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**Paving the Road between NCAA Stardom and an NFL Career: A University
Advisory Panel Perspective**

**PAVING THE ROAD BETWEEN NCAA STARDOM AND AN
NFL CAREER:
A UNIVERSITY ADVISORY PANEL PERSPECTIVE**

Mike Rogers*

Additional Commentary by Kelli Masters[†]

INTRODUCTION

You, a rising junior, are a talented Division I football student-athlete monitoring your phone calls. Caller I.D. reveals that one of the callers is a famous football agent who wants to recruit you to hire him. A series of questions is raised by this call including: (i) How do I interact with agents and protect/maintain my NCAA eligibility to compete?; (ii) Should I leave early for the NFL draft?; (iii) In hiring an agent, what are some of the important dos and don'ts?; and (iv) When my agent submits a written representation agreement for signature, how do I improve and complete that contract?

I have been addressing these questions and related matters for Baylor University football student-athletes (and their families) since the late 1980s as chair of Baylor's Pro Sports Counseling

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Panel (the “Panel”).¹ As examples, I have worked with Santana Dotson, Fred Miller, Gary Baxter, Jason Smith, and Robert Griffin, III (“RG3”). This article seeks to help a much broader audience - knowing that some professional prospects do not have access to a Panel or expert NCAA compliance staff on their campuses. I also hope that this piece helps educate new advisors.²

NCAA Bylaw 12, the National Football League Players Association (“NFLPA”) Regulations, and the Uniform Athlete Agents Act (“UAAA”) all govern interactions between athletes and agents.³ With three different bodies of law governing this unique process, all involved must proceed with caution and utmost awareness of the implications of these interactions. Also, it is important to know that some universities have agent regulations, which sometimes include a mandatory registration process.⁴

My advice, and this article, is divided into four parts. Part 1 discusses creating and developing a plan for interacting with an agent without jeopardizing collegiate eligibility. Part 2 offers advice on determining whether to stay at the collegiate level or to go on to the NFL. Part 3 provides an explanation of the agent selec-

¹ *National Collegiate Athletic Association, 2015-2016 Div. I Manual, Bylaw 12.3.4* (“it is permissible for an institution to have an authorized institutional professional sports counseling panel”).

² If you are new to the professional sports advisory business, do not be disappointed if some student-athletes do not follow your advice.

³ *National Collegiate Athletic Association, 2015-2016 Div. I Manual, Bylaw 12*, available at <http://www.ncaapublications.com/productdownloads/D116JAN.pdf>. *NFLPA Regulations Governing Contract Advisors*, NFL PLAYERS ASSOCIATION, (June 2012)

http://nflparesources.blob.core.windows.net/mediaresources/files/PDFs/SCAA/2012_NFLPA_Regulations_Contract_Advisors.pdf. UNIF. ATHLETE AGENTS ACT 7 U.L.A. 789 (2000).

⁴ See, e.g., Athlete-Agent and Advisor Program, BAYLOR ATHLETICS, <http://www.baylorbears.com/compliance/bay-compliance-agents.html> (last visited Mar. 2, 2016); Agent Advisor Registration, THE UNI. OF OKLAHOMA INTERCOLLEGIATE ATHLETICS, http://www.soonersports.com/ViewArticle.dbml?&DB_OEM_ID=31000&ATC_LID=208805731 (last visited Mar. 22, 2016).

tion process and suggestions for selecting an agent who is a NFLPA Contract Advisor. Part 4 sets forth suggested improvements to the current NFLPA Standard Representation Agreement and gives explanations of some contract provisions. Overall, this article is written for you, the professional football prospect. However, with this article, I seek to give insight to prospects, parents of professional prospects, other trusted advisors, and agents alike so that all may benefit from understanding the entirety of the process.⁵ You must have a plan in place in order to successfully navigate the process of becoming a professional athlete.

This article contains an unusual feature in that, at my invitation, sports lawyer and experienced NFLPA contract advisor Kelli Masters has given her input part-by-part. As an industry practitioner, her comments add value to this article. You will note that she reinforces some of my points. She also provides supplemental insights and at times, to my delight, disagrees with me. I hope that this article provides you the tools to develop your own plan in pursuit of a professional football career.

PART 1 – INTERACTION WITHOUT LOSING ELIGIBILITY

A. Rule #1

In order to interact properly with agents, you must become familiar with NCAA Bylaw 12.3, which regulates agent activity.⁶ A review of Bylaw 12 reveals what most rules educators⁷ call Rule

⁵ For more information on the infractions process see my article in the Seton Hall Law Review, which garnered media attention: Mike Rogers & Rory Ryan, *Navigating The Bylaw Maze in NCAA Major-Infractions Cases*, 37 SETON HALL L. REV. 749 (2007).

⁶ *National Collegiate Athletic Association*, 2015-2016 Div. I Manual, *Bylaw* 12.3.

⁷ At Baylor University: Josh Lens, Assistant Athletic Director of Compliance; Keith Miller, Associate Athletic Director of Compliance; and Mabrie Hermann, Director of Compliance are the rules educators in the Compliance Office.

#1, which is “do not accept anything of value from an agent.”⁸ While most student-athletes remain in compliance with this rule until their eligibility is exhausted, this rule has been violated in spectacular fashion with severe consequences. Take, for example, Marcus Camby.⁹ While starring at the University of Massachusetts, Camby:

became deeply entangled in the seamy world that exists behind the scenes of big-time college athletics. The agents supplied him with money, jewelry, rental cars and prostitutes, which he willingly accepted and in some cases requested. Two agents, John Lounsbury of Wolcott, Conn., and Wesley Spears, a lawyer in Hartford, Camby’s hometown, believed, or at least hoped, that Camby would allow them to represent him when he turned pro if they lavished gifts on him as a collegian; they were left in the lurch, feeling like jilted lovers, when he exited UMass after his junior year and signed with a high-powered agency, Pro-Serv, which helped him negotiate a three-year, \$8 million contract as the No. 2 pick in the 1996 NBA draft.¹⁰

Discovery of these violations caused all of his basketball records, as well as the University of Massachusetts’ trip to the NCAA Final Four in 1996, to be vacated.¹¹ Thus, the NCAA forced the university to send the trophy back and to take the banner down from the

⁸ *National Collegiate Athletic Association*, 2015-2016 Div. I Manual, *Bylaw* 12.3.1.2.

⁹ Although a collegiate basketball player, Camby’s example is equally applicable to football student-athletes because the basketball and football rule are the same.

¹⁰ Phil Taylor & Don Yaeger, *Tangled Web Marcus Camby was Both Victim and Villain in His Illicit Dealings with Agents While at UMass*, *SPORTS ILLUSTRATED*, Sept. 15, 1997, at 66.

¹¹ *Id.*

rafters of the gym.¹² Additionally, the university had to pay back the NCAA tournament revenue of \$151,000.¹³

As a student-athlete, you must also be aware of agents that bend, and often times break, the NCAA Bylaws governing athlete-agent interactions. One infamous agent, William H. "Tank" Black, founded a sports agency called Professional Management Incorporated and soon became involved in a scheme to provide loans to college players before they were eligible for the draft.¹⁴ Within a single year, "Tank" Black went from setting the record for having the most first-round picks in the NFL draft represented by a single agent to sitting behind federal bars for nearly seven years.¹⁵ The charges against "Tank" Black ranged from embezzling, money laundering, obstruction of justice, securities fraud, and illegally bribing college players for business.¹⁶ Black's catastrophic fall from prominence serves as a cautionary tale for both professional prospects and rising sports agents.

Parents and Rule #1

Another huge case reminds us that Rule #1 also applies to benefits being accepted by family members. Yahoo! Sports placed the University of Southern California in the national spotlight by alleging that its investigation revealed information indicating that Reggie Bush and his family accepted financial benefits worth more than \$100,000 from prospective marketing agents.¹⁷ Ultimately, the NCAA Committee on Infractions severely penalized the Uni-

¹² *Id.*

¹³ Eric Konigsberg, *Marcus Camby Has Nobody to Play With*, N.Y. TIMES (Apr. 22, 2001), <http://www.nytimes.com/2001/04/22/magazine/marcus-camby-has-nobody-to-play-with.html>.

¹⁴ *Meet William H. "Tank" Black*, THE TANK BLACK STORY, <http://www.thetankblackstory.com/author.html> (last visited Mar. 4, 2016).

¹⁵ *Id.*

¹⁶ WILLIAM H. BLACK, *TANKED! THE TANK BLACK STORY* (2d ed. 2009).

¹⁷ Charles Robinson & Jason Cole, *Cash and Carry*, YAHOO! SPORTS (Sept. 15, 2006), <https://sports.yahoo.com/ncaa/football/news?slug=ys-bushprobe>.

versity of Southern California and Reggie Bush lost his Heisman Trophy.

Having started with examples of egregious violations, do not think that my message is to not sweat the small stuff. NCAA rules compliance starts with the small stuff. When I began giving advice to Coach Grant Teaff's Baylor Bear team over 25 years ago, I mentioned not accepting a free soft drink.¹⁸ I said, "Don't accept anything of value—even a Dr. Pepper, a meal, or a ride home!" In that same vein, a Power 5 school once lost the services of a top defensive back for a game because he had gone to brunch to see a former teammate who was accompanied by his agent (the agent paid for the three brunches). The student-athlete ate only one muffin but had to reimburse a charity in the amount of \$30 - the cost of the brunch! Additionally, he was required to sit out a game as a penalty, plus he suffered embarrassing publicity. Do not think the penalty is always small. For example, if agent misdeeds involving huge dollars are discovered while you are still playing in college today, you will be declared ineligible immediately. When huge dollars are involved, reinstatement by the NCAA is not available.¹⁹

Rule #1 Includes Loans

Also, do not accept a loan from an agent!²⁰ That is a common hook dangled by agents.²¹ One of the agents in the Bush case

¹⁸ Support from the head coach is vital to the credibility of a Panel. Grant Teaff supported our Panel from the beginning.

¹⁹ Reinstatement Guidelines relating to a benefit from an agent provide: "For violations in which the value of the benefit is greater than \$1,000, the committee indicated that the minimum withholding condition applied should so sit a season, charge a season and repayment, up to permanent ineligibility." *NCAA Division I Student-Athlete Reinstatement Guidelines*, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,

http://www.ncaa.org/sites/default/files/Dec2015_DISAR_Guidelines20160204.pdf (last visited Mar. 22, 2016). Agent violations are considered more serious than general extra benefit violations.

²⁰ *National Collegiate Athletic Association*, 2015-2016 Div. I Manual, *Bylaw* 12.3.1.2.

²¹ See "Tank" Black discussion *supra* Part I.A.

told the media that some of the cash amounts in controversy were just loans not realizing that a loan was a violation too.

In fact, a loan against your potential future earnings as a pro (from anyone) is not allowed, except for the narrow exceptions discussed below.²² One of my all-time favorite Baylor players is Santana Dotson. After Baylor, he played for the Tampa Bay Buccaneers (1992 NFL Defensive Rookie of the year) and picked up a Super Bowl ring with the Green Bay Packers. During college, Santana came to see me during the summer before his junior year in 1990. He wanted to know if he could go to a bank and borrow spending money for the school year against his large potential professional earnings from a banker who was not a Baylor booster. Remember, this was a quarter of a century before full cost of attendance scholarships. I said no because that would violate Bylaw 12, which I soon confirmed from our compliance staff. He then surprised me by pointing out that he could borrow money to purchase NCAA Disability Insurance with his pro contract being the source of repayment. I smiled thinking that he should be a lawyer. Fortunately, I had the answer. The loan authorized as part of the NCAA Exceptional Student-Athlete Disability Insurance Policy program was, and still is, an exception to the general rule of no loans anticipating payback from professional earnings.²³ That insurance program, which was established for football in 1990, still exists including the loan availability.²⁴ The program was, in large part, created because agents were secretly loaning money to acquire secret disability policies as a hook to sign still eligible players. The loan professionalized the player who thus, unknown to the university, competed while ineligible.²⁵

²² *National Collegiate Athletic Association*, 2015-2016 Div. I Manual, *Bylaws* 12.1.2.1.6 and 13.2.1.1.

²³ *See Student-Athlete Insurance Programs*, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, <http://www.ncaa.org/about/resources/insurance/student-athlete-insurance-programs> (last visited Mar. 2, 2016).

²⁴ Santana was the first (now of many) Baylor student-athletes to obtain disability insurance through the NCAA.

²⁵ Notice that Santana followed the NCAA slogan of “ask before you act.” *See* discussion of the Andre Davis matter *infra* p. 7 for another example.

The insurance carrier for the NCAA is Tokio Marine HCC – Specialty Group. It has its own NFL draft experts and you must be projected to be no lower than a second round pick to be offered coverage. If you qualify for coverage you also qualify for an NCAA arranged bank loan from U.S. Bank, N.A. in Cincinnati. The Compliance Office at Baylor works with the carriers' administrator to learn who is eligible for coverage. You should check with the Compliance Office staff at your school to see whether they offer a similar service.

The media has reported that some athletics departments are using Student Assistance Funds to pay all or part of a premium on a disability policy or loss of value policy.²⁶ One example is Texas A&M paying a premium in excess of \$50,000 to keep tackle Cedric Ogbuehi from turning pro early.²⁷ This is apparently not a violation, but in my opinion is excessive and contrary to the NCAA amateurism/collegiate model. While the NCAA-sponsored loan program is an exception too, it is more palatable because the student-athlete ultimately pays for his coverage from his earnings

²⁶ Marc Tracy, *Insurance Doesn't Eliminate Risk for Top College Athletes Who Forgo Draft*, N.Y. TIMES, May 8, 2015, at D6. The increasingly popular loss-of-value insurance can be found at: *National Collegiate Athletic Association*, 2015-2016 Div. I Manual, *Bylaw* 12.1.2.4.4. Additionally, more information on it is discussed in an article co-written by Josh Lens of the Baylor Compliance Office. Jill W. Lens and Joshua Lens, *Insurance Coverage for Elite Student Athletes*, 84 MISS. L.J. 127 (2014). Notably, last year there was a \$3 million payout to Ifo Ekpre-Olomu, a cornerback at Oregon projected to be the number 12 pick, after he fell to a seventh-round pick in the draft. *Reports: Ex-Duck Collects Record \$3M Insurance Claim After Draft Fall*, FOX SPORTS (Oct. 19, 2015), <http://www.foxsports.com/nfl/story/oregon-ducks-ifo-ekpre-olomu-collects-3-million-loss-of-value-insurance-cleveland-browns-101915>. This is the highest payout collected on a loss-of-value policy to date. *Id.*

²⁷ Bruce Feldman, *How Texas A&M Paid Over \$50,000 to Get Cedric Ogbuehi Back for 2014*, FOX SPORTS (July 16, 2014), <http://www.foxsports.com/college-football/story/texas-am-aggies-paid-nearly-60-grand-top-nfl-prospect-cedric-ogbuehi-071614>.

as a professional. The loan frees him from undue agent influence and serious rule violations, which are greater evils.²⁸

There are other helpful regulations and laws. The NFLPA regulations for Contract Advisors reinforce NCAA legislation in that § 3B(2) prohibits inducements.²⁹ A violation may lead to decertification, which is like disbarring the agent.³⁰ The Uniform Athlete Agents Act also prohibits inducements.³¹ Such conduct may lead to a fine or criminal charges.³² Additionally, in Texas, sports agents have been required to register with the Texas Secretary of State since 1987. A sports agent whose activities compromised the college eligibility of Texas Christian University tailback Andre Davis was fined \$16,500 by the state of Texas for violating the athlete-agent law.³³ The fine is the largest levied against a sports agent by the Secretary of State since the statute went into effect in 1987.³⁴ The agent, Jeffrey Newport of Houston, was suspended from operating as a sports agent in Texas for two years.³⁵ Newport, 40 years old, was cited for buying a \$250,000 disability insurance policy for Davis the day after he finished his junior season at TCU in 1994.³⁶ Newport also was cited for providing Davis with money and “other things of value.”³⁷ Under recently approved changes to the UAAA, agents may soon be required to register

²⁸ For an article that provides excellent insight into the availability and effects of insurance coverage for student-athletes see Jill W. Lens and Joshua Lens, *supra* note 26.

²⁹ See *NFLPA Regulations Governing Contract Advisors*, *supra* note 3.

³⁰ See *id.*

³¹ See UNIF. ATHLETE AGENTS ACT, *supra* note 3.

³² See *id.* at §§ 15-16.

³³ Kevin O’Hanlon, *Agent Fined for Giving Money to TCU Star*, ASSOCIATED PRESS (Jan. 19, 1996), <http://www.apnewsarchive.com/1996/Agent-Fined-for-Giving-Money-to-TCU-Star/id-586b244f915f1034697a4c166adbd2a8>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

with a centralized agency, which would share detailed information on the agent across state lines.³⁸

B. Rule #2

Rule #2 is: “No agreements with an agent while maintaining collegiate eligibility.”³⁹ Do not agree to allow an agent to represent you in writing or orally. Doing so will jeopardize your eligibility and your scholarship.⁴⁰ The prohibition applies even if it is an agreement for representation in the future or if payment for current services is to be deferred.⁴¹ At Baylor, we recently found out that some agents tell our student-athletes that “verbal commitments” in recruiting are permissible under the NCAA Rules.⁴² According to our compliance staff, that is not true. Agent conduct is governed by a different set of rules.

The presumed penalty for violating Rule #2 is permanent ineligibility.⁴³ In nearly all cases one has professionalized himself.

Relatedly, do not allow an agent to perform tasks or provide services for you that an agent typically provides for a football client, such as talking to a professional team on your behalf or set-

³⁸ *Revision to Sports Agent Act That Protects NCAA Athletes Get Approved*, ESPN, <http://espn.go.com/espn/print?id=13263390> (last visited Mar. 4, 2016). (“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.”).

³⁹ *National Collegiate Athletic Association*, 2015-2016 Div. I Manual, *Bylaw* 12.1.2(g).

⁴⁰ *National Collegiate Athletic Association*, 2015-2016 Div. I Manual, *Bylaw* 12.3.1.

⁴¹ *National Collegiate Athletic Association*, 2015-2016 Div. I Manual, *Bylaws* 12.3.1.1 and 12.3.1.2.

⁴² It is important to note that NCAA legislation often uses the word “verbal” to mean “oral.” Do not let this language confuse you. Written *and* oral commitments are both prohibited.

⁴³ *National Collegiate Athletic Association*, 2015-2016 Div. I Manual, *Bylaw* 12.1.2.

ting up a tryout. Even if you deny the existence of a representation arrangement, the agent relationship may be inferred from the facts.⁴⁴

Talking to an Agent

The “NCAA Educational Memorandum” referenced below is correct in that one may talk to an agent.⁴⁵ However, the best practice when you see an agent’s name on your Caller I.D. is to let the call go to your voicemail. Be polite upon returning the agent’s call and ask the agent to only contact you through your university’s compliance staff.⁴⁶ Why? The compliance staff wants to help you avoid violations and will ensure that all interactions and conversations with an agent are made according to all applicable rules and regulations.

Also, if you are having an in-person discussion, someone may see and report your conversation with an agent perhaps embellishing it or misunderstanding what was happening, e.g., “I saw Agent X and Junior Football Star (you) talking in the stadium parking lot and Junior Football Star accepted an envelope from Agent X. Isn’t that a violation?” Per NCAA requirements, the school’s compliance staff must investigate. And, you may be withheld from competition during the investigation. On the other hand, if you limit your conversations with agents to agent days or agent interview sessions supervised by the compliance staff or a Panel member, you will avoid the potential hassle caused by an inaccu-

⁴⁴ See Chris Howard and Steve Mallonee, *Information Regarding the 2015 National Football League (NFL) Draft, Tryouts and Agents*, NCAA (Nov. 28, 2014),

<https://www.ncaa.org/sites/default/files/2014%2BDivision%2BI%2BNFL%2BEducational%2BMemo.pdf>. See *National Collegiate Athletic Association, 2015-2016 Div. I Manual, Bylaw 12 Official Interpretations*. See also *Oliver v. Nat’l Collegiate Athletic Assoc.*, 920 N.E.2d 203, 206 (Ct. Com. Pl. 2009).

⁴⁵ See *infra* Part 2.A.

⁴⁶ Perhaps you should return the call in the presence of a compliance staff member.

rate, (e.g., the envelope was the agent's resume or even an intentionally false, report).

Have a Plan

Protecting your eligibility requires knowing and following the rules so you can complete your third season and have the option of returning for a fourth. A prominent example: RG3, his family, and Baylor's compliance staff established a plan and followed it. The plan included NCAA rules education sessions followed by appropriate action. On one occasion, Mrs. Griffin opened a letter and found cash with a request for Robert's autograph. She turned the cash over to Baylor's compliance staff. The dollars were returned accompanied by a cease and desist letter. Robert participated in supervised agent days. Mrs. Griffin attended an informational session at the Alamo Bowl conducted by the compliance staff for parents of team members. I met her that day. The final stage, which was after the season ended, comprised of lengthy interviews at Baylor's athletics facility with top agents in part selected from earlier supervised meetings. Two members of the compliance staff and the chair of the Panel (me) monitored these interviews. His parents and then-fiancé (now wife) were also present and actively participated.

I have mentioned both the university's compliance staff and its Pro Sports Counseling Panel. They can be valuable sources of information and protection. Additional suggestions follow. Also, see the NCAA Educational Memorandum referenced below.⁴⁷

Compliance Office

Get to know and work with the institution's compliance staff. Circumstances may occur, or be proposed, that require an interpretation of NCAA legislation, which that staff is charged with providing to you. And, they will very much want to help you avoid amateurism violations. Perhaps the office provides extra

⁴⁷ See *infra* Part 2.A.

services such as agent days and supervised interviews. In our office at Baylor, Josh Lens has been the front man for the past several years. Before Josh, I had to run the agent days (during years when we had professional prospects before our current embarrassment of riches) and engaged in some of the other activities.

The Compliance Office should generally adhere to a “front-door” policy, meaning that any contact with agents goes through the Compliance Office before reaching the prospect. This approach helps to protect the prospects from distractions and interference with their collegiate careers. By using the Compliance Office as a screening mechanism for any agent-athlete interactions, the risk of prospects breaking Rules #1 or #2 discussed above is reduced.⁴⁸

Pro Sports Counseling Panel

A Pro Sports Counseling Panel is not required but is authorized by NCAA legislation. The bylaw provides:

- 12.3.4 Professional Sports Counseling Panel.** (A) It is permissible for an authorized institutional professional sports counseling panel to:
- (a) Advise a student-athlete about a future professional career;
 - (b) Assist a student-athlete with arrangements for securing a loan for the purpose insurance against a disabling injury or illness, or for purchasing loss-of-value insurance and with arrangements for purchasing such insurance;
 - (c) Review a proposed professional sports contract;

⁴⁸ See *supra* Part 1.A-B.

- (d) Meet with the student-athlete and representatives of professional teams;
- (e) Communicate directly (e.g., in person, by mail or telephone) with representatives of a professional athletics team to assist in securing a tryout with that team for a student-athlete;
- (f) Assist the student-athlete in the selection of an agent by participating with the student-athlete in interviews of agents, by reviewing written information player agents send to the student-athlete and by having direct communication with those individuals who can comment about the abilities of an agent (e.g., other agents, a professional league's players association); and
- (g) Visit with player agents or representatives of professional athletics teams to assist the student-athlete in determining his or her market value (e.g., potential salary, draft status).⁴⁹

Despite this wide latitude, I have not done each and every one of these things over my years on the Panel. I have not been comfortable with putting myself between the student-athlete and a professional team as described in (c), (d), (e), and (g). Why? I am not an agent and those are things that an agent does. I fear I may not have the expertise to provide high quality service to the student or to meet the standard of care of an ordinary prudent agent. I have

⁴⁹ *National Collegiate Athletic Association, 2015-2016 Div. I Manual, Bylaw 12.3.4.*

primarily provided services related to disability insurance, agent selection, and the suggestions relating to the Standard Representation Agreement. In addition, I have acted as a buffer to give some student-athletes time and space from the agents seeking to contact them. The Panel has provided free, neutral advice to dozens of players.⁵⁰ Staying familiar with the NFL marketplace 24/7 is hard for an academic (not to mention the NBA, MLB, etc.).

If your university has a Panel, you should get to know the chair. The Compliance Office and I do not compete. The Compliance Office is primary, and we work together to provide help to those who seek it.

A national professional sports counseling panel does not exist, at least not yet. While I was chair of the NCAA Division I Amateurism Cabinet, we discussed the possibility of the NCAA establishing and supporting a national advisory panel to help the student-athletes who lack access to local service or expertise.⁵¹ The Student-Athlete Advisory Committee (“SAAC”) liaison to the cabinet, who was an NCAA Division I football player at an Football Champion Subdivision (“FCS”) school, strongly supported the concept of NCAA assistance because local help for an FCS player is scarce to non-existent.⁵² We did not complete our deliberations on this topic, but I think renewal of discussions on this topic

⁵⁰ Because I am a tenured professor, and not an Athletics Department employee, I am able to give neutral advice. There are, however, commentators that believe that a university-run Panel is incapable of being neutral. See James F. Reid, *Call to the Bullpen: How the 2012 MLB Draft Shows Why the NCAA Must Make a Change to its Bylaws*, 3 ARIZ. ST. SPORTS & ENT. L.J. 1, at 57, 86.

⁵¹ See Libby Sander, *NCAA Considers a National Pro-Sports Counseling Panel*, THE CHRONICLE OF HIGHER EDUCATION (Oct. 19, 2010), <http://chronicle.com/blogs/players/ncaa-mulls-idea-of-a-national-pro-sports-counseling-panel/27598>.

⁵² Each Student-Athlete Advisory Committee is a group of student-athletes brought together to provide insight on the student-athlete experience and offer input on the rules, regulations, and policies that affect student-athletes' lives on campus. See *History of the NCAA Student-Athlete Advisory Committee*, NAT'L COLLEGIATE ATHLETIC ASSOC., <http://www.ncaa.org/student-athletes/history-ncaa-student-athlete-advisory-committee> (last visited Mar. 22, 2016).

should occur. If the NCAA brought this idea to fruition, the national pro sports counseling panel would likely consist of current and former professional athletes, legal experts, and experienced volunteers from campuses and conference officers. Academic and Membership Affairs and Enforcement Services would probably provide staffing. This would provide a panel free of any local school bias.⁵³

The NCAA offers an Educational Memorandum geared towards Division I football student-athletes with remaining eligibility and a desire to pursue a professional football career.⁵⁴ In fact, the NCAA staff does an excellent job in its rules education endeavors. The most recent Educational Memorandum may be found on the NCAA website under the “Agents and Amateurism” section.⁵⁵ This document provides information and advice via “Frequently Asked Questions” regarding the NFL draft process and interactions with agents. The questions highlight situations in which you may find yourself, such as being invited to the NFL combine or being offered impermissible financial inducements by an agent. The Memorandum confirms that a violation of Rule #1 or

⁵³ While this is not a personal concern of mine, some commentators are concerned that university staffed Panels can give rise to conflicts of interest when the staff is asked to advise student-athletes on whether to stay or go professional. Sarah Staudinger, *The Conflict of Interest Issue with NCAA Student-Athletes and Professional Sports Counseling Panels*, 3 ARIZ. ST. SPORTS & ENT. L.J. 1, at 123, 128; see also James F. Reid, *Call to the Bullpen: How the 2012 MLB Draft Shows Why the NCAA Must Make a Change to its Bylaws*, 3 ARIZ. ST. SPORTS & ENT. L.J. 1, at 57, 86 (“Since panel members are full-time employees and representatives of the university, they may be more inclined to sway an elite student-athlete to compete as a student-athlete for another year before turning pro.”).

⁵⁴ See *Information Regarding the 2015 National Football League (NFL) Draft, Tryouts and Agents*, *supra* note 44. This memorandum answers many questions that would be asked of a national panel.

⁵⁵ *Agents and Amateurism*, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, <http://www.ncaa.org/enforcement/agents-and-amateurism> (last visited Mar. 22, 2016).

Rule #2, as well as entering the draft and failing to take the proper steps to withdraw, causes a loss of eligibility.⁵⁶

NFLPA Contract Advisors Are Agents; Who Else?

All of the rules above about interacting with an agent apply to anyone who falls within the NCAA's broad definition of an agent. The definition includes not only NFLPA Contract Advisors but also "runners, financial advisors, marketing representatives, business managers, brand managers and street agents who act as brokers for their own personal gain."⁵⁷

All of these individuals and firms can cause you eligibility problems. So, once again, work with the compliance staff. A final note, now that you are an accomplished football player beware of anyone new who tries to befriend you, do favors for you, buy you things, etc. A runner doesn't wear a sign that says, "I am a runner."

⁵⁶ See *Information Regarding the 2015 National Football League (NFL) Draft, Tryouts and Agents*, *supra* note 44. Another NCAA publication that is still very helpful is the NCAA Agent/Student-Athlete Brochure (now more than 6 years since publication). NCAA Agent/Student-Athlete Brochure, *available at* https://admin.xosn.com/pdf9/2559115.pdf?DB_OEM_ID=31000&pdf. The Guide was produced by the NCAA Agent, Gambling, and Amateurism staff, headed by Rachel Newman-Baker, whom I worked with as Chair of the Amateur Cabinet. *Id.*

⁵⁷ Gary Brown, *Amateurism Cabinet Seeks Expanded Definition of Agents*, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (July 26, 2011 12:00 a.m.), <http://www.ncaa.org/about/resources/media-center/news/amateurism-cabinet-seeks-expanded-definition-agents>. Notably, the Uniform Law Commission recently approved changes to the Act, which would expand this definition even further. Under the newly approved definition, "agent" would include marketers and any other persons "who try to sign athletes by providing gifts or services that jeopardize their eligibility." *Revision to Sports Agent Act That Protects NCAA Athletes Get Approved*, *supra* at note 38.

C. Commentary by Kelli Masters

Student-athletes in the State of Texas are very fortunate, so long as they understand the resources, protections, and systems available to help them through the process as they transition to professional athletics. As a Contract Advisor (certified by the NFLPA since 2005), I have seen first hand the procedural differences between Texas schools and universities in other jurisdictions. And I can attest, Texas schools handle the process in a way that is very effective in producing successful outcomes for athletes and their families. This comprehensive article is just one great example of these efforts to educate and guide athletes through this very important phase of their lives.

As an attorney, agent, and Contract Advisor, my activities in recruiting and representing athletes are governed by a number of laws, regulations, and rules. As mentioned earlier, the NCAA by-laws govern interactions between agents and student-athletes. Each state's athlete-agent laws (typically some form of the Uniform Athlete Agents Act) also govern such interactions and require an agent to be currently licensed and bonded, if required by that state. But beyond that, agents are also subject to extensive regulations promulgated by the NFLPA as well as school-specific policies regarding registration and communication. If agents are also licensed attorneys, they are also subject to rules of professional responsibility within their jurisdiction.

While maintaining compliance with all these layers of requirements can be daunting, every agent knows what is required and should be responsible enough to ensure proper and timely registration as well as adherence to applicable laws and rules. You, as a student-athlete, family member, or advisor can ensure you are speaking only to well-qualified, compliant agents by following the advice in this article, and by following these rules of thumb:

1. Any communication from an agent (or anyone on an agent's behalf, even if the person is a former teammate or

friend) should be reported immediately to your school's compliance department. In the state of Texas, unlike most jurisdictions, agents are not allowed to contact a student-athlete directly. Agents **must** go through the compliance department to initiate contact with you or anyone on your behalf. If they do not, they are in violation of state law. A student-athlete or family member/advisor may initiate contact with an agent, but such contact should still be reported to compliance. This is for your protection, and allows the compliance office to help you navigate the process correctly.

2. Never accept **anything** of value from an agent or someone who is recommending an agent. Play it safe; not even a stick of gum or bottled water. And certainly not a loan or "cash advance."
3. Never make **any** promises or agreements with an agent or someone who is recommending an agent. As mentioned above, even oral agreements will jeopardize your college eligibility.
4. Once communication has been properly established between you and an agent (at an "agent day" interview facilitated by the compliance department), you may continue to stay in touch with an agent. Any meetings should be approved by compliance and you should inform compliance of all conversations. But as long as you are not accepting anything of value or making agreements (oral or written), communication is not prohibited. That being said, allow the compliance office to facilitate as much of the information flow as possible, as they are able to keep the process from getting overwhelming and can help discern good information from bad or incorrect information.
5. Educate yourself. Read the materials provided to you. Attend any meetings or seminars set up by your school re-

garding agents. You need to be prepared to ask many questions of prospective agents, but you won't know what to ask unless you are educated about the process.

Always keep in mind, throughout this process, that your goal is to find the very best advocate for you; someone you can trust who will guide you through the process in a knowledgeable, caring and protective manner. You want someone who is not only excellent at what they do, but also excellent at putting your best interests first. If a prospective agent is willing to put you and your eligibility in jeopardy by violating (or even bending) the rules and regulations, you must question whether that person will actually put your best interests ahead of their own. Remember, if they can buy you, they can sell you out too.

PART 2 – SHOULD I STAY OR SHOULD I GO?

Enough about eligibility rules, now let's turn to the issue of whether to apply for the draft early.

A. Tryouts: Testing the Waters to Gather Information

There are many questions and answers in the NCAA Educational Memorandum that pertain to tryouts and protecting eligibility.⁵⁸ While helpful, that information is far more often applicable to basketball. Tryouts of still eligible basketball student-athletes are common in order to test the waters and can occur following the end of a freshman, sophomore, or junior season. I do not think Baylor has ever had an eligible football student-athlete travel to an NFL city to tryout for a professional team. Apparently, tryouts to test the waters are not part of the football landscape. Three years of game film control. On the other hand, after eligibility is exhausted, football tryouts are common and it doesn't matter

⁵⁸ See *Information Regarding the 2015 National Football League (NFL) Draft, Tryouts and Agents*, *supra* note 44.

(for Bylaw 12 purposes) who pays for the travel. Scouts also come to campus to observe prospects before and after (i.e., Pro Day)⁵⁹ eligibility is exhausted.

Getting Accurate Information

You are thinking about leaving a year early because some draftnik projects that you will be a high pick in the next draft. While that projection may be flattering, it also may be wrong. Furthermore, agents often tell potential clients what they want to hear about their draft prospects. But agents are not always right. Get reliable information. The only opinions and projections that really matter are those formed by the NFL teams. Take, for example, Geno Smith who fired his agents immediately after the 2013 football draft.⁶⁰ Rumors soon circulated that Smith's agents had told him that he would be the first overall pick in the draft.⁶¹ However,

⁵⁹ Pro Days are events put on by individual universities at which both the prospects invited to the combine and other seniors are allowed to work out in front of scouts. This allows the scouts to see many more students and it also allows them to watch top prospects in a "friendly" environment. At Pro Day, NFL teams can "watch the players participate in position workouts and events like the 40-yard dash, the shuttle run and the vertical leap." Staff Report, *NFL-Hopeful Bears Prepare for Pro Day*, WACO TRIBUNE-HERALD, 1C, Mar. 16, 2016. As this article is being written, Baylor hosted its own Pro Day at which 16 players tried out for scouts and coaches. Coach Art Briles told the Waco Tribune-Herald that the players have said that they prefer the "music-blaring, strength coach-hollering atmosphere of Baylor's Pro Day environment to the more sublime, pressure-packed combine." Brice Cherry, *16 Players Demonstrate Skills Before NFL Coaches, Scouts*, WACO TRIBUNE-HERALD, Mar. 17, 2016, at 1C. Thus, it was no surprise that they performed better, with Andrew Billings even running a personal-best 4.92 seconds in the 40-yard dash (shaving time off the time he clocked at the combine). *Id.*

⁶⁰ Manish Mehta, *Geno Smith Thought He Should Have Been No. 1 Pick in NFL Draft, Fires Agents After He Slips*, NEW YORK DAILY NEWS (Apr. 30, 2013), <http://www.nydailynews.com/sports/football/jets/geno-fires-agents-felt-no-1-article-1.1331194>.

⁶¹ Mike Florio, *Geno Smith Camp Shares Details on Decision to Fire Agents*, PRO FOOTBALL TALK, NBC SPORTS (May 2, 2013), <http://profootballtalk.nbcsports.com/2013/05/02/geno-smith-camp-shares-details-on-decision-to-fire-agents/>.

that turned out to be completely incorrect.⁶² Instead, the New York Jets drafted Smith with the eighth pick in the second round.⁶³

Although tryouts are rare, the really good news is that advice is available from the NFL College Advisory Committee (“CAC”).⁶⁴ This committee includes high level personnel evaluators from NFL teams and directors from the league’s two sanctioned scouting organizations.⁶⁵ Go see your head coach to see if it makes sense to apply for an evaluation. Do not apply for an evaluation unless you are a realistic professional prospect. The sports medicine staff members also talk to NFL Scouts and may be helpful in making that decision.

College Advisory Committee Evaluation

If you apply for a College Advisory Committee Evaluation, the evaluation will be based on the committee’s best estimate of your potential to be drafted. The CAC’s response is non-binding and does not constitute a guarantee that you will even be drafted.⁶⁶

Players are given one of the following messages:

- a. They have the potential to be drafted as high as the first round;
- b. They have the potential to be drafted as high as the second round; or
- c. They should remain in school to develop further as potential professional prospects while continuing their education.

⁶² Mehta, *supra* note 60.

⁶³ *Id.*

⁶⁴ See *A Head Coach’s Guide to the Collegiate Advisory Committee*, NFL FOOTBALL OPERATIONS, https://www.nfl.info/transfer/CAC_A%20Head%20Coachs%20guide_Final_0624.pdf (last visited Mar. 22, 2016).

⁶⁵ *The NFL College Advisory Committee*, NATIONAL FOOTBALL LEAGUE, <http://operations.nfl.com/the-players/the-nfl-draft/the-nfl-college-advisory-committee/> (last visited Mar. 22, 2016).

⁶⁶ See *A Head Coach’s Guide to the Collegiate Advisory Committee*, *supra* note 64.

The Committee formerly issued a third round message in addition to the first two round forecasts described above. However, that third round category proved to be too inaccurate to continue. Apparently, nearly all NFL experts agree on most of the top 50 or 60 prospects (so the first two rounds involving 68 draftees are much easier to predict at least in some order) but opinions differ greatly after that. Also, realize that 24 of the 84 underclassmen who declared for the draft in 2015 were not drafted at all!

The CAC's evaluation is based solely upon demonstrated football ability. It does not take into account injuries, the perceived strength or weakness of a particular year's draft class, performance at the Scouting Combine or Pro Days, or any other factor that may influence a player's draft status. Nonetheless, it should be the linchpin of the stay or go decision. And, a first round evaluation almost always results in the prospect deciding to go pro. Other factors should include academic status, enjoyment of college, family financial circumstances, health/injury concerns, and disability insurance availability. Additionally, it is understandable for you to decide to go Pro if your family has great financial need.

I have been suggesting the above factors for many years. This article has caused me to drill down on this subject. One new thought is that recently adopted NCAA Financial Aid Rules make it more comfortable to stay. While the new bylaws don't allow your college to provide resources to meet dire financial needs for your family, you may have noticed that you personally were more solvent this year.⁶⁷

⁶⁷ During interviews preceding the national championship game, players and coaches landed the new stipends. Clemson wide receiver Sean MacLain said the money he receives might buy a pizza or a trip to the movies. Eddie Baum, *Pizza and a Movie: Players Say Stipends Help Pay for Basics*, ASSOCIATED PRESS (Jan. 10, 2016), <http://collegefootball.ap.org/article/pizza-and-movie-players-say-stipends-help-pay-basics>. Some of the money, Clemson tight end Jesse Fisher said, gets socked away in the bank. *Id.*

If you qualified for a Pell Grant, you received \$5,700 from the U.S. Government with no strings attached. Regardless of your family's economic status, your scholarship now covers full cost of attendance, which means thousands in extra dollars above the former NCAA grant in aid allowance.⁶⁸ The calculation is made by the Financial Aid Office at each school, not the Athletics Department.⁶⁹ For example, Alabama players received \$550 per month.⁷⁰

And you should have been fed better and more often due to deregulation of the extra benefit rules relating to meals and snacks.⁷¹ Furthermore, there is the additional peace of mind that comes from a disability insurance policy, if you have one. My point is that high profile student-athletes like you are being compensated more fairly now than just a couple of years ago. Under current rules you can earn your degree, enjoy developing your skills, be a "big man on campus" ("BMOC"), and have some pocket money (no receipts required). While it still may make sense to leave (you receive a first round projection or your family has dire financial need), the NCAA financial aid rules no longer encourage it.

Supplemental Thoughts on Academics (If You Decide to Leave Before Graduation)

As Leigh Steinberg says, "be good to your future self."⁷² If you have not graduated, finish your fall semester strong. Study for

⁶⁸ See *National Collegiate Athletic Association*, 2015-2016 Div. I Manual, Bylaw 15.

⁶⁹ Baum, *supra* note 67. The additional amount given to each student-athlete varies from school to school due to federal regulation.

⁷⁰ *Id.*

⁷¹ *National Collegiate Athletic Association*, 2015-2016 Div. I Manual, Bylaw 15.6.2.

⁷² Leigh was very good to my Alternative Dispute Resolution class this past Winter 2015 quarter, in which he made a presentation via Skype. He discussed his book on negotiations, *Winning With Integrity*, which is on my list of recommended books for outside reading. LEIGH STEINBERG & MICHAEL D'ORSO,

and take your finals. Maintain your GPA. That way, if you decide to leave you will be as close as you can be to graduation if you return down the line.

My experience has been that the student-athletes who blow off academics and let their GPAs drop below 2.0 almost never come back to graduate. If you leave ineligible, you also will be hurting the football program's Academic Progress Rate ("APR") because you will be departing without earning either the retention or eligibility points known as an 0-2 APR performance.⁷³ If you depart eligible and make a pro team, the APR rate for your team is not adversely affected.⁷⁴

When you consider returning to school, be aware that the NFLPA Collective Bargaining Agreement has a tuition assistance plan set out in Article 56.⁷⁵ Also, Power Five Conference schools (and some others) have tuition assistance programs for returning student-athletes who meet the institution's criteria.⁷⁶ For example, the Big 12 Bylaws provide that "member institutions shall award institutional athletically related financial aid to former student-athletes per institutional policy."⁷⁷

WINNING WITH INTEGRITY: GETTING WHAT YOU'RE WORTH WITHOUT SELLING YOUR SOUL (1998).

⁷³ See *Academic Progress Rate Explained*, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, <http://www.ncaa.org/about/resources/research/academic-progress-rate-explained> (last visited Mar. 22, 2016).

⁷⁴ *Division I Academic Progress Rate (APR)*, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, <http://www.ncaa.org/about/resources/research/division-i-academic-progress-rate-apr> (last visited Mar. 22, 2016).

⁷⁵ COLLECTIVE BARGAINING AGREEMENT Art. 56 (Aug. 4, 2011), available at <https://nflabor.files.wordpress.com/2010/01/collective-bargaining-agreement-2011-2020.pdf>.

⁷⁶ See, e.g., Pac-12 Conference, *Pac-12 Universities Propose Sweeping Changes to Student-Athlete Benefits*, PAC-12 NEWS (Oct. 1, 2014), <http://pac-12.com/article/2014/10/01/pac-12-universities-propose-sweeping-changes-student-athlete-benefits> (last visited Mar. 22, 2016).

⁷⁷ BIG 12 CONFERENCE HANDBOOK, BYLAW 1.3.3.3 (2015016), available at http://www.big12sports.com/fls/10410/pdfs/handbook/ConferenceHandbook.pdf?DB_OEM_ID=10410. See also *Board of Directors Announces Student-Athlete*

Stay or Go Factors Applied

These are some of the factors that I observed being applied while RG3 and Jason Smith each made his decision on whether to stay or go. When making your own decision, you should consider these factors as well.

Stay Factors for RG3:

He was working on a Master's degree. He is from Central Texas. The team's talent was trending sharply upwards. He was enjoying school and being the team leader. There was no financial pressure from family. He had disability insurance.

Go Factors for RG3:

He had just won the Heisman trophy and winning it twice is rare. He had been at Baylor four seasons (including one medical redshirt season) and had already earned a Bachelors degree. He was projected as a high first round pick. For marketing purposes, he would never be hotter. So, he decided to go and was drafted second in the first round.

Go Factors for Jason Smith:

Although he didn't receive a first round evaluation, he would have been drafted and earning a good living soon. He had been at Baylor four seasons (one as a redshirt). He was close to a degree.

Stay Factors for Jason Smith:

He had a limited portfolio of game films as a tackle because he had redshirted, missed some games due to injury, and had played a different position part of his college career. Jason played

Initiatives, BIG 12 CONFERENCE (Dec. 1, 2014),
<http://www.big12sports.com/ViewArticle.dbml?ATCLID=209788901>.

great in an injury free senior year (13 new game films) and rose to the second pick in the first round.

Applying for the Draft

As a rising junior, you may apply to opt-in to the next NFL draft. Legal challenges to come out for the NFL draft earlier in college have not been sustained because NFL success is closely tied to age and physical maturity.⁷⁸

Cooling Off Period

What if you apply for the draft and then conclude that you made a mistake? You must change your mind quickly or it is too late. The “cooling off” period is short—only three days. This allows you to sleep on the original decision but not much beyond that. And please realize that during such brief time period you must continue to comply with all agent and amateurism rules. The withdrawal period is short because of the need to manage rosters at the collegiate level. Remember that the signing period for football starts in early February and college coaches need to know who is staying and who is going before signing day.

B. Importance of Maintaining Good Character

One aspect in the pursuit of a professional career that is often placed too low on the list of priorities is the importance of good character. One sometimes overlooked source of information is social media. This should not be underestimated. A good reputation takes years to build but can be lost in a single incident or post on social media. Just this year, Laremy Tunsil suffered one of the most bizarre falls down the draft board all because of character issues and social media. Tunsil, an offensive tackle from Ole Miss,

⁷⁸ For information on the key dates in applying for an evaluation (mid-December) and applying for the NFL Draft (mid-January) see the NCAA Educational Memorandum previously mentioned *supra* note 54.

was at one point considered a likely number one overall pick.⁷⁹ But, with mere minutes before the start of the 2016 draft, a reputation-shattering video was posted through his Twitter account.⁸⁰ The video showed Tunsil wearing a gas mask and smoking marijuana from a bong.⁸¹ Instead of going in the top three, Tunsil sat by as teams traded up, yet passed on him.⁸² He ended up as the thirteenth overall pick; this slide cost him upwards of \$13 million in salary.⁸³ Many other stories exist of student-athletes who have posted on social media after an emotional game or event and regretfully make a statement that has a profound negative impact on their athletic career and reputation.⁸⁴ You must keep this in mind as you navigate through the draft process.

It should not surprise you that investigators will comb through your background and perform an in-depth review. Your

⁷⁹ Kevin Seifert, *Laremy Tunsil Slides to Dolphins at No. 13 After Gas Mask Tweet*, ESPN (Apr. 29, 2016), http://espn.go.com/nfl/draft2016/story/_/id/15423201/agent-laremy-tunsil-gas-mask-tweet-was-hacked.

⁸⁰ Rodger Sherman, *Laremy Tunsil's Twitter Account Posted a Video of Him Smoking a Bong Minutes Before the NFL Draft*, SB NATION (Apr. 28, 2016), <http://www.sbnation.com/nfl/2016/4/28/11533380/nfl-draft-laremy-tunsil-marijuana-bong>.

⁸¹ *Id.*

⁸² *Id.*

⁸³ Had Tunsil gone in the top-three, as some sources projected, he would have obtained about \$13 million more than the \$12.4 million he will likely get from the Dolphins. But, even if he had gone to the Ravens with the number six pick, he would have gotten about \$20.4 million — almost \$8 million dollars more! Jonathan Chew, *Here's How Much NFL Draft Pick Laremy Tunsil Lost Because of 1 Tweet*, FORTUNE (Apr. 29, 2016), <http://fortune.com/2016/04/29/laremy-tunsil-tweet-video/>.

⁸⁴ Then there are the stories about players posting non-game related material on their social media, such as the three Minnesota men's basketball players who were recently suspended after a sexually explicit video appeared on one of their social media accounts. See Dave Campbell and Jon Krawczynski, *Three Minnesota Men's Basketball Players Were Suspended Over the Weekend After a Sexually Explicit Video Appeared on One of Their Social Media Accounts, According to a Person with Knowledge of the Discipline*, ASSOCIATED PRESS (Feb. 29, 2016), <http://www.usnews.com/news/sports/articles/2016-02-29/ap-source-minnesota-players-punished-for-illicit-video>.

coaches, trainers, and even teachers in college and high school may be asked about you. Any arrest or disciplinary actions will be scrutinized. Keep any such misconduct in the distant past. Recent mishaps are costly, and even past ones are not easily forgiven. For instance, Noah Spence's mistakes from early on in his college career haunted him all the way to the NFL draft.⁸⁵ Spence was Coach Urban Meyer's first five-star recruit to commit to the Ohio State Buckeyes and displayed first-round talent while he was there. However, after testing positive twice for the drug ecstasy, he was permanently banned from the Big 10.⁸⁶ He then spent a year at Eastern Kentucky attempting to rehabilitate his image, but the media has not forgotten his mistakes as a Buckeye.⁸⁷ Regardless of his obvious talent on the field, even local media refuse to overlook his off-the-field indiscretions:

The Cowboys are in dire need of a pass rush, and the best pass rusher in this draft will be there for the taking at No. 4. But the Cowboys can't take him. They must let Noah Spence of Eastern Kentucky slide. They have little choice – not after the Greg Hardy and Randy Gregory debacles of 2015. . . . Which brings us to Spence. He also has baggage. Too much baggage for the Cowboys to risk at this high a draft pick.⁸⁸

⁸⁵ As this article was being prepared for publication, Noah Spence was selected by the Tampa Bay Buccaneers in the second round. *Noah Spence, Draft*, NFL (2016), <http://www.nfl.com/draft/2016/profiles/noah-spence?id=2555312>.

⁸⁶ *Noah Spence Player Overview*, NFL DRAFT SCOUT, <http://www.cbssports.com/nfl/draft/players/1983799/noah-spence> (last visited June 05, 2016).

⁸⁷ *Id.*

⁸⁸ Rick Gosselin, *Cowboys Can't Ignore Character*, THE DALLAS MORNING NEWS, Feb. 29, 2016, at 1C.

Even with my knowledge about NFL background checks, Jason Smith told me a story that surprised me. He was flown first class to St. Louis for a tryout/evaluation with the Rams (after the season but before the draft had ended). He later learned that the Rams had placed a secret observer on the flight to watch him, Jason, interact with the public. Wow! They were being extremely careful. On this subject of character, I really like the point made by Marc Isenberg.⁸⁹ “Teams look for reasons *not* to draft an athlete. If playing pro sports is a serious goal, don’t give teams an excuse not to draft you.”⁹⁰

C. Commentary by Kelli Masters

As this article points out, there are many factors to consider in making the decision to stay in school or leave early to enter the draft. Every player’s situation is different. But here are a few important things to keep in mind:

1. Trust the College Advisory Committee, as this will be the most unbiased information available. But also understand how the committee determines the grade it gives you. It is not based on a survey of all 32 NFL teams, only a handful. It is based on an anonymous recommendation given by a member of the scouting/personnel department from each of the teams providing grades. Therefore, it is meant to be informative but not definitive.
2. Do not make your decision based on pressure from people who have their own interests attached to your future. Agents, coaches, and family members may be well-meaning and trying to help or protect you. But always consider their advice in light of their own desires. Make an informed decision, knowing it is **your** life and **your** career. And ultimately you will be the one who lives with the consequences, good or bad.

⁸⁹ MARC ISENBERG & RYAN NECE, *GO PRO LIKE A PRO* (2011).

⁹⁰ *Id.* at 22.

PART 3 – AGENT SELECTION SUGGESTIONS

A. Questions & Answers to Consider When Selecting Your Agent

Q1. How Does One Become an Agent for NFL Rookies?

Because the NFLPA is a labor union and the exclusive bargaining representative of NFL players, agents have to be certified as a “Contract Advisor” by the NFLPA to represent veterans or rookies. However, it is not difficult to become a Contract Advisor, nor is it an exclusive club. In fact, there are more agents than NFL rookies. You are a buyer in a buyer’s market, which provides leverage when negotiating your fee.

Q2. Which Contract Will You Sign First — The Contract with Your Agent or the Contract with Your Team?

You first sign a contract with your agent (known as the Standard Representation Agreement, a printed form) and you hire an agent to negotiate your NFL Player Contract. The NFL Player Contract is also a standard form; your agent negotiates its term (length), your salary, and bonuses.

Step 1

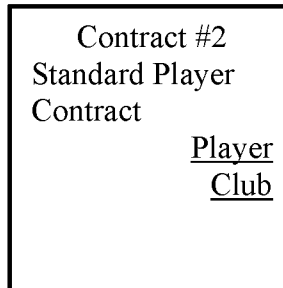
Rookie hires agent

Step 2

Agent negotiates with club (team) on Rookie's behalf.

Step 3

Rookie signs contract with club, which incorporates the terms negotiated in Step 2.



Your compensation will be determined by your draft round and the position within the round, not the skill or effort of your agent. This is because the 2011 CBA eliminated the vast majority of negotiating — it sets predetermined contract value and bonus amounts.⁹¹ Under this system:

[E]ach first round pick receives a four-year contract with a team option for a fifth season. The salaries for each slot in the draft are pre-set. The values are based on the NFL's salary cap for the coming season and the rookie compensation pool in a formula spelled out in the CBA.⁹²

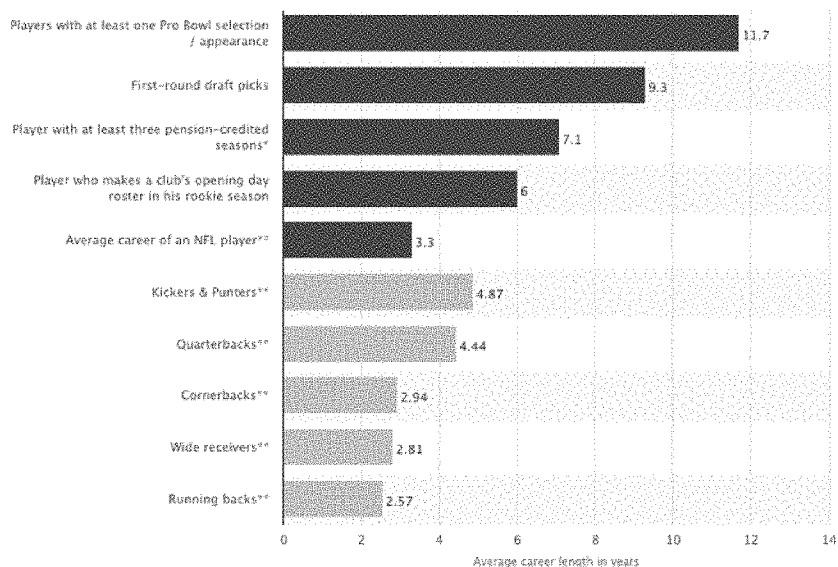
⁹¹ Andrew Brandt, *Easy Math for Rookies*, THE MONDAY MORNING QUARTERBACK, SPORTS ILLUSTRATED (June 4, 2015), <http://mmqb.si.com/2015/06/04/nfl-rookie-contracts-cba-agents>.

⁹² Mark Inabinett, *NFL Draft 2015: How Much Each First-Round Pick Will Be Paid*, ALABAMA (May 01, 2015), http://www.al.com/sports/index.ssf/2015/05/nfl_draft_2015_how_much_each_f.html.

This means that you pay a significant amount of money for a service (Step B above) that is rather routine. In fact, in his recent book *The Agent*, Leigh Steinberg opines that the new CBA has “eliminated creative bargaining” thus underscoring the mundane nature of the service.⁹³ Shifting away from the top draft prospects, regardless of who your agent is, you will probably receive the minimum salary.

Q3. Are the First Contracts You Sign with Your Agent and Club That Important?

Yes. The average career for an NFL player lasts approximately 3.3 years. The first NFL Player Contract you sign may be your last.



Above: Chart depicting Average Playing Career Length in NFL (in years).⁹⁴

⁹³ LEIGH STEINBERG & MICHAEL ARKUSH, *THE AGENT* 282 (2014).

⁹⁴ *Average Playing Career Length in the National Football League (In Years)*, STATISTA: THE STATISTICS PORTAL, <http://www.statista.com/statistics/240102/average-player-career-length-in-the-national-football-league/> (last visited Mar. 22, 2016).

Q4. How Do the NFLPA Rules Help Me?

First, the Contract Advisor must play by NFLPA rules and regulations. If he doesn't — for example, if he offers a player an illegal inducement in order to become his agent — he may be de-certified. Second, he must attend an annual seminar sponsored by the NFLPA. The purpose of the seminar is to educate the agent about the NFL, its Collective Bargaining Agreement, and other helpful matters, in order to enhance his negotiating capability. Third, the Contract Advisor must use a standard NFLPA contract form — the Standard Representation Agreement — that is drafted to protect the player (e.g., the agent doesn't receive any fee until and unless the player receives the compensation upon which the fee is based). A contract with an NFLPA Member Contract Advisor may be modified in your favor, but it cannot be changed to your detriment.⁹⁵ And, it creates a fiduciary relationship under which the agent is required to act at all times for *your* benefit. Because of the fiduciary relationship, perhaps the test that an aspiring NFLPA Contract Advisor must pass should include questions on NCAA legislation pertaining to agents. I do not think this educational effort should be viewed as controversial.

Q5. When should you pick your Contract Advisor?

You now know that you lose your eligibility if you hire an agent prior to the end of your final season. Even an oral agreement would make you ineligible. You may hire an agent as soon as your final season is over. However, some think you do not need an agent until near the NFL draft.⁹⁶ There is very rarely a need to sign any earlier. The NFLPA advises that an agent cannot signifi-

⁹⁵ See *infra* Part 4 of this article for suggested modifications for your consideration.

⁹⁶ And then there are those that do not use an agent at all, like safety Matt Elam. In 2013, he was the only top prospect to enter the draft without an agent and was drafted in the first round! Darren Heitner, *Safety Matt Elam Is Only Top Prospect to Enter NFL Draft Without an Agent*, FORBES (Apr. 21, 2013), <http://www.forbes.com/sites/darrenheitner/2013/04/21/safety-matt-elam-is-only-top-prospect-to-enter-nfl-draft-without-an-agent/#511aca521593>.

cantly improve your position in the draft. You have been thoroughly scrutinized during your college career. There are pro scouts in the press box during every important game. All games are filmed. Every NFL team has its own scouting system and most also belong to one of the two major scouting combines. Millions of dollars are spent annually in the evaluation of college talent. Further, an unpopular agent may hurt your draft status with certain teams.

The primary rationale to make a quick hire is that you want immediate help from expensive outside experts in preparing for the combine or Pro Days and you need the agent to pay or front the expense. The other reason is to stop the relentless recruitment process you may experience from some agents. This is a poor reason to sign. Agent selection is an important process and you need to take your time. If you are being harassed, ask the compliance staff or Panel to help get the agent(s) off your back.

Remember that you have a lot riding on the selection of your agent. A poor agent selection can cost you big time down the road. For example, in 2013 Elvis Dumervil had to fire his agent over an egregious blunder on the agent's part.⁹⁷ Dumervil had been a vital part of the Denver Broncos' defense, but when it came time to re-sign with the team, his agent failed to fax in the agreement by the deadline.⁹⁸ The Broncos had to cut Dumervil in order to avoid a \$13 million-plus cap charge for the season.⁹⁹ Dumervil was left looking for a new job and a new agent! Similarly, Tarell Brown lost a \$2 million salary bump and was left without representation all because of his agent's mistake.¹⁰⁰ Brian Overstreet, Brown's

⁹⁷ Jason Chilton, *The Fax Mishap That Cost the Broncos Elvis Dumervil and Its Impact on Super Bowl XLVIII*, SB NATION (Jan. 28, 2014), <http://www.sbnation.com/nfl/2014/1/28/5341628/2014-super-bowl-xlvi-iii-broncos-defense-elvis-dumervil-fax-contract>.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Josh Katzowitz, *Tarell Brown Didn't Know He Lost \$2 Million for Working Out Alone*, CBS SPORTS (July 25, 2013), <http://www.cbssports.com/nfl/eye-on->

agent, failed to tell him that his contract with the 49ers entitled him to that money if he elected to train with the team during the summer, instead of at home as Brown elected to do.¹⁰¹ Brown fired his agent, saying:

If I would have known the clauses in my contract and that's what agents get paid to do -- to orchestrate the contract and let you know what you can and can't do as far as workouts and [Organized Team Activities] and things of that sort. That's what he got paid to do, he didn't do that, so in my opinion he had to be let go.¹⁰²

To avoid these huge agent mishaps, you must take your time to find an agent that is qualified, a good fit for you, and, most importantly, whom you trust.

Q6. How Ho I Select my Contract Advisor?

Here are my tips on selecting an agent.

- a. For several reasons, I would consider hiring an agent who is also a lawyer. First, lawyers are experienced professional negotiators. Second, lawyers are subject to discipline (reprimand, suspension, or disbarment) if they cheat or fail to adequately perform for a client. Third, some lawyers will give you the option of paying them by the hour at their normal hourly rate. If the agent isn't a lawyer, make sure that he is associated with a lawyer. If an agent tells you he has invested a huge amount of time in you, he is in large part discussing his recruiting effort. You have no obliga-

football/22892226/tarell-brown-didnt-know-he-lost-2-million-for-working-out-alone.

¹⁰¹ *Id.*

¹⁰² *Id.*

tion to pay for that time and your goal is to hire the best agent, not necessarily the best recruiter.

- b. I would suggest that you take the following steps before you select an agent, whether or not the agent is a lawyer.
 1. Confirm that the proposed agent is certified as an NFLPA Member Contract Advisor.
 2. Confirm that the proposed agent is registered under the Uniform Athlete Agents Act.
 3. During the call to the NFLPA suggested above, ask if any complaints have ever been filed against the agent. Call the Director of Agent Administration for the NFLPA to learn if the agent has had problems.¹⁰³ He also can give you a list of players the agent represents.¹⁰⁴
 4. "The proof is in the pudding." Talk to present and former clients about the quality of services provided by the agent.¹⁰⁵
 5. The first contract you will sign hires the agent to negotiate your NFL Player Contract. Do not sign this contract unless it is the NFLPA "Standard Representation Agreement."¹⁰⁶
 6. Any contract for supplemental services (i.e., endorsements, money management, etc.) should not

¹⁰³ Currently, Mark Levin is the Director for the Salary Cap and Agent Administration Department of the NFLPA. He can be contacted at 800-372-2000.

¹⁰⁴ You can also find this information by browsing the NFLPA website. *See* www.nflpa.org.

¹⁰⁵ *See* Kelli's comments, *supra* Part 3.B.

¹⁰⁶ Also, make sure that it is the most current version. The new one is dated September 9, 2011.

be signed until you have had your lawyer (and not the agent's lawyer) review it. There is no such thing as a “standard” contract for supplemental services. Expert advice in this area might be the best investment you ever make. Also, your lawyer could negotiate your Standard Representation Agreement with your agent.

7(a). If you are a high draft pick, select an agent who has successfully represented high draft picks. The stakes are much higher and the service is not routine. However, do not overpay your agent.

7(b). An undrafted player, or free agent, has very different interests. Your main interest will be getting and keeping a job. Within reason, the percentage you pay your agent isn't that important (e.g., 2.5% versus 3%) because your salary will be on the low end of the salary scale. You may need an agent to help you get into an NFL camp or to work with you on other opportunities, such as in Canada.

8. If your school sponsors one, participate in an Agent Interview Program. This provides a free supervised look at agents who wish to represent you. Use the services of the Panel, if available, before you make your decision. At Baylor, the Agent Day program allows rising seniors in June to conduct 25-minute interviews with interested agents. The Compliance Office provides education on the agent-selection process to the student-athletes and parents of the student-athletes. All agents are required to register specifically with Baylor to attend Agent Day. A member of the Baylor Compliance Office is present at each interview to ensure compliance with NCAA rules and regulations. Under no circumstances are any contract negotiations permitted. The Agent Day

program simply provides an opportunity for the student-athletes to interview agents they may wish to hire in the future. Following the season, the compliance staff supervises longer interviews with agents the student-athlete has selected based upon the Agent Day interviews and other sources of information.

9(a). Remember, only deal with an NFLPA Member Contract Advisor who will play by the rules. Do not choose an agent based upon financial inducements. Good agents do not pay players to hire them! Financial inducements include any form of gifts or bribes. Such conduct violates § 3B(2) of the NFLPA Code of Conduct for NFLPA Member Contract Advisors¹⁰⁷ and, in most states, § 6(b)(4) of the Agents Act¹⁰⁸. An agent may not give financial inducements to the parents or relatives of the athlete. Also, it creates a conflict of interest. If an agent has loaned you a large sum of money, he will be mindful that he has to get you into an NFL camp in order to get his money back.¹⁰⁹ He might be tempted to recommend that you sign a less-than-fair NFL Player Contract. As running back Fred Taylor has said, “If an agent is going to cheat to get you, he’ll cheat to keep you.”

9(b). Under no circumstances should you sign a Power of Attorney! This can facilitate the agent’s ability to take advantage of you and steal your money or

¹⁰⁷ See *NFLPA Regulations Governing Contract Advisors*, *supra* note 3.

¹⁰⁸ See UNIF. ATHLETE AGENTS ACT § 6(b)(4), *supra* note 3.

¹⁰⁹ Or he may work you to death making paid appearances to sign autographs when you should be focused on playing football.

property. For example, this was one of the tools employed by “Tank” Black.¹¹⁰

10. Search the agent's name through computer data services.
11. Interview several different agents and ask them all the same series of core questions. Consider doing several rounds of interviews by narrowing down the agents that you like the most and inviting them for a subsequent interview. Also, among the questions you may ask,¹¹¹ consider asking how many other players similar to you the agent plans on signing this year. This question is often overlooked, but if the agent is representing another player who looks and plays similar to you, there could be conflicts of interest down the road.

Q7. Where Will I Train to Prepare for the Combine and NFL Draft? Who Will Train Me?

A recently created hook to attract prospects is using the allure of training in an exotic locale, including having private luxury accommodations, a flashy car, and a personal chef. Coaching and training is done by NFL experienced experts. Training in this

¹¹⁰ John Altavilla, *Black Cloud Still Lingers, Hilliard a Victim in Case That Put Issue in Spotlight Protecting the Pocket: NFL Players and Money*, HARTFORD COURANT (Apr. 18, 2004), http://articles.courant.com/2004-04-18/sports/0404180544_1_william-tank-black-black-s-defense-drug-ring.

¹¹¹ A helpful list of questions to ask prospective agents can be found on the Baylor University Athletics Compliance Office website. *21 Questions to Ask Prospective Agents*, BAYLOR ATHLETICS, http://grfx.cstv.com/photos/schools/bay/genrel/auto_pdf/2011-12/misc_non_event/prospectiveagentquestions.pdf (last visited Mar. 15, 2016). Additionally, Pro Star Online offers a similar questionnaire. *Next Level Agent Questionnaire*, PRO STAR ONLINE, http://www.prostaronline.com/draftee/AgentQuestionnaire_NextLevel.pdf (last visited Mar. 15, 2016).

manner is obviously very expensive and makes little sense if the prospect is not a projected first round pick. The expense outweighs any possible gain. If a top of the first round selection is likely, you may sensibly consider such an arrangement with the primary focus being on the coaches, trainers, and players you will work with.

I still think that even a top prospect should consider training at his university. If not a top prospect, I think the decision to train at school is clear. Many athletes choose to remain at their universities to train for the combine and the NFL draft. This is the most cost efficient option, and the strength trainers at your university already know you as an athlete and may be able to create a more personalized training plan for you. Specifically, at Baylor, we have an expert strength and conditioning staff and a Director of Sports Nutrition to create nutrition plans for Baylor student-athletes. A personal chef sounds appealing, but you may have what you need at your own university.¹¹²

B. Commentary by Kelli Masters

Reading this portion of the article, from my perspective as an agent, lights a fire within me; probably because I have lived through eleven seasons of recruiting players and representing them in the draft. Becoming a certified agent is actually **not** easy (only 39% of applicants passed the Certification Exam last summer). And maintaining certification, as well as proper licensing and registration, is tedious but must be done. I am surprised each year that players sign with agents who are not properly registered. And players still get recruited by non-certified runners, which violates NFLPA regulations. Make sure that the people you are talking to are, in fact, certified, licensed, bonded, and registered with your school.

¹¹² See Rachel Stark, *Food for Thought*, NCAA CHAMPION (Summer 2015), <http://www.ncaa.org/static/champion/food-for-thought/#sthash.wVr7bVSV.RR4hC5KN.dpbs>.

I also highly recommend you choose an agent who is a lawyer, for all the reasons mentioned above. Lawyers are held to a higher standard of professional conduct. Moreover, your communications with your agent/lawyer are protected by attorney client privilege. It is best if the agent actually practices (or has practiced) law and brings that knowledge and practical experience to the table. Some agents have law degrees, but have never practiced law.

When choosing an agent, it is my opinion you should focus on two key areas:

1. What will this agent/agency do for me?
2. What is this agent's reputation in the industry?

With regard to the first question: any certified Contract Advisor should be able to “negotiate” your rookie contract. The language is standard and the economic terms are essentially established the moment you are drafted. This is even true of the first round. While there may be some discussion on the payout terms of the signing bonus, as well as some arguing over offset language, the rookie contract does not require a great deal of time. That being said, you absolutely want an agent who knows how to guide you through the pre-draft process **and** (this is important) will not abandon you after the contract is negotiated.

While I spend a great deal of time recruiting, I spend significantly more time managing my clients' careers. Every client I work with has a pre-draft strategy for success. Most agencies can map out their plan for you (which will cost your agent roughly \$30,000-\$50,000 out of pocket to provide for you). But it is very important to find an agent that will help you plan for success throughout your career and beyond. Ask those questions. “Besides draft preparation and my contract, what else will you be doing to represent me and help me?” A truly great agent will provide significantly more value by implementing a plan to help you define and achieve your goals both on and off the field. A great agent will make sure you have access to the best legal, tax, and financial advice from the best professionals. A great agent will stay on top

of the issues you will face in the league: injuries, second opinions, worker's compensation, fines, grievances, benefits, development, and community engagement. A great agent will understand and help you brand and market yourself effectively. A great agent will stay engaged with you throughout your career to answer questions and help you deal with each situation you encounter, hopefully educating you along the way. And that agent should be willing to commit to your entire football career, advising you as to your rights, options, and the market if you reach free agency. Ask questions and find an advocate who is willing to do far more than simply "negotiate" a rookie contract.

As to the second question, clients and former clients can be great sources of information regarding an agent and his or her services. But don't stop with just talking to the clients. I've seen clients defend their agent choice out of pride or because they are being incentivized to do so. (Many players accept large loans or "marketing guarantees" up front from agents, and are then trapped in the agent-player relationship, but won't tell you that.) Ask others in the industry: general managers, coaches, your compliance director, and the agent administration director at the NFLPA. Ask the agent for references beyond his or her clients. As mentioned, research agents online (but be aware of the sources you trust). And spend time asking the tough questions face to face with the agent if possible. A student-athlete must reach a point where he feels confident he can trust the agent to be his advocate, protector, and representative to the NFL world.

PART 4 – IMPROVING THE STANDARD REPRESENTATION AGREEMENT

A. Selected Sections of the Standard Representation Agreement and What They Mean

Part 4 will discuss specific provisions of the Standard Representation Agreement.¹¹³ I have provided explanations and suggested improvements regarding each provision worthy of comment. Within each section of the Standard Representation Agreement, the particular provision is stated first within the text box, with the applicable comments and explanations immediately following.

Introduction

This AGREEMENT made this _____ day of _____, 20 __, by and between _____ (hereinafter “Player”) _____ and (hereinafter “Contract Advisor”).

WITNESSETH:

In consideration of the mutual promises hereinafter made by each to the other, Player and Contract Advisor agree as follows:

Standard Representation Agreement is the title. The introductory clause states the date of the agreement and the names of the parties, followed by a recitation of consideration (a contract law standard provision).

Section 1 – General Principles

This Agreement is entered into pursuant to and in accordance with

¹¹³ The article discusses only Sections 1-6, 8, and 13. Sections 7 and 9-12 can be found in the Appendix.

the National Football League Players Association (hereinafter “NFLPA”) Regulations Governing Contract Advisors (hereinafter the “Regulations”) effective September 9, 2011, and as amended thereafter from time to time.

Make sure the form that you sign is the new form of Standard Representation Agreement that has the effective date of September 9, 2011 in this section. A signed agreement on the old form will be rejected and returned by the NFLPA Staff.

Section 2 – Representations

Contract Advisor represents that in advance of executing this Agreement, he/she has been duly certified as a Contract Advisor by the NFLPA. Player acknowledges that the NFLPA Certification of the Contract Advisor is neither a recommendation of the Contract Advisor, nor a warranty by NFLPA of the Contract Advisors competence, honesty, skills or qualifications.

Contract Advisor hereby discloses that he/she (check one): represents or has represented; does not represent and has not represented NFL management personnel, any NFL coaches, other professional football league coaches, or college football coaches in matters pertaining to their employment by or association with any NFL Club, other professional football league club or college. If Contract Advisor responds in the affirmative, Contract Advisor must attach a properly completed and signed SRA Coaches and NFL Personnel Disclosure Form (Appendix G of the Regulations).

The primary purpose of this section is to reveal if your agent also represents NFL management personnel. You are labor personnel (not management) and a conflict of interest may exist if “yes” is checked and an addendum attached. If the answer is “no,”

check the “no” box and move on. Most agents do not work both sides of the street.¹¹⁴

¹¹⁴ See *Detroit Lions v. Argovitz*, 580 F. Supp. 542 (E.D. Mich. 1984) (Jerry Argovitz negotiated with the Detroit Lions on behalf of Billy Sims. However, during these negotiations, Argovitz bid for part ownership in the Houston Gamblers. Argovitz became the president of the Gambler’s corporation, received a salary from the club, earned 5% of annual cash flow, and was obligated for 29% of a \$1.5 million letter of credit for the Gamblers. After having secured a significant interest in the Gamblers franchise, Argovitz negotiated a contract for Sims with the Gamblers, leading Sims to believe that the Lions were no longer interested. The court found that Argovitz breached his fiduciary duty to Sims for failing to inform Sims of his conflict of interest. The court declared Sims’s contract with the Gamblers invalid.).

Section 3 – Contract Services

Player hereby retains Contract Advisor to represent, advise, counsel, and assist Player in the negotiation, execution, and enforcement of his playing contract(s) in the National Football League. In performing these services, Contract Advisor acknowledges that he/she is acting in a fiduciary capacity on behalf of Player and agrees to act in such manner as to protect the best interests of Player and assure effective representation of Player in individual contract negotiations with NFL Clubs. Contract Advisor shall be the exclusive representative for the purpose of negotiating player contracts for Player. However, Contract Advisor shall not have the authority to bind or commit Player to enter into any contract without actual execution thereof by Player. Once Player agrees to and executes his player contract, Contract Advisor agrees to also sign the player contract and send a copy (by facsimile or overnight mail) to the NFLPA and the NFL Club within 48 hours of execution by Player. Player and Contract Advisor (check one): have have not entered into any agreements or contracts relating to services other than the individual negotiating services described in this Paragraph (e.g., financial advice, tax preparation). If the parties have, complete 3(A) and 3(B) below.”

A. Describe the nature of the other services covered by the separate agreements:

B. Contract Advisor and Player hereby acknowledge that Player was given the opportunity to enter into any of the agreements described in Paragraph 3(A) above and this Standard Representation Agreement, without the signing of one agreement being conditioned upon the signing of any of the other agreements in violation of Section 3(B)(22) of the NFLPA Regulations Governing Contract Advisors.

Contract Advisor

Player

If your agent is being hired to negotiate your NFL Player Agreement and nothing else, this section is easy to complete. Check the appropriate box and move on. However, many Contract Advisors provide significant supplemental services such as combine/tryout preparation or marketing services. Supplemental agreements may be included in an addendum, which consists of additional pages attached to your standard contract. If the supplemental agreement is not yet in written form, get it in writing before you sign. Because this type of agreement usually involves payment obligations, it is important that you have your attorney review it. Getting supplemental agreements on file for review purposes has become a point of emphasis for the NFLPA staff.¹¹⁵

Section 4 – Compensation for Services

A. If a Contract Advisor succeeds in negotiating an NFL Player Contract acceptable to Player and signed by Player during the term hereof, Contract Advisor shall receive a fee as set forth in subparagraph B below.” CONTRACT ADVISOR AND PLAYER AGREE AND ACKNOWLEDGE THAT THE AMOUNT OF SUCH FEE IS FREELY NEGOTIABLE BETWEEN THEM, EXCEPT THAT NO AGREED UPON FEE MAY BE GREATER THAN:

(1) Three percent (3%) of the compensation received by Player for each playing season covered by a Player Contract which is the result of negotiations between Contract Advisor and an NFL Club; or
 (2) The lesser percentage specified in Section 4(B)(1)(a) of the Regulations in a case where Player signs a one-year tender as a Franchise, Transition, or Restricted Free Agent player.

B. The fee for Contract Advisor’s services shall be as follows

¹¹⁵ In a memorandum dated June 9, 2014 from NFLPA to all Contract Advisors, the staff discussed concerns about the use “pre-combine agreements, marketing guarantees and loan agreements” in recruiting. See Liz Mullen, *NFLPA Memo to Agents Part of Rules Review, Not the Result*, SPORTS BUS. DAILY (June 30, 2014), <http://m.sportsbusinessdaily.com/Journal/Issues/2014/06/30/Labor-and-Agents/Labor-and-Agents.aspx?>.

(Both Contract Advisor and Player must initial the appropriate line below):

	Contract Advi- sor	Agent
Three Percent (3%)	_____	_____
Two-and-one-half Percent (2 1/2%)	_____	_____
Two Percent (2%)	_____	_____
One-and-one-half Percent (1 1/2%)	_____	_____

In computing the allowable fee pursuant to this Paragraph 4 the term “compensation” shall include only base salaries, signing bonuses, reporting bonuses, roster bonuses, Practice Squad salary in excess of the minimum Practice Squad salary specified in Article 33 of the Collective Bargaining Agreement, and any performance incentives actually received by Player. The term “compensation” shall not include any “honor” incentive bonuses (i.e., ALL PRO, PRO BOWL, Rookie of the Year), or any collectively bargained benefits.

The compensation to be paid to the Contract Advisor is blank and subject to negotiation. Under NFLPA regulations, 3% is the maximum allowable compensation. As to the standard contract form, a recent rule change calls for blanks allowing separate percentage fees to be checked (e.g., 1.5%, 2%, 2.5%, 3%).

It is important to know what the market is. Shop around! Call the NFLPA. The NFLPA distributes information on agent compensation. High draft choices have tremendous leverage because everyone wants to represent them. All players have some leverage because there are so many more potential agents than rookies. Negotiate for an hourly rate or a lesser percentage than is originally offered. The last time I discussed agent compensation with the NFLPA, I was told that there are a number of good agents who will work for 2-3%. Also, think about a sliding scale such as 3% for the first year, 2% for the second year, and 1% for the third year; or, a sliding scale tied to your draft status, such as 1% if you

are drafted in the first round, 2% if you go in the second round, and 3% for third round or lower.

Section 5 – Payment of Contract Advisor Fees

Contract Advisor shall not be entitled to receive any fee for the performance of his/her services pursuant to this Agreement until Player receives the compensation upon which the fee is based. However, Player may enter into an agreement with Contract Advisor to pay any fee attributable to deferred compensation due and payable to Player in advance of when the deferred compensation is paid to Player, provided that Player has performed the services necessary under his contract to entitle him to the deferred compensation. Such fee shall be reduced to its present value as specified in the NFLPA Regulations (see Section 4(B)). Such an agreement must also be in writing, with a copy sent to the NFLPA.

In no case shall Contract Advisor accept, directly or indirectly, payment of any fees hereunder from Players club. Further, Contract Advisor is prohibited from discussing any aspect of his/her fee arrangement hereunder with any club.

The language of § 5 is very important because the agent will get his commission if and when you collect your compensation.¹¹⁶ In the era before NFLPA Standard Representation Agreements, many agents took their entire fee upon the signing of the NFL contract even if not guaranteed. For example, suppose the contract provided for a one million dollars signing bonus and four annual salaries of \$1 million each, totaling five million dollars. The agent (assuming 3% commission) would take all \$150,000 up front. However, few contracts are guaranteed. Suppose the player competes two years. He will collect \$3 million but will have paid

¹¹⁶ A fee on deferred compensation may be collected early if the player has performed the services triggering the compensation and the fee is reduced to present value. See *NFLPA Regulations Governing Contract Advisors* § 4(B), *supra* note 3.

a commission on \$5 million. That's not fair and is a relic of the past. So, this provision cannot be deleted. It would not favor you!

Section 6A – Expenses

A. Player shall reimburse Contract Advisor for all reasonable and necessary communication expenses (i.e., telephone and postage) actually incurred by Contract Advisor in connection with the negotiation of Player's NFL contract. Player also shall reimburse Contract Advisor for all reasonable and necessary travel expenses actually incurred by Contract Advisor during the term hereof in the negotiation of Player's NFL contract, but only if such expenses and approximate amounts thereof are approved in advance by Player. Player shall promptly pay all such expenses upon receipt of an itemized, written statement from Contract Advisor.

This allows the agent to collect certain expenses of his representation from you. As a young person, you may not realize that long distance telephone calls formerly were billed by the minute and could get expensive. So the need for this category of reimbursement (due to unlimited data plans) has pretty much vanished. I have long suggested that this sentence be deleted by mutual agreement. In fact, this paragraph is the only one that the NFLPA allows to be stricken, and most agents will agree to do so. As to the travel expense reimbursement sentence, consider deleting it as well. Even if it remains, you have control due to the advance approval language.

Section 6B – Expenses

B. After each NFL season and prior to the first day of May following each season for which Contract Advisor has received fees and expenses, Contract Advisor must send to Player (with a copy of the NFLPA) an itemized statement covering the period beginning March 1 of the prior year through February 28th or 29th of that year. Such statement shall set forth both the fees charged to Player for, and any expenses incurred in connection with, the performance of the following services: (a) individual player salary negotiations, (b) management of player's assets, (c) financial, investment, legal, tax and/or other advice, and (d) any other miscellaneous services.

However, do not strike through 6B! That itemized statement is required by the CBA in order to keep you informed.

Section 8 - Disputes

Any and all disputes between Player and Contract Advisor involving the meaning, interpretation, application, or enforcement of this Agreement or the obligations of the parties under this Agreement shall be resolved exclusively through the arbitration procedures set forth in Section 5 of the NFLPA Regulations Governing Contract Advisors.

This section is a future disputes clause wherein you and your agent choose to submit any and all disputes relating to this Standard Representation Agreement to arbitration pursuant to the arbitration rules of the NFLPA. So, any litigation relating to the SRA occurs in arbitration, not at the courthouse. Fair? I think so.

Section 13 – Governing law

This Agreement shall be construed, interpreted and enforced according to the laws of the State of _____.

Contract Advisor and Player recognize that certain state statutes regulating sports agents require specified language in the player/agent contract. The parties therefore agree to the following additional language as required by state statute:

We always advise our student-athletes to choose the laws of Texas rather than the agent's home state. The Texas Secretary of State's attorney may be the most diligent Uniform Athlete Agents Act watchdog in the country. Also, the Texas Act continues to protect the prospective professional until he signs his NFL Standard Player Agreement. The original version of the Uniform Act (in place in most states) fails to protect the exhausted eligibility athlete.¹¹⁷ It is tied to NCAA eligibility. Furthermore, one of the most significant protections is afforded by § 5(f) of the Uniform Athlete Agents Act, which provides that you may cancel your contract (without cause) before the expiration of the 15th day after the date the contract is signed by notifying the agent in writing.¹¹⁸ This means you can change your mind without giving any reason! The Act requires that the language in Appendix A be included in your contract (add this to §13 the NFLPA form).

B. Commentary by Kelli Masters

Quite honestly, I agree with this article on all points. Paragraph 6a should be crossed through and initialed by both the agent and the player. One note as to a change that is coming: if you sign

¹¹⁷ 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 (2002); Lloyd Z. Remick, *Keeping Out the Little Guy: An Older Contract Advisor's Concern, a Younger Contract Advisor's Lament*, 1 VILL. SPORTS & ENT. L.J. 12 (2005).

¹¹⁸ See UNIF. ATHLETE AGENTS ACT § 5(f), *supra* note 3.

an SRA with two or more agents (whether they are in the same agency or working in a partnership or joint venture), one agent will be the designated payee. This agent will be paid your commission fees, and then will be responsible for disbursing the proper percentage to the other agent(s) on the agreement. This is to protect you from issues and disputes that may arise if agents discontinue doing business together.

I also agree that the arbitration provision is in the best interests of the player. The arbitration process, in my experience, is fair, reasonable, and can be significantly less expensive than going to court. Moreover, the NFLPA advocates on behalf of its members (the players). So even if you face a grievance from a former agent, the NFLPA will provide support and defend you throughout the process. For example, I represented a player who had fired his agent after the draft and signed with me shortly thereafter (at least five days later, of course). His agent had provided pre-draft training but did not have him sign a written agreement regarding repayment and did not file anything with the NFLPA that would indicate the player was responsible for repayment. The former agent filed a grievance against the player, seeking repayment of training expenses and quantum meruit (payment for time spent representing him). I worked with the NFLPA to try to resolve the matter, but the former agent refused to settle. The matter went before an arbitrator in Washington D.C., where the player was allowed to attend by phone. The arbitrator took testimony, which was damaging to the former agent, and the former agent agreed to settle prior to the entry of a binding decision. The same type of dispute could have taken months, if not years, and thousands of dollars to resolve via the court system.

CONCLUSION

Overall, a collegiate football star has many factors to take into account when considering the pursuit of a professional football career. As this career path may be extremely rewarding, athletes need to take caution before interacting with agents in a way

that could jeopardize that opportunity. Both athletes and agents must understand how NCAA Bylaw 12, the NFLPA rules and regulations, and the Uniform Athlete Agents Act all work together to protect the professional prospects throughout the agent selection process. As a talented college football athlete, you need to seriously consider all options and factors discussed in this article before leaving behind a year of collegiate eligibility to enter the NFL draft. Exercising the advice offered in this article, as well as the resources available to you through your university's compliance staff, you should make educated decisions to set yourself up for a successful professional career. So, when the Caller I.D. reveals that a famous football agent is calling you to recruit you to hire him, use the tools provided in this article to equip you in paving the road between NCAA stardom and the NFL.

Appendix

Section 7 – Disclaimer of Liability

Player and Contract Advisor agree that they are not subject to the control or direction of any other person with respect to the timing, place, manner or fashion in which individual negotiations are to be conducted pursuant to this Agreement (except to the extent that Contract Advisor shall comply with NFLPA Regulations) and that they will save and hold harmless the NFLPA, its officers, employees and representatives from any liability whatsoever with respect to their conduct or activities relating to or in connection with this Agreement or such individual negotiations.

Section 9 – Notices

All notices hereunder shall be effective if sent by confirmed facsimile or overnight delivery to the appropriate address contained in this Agreement.

If to the Contract Advisor:

If to the Player:

Section 10 – Entire Agreement

This Agreement, along with the NFLPA Regulations, sets forth the entire agreement between the parties hereto and cannot be amended, modified or changed orally. Any written amendments or changes shall be effective only to the extent that they are consistent

with the Standard Representation Agreement as approved by the NFLPA.

Section 11 – Filing

This contract is signed in quadruplicate. Contract Advisor agrees to deliver two (2) copies to the NFLPA within five (5) days of its execution; one (1) copy to the Player; and retain one (1) copy for his/her files. Contract Advisor further agrees to submit any other executed agreements between Player and Contract Advisor to NFLPA.

Section 12 – Term

The term of this Agreement shall begin on the date hereof and shall remain in effect until such time that it is terminated by either party in which case termination of this Agreement shall be effective five (5) days after written notice of termination is given to the other party. Notice shall be effective for purposes of this paragraph if sent by confirmed facsimile or overnight delivery to the appropriate address contained in this Agreement. Notwithstanding the above, if this Standard

Representation Agreement is being signed by a prospective rookie player (a “rookie” shall be defined as a person who has never signed an NFL Player Contract) prior to the date which is thirty (30) days before the NFL Draft, then this Agreement shall not be terminable by Player until at least 30 days after it has been signed by Player.

If termination pursuant to the above provision occurs prior to the completion of negotiations for an NFL player contract(s) accepta-

ble to Player and signed by Player, Contract Advisor shall be entitled to compensation for the reasonable value of the services performed in the attempted negotiation of such contract(s) provided such services and time spent thereon are adequately documented by Contract Advisor. If termination pursuant to the above provision occurs after

Player has signed an NFL player contract negotiated by Contract Advisor, Contract Advisor shall be entitled to the fee prescribed in Paragraph 4 above for negotiation of such contract(s).

In the event that Player is able to renegotiate any contract(s) previously negotiated by Contract

Advisor prior to expiration thereof, and such renegotiated contract(s) for a given year equals or exceeds the compensation in the original contract, the Contract Advisor who negotiated the original contract shall still be entitled to the fee he/she would have been paid pursuant to 4 above as if such original contract(s) had not been renegotiated. If Contract Advisor represents Player in the renegotiation of the original contract(s), and such renegotiated contract(s) for a given year equals or exceeds the compensation in the original contract, the fee for such renegotiation shall be based solely upon the amount by which the new compensation in the renegotiated contract(s) exceeds the compensation in the original contract(s), whether or not Contract Advisor negotiated the original contract(s).

In the event that the Player renegotiates any contract(s) and the renegotiated compensation for a given year is less than the compensation in the original contract, the fee to the Contract Advisor who negotiated the original contract shall be his/her fee percentage applied to the new compensation, but only after the new compensation is reduced by the percentage which the compensation was reduced from the original contract. The fee to the Contract Advisor who negotiated the new contract shall be his/her fee percentage applied to the new compensation, but only after the new compensation is reduced by the compensation applicable to the original Contract Advisor's fee as calculated pursuant to the immediately

preceding sentence.

If the Contract Advisor's Certification is suspended or revoked by the NFLPA or the Contract Advisor is otherwise prohibited by the NFLPA from performing the services he/she has agreed to perform herein, this Agreement shall automatically terminate, effective as of the date of such suspension or termination.

EXAMINE THIS CONTRACT CAREFULLY BEFORE SIGNING IT

IN WITNESS WHEREOF, the parties hereto have hereunder signed their names as hereinafter set forth.

(CONTRACT ADVISOR)

(PLAYER)

(Street Address)

(Street or P. O. Box)

(City, State, Zip Code)
Code)

(City, State, Zip

(Telephone)

(In-Season Telephone)

(Fax Number)

(Off-Season Telephone)

_____	_____
(Player's Birthdate)	(College/University)

Print Name and Signature of PARENT or GUARDIAN (if Player is under 21 Years of Age)	

(Street Address)	

(City, State, Zip Code)	

(Telephone)	
NOTICE TO CLIENT:	
(1)	THIS ATHLETE AGENT IS REGISTERED WITH THE SECRETARY OF STATE OF THE STATE OF TEXAS. REGISTRATION WITH THE SECRETARY OF STATE DOES NOT IMPLY APPROVAL OR ENDORSEMENT BY THE SECRETARY OF STATE OF THE COMPETENCE OF THE ATHLETE AGENT OR OF THE SPECIFIC TERMS AND CONDITIONS OF THIS CONTRACT.
(2)	DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ IT OR IF IT CONTAINS BLANK SPACES.

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(3) IF YOU DECIDE THAT YOU DO NOT WISH TO PURCHASE THE SERVICES OF THE ATHLETE AGENT, YOU MAY CANCEL THIS CONTRACT BY NOTIFYING THE ATHLETE AGENT IN WRITING OF YOUR DESIRE TO CANCEL THE CONTRACT NOT LATER THAN THE 16TH DAY AFTER THE DATE ON WHICH YOU SIGN THIS CONTRACT.

