bonuses, reporting bonuses, roster bonuses, and any performance bonuses earned during term of contract). An example of compensation not included under this provision would be honor bonuses, such as "All Pro", "Pro Bowl", or "Rookie of the Year." *Id.*

the player receives compensation.[61] If the player decides otherwise, however, the contract advisor may receive the commission up front.[62]

The RGCA prohibits a variety of contract advisor activities. Contract advisors are prohibited from soliciting players through money or merchandise, negotiating player contracts that violate NFLPA policy, concealing material facts from players, filing a lawsuit against a player as opposed to using arbitration, and sharing commissions with other contract advisors.[63] Additionally, contract advisors may not initiate discussions with players about their current contract advisor agreement or NFL Club contract.[64] If the player initiates the contact, however, the contract advisor may communicate with the player regarding the agreements.[65]

Notwithstanding the foregoing procedures, requirements, fees and prohibitions under Section 2(g), a contract advisor's certification automatically expires at the end of any three-year period, in which he or she fails to negotiate and sign a player to a NFL contract.[66] Practice squad contract negotiations do not count for the purposes of Section 2(g).[67] Similarly, the NFLPA's legal department is researching the feasibility of adopting an amendment that would limit the number of contract advisors certified by the league.[68]

III. PROBLEMS

The UAAA, SPARTA, and Section 2(g) cause three problems. First, they do not protect student-athletes with exhausted eligibility. Second, they do not provide students with the right to bring an action against unscrupulous agents. Third, they produce unfair fees and reduce professional business intimacy. Professor R.

61. *See id.* at § 4 (describing compensation process).

62. *See id.* (noting exception to how contract advisor is compensated).

63. *See id.* at § 3(B)(1)-(27) (describing prohibited RGCA behavior).

64. *See NFLPA Regulations, supra* note 46, at § 3(B)(21)(a) (stating another RGCA requirement which contract advisors must follow).

65. *See id.* at § 3(B)(21)(b) (noting exception to requirement § 3(B)(21)(a)).

66. *See id.* at § 2(6) (explaining term limit concerning certification of contract advisors).

67. *See id.* (stating which types of players count to meet standards of RGCA).

68. Memorandum from Tom DePaso, National Football League Players Association, on 2004 Amendments to the NFLPA Regulations Governing Contract Advisors, to the Contract Advisors (May 18, 2004) (on file with Villanova Sports & Entertainment Law Journal) (describing 2004 amendments to regulations, specifically, NFLPA's legal department).

Michael Rogers addressed the first problem two years ago.[69] Jeremy Bloom is tackling the second issue.[70] Thus, I will discuss the third problem exclusively.

The contract advisor industry needs improvement. The status quo is harming NFL players, even though a majority of it is honest and law abiding. Recently, the NFLPA reported that agents, business partners, and financial advisors cheated seventy-eight NFL players out of more than $42,000,000 in 2002.[71] Recognizing this harm, it is clear that the industry needs young aspiring contract advisors. They are our future leaders, possessing the energy and motivation needed to fight unethical behavior. The irony is that fight is the desired end of the UAAA, SPARTA, and RGCA. Unfortunately, the excessive financial considerations they produce stifle that fight by barring aspiring contract advisors from competing in the multi-state game.

A. The Multi-State Game

Sports are everywhere. Consequently, athlete representation is a multi-state game. Today forty-nine of the fifty states have collegiate football programs.[72] Moreover, this past 2003-04 NFL season, forty-eight of those forty-nine states were represented on the active NFL league roster per the various players' undergraduate in-

69. *See* Rogers, *supra* note 26, at 69-73 (discussing shortcomings of Uniform Athlete Agent Act). Professor Rogers's article examines the UAAA's definition of "student-athlete" and its limitation to those students with remaining eligibility. *See id.* at 65 (defining "student-athlete" under UAAA and its limits). Professor Rogers proposes that the definition be modified to apply to all student-athletes including seniors whose eligibility is exhausted, as they too need protection from unscrupulous agents. *See id.* at 78-79 (describing proposal for changes to UAAA).

70. University of Colorado wide receiver and Olympic skier Jeremy Bloom is fighting to equip student-athletes with more rights. Bloom, in association with California Senator Kevin Murray, drafted the Student Athlete's Bill of Rights ("SABR"). *See generally* S. 193, 2003-04 Leg., Reg. Sess. (Cal. 2003). SABR proposes that a university not be bound to the "rules or policies of any organization, . . . nor make a contract with any party, that dictates the terms, value, and conditions of student athlete scholarships . . . ." *Id.* at § 67371. Most importantly, the SABR would provide a stipend to cover the full cost of attending college, which includes $2,400 extra for necessary travel, out of season medical expenses, clothing and leisure activities. *See* Andrew Zimbalist, *Jeremy Bloom can guide NCAA to logical reform*, STREET & SMITH'S SPORTS BUS. J., Feb. 9 - 15, 2004, at 31 (discussing Bloom's California bill in relation to NCAA amateurism difficulties).

71. Letter from Alan M. Rothstein, CPA, PFS, Vice President, Asset Strategies Inc., to Lloyd Z. Remick, Esq., President, Zane Management, Inc. (June 10, 2004) (on file with author) (stating need for improvement in contract advisor industry).

72. Alaska is the exception. *See* Peter Wolf & Ross Baker, *College football team homepages (by state), at* http://www.bol.ucla.edu/~prwolfe/cfootball/LinksList.html (last visited Nov. 22, 2004) (showing all states except Alaska have football programs).

stitutions.[73] The average number of states represented per team was twenty-eight.[74] Viewing these statistics, it becomes clear that young contract advisors must register in as many states as possible, because only registering in one or two states severely limits his or her ability to obtain clients; hence, the phrase "the multi-state game."

The UAAA is a direct result of the multi-state game. Prior to its drafting, a number of agents lobbied for uniform registration, as they were spending hours upon hours executing several unique state licensure applications.[75] The NCCUSL acknowledged their complaints when it included uniform registration procedures in the UAAA. Despite recognizing this need, the NCCUSL failed to establish a uniform registration fee. Thus, each UAAA member state has its own separate fee. Currently, registration fees range from $20 to $2,500, with a mean of $1,260 and an average of $459.[76] Since nine of the twenty-eight UAAA states and territories reduced their renewal registration fee, the average renewal registration fee drops slightly to $414.[77] Three states offer reduced registration fees for registration based upon a certificate of registration or licensure is-

73. Vermont was not represented this past season. Such data was compiled through a roster review of each NFL player's undergraduate institution. Roster information is available through each team's link at www.nfl.com.

74. Such data was compiled through a roster review of each NFL player's undergraduate institution. Roster information is available through each team's link at www.nfl.com. For a breakdown of the number of states represented on each team's roster, see *Appendix C.*

75. *See* UNIF. ATHLETE AGENT ACT, Prefatory Note, 7 U.L.A. 191 (Supp. 2000) (describing need for uniform registration). The drafters of the UAAA note that "[c]onscientious agents operating in more than a single State must have nightmares caused by the lack of uniformity in the existing statutes, the difficulty in compliance and the severity of penalties which may be imposed for violations." *Id.*; *see also* Diane Sudia & Rob Remis, *Athlete Agent Legislation in the New Millenium: State Statutes and the Uniform Athlete Agents Act,* 11 SETON HALL J. SPORT L. 263, 276 (2001) (discussing tenuous state of athlete agent legislation).

76. For a complete breakdown of the registration and renewal fees associated with each UAAA and non-UAAA state and territory, see *Appendix B.*

77. Those states are Alabama (ALA. CODE § 8-26A-9 (2002)); Florida (FLA. STAT. ANN. § 468.453 (West 2001)); Kentucky (KY. REV. STAT. ANN. § 164.6915 (Michie Supp. 2004)); Minnesota (MINN. STAT. ANN. § 81A.09 (West Supp. 2004)); Mississippi (MISS. CODE ANN. § 73-42-17 (2004)); New York (N.Y. GEN. BUS. LAW § 899-g (McKinney Supp. 2004)); North Dakota (N.D. CENT. CODE § 9-15.1.08 (Supp. 2003)); Tennessee (TENN. CODE ANN. § 49-7-2130 (2002)); and West Virginia (W. VA. CODE ANN. § 30-39-9 (Michie 2002)). For state statute information, see *UAAA History, supra* note 12. For a complete breakdown of the registration and renewal fees associated with each UAAA and non-UAAA state and territory, see *Appendix B.*

sued by another UAAA state.[78] Interestingly, the NCCUSL stated in the UAAA that:

> The amount of [registration] fees is left for each State to determine. Some States with existing acts have set fees in amounts sufficient to recover the cost of administration. If that approach is taken, a fee for registration or renewal based on registration or renewal of registration in another State should be less than when a complete evaluation and review of an application is necessary.[79]

Despite these guidelines, only the foregoing few states follow them; hence, the present problems persist.

In addition, two states offer registration advantages for business organizations. In Pennsylvania, individuals pay a registration fee of $200, while corporations pay a registration fee of $400.[80] Individuals registering in Texas pay $1,000, but individuals who work for a business entity only pay $100.[81] These registration fees, when combined with SPARTA's failure to address the subject and Section 2(g)'s ouster clause, are unfair because they create an environment that places beginning contract advisors at a significant competitive advantage. Simultaneously, these fees reduce the professional business intimacy associated with contract advisor-client relations.

B. Unfairness

The UAAA, SPARTA, Section 2(g) and the myriad of state registration fees are unfair. As mentioned, aspiring contract advisors must pay a separate registration fee in every state. In the multi-state game, fees and expenses accumulate quickly. The average beginning contract advisor cannot afford these expenses, because he or she is most likely in the midst of paying the annual NFLPA fee, repaying student loans, making mortgage payments, paying off a car, starting a family and facing practice overhead.

As a result, aspiring contract advisors with law degrees are forced, while simultaneously being lucky to at least have the chance

78. Those states are Alabama, Arkansas and Pennsylvania. *See* ALA. CODE § 8-26A-9 (2002); *see also* ARK. CODE ANN. § 17-16-109 (2001); 5 PA. CONS. STAT. ANN. § 3308 (West Supp. 2004). For state statute information, see *UAAA History*, *supra* note 12.

79. *See* UNIF. ATHLETE AGENTS ACT § 9, 7 U.L.A. 211 (Supp. 2000) (stating how registration fees are determined state by state).

80. *See* 5 PA. CONS. STAT. ANN. § 3308(a)(1) (West Supp. 2004) (noting monetary differences between individuals and corporations).

81. *See* TEX. OCC. CODE ANN. § 2051.107 (Vernon 2004) (detailing fees of individuals and those affiliated with corporations).

to work, in the District Attorney's Office, Public Defender's Office or a law firm. There, they can at least receive a steady paycheck. Deadlines, billable hours, mortgage payments and familial needs, however, create congested schedules and long hours.

Similarly, non-lawyer agents find work elsewhere, but often times they fall victim to the same schedules and hours. Consequently, these young men and women put their dreams of becoming a NFLPA contract advisor on hold, while they try to make ends meet. Most times these dreams are never re-visited.

Quantity breeds quality. Therefore, if we allow more contract advisors into the NFLPA it will help improve the industry. Under this approach, the aspiring agents of today will become the ethical status quo of tomorrow. Simultaneously, the industry will become more service oriented and better geared toward the needs of athletes. This evolution is impossible, however, if contract advisors continue to be subject to the exorbitant registration fees that the UAAA produces.

SPARTA does not help the problem. As written, it is silent on the issue of registration fees. Ironically, while it recognizes the need for federal regulation, it fails to ensure a fair and reasonable means of registration.

Section 2(g) adds to the unfairness because it gives the NFLPA a license to strip an agent of his or her certification. Interestingly, Section 2(g) disrobes contract advisors of their certification while they abide by NFLPA requirements, pay membership fees, attend annual meetings, and compete with their 900 plus brother and sister agents.[82] In effect, Section 2(g) rebuts the pillars of laissez-faire, by limiting competition and depriving one the opportunity to work in the field of his or her choice.

Some may argue that football player representation is not a binding concern. Preventing people from working in the field of their choice, however, frustrates the fundamental freedoms of our nation, and maintaining the American way is always a concern.

C. The Reduction of Professional Business Intimacy

Alternatively, some young men and women sidestep the unfairness, debt and hustle by joining large agencies, which are full of divisions, departments and specialized sectors.

82. *See* NAT'L FOOTBALL LEAGUE PLAYERS ASS'N CERTIFIED CONTRACT ADVISORS DIRECTORY 240-54 (2004) (listing NFLPA agents).

The product of these large agencies is scattered representation, under which an athlete speaks to one person for this and another person for that, phone tag becomes the communication norm, and face to face, one-on-one meetings are phased out. As the RGCA notes, contract advisors serve their clients in a fiduciary capacity.[83] When one owes another a fiduciary duty, trust and the other's better interest are at the nerve center of the fiduciary's every decision. The fiduciary duty an agent owes an athlete is uniquely intimate and requires an unusually high degree of trust.

Lawyers, accountants, personal managers, business managers and booking agents all serve their clients in a fiduciary capacity. When an agent represents an athlete, many of the aforementioned jobs and relationships are combined into one. Typically, agents handle their client's business affairs and wealth like that of an accountant or business manager. Additionally, they publicize and promote their clients, and provide them with long term planning (similar to that of a personal manager). Further, they seek employment on behalf of their clients through endorsements, sponsorships and speaking engagements much like that of a booking agent. Lastly, they negotiate their client's contracts and if the agent is a lawyer, he or she may very well aid in the drafting process. Athletes trust that these services will increase their value in the market, ease the transition from the playing field to the booth, and lead towards a prominent retirement.

These services are very intimate and personal, and in order to tailor them properly an agent must communicate with his or her client regularly.[84] Providing intimate and personal services comes

83. *See NFLPA Regulations, supra* note 46, at § 3(A)(1)–(17) (describing relationship between contract advisors and their clients).

84. *See* MODEL RULES OF PROF'L CONDUCT R. 1.1 – 1.18 (amended 2003) (providing ethical rules for attorneys). If the agent is a lawyer, the Model Rules of Professional Conduct further regulate his or her practice. The Rules most applicable to agent/lawyers are the following:

Rule 1.1 requires that agent/lawyers provide their clients with competent, skilled, knowledgeable, thorough, and prepared representation. *See id.* at 1.1.

Rule 1.2 requires that agent/lawyers allow their clients to set the ends of the relationship. *See id.* at 1.2. The agent/lawyer is then required to consult with the athlete as to the means he or she intends to use in meeting the ends. *See id.* This rule also allows the agent/lawyer to limit the scope of the representation, if a limitation is reasonable under the circumstances and the athlete gives informed written consent. *See id.* at 1.2(c). Informed consent means that the client is fully aware of the ramifications of any decisions made. *See id.* at 1.0(e) (stating definitions). Finally, this rule prohibits an agent/lawyer from counseling or assisting a client in regard to criminal or fraudulent behavior. *See id.* at 1.2(d).

Rule 1.3 requires that an agent/lawyer act reasonably, diligently, and promptly when representing his or her client. *See id.* at 1.3.

naturally to a sole practitioner, but less naturally to a large agency with multiple departments, sectors and junior agents. It is easier for a sole practitioner to establish trust with an athlete because he or she can "hold the client's hand" and tailor services directly toward the needs of the athlete. Although the variety of service a large agency offers a player is valuable and cannot be discounted, the core of the industry is professional business intimacy.

Unfortunately, exorbitant registration fees and the multi-state game, make it difficult for sole practitioners to provide business intimacy. As a result, large agencies are becoming the norm in the agent industry. The 2004 NFL draft provides a fine illustration.

Rule 1.4 requires that an agent/lawyer inform his or her athlete client of the ramifications associated with any consensual decision the athlete makes. *See id.* at 1.4. This rule requires that the agent/lawyer inform the client about the status of all relevant matters promptly. *See id.*

Rule 1.5 requires that agent/lawyers keep fees reasonable. *See id.* at 1.5. If a fee is contingent, the agent/lawyer must present it to the athlete in writing. *See id.* at 1.5(c). Further, if fees are split with other agent/lawyers, the division must be in proportion to the services provided, the total fee must be reasonable, and the athlete client must agree to such division in writing. *See id.* at 1.5(e). This fee rule is very important in sports like Major League Baseball where the Players' Association collective bargaining agreement does not limit agents' fees and allows them to be negotiated freely.

Rule 1.6 requires that the agent/lawyer keep all information relating to representation of the athlete client confidential unless the athlete gives informed consent, or disclosure is necessary to prevent reasonably certain death, substantial bodily harm, criminal activity, fraud that will most likely result in substantial injury to the financial interests of another, or to secure legal advice about the agent/lawyer's compliance with the Model Rules of Professional Conduct, establish a defense on behalf of the agent/lawyer, or to comply with another law or court order. *See id.* at 1.6.

Rules 1.7, 1.9, and 1.18, require that the agent/lawyer not represent an athlete if such representation will cause a conflict of interest with another current, former, or potential client. *See id.* at 1.7, 1.8, 1.9. If the current, former, or potential client gives informed written consent, the agent/lawyer may represent the athlete in most situations. *See id.*

Rule 1.8 requires that an agent/lawyer not enter into a business transaction with an athlete client unless the transaction and terms on which the lawyer acquires the interest are fair and reasonable, the athlete client is informed in writing about the opportunity to seek the advice of independent counsel on the transaction, and the client gives informed consent. *See id.* at 1.8. Additionally, the agent/lawyer shall not use information relating to the representation of the athlete client to her disadvantage unless he or she gives informed consent. *See id.* at 1.8(b). Further, the agent/lawyer shall not solicit any substantial gift from the client or testamentary gift, or prepare such a gift. *See id.* at 1.8(c). Lastly, prior to the conclusion of such representation, the agent/lawyer shall not make or negotiate an agreement that gives the lawyer literary or media rights to a portrayal based on the representation. *See id.* at 1.8(d).

Rule 1.10 states that if an agent/lawyer is in a firm and he or she is disqualified from representing an athlete due to a conflict with a potential client, the entire firm is disqualified through imputation. *See id.* at 1.10.

Out of the 224 players drafted in the traditional seven rounds, seventeen agencies had at least five or more players, for a total of 117 between them.[85] As mentioned, there are over 900 certified contract advisors registered with the NFLPA.[86] Thus, approximately 890 contract advisors compete for the remaining 107 athletes.

Competition is the backbone of American business and many would consider the 2004 draft's ferocious level of competition as business at its finest. They are wrong, however, because the competition there was not fair, courtesy of unaffordable registration fees.

As alluded to earlier, such unfairness is causing mergers and large-scale representation. Unfortunately, often times when a large agency represents an athlete, the athlete is in danger of becoming a number, instead of being a client with individual needs and characteristics. In the end, professional business intimacy is reduced.

Inadvertently, Section 2(g) furthers the move toward large agency representation, because partners in large agencies can assign clients to a contract advisor employee, who may have failed to sign a roster player on his or her own. Basically, a large firm can "spread" its clientele to ensure that none of its employees lose their certification. A sole practitioner does not have that luxury.

Before outlining the solution, we offer a word of caution. Big business domination leads to conglomeration, and conglomeration can be dangerous. One example is the music industry. Every time two major labels merge, thousands lose their jobs, from the senior executives at the top to the recording studio custodians at the bottom. In order to prevent a similar occurrence in the agent industry, we propose the following solution.

IV. SOLUTION

In order to assure fairness and reinforce professional business intimacy, the industry needs an affordable federal licensure for ath-

85. *See* Len Pasquarelli, *Ind. firm represents four first-rounders*, ESPN.COM, *at* http://sports.espn.go.com/nfl/columns/story?columnist=Pasquarelli_len&id=1809767 (May 26, 2004) (stating breakdown of firms that had at least five clients selected in traditional seven rounds, as follows: Domann & Pittman – 9, Octagon – 9, Priority Sports and Entertainment – 9, Rosenhaus Sports – 8, Sportstars – 8, ARM – 8, Maximum Sports – 8, Joel Segal – 8, SFX Sports – 7, Pro Sports & Entertainment – 4, IMG Football – 4).

86. *See* NAT'L FOOTBALL LEAGUE PLAYERS ASS'N CERTIFIED CONTRACT ADVISORS DIRECTORY 240-54 (2004) (stating number of contract advisors to illustrate stiff competition for athletes).

lete agents. The solution can be achieved in three steps: modifying the UAAA, amending SPARTA and revising Section 2(g).

A. Modifying the UAAA

The first step toward affordable federal athlete agent licensure is modifying the UAAA. As written, the means of registration are uniform, but registration fees are not. Hence, the unfair expenses that one must pay in order to compete in the industry. Fortunately, the remedy is simple; modify the UAAA by removing registration fees from Section Nine of the UAAA. In turn, the UAAA will be void of fees and lay the foundation for a SPARTA amendment.

B. Amending SPARTA

Amending SPARTA is the second step. Currently, twenty-two states have yet to adopt the UAAA. These twenty-two states, many of which do not require registration, remain hot beds for unethical athlete agents. To prevent unethical behavior, reduce student-athlete ineligibility, and protect academic institutions from sanctions, a federal law is needed to solidify registration in these states. This was the motivation behind SPARTA. However, as written, SPARTA is silent in terms of registration fees, and that silence leads to the aforementioned unfairness and reduction of professional business intimacy. Thus, an amendment is needed that will create a reasonable and fair registration fee.

The registration fee should effectively screen applicants and offset registration costs, yet not bar aspiring contract advisors from the industry. With these thoughts in mind, a one-time nationwide registration fee of $2,000 per individual, plus an annual $1,000 renewal fee would be appropriate. This figure would be exclusive of NFLPA and any other players' association fees.

Under this plan, the registration of the 900 plus NFLPA contract advisors will create large annual revenues. Additional thousands will be generated by the registration of athlete agents who are registered with the Major League Baseball Players Association, the National Hockey League Players Association and the National Basketball Players Association, as well as those who represent individual athletes, e.g. boxing.

The key to creating a fair registration fee is defining the word individual in a way that subjects every person to registration. Accordingly, SPARTA's definitions section must be amended to include a definition for individual. Such definition should read as

follows: "any one person acting for his or herself or within a business organization." This minor adjustment will assure equal fairness between all contract advisors and dissolve any registration advantage for large agencies. In turn, there will be less incentive for agents to form large agencies at the expense of professional business intimacy. Hopefully, it will help prevent conglomeration.

Opponents may argue that a lower fee will create a greater opportunity for runners and illegal funneling. Agent regulations, however, now have teeth at both the federal and state level. Thus, it will be difficult for agents to perform such acts without suffering the consequences.

C. Revising Section 2(g)

The final step in ensuring fairness and strengthening business intimacy is revising Section 2(g). Acknowledging the NFLPA's desire to decongest itself, an ouster clause, like Section 2(g), seems logical. However, the term of any ouster clause should be long enough to afford a contract advisor the opportunity to develop his or her practice, work with athletes and engage in fair competition. With these thoughts in mind, Section 2(g)'s term should be extended from three years to five years. Additionally, signing a practice squad player should satisfy league requirements.

Similarly, the NFLPA should cease researching the feasibility of adopting an amendment that would limit the number of contract advisors certified by the league. There is no reason why the NFLPA should seek to bar aspiring agents from pursuing the career of their choice, especially when it has an ouster clause in place. Imagine if the American Bar Association attempted to limit or cap bar admittance. There would be a plethora of actions brought nationwide.

V. CONCLUSION

Below Section Nine of the UAAA, its drafters wrote:

> [A]thlete agent registration is the cornerstone of this act. High registration fees imposed by some states with existing acts have probably contributed to seemingly small numbers of registrants under these acts. The success of this act may be contingent upon the implementation of a reasonable fee structure that does not motivate noncompliance.[87]

87. *See* UNIF. ATHLETE AGENTS ACT § 9, 7 U.L.A. 211 (Supp. 2000) (explaining high fees implemented by state law).

Recognizing their vision, we need to modify the UAAA, amend SPARTA, and revise Section 2(g), in order to create fair and reasonable federal athlete agent licensure and abolish the current exorbitant expense that is associated with the industry. In sum, the natural laws of supply and demand should govern entry into the contract advisor industry, not overly expensive registration fees.

APPENDIX A

State and Territory Adoptions of the UAAA

Alabama	Arizona	Arkansas
Connecticut	Delaware	District of Columbia
Florida	Georgia	Idaho
Indiana	Kansas	Kentucky
Maryland	Minnesota	Mississippi
Montana	Nevada	New York
North Carolina	North Dakota	Oklahoma
Pennsylvania	Rhode Island	Tennessee
Texas	Utah	U.S. Virgin Islands
Utah	Washington	West Virginia
Wisconsin		

States with Active UAAA Legislation in their Legislative Chambers

Illinois	Missouri	South Carolina

States with Existing non-UAAA Athlete Agent Regulation Law

California	Colorado	Iowa
Louisiana	Michigan	Missouri
Ohio	Oregon	South Carolina

States and Territories Lacking Athlete Agent Regulations

Alaska	Hawaii	Illinois
Maine	Massachusetts	Nebraska
New Hampshire	New Jersey	New Mexico
Puerto Rico	South Dakota	Vermont
Virginia	Wyoming	

From the NCAA website *at* http://www1.ncaa.org/membership/enforcement/agents/uaaa/history.html.

APPENDIX B

UAAA State Registration Fees

State	Registration Fee	Reciprocity Registration Fee	Renewal Fee	Renewal Reciprocity Fee	Term	Other
Alabama	$200	$100	$100	$100	2 years	None
Arizona	$20	$20	$20	$20	2 years	None
Arkansas	$500	$100	$500	$100	2 years	None
Connecticut	$200	$200	$200	$200	1 year	None
Delaware	$2,500	$2,500	$2,500	$2,500	2 years	None
District of Columbia	$515	$515	$515	$515	2 years	None
Florida	$750	$750	$445 on even years	$445 on even years	1 year	None
Georgia	$200	$200	$200	$200	Term expires on June 30th of odd years	$10,000 Bond
Idaho	$250	$250	$250	$250	Term expires annually on agents birthday	None
Indiana	$700	$700	$700	$700	2 years	None
Kansas	$515	$515	$515	$515	2 years	None
Kentucky	$300	$300	$100	$100	1 year	None
Maryland	$1,000	$1,000	$1,000	$1,000	2 years	None
Minnesota	$500	$500	$400	$400	2 years	None
Mississippi	$100	$100	$50	$50	Term expires June 30th annually	$50 Filing Fee
Montana	$200	$200	$200	$200	2 years	None
Nevada	$500	$500	$500	$500	2 years	None
New York	$100	$100	$50	$50	2 years	None
North Carolina	$200	$200	$200	$200	1 year	None
North Dakota	$250	$250	$150	$150	2 years	None
Oklahoma	$1,000	$1,000	$1,000	$1,000	2 years	None
Pennsylvania	$200 individual $400 corporation	$150 individual $300 corporate	$200 individual $400 corporate	$150 individual $400 corporate	2 years	None
Rhode Island	$100	$100	$100	$100	1 year	None
Tennessee	$500	$500	$200	$200	2 years	None
Texas	$1000 individual $100 per individual in an entity	$1000 individual $100 per individual in an entity	$1000 individual $100 per individual in an entity	$1000 individual $100 per individual in an entity	1 year	None
Utah	$510	$510	$510	$510	2 years	None
Washington	$0	$0	$0	$0	None	None
West Virginia	$50	$50	$10	$10	2 years	None

Non-UAAA State Registration Fees

State	Registration Fee	Reciprocity Registration Fee	Renewal Fee	Transfer Renewal Fee	Term	Other
California	$30	N/A	N/A	N/A	None	$100,000 insurance coverage
Colorado	$0	N/A	N/A	N/A	N/A	None
Iowa	$300	N/A	$300	N/A	1 year	$25,000 Bond
Louisiana	$100	N/A	$100	N/A	Expires June 30th annually	None
Michigan	$0	N/A	N/A	N/A	N/A	None
Missouri	$500	N/A	$500	N/A	2 years	None
Ohio	$500	N/A	$500	N/A	2 years	$20,000 Bond
Oregon	$250	N/A	$250	N/A	1 year	None
South Carolina	$300	N/A	$300	N/A	2 years	None

From the NCAA website *at* http://www1.ncaa.org/membership/enforcement/agents/uaaa/history.html.

APPENDIX C

NFL Club	*States Represented*
Arizona Cardinals	25
Atlanta Falcons	33
Baltimore Ravens	28
Buffalo Bills	30
Carolina Panthers	28
Chicago Bears	29
Cincinnati Bengals	32
Cleveland Browns	28
Dallas Cowboys	28
Denver Broncos	29
Detroit Lions	31
Green Bay Packers	24
Houston Texans	28
Jacksonville Jaguars	28
Indianapolis Colts	30
Kansas City Chiefs	25
Miami Dolphins	26
Minnesota Vikings	29
New England Patriots	31
New Orleans Saints	27
New York Giants	31
New York Jets	30
Oakland Raiders	30
Philadelphia Eagles	26
Pittsburgh Steelers	27
St. Louis Rams	23
San Diego Chargers	26
San Francisco 49ers	26
Seattle Seahawks	32
Tampa Bay Buccaneers	26
Tennessee Titans	23
Washington Redskins	29
Average	**28**

Data compiled by a roster review of 2003-2004 season from the NFL website *at* http://www.nfl.com.

4-1-1986

The Personal Manager in the Entertainment and Sports Industries

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David S. Eisen

THE PERSONAL MANAGER IN THE ENTERTAINMENT AND SPORTS INDUSTRIES

LLOYD ZANE REMICK*
AND
DAVID SPENCER EISEN**

I. INTRODUCTION

"Opportunity is where you find it," reads an old proverb. The job of the personal manager is to find and foster opportunities for his client. The personal manager, generally, is an individual employed to assist in the overall direction and development of an entertainer's or athlete's career. This article looks at the interrelationship between the personal manager, his client and the client's opportunities. First, the article describes the various roles and functions of a personal manager. Then, the article looks at the considerations that should be taken into account when formulating the personal management agreement. Finally, the article suggests regulations that should be imposed by the government to control the relationship between the personal manager and the client.

II. THE PERSONAL MANAGER'S ROLE

The term personal manager has been said to have "no distinctive definition of its own,"[1] it is a "generic term encompassing professional and business representatives of talent".[2] The term is often meaningless because of the numerous combinations of roles that a personal manager can perform. Each personal manager serves his client in a different manner. Personal managers assume such roles as attorneys, business managers, publicists, and produc-

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1. S. SHEMEL & M. KRASILOVSKY, THIS BUSINESS OF MUSIC 71 (4th ed. 1979).
2. *Id.*

ers.[3] For the purpose of clarity, this article will describe each role as separate aspects of the personal manager's job. It should, however, be kept in mind that these functions often occur in some combination.

A. *The Alter Ego*

The personal management role is perhaps the most demanding job in the entertainment and sports industries. In a general sense, "the personal manager [functions as] the alter ego of the artist . . . the part of the artist the audience never sees. He is a planner, advisor, organizer, strategist, overseer, munipulator, detail . . . [person], . . . [parent] figure, traveling companion, and friend."[4] Moreover, the job description of the personal manager must continue to grow to keep pace with the ever-increasing number of methods of career development and advancement.

Despite the importance of the personal manager, there is no special educational requirement that an individual must meet in order to represent clients. Business executives, attorneys, certified public accountants, former entertainers and athletes, spouses, relatives, and family friends have all functioned as personal managers. It is widely accepted, however, that a personal relationship with a client prior to representing him or her in a management situation can be highly detrimental both to the personal relationship and to the business affairs of the client.[5] This is so because the personal manager needs to be in a position to objectively criticize and evaluate the business needs and opportunities of the client. In order to maintain this needed objectivity, the personal manager must retain a certain degree of estrangement from the client.[6]

This required estrangement is, of course, lost when the athlete or entertainer acts as his or her own personal manager. Even in today's complicated world of entertainment and sports management, self-representation is not uncommon, especially at the start of a career. However, most athletes or entertainers who advance in

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3. For example, personal manager Bill Graham—owner of RSO Inc., a recording and music management company—also works as a film and stage producer. *See Rock Tycoon*, NEWSWEEK, July 31, 1978, at 40.

4. X. FRANSCOGNA JR. & H. HETHERINGTON, SUCCESSFUL ARTIST MANAGEMENT 12 (1978).

5. *See* B. WOOLF, BEHIND CLOSED DOORS 91 (1976). Woolf stated that "as a practical matter, [personal managers] should never get too close to their clients, especially athletes. The rule is that you take them to advise not to raise. Yet I have never been able to remain uninvolved . . . ." *Id.*

6. *Id.*

their profession find at some point that it is difficult to reconcile personal abilities and tastes with the realities and requirements of the business world. This problem is normally compounded by the inability of most athletes and entertainers to deal effectively with business professionals. It is at this point in the performer's career that he or she generally seeks career management help. As we shall see, this help can best be provided by a professional personal manager who is contractually bound to act to further the client's best career interest.[7]

B. The Career Planner

No matter who serves as the personal manager, the initial role of such a representative is to serve as a career planner.[8] The personal manager must steer the client in a well-defined direction while maintaining flexibility for unanticipated changes in the entertainer or athlete's career. All decisions made by the personal manager should take into account the client's overall career plan.

For example, the decision to secure an advertising endorsement for the client should be made with consideration as to whether the product will enhance or damage the client's public image. Indeed, public image, especially in the entertainment field, is a major marketing factor that can affect the client's future success.[9] Similarly, it is important for the personal manager to discern the appropriate time to forego certain employment opportunities, such as live appearances. These are only a few of the career steering decisions a personal manager is confronted with on a day-to-day basis.[10]

C. The Negotiator

In order to implement the career plan, once it is developed, the personal manager must either negotiate contracts for the client or arrange for competent counsel to negotiate on the client's behalf.[11] Negotiation of an employment contract is not only the per-

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7. *See infra* notes 77-81 and accompanying text.

8. *See* Kennedy, *On His Mark and Go-Go-Going*, SPORTS ILLUSTRATED, May 12, 1975, at 82.

9. *Id.*

10. *See* Lourie, *The Lawyer/Manager Role*, RECORD WORLD, Apr. 23, 1977, at 17 (The personal manager must "be aware of the whole gamut of the artist's business. . . .").

11. M. MAYER, THE FILM INDUSTRIES 17 (1973). *See generally* 1 J. TAUBMAN, PERFORMING ARTS MANAGEMENT & THE LAW 117 (1972) ("[L]awyers become necessary. . . [in] the negotiations on behalf of the author . . . counsel must be skilled in the law of literary and artistic property so as to know and advise as to the ownership and legal possibilities in the

sonal manager's single most important function, but it is also, generally, the focal point of the relationship between the client, owners, management and others in the entertainment industries.[12]

It is certainly in the client's best interest to be represented by an attorney during the negotiation process.[13] A personal manager with legal training not only has additional negotiation skills, but a strong arsenal of legal devices available to protect the client's interests. This additional expertise may be vital to a client who creates intellectual property, for example. First-hand knowledge of copyright law provides the client and his work with invaluable protection. Without these protective measures, the client may lose control of his own creation.[14] Also, it is important for the personal manager to oversee and protect screen, television and leisure industry credits. These credits often play a role in establishing a new artist's name or solidifying an established performer's reputation.[15]

For the athlete-client who participates in team competition, important protection is derived from the use of carefully drafted interest clauses which preserve his freedom of movement.[16] An athlete without adequate legal protection, can be denied security and the opportunity to create a stable home life. The attorney who simultaneously functions as a personal manager is clearly in a better position to know how to protect his client.[17]

The traditional role of the lawyer in the entertainment and sports industries is threefold: (1) provide counsel; (2) draft and negotiate legal instruments; and (3) represent the client in court.

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subsidiary rights.").

12. Boardman, *Forward* to 1 T. LINDEY, ENTERTAINMENT PUBLISHING & THE ARTS at v. (1980) ("The ingenuity of man has yet to devise an iron clad contract. The advantage of the carefully drawn agreement is not that it will be breachproof, but that it will strongly dissuade the potential repudiator from attempting to suspend his obligation and will provide adequate remedies if he does.").

13. *Id.* at iv.

14. *See* 17 U.S.C. § 102 (1982). *See, e.g.*, Bright Tunes Music Corp. v. Harrisongs Music, Ltd., 420 F. Supp. 177 (S.D.N.Y. 1976). In *Bright Tunes*, an action was brought claiming that the song "My Sweet Lord" infringed on the copyright held by the writers of the song "He's So Fine." The court held that inasmuch as "My Sweet Lord" had a strikingly similar musical arrangement to "My Sweet Lord," the copyright was infringed. *Id.*

15. *See* Smith v. Montoro, 648 F.2d 602 (9th Cir. 1981) (action against a film distributor for leaving the name of an actor off the credits of a film).

16. *See, e.g.*, Flood v. Kuhn, 407 U.S. 258 (1972); Robertson v. National Basketball Ass'n 625 F.2d 407 (2d Cir. 1980); Mackey v. National Football League, 543 F.2d 606 (8th Cir. 1976); Washington Capital Basketball Club, Inc. v. Barry, 304 F. Supp. 1193 (N.D. Cal. 1969). *See generally* Schneiderman, *Professional Sport: Involuntary Servitude and the Popular Will*, 7 GONZ. L. REV. 63, 69 (1971) ("The Professional Athlete is like legal chattel of his club, and can be sold or traded at will.").

17. *See generally* S. GALLNER, PRO SPORTS: THE CONTRACT GAME 2 (1974).

These services make an attorney invaluable in entertainment and sports representation.

Whether the entertainer or athlete should be represented by a personal manager and a separate attorney or whether such representation can be accomplished by one person performing both roles is a controversial question. "Because the managerial function is inextricably bound with problems of law and contracts, sometimes counsel gravitate into the managerial functions, and in fact, become managers side by side with [sic] law practice."[18] Indeed, they may even work exclusively in management positions. Some attorneys change hats for different clients. They may represent one client as an attorney while at the same time as a complete personal manager for another.[19]

Many lawyers believe that the personal manager and attorney functions should be performed by a given client by separate individuals.[20] The attorneys who believe in the separation of the legal and management professions have advanced several arguments to support their position. First, they state that because an attorney works on a flat fee basis, the client's decision on whether or not to accept a contract will not determine whether the attorney receives his fee. In this manner, independent, unbiased legal advice is assured. Whereas, if an attorney, acting as a personal manager, works on a commission basis, he may advise a client to accept a contract in order to guarantee himself a percentage share.[21]

The second argument advanced by those opposed to the mixing of the attorney and personal manager roles, is that the most important function an attorney provides in a transactional relationship is that of an independent third party advisor.[22] This role may be lost when the personal manager also acts as the client's counsel. The attorney who is not a direct party in such a transaction can deliver more objective advice without any conflict of inter-

18. TAUBMAN, *supra* note 11, at 47.

19. *Id.*

20. *See* J. CSIDA, THE MUSIC/RECORD CAREER HANDBOOK 322. According to this author, "[w]hat a lawyer should bring to a client is almost total objectivity, which is to say, lawyers should be paid on an hourly rate . . . If you pay a lawyer on a percentage . . . the lawyer's fee becomes dependent upon his advice. . . ." *Id.*

21. *Id.*

22. *See* Clifford David Management Ltd. v. WEA Records Ltd. [1975] 1 All E.R. 237. In this case, the former personal manager of the musical group Fleetwood Mac also served as legal counsel for the group. The personal manager/lawyer sought to enjoin the group from releasing a recording upon which he claimed a copyright. The court denied the injunction, stating: "That the bargaining power of each of the composers was gravely impaired by the position . . . [of the personal manager/lawyer]." *Id.*

est, thus protecting the client from numerous pitfalls. Attorneys placed in the role of a third party can become a buffer between the personal manager and the funds of the client. This role, however, can also be played by others, including a business manager.[23]

Finally, some commentators argue that from a management standpoint, the attorney who works regular hours in a law firm will find it difficult to participate in the client's day-to-day career. The hours involved in each position would simply conflict.[24] To provide a client with complete legal services, the attorney must be competent to handle a variety of legal complexities and specialties. Outside counsel may be a necessity when the client's lawyer is also the personal manager and does not practice law on a fulltime basis since such an attorney may not be up to date on the most recent trends in the legal profession.[25]

Despite the numerous arguments against the combining of professions, a number of individuals have apparently succeeded in the dual role of attorney/personal manager.[26] A later section of this article discusses in great detail the mechanisms that can be put into operation to adequately protect the entertainer or athlete from the problems that may arise when his personal manager is also his attorney.

D. The Business Manager

Often an attorney/personal manager will hire a business manager to help manage a client's affairs. Also, many large personal management firms have employees who are given the title and function of "business managers." Typically, however, the personal manager will also act as the client's business manager.[27] It has been said that "[t]here is no precise definition of a business manager . . . [the] role varies from client to client and from business manager to business manager."[28] The business management role

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23. *See* CSIDA, *supra* note 20, at 322.

24. There are many areas of law that an entertainment lawyer should be familiar with in order to provide his client with adequate legal services. An attorney who actually functions as the personal manager cannot possibly maintain a freshness in the necessary areas of law. *See* Rudell, *Entertainment Lawyer as a Generalist*, N.Y.L.J., Nov. 14, 1979, at 11.

25. *See* Culbreth v. Simone, 511 F. Supp. 906 (E.D. Pa. 1981) (lawsuit brought against an entertainer's attorney for conflict of interest because the attorney allegedly acted improperly while performing personal management services).

26. *See* Horewitz, *Personal Management: Syllabus on Representing Musical Artists; Legal, Business, and Practical Aspects*, 1975 ENTERTAINMENT L. INST. 51, 55-57.

27. *See* Lourie, *supra* note 10, at 17.

28. Thomas, *Legal Responsibilities and Liabilities of the Business Manager*, 1975 PROCEEDINGS OF THE CAL. CPA FOUND—ENTERTAINMENT INDUS. CONFERENCE, B-1.

typically includes one or more of the following: (1) personal budget planning; (2) investment advice; (3) tax advice; and (4) estate and financial planning.[29] It is well accepted that a business manager who is well acquainted with the sports and entertainment industries is better able to perform these functions more competently for an athlete or entertainer than a businessman who is unfamiliar with these industries.[30] A business manager familiar with the sports and entertainment industries will be in a better position to exploit unique financial opportunities while at the same time maintaining a stable flow of income for the client.

The uniqueness of business management for an entertainer or athlete centers around the relatively short period of time in which the client generates high income. The business manager must protect and invest this short lived income stream. Football star O.J. Simpson summed up his thoughts on the subject by stating: "Fame . . . is a vapor, popularity is an accident *money takes wings*. The only thing that endures is character."[31]

A business manager, functioning as a personal budget planner, should begin by analyzing the present financial needs of the client. The business manager and client can then develop a personalized budget by determining the needed cash flow for maximum liquidity and flexibility, while investing funds for the client's future needs.[32]

After determining the present needs of the client, the business manager must function as an investment advisor. In this capacity, the business manager must stretch the present high income to provide for the client's future financial security. While doing this, the business manager must also be planning and implementing an overall estate and family financial program to provide for the client's family in the event the client dies, or is disabled, or otherwise can not function in the entertainment or sports fields. In short, the function of the business manager is not to plan what should be done tomorrow, but plan today to protect the client's tomorrow.[33]

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29. P. Ames, *Business Managers Role in Counseling the Music Client* in COUNSELING CLIENT IN THE PERFORMING ARTS 163-71 (G. Margolis & M. Silfen eds., 1976).

30. *Id.*

31. Interview with O.J. Simpson, *printed in* SPORTS ILLUSTRATED, Nov. 26, 1979, at 38 (emphasis added).

32. David Niven and John Wayne had their business managers provide them with a small allowance to live on, while investing the remainder of their income. *See* W. HAWES, THE PERFORMER IN MASS MEDIA 297 (1978).

33. *Id.*

E. The Tax Planner

In addition to managing the day-to-day business concerns of the client, the personal manager must also secure tax advice. Athletes and entertainers have unique tax problems because they tend to earn a high amount of income for a relatively short period of time. Without proper planning, the present tax system would take as much as fifty percent of an athlete or entertainer's income. With effective tax planning, the athlete or entertainer can legitimately and dramatically reduce his tax burden.

It would be impossible in this article to give a detailed account of all the tax shelters and other tax saving devices available for a high-salaried professional athlete or entertainer—indeed, there are numerous books and articles that explore this one narrow area of tax law.[34] Moreover, any description provided here may soon become dangerously out-of-date because this area is in a constant state of change.[35] Despite this seeming complexity, however, tax planning for athletes and entertainers involved two simple concepts: spreading and sheltering. The first concept involves spreading this client's income over as many years as possible and to as many different tax paying entities, in order to reduce the client's marginal tax rate.[36] "Income-averaging"[37] is the classic spreading device. Sheltering involves the investment of the client's money in projects which initially, at least, lose a great deal of money. Because the client's share of the project's loss is tax deductible, the project in effect "shelters" the client's income until the project

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34. *See, e.g.*, Bailey, *Section 482 and the Aftermath of* Foglesong: *The Beginning of the End for the Personal Service Corporation*, 15 IND. L. REV. 639 (1983); Conners, *The Role of Self-Incorporation By Professional Athletes in Today's Tax Climate—After TEFRA and TRA '84*, 2 ENT. SP. L. J. 1 (1985); Feuer, *Section 482, Assignment of Income Principles and Personal Service Corporations*, 59 TAXES 564 (1981); Gombinski & Kaplan, *Demise of the Tax Motivated Personal Service Corporation*, 1 J. COPYRIGHT, ENTERTAINMENT & SPORTS L. 73 (1982); Hira, *Self-Employed Retirement Plans: TEFRA Brings Parity, but Disparities Remain*, 10 J. PENS. PLAN. & COMP. 225 (1984); Manning, *The Service Corporation: Who is Taxable on its Income: Reconciling Assignment of Income Principles, Section 482 and Section 351*, 37 U. MIAMI L. REV. 657 (1983); Scallen, *Federal Income Taxation of Professional Associations and Corporations*, 49 MINN. L. REV. 603 (1965); Weiss, *Pension Changes Under TEFRA*, 27 B. BAR J. 8 (1983); Wood, *The* Keller, Foglesong and Pacella *Cases: 482 Allocations, Assignment of Income, and New Section 269A*, 10 J. CORP. TAX 65 (1983).

35. *Id.* These articles discuss the major changes in this area of tax law which taken place over the past five years.

36. *See* Frost v. Commissioner, 61 T.C. 488 (1974); Heidel v. Commissioner, 56 T.C. 95 (1971).

37. I.R.C. §§ 1301-05 (1982).

starts to produce a profit.[38] Real estate limited partnerships are the classic form of shelters.[39]

F. Conclusion

As this discussion has indicated, there are numerous roles and functions to be performed in developing the career of an athlete or entertainer. Although the personal manager is the driving force behind the advancement of the client's career, it is becoming increasingly difficult for one person to provide all of the services needed by today's "big-time" athlete or entertainer. Because of the complexity of personal management in today's leisure industries, there are a growing number of companies that provide all of the personal management services through the efforts of several people working in combination.[40] The problem with these large firms is that they often give the client less personal attention and leave him feeling like a commodity. The best alternative for today's athlete or entertainer is to have assembled a team of professionals to act as his booking agent, attorney, business manager and accountant. The main problem with this "team" approach is its high cost, which makes it all but unworkable except for the highest paid athlete or entertainer.[41] Therefore, the vast majority of today's athletes or entertainers face the dangers of being underrepresented by a sole personal manager or being lost in the crowd with a large personal management firm.[42] The only protection an athlete or entertainer has against these two alternatives is to select a personal manager or management firm carefully and once one is selected, to seek to protect his interests through the personal management contract.

II. Selecting the Proper Manager and Negotiating the Management Agreement

Because of the importance of the personal manager, the client, before negotiating the management agreement, should take adequate time to evaluate the prospective personal manager. In the ideal situation, the manager, once selected, would stay with the athlete or entertainer throughout his career. For such a long-term relationship to develop, the client must give extreme consideration

38. I.R.C. § 165 (1982).

39. Commissioner v. Tufts, 461 U.S. 300 (1983) (use of nonrecourse debt can increase tax loss).

40. *See* Shemel & Krasilovosky *supra* note 1, at 78.

41. *Id.*

42. *Id.* at 77-79.

to both the manager's qualities and personality.

Before a personal manager is hired, the client should personally meet and evaluate the personal manager. Time must be taken in developing a rapport with the prospective manager. The client and the personal manager have to respect each other professionally, as well as, socially in order for their relationship to work. Equally as important is that the client and personal manager share the same goals and priorities in the development of the client's career.

After selecting a personal manager, the athlete or entertainer should use extreme caution in negotiating an agreement with his personal manager. The relationship at this point should not be taken for granted. The entertainer or athlete and the prospective personal manager will be adversaries during this period of time; therefore, a third-party attorney working for the entertainer or athlete is required.

A. The Scope of Representation

The specific services to be provided by the personal manager should be clearly indicated in the management agreement. The personal manager will often attempt to exclude certain services from the contract in order to avoid state regulation.[43] The athlete or entertainer, however, should be assured of these services through some kind of understanding with the personal manager.[44] Likewise, the athlete or entertainer, by signing the agreement, will have an implied duty to provide the personal manager with the opportunity for providing service.[45]

B. Exclusivity

The personal manager often requires that the contract grant the exclusive right to represent the entertainer or athlete. Although the agreement is for exclusive representation, the entertainer or athlete is free to rescind the contract at any time, and to hire a new manager, provided certain procedures are followed. These procedures normally call for the personal manager to receive money damages.[46] The contract itself may provide for liquidated

43. *See infra* notes 83-108 and accompanying text.

44. *See generally* L. REMICK, ARTIST MANAGEMENT (1983).

45. *Id.*

46. *See* W. SEAVEY, HANDBOOK OF THE LAW OF AGENCY §§ 165-75 (West 1964); *See generally* Schoenfeld, *Recording Artists and Exclusive Contracts*, N.Y.L.J., June 21, 1978, at 124 (some contracts are so biased in favor of the personal manager that they are referred

damages upon a breach, otherwise, the personal manager will rely on a court to determine damages.[47] Either way, the consequences will be the payment of damages for any harm done as a result of a breach on the part of the client. The personal manager cannot normally prevent the former client who rescinds from being represented by another personal manager.[48] A client may irreparably damage a personal manager who invests time and effort into the client's career, only to find himself out of the contract just when the benefits of his labor start to materialize.[49]

C. *Right of Termination and Compensation*

The client and the personal manager may wish to outline reasons for dissatisfaction with the contractual relationship which will give either party a right to terminate the contract. The termination provision should be very specific as to its terms, because it lets the terminating party out of the contract without incurring liability.[50]

The compensation clause should be similarly specific because of the large sums of money involved.[51] Personal managers in the entertainment field tend to earn between fifteen percent and twenty-five percent of the client's gross income.[52] In the sports industry, personal managers make an average of five percent of the client's earnings.[53] There are cases, however, where the personal manager's compensation has been as much as fifty percent. In order to avoid conflict, the personal management contract must indicate with great specificity the formula for determining the personal manager's compensation. In many cases, the client attempts to exclude the personal manager from certain sources of income.[54] For

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to as contracts of slavery.).

47. *Id.* at § 46. (The athlete or entertainer can revoke the authority of a personal manager, irrespective of an agreement not to do so).

48. In Wilhemina Models, Inc. v. Iman Abdulmayid, 67 A.D.2d 853, 413 N.Y.S.2d 21 (App. Div. 1979), a lower court granted an injunction against a model so she could not perform for another modeling agency. The appellate court lifted the injunction, finding that money damages were an adequate remedy.

49. *See* REMICK, *supra* note 44.

50. *See* Clayton, *Elvis Estate Sues Parker Over License,* BILLBOARD, Feb. 20, 1982, at 4.

51. *Id.* Colonel Tom Parker made fifty percent of Elvis Presley's gross income from RCA recording royalties.

52. *See A Millionaire Slugger, Eddie Murray keeps His Eye on Real Life,* WALL STREET J., Apr. 5, 1982, at 18. California does not limit the amount of compensation by statute, but the labor commission has a policy of disapproving any contract in excess of 25% in commissions.

53. *Id.*

54. *See* REMICK, *supra* note 44.

example, it is not uncommon for singers to exclude the personal manager from sharing in certain royalties.[55] As a further limit, some personal management contracts call for the personal manager's compensation to be based on an incremental formula—instead of a fixed rate formula—that changes as the client's income increases.[56] Supporters of the incremental formula claim that it gives the personal manager more incentive to increase the client's income.[57]

Whether an incremental or fixed rate formula is used, the compensation clause should indicate from which receipts and income, before and after the term of the contract, from which the manager has a right to draw a percentage. Further, the compensation clause should specifically state who will assume responsibility for the proper accounting and disbursement of funds. The personal manager may be charged with the duty of receiving all funds and then disbursing the funds to the client as he needs them. The client in this case should make exacting provisions in the contract for the proper accounting of all funds received by the personal manager,[58] and for the audit of accounts held by the personal manager.[59]

Similarly, if the manager's percentage is to be deducted prior to taking out expenses, there should be a provision in the contract stating who is responsible for what expenses.[60] If expenses are to be taken out prior to the manager's percentage, similar precautions should be taken. Furthermore, there should be a limitation on the amount after which the client's written permission is required prior to further expenditures.[61]

D. Duration of the Contract and the Right to Approval by the Client

The compensation provisions of the personal management contract will often be dependent on the duration of the contract. Many personal management agreements call for an increasing rate of compensation over the term of the contract. Generally, the contract will provide for an initial period with an option in favor of

55. *Id.*
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.*
60. *See infra* notes 63-65 and accompanying text.
61. *See* REMICK, *supra* note 44.

the personal manager to renew. As will be seen, the duration of the personal management contract is often subject to state regulation.[62]

During the duration of the contract, the athlete or entertainer should retain a right to approve certain fundamental decisions of the personal manager. The failure to contractually provide for such a reservation may cause the client to be bound by or liable for unwanted actions of the personal manager.[63] This is so because the personal management agreement normally contains a clause granting the personal manager the client's power of attorney.[64] This power authorizes the personal manager to sign documents as though the client had approved them. The personal manager typically needs the power of attorney to carry on the client's day-to-day business needs. To prevent possible abuses of the power by the manager, the client should limit the power of attorney to certain specific subjects and call for actual client approval in certain transactions or in transactions over a stated amount.[65]

E. Special Considerations

In addition to the standard terms common to most personal management agreements, the manager and the client may want to make provisions for special circumstances surrounding their relationship. For example, if the personal manager loans the client money, the management agreement may entitle the manager to recoup the loan directly from the client's earnings.[66] For a manager and a client who live or work in different states, another provision in the agreement may determine which state law is to control interpretation of the contract.[67] Similarly, if the client has developed a special trust in the personal manager, the client may ask for a nonassignability clause to be incorporated into the contract. Still another special provision found in a growing number of personal manager agreements calls for an arbitrator to settle disputes between the client and the manager.[68]

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62. *See infra* notes 83-108 and accompanying text.

63. A. CORBIN, CONTRACTS § 1204 (1984).

64. The power can be granted generally or with limitations. 3 AM. JUR. 2D *Agency* § 73 (1962).

65. *Id.*

66. This is not to say that the personal manager should be obligated to lend money to the client. Many in the profession consider lending money to be unethical behavior.

67. *See infra* notes 109-119 and accompanying text.

68. See AMERICAN ARBITRATION ASS'N, COMMERCIAL ARBITRATION RULES (1982).

F. Conclusion

As this discussion has indicated, concrete terms in the personal management agreement are beneficial to all parties. Clarity of contractual obligations avoids disputes and misunderstandings between the personal manager and the client. This clarity, however, must neither deny the personal manager his flexibility nor the client his creativity in pursuing his talents. It is necessary that the personal manager retain the flexibility to take advantage of business opportunities for the client when they present themselves.[69] Similarly, a contractual scheme, which is specific and exacting on the work requirements of the client, tends to stifle his talents.[70] This notion is especially true of the creative entertainer, whose instinct cannot be counted on to produce a regular income.[71] At some point, however, the personal manager has to adapt the creative desires of the client to the needs and wants of the marketplace. At this point, the client should be contractually obligated to heed the personal manager's advice.

III. Regulation and Reform

The personal manager can be, and in fact is, regulated outside of the management agreement by various organizations and laws. The extent of regulation will depend upon: the functions the personal manager provides for his or her client; the jurisdiction in which the personal manager practices and; whether the manager has voluntarily submitted to the jurisdiction of any organizations. There have been very few lawsuits involving the personal manager-client relationship. Most cases either go into arbitration or are settled before trial. Yet there are some guidelines which indicate the legal responsibilities and ramifications of the relationship.

A. Agency Theory

The personal manager is an agent for the principal athlete or entertainer. As an agent, the personal manager must exercise the utmost good faith, loyalty, and honesty when acting on behalf of the principal.[72] Moreover, the personal manager/agent has a fiduci-

69. Remick, *supra* note 44.

70. H. Golightly, Managing with Style 48 (1977).

71. *See* Taubman, *supra* note 11, at 40.

72. "Agency is a consensual, fiduciary relation between two persons, created by law which one, the principal, has a right to control the conduct of the agent and agent has the power to affect the legal relations of the principal." Seavey, *supra* note 46, at § 3.

ary duty of care when acting within the scope of the agency.[73] Further, a personal manager/agent who handles the funds of the client/principal has a duty to use good faith and good business judgment in the handling of the money.[74] Also, if a person manager/agent holds himself out as a financial advisor, he implies that he has the necessary knowledge and skill to represent his principal in that capacity.

Although the client/principal can theoretically recover under agency theory for breach of duty by the personal manager/agent, this protection is more illusory than real. The practical difficulties in prosecuting a case under agency theory make it all but impossible for the average client/principal to obtain a meaningful remedy.[75] In addition to the time and money involved in litigating a case, under agency theory, the client/principal is confronted with the burden of proving that the agent/personal manager did not act within the scope of the agency. This burden of proof requirement ensures a long and difficult trial.[76]

B. Tort and Contract Law

The personal manager is also held to an implied duty to exercise the ordinary skill and competence of members in the same profession. An action can be brought against the manager under tort law for any intentional wrong or for negligent performance of the personal management duty.

Although the general principles of fraud apply to the management relationship, the remedies are frequently inadequate. In the landmark case of *Buchwald v. Superior Court*,[77] a personal manager of an entertainment group engaged in fraudulent practices to secure contracts from the musicians. Upon discovering the fraud, the musicians brought suit to recover damages from the manager. After ten years of litigation, the musicians prevailed, but recovered only nominal damages.[78]

Similarly, in *Burrows v. Probus Management, Inc.*,[79] a sports agent was sued for misrepresentation and fraud. The defendant, an

73. *See id.* §§ 140-54.

74. *Id.* § 27. The quality of representation will be judged against the level of skill of others engaged in similar activities. *Id.* at § 140. The agent must perform with expertise of others in the trade. RESTATEMENT (SECOND) OF AGENCY § 379 (1957).

75. SEAVEY, *supra* note 46, at § 84.

76. *Id.* at § 155.

77. 254 Cal. App. 2d 374, 62 Cal. Rptr. 364 (1967).

78. *Id.* at 378, 62 Cal. Rptr. at 367.

79. Civ. No. 16840 (N.D. Ga. Aug. 9, 1973).

accountant acted as a sports agent and business manager for several professional ballplayers. The agent defrauded his clients by converting and mismanaging their funds. Punitive, as well as, compensatory damages were awarded to the clients, but these remedies proved to be inadequate because the agent had no assets to cover the liabilities.[80] As the *Buchwald* and *Burrows* cases indicate, although a personal manager may be held liable under tort theory, the right to recover alone does not necessarily assure the athlete or entertainer adequate protection.

Likewise, contract law provides the client a remedy if the personal manager breaches the management agreement.[81] As under the tort theory, this right to recover, however, is often an empty remedy because there is no assurance that the personal manager will have the ability to pay the judgment.

C. *Criminal Law*

The general principles of criminal law can be employed to protect the athlete or entertainer from the corrupt personal manager. Criminal law, like tort and contract law, however, often provides inadequate relief. In *People v. Sorkin*,[82] a sports agent pleaded guilty to misappropriation and converting his clients' funds. Although the agent was sent to prison, he did not compensate his clients for their lost funds.

D. *State Regulation*

As can be seen by the inadequacy of present legal theory, more regulation is needed to improve the remedies presently available to the athlete or entertainer who has been injured as a result of misrepresentation. Some states have recognized the impotency of traditional legal theories in deterring manager misconduct.[83] These

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80. *Id.*

81. For a discussion see WILLISTON, CONTRACTS §§ 1285-1485 (3d ed. 1957).

82. No. 46429 (Nassau Co., N.Y. Ct. Nov. 28, 1977), *aff'd*, 407 N.Y.S. 2d 772 (App. Div. 2d Dept. 1978).

83. *E.g.*, MASS. GEN. LAWS ch. 140, § 180B (1981). Massachusetts law provides:

> No person shall act as a . . . personal agent or actor's manager, or engage, directly or indirectly, in the business of acting as an agent in the employment of persons for a theatrical engagement in the Commonwealth unless he has obtained a license from the Commissioner of Public Safety. Any person so licensed shall maintain one or more offices in the Commonwealth.
>
> . . . .
>
> Whoever violates the provisions of this section shall be punished by a fine of not more than $500 or by imprisonment for not more than one year, or both.

progressive states have developed regulatory schemes to control the actions of personal managers and to safeguard the interests of their clients. The statutes which implement these regulatory structures are remedial in nature,[84] utilizing a licensing procedure to lessen abuses in the representation of athletes and entertainers. While not all the states have the progressive regulatory statutes meant to specifically control the abusive manager problem, all the states currently have general employment regulatory statutes.[85] Although these generalized statutes rarely reach all personal management activities, they do provide some protection from corrupt managers.

For example, the California Labor Code Talent Agencies Act (Act)[86] would not appear on its face to regulate the personal manager. Its terms and conditions are specifically designed to regulate talent agents. Moreover, the statutory language does not even mention the term "personal manager." Despite this omission, state regulators have stated: "A personal manager of entertainers must obtain a license under California law if he or she procures or attempts to procure employment for their client."[87] Hence, the absence of the term "personal manager" from the statute is misleading. Although originally designed to regulate talent agents, the Act now reaches those personal managers who involve themselves in employment procurement.[88]

The Act, however, creates a dilemma because it fails to define

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Id.

84. *Id.*

85. *See, e.g.*, CAL. BUS. & PROF. CODE §§ 9900-97 (West 1971).

86. The pertinent section provides that:

> A Talent agency is hereby defined to be a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists. Talent agencies may, in addition, counsel or direct artists in the development of their professional careers.
>
> The word "artists" as used herein refers to actors and actresses rendering services on the legitimate state and in the production of motion pictures; radio artists; musical artists, musical organizations; directors of legitimate stage; motion picture, and radio productions; musical directors; writers; cinematographers; composers; lyricists; arrangers; and other artists and persons rendering professional services in motion picture, theatrical radio, television and other entertainment enterprises.

CAL. LAB. CODE § 1700.4 (West Supp. 1986).

87. Telephone interview with Carol Cole, Deputy Labor Commissioner and Area Administrator in charge of Licensing and Registration, California Labor Commission, (Sept. 17, 1982) [hereinafter cited as "Interview with Carol Cole"].

88. *See* Buchwald v. Katz, 8 Cal. 3d 493, 106 Cal. Rptr. 368 (1972) (management contract is unenforceable, where manager fails to obtain license from labor commission).

the term "procurement of employment." The degree of involvement the personal manager has in assisting the client in getting employment may or may not require him to be licensed as a talent agent. The line separating the personal manager from the regulated talent agent remains obscured and blurred. The courts have been given too much discretion to determine where the line is to be drawn.[89] A portion of this line was recently more clearly defined when the Act was amended to exclude two specific procurement activities of personal managers: When they negotiate and secure recording contracts and when they work in conjunction with a licensed talent agent.[90] "A personal manager can now negotiate and secure record contracts for an individual without obtaining a license, but they cannot arrange the tours or any concerts . . . without working with a licensed talent agent."[91]

The State of California has an additional labor statute which specifically regulates the sports agent.[92] Any person who functions as a sports agent, as defined by California law,[93] must obtain a license. Attorneys practicing in California and acting as legal counsel for the athlete are never required to obtain a license because of the regulation already imposed upon them by the Code of Professional Responsibility.[94]

Massachusetts has adopted laws which require a personal manager to be licensed.[95] As of this writing the Massachusetts courts have not interpreted their statute in any published opinions. A Michican court, however, interpreting similar provisions,[96] held that a management agreement is void and unenforceable where the manager fails to obtain a license in violation of state

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89. The definition of procuring employment under California's statute has been interpreted broadly. *See* Deane v. Rippy, 63 Cal. App. 2d 978 (1976) (West 1982).

90. Amended CAL. LAB. CODE § 1700.4 (no longer effective as of Jan. 1, 1985).

91. Interview with Carol Cole, *supra* note 87.

92. *See generally*, CAL. LAB. CODE §§ 1500-47 (West Supp. 1982).

93. The relevant section of the California Labor Code reads as follows:

> Athletic agency means any person who, as an independent contractor, directly or indirectly, recruits or solicits any person to enter into any agency contract or professional sport services contract, or for a fee procures offers, promises, or attempts to obtain employment for any person with a professional sport team.
>
> "Athletic agency" *does* not include any employee of a professional sport team, and does not include any member of the State Bar of California when acting as legal counsel for any person.

Id. § 1500(b) (emphasis added).

94. *See infra* notes 131-46 and accompanying text.

95. For the text of the Massachusetts state law, see *supra* note 83.

96. "Artist's manager means a person acting as a manager or business advisor or rendering technical assistance to an entertainer for which the person is to receive renumeration out of future earnings of the entertainer." 1980 MICH. PUB. ACTS 339.1001.

licensing and criminal law.[97]

Under New York law, personal managers are not regulated with as much scrutiny.[98] If a personal manager performs the functions as such, and only procures employment incidental to that role, then no license is required.[99] It is likely that the states which do not have specific statutes promulgated to regulate the personal manager, will follow the reasoning of the New York legislature. Since these remaining states do not have a specific interest in regulating the personal manager, their employment agency statutes will probably not reach such activities.[100]

Regardless of the provisions in a personal management contract, it is the behavior of the parties under the contract which will determine whether a license is required.[101] Once a personal manager has been required to obtain a license, further regulation can be implemented to control his or her activities. The amount of

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97. Schwartz v. Gonzales, 2 Mich. App. 673, 186 N.W.2d 643 (1970) (where the court found that in view of provisions in the code proscribing an artist's manager from acting as such without a license, the management contract was unenforceable).

98. Section 171(8) of the New York General Business Law provides:

> "Theatrical employment agency" means any person who . . . procures or attempts to procure employment or engagements for circus, vaudeville, the variety field, the legitimate theater, motion pictures, radio, television, phonograph recordings, transcriptions, opera, concert, ballet, modeling, or other entertainment or exhibitions or performances, but such term *does not* include the business of managing such entertainments, exhibitions, or performances, or the artists or attractions constituting the same, where such business only incidentally involves the seeking of employment therefor.

N.Y. GEN. BUS. LAW § 171(8) (McKinney 1986).

99. Nazarro v. Washington, 81 N.Y.S.2d 769 (1948); Angileri v. Vivanco, 137 N.Y.S.2d 662 (1954); Friedkin v. Harry Walker, Inc., 90 Misc. 2d 680, 395 N.Y.S.2d 611 (1977). A contract indicating that the representative is to be the personal manager implies that there will be additional duties and will therefore persuade the courts that procuring employment is more likely an incidental duty. Pawlowski v. Woodruff, 203 N.Y.S. 819 (1924), *aff'd*, 212 A.D. 871, 208 N.Y.S. 912 (1925); Pine v. Laine, 36 A.D.2d 924, 321 N.Y.S.2d 303, *aff'd*, 341 N.Y.S.2d 448 (1971). Where the manager promised to procure employment, the court found that the contractual promise was only incidental to the other duty of the designated attorney. Sublette v. Davis, 82 N.Y.S.2d 77 (1948).

100. *See* National Talent Associates v. Holland, 76 Ill. App. 3d 556, 395 N.E.2d 142 (1979). The Illinois court interpreted its state employment agency act and its definition of a theatrical employment agency. The Illinois court, finding itself reviewing a case of first impression, utilized California and New York cases for its analysis. The court found the activities in question beyond the scope of those intended to be regulated. The plaintiff had solicited potential models and offered assistance to procure contracts with booking agencies. The labor commissioner wanted to require a license for such activities. The Illinois court followed New York law and ruled such procurement activities as only incidental to the relationship of management.

101. *See* Farnum v. O'Neill, 141 Misc. 555, 252 N.Y.S. 900 (1931). *But see* Hyde v. Vinolas, 234 A.D. 364, 254 N.Y.S. 687 (1932) (where the court held that the "incidental-to" distinction is a jury question, to be ruled upon by the character of the contract).

compensation that a manager can demand may be limited.[102] The California Labor Commissioner has determined that a manager and attorney sharing the same offices must keep their records separate.[103] The labor commissioner may investigate the character and responsibility of a licensed individual.[104] The state labor commissioner holds the ultimate remedial weapon of suspending or revoking the license of an individual who fails to comply with state law or is otherwise found to be unfit to be a personal manager.[105] The state may require the deposit of a surety bond to protect athletes from fraud or any misrepresentation by personal managers.[106]

Other state statutes can affect the personal management relationship. The length of an agreement can be limited.[107] The ages of the participating parties to an agreement are also regulated. In both California and New York a minor[108] must follow a specific procedure before performing or rendering services in the entertainment or professional sports areas.

E. Choice of Law Considerations

Attempts may be made to circumvent state laws that regulate the personal manager by inserting choice-of-law clauses into contracts. These clauses reference a specific jurisdiction for the laws that interpret and control the contractual relationship. Such clauses may or may not be upheld depending on both a state's choice of law theory and public policy.[109]

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102. *See* N.Y. GEN. BUS. LAW § 185(8). California does not limit the amount of compensation by statute, but the Labor Commission disapproves of any contractual compensation in excess of 25%. Interview with Carol Cole, *supra* note 87.

103. Interview with Carol Cole, *supra* note 87.

104. CAL. LAB. CODE § 1700.7 (West Supp. 1985).

105. *See* CAL. LAB. CODE § 1700.21 (West Supp. 1985) (an example of the possible statutory standards for revoking or suspending a license).

106. A surety bond is required to protect represented athletes who by reason of "misstatement, misrepresentation, fraud, deceit, or any unlawful acts or omission" might be damaged. CAL. LAB. CODE §§ 1519-20 (West Supp. 1985).

107. *See* CAL. LAB. CODE § 2855 (West Supp. 1985) (Personal service contracts cannot be enforced against the employee beyond seven years.).

108. A minor is a person who has not attained the age of 18 years. CAL. CIV. CODE § 25 (West Supp. 1985); N.Y. GEN. OBLIG. LAW § 1-202 (McKinney 1978).

109. Early choice of law decisions stressed a "vested rights" rationale and held that parties were precluded from designating which state would control. *See* Gerli & Co. v. Cunard Steamship Co., 48 F.2d 115 (2d Cir. 1931). The modern view is that, so long as it is not against public policy, the parties may expressly incorporate some foreign law into their contract. *See* Duskin v. Pennsylvania-Central Airlines Corp., 167 F.2d 727 (6th Cir. 1948). Under the Restatement, however, the parties' choice of law will be upheld only if there is a "substantial relationship" between the parties, contract and the state law chosen or some other "reasonable basis" for selecting that state's law. *See* RESTATEMENT (SECOND) OF CON-

Choice of law clauses cannot insulate a manager's activities from regulation by other jurisdictions.[110] Irrespective of their domicile or chief place of business, personal managers may be regulated by another state if certain "minimum contacts" can be shown to exist with that state.[111] State statutes and administrative rules may or may not have an extraterritorial effect depending on the type of contacts involved and the choice of law rules applied.[112] For example, a personal manager who is not a resident of California but who is "negotiating with clients there and also finding jobs there probably would need a license [under California law] to support his activities there."[113] In deciding whether or not they have jurisdiction over such person or persons and their activities, the California Labor Commission will "have to look at each one of those cases individually when it involves out-of-state people."[114] The minimum contacts needed before jurisdiction over a personal manager will attach "is not clearly defined."[115]

A 1976 decision illustrates how one court weighed the cummulative effect of a personal manager's conduct within the state. In *Peebles v. Murray*,[116] a Kansas promoter, Harry Peebles, brought a breach of contract action against a California performer, the performer's personal manager and her booking agent. Motions were filed to dismiss the suit for lack of in personam jurisdiction, insufficiency of service of process and to transfer the suit to a federal district in California. In reference to the personal manager, the court held that his contacts did not sufficiently satisfy the due process requirement for sustaining long-arm jurisdiction. His only

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FLICT OF LAWS § 187(2) (1969).

110. *See* Mattgo Enters., Inc. v. Henry Aaron, 374 F. Supp. 20 (S.D.N.Y. 1974).

111. "[D]ue process requires only that in order to subject a defendant to a 'judgment in personam,' . . . he have certain minimum contracts with it such that the maintenance of the suit does not offend traditional notions of fairplay and substantial justice." International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). The Supreme Court reaffirmed the "minimum contacts" standard in 1980. The Court held that before a court may exercise jurisdiction it must be convinced that "the defendant's conduct and connection with the forum state are such that he would reasonably anticipate being hauled into court there." World-Wide Volkswagen v. Woodson, 444 U.S. 286, 297 (1980).

112. Most states have long-arm statutes which enable their courts to exercise in personam jurisdiction over persons having the proper minimum contacts with their state. *Compare* ILL. REV. STAT. ch. 110, § 17 (1956) (enumerates various specific acts which, if committed in the state, will submit the actor to state jurisdiction) *with* CAL. CIV. PROC. CODE § 410.10 (West Supp. 1985) (authorizes jurisdiction "on any basis not inconsistent with the constitution of this state or of the United States").

113. Interview with Carol Cole, *supra* note 87.

114. *Id.*

115. *Id.*

116. 411 F. Supp. 1174 (D. Kan. 1976).

contacts with Kansas involved sending a letter to Peebles in Kansas and receiving telephone calls from Peebles while Peebles was in the state.[117]

An additional complication in a manager's foreseeing which courts will obtain jurisdiction over him is the disparity of judicial decisions among forums. In *Zwirn v. Galento*,[118] a manager, pursuant to an employment contract negotiated and executed in New York, procured a fight in New Jersey for his employee/boxer. The contract was declared unenforceable as to boxing matches performed in New York since the manager had failed to comply with New York Athletic Commission requirements. However, the same contract was deemed valid and enforceable as to out-of-state matches that did not violate another state's laws. In contrast, the court in *Foreman v. George Foreman Associates*[119] vitiated a contract which violated California law even though the contract was to be performed outside of California.

The parties to a management contract should be aware that the laws and regulations of several states may apply to them. Therefore, the law which controls the relationship between the parties is dependant both upon the clauses within their contracts and the contacts the parties have with various states.

F. Union Regulation

If a personal manager is required to obtain a state license as a talent agent, a union may require that he obtain a franchise in order that they, the union, may also regulate the manager as an agent. The American Federation of Musicians (AF of M), the Screen Actors Guild (SAG), the American Federation of Television and Radio Artists (AFTRA), the American Guild of Variety Artists, the Writer's Guild of America, and the various sports unions, enforce requirements designed to protect their membership.

The constitutions of the first three guilds will be examined here as their memberships comprise the majority of those serviced by personal managers. It should be noted that the dilemma present in the California Talent Agency Act as to what exactly constitutes procuring employment is also present within union regulation. All three guilds indicate a desire to regulate general procurement activities but the question remains as to what activities trigger labeling the personal manager as a procurer of employment.

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117. *Id.*
118. 288 N.Y. 428, 43 N.E.2d 474 (1942).
119. 389 F. Supp. 1308 (N.D. Cal. 1974), *aff'd*, 517 F.2d 354 (9th Cir. 1975).

The AFTRA constitution expresses in general terms a desire to regulate the practices of agents and managers concerning grievances, standard contractual relations and all related and collateral abuses that may affect the welfare of its membership.[120] The union may order members to refrain from dealing with a given personal manager if such person has been found to have been injurious to its membership.[121]

The SAG constitution expresses the same intentions but is more precise in describing the type of manager that will be subject to its regulations.[122] The personal manager will only be regulated if he solicits employment for others in motion pictures or otherwise holds himself out as an agent.[123]

The AF of M has indicated a desire to regulate the personal manager.[124] Its constitution prescribes regulation of activities usually engaged in by booking agents.[125] If applied broadly, it "can

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120. *See* ARTICLES OF AGREEMENT AND CONSTITUTION OF THE AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS (July 23, 1981) [hereinafter cited as AFTRA CONST.

121. *Id.* Art. XII at 20.

122. *See* SCREEN ACTORS GUILD, AGENCY REGULATIONS, Rule 16(f) § 1 (July 31, 1968). This rule provides in part:

> C. Artist's Manager or Agent is a person . . . who or which offers to or does represent, act as the representative of, negotiate for, procure employment for, counsel or advise any member of the SAG in and about and in connection with or relating to his employment or professional career as an actor in the production of motion pictures. The terms "agent" and "artist's manager," as used herein, are synonymous.
>
> . . . .
>
> F. Business manager is a person . . . whose services . . . are limited to the giving of financial advise or management of financial affairs. A business manager shall not be deemed an agent within the scope of these regulations if . . . such person . . . does not otherwise engage in the business of an agent . . . .
>
> . . . .
>
> G. An attorney-at-law, who performs services . . . shall not be deemed an agent unless such services include solicitation of employment in motion pictures for the member, or the attorney holds himself out as an agent . . . .
>
> . . . .
>
> S. A personal manager is a person . . . whose services are limited to counseling and advising . . . about and in connection with his professional career as an actor. A personal manager who performs services for a member of SAG shall not be deemed to be an agent unless such services include solicitation of employment in motion pictures for a member, or the personal manager holds himself out as an agent . . . .

Id.

123. *Id.*

124. *See generally* CONSTITUTION AND BY-LAWS OF THE AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA (Sept. 15, 1981).

125. *Id.* Art. 23, §§ 1, 2. Section one provides: "It is the policy of the AF of M to assist its members in securing the services of fair, honest, and scrupulous booking agents, and to

encompass regulation of the personal manager."[126] Any personal manager who procures employment for musicians is classified as a booking agent "if he does so without the assistance of an agent."[127] "An attorney who reviews an artist's contract and works on a commission basis rather than a fee basis may also be considered an agent."[128]

A personal manager who is deemed by the guilds to be soliciting or procuring employment may be required to obtain a franchise thereby subjecting himself to union regulation. Union members will be forced to forbear from contracting with any non-franchised managers who have been required by the union to become franchised. Once a manager is franchised, union regulation will control the terms of agreements and contractual relationships with union members.[129] Regulations, such as those limiting the amount of compensation a manager can draw, have a substantial impact on personal managers.

G. ABA Regulation

A substantial advantage in utilizing an attorney as a personal manager is that the attorney must act in accordance with a strict code of ethics.[130] The American Bar Association (ABA) influences the conduct of attorneys through its code of Professional Responsibility (Code). "The disciplinary rules [of the Code] state the minimum level of conflict below which no lawyer can fall without being subject to disciplinary action."[131] The canons within which the disciplinary rules lie are enforceable by the courts, and respected by the members of the Bar.[132] Although the Code cannot control actions by non-lawyers, it has an effect on the personal management profession because many managers are lawyers. The personal management field is virtually void of any other codified ethical standards.[133]

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protect its members against unfair dealing by persons serving in such capacity . . . ." *Id.*

126. Telephone interview with Jerry Zilbert, Assistant to the President of AF of M and Director of the California office (Sept. 9, 1982).

127. *Id.*

128. *Id.*

129. *See, e.g.*, AFTRA CONST. Art. XII.

130. *See generally* MODEL RULES OF PROFESSIONAL RESPONSIBILITY (1983).

131. MODEL CODE OF PROFESSIONAL RESPONSIBILITY, Preamble and Preliminary Statement at App. A-7 (1980).

132. *See In Re* Meeker, 76 N.M. 354, 357, 414 P.2d 862, 869, *appeal dismissed*, 385 U.S. 449 (1966).

133. *See* B. WOOLF, BEHIND CLOSED DOORS 56 (1976). "The opportunities for compromising one's integrity are endless in sports [and entertainment] and growing worse." *Id.*

The ABA Code has been adopted with only minor revisions in the majority of states.[134] Where a violation of the disciplinary rules has occurred, "measures taken are discretionary with the courts, which may disbar, suspend, or merely censure the attorney as the nature of the offense and past indicia of character may warrant."[135]

The following is a list of disciplinary rules pertinent to the control of the lawyer/personal manager. The lawyer must never engage in any conduct involving dishonesty, fraud, deceit, or misrepresentation.[136] The lawyer is prohibited from giving anything of value to induce employment.[137] The lawyer cannot charge or collect an illegal or clearly excessive fee.[138] A lawyer who is engaged in both the practice of law and personal management cannot indicate so on his legal letterhead.[139] The lawyer must preserve all confidential communications with his client.[140] The lawyer may be prohibited from representing clients with whom his interests conflict.[141] The lawyer is prohibited from handling legal matters which he knows or should know he is not competent to handle, unless he associates with a lawyer who is competent to handle the matter.[142] The lawyer must manage the funds of the client with due care.[143] The lawyer is restricted from accepting employment if the exercise of professional judgment will be affected by his own financial, business property, or personal interests, unless he has the well-informed consent of his client.[144]

Although the activities of a lawyer acting in the role of a personal manager may be difficult to bring within the ABA Code, the threat of disciplining action is a deterrence. The ABA Code can also reach the activities of the employees or associates of the lawyer/personal manager.[145]

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134. ABA Comm. on Professional Ethics & Grievances, Informal Op. 1420 (1978).

135. *See* Note, *Disbarment: No Professional Conduct Demonstrating Unfitness to Practice*, 43 CORNELL L.Q. 489, 495 (1958).

136. MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 1-102(4) (1979). [hereinafter cited by DR section].

137. DR 2-103(B).

138. DR 2-106(A) and (B).

139. DR 2-102.

140. DR 4-101.

141. DR 5-105(A).

142. DR 6-101(A)(1).

143. DR 9-102(A) and (B).

144. DR 5-101 and 5-105(C).

145. *Id.*

H. Trade Organizations

There are two trade organizations that have been established to regulate the ethics and improve the standards of athletic and entertainment representation. The Association of Representatives of Professional Athletes and the Conference of Personal Managers have both adopted their own standards.[146]

These organizations, however, are composed of voluntary members. The rules promulgated and rules suggested by them are therefore not binding or effective as to non-members. In fact, enforcement against any injurious activity of members cannot truly be expected since this would induce members to rescind their membership. The existence of the organizations indicates a need to monitor the practicing members of this trade.

I. NCAA Regulations

The National Collegiate Athletic Association (NCAA) regulates all collegiate agent-athlete relationships. The NCAA regulations state that any athlete who enters into an agreement of representation with an agent is ineligible to compete in NCAA sanctioned events.[147] The policy behind this apparently harsh regulation is to discourage the business representation of athletes who have not yet completed their education. The majority of college athletes that retain business managers, however, circumvent the regulations by simply keeping the relationship secret.[148] Further, since the NCAA has no regulatory authority over athletes not in college, it cannot control the legal relationships between non-college athletes and sports agents or personal representatives. This leaves serious legal and ethical problems regarding the professional athlete and his representative as yet unresolved.

J. Security Regulation

Certain state and federal laws reach the activities of those personal or business managers who choose to advise their client in the area of investment planning. A manager who holds himself out as an investment advisor implies that he has the necessary knowledge

146. "A lawyer should ultimately be responsible for the conduct of his employees and associates in the course of the professional representation of the client." A.R.P.A. CODE OF ETHICS (1979).

147. NCAA CONST. Art. III § 1(C) (1985).

148. *See* Johnson & Reid, *Some Offers They Couldn't Refuse*, SPORTS ILLUSTRATED, May 21, 1979, at 28-30.

and expertise to command a reasonable fee. Even if the manager only screens out the unwise investment recommendations that might reach his client, he may be required by law to register as an investment advisor.[149] Federal securities law, however, only requires those managers that fall within the strict definition of "investment advisor" to register on the federal level.[150] Also, isolated transactions, which are only incidental to the main purpose of the management contract, may not require registration.

K. Federal Laws Generally

With the exception of the securities and tax laws, there are no specific regulations at the federal level concerning the personal manager. Many other countries, however, have enacted such laws. In England, for example, the Employment Agencies Act of 1973 requires anyone in the occupation of entertainment manage to be licensed.[151] In addition, under English law there is a maximum number of clients that a manager may represent at one time.[152] For obvious reasons, it is wise to consult counsel whenever contemplating an international transaction in this field.

L. Conclusion

As described above, there are laws already in place which restrict the conduct of personal managers.[153] Recent history has shown, however, that these laws are inadequate to fully protect those entertainers or athletes who, as a result of mismanagement, have incurred financial damages.[154]

The legislatures of several states have recognized these legal inadequacies and have enacted remedial statutes. California and New York have a vested interest in the regulation of personal managers and have a duty to assume a position of leadership regarding

149. *See* SEC v. Wall Street Transcript Co., 454 F. Supp. 559 (S.D.N.Y. 1978).

150. *See* Investment Advisors Act of 1940, § 80b-3(b)(3) (codified as amended 15 U.S.C. § 80b-3(b) (1982)). This section provides: "[A]ny investment advisor who during the course of the preceding 12 months has had fewer than 15 clients and who would neither hold himself out generally to the public as an investment advisor nor acts as an investment advisor to any investment company" shall not have to register. *Id.*

151. *See* COTTERAL, SECURITIES REGULATION 361 (1971).

152. J. YOUNG & S. YOUNG, SUCCEEDING IN THE BIG WORLD OF MUSIC, 276 (1977). The lawmakers felt that the personal manager role should be so time consuming, if done properly, that they have limited the number of clients a personal manager can take to three. *Id.*

153. *See supra* notes 87-107 and accompanying text.

154. *Id.*

future legislation. To some extent, they have assumed this duty.[155] In fact, the California legislature is currently studying to improve their existing laws.[156] The California Talent Agencies Act and Sports Agency Act are pioneer statutes in the regulation of personal managers and sports agents. The Acts impose a licensing requirement to protect athletes and entertainers from unqualified representatives. The Acts also regulate those agents already licensed.[157] Anyone who violates these laws may suffer sanctions or license revocation.

Unfortunately, in some areas the California statutes fail to fulfill their purpose. Absent from either act is any proscription for violations of the fiduciary duties owed to the client by the personal manager.[158] Agency law may already hold personal managers to a fiduciary duty, but ideally, this duty should be incorporated into a statutory framework. The *Buchwald*[159] case illustrates the vulnerability of entertainers and athletes. A clearly defined statute would provide the client with the legal protection needed to safeguard them from mismanagement.

Presently, an entertainer or athlete who selects an unlicensed personal manager is entrusting his career to someone who may or may not be qualified. A better route would be to secure an attorney as a personal manager. An attorney who operates as a personal manager, whether licensed or not, is bound to the standards set by the American Bar Association.[160] The ABA Code deters mismanagement and provides remedies to aggrieved clients.[161]

To fill the gaping holes present in state regulation, California should enact a personal manager code. New York should follow California's example. Innocent and competent personal managers are injured by the mismanagement of a few unqualified managers. Some entertainers have utilized laws like the Talent Agencies Act to void personal management agreements even for minor violations.[162] Any violation by a licensed personal manager can trigger

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155. *Id.*

156. CAL. LAB. CODE §§ 1701-04 (West 1982).

157. Buchwald v. Superior Court, 254 Cal. App. 2d 350, 351, 62 Cal. Rptr. 364, 365 (1967).

158. *See* Charles, *The Personal Manager in California: Riding the Horns of the Licensing Dilemma*, 1 HASTINGS COMMUNICATIONS & ENTER. L. J. 364 (1978).

159. Buchwald v. Superior Court, 254 Cal. App. 2d 347, 62 Cal. Rptr. 364 (1967).

160. *See supra* notes 131-46 and accompany text.

161. *Id.*

162. *See* Johnson and Lang, *The Personal Manager in California Entertainment Industry*, 52 So. CAL. L. REV. 375, 389-91 (1979). "With one exception in every case where the personal manager was found to have violated the act, the management agreement has been

the power of the California Labor Commissioner to declare a management agreement void.[163] Artists deserve protection, but not, certainly at the expense of equally innocent parties.[164] Any new statute should be more specific as to the degree of culpability needed to trigger the most severe sanctions. A personal manager needs an enforceable contract, not a contract which is simply conditioned upon vaguely defined statutory behavior and the whims of the artist. "Is it not a greater crime to use the vagaries of California law to rip from a person the vestiges of his or her livelihood?"[165]

The Talent Agencies Act creates a perplexing problem. The personal manager who procures employment is required to obtain a license as a talent agent. Upon obtaining the license, this same personal manager, under the title of "talent agent," may then be required to obtain a franchise from labor unions.[166] The unions can then additionally regulate the personal manager and possibly limit his compensation. Any new law should avoid describing a personal manager as a talent agent. They are separate professions and should be regulated as such.

The present regulations fail to define and enforce the fiduciary relationship between the manager and his client. Disciplinary rules similar to those present in the ABA code could be developed to outline this fiduciary duty and to provide sanctions for breach of that duty. The specific purpose of the statute should be outlined in detail to give direction to judges and arbitrators. Also, the statute should indicate how it is to be applied to non-domiciliaries, because management agreements almost invariably involve interstate transactions and are therefore subject to the laws of several jurisdictions. California and New York, especially, have an obligation to clarify this jurisdictional problem, because a personal manager is likely to have business contacts with those states, regardless of his state of domicile.

Also, any new regulation should recognize that the personal manager sometimes must secure employment, and in doing so, is not acting adverse to the interest of the state or his client. The limits of procurement activity should be more clearly defined.

Personal managers need to form a strong lobby—one that can

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voided by the Labor Commissioner." *Id.* at 391, n.97.

163. *Id.* at 391-93.

164. Phillips, *Ripping off Management Ties*, BILLBOARD, Apr. 17, 1982, at 14.

165. *Id.*

166. *See supra* notes 86-87 and accompanying text.

correct the present regulations. Now is the time to get organized. The study that is underway in California will be a controlling factor in future regulation. Leadership from within the entertainment and sports industries must guide the legislative process.

Most personal managers will openly oppose any concrete regulations, but as the existence of trade associations indicates, the rules are sorely needed. The present lack of statutory protection over personal representation of entertainers and athletes forces these talented individuals to endure needless hardships.

The personal manager, presently, need only put forth a competent and good faith effort to properly manage the athlete or entertainer. The importance of choosing the proper personal manager and drafting a sufficient management agreement cannot be overemphasized. Luck, chance, and disaster affect personal management as they affect all human endeavors. But the fates never build a successful career. Prosperity comes to those who find and exploit potential. Mere talent is not enough in order to become financially successful in today's sports and entertainment industries. It takes meticulous planning and careful execution to be successful. The personal manager, while sometimes taken for granted, can often be the key to such success. Because there is a limited time to achieve success, it is important to have guidance from the beginning of a career, before opportunity has passed.

Finally, one should try to obtain a personal manager who can counsel and advise the client toward financial success without alienating the client by treating him like a commodity. Such alienation, if it occurs, can deaden the essence of the artist's creativity, or distract the concentration of the athlete, until what was once unique and exciting, fades into the common and mundane.

"HOW TO PROTECT YOURSELF, HOW TO APPLY AS MUCH TIME (OR ALMOST AS MUCH TIME) TOWARDS THE BUSINESS END AS THE CREATIVE END, AND WHY"

SIMON ROSEN, ESQUIRE LAW OFFICE OF SIMON ROSEN, PHILADELPHIA, PA

I. WHICH CAME FIRST, THE CHICKEN OR THE EGG?

A. DOES MY CLIENT REALLY NEED A LAWYER?

1. Copyright Act

2. Lanham Act

3. Shark Tank

4. The Nature of the Entertainment Business

   99% of projects yield $0
   1% of projects yield $$$$$$$$$

   Supply & Demand

B. IT'S LIKE A RELAY RACE

C. IS THIS A BUSINESS, OR A HOBBY

D. TALENT DOES NOT [NECESSARILY] RULE THE DAY

The Rise of Social Media

Globalization through the Internet

Hard Work & Hustle (e.g., Rise of Urban Music, Decline of Rock)

II. BASIC NEEDS

1. Formation of legal entity

2. Written agreements with all necessary parties

3. Agreements with producers

4. Split Sheets

5. Producer Decs

6. Filing copyrights

a) When in doubt, file a copyright

b) Poor Man's Copyright

7. NDA/Non-Circumvent

8. Investor Agreements

9. Finance Agreements

10. How Many Lawyers Involved

a) Conflict of Interest Not Necessarily Bad- Need Disclosure & Consent

b) Rep'ing the LLC vs. Rep'ing the Film Producers

c)

III. TRY TO GET FULL VALUE FOR YOUR CLIENT- THIS MAY BE THE ONLY BITE AT THE APPLE

A. BEING A DEALMAKER VS. A DEAL BREAKER

B. EXERT YOUR BEST PROFESSIONAL EFFORTS TO OBTAIN MAXIMUM VALUE

C. STEP GINGERLY

SPORTS PANEL

SPORTS AGENT CERTIFICATION, LICENSING & STATE REGISTRATION

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Sports Agent Certification, Licensing & State Registration

The Four Major Sports:

- NFLPA Requirements
    - https://www.nflpa.com/agents/how-to-become-an-agent
- NBPA Requirements
    - http://nbpa.com/becoming-an-agent/
- MLBPA Requirements – 3 Types of Agents
    - https://registration.mlbpa.org/
- NHLPA Requirements
    - http://www.nhlpa.com/inside-nhlpa/certified-player-agents

Sport Agent Registration With Individual States:

- Uniform Athlete Agent Act (2000) – 42 States, Washington D.C. & U.S. Virgin Islands
    - http://www.uniformlaws.org/Act.aspx?title=Athlete%20Agents%20Act
    - http://www.uniformlaws.org/ActSummary.aspx?title=Athlete%20Agents%20Act
- Revised Uniform Athlete Agent Act (2015) – 4 States enacted & 9 introduced
    - http://www.uniformlaws.org/Act.aspx?title=Athlete%20Agents%20Act%20(2015)
    - http://www.usatoday.com/story/sports/ncaaf/2015/07/15/law-commission-oks-changes-to-strengthen-sports-agent-act/30208833/
- Pennsylvania, Maryland, & New Jersey
    - http://www.dos.pa.gov/OtherServices/State%20Athletics/Pages/Athlete-Agents.aspx
    - http://www.dllr.state.md.us/license/sports/
- California, Ohio, & Michigan – Own versions similar to Uniform Athlete Agent Act
    - http://aco.ohio.gov/AthleteAgent.aspx
    - http://bpd.cdn.sos.ca.gov/sf/forms/sf-aa1.pdf

Law Associations In Sports

- Sports Lawyers Association
    - https://www.sportslaw.org
- American Bar Association Forum on Entertainment & Sports Industry Committee
    - http://www.americanbar.org/groups/entertainment_sports.html

FOUR MAJOR SPORTS

NFLPA

Requirements

- Non-refundable Application fee of $2,500.00.
- Undergraduate AND Post Graduate degree (Masters or Law) from an accredited college/university OR Proof of at least 7 years of contract negotiating experience.
- Authorization to perform a background investigation.
- Mandatory attendance at a new agent two (2) day seminar.
- Successful completion of written proctored examination. (60 multiple choice questions)
- Valid Email address.

Date to Apply

- File an NFLPA Application for Certification from January 2, 2017 - February 3, 2017.

Failing to Pass the Written Examination

- If you do not pass the 2017 exam you may attend the 2018 New Agent Seminar and take the exam again. You will not need to pay an additional application fee. The fee waiver will only apply to the 2018 seminar. If you also fail the 2018 exam, **you are prohibited from filing an application for 5 years.**

Certification

- Pay an annual fee immediately following successfully passing the exam. The annual fee is currently $1,500 (subject to change) if you represent less than 10 active players and $2,000 (subject to change) if you represent 10 or more active players.
- Obtain professional liability insurance from an approved carrier.
- Attend one of three NFLPA seminars held each year. Contract Advisors certified at the 2017 New Agent Seminar are required to attend a seminar in 2018. Typically, there are three one-day seminars every year: one during the NFL Scouting Combine in February (subject to change) in Indianapolis; one at a location TBD during the spring; and one in conjunction with the Sports Lawyers Association's annual conference. There is also the NFLPA Financial Advisor Seminar.
- Negotiate at least one player contract within a three-year period.

Lapse in Certification

- Do not attend a required seminar.
- Failure to pay the annual fee.

- Maintain required insurance in any given year.

NBPA

Requirements

- Non-refundable application fee of $100.00
- Agent dues of $2,500.00
- Degree from an accredited four-year college/university (To substitute for any year(s) of education, an applicant may submit for consideration any relevant negotiating experience).
- Authorization to perform a background investigation.
- Approval of NBPA Player Agent Application.
- Successful completion of a written proctored examination. (50 multiple choice questions)

Date to Apply

- The application window is August 1 through December 1 of every year.

Certification

- Pay an annual fee. For Agents with 0-9 players: $2,500.00. For Agents with 10-19 players: $5,000.00. For Agents with 20 players or more: $7,500.00.
- Attend the NBPA Agent Seminar held each year for Certified Agents.
- Provide updated contact information
- Negotiate at least one player contract within a five-year period.

MLBPA

3 Types of Agent Certification

1. General Certified Agent

- May represent, assist, or advise a Player (as defined by Section 2(b) of the Agent Regulations) in negotiating terms to be included in a Major League contract or "side letter" concerning terms to be included in a Major League contract, and representing that Player in dealings with any Major League Club or the Commissioner's Office concerning the administration or enforcement of that Player's Uniform Player's Contract, the Basic Agreement or the Major League Rules.

2. Limited Certified Agent

- May recruit and/or provide client maintenance services on behalf of a General Certified Agent but may not communicate with a Major League Club on behalf of a Player.

3. Expert Agent Advisor

- May represent, assist and advise a General Certified Agent on behalf of a Player.
- An Expert Agent Advisor is an individual designated by at least one General Certified Agent to engage in the representation, assistance, or advising of that Agent, on behalf of a Player, in the negotiations of terms to be included in a Major League Uniform Player Contract.
- An Expert Agent Advisor may not engage in recruiting or Client Maintenance Services.

MLBPA General Certification is required to represent a Player as defined by §2(B) of the Agent Regulations including:

(1) – any player who is a party to a Major League Uniform Player's Contract or who is listed on a Major League 40-man roster or Major League Reserve List, or a Major League Voluntarily Retired, Emergency Disabled, Military, Restricted, Disqualified or Ineligible List;

(2) – any player who is a Major League free agent by operation of the Basic Agreement, the Major League Rules, or his Major League Uniform Player's Contract;

(3) – any player who is a professional free agent player most recently employed by either a foreign or U.S. professional baseball league or club (e.g., a Minor League, independent league, Japanese league free agent, or Cuban Players who are at least 23 years of age and have played in a Cuban professional league for a minimum of 5 seasons), and who is engaged in negotiations of, or preparing to negotiate terms to be included in, a Major League Uniform Player's Contract;

(4) – any other player engaged in negotiations of, or preparing to negotiate, any agreement or "side letter" concerning terms to be included in any future Major League Uniform Player's Contract.

Requirements

- Submit a non-refundable Application fee of $2,000.
- Submit a signed "Declaration by Applicant" and, in the case of an applicant for General Certification, a copy of your Agency's Representation Agreement.
- Authorize the performance of a background investigation.
- Pass the written examination. There are separate tests for General and Limited Certified Agents. (Exams consist of series of fact patterns and multiple choice questions).

- Be designated as the Agent of a Major League Player, or designated by a General Certified agent as a Recruiter, Client Maintenance Service Provider, or Expert Agent Advisor.

Who Can Apply to Expert Agent Advisor

- A member, partner or employee of a business entity that is not a sports agency and does not include other General or Limited Certified Agents.
- Has not been designated on a Player Agent Designation form from a Player.
- Has an undergraduate degree from an accredited four-year college or university, and either a post-graduate degree from an accredited college or university or four or more years of appropriate negotiating experience.

Date to Apply & Examination

- Applicants who submit a complete application by July 1st of any given year will be eligible to take the written exam in August of that year. Applicants who submit a complete application after July 1st and before December 1st of any given year will be eligible to take the written exam in January of the following year.

Failing to Pass the Written Examination

- An Applicant who fails the test for either certification may retake the test the next time it is offered. An Applicant who fails the test twice must reapply and complete the entire application process again, and will be eligible to submit a new application no earlier than **one year** from the date of the second failed test.

Certification

- An applicant for **General Certification** who completes the background investigation and passes the written test will not be certified by the MLBPA until he or she is designated on a **Player Agent Designation** form by at least one Player, as defined by §2(B) of the Agent Regulations. If the Player's native language is not English, the Designation form must be signed, on the same date, in both English and that Player's native language.
- An Applicant for **Limited Certification** who completes the background investigation and passes the written test will not be certified by the MLBPA until he or she is designated on a **Designation of Recruiter or Client Maintenance Service Provider** form by a General Certified Agent.
- An Applicant for Certification as an **Expert Agent Advisor** who completes the background investigation and passes the written test will not be certified by the MLBPA **until** he or she is designated on an **Expert Agent Advisor Designation** form by at least one General Certified Agent.

- Applicants will have up to **three years after passing the written test to obtain the required designation** for their desired certification. If the applicant does not receive the required designation within those three years the application will expire, and that person must reapply and complete the entire application process again.
- Updating their Agent Registration.
- Pay an annual administrative fee.
- Attend mandatory meetings. During the last week of September of each year, the MLBPA holds a mandatory meeting for all newly certified agents, which is defined as any Agent that has been certified within the prior three years. In early November, the MLBPA holds a meeting which is traditionally designated as mandatory for at least one Player Agent from each firm unless excused. Only general certified agents are invited to the November meetings.
- File required documents and disclosures.
- Maintain current designations.

Lapse in Certification

- An Agent's certification may be revoked for failure to update his or her Registration in a calendar year, failure to pay the annual administrative fee, and failure to comply with the Agent Regulations, including but not limited to repeated failure to comply with reporting and disclosure requirements.
- An **Agent or Expert Agent Advisor**'s certification will also be deemed relinquished if the Agent is in "inactive status." Any General Certified Agent, who in the immediately preceding three years has not had a current Player Agent Designation form signed by a Player and filed with the MLBPA, shall be notified by the MLBPA that he or she will be placed in inactive status. An Expert Agent Advisor who in the immediately preceding three years has not had a current designation by a General Certified Agent to assist with representation of a Player shall be notified by the MLBPA that he or she will be placed in inactive status.
- If an inactive **Agent or Expert Agent Advisor** subsequently receives an appropriate designation, he or she may reapply for MLBPA Certification as set forth in §4 of the Agent Regulations, except that he or she is not required to retake the written test unless he or she is inactive for four or more years.
- Any Player Agent with a **Limited Certification** who in the immediately preceding ninety days has not had a current Designation of Recruiter or Client Maintenance Services Provider form signed by a Player Agent with General Certification and filed with the MLBPA shall be notified by the MLBPA that he or she will be placed in inactive status. A Limited Certified Agent may avoid placement in inactive status by providing evidence within thirty (30) days of receiving such notice demonstrating to the MLBPA's satisfaction that he or she has had a current Designation of Recruiter and Client

Maintenance Services Provider form from a Player Agent with General Certification within the preceding ninety days.

NHLPA

The National Hockey League Players' Association (NHLPA) requires individuals to complete an Agent Certification Program in order to be recognized as a player representative. This process ensures that player agents are aware of the standards of conduct and education they are expected to maintain, and provides a safeguard for the NHLPA membership.

SPORT AGENT REGISTRATION FOR INDIVIDUAL STATES

Uniform Athlete Agent Act (2000)

42 States, Washington D.C., and the US Virgin Islands enacted

Purpose

- Protects the interests of student athletes and academic institutions by regulating the activities of athlete agents.
- The Uniform Athlete Agents Act provides for the uniform registration, certification, and a mandated criminal history disclosure of sports agents seeking to represent student athletes who are or may be eligible to participate in intercollegiate sports, imposes specified contract terms on these agreements to the benefit of student athletes, and provides educational institutions with a right to notice along with a civil cause of action for damages resulting from a breach of specified duties.

Requirements

- The act requires agents to disclose their training, experience, and education.
- Whether they or an associate have been convicted of a felony or crime of moral turpitude, have been administratively or judicially determined to have made false or deceptive representations, have had their agent's license denied, suspended, or revoked in any state, or have been the subject or cause of any sanction, suspension, or declaration of ineligibility.
- Agents are required to maintain executed contracts and other specified records for a period of five years, including information about represented individuals and recruitment expenditures, which would be open to inspection by the state.

Revised Uniform Athlete Agent Act (2015)

Enacted in 4 States (Washington, Idaho, Utah, and Alabama) and Introduced in 9 States

Purpose

- The purposes of the RUAAA include providing enhanced protection for student athletes and educational institutions, creating a uniform body of agent registration information for use by state agencies, and simplifying the regulatory environment faced by legitimate athlete agents.
- The revisions include expanding the act to include financial advisers, business managers, marketers or others who try to sign athletes by providing gifts or services that jeopardize their eligibility.
- The revisions also include an effort to streamline the agent registration process with states, including outlining a structure for a possible central agency to handle the process and share detailed background information provided by agents across state lines. The interstate commission would need at least five states to join for it to take shape.
- The act lets states determine whether a violation is a felony or misdemeanor, but it increases the recommended fine for a violation from up to $25,000 in the 2000 version to $50,000.

Changes from Uniform Athlete Agent Act

- "Athlete agent" is further defined to include an individual who, for compensation or the anticipation of compensation, serves the athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions; or manages the business affairs of the athlete by providing assistance with bills, payments, contracts, or taxes, and an individual who gives something of value to a student athlete or another person in anticipation of representing the athlete for a purpose related to the athlete's participation in athletics.
- Two alternatives for athlete agent registration are provided.
    - Alternative A includes a true reciprocal registration requirement in that if an individual is issued a certificate of registration by one state, the registration is in good standing and no disciplinary proceedings are pending against the registration, and the law in that state is the same or more restrictive as the law in another state, the other state would be required to register the individual.
    - Alternative B would adopt an interstate compact when the act is enacted by at least five states. The compact would create the Commission on Interstate Regulation of Athlete Agents to provide a single registration site where an individual could register to act as an athlete agent in the states that are members of the compact.
- Additional requirements are added for the signing of an agency contract. The contract must now contain a statement that the athlete agent is registered in the state in which the contract is signed and list any other state in which the agent is registered. The contract must also be accompanied by a separate record signed by the student athlete

acknowledging that signing the contract may result in the loss of eligibility to participate in the athlete's sport.

- An agent is required to notify the educational institution at which a student athlete is enrolled before contacting a student athlete. A violation of this notice requirement is subject to civil penalties. The revised act also contains a provision that requires an athlete agent with a preexisting relationship with a student athlete who enrolls at an educational institution and receives an athletic scholarship to notify the institution of the relationship if the agent knows or should have known of the enrollment and the relationship was motivated by the intention of the agent to recruit or solicit the athlete to enter an agency contract or the agent actually recruited or solicited the student athlete to enter a contract.

Pennsylvania, Maryland, & New Jersey

Pennsylvania

- Follows the Uniform Athlete Agent Act.
- A certificate of registration will be valid for two years.
- An applicant must execute and file a surety bond or an alternate security with the Commission of not less than $20,000.
- Must also complete the enclosed "Pennsylvania State Police Form" – Criminal Record Check
- "In Lieu of" Registration Procedure for Out-of-state Agents Registered in Another State within the last Six Months: An out-of-state agent may submit a copy of an application and a valid certificate of registration or licensure from another state in lieu of submitting an initial application if the application to the other state was submitted within six months preceding the submission of the application in the Commonwealth and the applicant certifies the information contained in the application is current and similar to Pennsylvania.
- For an act violation, the Commission may assess a civil penalty against an athlete agent not to exceed $25,000 per violation and to give the Commission the right to apply for injunctive relief.

Maryland

- Follows the Uniform Athlete Agent Act.
- Individuals desiring an athlete agent's license must document their formal training, practical experience and educational background which relates to the individuals professional activity as an athlete agent.
- A copy of your most recent federal income tax return; or an audited financial statement including a balance sheet which sets forth your current assets and liabilities.

- Agents who are, or will be, employed by a corporation as an athlete agent, list the officers and directors of the corporation, as well as any shareholders of the corporation having an interest of 5% or greater.
- If the business of an athlete agent is not a corporation, list the partners, members, officers, managers, associates and profit sharers of the business.

New Jersey

- New Jersey does not follow the Uniform Athlete Agent Act.
- The state does not have their own version of the Uniform Athlete Agent Act.
- The state requires professional licensing for only boxing, mix martial arts, and kickboxing.

California, Ohio, & Michigan

Several States have their own versions of the Uniform Athlete Agent Act.

LAW ASSOCIATIONS IN SPORTS

Sports Lawyers Association

Who They Are

- Non-profit, international, professional organization whose common goal is the understanding, advancement and ethical practice of sports law.

Mission

- To provide educational opportunities and disseminate data and information regarding specific areas of sports law.
- To provide a forum for lawyers representing athletes, teams, leagues, conferences, civic recreational programs, educational institutions, and other organizations involved in professional, collegiate, Olympic, and amateur sports. SLA's role is to foster the discussion of legal problems affecting sports law and to promote the exchange of a variety of perspectives and positions.
- To promote and, where necessary, establish rules of ethics for its members involved in sports law.

American Bar Association Forum on Entertainment & Sports Industry Committee

Who They Are

- The forum is governed by a seven-member governing committee. Because of the diverse subjects covered by the forum, the governing committee created the following divisions: Arts & Museums; Digital Media and New Technologies; Electronic Gaming; International; Literary Publishing; Litigation; Licensing and Merchandising; Motion Pictures, Television, Cable, and Radio; Music and Personal Appearances; Sports; Theater and Performing Arts; and Volunteer Lawyers for the Arts.

Mission

- To educate lawyers in the legal principles and transactional aspects of entertainment and sports law.
- To provide a platform for the discussion of issues affecting these fields, and to foster excellence in the practice of law in these fields.

TV PANEL

MATERIALS RELEASE AGREEMENT

TO: _____ (Production Company)

I, _____, authorized representative of _____, represent, warrant and agree as follows:

1. The following photographs, videotapes, audio recordings and/or other artwork (collectively, "Materials") are in my possession and are the subject of this Materials Release agreement ("Agreement"):

_____

_____

_____

2. By signing this Agreement below, and for good and valuable consideration in the total amount of $_____, the receipt of which is hereby acknowledged, I grant to _____ and your successors, assigns and licensees (collectively, "you") the irrevocable right and license to photograph, reproduce, transmit, telecast and otherwise use my Materials, including without limitation, all images, names, likenesses, voices and sounds connected with the Materials, in any manner, in any and all media now or hereafter devised (including as set dressing and/or on screen props and to edit, crop or juxtapose the Materials), in perpetuity and throughout the universe, including without limitation, for the purpose of producing, distributing and exploiting the television program currently entitled "_____" ("Program"), any other production in which the Materials are incorporated, and in connection with advertising, publicizing, and promotion of you, the Program, [NETWORK] and its respective related and affiliated entities ("NETWORK"), licensees and assigns as you may determine in your sole discretion. Without limiting the generality of the foregoing, I agree that the rights granted hereunder shall include your perpetual, worldwide right to edit, telecast, rerun, record, publish, reproduce, use, license, print, distribute or otherwise exploit, in any manner and in any media or forum, whether now known or hereafter devised, the Program and/or any other production in which the Materials are incorporated, in whole or in part, without any additional monetary compensation to me.

3. I represent and warrant that I have the sole right and authority, as copyright owner in the Materials, to grant the rights granted to you hereunder and that the consent of no other person, firm, corporation or entity is required to enable you to use the Materials as described herein, and that such use by you will not violate the rights of any third parties. I agree that I will not assert, maintain or assist other persons in asserting or maintaining against you, NETWORK or the respective related and affiliated entities, successors, assigns and licensees, any claim, action, suit or demand of any kind or nature whatsoever, related to the use of the Materials, including but not limited to, those grounded upon copyright or trademark infringement, invasion of privacy, rights or publicity, other civil rights, or any other reason in connection with the use of the Materials in the Program or in other productions.

4. I will indemnify and hold harmless you, NETWORK and the respective related and affiliated entities, successors, assigns and licensees from and against any and all claims, liabilities, demands, actions causes of action, costs and expenses (including attorneys' fees and court costs) whatsoever, at law or in equity, known or unknown, anticipated or unanticipated, arising out of their use of the Materials as provided herein, and for breach of any representation or warranty made by me herein. To the fullest extent allowable under any applicable law, I also hereby expressly waive any and all so-called "moral rights" in the Materials as used pursuant to the terms hereto.

5. I acknowledge that you and NETWORK shall have the right but not the obligation to utilize my Materials in the Program, other programs, or in advertising, publicizing, exhibiting or exploiting same, in whole or in part. I acknowledge that you are proceeding with the production, distribution and exploitation of the Program in reliance upon and induced by this Agreement and therefore will not terminate, rescind or revoke this Agreement for any reason. I acknowledge that no payments resulting from the Program shall become due and owing to me for any present or future uses or exploitations, and I hereby release you and NETWORK and the respective related and affiliated entities, successors, assigns and licensees from any claims, obligations or liability related thereto.

6. In the event that you are in breach of any provision of this Agreement and/or any other agreement entered into between the parties, I specifically acknowledge and agree that the damage, if any, caused thereby will not be irreparable or otherwise sufficient to entitle me to injunctive or any other form of equitable relief. My rights and remedies in any such event shall be strictly limited to the right to recover monetary damages, if any, in an action at law. Without limiting the forgoing, I shall not be entitled by reason of any such breach to terminate or rescind this Agreement nor to enjoin, restrain or otherwise impair your exercise or NETWORK's exercise of any of the rights and privileges granted or to be granted hereunder, nor to restrain, enjoin or otherwise impair your property or assets, or those of NETWORK, or the development, production, exhibition and/or exploitation of the Program or any advertising, publicity or promotion in connection therewith.

7. This Agreement contains the full and complete understanding between the parties and supercedes all prior agreements and understandings pertaining hereto and cannot be modified except by a writing signed by each party.

ACCEPTED AND AGREED TO:

_____	_____
(Signature)	(Company)
_____	_____
(Print name)	(Title)
_____	_____
(Address)	(Telephone No.)
_____	

(IF I AM UNDER THE AGE OF 18 YEARS,
MY PARENT OR LEGAL GUARDIAN MUST SIGN BELOW)

I hereby warrant that I am the parent and/or legal guardian of the person who signed the foregoing agreement, that I have caused said person to execute said agreement, that I will indemnify Producer against all claims, liability and expense respecting said agreement, and that, knowing of Producer's reliance hereon, I agree to cause said person to adhere to all of the provisions of said agreement.

_____ Dated: _____

(Signature)

_____

(Print name)

Parent/Legal Guardian Address (if different from Participant's):

_____

_____

(name of production company)

Via _____

(date)

(Name)
(Address)
(Address)

RE: Likeness Clearance for (actor's name) in ("clip/production title")

Dear _____:

We are currently producing an episode for our new show entitled _____ (the "Production") which (describe your show). As part of the Production, we would like to include a (describe the exact use that you want , i.e., photo of X, scene with X doing X, Y, Z) (collectively, the "Material").

By signing below, we would like to confirm that _____ has no objection to our use of their likeness in the Material as part of the Production and that he/she releases, holds harmless and indemnifies (add your production company name here), NETWORK., their respective affiliated and related entities, employees, agents, licensees and assigns from any liability based on any personal, property, residual, re-use, right of publicity or other right which he/she has or may have by virtue of the use of his/her likeness as described above, or the distribution or other exploitation of the Production, in any and all media, throughout the world, in perpetuity.

If this is acceptable, please sign below **and return a copy via facsimile or scanned email to me at ( ) _____**. If you have any questions, please don't hesitate to contact me at (____)_____. Thank you very much for your assistance and cooperation.

Sincerely,

(your name)
(your title)

ACCEPTED AND AGREED TO:

_____

_____
Its Authorized Representative

LOCATION AGREEMENT

This will confirm the agreement ("Agreement") between _____ ("Lessor") and _____ ("Producer"), with respect to Producer's use of Lessor's property (the "Premises") located at: _____ in connection with the television program currently entitled "_____" ("Program") as follows.

1. Rights: In consideration for the payments set forth in Paragraph 2 below, Lessor hereby grants to Producer, its employees, agents, representatives, successors, assigns and licensees permission to bring personnel, equipment, facades, props and effects, of any kind and nature, onto the Premises and to remove same and to film, videotape, make still photographs and sound recordings on the Premises and otherwise enter, occupy and/or use all property exterior and/or interior including, but not limited to, sets, structures, personal property and fixtures, located at the Premises and to use owner's/Lessor's name, logo, signs, marks or slogans, as depicted in, on, and/or about the Premises, alone or in connection with other words.

Lessor also hereby grants to Producer the right, but not the obligation, to use in any manner, in any and all media, in perpetuity, throughout the world, in whole or in part, any and all film, videotapes, photographs, sound recordings and other reproductions of the Premises made hereunder, in or in connection with the production, exhibition, distribution, and exploitation of the Program, any part of the Program, or other television production or any other production as Producer determines. Lessor agrees that Producer may refer to the Premises by any real or fictitious name, and may attribute real or fictitious events as having occurred on the Premises.

Producer shall own, and Lessor shall have no claim of any kind in or to, the Program, or any portion thereof, any film, videotapes, still photographs, sound recordings or other reproductions made hereunder. Producer shall have no obligation to accord credit to Lessor in the Program.

Lessor further agrees that Producer may rely upon this Agreement in preparing and exploiting the Program and any other production. Because Producer is incurring expenses in reliance of this Agreement, Lessor shall never revoke the rights granted hereunder.

2. Payment: In full and complete consideration for Producer's use of the Premises, Producer agrees to pay Lessor $_____ for each day Producer shoots on the Premises, such payment to be only payable following completion of all work contemplated. Notwithstanding the foregoing, no payment shall be made for any day on which prepping and striking or shooting is interrupted or made impracticable for reasons outside of Producer's control (e.g. refusal by the appropriate third party authority (for any reason) to issue or extend permit where permit is required to shoot, etc.). Lessor acknowledges and agrees that prior to the Term Producer may conduct extensive inspection and evaluation of Premises, and Lessor shall not be entitled to any payment in connection therewith.

3. Term: Lessor agrees that Producer shall have exclusive possession of the Premises commencing on or about _____ and continuing until _____ (the "Term"). If, because of the illness or unavailability of any Producer personnel, weather conditions or any other occurrence beyond Producer's control, Producer is unable to proceed with the development, pre-production or production of the Program at any time during the Term, Producer shall have the right to extend the Term or to use the Premises at a later date to be mutually agreed upon with Lessor, at the previously agreed upon rates.

4. Liability: Producer agrees to leave the Premises in the same order and condition as received from Lessor, reasonable wear and tear excepted, unless the parties agree to make permanent modifications to the Premises: Lessor's initials _____

☐ No permanent modifications will be made to the Premises.

☐ The following permanent modifications will be made to the Premises:

_____

_____

Producer shall indemnify Lessor for any actual injury or damages to the Premises directly caused by Producer's activities on the Premises, except to the extent that Lessor contributes to such injury or damage (whether by act or omission of Lessor and its agents), provided that Lessor shall submit written notice of any such claim to Producer no later than ten (10) days following occurrence of any such injury or damage for which Lessor claims damages, and Lessor shall permit Producer to inspect that portion of the Premises alleged to be damaged and shall otherwise cooperate with Producer.

5. No Injunctive Relief: In the event that Producer is in breach of any provision of this Agreement and/or any other agreement entered into between Producer and Lessor, Lessor specifically acknowledges and agrees that the damage, if any, caused thereby will not be irreparable or otherwise sufficient to entitle Lessor to injunction or any other form or equitable relief. Lessor's rights and remedies in any such event shall be strictly limited to the right to recover monetary damages, if any, in an action at law. Without limiting the foregoing, Lessor shall not be entitled by reason of any such breach to terminate or rescind this Agreement nor to enjoin, restrain, or otherwise impair Producer's or [NETWORK] ("NETWORK") use or exploitation of any of the rights and privileges granted hereunder, nor to restrain, enjoin or otherwise impair Producer's or NETWORK's property or assets or the development, production, exhibition and/or exploitation of the Program or any advertising, publicity or promotion in connection therewith, whether or not such use is or is claimed to be defamatory, untrue or censorable in nature.

6. Lessor's Responsibilities: Lessor hereby represents and warrants that Lessor is the sole owner or the authorized representative of the sole owner of the Premises and has the sole authority to grant Producer the rights herein granted. Lessor agrees to indemnify Producer, NETWORK and their respective officers, agents, assigns and licensees, from and against any and all claims, liabilities, obligations, costs, damages and expenses including, without limitation, reasonable attorneys' fees and court costs (including without limitation, an applicable and allocable share of in-house attorneys' fees, costs and expenses) arising from any breach or alleged breach of the foregoing representation and warranty.

7. No Obligation To Use: Notwithstanding any other provision of this Agreement, Producer shall have no obligation to use the Premises or to include the Premises in the Program, or to produce, release, distribute or otherwise exploit the Program. Producer may at any time prior to the Term elect not to use the Premises by giving Lessor notice of such election, in which case neither party shall have any obligation hereunder, and Lessor shall not be entitled to any compensation whatsoever from Producer. If Producer in its sole and absolute discretion does not film, videotape, and/or make still photographs and/or sound recordings on the Premises during the Term, Lessor shall not be entitled to any compensation whatsoever from Producer.

8. Assignment: This Agreement may be freely assigned or licensed by Producer, and in the event of any such assignment or license, this Agreement shall remain binding on Lessor and shall inure to the benefit of any such licensee or assignee.

9. Promotion: Lessor affirms that Lessor has not accepted and will not accept any money or other compensation from any third party to mention any person, product, service, trademark or brand name in the Program. Lessor further acknowledges that it is a Federal offense, unless disclosed prior to broadcast, to give or agree to give anything of value to promote any product, service or venture on the air.

10. Entire Understanding: This Agreement sets forth the entire understanding of Lessor and Producer and may not be changed except by written agreement signed by the party to be changed. Lessor acknowledges that Lessor has not been induced to enter into this Agreement by any representation or promise not contained herein. This Agreement shall be governed by the laws of the State of _____, and the State and Federal Courts located in the County of _____ shall have exclusive jurisdiction over any disputes arising from or related to this Agreement.

ACCEPTED AND AGREED:

By: _____
("Lessor")
Print Name: _____
Date: _____

Producer

_____

By: _____
Its: _____
Date: _____

TRADE-OUT AGREEMENT

1. This Trade-Out Agreement ("Agreement") is entered into by and between _____ _____ ("Company") and _____ _____ ("Producer") in connection with the television program currently entitled "_____" (the "Program"). For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Company hereby agrees to provide to Producer the following products/material for use in, and in connection with, the Program:

_____

_____

(the "Products").

2. Company grants to Producer the irrevocable, non-exclusive right to use the Products, Company's trademarks, copyrights, artwork and packaging as they appear in the Program in all forms of exploitation of the Program, or any part thereof, (including, without limitation, advertising and publicity of the Program), or any other production, in all media, whether now known or hereafter devised, throughout the universe, in perpetuity (collectively, "Rights").

3. Company acknowledges and agrees that all videotape recordings and photographs taken during the production of the Program shall be the sole and exclusive property of Producer, and that Producer (and/or its licensees, assignees, etc.) shall have the right to use forever and throughout the universe said photographs and/or videotape recordings in any and all manner and media, now known or hereafter devised.

4. At Producer's and NETWORK's ("NETWORK") discretion, Company may receive a promotional consideration credit in connection with the Program. All aspects of such credit shall be at Producer's and NETWORK's discretion. Company acknowledges that in some instances, such credit may be removed after the initial airing of the Program (or relevant episode of the Program), and/or may not be included in international versions of the Program.

5. Other than the consideration expressly addressed in this Agreement, Company warrants that it has not paid or accepted, and shall not pay or accept, any money, services or other valuable consideration for the inclusion of any plug, reference or product identification or any other matter in the episodes for the Program. Nothing contained in this Agreement shall obligate Producer to use the Products or to produce the Program or, if produced, to include the Products in the completed Program or in related materials authorized therein.

6. The rights and license granted to Producer herein with respect to the use of the Products in the Program may be freely assigned and licensed to any person as part of the Program without the consent of Company. Company may not assign its rights or delegate its obligation under this Agreement. Any such attempted assignment or delegation by Company shall be null and void.

7. The parties acknowledge that NETWORK has the exclusive right to control publicity and promotion for the Program. Any and all Company advertising and promotion which mention the Program and/or Producer must be pre-approved in writing by NETWORK. Company recognizes

the need for strict confidentiality with respect to the subject matter of this Agreement and with respect to the scripts and all other contents of the Program and agrees that it shall not disclose any such information to any person or entity. In recognition of the need for strict confidentiality, Company agrees that Producer and NETWORK will be entitled to injunctive relief to prevent any disclosure of any such information.

8. Company hereby represents and warrants to Producer that Company is either the owner of the Products or the lawful and authorized agent of Company, that Company has the full right, power and authority to enter into this Agreement and to grant to Producer all of the rights and licenses specified herein, that no further consent is required from any other person, firm or corporation to enable Producer to use the Products for the purposes and in the manner described herein, and that no such use by Producer will subject Producer or NETWORK to liability for further payment of any kind to any other party or will infringe upon or violate any property right of any third party.

9. Company shall defend, indemnify, and hold harmless Producer, NETWORK and their respective parents, affiliated, related and subsidiary companies and the officers, agents, employees, directors, licensees and assigns (collectively "Indemnitees") of each and all of the foregoing, from and against any and all losses, claims, liability, judgments, expenses, costs, damages, actions or causes of action (including, without limitation, reasonable outside attorney's fees) arising out of or relating to any claims brought by third parties against Indemnitees in connection with: (i) the Products, (ii) the Rights as contemplated under this Agreement; or (iii) any claims caused or contributed to by Company's negligence or breach of this Agreement.

10. Producer agrees to indemnify, defend and hold harmless Company, its parent and affiliated companies and any of their respective parents, affiliated, related and subsidiary companies and the officers, agents, employees, directors, licensees and assigns from any and all claims against them, of any kind or nature whatsoever, arising from the exploitation of the Program except for: (i) any claims as to which Company's indemnity under this Agreement (and/or under any other agreements relating to Company's grant of right to, and/or rendition of services for, any Indemnitee) applies, or (ii) any claims caused or contributed to by Company's negligence or breach of this Agreement.

11. If, at any time, Producer or its assignees or licensees are alleged to be in default of any provision of this Agreement, Company hereby agrees that sole remedy of Company shall be, if any, an action at law for damages, if any, and neither Company nor any party claiming through or in place of Company have the right to enjoin the development, production, distribution or exploitation of any episode of the Program, or otherwise interfere with the exercise by Producer, NETWORK and their respective assignees and licensees of the rights granted in herein.

12. All notices and statements required to be given hereunder shall be given in writing either by facsimile transmission with a confirmed "answer back" receipt (and with a simultaneously mailed "hard copy" via expedited mail service); overnight courier service (e.g., FedEx) with confirmation of receipt; or personal delivery to the parties as listed below at their following respective addresses (or at such other address as each may specify by notice to the other) and the date of delivery shall be deemed the date of the giving of such notice.

To Company:

Attn:

To Producer:

Attn:

13. This agreement is the entire agreement of the parties and supersedes all prior agreements and representations concerning this subject. This agreement shall be governed by the laws of the State of _____ and all disputes arising hereunder shall be determined by the state or federal courts located in _____.

DATED as of the ___ day of _____, 20__.

COMPANY:	PRODUCER:
_____	_____
Print Name: _____	Print Name: _____
Its: _____	Its: _____

PRODUCTION COMPANY

Dated as of _____

Mr/Ms. _____

Re: **Television Reality Show Project – "_____"**

Dear _____:

This letter shall confirm the terms of the agreement (the "Development Agreement") by and among _____ ("Producer") and _____ **(**"Collaborator"), for the possible development and production of a television reality series based on a concept created by Collaborator described as follows: _____currently titled, "_____" (the "Project"). For good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Collaborator hereby enters into an exclusive relationship with PRODUCER in connection with the Project commencing on the date hereof and continuing for a period of _____ months thereafter (the "Term"). During the Term, PRODUCER and the Collaborator will jointly develop the Project, and PRODUCER will have the exclusive right to solicit interest and commence negotiations to obtain financing, development and production for the Project ("Set Up") with a distributor, broadcaster, or other financier (collectively, "Distributor"). PRODUCER will advise Collaborator of scheduled pitch meeting so that Collaborator may attend. In the event that, at the end of the Term, PRODUCER is in significant good faith negotiations with a Distributor for the Project (as evidenced in writing), the Term shall be extended automatically through the conclusion of such negotiations (such extension not to exceed sixty (60) consecutive days).

2. PRODUCER shall take the lead and have oversight over the terms of any agreement with a Distributor ("Development/Production Agreement"), which shall be an agreement by and between PRODUCER and the applicable Distributor that is approved in writing (which may be via email) by Collaborator prior to PRODUCER entering into such agreement. Representatives of Collaborator may participate in the negotiations of any Development/Production Agreement, at the Collaborator' sole expense. Entering into a Development/Production Agreement approved by Collaborator will be a condition of the Project moving forward to production. The Term hereof shall be extended for the duration of any Development/Production Agreement entered into during the Term. With respect to any Development/Production Agreement, the parties agree as follows:

2.1 PRODUCER shall be engaged as the production company supplier to the Distributor and shall be an Executive Producer for the Project and for the pilot ("Pilot") and for all episodes of the Project if a series is produced for television ("Series") for the life of the Series and for all subsequent productions, remakes, sequels, derivative works and the like (collectively "Subsequent Productions"). In connection therewith, PRODUCER shall receive (i) an Executive Producer/production company fee from the approved Project budget commensurate with industry standards; and (ii) credit for such Executive Producer/ production company services. All aspects of such financial terms and credit will be subject to Distributor's standards, practices and approval in consultation with the Collaborator.

2.2 Collaborator shall be engaged as Executive Producer for the Project and, in connection therewith, Collaborator shall receive (i) a fee from the approved Project budget commensurate with industry standards (the "Collaborator Fee") which Collaborator Fee shall, in all events, be no less than ___% of the EP Fee (defined below) received by PRODUCER for the Project, (ii) credit as Co-Executive Producer for such services on-screen and in paid ads and packaging for ancillary exploitations of the Project (to the extent PRODUCER receives credit therein), in all cases in second position to the Executive Producer credits accorded PRODUCER, and otherwise on a most favored nations basis with the credits accorded PRODUCER (including, without limitation, with respect to size), and (iii) a "Created by" credit on-screen and in paid ads and packaging for ancillary exploitations of the Project (to the extent PRODUCER receives credit therein).The Collaborator shall be locked to the Project to the same extent that PRODUCER is locked, including for any Pilot, Series and/or Subsequent Productions. All aspects of such credit will be subject to Distributor's standards, practices and approval.

2.3 ____ shall be attached to the Project as host/talent for the life of the Project including, without limitation, the Pilot, the Series and/or Subsequent Productions. ____ shall negotiate and enter into a talent agreement with the applicable Distributor directly for ___ services and neither PRODUCER nor MS shall participate in any such talent deal.

3. PRODUCER guarantees that line items that the Collaborator receives from the approved Project budget shall equal or exceed PRODUCER's Executive Producer/production company fee (or comparable fee, and net of any agency packaging fee or other agency commission payable from such fee) ("EP Fee") on each of the Pilot (if any), the Series, and all Subsequent Productions; otherwise, PRODUCER shall contribute and pay to the Collaborator that portion of the EP Fee necessary so that PRODUCER and the Collaborator receive revenues in the following percentages: _____.

4. The Collaborator shall receive an amount equal to ____% of one hundred percent (100%) of the contingent compensation, however defined ("Profits"), if any, actually received by or credited to the account of PRODUCER (its assignees, designees, or affiliates) from exploitations of the Project, the Series, any Subsequent Productions and any element thereof, in any manner, format or media whether now known or hereafter devised, throughout the universe in perpetuity including, without limitation, merchandising, music publishing, music distribution, personal management, live and/or recorded performance, and literary publications. Profits will be defined, computed, calculated and paid in accordance with the definition accorded to PRODUCER in the Development/Production Agreement, or other applicable agreement.

5. PRODUCER shall be entitled to receive an amount equal to _____% of one hundred percent (100%) of the contingent compensation, however defined ("Profits"), if any, actually received by or credited to the account of the Collaborator (the assignees, designees, or affiliates of either or both) from exploitations of the Project, any Subsequent Productions and any element thereof, in any manner, format or media whether now known or hereafter devised, throughout the universe in perpetuity including, without limitation, merchandising, music publishing, music distribution, personal management, live and/or recorded performance, and literary publications. Profits will be defined, computed, calculated and paid in accordance with the definition accorded to the Collaborator in any applicable agreement or otherwise as negotiated in good faith between the parties.

6. Upon execution of this Development Agreement, the Collaborator shall promptly deliver to PRODUCER all Project-related videotape and/or digital footage ("footage"), the rights to

which are owned and controlled by the Collaborator, and PRODUCER will edit the footage into a five-to-seven minute proof-of-concept "sizzle reel" to be presented to potential distributors during the Term. The Collaborator may participate in the edit of the sizzle reel which will be subject to Collaborator's approval which shall not be unreasonably denied. All costs related to the production of the sizzle real and any costs associated with the development of the Project hereunder, including without limitation any pitches performed and/or presented by PRODUCER , shall be PRODUCER's sole responsibility.

7. In the event that PRODUCER enters into a Development/Production Agreement during the Term pursuant to this Development Agreement, the Collaborator hereby grants, conveys and assigns to PRODUCER, its successors, assigns and licensees, those rights, title and interest in the Project necessary to produce, distribute and otherwise exploit the Project and all allied, ancillary and subsidiary rights therein (including but not limited to Project-related merchandising) in all forms of media including, without limitation, network, cable and satellite transmission, DVD/home video, mobile, literary, Internet, or any other form of audio-visual rights whether now known or hereafter devised (the "Rights"). PRODUCER shall have the right to adapt, modify, add to or take from the Rights in connection with its development, production and/or exploitation of the Project. Notwithstanding the foregoing, if no Development/Production Agreement is concluded during the Term, all rights in and to the Project, the development materials created during the Term, and the sizzle reel shall remain with, transfer to and/or revert to the Collaborator, as applicable.

8. Each party represents and warrants to the other as follows: (a) it has the full right, power and authority to enter into this Development Agreement, to grant the rights herein granted, and to fully perform the obligations required hereunder; and (b) it has not heretofore made and will not hereafter enter into or accept any engagement, commitment or agreement with any person or entity which will interfere with the full and faithful performance by it of the terms and conditions of this Development Agreement or interfere with the other party's full enjoyment of its rights and privileges hereunder. Each party (the "Indemnifying party") shall indemnify and hold harmless the other party and their affiliated and related persons and entities and each of their respective principals, officers, directors, employees, agents, successors and assigns from and against any and all claims, damages, liabilities, costs and expenses (including, without limitation, reasonable outside attorneys' fees and disbursements) arising out of or in connection with the Indemnifying party's breach of any term or condition of this Development Agreement. In the event that PRODUCER enters into a Development/Production Agreement during the Term, PRODUCER will cause the Collaborator to be listed as insured parties on all Project-related insurance policies.

9. It is contemplated that a more formal agreement will be entered into by the parties hereto covering the subject matter hereof, which agreement shall contain such standard terms as are customary for agreements of this type, subject to good faith negotiations not inconsistent with the terms specified herein. Unless and until such time that such more formal agreement is entered into, this Development Agreement shall constitute the sole, entire and binding agreement between the parties with respect to the subject matter herein. This Agreement shall be interpreted in accordance with the laws of the State of New York applicable to agreements fully entered and performed therein. This Agreement may be executed by facsimile or PDF signature and in two or more counterparts, all of which shall be considered one and the same agreement when signed by the parties, and this Development Agreement may not be modified or amended except in writings executed by all the parties hereto. All parties agree to execute and complete any and all other documentation that may be necessary to effectuate the purposes and intent of this Development Agreement. No party shall assign or transfer any rights or obligations under this Development Agreement without the prior written consent of the other parties hereto, and any attempt of assignment or transfer without such consent shall be void; provided that any party shall have the right to assign this Agreement to an

affiliate wholly owned and controlled by it/her/him. Each party is an independent contractor and not an agent, partner, co-venturer, franchisee, affiliate or employee of any other, and no fiduciary relationship exists among the parties.

If the foregoing is in accordance with your understanding, please indicate your agreement in the space provided below.

Sincerely,

AGREED TO AND ACCEPTED:

_____

_____ _____, President

PRODUCTION COMPANY

TALENT AGREEMENT

DATED AS OF: _____

PRODUCER: _____

PROGRAM(s): Tentatively entitled "_____"

TALENT: _____
[Address]

The following shall set forth the agreement (the "Agreement") between Producer and Artist for the provision of exclusive services by Artist in connection with the Program(s) as follows.

1. Program(s):

(a) The Programs shall consist of a pilot program (the "Pilot") and, if applicable, a subsequent series of programs based upon or related to the Pilot (the "Series"). The Pilot and the Series shall sometimes be referred to individually or collectively herein as the "Program(s)".

(b) Artist shall commence rendering services in connection with the production of the Pilot on a date to be determined by Producer in consultation with Artist and shall continue through the conclusion of production of the Pilot or, if applicable, the last episode in the Series hereunder.

(c) Producer will have _____ separate, successive, and irrevocable options to require Artist to render services on between ___ and ____ episodes in the Series per option cycle, the precise quantity of which to be determined by Producer. Each option will be exercisable by Producer in its sole and absolute discretion by written notice to Artist and that notice shall include the number of Series episodes ordered per option cycle.

2. Artist's Exclusive Services:

(a) Artist is hereby engaged to perform services as a featured/lead character in the Pilot and, if applicable, the Series, and shall perform all services customarily performed by talent in television programs (the "Services"). During all periods when the Pilot and the Series are in production, Artist will render Artist's services on an exclusive top priority basis. During the remainder of the Term, Artist shall be available to Producer subject to Artist's bona fide professional commitments.

(b) The Services shall include, but not be limited to, on-camera services, promotional appearances, publicity appearances, product integration, voice-overs, studio and location taping, looping, dubbing, re-shoots, photo sessions, participation in lead-ins, lead-outs, promotional spots and other commercial and non-commercial announcements relating to the Series.

(c) Artist shall render the Services hereunder at such locations and according to a schedule provided to Artist with reasonable notice to be determined by Producer. Artist agrees that all Services to be rendered hereunder shall be performed in a first-class, professional manner and shall be subject to the instructions and directions of Producer and/or its designated representatives. Producer retains the right of final approval over the finished product or the final result relative to the Services and all such Services must be satisfactory to Producer in its sole good faith and reasonable judgment.

(d) During the Term, Artist will not engage in any activity that will fundamentally interfere with the performance by Artist of Artist's material obligations hereunder. In addition, during the Term and for a period of 12 months after the Term, Artist shall not grant any rights, nor enter into negotiations with, make or accept or solicit any offer to or from any third party with respect to granting rights, to Artist's name, likeness, voice or performance in connection with a reality or other non-scripted television, cable, digital, internet-based or similar programming or other audiovisual media for broadcast or dissemination in any media or format whether now known or hereafter devised. Subject to subparagraph 2(e), the foregoing restriction relating to non-scripted programming is not intended, nor shall it have the effect, of interfering with Artist's right to accept employment or other engagements in other industries including, without limitation, _____.

(e) Artist acknowledges that Producer has an interest in protecting its integrity and maintaining the credibility of talent appearing in its programming. In furtherance of this interest, Artist acknowledges Producer's concerns that Artist's credibility might be impaired by the nature or quantity of commercial endorsements that make use of Artist's name, voice, or likeness and that such endorsements might result in certain sponsors not sponsoring the Series due to Artist's attachment to a particular sponsor.

Artist agrees to notify Producer in writing of each offer that Artist receives to render services (or otherwise furnish Artist's name, voice, or likeness) in any commercial endorsement in any media. Artist agrees that all such sponsorships and endorsements shall be subject to Producer's prior written approval which shall not be unreasonably denied.

(f) Notwithstanding anything herein to the contrary, Producer shall have no obligation to actually use Artist's Services, exhibit or use any of the results and proceeds of Artist's Services, or to exploit any of Producer's rights hereunder. Producer's sole obligation shall be to pay such amounts due to Artist pursuant to paragraph 4 of this Agreement.

3. Term: Subject to earlier termination as provided herein or extension as agreed in writing between the parties hereto, the Term of this Agreement shall begin on the date first written above and shall end on the date that is ____ months following the initial telecast of the final Program produced hereunder.

4. Artist Compensation: Subject to the provisions of this Agreement and provided that Artist is not in material breach of this Agreement, Producer shall pay Artist the following amounts:

(a) For the Pilot: The amount of _____ dollars ($ ___) which amount shall be payable as follows: (i) fifty percent (50%) following execution and delivery of this Agreement to Producer; and (ii) fifty percent (50%) following the satisfactory completion of Artist's Services in connection with the production of the Pilot.

(b) For the Series: The amount of _____ dollars ($ _____) per Series episode which shall be payable following the satisfactory completion of Artist's Services for each such Series episode.

(c) Artist will not be paid any compensation (other than any unpaid portion of such compensation which has accrued to and been earned by Artist for Artist's Services previously rendered hereunder) if Artist is unavailable, unable or unwilling for any reason whatsoever to render Artist's Services to Producer's satisfaction during the Term provided that Producer has provided Artist with the opportunity to provide the Services and Artist has failed in a material fashion to provide such Services in accordance with this Agreement. Payments hereunder shall also be contingent upon Artist complying with all governmental requirements including, but not limited to, completing, signing and delivering to Producer all required tax and immigration forms if and as applicable.

(d) Artist shall pay all state and federal or other tax obligations arising from the payment of compensation hereunder or receipt of any goods or services which Artist may receive in connection with Artist's participation in the Program. Artist releases the Released Parties (as defined in paragraph 7 below) of any liability in connection with any such taxes.

5. Satisfaction of Producer's Obligations:

(a) Producer's obligations to Artist hereunder shall be fully and completely satisfied by payment to Artist of all compensation set forth in paragraph 4 and such payment shall entitle Producer and its licensees, sublicensees, successors and assigns to the irrevocable, unlimited, and unrestricted use and re-use of all Programs and all elements and components thereof, and of the results and proceeds of any nature whatsoever of Artist's Services hereunder, in perpetuity, throughout the universe, in all languages, by any and all means and media now known or hereafter created or devised, with no further obligation or compensation to Artist.

(b) Artist acknowledges and agrees that Producer is not a signatory to any union or guild or other collective bargaining Agreement and this Agreement and Artist's Services are not subject to any union, guild or other collective bargaining agreement. Accordingly, Artist will receive only the sums as provided herein in full and complete consideration for the Services to be performed and rights granted hereunder, including, but not limited to, the unlimited right to exploit the Programs and all materials and/or any portions thereof, in perpetuity, throughout the universe, in all languages, by any and all means and media now known or hereafter created or devised, with no further obligation or compensation to Artist.

5. Producer's Rights:

(a) Artist agrees that Producer shall solely, exclusively and perpetually own all right, title and interest in the results and proceeds of Artist's Services and in and to the Programs and all elements and components thereof and all copyrights therein and thereto, and Producer shall have the exclusive unfettered right to record, reproduce, publish, perform, sell, broadcast, display, distribute, disseminate, transmit, exhibit, license, sublicense, market, promote, and otherwise exploit all rights therein and thereto in perpetuity, throughout the universe, in all languages and in all media and formats by any and all means (whether now known or hereafter developed) with no further obligation or compensation to Artist except as otherwise set forth in this Agreement.

(b) Artist irrevocably and exclusively grants Producer, in perpetuity and throughout the universe, all common law, statutory and moral rights in and to the Programs and all of Artist's Services and

performances hereunder, together with the exclusive world-wide perpetual right to use and authorize others to use, Artist's name, sobriquet, biography, voice and likeness in connection with the Programs in any and all media now known or hereafter devised, including, without limitation, (a) the production, exhibition and exploitation of the Programs and all subsidiary and ancillary rights therein in all media now known or hereafter developed; (b) the advertising, publicity or promotion of the Programs, Producer, and its related and affiliated entities in all media now known or hereafter developed; and (c) publishing, merchandising and commercial tie-ins. Artist may be required to use, touch or comment upon commercial products or services in and in connection with the Programs. Producer shall not need Artist's prior consent with respect to any product placement (whether active or passive) in or in connection promotion and publicity relating thereto and Producer's connection therewith.

(c) Artist acknowledges that Artist has no, and shall make no claim to, any right, title or interest in or to Artist's performances embodied in the Programs or to any creative or other contributions made by Artist to the Programs or to any of the revenues derived from the use or exploitation of materials embodied in the Programs or other materials produced hereunder. Artist's Services hereunder and the results and proceeds of such Services are works made for hire for Producer for copyright purposes. In the event that such results and proceeds of Artist's Services are not deemed works made for hire, Artist hereby irrevocably assigns to Producer all of its right, title and interest of every kind and nature whatsoever (including, without limitation, all copyrights), now existing or hereafter known in such results and proceeds.

(d) Producer shall have the complete and unencumbered right to edit, cut and dub the Programs and all results and proceeds of Artist's Services under this Agreement.

(e) Producer shall have the right to change the title of the Programs, add subtitles and closed captioning and to create and exploit foreign language versions of the Programs.

(f) Artist acknowledges and agrees that the title of the Programs and all logos related thereto are or shall be trademarks owned by Producer and are the sole and exclusive property of Producer, unless otherwise licensed or assigned by Producer to a third party, and Artist shall have no right, title or interest therein and shall have no right to use or authorize the use of any such title, logo, or trademark for any purpose whatsoever without the prior written consent of Producer in each instance.

(g) Artist agrees that any and all publicity, advertising, interviews or other information with respect to the Programs or Artist's Services shall be under the sole control of Producer and Artist will not release, issue or authorize any statements, interviews, publicity, press notices or other information regarding the Programs or Artist's Services without the prior written consent of Producer in each instance.

(h) Nothing contained in this Agreement shall be deemed or construed so as to restrict in any way Producer's right to distribute, license, sublicense, assign, market, promote, exhibit or otherwise exploit any element of or right in and to the Programs or the results and proceeds of Artist's Services hereunder or this Agreement in part or in its entirety. Neither the extension, expiration, or termination of the Term of this Agreement for any reason whatsoever shall affect the rights granted to Producer herein.

6. Termination:

(a) In the event that the Artist becomes unable or unwilling to perform Artist's Services hereunder due to Artist's death or physical or mental disability, this Agreement shall terminate and no further compensation shall accrue to Artist following the date of such death or disability except for any compensation which has otherwise accrued to Artist for Services rendered by Artist hereunder prior to the date of death of disability.

(b) Producer shall have the right to terminate this Agreement for "cause" at any time, upon written notice to Artist and no further compensation shall accrue to Artist hereunder following such termination. For purposes of this Agreement, "cause" shall mean (i) Artist's involvement in any situation bringing Artist into public disrepute, scandal, or any act which shocks, insults or offends the community or reflects unfavorably upon Producer or any sponsor of the Programs; (ii) disparagement by Artist of Producer or any sponsor of the Programs or any participants in or contributors to the Program; (iii) failure of Artist to perform Services in accordance with this Agreement; (iv) Artist's commission of any criminal act or act of dishonesty or willful misconduct; (v) a substantial change in Artist's appearance that has not been approved by Producer; or (vi) any material breach by Artist of this Agreement. In the event of termination for cause, Artist shall be paid only the compensation which has accrued to and was earned by Artist prior to the date of termination.

7. Representations / Warranties / Indemnities:

(a) Artist hereby warrants and represents that (i) Artist has the right, power and authority to enter into and fully perform its obligations under this Agreement and to grant to Producer the rights granted hereunder, which grant does not infringe upon the rights of any third party; (ii) this Agreement constitutes a valid and binding obligation of Artist enforceable in accordance with its terms; (iii) the product of Artist's Services hereunder will not violate, conflict with or infringe upon any rights whatsoever; (iv) Artist is not entitled to receive any compensation of any kind other than has been expressly provided for in this Agreement with respect to Artist's Services or uses or re-uses of the results and proceeds of Artist's Services; and (v) there is no claim, suit action or other proceeding that has been threatened or commenced in connection with Artist which would or might affect any of the rights granted by Artist in this Agreement or Artist's ability to perform under this Agreement.

(b) Producer hereby warrants and represents that Producer has the right, power and authority to enter into and fully perform its obligations under this Agreement; (ii) this Agreement constitutes a valid and binding obligation of Producer enforceable in accordance with its terms; and (iii) any materials independently created or furnished by Producer for use in the Programs will not violate, conflict with or infringe upon any rights whatsoever.

(c) Artist hereby agrees to indemnify, protect, save and hold harmless Producer and its employees, officers, directors, shareholders, successors, licensees, assigns and affiliated entities (the "Released Parties") from and against any and all claims, actions, suits, costs (including reasonable attorneys' fees), liabilities, judgments, obligations, losses, penalties, expenses or damages of whatsoever kind and nature imposed on, incurred by or asserted against Producer arising out of (i) any breach or alleged breach by Artist of any representation, warranty, covenant or obligation of Artist pursuant to this Agreement, (ii) any act done by Artist, or (iii) any words spoken by Artist not provided by Producer.

(d) Producer hereby agrees to indemnify, protect, save and hold harmless Artist from and against any and all claims, actions, suits, costs (including reasonable attorneys' fees), liabilities, judgments, obligations, losses, penalties, expenses or damages of whatsoever kind and nature imposed on, incurred by or asserted against Artist, arising out of any breach or alleged breach by Producer of any representation, warranty, covenant or obligation of Producer pursuant to this Agreement or the production, broadcast or other exploitation of the Programs, except as to matters (i) involving a breach of this Agreement or any representation or warranty by Artist, or (ii) with respect to which Artist is obligated to indemnify Producer hereunder.

(e) The representations, warranties and indemnifications of the parties herein shall survive the expiration or termination of this Agreement.

8. Confidentiality: Artist agrees to keep secret and retain in the strictest confidence all business, financial and other matters of Producer including without limitation the terms of this Agreement, scheduling and marketing plans for the Programs, as well as the policies and other business affairs of Producer learned by Artist in connection with Artist's engagement hereunder and Artist agrees not to disclose such information to anyone during or after the Term except with Producer's prior written consent in each instance.

9. Miscellaneous.

(a) All notices hereunder must be in writing and sent by personal delivery or mail, to the respective addresses given above or by email or facsimile (provided that the sender has a valid confirmation of receipt to proper fax number or email address). A copy of all notices to Producer must be simultaneously sent to _____.

(b) This Agreement is a personal contract and may not be assigned by Artist. Producer shall have the right to assign or otherwise transfer this Agreement in whole or in part to any third party.

(c) This Agreement shall be governed and construed in accordance with the laws of the State of _____ applicable to contracts entered into and fully to be performed therein without regard to conflicts of law principles. Artist consents to and submits to the jurisdiction of the Federal and State courts located in _____ and any action or suit under this Agreement shall be brought in the Federal or State court with appropriate jurisdiction over the subject matter of such action or suit. Artist hereby waives any defenses based upon improper venue, inconvenience of the forum, lack of personal jurisdiction, or the like in any such action or suit brought in _____.

(d) Artist agrees that Artist's sole remedy in the event of any breach of the Agreement by Producer shall be limited to a right to seek to recover damages in an action at law, and in no event shall Artist be entitled to any form of injunctive relief or to terminate or rescind this Agreement or enjoin or restrain the exploitation of the Programs or any rights therein. Producer reserves all rights and remedies afforded at law or in equity including, without limitation, the right to seek injunctive relief restraining Artist from

engaging in a breach that may give rise to irreparable harm and injury to Producer for which Producer cannot be fully or adequately compensated through payment of money damages.

(e) Any controversy or claim arising out of or relating to this Agreement, or any breach or alleged breach thereof, shall be submitted to arbitration in _____ in accordance with the Rules of the American Arbitration Association before a single arbitrator experienced in entertainment matters, and judgment upon the award rendered may be entered into any court having jurisdiction thereof. Upon written request, each party will provide the other with copies of documents relevant to the issues raised by any claim or counterclaim. At the request of a party, the arbitrator shall have the discretion to order the examination by deposition of witnesses to the extent the arbitrator deems such additional discovery relevant and appropriate. Any documents must be exchanged and depositions completed within sixty (60) days following the appointment of the arbitrator. The prevailing party in any such arbitration or claim shall be entitled to recover from the other party reasonable attorneys' fees and costs incurred in connection therewith. The determination of the arbitrator in such proceedings shall be final, binding and non appealable.

(f) The provisions contained herein constitute the entire agreement between the parties with respect to the subject matter hereof and supersede any and all prior agreements, understandings and communications between the parties, oral or written, with respect to such subject matter. This Agreement may not be altered, modified or amended except by a written instrument signed by all of the parties hereto. Each of the parties has been or has had the opportunity to be represented by independent counsel in connection with this Agreement.

(g) The provisions of the Agreement shall be severable. If any provision of the Agreement or the application thereof for any reason or circumstances shall to any extent be held to be illegal, invalid or unenforceable, the remaining provisions of the Agreement or the application of such provision to persons or entities other than those as to which it is held invalid or unenforceable, shall be applied to the fullest extent permitted by law.

(h) The paragraph headings of this Agreement are inserted only for convenience and shall not be construed as a part of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which together shall constitute one and the same agreement.

In WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

PRODUCTION COMPANY

By: _____

_____
(Artist)

Social Security No: _____

Date of Birth: _____

FILM PANEL

Mark Moskowitz

Producer/Director

The following are some documents related to the creation of the independent documentary “It Was the Music”

Current One-sheet

Director’s Bio

Music Rights Schedule

Director’s Statement for Post-Production and Editors

Production Notes Post-Shoot for 8/5-8/6

IT WAS THE MUSIC

After more than forty years as the key sideman for dozens of acts and hundreds of records, including Bob Dylan, Kd Laing, Tracy Chapman, Jackson Browne, Phil Lesh, Paul Simon, Levon Helm, Keith Richards, Sheryl Crow and many more, Larry Campbell steps off the tour bus and packs his guitars, two amps, and his long term marriage to singer Teresa Williams, into their Ford Escape. Together, the couple takes off across the country, after the release of their first record together, to play their own music for the first time together in their thirty year marriage.

What brings them forward at this time in their lives with their own music? What made Larry and Teresa step off the tour bus, load a bevy of string instruments into their small SUV and start driving to their own gigs playing their own music?

The answer takes us back and forth across the country, from musicians to audiences, from one generation to another. And while the film lives and breathes in the present, it reaches back to evoke the past, a time when the music meant so much. At once a love story, a musical journey, and a behind the scenes look at virtuoso musicians at the top of their game, it's also about how music can bring about love, and how the love in turn, can bring us the music.

Larry Campbell and Teresa Williams in "It Was the Music"

with

Paul Asbell David Bromberg Jackson Browne Rosanne Cash Shawn Colvin

Jerry Douglas Justin Guip Garland Jeffreys Jorma Koukenon Jack Casady

Phil Lesh John Leventhal Jamie Malanowski Buddy Miller Tracy Nelson

Jerron "Blind Boy" Paxton Bill Payne (of Little Feat) Scot Sax and Suzi Brown

Michael Simmons Larry "The Mole" Taylor Bob Thiele, Jr. Happy Traum

And more.

Produced and Directed by Mark Moskowitz

Mark Moskowitz, as President of Point of View Productions, Inc.,

has directed more than six thousand political spots for a leading national political consulting firm, commercials for leading retailers, brands, and medical providers, as well as dozens of films for educational and government institutions, biotech firms and web clients.

Mark's feature film, "Stone Reader," his search for what happened to a long lost novel, was nominated by both the International Documentary Association and the Indie Spirit Awards for the year's best documentary. "Stone Reader" had a 100-market theatrical run, followed by an extensive European broadcast schedule, and was picked by many critics as one of the Ten Best Films of 2003.

His follow-up, "It Was the Music", stars Larry Campbell and Teresa Williams, both on stage and behind the scenes, in a feature length documentary about what music means to us. It is currently in post-production.

Mark lives in Chester Springs, Pennsylvania.

Music Schedule for rights….

Sugaree	Garcia/Hunter	Sync
Righten the Wrong	Carter/Peer	Sync
Going to Tennessee	Jack Lee	Sync
Big River	Roger Miller	Sync
Without a Song	Youmans/Rose/Eliscu	Master Use/Freddie Hubbard
Without a Song		Sync
I'll Love You So	Ron Holden	Master
Chest Fever	Robbie Robertson	Sync
Evangeline	Robbie Robertson	Sync
Blue Christmas	Hayes/Johnson	Sync
Beat the Devil	Kristofferson	Master
O Glory	Rev. Gary Davis	Sync
Freight Train	Elizabeth Cotton	Master
Fight the Power (e.g.)	Isleys	Sync
Expressway to Your Heart	Soul Survivors	Master
Fried Hockey Boogie	Canned Heat	Master
Sansom and Delilah	Traditional?	
Caravan	Ellington/ Strayhorn?	

Director's Statement

(A post-production memo to the editors)

I set out to make a film about what music means to us. I wanted to do it in a different way from the one I made about what books mean to us. That is, not be the protagonist, but instead the chronicler. Observer. The person who tells the protagonist's story.

At first I thought I could do it by way of example—tracking Larry and Teresa and discovering what the music has meant and means to them. That the search for and the discovery of what made them tick would, in essence, open up a garden of associations for what music means to each of us in our way.

As I went along I followed their leads. I went to Tennessee because Teresa insisted I had to "see the dirt". I did and then wondered what she is really looking for there and wanted me to see.

Larry suggested I talk to Jorma, Jack, Phil Lesh, Jackson Browne, Garland Jeffreys, Rosanne Cash, and others that Larry worked with or admired or felt influenced him. I began to understand the responsibility that some of these musicians felt for passing on and keeping alive aspects of the music. They often talked that, whether Garland about Frankie Lyman, Rosanne about Tracy Nelson, Jorma about Rev. Gary Davis, Bromberg about Jorma, and so on.

Inspired, realizing how much of their musical associations connected to me, the audience, I went off the grid to round up some others, outside Larry's circle, to help provide context (Larry Taylor, Tracy Nelson), and still others to compare and contrast with Larry and Teresa (Scot and Suzie, Blind Boy, Rosanne and John both, Buddy and Julie Miller).

How to explain all this activity on my part, with no story in hand other than the one I might create by getting to know Larry and Teresa better?

Let's go back to the beginning. I emailed Steve Riggio, the morning after I first saw them play, that I had seen a show five minutes from my mother's, the Ardmore Music Hall, not knowing a thing about Larry and Teresa. They took me back to a time when music mattered and had a long form narrative to it; they took me back through record bins, marriage, work; triggered a reflection of my life, and to where I am now, sitting on the brink of sixty-three; and they did it all in the present, made it happen in the here and now. A musical journey. Colleen finished the night in tears, saturated with memories of her father and brother, who had loved the same music Larry evoked. Her narrative was different. But no less affected by the music.

A week later, when Steve and I had lunch and I asked him to help me finance a film about this, I said to him: Steve, for years you and I have talked round and round about all the books we read and what they meant to us at points in our lives, but it wasn't until I saw Larry and Teresa that I realized it wasn't the books, it was the music.

At that moment I understood that the film to be made about this, was not a film as a historian might or a researcher or bystander, not one that relied on archival footage or social

history, but one that moved forward in the present, like their act, by a passionate amateur via a personal expression that connected to others, who might feel the same way. The other guy at the record bin who you find out was at the same concert you were, or listened to the same radio show, or also knew the obscure records you knew. One to another. A film that could evoke that.

Leap forward, a year after starting to work on the film. I show several hours of stuff to an old editor friend, long since retired, who was passing through and stayed a day. I hadn't seen her in years. Afterwards she says to me: you shouldn't make a movie, just book theater space and travel around and talk to people about all this and show clips of the good parts like you did with me today.

The last thing she said, as we got up, she's approaching 70, was "Everyone in it is old. But that's not necessarily bad. I like it."

I knew this, of course, even if we all still seem young to one another and the players still do so to me because that is how I first saw them. (The story in the studio that Bill Payne tells: opening the door for "an old guy", and it turns out to be Eric Kaz). Yet "old" has been just wandering around the edges of my mind—even with deaths to Leon Russell and others, and the whole generation about to expire—just like a fly one swats away every few minutes. Could what is on film just be old folks, instead of people who once set the bar?

Isn't that in itself how life plays out?

I have always believed there was a window of people who came to consciousness 1967-1972 or so….1972, it's over more or less. Even we, these people, are on the brink of old.

Some of us though will feel we are always in the sweet spot because we grew up in the sweet spot: 13 in 1967, 18 in 1972. Perfect. You had to be a teenager then, when our brains are super impressionable and sponges and questioning, and the Vietnam War draft was in our faces, and our youthful questioning of everything was out of step with the times, and then created the times. It was a time where youth led.

All these old guys—some of whom won't be here much longer, another one checks out every week—out still doing their thing, more or less unchanged for 40-50 years. They put out and still do it well in some cases (Kim Simonds, Taj, The Stones, Jorma and Jack, maybe Bromberg, though I feel he's slipped), or go through the motions, but professionally (Garland, Larry Taylor, Tracy Nelson, Jackson Browne, maybe Bromberg these days).

Normally, a film like this would have someone a generation younger, like that Foo Fighters guy who is in every film, or even younger, an Adele or 40 year old celeb, Justin Timberlake, whomever, paying homage. *As you say, making us want to be part of that then.* But we don't need any of that….as John Leventhal says, he can hear all the strands of the 60s stuff still in all the Americana or Rock, or Pop or Alternative Adult or College.

We don't need people paying homage. We need people who were there, who want to pass something on:

Because Larry's act (and it is essentially his, his narrative, as great as Teresa is on stage and on record), and in fact, HIS WHOLE CAREER (from seeing The Rev. Gary Davis, Moby Grape, and Hot Tuna to playing with Dylan, Levon, Lesh), ***is*** the homage. Although he would not say this, because as an artist, for him, it is all in the music he loves and loves to create and play.

But the L&T act, like anyone who loves music, is as much about "listening" as it is about playing. Larry listened to Bill Keith do Caravan, Teresa listened to the Louvin Brothers, they all listened to a lot of the same things we did growing up, and they listen to one another on stage, harmonizing, or doing "Attics". Young people are listening now. Their choices instant and infinite.

Larry's inventiveness of taking what he listened to, and loved, and inventing new arrangements and songs, late in life, and even now, ongoing, in and of itself takes me back to what long form music-----albums, concerts, progressive FM radio formats 1968-1972 (it didn't last long, as Tracy Nelson says)----did and does. Inventiveness. Long Form. I think that is important. It *was* the music, however it always *is* about the journey, whatever form it takes. Not any one song. The narrative the music creates over time.

So one of the stories, abstract as it may seem, and if there is one, is the blossom has opened almost as the ice age is setting in. The new flower (Larry's music) is there, and it is as beautiful as all the varietals that have been bred before. THAT is the renewal….and why I felt seasonal imagery and other things that go along with it, can help play out some of this loss and renewal.

He may be a late bloomer, as Buddy Miller says in so many words.

But there are also Chrysanthemums at Christmas.

I imagine viewers will feel something based on his and her own experience in their own relationships in life. Larry says once they met Levon "Teresa and I have been playing together ever since" and maybe it wasn't until Levon died that the blossom opened. That old notion of a new birth which comes shortly after death.

As Colleen says, there's no children, no dog, no garden, nothing to raise or care for in their lives: there's only the music. And she goes further when she tells me it's this simple: He loves Her. And the expression of that is found in what they are doing together. Way back, it was the music, in each of them alone, and then together, that may have triggered the love, but perhaps now love has triggered the music.

Production Notes 8/5-8/6

Shoot 8/5-8/6 The Barn (Woodstock, NY) and Lincoln Center (NYC) notes:

C500 is all C-log

C300 is wide dynamic range (preset 8) as usual.

Both C300 and C500 have time code jams w/audio

The Barn Concert music recorded by John and also Brendan's sound files stereo pair, and also Pro Tools for at least back half.

Lincoln Center has John's tracks and also multi-track from Lincoln Center

From John:

"There was a point where I was making a lot of changes to piece together elements for a flexible post mix. Plus I did a recorder swap between the rehearsal and show…. So it would be good to have some notes of what is what…. Pretty much just for The Barn stuff, listening to Brendan's mix might be helpful too. Of course, just the points where Pro-Tools failed.

Crew:

Dave Huntley camera

Mark camera

Cenna camera

Gooch sound

Colleen camera and production assistance

Steve Carey production assistance

Scott the blogger ax100 camera at Lincoln center.

SPORTS & ENTERTAINMENT LAW ASSOCIATION

DELAWARE LAW SCHOOL

MARCH 31, 2017

FILM: LEGAL AND BUSINESS ISSUES IN THE MAKING OF "LARRY AND TERESA", A DOCUMENTARY FEATURE FILM

ALEXANDER MURPHY JR., ESQ.

OUTLINE

I. Introduction

II. Stages of Production of the Picture

III. Motion Picture Financing

IV. Distribution of Motion Pictures

V. Artist Agreement

VI. Consents/Releases/Licenses

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FILM: LEGAL AND BUSINESS ISSUES IN THE MAKING OF "LARRY AND TERESA", A DOCUMENTARY FEATURE FILM

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BACKGROUND INFORMATION

PRODUCTION OF MOTION PICTURES

I. Introduction: The production of motion pictures typically has its genesis in a literary work, story line, life story, or scenario conceived for or acquired by the producer. Production of a motion picture involves a number of related activities that might, in the aggregate, require up to 12 months or more to complete and which may be separated into four distinct phases: development, pre-production, principal photography and post-production.

II. Stages of Motion Picture Production

A. Development: During the development stage, a producer acquires the underlying literary or other material for a motion picture project, either outright or through an option to acquire such rights. The producer will then cause a screenplay to be written based on the literary material if it is not already in screenplay form. The screenplay must be sufficiently detailed to provide the producer and other financial participants with enough information to estimate the cost of producing the picture. During the development stage, tentative commitments may also be obtained for a director, principal cast members and other creative personnel, a proposed production schedule and budget are prepared, and financing is obtained for the production of the picture.

B. Pre-Production: Once a screenplay is finalized and financing has been obtained, the film production cycle enters a pre-production phase, which involves engaging the creative personnel, including the producer, director and principal cast members, to the extent not committed previously; finalizing the shooting schedule and the budget; obtaining insurance; securing completion guarantees, if necessary; establishing shooting locations and securing any necessary studio facilities and stages; and preparing for the actual commencement of photography. This phase typically extends from one to four months.

C. Principal Photography: Principal photography, the actual filming of a picture, is the most costly stage of the production process. Principal photography generally takes from four to twelve weeks or more to complete depending on a number of factors. Bad weather at locations,

the illness of a cast or crew member, disputes with local authorities or labor unions, a director's or producer's decision to re-shoot scenes for artistic reasons, and other events can seriously delay the scheduled completion of principal photography.

D. Post-Production: During post-production, the film is edited. Opticals, dialogue, music and special effects are added. The picture is synchronized to produce the cut negative from which a protective duplicate and the release prints are made or, if filmed in the high-definition (HD) digital format, to deliver a hi-definition, digital video master of the picture Depending upon the complexity of the film, post-production may take from four to eight months or more.

MOTION PICTURE FINANCING

I. Types of Film Financing

A. Studio Financing

B. Independent Producer

C. Co-Production Agreement

D. Independent Film

1. Private Equity

2. Negative Pick-Up Agreement

3. Foreign Pre-Sales

II. New/Alterative Financing Devices

A. Tax Incentives

B. Foreign Sales Projections

C. Facilities Equity Agreement

DISTRIBUTION OF MOTION PICTURES

I. Studio/Distributor Distribution

A. Marketing

B. Distribution Activities

II. Self-Distribution:

A. Producer Distribution

B. Method of Distribution

C. P&A Distribution Fund.

DOCUMENTARY MOTION PICTURES

I. The Rise in Popularity of Documentary Motion Pictures

II. Alterative Marketing and Distribution Plans

ARTIST AGREEMENT

I. Basic Terms of Talent Agreement

A. Grant of Rights

B. Term of Agreement

C. Services of Artist

D. Compensation

E. Profit Participation

F. Credit

G. Expenses

H. Ownership

I. Name and Likeness

J. Creative Control/Approval Rights/Consultation Rights

K. Accounting/Examination of Books and Records

L. Warranties/Indemnities

M. No Equitable relief

N. Assignment

O. Venue and Jurisdiction

P. Additional Documents

Q. Entire Agreement

II. Specific Terms of "Larry and Teresa" Agreement

A. Grants of Rights

1. Non-exclusive right in perpetuity to incorporate Artist's life story in and to produce a feature-length, documentary film tentatively entitled "Larry and Teresa" ("Picture") about Artist's tour ("Tour") in support of their first album entitled "Larry Campbell and Teresa Williams", and through the recording and completion of Artist's currently untitled second album to be recorded, and their life and work, subject to all of the terms and conditions of this Agreement.

2. All upcoming appearances and concerts in connection with the Tour of Artist and/or Artist's musical group ("Group"), including rehearsals prior to the Tour, portions of the Group's appearances in concert during the Tour, and after the Tour, interviews with the Group members away from the Tour and at home and at other places along with friends and family of Group for a "behind the scenes" and "day in the life of" portion of the Picture.

3. Any and all audio-only products excluded.

B. Artist's Approval Rights

1. Access to private areas of venues, rehearsals, and rehearsal spaces.

2. The use of all material and information provided to Producer by Artist.

3. Any and all dates of filming of performances and interviews.

4. The use of Artist's name and likeness in the exploitation of the picture.

5. Artist's expenses to be mutually agreed upon.

6. The final audio-mix of the footage containing Artist's performances.

C. Artist's Consultation Rights

1. Film footage containing Artist's performances.

2. The rough-cut and final cut of the picture.

CONSENTS/RELEASES/LICENCES

I. Appearance Release

II. Audience Release

III. Copyright Release

IV. Film Footage Release

V. Interviewee Release (Off and on camera)

VI. Location Agreement

VII. Master Use Agreement

VIII. Materials Release (Photos, letters, etc.)

IX. Performer Release

X. Synchronization License

XI. Trademark Release

FAIR USE/TRANSFORMATIVE USE DEFENSE

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ETHICS PANEL

NAVIGATING ETHICAL CHALLENGES FOR SPORTS & ENTERTAINMENT LAWYERS

Mary E. Cavallaro, Esq.
Chief Broadcast Officer
Screen Actors Guild / American Federation of Television and Radio Artists
New York, NY

An Ethics presentation on the subject of Sports and Entertainment law should always begin with the explanation that there are no particular sports or entertainment laws as one might define, for example, trust and estates law or tort law. Rather, those attorneys who choose to call themselves sports and/or entertainment lawyers are simply practicing law in the sports and entertainment industries. Today's presentation will focus on two distinct but wide-ranging ethical concerns that face lawyers entering into the practice of sports and entertainment law: competence and conflict of interest.

I. COMPETENCE

Rule 1.1. Competence[1]: A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Many very good lawyers might be very familiar with the sports and entertainment industries, but these lawyers may not be considered qualified experts in any or all of the areas of law that touch those industries. This distinction may seem like one without a difference, but it is one that leads many a lawyer down the path of giving advice to a client based on a knowledge of the industry but without an expertise in the area of the law in question for that client. Equally important, however, is the idea that those who choose to advise clients on matters of law in the Sports and Entertainment industries without a working knowledge of those industries could be denying their client the benefit of the significance of that expertise. The lure of an exciting and glamorous law practice has led

[1] *Pennsylvania Rules of Professional Conduct. Adopted by Order of the Supreme Court of Pennsylvania dated October 16, 1987 effective April 1, 1988. Text contains recent revisions & amendments which became effective January 1, 2005, January 6, 2005, March 17, 2005, April 23, 2005, July 1, 2006 and September 20, 2008.*

many a lawyers to walk the competence tightrope. A careful lawyer would choose to walk that tightrope with the assistance and/or advice and consultation services of lawyers skilled in the relevant areas of the law as well as those who work in the industries.

Case Study #1: Joe Tort, Esq. is a well-known plaintiff-side attorney based in Pennsylvania specializing in medical malpractice. Joe has successfully litigated and/or settled claims against major hospitals for many clients. His clients sing his praises. Joe's nephew Steve Anchorman has been working for five years as a television anchor/reporter. Steve started in Lubbock, Texas and then moved up the market ladder to Columbus, Ohio. Steve now has interest from ABC Network News. Steve has been talking to the ABC Talent Acquisitions VP who has now involved ABC in-house counsel to present Steve with an offer to anchor for ABC News in New York. Steve has never had an agent, and he is not interested in paying anyone 10% of his salary to review his contract. Steve calls his uncle Joe and asks him to look at his contract and give him advice.

Questions:

1. Is Joe competent to handle a review of Steve's employment contract with ABC?
2. Is Joe competent to negotiate the terms of that contract?
3. Let's assume that Joe has very little experience with employment contracts, what kind of questions would you have for Joe before being satisfied that Joe is competent to handle this matter?
4. Let's assume that Joe has reviewed employment contracts as part of his malpractice practice and is therefore familiar with these contracts, would you still have concerns?
5. What kind of preparation should Joe do to meet the competency requirements of the PA Rule?
6. Besides Competency, are there any other concerns that you would have with Joe taking on this matter?

Case Study #2:

Susan Securities, Esq. has an extensive corporate law practice based in Delaware. She is admitted to practice in Pennsylvania as well. Susan is dropping her son off at school and runs into the head of the PTA Alice who has been asking Susan to volunteer for the school auction. Susan has to turn her down, because she will be out of town for work. Alice takes the opportunity to ask Susan if she might look at the contract that Alice's husband just received to option the screenplay that he has been writing for ten years.

Questions:

1. Should Susan agree to look over the agreement?
2. What questions might Susan ask before making this decision?
3. What kind of preparation might Susan do if she were to accept this work?
4. Aside from competence, what other concerns might Susan have about taking on this work?

II. CONFLICTS OF INTEREST[2]

Rule 1.7 Conflict of Interest: Current Clients

a. Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

1. the representation of one client will be directly adverse to another client; or

2. there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

b. Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

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1. ***the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;***
2. ***the representation is not prohibited by law;***
3. ***the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and***
4. ***each affected client gives informed consent.***

The Sports and Entertainment industries provide a wealth of opportunity for the study of ethical considerations, but perhaps no more so than with the cannons related to conflict of interest. Lawyers looking to represent clients involved in sports and entertainment with conflict of interest concerns will more often hear the response, "Likely a conflict, but everyone does it" than "turn down the client." It is not uncommon for attorneys to have several actor clients working on the same project; for a lawyer to be representing the producer and perhaps the writer and others on the project. Fee structures are often the subject of some scrutiny, because lawyers have sought compensation based on a percentage of their client's income or revenue. The following scenarios will explore some of the various ethical questions, concerns and dilemmas involving conflicts of interest.

Case Study #1:

Ari Attornagent has a legal practice based out of his 10,000 square foot home in Gladwyne, PA and handles employment contract negotiations, among other entertainment related matters. Ari has a client, Sally Lead, a news anchor employed at WRC-TV in Washington, DC. Sall has worked for the station for over 30 years. Ari has another client at WRC-TV, Susie Scoop, who is a reporter who started at the station just two years ago after her first job in Hagerstown, MD. Employer calls Ari and tells him that he is interesting in promoting Susie to the main anchor position to replace Sally. However, the employer tells Ari not to tell Sally, because she does not yet know that "the station is going in another direction."

Questions:

1. Can Ari represent Sally? Can Ari represent Susie?
2. If not, is there anything that can be done to address any actual or perceived conflicts?

Case Study #2:

Dave L'Employ is attorney with the firm of Weir, Knott, Flashie, LLP based in Philadelphia, a well-known boutique Labor and Employment practice whose clients include several major media companies. These companies like the idea of using a distinguished Philadelphia firm. Dave's firm also has a hearty business practice, and Dave along with several other attorneys from the firm have also handled several other entertainment matters including securing and optioning life story rights. One of the attorney's at the firm, Guy Ip, has a client, Martha Storyrights, who has obtained the life story rights for a woman, Mary Marin who has an amazing story of survival of combat in Iraq. Guy runs into Dave in the firm lunchroom and strikes up a conversation during which Dave tells Guy about his ongoing negotiations on behalf of Fox Studios with the WGA. Guy asks Dave if he would mind pitching the project to the lawyer from Fox when he sees him next.

Identify the conflict issues involved in this scenario as well as ways to address those conflicts.

PENNSYLVANIA RULES OF PROFESSIONAL CONDUCT[3]

The following includes a portion of the Pennsylvania Rules of Professional Conduct related to Competence and Conflict of Interest as well as a portion of the notes related to the discussion of Ethics for today's panel. For a complete listing of the applicable rules and notes, please refer to the Rules.

Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Comment:

Legal Knowledge and Skill

1. In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.
2. A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide

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adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

3. In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impracticable. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill considered action under emergency conditions can jeopardize the client's interest.
4. A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation

5. Competent handling of particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

Retaining or Contracting With Other Lawyers

6. Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. See also Rules 1.2, 1.4, 1.6, and 5.5(a). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience and reputation of the nonfirm lawyers; the nature of the services assigned

to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

7. When lawyers from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See Rule 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Maintaining Competence

8. To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Rule 1.7 Conflict of Interest: Current Clients

Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

1. the representation of one client will be directly adverse to another client; or
2. there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
3. Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
4. the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
5. the representation is not prohibited by law;

6. the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
7. each affected client gives informed consent.

Comment:

General Principles

1. Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For the definition of "informed consent," see Rule 1.0(e).
2. Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent. The clients affected under paragraph (a) include the clients referred to in paragraph (a)(1) and the clients whose representation might be materially limited under paragraph (a)(2).
3. A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

4. If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of paragraph (b). See Rule 1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. See Rule 1.9. See also Comments [5] and [29].
5. Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 1. 16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See Rule 1.9(c).

Identifying Conflicts of Interest: Directly Adverse

6. Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony

will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

7. Directly adverse conflicts can also arise in transactional matters. For example, if lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.
8. Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Personal Interest Conflicts

10. The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's

representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 5.8 for specific Rules that prohibit or restrict a lawyer's involvement in the offer, sale, or placement of investment products regardless of an actual conflict or the potential for conflict. See Rule 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm).

11. When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., as parent, child, sibling or spouse, ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rule 1.10.
12. A lawyer is prohibited from engaging in sexual relationships with a client unless the sexual relationship predates the formation of the client-lawyer relationship. See Rule 1.8(j).

Interest of Person Paying for a Lawyer's Service

13. A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with

the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations

14. Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph 1.7(b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.
15. Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).
16. Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client. In addition, decisional law in some states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest.
17. Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a

proceeding before a "tribunal" under Rule 1.0(m)), such representation may be precluded by paragraph (b)(1).

Informed Consent

18. Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 1.0(e) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comment, paragraphs [30] and [31] (effect of common representation on confidentiality).
19. Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Confirming Consent

20. Paragraph (b) requires the lawyer to obtain the informed consent of the client to a concurrent conflict of interest. The client's consent need not be confirmed in writing to be effective. Rather, a writing tends to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing. See also Rule 1.0(b) (writing includes electronic transmission).

Revoking Consent

21. A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the lawyer would result.

Special Considerations in Common Representation

29. In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great the multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.
30. A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must

be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

31. As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule 1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.
32. When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 1.2(c).
33. Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 1.16.

Organizational Clients

34. A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.
35. A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

Rule 1.8 Conflict of Interest: Current Clients: Specific Rules

a. A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

1. the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
2. the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
3. the client gives informed consent in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

b. A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.
c. A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close familial relationship.
d. Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.
e. A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
    1. a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
    2. a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.
f. A lawyer shall not accept compensation for representing a client from one other than the client unless:
    1. the client gives informed consent;

2. there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
3. information relating to representation of a client is protected as required by Rule 1.6.

g. A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

h. A lawyer shall not
   1. make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or
   2. settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

i. A lawyer shall not acquire a proprietary interest in a cause of action that the lawyer is conducting for a client, except that the lawyer may:
   1. acquire a lien authorized by law to secure the lawyer's fee or expenses; and
   2. contract with a client for a reasonable contingent fee in a civil case.

j. A lawyer shall not have sexual relations with a client unless a consensual relationship existed between them when the client-lawyer relationship commenced.

k. While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

Comment:

Business Transactions Between Client and Lawyer

1. A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for

example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. See Rule 5.7. But see Rule 5.8 for specific Rules that prohibit or restrict a lawyer's involvement in the offer, sale, or placement of investment products regardless of an actual conflict or the potential for conflict. **Rule 1.8** also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

2. Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See Rule 1.0(e) (definition of "Informed consent").

3. The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of paragraph (a), but also with the requirements of Rule 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.7 will preclude the lawyer from seeking the client's consent to the transaction.
4. If the client is independently represented in the transaction, paragraph (a)(2) of this Rule is inapplicable, and the paragraph (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires.

Use of Information Related to Representation

5. Use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty. Paragraph (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Paragraph (b) prohibits disadvantageous

use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.2(d), 1.6, 1.9(c), 3.3, 4.1(b), 8.1 and 8.3.

Literary Rights

9. An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and paragraphs (a) and (i).