

2000

## Ethical and Statutory Limitations on Athlete Agent Income: Fees, Referrals, and Ownership Interests

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### Recommended Citation

Diane Sudia & Rob Remis, *Ethical and Statutory Limitations on Athlete Agent Income: Fees, Referrals, and Ownership Interests*, 27 Fla. St. U. L. Rev. 787 (2000) .  
<https://ir.law.fsu.edu/lr/vol27/iss4/1>

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# FLORIDA STATE UNIVERSITY LAW REVIEW



ETHICAL AND STATUTORY LIMITATIONS  
ON ATHLETE AGENT INCOME:  
FEES, REFERRALS, AND OWNERSHIP INTERESTS

*Diane Sudia & Rob Remis*

VOLUME 27

SUMMER 2000

NUMBER 4

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Recommended citation: Diane Sudia & Rob Remis, *Ethical and Statutory Limitations on Athlete Agent Income: Fees, Referrals, and Ownership Interests*, 27 FLA. ST. U. L. REV. 787 (2000).

# ETHICAL AND STATUTORY LIMITATIONS ON ATHLETE AGENT INCOME: FEES, REFERRALS, AND OWNERSHIP INTERESTS

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## I. INTRODUCTION

*Autumn temperatures and football! The athletic director stands outside and swallows the fresh evening air before walking to his car to go home. The athlete agent stands behind a tree, waiting for the most opportune moment—the moment the athletic director turns his engine over, backs up, shifts to drive and leaves the parking lot. The engine cranks. The agent's footsteps quietly, but noisily, trample across the fallen leaves. Inside, the coach awaits. The agent walks into the coach's office and starts questioning him about the athletes.*

*The coach immediately says, "Sssshhhh," gets up, walks over, and shuts the door. "What's wrong with you?" the coach asks in disgust.*

*The agent replies, "Settle down. The A.D. left already. Stop worrying." The coach hands the names and phone numbers of two star athletes to the agent. "Will they talk to me?" the agent inquires.*

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*“Only you and no one else. They trust my judgment,” the coach replies. The agent hands the coach one hundred crisp twenty-dollar bills. “Andrew Jackson gets better looking every time I see him,” the coach chuckles.*

*The agent briefly joins the laughter and then leaves by the same tip-toe walking style with which he entered. The agent accidentally knocks over the water cooler, causing the jug to fall with a loud tumbling crash. Luckily, nobody remains in the building at such a late hour.*

*The coach shakes his head in bewilderment, kisses Andrew goodnight, turns off his light and locks his office tight.*

Athlete agents find themselves increasingly regulated, as twenty-eight states regulate numerous aspects of agent conduct.<sup>1</sup> Civil, administrative, and criminal penalties exist for violations of the statutes, depending on the state involved.<sup>2</sup> Again, depending on the state, athlete agents must also adhere to various registration and reporting requirements.<sup>3</sup> Arguably, however, many of these statutes

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1. Athlete agent regulation changes quickly. Consequently, states continually enact new, or amend existing, athlete agent legislation. For example, Arizona and Oregon recently enacted new, and Arkansas and Louisiana recently amended existing, athlete agent legislation. In contrast, Washington repealed its athlete agent statute on April 30, 1999. See H.B. No. 1251, 56th Leg., 1st Reg. Sess. (Wash. 1999). The following statutes currently regulate athlete agents: ALA. CODE §§ 8-26-1 to -41 (Supp. 1999); ARIZ. REV. STAT. ANN. §§ 15-1761 to -1765 (West Supp. 1999); ARK. CODE ANN. §§ 17-16-101 to -207 (Michie Supp. 1999); CAL. BUS. & PROF. CODE §§ 6106.7, 18895 to 18897.93 (Supp. 2000); COLO. REV. STAT. ANN. §§ 23-16-101 to -108 (West 1999); CONN. GEN. STAT. ANN. §§ 20-553 to -569 (West 1999); FLA. STAT. §§ 468.451-.4571 (1999); GA. CODE ANN. §§ 43-4A-1 to -19 (1999); IND. CODE ANN. §§ 35-46-4-1 to -4 (Michie 1998); IOWA CODE §§ 9A.1-.12 (1999); KAN. STAT. ANN. §§ 44-1501 to -1515 (Supp. 1999); KY. REV. STAT. ANN. §§ 164.680-.689 (Michie 1999); LA. REV. STAT. ANN. §§ 4:420-33 (West Supp. 2000); MD. CODE ANN., BUS. REG. §§ 4-401 to -426 (1998); MICH. COMP. LAWS ANN. § 750.411e (West 1991); MINN. STAT. ANN. § 325E.33 (West 1995); MISS. CODE ANN. §§ 73-41-1 to -23 (1999); MO. ANN. STAT. §§ 436.200-.212 (West Supp. 2000); NEV. REV. STAT. ANN. §§ 398.015-.255, 597.920 (Michie 2000); N.C. GEN. STAT. §§ 78C-71 to -81 (1999); N.D. CENT. CODE §§ 9-15-01 to -05 (Supp. 1999); OHIO REV. CODE ANN. §§ 4771.01-.99 (Anderson 1997); OKLA. STAT. ANN. tit. 70, §§ 821.61-.71 (West 1998); 1999 Or. Laws 1079, §§ 1-12; 5 PA. CONS. STAT. ANN. §§ 3101-3312 (West Supp. 2000), and 18 PA. CONS. STAT. ANN. § 7107 (West Supp. 2000); S.C. CODE ANN. §§ 59-102-10 to -50 (Law. Co-op. Supp. 1999); TENN. CODE ANN. §§ 49-7-2111 to -2121 (1996); TEX. OCC. CODE ANN. §§ 2051.001-.553 (West 2000).

2. For a detailed analysis of the civil, administrative, and criminal remedies and penalties imposed on athlete agents, see Rob Remis, *Analysis of Civil and Criminal Penalties in Athlete Agent Statutes and Support for the Imposition of Civil and Criminal Liability upon Athletes*, 8 SETON HALL J. SPORT L. 1 (1998) [hereinafter Remis, *Remedies and Penalties*]. Such regulations are beyond the scope of this Article, which addresses only those regulations which authorize or prohibit certain fees, referrals, and ownership interests of athlete agents. See *infra* note 4.

3. For a detailed analysis of registration and reporting requirements, see Rob Remis, *The Art of Being a Sports Agent in More than One State: Analysis of Registration and Reporting Requirements and Development of a Model Strategy*, 8 SETON HALL J. SPORT L. 419 (1998) [hereinafter Remis, *Registration and Reporting*]. Such regulations are beyond the scope of this Article, which (as noted above) addresses only those regulations that

are unconstitutional, at least in part, and contain numerous loopholes or exemptions that should make it relatively easy for an athlete agent to escape civil and criminal liability under existing athlete agent statutes.<sup>4</sup> Another issue that arises, and which this Article answers, is exactly what restrictions on fees, referrals, and ownership interests the states legislatively impose on athlete agents.

Part II of this Article analyzes the nationwide statutory regulations imposing restrictions on the following items: (1) fees athlete agents may charge athlete clients; (2) referral fees paid by athlete agents to employees and coaches of educational institutions; and (3) ownership interests of athlete agents in sports and financial entities. Part III examines some regulations appearing in the *Rules Regulating The Florida Bar*, which regulate attorney-agents licensed to practice in Florida.<sup>5</sup> Part IV analyzes the regulations governing agents certified by the National Football League Players Association (NFLPA): *NFLPA Regulations Governing Contract Advisors*. Part IV also analyzes the regulations governing agents certified by the Major League Baseball Players Associations (MLBPA): *MLBPA Regulations Governing Player Agents*.<sup>6</sup>

Appendix A sets forth the relevant statutory provisions prohibiting or requiring disclosure of an agent's ownership interests in certain sports or financial entities as defined in the athlete agent statutes. Appendix A also outlines the relevant statutory provisions restricting the fees an agent may charge an athlete client and the referral fees an agent may pay to employees and coaches of an

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authorize or prohibit certain fees, referrals, and ownership interests of athlete agents. Additionally, some players associations require agents to become certified and pay a registration fee, and agents can also register with college professional sports counseling panels. *See id.* at 448; *infra* note 4.

4. For a detailed analysis of the loopholes and constitutional defects contained in the various athlete agent statutes, predicated upon a tri-partite statutory classification of athletes, see Rob Remis & Diane Sudia, *Escaping Athlete Agent Statutory Regulation: Loopholes and Constitutional Defectiveness Based on Tri-Parte Classification of Athletes*, 9 SETON HALL J. SPORT L. 1 (1999) [hereinafter Remis & Sudia, *Escaping Athlete Agent Regulation*]. Such provisions are beyond the scope of this Article. Please note that Remis & Sudia, *Escaping Athlete Agent Regulation*, *supra*, as well as Remis, *Registration and Reporting*, *supra* note 3, and Remis, *Remedies and Penalties*, *supra* note 2, will be referred to often throughout this Article, as many of the concepts analyzed in the four articles are interrelated and causally connected.

5. Although this Article discusses the Florida Rules, these rules are patterned after the ABA Model Rules; accordingly, similar results should occur in other states following the ABA Model Rules.

6. Athlete agents are called "Contract Advisors" in the NFLPA regulations. *See* NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS (1998) [hereinafter NFLPA REGULATIONS]. Athlete agents are called "Player Agents" in the MLBPA regulations. *See* MLBPA REGULATIONS GOVERNING PLAYER AGENTS (1993) [hereinafter MLBPA REGULATIONS].

educational institution. Appendix B summarizes and statistically demonstrates which of the various states contain the provisions set forth in Appendix A.

## II. STATUTORY RESTRICTIONS ON AGENT COMPENSATION AND ACTIVITIES

Several states have legislated civil and criminal penalties for athlete agents who exhibit certain proscribed conduct, including violating NCAA regulations and state athlete agent statutes. The rationale for legislating athlete agents lies partially in the recognition that several potential conflicts of interest flourish in the athlete agent field and that these conflicts easily escape detection and prevention.<sup>7</sup> Agent violations of NCAA regulations often cause rippling, disastrous effects to athletes, universities, and other third persons and organizations.<sup>8</sup>

The following discussion analyzes states' attempts to curb unethical agent practices by imposing regulations on agents' fees and ownership interests. This Article also analyzes the states' regulation of fee divisions and referrals from educational institution employees. All athlete agents must keep abreast of these restrictions to avoid civil and criminal liability which the various states may impose, or agent decertification or other sanctions from the respective players associations.

### A. *Limit on Agent Fees*

The first relevant issue concerns whether any states limit the percentage of an athlete's compensation that an agent may take as a fee. Interestingly, although one would imagine that such statutory provisions occur frequently, Alabama is thus far the only state that statutorily prescribes a percentage limitation on the amount of compensation an athlete agent may charge an athlete.<sup>9</sup> Specifically, Alabama limits an agent's fee to ten percent of the total compensation the athlete earns, directly or indirectly, in a calendar year under a negotiated professional sports services contract.<sup>10</sup> The source of the athlete's compensation under the contract is irrelevant.<sup>11</sup> Interestingly,

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7. See Remis, *Remedies and Penalties*, *supra* note 2, at 31-32.

8. See *id.* at 8-12.

9. See ALA. CODE § 8-26-24 (Supp. 1999). Although it does not set a limit, Connecticut's athlete agent statute provides that the state shall adopt regulations on this issue. See CONN. GEN. STAT. ANN. § 20-556 (West 1999).

10. See ALA. CODE § 8-26-24 (Supp. 1999).

11. See *id.*

the Alabama statute does not address endorsement deals, just negotiated “professional sports services contracts.”<sup>12</sup>

In a slightly different fashion, six athlete agent statutes restrict an agent’s fee by limiting the amount an agent may receive in a twelve-month period.<sup>13</sup> Typically, these provisions provide that when a multi-year professional sports services contract is negotiated for an athlete, the agent may not collect, in any twelve-month period, a fee for negotiating the contract that exceeds the compensation the athlete will receive under the contract in that twelve-month period.<sup>14</sup>

The Alabama statute also contains a provision limiting the fees and expenses an athlete agent may collect when obtaining employment for the athlete in two scenarios: (1) when no professional sports service contract is obtained by the athlete; or (2) when the athlete is not paid for the employment.<sup>15</sup> In either of these scenarios, the agent is limited to collecting two items for his or her services. First, the agent may recover reimbursement for the agent’s reasonable out-of-pocket expenses.<sup>16</sup> Second, as compensation for services performed, the agent may only collect the greater of ten percent of the athlete’s signing bonus or one thousand dollars.<sup>17</sup> Alabama also permits an agent to require security for her fees.<sup>18</sup>

Although it appears somewhat odd that twenty-one of the twenty-eight athlete agent statutes intended and designed to protect athletes do not include provisions limiting the percentage or amount of agent fees, the problem might not always create harsh consequences. First, the ethical rules of the applicable state bar associations limit the fees an agent may charge and collect, assuming the agent is also an attorney.<sup>19</sup> Further, agent fees are often regulated by the respective players associations.<sup>20</sup> Players associations can prohibit agents who violate their rules from representing any athletes. Therefore, sufficient deterrents arguably exist irrespective of the

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12. *Id.* Alabama defines “professional sports services contract” as “[a]ny contract or agreement pursuant to which an athlete is employed or agrees to render services as a player on a professional sports team or as a professional athlete.” *Id.*

13. See KAN. STAT. ANN. § 44-1507 (Supp. 1999); LA. REV. STAT. ANN. § 4:423 (West Supp. 2000); MD. CODE ANN., BUS. REG. § 4-415 (1998); N.D. CENT. CODE § 9-15-03 (Supp. 1999); OKLA. STAT. ANN. tit. 70, § 821.63 (West 1998); TEX. OCC. CODE ANN. § 2051.206 (West 2000).

14. See sources cited *supra* note 13.

15. See ALA. CODE § 8-26-35 (Supp. 1999).

16. See *id.*

17. See *id.*

18. See *id.* § 8-26-24.

19. See *infra* Part III.

20. See *infra* Part IV.

nonexistence of statutory fee limits in most states. Of course, the actual degree of deterrence obviously depends on how frequently and effectively the players associations enforce their own rules.

Even with these protections, however, it must be remembered that a state statute providing for civil or criminal penalties arguably serves as a better deterrent against unreasonable agent fees.<sup>21</sup> Players associations cannot impose criminal sanctions, assuming, of course, they deem such sanctions desirable.<sup>22</sup> Additionally, although state bar rules may force disbarment, some attorneys might simply choose to forego their law practice for full-time athlete representation. In fact, some agents find that abandoning a law practice constitutes a wise career move.<sup>23</sup>

### *B. Required Disclosure of Agent Fees and Limit on Changes*

Even though only seven of the twenty-eight states impose caps on the maximum fees that an athlete agent may collect from the athlete, fourteen states require that the agent disclose to the athlete the amount of the agent's fee and/or how the fee will be calculated.<sup>24</sup> Further, nine of these fourteen states require the agent to provide prior notice before changing or departing from the predetermined fee schedule.<sup>25</sup>

### *C. Selling or Transferring Agent's Profits*

A related issue deals with indirectly restricting an agent's fee. In particular, four states impose restrictions on an agent's ability to

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21. See generally Remis, *Remedies and Penalties*, supra note 2, at 60.

22. Not every state criminally punishes athlete agent conduct. For a detailed analysis of state imposition of criminal penalties, see *id.* at 22-43.

23. See Richard C. Webb, *Personal Services Lawyering: Sport, Entertainment, Art . . . or Just Plain Risky Business?*, S.C. LAW., Nov.-Dec. 1993, at 14.

24. See ALA. CODE § 8-26-31 (Supp. 1999); CAL. BUS. & PROF. CODE §§ 18896, 18896.2, 18897 (Supp. 2000); COLO. REV. STAT. ANN. § 23-16-104 (West 1999); CONN. GEN. STAT. ANN. § 20-554(d) (West 1999); FLA. STAT. § 468.454 (1999); IOWA CODE § 9A.7(3) (1999); KAN. STAT. ANN. § 44-1507 (Supp. 1999); LA. REV. STAT. ANN. § 4:423(D) (West Supp. 2000); MD. CODE ANN., BUS. REG. § 4-415(b)(1) (1998); N.C. GEN. STAT. § 78C-74 (1999); N.D. CENT. CODE § 9-15-03(2) (Supp. 1999); OKLA. STAT. ANN. tit. 70, § 821.63 (West 1998); TENN. CODE ANN. § 49-7-2113 (1996); TEX. OCC. CODE ANN. § 2051.203 (West 2000).

25. Typically, the statutes require seven days' notice of any such agent fee changes. See CAL. BUS. & PROF. CODE §§ 18896, 18896.2(a) (Supp. 2000); CONN. GEN. STAT. ANN. § 20-554(d) (West 1999); IOWA CODE § 9A.7(3) (1999); KAN. STAT. ANN. § 44-1507 (Supp. 1999); LA. REV. STAT. ANN. § 4:423(D) (West Supp. 2000); MD. CODE ANN., BUS. REG. § 4-415 (1998); N.D. CENT. CODE § 9-15-03(2) (Supp. 1999); OKLA. STAT. ANN. tit. 70, § 821.63 (West 1998); TEX. OCC. CODE ANN. § 2051.203 (West 2000).

sell or otherwise transfer profits.<sup>26</sup> A fifth state merely states that it shall adopt regulations on this issue.<sup>27</sup>

*D. Sports Entity Ownership Interest or Compensation Prohibited or Disclosed*

Four states statutorily regulate an agent's commissions earned on investments the agent makes for the athlete client.<sup>28</sup> For example, if an agent advises an athlete on investments, Alabama requires the agent to disclose to the athlete any ownership interests the agent has in any entity used by the agent in providing the advice and any commissions or fees paid to the agent as a result of the investments.<sup>29</sup> California and Nevada mandate similar disclosure.<sup>30</sup>

Another type of ownership or financial interest that five states either completely prohibit or allow with mandated disclosure involves interests in sports entities.<sup>31</sup> To illustrate, California prohibits athlete agents from maintaining an ownership or financial interest in any entity that is directly involved in the same sport as a person with whom the athlete agent has entered into an agent contract.<sup>32</sup> Similarly, California prohibits such interests in any entity that is directly involved in the same sport as a person for whom the agent is attempting to negotiate an endorsement, financial services, or a professional sports service contract.<sup>33</sup> A third category prohibits interests in entities involved in the same sport as a person for whom the agent provides advice regarding actual or potential employment as a professional athlete.<sup>34</sup> Alabama, Nevada, and North Dakota similarly restrict such ownership interests.<sup>35</sup>

A fairly common regulatory provision prohibits athlete agents from dividing fees with, or receiving compensation from, certain

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26. See ALA. CODE § 8-26-29 (Supp. 1999); LA. REV. STAT. ANN. § 4:424(A)(1) (West Supp. 2000); MISS. CODE ANN. § 73-41-11(a) (1999); OKLA. STAT. ANN. tit. 70, § 821.64(1) (West 1998).

27. See CONN. GEN. STAT. ANN. § 20-556 (West 1999).

28. See ALA. CODE § 8-26-31 (Supp. 1999); CAL. BUS. & PROF. CODE § 18897.3 (Supp. 2000); KY. REV. STAT. ANN. § 164.683(3) (Michie 1999); NEV. REV. STAT. ANN. § 597.920 (Michie 1999).

29. See ALA. CODE § 8-26-31 (Supp. 1999).

30. See CAL. BUS. & PROF. CODE § 18897.3 (Supp. 2000); NEV. REV. STAT. ANN. § 597.920 (Michie 1999).

31. See ALA. CODE § 8-26-30 (Supp. 1999); CAL. BUS. & PROF. CODE § 18897.27 (Supp. 2000); KY. REV. STAT. ANN. § 164.683(3) (Michie 1999); NEV. REV. STAT. ANN. § 597.920(e) (Michie 1999); N.D. CENT. CODE § 9-15-04 (Supp. 1999).

32. See CAL. BUS. & PROF. CODE § 18897.27 (Supp. 2000).

33. See *id.*

34. See *id.*

35. See ALA. CODE § 8-26-30 (Supp. 1999); NEV. REV. STAT. § 597.920(e) (Michie 2000); N.D. CENT. CODE § 9-15-04 (Supp. 1999).

sports entities or individuals. Eleven states proscribe such activity.<sup>36</sup> Alabama and California, for instance, each provide that an athlete agent may not divide fees with a professional sports league or franchise, its representatives, or its employees.<sup>37</sup>

*E. Referral of Athletes from Educational Institution Employees*

Twenty-six states either directly or indirectly restrict athlete referrals. Twenty-four states explicitly prohibit the referral of athletes to athlete agents from coaches or other employees of educational institutions.<sup>38</sup> Arkansas, while not specifically mentioning “referrals,” drafted a provision restricting agents from offering anything of value to any person for the purpose of inducing a student athlete to enter into an agent contract with the agent.<sup>39</sup> Georgia arguably regulates referrals through two related provisions.<sup>40</sup> The National Collegiate Athletic Association (NCAA) also prohibits agent referrals.<sup>41</sup>

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36. See ALA. CODE § 8-26-34 (Supp. 1999); CAL. BUS. & PROF. CODE § 18897.47 (Supp. 2000); CONN. GEN. STAT. ANN. § 20-555 (West 1999); KAN. STAT. ANN. § 44-1508 (Supp. 1999); LA. REV. STAT. ANN. § 4:424(5) (West Supp. 2000); MD. CODE ANN., BUS. REG. § 4-420 (1998); MISS. CODE ANN. § 73-41-11(e) (1999); N.C. GEN. STAT. § 78C-76 (1999); N.D. CENT. CODE § 9-15-04 (Supp. 1999); OKLA. STAT. ANN. tit. 70, § 821.64(5) (West 1998); TEX. OCC. CODE ANN. § 2051.351(a)(4) (West 2000).

37. See ALA. CODE § 8-26-34 (Supp. 1999); CAL. BUS. & PROF. CODE § 18897.47 (Supp. 2000).

38. See ALA. CODE § 8-26-7 (Supp. 1999); ARK. CODE ANN. § 17-16-205(a)(4) (Michie Supp. 1999); ARIZ. REV. STAT. ANN. § 15-1762 (West Supp. 1999); CAL. BUS. & PROF. CODE § 18897.67 (Supp. 2000); COLO. REV. STAT. ANN. § 23-16-103 (West 1999); CONN. GEN. STAT. ANN. § 20-555 (West 1999); FLA. STAT. § 468.456 (1999); IOWA CODE § 9A.8 (1999); KAN. STAT. ANN. § 44-1508 (Supp. 1999); KY. REV. STAT. ANN. § 164.683(8) (Michie 1999); LA. REV. STAT. ANN. § 4:424 (West Supp. 2000); MD. CODE ANN., BUS. REG. § 4-419 (1998); MICH. COMP. LAWS ANN. § 750.411e (West 1991); MINN. STAT. ANN. § 325E.33 (West 1995); MISS. CODE ANN. § 73-41-11(f) (1999); MO. ANN. STAT. § 436.212 (West Supp. 2000); NEV. REV. STAT. § 597.920 (Michie 2000); N.C. GEN. STAT. § 78C-76 (1999); N.D. CENT. CODE § 9-15-04 (Supp. 1999); OKLA. STAT. ANN. tit. 70, § 821.64(6) (West 1998); 1999 OR. LAWS 1079, § 7; 18 PA. CONS. STAT. ANN. § 7107(a)(3), 5 PA. CONS. STAT. § 3305 (West Supp. 2000); S.C. CODE ANN. § 59-102-40 (Law. Co-op. Supp. 1999); TENN. CODE ANN. § 49-7-2114 (1996); TEX. OCC. CODE ANN. § 2051.351(a)(5) (West 2000). Iowa also specifically prohibits referrals of athletes to agents by other students. See IOWA CODE § 9A.8 (1999).

39. ARK. CODE ANN. § 17-16-205(a)(4) (Michie Supp. 1999).

40. Georgia arguably prohibits such referrals through its provision prohibiting agents from acting in a manner that significantly and adversely impacts on her credibility, honesty, integrity, or competence to serve in a fiduciary capacity. See GA. CODE ANN. § 43-4A-7(a)(3) (1999). Another Georgia provision that would regulate referrals prohibits agents from engaging in conduct that results in an athlete's loss of intercollegiate eligibility. See *id.* § 43-4A-7(a)(4); see also *infra* note 41 and accompanying text, regarding the NCAA prohibition against referrals.

41. See NCAA, *Operating Bylaws* art. 10.1(e), in 1999-2000 NCAA DIVISION I MANUAL 53, 53.

Sports agents increasingly exchange cash for student referrals from university personnel.<sup>42</sup> Additionally, some college coaches, for compensation, either permit only one agent to speak with all team members or refer all athletes to only one sports agent.<sup>43</sup> The referral of athletes to an agent by educational institution employees presents an interesting issue as to whether an athlete can sue a university when such referrals are made and the athlete is injured thereby. Arguably, athletes will inevitably sue universities under a fiduciary duty theory.<sup>44</sup> The basis for such suits is that universities arguably owe a fiduciary duty to student athletes, due to their special relationship, and may be liable for a breach of that duty.<sup>45</sup> The Colorado Supreme Court noted that imposition of fiduciary duties on universities is warranted by the enormous control exerted over the lives of its athletes: “[Student athletes] submit to extensive regulation of their on- and off-campus behavior, including maintenance of required levels of academic performance, monitoring of course selection, training rules, mandatory practice sessions, diet restrictions, attendance at study halls, curfews, and prohibitions on alcohol and drug use.”<sup>46</sup> Further, coaches arguably dominate student athletes by imposing curfews, requiring students to show up for practice, advising athletes on which classes to enroll, and imposing required morning and evening study periods.<sup>47</sup>

### III. STATE BAR ETHICAL RULES FOR ATTORNEY-AGENTS

Sports agents who are also attorneys are further governed by the ethical rules of their respective states of admission. For illustrative purposes, this Article examines the ethical rules governing Florida attorneys for limitations on an agent’s ability to charge and collect fees from athlete clients.<sup>48</sup> Obviously, state ethical codes vary in scope

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42. See Michael L. Buckner, *University Liability in Florida When Coaches Refer Student Athletes to Sports Agents*, FLA. B.J., Apr. 1999, at 87, 87.

43. See *id.*

44. See *id.* Placing trust and confidence in a dominant party can give rise to a fiduciary relationship. See *id.* at 88. When a fiduciary duty arises, the fiduciary must fulfill its duty to act for the benefit of the principal. See *Jacobs v. Vaillancourt*, 634 So. 2d 667, 670 (Fla. 2d DCA 1994). The fiduciary remains subject to the duty with respect to all matters relevant to the fiduciary relationship. See *id.*

45. See Buckner, *supra* note 42, at 88.

46. *Id.* (quoting *University of Colo. v. Derdeyn*, 863 P.2d 929, 937 (Colo. 1993)).

47. See *Derdeyn*, 863 P.2d at 940-41.

48. The ethical rules governing Florida attorneys are set forth in *Rules Regulating The Florida Bar*. Provisions that apply directly to the sports agency field include *Rules of Discipline*, *Rules of Professional Conduct*, and *Rules Regulating Trust Accounts*. See RULES REGULATING THE FLA. BAR chs. 3-5 (Mar. 2000), available at <<http://www.flabar.org/newflabar/lawpractice/Rules>>. Also pertinent to the attorney-agent are the standards set

and the attorney-agent should consult the applicable rules of the state in which she is licensed and practices. In contrast, ethical codes for lawyers cannot bind or otherwise govern nonattorney-agents unless, of course, the nonattorney-agent engages in the unauthorized practice of law. Nevertheless, since many athlete agents are professionals in an area other than law, such as certified public accountants and financial planners, other codes of ethics might apply to agents licensed in these areas.

In Florida, as in most states, several ethical rules apply to attorney-agents: (1) attorneys must represent clients competently;<sup>49</sup> (2) they must define the scope of representation;<sup>50</sup> (3) they must represent clients diligently;<sup>51</sup> (4) they must communicate with their clients;<sup>52</sup> (5) they are prohibited from charging excessive and unreasonable fees;<sup>53</sup> (6) they must maintain the confidentiality of client information;<sup>54</sup> (7) they must avoid conflicts of interest;<sup>55</sup> (8) they must comply with rules regulating an attorney's conduct when the client is under a disability (such as being unable to make decisions due to minority age);<sup>56</sup> (9) they must safe-keep client funds and property;<sup>57</sup> (10) they must either decline or terminate representation under particular circumstances;<sup>58</sup> (11) they must comply with rules regulating attorney advertisements;<sup>59</sup> and (12) they must comply with rules regulating solicitation of clients.<sup>60</sup> Importantly, nonattorney-agents are not bound by any of these rules since they are only applicable to, and enforceable against, attorneys admitted to practice law in Florida.

Further, although not all states have addressed the issue, some courts have held that the ethical rules regulating lawyers follow the

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forth in *Florida Standards for Imposing Lawyer Sanctions*, which provide guidance to The Florida Bar as to the appropriate sanction to be imposed for various types of rule violations. See THE FLA. BAR, STANDARDS FOR IMPOSING LAWYER SANCTIONS (July 2000), available at <<http://www.flabar.org/newflabar/lawpractice/rules/STAND.html>>. These standards are an amended version of the *ABA Standards for Imposing Lawyer Sanctions*. See *Preface* to STANDARDS FOR IMPOSING LAWYER SANCTIONS, *supra*.

49. See R. REGULATING FLA. BAR 4-1.1 ("Competence").

50. See *id.* R. 4-1.2 ("Scope of Representation").

51. See *id.* R. 4-1.3 ("Diligence").

52. See *id.* R. 4-1.4 ("Communication").

53. See *id.* R. 4-1.5 ("Fees for Legal Services").

54. See *id.* R. 4-1.6 ("Confidentiality of Information").

55. See *id.* Rules 4-1.7 to 4-1.9 ("Conflict of Interest").

56. See *id.* R. 4-1.14 ("Client Under a Disability").

57. See *id.* R. 4-1.15 ("Safekeeping Property").

58. See *id.* R. 4-1.16 ("Declining or Terminating Representation").

59. See *id.* R. 4-7.2 ("Advertising").

60. See *id.* R. 4-7.4 ("Direct Contact with Prospective Clients").

lawyer and govern her conduct in the representation of athletes.<sup>61</sup> The reasons for applying ethical rules to lawyers in the athlete agent business include the fact that some athletes will select an agent based upon the fact that she is a member of the legal profession.<sup>62</sup> Also, the activities of an athlete agent and an attorney are often indistinguishable, which further supports the application of ethical rules to attorneys regardless of business form.<sup>63</sup> The significance of such holdings increases, moreover, when one considers that athlete representation often surfaces as a business relationship and bears minimal relevance to the actual practice of law.

The end, and perhaps unavoidable, result of the intense competitiveness of the athlete agent industry emerges as unethical activity by some agents. Assuming the state in question agrees that the state's ethical rules governing attorneys licensed in that state apply to those attorneys while acting as athlete agents, nonattorney-agents are given a distinct advantage over attorney-agents. This is true even though particular attorney-agents might be more ethical and competent in the representation of athletes than their nonattorney-agent counterparts.

One type of ethical restraint which restricts athlete agent income for attorneys lies in the rule prohibiting solicitation of clients. Florida's anti-solicitation rule, which restricts an attorney's solicitation of clients, provides in pertinent part:

A lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. A lawyer shall not permit employees or agents of the lawyer to solicit in the lawyer's behalf. A lawyer shall not enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this rule. The term "solicit" includes contact in person, by telephone, telegraph, or facsimile, or by other communication directed to a specific recipient and includes any written form of communication directed to a specific recipient and not meeting the requirements of subdivision (b) of this rule.<sup>64</sup>

As a result of such anti-solicitation ethical rules, some lawyers either abandon their law practices or establish separate businesses

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61. See Walter T. Champion, Jr., *Attorneys Qua Sports Agents: An Ethical Conundrum*, 7 MARQ. SPORTS L.J. 349, 355 (1997).

62. See *id.*

63. See *id.* at 355-56.

64. R. REGULATING FLA. BAR 4-7.4.

devoted to sports agent activities.<sup>65</sup> The reasoning lies in the fact that nonattorney-agents are not subject to this rule and can therefore more readily acquire new clients, assuming the agent does not violate any NCAA rules.

Another type of ethical rule affecting attorney-agents is the rule regulating the amount of an attorney's fee. Florida's ethical rule regulating fees, which applies to collection of fees by attorney-agents, provides in pertinent part that "[a]n attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar."<sup>66</sup>

Florida's fee rule governs many aspects of the fee arrangement by the following methods: (1) promulgating numerous factors for determining whether a fee is reasonable or excessive; (2) regulating the enforcement of fee contracts; (3) requiring the attorney to communicate the fee to the client; (4) regulating contingency fees, including permissibility, content, and enforceability of such fees; and (5) regulating the division of fees between lawyers in different firms.<sup>67</sup>

In determining whether a fee is reasonable or excessive, Florida looks to factors such as: (1) whether a lawyer of ordinary prudence would be convinced the fee was excessive or unconscionable; (2) whether the fee was obtained through misrepresentation or fraud; (3) time and labor involved and the complexity of the subject matter requiring representation; (4) likelihood of preclusion of other employment; (5) customary local fees for such services; (6) significance of the subject matter, responsibility assumed, and results achieved; (7) time commitment; (8) nature and length of the relationship between the attorney and client; (9) experience, skill and reputation of the attorney; and (10) whether the fee is fixed or contingent.<sup>68</sup>

Although the above factors will usually generate an extensive and time-consuming analysis, the resulting fee may be more fair than the fee achieved under a set ten-percent limitation as Alabama legislated.<sup>69</sup> Further, as analyzed in Part IV below, players associations do not comprehensively regulate all aspects of agent fees.

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65. See *supra* note 23 and accompanying text.

66. R. REGULATING FLA. BAR 4-1.5(a).

67. See *id.* R. 4-1.5(a)-(g).

68. See *id.* R. 4-1.5 (a)-(c).

69. See ALA. CODE § 8-26-24 (Supp. 1999); see also *supra* notes 9-12 and accompanying text.

In many respects, state bar ethical rules regulate agent fees more extensively than do some players associations. However, as discussed above, such rules do not apply to nonattorney-agents. Fees of nonattorney-agents are usually regulated instead by players association regulations, athlete agent statutes and common law fiduciary and contract principles.

#### IV. PLAYERS ASSOCIATIONS

Professional sports leagues operate through collective bargaining agreements, which contain various regulations pertaining to athletes and, more indirectly, athlete agents. These collective bargaining agreements typically provide that the players associations (in other words, unions) may directly regulate athletes and athlete agents as the professional league's exclusive bargaining agent.<sup>70</sup> For example, to represent a player in negotiations for professional employment, an athlete agent typically must first register and achieve certification from the players association of the sport in which the agent represents athletes.<sup>71</sup> If the players association at issue maintains such certification policies, the agent must then abide by the rules and regulations of that particular players association or face decertification and other sanctions.

Numerous advantages flow from certification by the pertinent players association, including authorization to represent athletes in contract negotiations and access to critical league-wide salary statistics and athlete scouting information.<sup>72</sup> Standard players association agent contracts govern the athlete-agent relationship.<sup>73</sup> Players associations regulate agents, and they require execution of standard representation contracts between athletes and agents which

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70. For example, Article II of the Major League Baseball Collective Bargaining Agreement provides, in part, "The Clubs recognize the [Major League Baseball Players] Association as the sole and exclusive bargaining agent for all Major League Players, and individuals who may become Major League Players during the term of this [Collective Bargaining] Agreement, with regard to all terms and conditions of employment." MLBPA REGULATIONS, *supra* note 6, at 1. Two exceptions exist as to this exclusive representation, namely that an individual player can negotiate individually for: (1) an individual salary over the minimum salary; and (2) special covenants to be included in the individual's Uniform Player's Contract which do (or potentially may) provide additional benefits to the player. *See id.*; *see also infra* Part IV.B.2. (regarding MLBPA minimum salaries).

71. The NFLPA, for example, provides such certification requirements. *See NFLPA REGULATIONS, supra* note 6, § 2. This assumes, of course, that the particular players association chooses to regulate athlete agents through certification.

72. *See* Dean Robert P. Garbarino, *So You Want to Be a Sports Lawyer, or Is It a Player Agent, Player Representative, Sports Agent, Contract Advisor, Family Advisor or Contract Representative?*, 1 VILL. SPORTS & ENT. L.J. 11, 34 (1994).

73. *See* Remis, *Registration and Reporting, supra* note 3, at 451.

protect athletes in several ways, by, for example: (1) limiting agent fees; (2) limiting the percentage of a player's salary receivable as deferred compensation; (3) prohibiting agents from receiving payment until after their athlete clients have been paid; (4) limiting the duration of the agent representation contract; and 5) allowing early termination of the representation contract.<sup>74</sup>

A. *National Football League Players Association (NFLPA)*

1. *Controlling Nature of NFLPA Regulations*

The NFLPA refers to athlete agents as “contract advisors.” The NFLPA regulates contract advisors through its *Regulations Governing Contract Advisors*, which governs the relationship between contract advisors and athlete clients. The NFLPA must grant certification to a contract advisor before it will allow the contract advisor to represent NFL athletes in contract negotiations.<sup>75</sup> The NFLPA regulations also mandate that agents utilize the NFLPA's standard contracts in order to assert any claim against the athlete under the contract.<sup>76</sup> Accordingly, athletes and agents are limited in the number of contractual terms for which they can negotiate. In addition to restrictions that the NFLPA imposes, limitations on freedom of contract also appear in state athlete agent statutes; bar rules; common law such as contract, tort, and agency law; and possibly state laws regulating entertainment agents.<sup>77</sup>

Although no state athlete agent statute requires an agent to possess a college degree, the NFLPA mandates that applicants for certification possess a degree from an accredited four-year college or university.<sup>78</sup> Florida requires applicants to pass a written examination

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74. *See id.*

75. *See* NFLPA REGULATIONS, *supra* note 6, § 2. In fact, Louisiana, on June 11, 1999, amended its athlete agent legislation to provide, *inter alia*, that “[a]n athlete agent must first be certified by the appropriate professional players association or associations in the professional league or leagues for which he is soliciting athletes in order to be registered as an athlete agent in this state.” LA. REV. STAT. ANN. § 4:422 (West Supp. 2000).

76. Specifically, the NFLPA regulations provide in pertinent part:

Any agreement between a Contract Advisor and a player . . . which is not in writing in the pre-printed form attached hereto . . . or which does not meet the requirements of these Regulations, shall not be enforceable against any player and no Contract Advisor shall have the right to assert any claim against the player for compensation on the basis of such a purported contract.

NFLPA REGULATIONS, *supra* note 6, § 4.A.

77. *See* Remis, *Registration and Reporting*, *supra* note 3, at 454-55. Federal laws, such as the Federal Investment Advisors Act, can also regulate agent conduct. *See id.*

78. *See* NFLPA REGULATIONS, *supra* note 6, § 2.A. However, the NFLPA may grant certification to a non-degree-holding individual with “sufficient negotiating experience.” *Id.* It must be remembered, however, that possession of a college degree does not necessarily

and requires athlete agents to undergo continuing education.<sup>79</sup> In a fashion similar to Florida's athlete agent legislation, the NFLPA holds seminars to educate its agents.<sup>80</sup>

The NFLPA also now requires all of its agents to pass a written examination to remain in good standing.<sup>81</sup> The exam covers the NFL's Collective Bargaining Agreement and substance abuse policy, as well as the NFLPA's agent regulations.<sup>82</sup> Recently, some well-known agents failed to achieve a passing score of seventy percent on the open-book, take-home test. The NFLPA mailed the test to its approximately 1000 agents on May 3 and gave them until May 28 to turn in the answers.<sup>83</sup> Furthermore, the NFLPA gave the agents seven sources where they could find the answers to the forty-nine questions.<sup>84</sup> Despite these arguably favorable conditions, these agents flunked the exam and the NFLPA subsequently suspended them from representing NFL players!<sup>85</sup>

The list of flunked agents included the widely criticized Leland Hardy, who recently negotiated a questionable contract with the New Orleans Saints for Ricky Williams, the fifth overall pick in the April 1999 NFL draft.<sup>86</sup> Other NFLPA contract advisors claim that the deal is too incentive-laden and contains too little guaranteed income for Williams.<sup>87</sup> Under the contract, if Williams proves to be one of the best all-time running backs in the history of NFL football, Williams could earn as much as \$68.5 million by triggering various bonus clauses.<sup>88</sup> However, if he does not meet this high standard and thereby trigger the bonus clauses, Williams will earn the league minimum in base salary and less than \$20 million for the duration of

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equate to competency in the athlete agent profession, since the agent need not have a degree, training, or experience in the athlete agent field.

79. See FLA. STAT. §§ 468.453, .4563 (1999). Florida law requires 20 hours of continuing education for each biennial cycle. See *id.*

80. See NFLPA REGULATIONS, *supra* note 6, § 2.G.

81. See Josh Gotthelf, *Criticized Agent Flunks Test: NFLPA To Slap Sanctions on Leland Hardy*, STREET & SMITH'S SPORTS BUS. J., June 28-July 4, 1999, at 1.

82. See *id.* at 45.

83. See *id.* at 1, 45.

84. For a sample of 10 questions from the exam, see *id.* at 45. The seven sources included: (1) NFL Collective Bargaining Agreement; (2) *NFLPA Regulations Governing Contract Advisors*; (3) NFL Policy and Program for Substances of Abuse; (4) NFL Policy and Procedures for Anabolic Steroids and Related Substances; (5) NFL Player Reserve Lists; (6) November 1998 *Signals* (NFLPA newsletter); and (7) 1999 Expansion Draft Documents. See *id.*

85. The NFLPA suspended the agents for an undetermined time period. See *id.* at 1.

86. See *id.* The Ricky Williams contract served as Hardy's initial negotiating experience as an NFL Contract Advisor. See *id.* at 45.

87. The contract contains an \$8.84 million signing bonus. However, most of that bonus is deferred under the contract until Williams' second year. See *id.*

88. See *id.*

the eight-year deal.<sup>89</sup> Although \$20 million may not gain much sympathy toward Williams in the eyes of the general public, this figure stands far below market value for a Heisman Trophy winner chosen as the fifth overall NFL draft pick and assuming the starting running back position on his new NFL team.<sup>90</sup>

## 2. Restrictions on Athlete Agent Fees

Additional restrictions on the ability of the athlete and the contract advisor to freely contract appear throughout the NFLPA regulations. First, the contract advisor must disclose the fee to the athlete.<sup>91</sup> Second, the NFLPA regulations impose a limit on the maximum fee, which a contract advisor may charge an athlete client. The maximum fee is three percent of the compensation received by the player in each playing season.<sup>92</sup> Particularly, section 4 of the NFLPA regulations sets the maximum fee for which contract advisors can charge athlete clients as follows:

### B. Contract Advisor's Compensation

- (1) The maximum fee which may be charged or collected by a Contract Advisor shall be three percent (3%) of the "compensation" (as defined within this Section) received by the player in each playing season covered by the contract negotiated by the Contract Advisor.
- (2) The Contract Advisor and player may agree to any fee which is less than the maximum fee set forth in (1) above.<sup>93</sup>

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89. *See id.* Even if Williams meets the high expectations of his contract during some playing seasons, knowing that he earns the minimum salary for any number of years (assuming it takes him some time to adjust to the NFL or just has an off-year down the road) will likely not ease his financial woes.

90. *See id.*

91. Specifically, NFLPA regulations provide, in part, as follows:

#### A. General Requirements.

[A] Contract Advisor shall be required to:

- (9) Provide . . . each year . . . to every player who he/she represents, with a copy to the NFLPA, an itemized statement . . . which separately sets forth both the fee charged to the player for, and any expenses incurred in connection with the performance of . . . services . . . .

NFLPA REGULATIONS, *supra* note 6, § 3.A(9).

92. *See id.* § 4.B. The NFLPA previously set the maximum Contract Advisor fee at four percent. However, the NFLPA recently voted to limit Contract Advisor fees to three percent. *See infra* note 93 for the NFLPA's definition of "compensation."

93. *Id.* § 4.B.(1)-(2). The term "compensation" is "deemed to include only salaries, signing bonuses, reporting bonuses, roster bonuses, and any performance incentives earned by the player during the term of the contract (including option year) negotiated by the Contract Advisor." *Id.* § 4.B.(3). The term does "not include any 'honor' incentive bonuses (e.g. ALL PRO, PRO BOWL, Rookie of the Year), or any collectively bargained benefits or other payments provided for in the player's individual contract." *Id.*

Third, the NFLPA regulations prohibit contract advisors from receiving any fee until the athlete first receives his compensation upon which the contract advisor's fee is based.<sup>94</sup> An exception to this limitation exists for fee advances on deferred compensation; however, restrictions also apply to this limited exception for deferred compensation fee advances: "Such fee advance may only be collected by the contract advisor after the player has performed the services necessary under his contract to entitle him to the deferred compensation."<sup>95</sup> Fourth, such agreements between contract advisors and players must be in writing, and the contract advisor must send a copy to the NFLPA.<sup>96</sup> Finally, the compensation calculation must be based upon the present value of the deferred compensation.<sup>97</sup>

### 3. *Prohibited Conduct*

As one can readily see from the above discussion, the NFLPA regulations place several restrictions on a contract advisor's ability to earn a fee. The NFLPA regulations contain further limitations on a contract advisor's fees, ability to solicit new clients, and other financial conduct as follows:

#### B. Prohibited Conduct

Contract Advisors are prohibited from:

....

(2) Providing or offering a monetary inducement to any player or prospective player to induce or encourage that person to utilize his/her services;

(3) Providing or offering money or any other thing of value to a member of the player or prospective player's family or any other person for the purpose of inducing or encouraging that person to recommend the services of the Contract Advisor;

....

(6) Holding or seeking to hold, either directly or indirectly, a financial interest in any professional football Club or in any other business entity when such investment could create an actual conflict of interest or the appearance of a conflict of interest in the representation of NFL players;

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94. NFLPA REGULATIONS, *supra* note 6, § 4.B.(4).

95. *Id.*

96. *See id.*

97. *See id.*

(7) Engaging in any other activity which creates an actual or potential conflict of interest with the effective representation of NFL players;

(8) Soliciting or accepting money or anything of value from any NFL Club in a way that would create an actual or apparent conflict with the interests of any player Contract Advisor represents;

....

(14) Failure to comply with the maximum fee provisions contained in Section 4 of these Regulations;

(15) Circumventing the maximum fee provisions set forth in the Regulations by knowingly and intentionally increasing the fees that Contract Advisor charges or otherwise would have charged the player for other services including, but not limited to, financial consultation, money management, and/or negotiating player endorsement agreements;

(16) Failing to provide to each player represented and the NFLPA the annual statements required by Section 3 (A)(9) of these Regulations and/or failing to provide NFLPA copies of all agreements between the Contract Advisor and each player as required by Section 3(A)(6) of these Regulations;

....

(19) Failing to disclose in writing to any player represented by Contract Advisor any fee paid or received by Contract Advisor to or from a third party in return for providing services to that player  
....<sup>98</sup>

In sum, the NFLPA imposes restrictions on a contract advisor's ability to attract and sign new clients by prohibiting a contract advisor from providing things of value to prospective athlete clients, their families or other third parties, and from accepting anything of value from any NFL Club that creates an actual or apparent conflict of interest. Although these restrictions are harsh, attorneys are even more restricted in their ability to solicit new clients.<sup>99</sup> Interestingly, contract advisors cannot circumvent the three percent maximum fee prescribed by the NFLPA regulations, as set forth above, by intentionally increasing the fees the contract advisor would have charged the player for other services such as financial consultation, money management, or endorsement deals.

The irony of this restriction surfaces when one considers that evidentiary proof would be difficult to obtain. The NFLPA

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98. *Id.* § 3.B.

99. *See supra* Part III.

regulations do not set a limit on the amount of fees that a contract advisor can collect on deals negotiated *outside* the player contract with the NFL Club.<sup>100</sup> In other words, contract advisors can theoretically charge and collect any percentage of an endorsement deal or financial deal.<sup>101</sup> Obviously, one would encounter difficulty in determining if an agent is “overcharging” in an area that has no set maximum. However, even though the NFLPA regulations do not set fee limits, other laws, such as federal and state investment laws, might limit such fees. Further, state bar ethical rules restrict a contract advisor’s ability to charge an unreasonably high fee, assuming he is also an attorney.<sup>102</sup> State common law contract and fiduciary principles might also limit a contract advisor’s fee.<sup>103</sup> Finally, industry custom might serve as one evidentiary factor showing that an agent is overcharging on endorsement or financial deals, assuming other agents do not charge equally high fees.

Most states, however, follow the NFLPA’s lead and do not set limits on a contract advisor’s ability to charge any fee percentage the athlete negotiates with the agent.<sup>104</sup> Even Alabama’s statute, the only state athlete agent statute that sets a ten percent limit on agent fees, only applies to professional sports services contracts, not endorsement or financial deals.<sup>105</sup> In the event a contract advisor who conducts business in Alabama represents an NFL player, that contract advisor would be limited to three percent of the negotiated professional sports services contract, even though the state allows agents to charge athlete clients up to ten percent. These types of conflicts must be resolved in favor of the NFLPA regulations, rather than the state athlete agent statutes, since the NFLPA is the exclusive bargaining representative for NFL players and has the exclusive authority to determine which individuals may serve as contract advisors and thereby conduct contract negotiations on behalf of NFL players.<sup>106</sup>

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100. See NFLPA REGULATIONS, *supra* note 6.

101. See *id.*

102. See *supra* Part III.

103. See *supra* Part II.E (discussing liability that may attach to a fiduciary for breach of the confidence and trust that the fiduciary owes to the principal).

104. See *supra* Part II.

105. See *supra* notes 9-12 and accompanying text.

106. See James Malone & Daren Lipinsky, *The Game Behind the Games: Unscrupulous Agents in College Athletics & California’s Miller-Ayala Act*, 17 LOY. L.A. ENT. L.J. 413, 433 (1997).

*B. Major League Baseball Players Association (MLBPA)*

*1. Controlling Nature of MLBPA Regulations*

The MLBPA refers to athlete agents as “player agents.” The MLBPA regulates player agents through its *MLBPA Regulations Governing Player Agents*, which governs the relationship between player agents and baseball athlete clients.<sup>107</sup> Any person desiring to conduct business as a player agent must be certified by the MLBPA pursuant to its established certification procedure.<sup>108</sup> Similar to state athlete agent statutes, but unlike the NFLPA, the MLBPA does not require certification applicants to possess a degree from an accredited four-year college or university.<sup>109</sup> However, the MLBPA regulations mandate that to serve as a player’s agent, the agent must be designated as such by the player on a form supplied by the MLBPA for that purpose.<sup>110</sup> Like the NFLPA, the MLBPA also utilizes a uniform contract (the Uniform Player’s Contract).<sup>111</sup> Accordingly, Major League Baseball athletes and player agents are likewise limited in the contractual terms for which they can negotiate.<sup>112</sup>

*2. Restrictions on Player Agent Fees*

Like the NFLPA regulations, the MLBPA regulations restrict the ability of the athlete and agent to freely contract. First, the player agent must provide the athlete a copy of any contracts entered into with the athlete and disclose the fees charged.<sup>113</sup> Second, the MLBPA regulations restrict the fee amount a player agent may charge an athlete.<sup>114</sup> Unlike the NFLPA regulations, however, the MLBPA

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107. See *supra* notes 70-71 and accompanying text.

108. See MLBPA REGULATIONS, *supra* note 6, §§ 1-2.

109. See *id.* The NFLPA regulations do require a degree from a four-year college or university. See *supra* notes 78-85 and accompanying text (discussing the NFLPA’s college degree and written examination requirements, Florida’s written examination requirement, and the continuing education obligations imposed by the NFLPA and Florida).

110. See MLBPA REGULATIONS, *supra* note 6, § 4A; see also *id.* exhibit B (“Player Agent Designation”).

111. See *supra* notes 76-77 and accompanying text.

112. Beyond the MLBPA regulations, limitations on freedom of contract also appear in state athlete agent statutes; bar rules; common law and statutory law such as contract, tort and agency law; and possibly state laws regulating entertainment agents. See *supra* note 78 and accompanying text.

113. See MLBPA REGULATIONS, *supra* note 6, §§ 3.A.(3), (7); see also *supra* note 91 (setting forth the NFLPA’s disclosure requirements).

114. MLBPA REGULATIONS, *supra* note 6, § 4.F.

regulations do not specify a particular percentage.<sup>115</sup> Specifically, the pertinent MLBPA regulation provides:

No Player Agent shall charge a Player any fee for negotiating that Player's individual salary unless the salary negotiated exceeds the minimum salary for that year established by the Basic Agreement. Where the salary negotiated does exceed the applicable minimum salary, any fee charged may not, when subtracted from the salary negotiated, produce a net salary to the Player below or equal to the minimum salary. For purposes of this Section 4(F), bonuses included in a Player's contract shall constitute salary only if earned by the Player. The fee restrictions set forth in this Section 4(F) shall not apply in circumstances where the Player involved was a professional free agent at the time that the Player Agent negotiated the Player's contract.<sup>116</sup>

Accordingly, the MLBPA's restrictions on player agent fees sharply contrast with the NFLPA's regulation of contract advisor fees. The NFLPA limits contract advisors' fees to three percent of an athlete's compensation.<sup>117</sup> In contrast, the MLBPA regulations do not set a maximum fee.<sup>118</sup> Accordingly, while a contract advisor representing a football player in contract negotiations in the National Football League is restricted to three percent of the athlete's compensation regardless of the salary amount, a player agent representing a baseball player in contract negotiations in Major League Baseball has no upward limit on fees. In other words, a player agent can charge as high a fee as he can obtain from the player.

The main requirement in the MLBPA is that the player's salary must not equal or dip below the minimum salary after the player agent deducts his fee from the athlete.<sup>119</sup> For example, if a player agent negotiates a salary for the player that is \$10 million over the minimum salary, the player agent can charge the player \$9,999,999 and leave the player with the minimum salary plus one dollar. Although this scenario stretches the imagination, the point made is that in Major League Baseball, the free market determines the player agent's fee for contract negotiations and endorsement deals.<sup>120</sup>

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115. The NFLPA restricts Contract Advisors' fees to three percent of an athlete's compensation. *See supra* notes 92-93 and accompanying text (discussing the exact nature of the NFLPA's three-percent fee limitation).

116. MLBPA REGULATIONS, *supra* note 6, § 4.F.

117. *See supra* notes 93-94 and accompanying text.

118. MLBPA REGULATIONS, *supra* note 6, § 4.F.

119. *See id.*

120. Although the MLBPA does not conduct formal studies as to what agents charge on each contract, it can be safely stated that player agent fees typically range from 3% to 5% of the player's negotiated salary. A sliding scale generally comes into play, meaning that the higher the salary negotiated, the lower the player agent's percentage fee. Further, no

The same holds true for the National Hockey League Players Association.<sup>121</sup>

Realistically, however, the \$10 million dollar example set forth above would never occur in any sport, including Major League Baseball. First, no athlete would retain a player agent that tried to take the athlete's entire salary above the MLBPA's stated minimum. Second, if the player agent is an attorney, the attorney would be subject to the ethical rules barring excessive and unreasonable fees in the attorney's state of admission. Further, other common law principles would likely impose a fiduciary duty for the benefit of the athlete and thereby prohibit such an extraordinarily unreasonable fee. Finally, agent fees for Major League Baseball player agents typically follow an industry custom or pattern, ranging from three to five percent for player contracts and from ten to twenty-five percent for endorsement deals.<sup>122</sup>

### 3. *Prohibited Conduct*

The MLBPA regulations also regulate player agents' ownership interests and employment status with Major League Baseball clubs, the American and National Leagues, and other business ventures that would create an actual or potential conflict of interest between the player agent and player.<sup>123</sup> Additionally, like the NFLPA regulations, the MLBPA regulations prohibit player agents from providing anything of value to any player, member of the player's family, or other person, if the purpose is to induce or encourage the player or any other player to utilize the agent's services.<sup>124</sup>

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set limit exists on endorsement deals. Player agent fees on endorsements typically vary in percentage and can generally reach between 10% to 25%, depending on the deal structured. Again, no set limit exists. Telephone Interview with MLBPA Representative (Sept. 1, 1999).

121. Fees for contract negotiations for player contracts in the NHL typically range from 2% to 5% of the player's salary, and fees on endorsement deals can generally reach up to 15% of the deal. Again, no set limit exists. Telephone Interview with NHLPA Representative (Sept. 1, 1999).

122. *Id.*

123. MLBPA REGULATIONS, *supra* note 6, §§ 3.B.(5)-(8). In fact, in seeking certification, the applicant must answer specific questions posed by the MLBPA pertaining to relationships with Major League Baseball clubs, owners, and other related entities. *See id.* at pt. IV ("Verified Application for Certification and Certification Statement").

124. *See id.* §§ 3(B)(2)-(3). Although these sections do not specifically mention employees and coaches of colleges and universities, such individuals would obviously fall within the reach of these sections.

## V. CONCLUSION

Not every athlete agent is subject to existing state legislation. In Florida, for example, the state's legislation regulates only those athlete agents representing, or attempting to represent, "student athletes" as statutorily defined.<sup>125</sup> Upon reading Florida's athlete agent statute, it becomes clear that Florida does not regulate agents representing or contacting high school athletes who have not yet signed a national letter of intent, nor does it regulate those agents representing professional athletes.<sup>126</sup> In fact, many existing state athlete agent statutes contain numerous enforcement loopholes and jurisdictional defects that should allow athlete agents to escape responsibility under the respective statutes.<sup>127</sup> Therefore, an athlete agent must painstakingly read the statutes of every state in which the agent conducts business to determine if the statute governs the agent's activities.<sup>128</sup>

Universities would be well advised to take measures to ensure that their coaches and other employees do not refer athletes to agents for compensation in violation of NCAA rules and statutes. Such measures should include conducting a review of university policies on agent referrals, documenting improper offers made by athlete agents to athletes, compiling and reviewing lists of former student athletes and their athlete agents, interviewing these athletes and agents to identify any improper activity such as referrals, conducting student athlete exit interviews, and holding educational seminars to avoid such problems in the future.<sup>129</sup>

Ultimately, due to state bar ethical rules, attorney-agents are at a disadvantage when it comes to making money in this highly competitive profession. Of course, attorney-agents also have an offsetting competitive advantage in that they are more highly trained in the requisite skills needed to succeed as an athlete agent. Although all athlete agents—attorneys and nonattorneys alike—can make a very good living in this lucrative profession, agents need to ensure

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125. FLA. STAT. § 468.451 (1999); see also *id.* § 468.452 which defines, *inter alia*, the terms "athlete agent" and "student athlete."

126. See *id.* § 468.452(5).

127. For a detailed analysis of the numerous loopholes and constitutional defects in the existing athlete agent statutes, see generally Remis & Sudia, *Escaping Athlete Agent Regulation*, *supra* note 4.

128. Voluminous statutory definitions appear throughout the existing athlete agent statutes, with little uniformity accorded among the states. For a nonexhaustive list of terminology utilized in the statutes, and a discussion of the numerous problems caused thereby, see Remis, *Remedies and Penalties*, *supra* note 2, at 25 n.98.

129. See Buckner, *supra* note 42, at 90.

that they do not exceed certain boundaries, such as accepting referrals from university personnel, dividing agent fees, owning interests in certain sports entities, and holding or not disclosing ownership or financial interests in certain sports and financial entities. Some players associations and state athlete agent statutes directly or indirectly regulate agent fees, and most state bar ethical rules should regulate athlete agent fees as well. Accordingly, athlete agents should take time and care to read all pertinent laws of every state in which they conduct business as athlete agents or in which they practice law, as well as the rules and regulations of all players associations for the sports in which they represent athlete clients.

**APPENDIX A****STATUTORY REGULATION OF AGENT FEES,  
REFERRALS, AND OWNERSHIP INTERESTS**

As Expressly Enumerated in Athlete Agent Statutes

**ALABAMA**

*[Ala. Code §§ 8-26-7, -24, -26, -29 to -31, -34, -35 (1998)]*

1. If a professional sports services contract is negotiated, no athlete agent shall collect a fee in any calendar year which exceeds 10% of the total compensation, direct or indirect, irrespective from whom received, the athlete is receiving in that calendar year under the contract.
2. An athlete agent may require security that his or her future fees will be paid under the agreement with the athlete.
3. If an athlete agent collects a fee or expenses from an athlete for obtaining employment, and the athlete fails to procure such employment, or the athlete fails to be paid for such employment, the athlete agent shall be limited as to the fee collected from the athlete in the following manner:
  - a. The athlete agent shall receive reimbursement for all reasonable out-of-pocket expenses incurred by the athlete agent during the course of his representation of the athlete; and
  - b. If the athlete received a bonus for the signing of a professional sports services contract, the athlete agent shall be entitled to a fee in an amount no more than the greater of 10% of such bonus or \$1,000.
4. No athlete agent shall divide fees with a professional sports league or franchise, its representatives, or its employees.
5. No athlete agent shall enter into any agreement whereby the athlete agent offers anything of value, including, but not limited to, the rendition of legal services for free or for reduced fees, to any employee of a university or educational institution in return for the referral of any clients by that employee.
6. An athlete agent may not accept as a client a student athlete referred by or in exchange for any consideration made to an employee of or a coach for a college or university.
7. No full-time employee of a union or players association connected with a professional sports league shall own or participate in any of the revenues of an athlete agent.
8. No athlete agent shall sell, transfer, or give away any interest in or the right to participate in the profits of the athlete agent without the written consent of the Alabama Athlete Agent Regulatory Commission.
9. No athlete agent shall have an ownership or financial interest in any entity which is directly involved in the same sport as an athlete:
  - a. With whom the athlete agent has entered an agent contract; or
  - b. For whom the athlete agent is attempting to negotiate a professional sports services contract.
10. If an athlete agent also advises a client regarding the investment of funds, the athlete agent shall disclose to the client:
  - a. Any ownership interest the athlete agent has in any entity used by the athlete agent in giving such advice; and

- b. Any commissions or fees which are being paid to the athlete agent as a result of investments which are made.
11. Every athlete agent shall keep records approved by the commission and filed with the Secretary of State, in which shall be entered the amount of fee received from each athlete employing the athlete agent.

### **ARIZONA**

*[Ariz. Rev. Stat. Ann. § 15-1762 (1999)]*

1. It is unlawful for any person to accept as a client an athlete referred by and in exchange for any consideration made to an employee of or coach for an institution of higher education or high school located in Arizona. As used herein, "consideration" includes the rendering of free or reduced price services.
2. It is unlawful for any person to offer or provide anything of value or benefit to any person to induce or attempt to induce an athlete to enter into an agreement by which an athlete agent will represent the athlete.

### **ARKANSAS**

*[to be codified at Ark. Code Ann. § 17-16-xx (1999)]*

1. An athlete agent is prohibited from offering anything of value to any person to induce a student athlete to enter into an agent contract by which the athlete agent will represent the student athlete. However, negotiations regarding the athlete agent's fees shall not be considered an inducement.

### **CALIFORNIA**

*[Cal. Bus. and Prof. Code §§ 18896, 18896.2; 18897, 18897.23, -.27, -.3, -.47, -.67 (West 1997)]*

1. Every agent contract shall be in writing and include a description of the types of services to be performed and a schedule of the fees to be charged under the contract.
2. Each athlete agent, prior to engaging in or carrying on business as an athlete agent, shall file with the Secretary of State a schedule of fees to be charged and collected in the conduct of the athlete agent business.
3. Within 7 days of the time any such filed fee information changes, the athlete agent must file revised information, and no revision of a fee schedule shall be effective until it is filed.
4. Every athlete agent shall maintain records which include the amount of fee received from each person employing the athlete agent.
5. No athlete agent shall divide fees with or receive compensation from a professional sports league, team, or other organization or its representatives or employees.
6. No athlete agent shall offer or allow any full-time employee of a union or players association connected with professional sports to own or participate in any of the revenues of the athlete agent.
7. No athlete agent or athlete agent's representative or employee shall offer or provide money or anything of benefit or value, including, but not limited to, free or reduced-price legal services, to any elementary or secondary school, college, university, or other educational institution, or any representative or employee of any such educational institution in return for the referral of any clients or initiation of any contact described in § 18897.63(d).

8. No athlete agent shall have an ownership or financial interest in any entity that is directly involved in the same sport as a person:
  - a. With whom the athlete agent has entered into an agent contract;
  - b. For whom the athlete agent is attempting to negotiate an endorsement contract, financial services contract, or professional sports service contract; or
  - c. For whom the athlete agent provides advice concerning potential or actual employment as a professional athlete.
9. If an athlete agent or athlete agent's representative or employee provides financial services to a professional athlete or student athlete or advises the athlete concerning investment of funds, the athlete agent shall disclose to the athlete:
  - a. Any ownership interest the athlete agent, representative or employee has in any entity regarding which the athlete agent, representative or employee is providing financial services or giving advice; and
  - b. Any commission the athlete agent, representative or employee will receive from the athlete's investment.

### **COLORADO**

*[Colo. Rev. Stat. Ann. §§ 23-16-103, -104 (West 1997)]*

1. Any agent contract entered into between an athlete agent and a student athlete shall at a minimum include:
  - a. The amount of the fees and expenses and the percentages to be paid by the student athlete to the athlete agent; and
  - b. A description of the professional services that the athlete agent will render to the student athlete in return for each fee, expense, or percentage.
2. Except as otherwise provided in this article, an athlete agent shall not enter into any agreement, written or oral (and no person shall assist the agent in doing so), by which the athlete agent offers anything of value to an employee of an institution in return for the referral of any student athletes to the athlete agent by the employee.

### **CONNECTICUT**

*[Conn. Gen. Stat. Ann. §§ 20-554 to -556 (West 1997)]*

1. Each agent or financial services contract must include:
  - a. A schedule of fees that the athlete agent may charge the athlete; and
  - b. A description of the various professional services to be rendered in return for each fee.
2. The athlete agent may impose fees under any such contract only in accordance with such schedule.
3. The athlete agent may make changes in such schedule but such changes shall not become effective until the 7th day after the date on which a copy of the contract containing such changes is filed with the Department of Consumer Protection.
4. The Commissioner of Consumer Protection shall adopt regulations to establish requirements for the registration and regulation of athlete agents, including:
  - a. Requirements for athlete agent fee schedules; and

- b. Limitations on fees or other compensation that may be collected by athlete agents, including limitations on the transfer of interests or rights to participate in profits made by athlete agents.
5. An athlete agent shall not:
  - a. Divide fees with or receive compensation from a professional sports league or franchise or its representative or employee; or
  - b. Enter into any agreement, written or oral, by which the athlete agent offers anything of value to any employee of an institution of higher education located in this state in return for the referral of any athletes by that employee.

### **FLORIDA**

*[Fla. Stat. Ann. §§ 468.454, -.456 (West 1998)]*

1. A written contract between a student athlete and an athlete agent must state the fees and percentages to be paid by the student athlete to the agent.
2. An athlete agent may not accept as a client a student athlete referred by and in exchange for any consideration made to an employee of or a coach for a college or university located in this state.

### **GEORGIA**

*[Ga. Code Ann. §§ 43-4A-7 (1997)]*

1. An athlete agent may not engage in conduct that has a significant adverse impact on his or her credibility, honesty, integrity or competence to serve in a fiduciary capacity.
2. An athlete agent may not engage in conduct which results in a violation of any rule or regulation promulgated by an intercollegiate sports governing body.

### **INDIANA**

*\* Not Enumerated in Athlete Agent Statute*

### **IOWA**

*[Iowa Code Ann. §§ 9A.7, -.8 (West 1997)]*

1. A registered athlete agent shall file with the secretary of state:
  - a. A schedule of fees chargeable and collectible from a student athlete who has not previously signed a contract of employment with a professional sports team; and
  - b. A description of the various professional services to be rendered in return for each fee.
2. The athlete agent may impose charges only in accordance with the fee schedule.
3. Changes in the fee schedule may be made from time to time, except that a change shall not become effective until the 7th day after the date the change is filed with the secretary of state.
4. A person shall not enter into an agreement where the athlete agent gives, offers, or promises anything of value to an employee or student of an institution of

higher education in return for the referral of a student athlete by he employee or student.

### **KANSAS**

*[Kan. Stat. Ann. §§ 44-1507, -1508, -1513 (1996)]*

1. Each contract shall state the fees and percentages to be paid by the athlete to the athlete agent.
2. Each registered athlete agent shall file with the secretary of state a copy of each agent contract and financial services contract entered into with an athlete by the athlete agent. Such a contract must include:
  - a. A schedule of fees that the agent may charge to and collect from an athlete; and
  - b. A description of the various professional services to be rendered in return for each fee.
3. The athlete agent may impose charges only in accordance with the fee schedule.
4. Changes in the fee schedule may be made, but a change does not become effective until the 7th day after the date on which a copy of the contract as changed is filed with the secretary of state.
5. If a multi-year professional sport services contract is negotiated by a registered athlete agent for an athlete, the athlete agent may not collect in any 12-month period for the agent's services in negotiating the contract a fee that exceeds the amount the athlete will receive under the contract in that 12-month period.
6. An athlete agent may not divide fees with or receive compensation from a person exempt under K.S.A. 1996 Supp. 44-1503 and amendments thereto or a professional sports league or franchise or its representative or employee.
7. An athlete agent may not enter into any agreement, written or oral, by which the athlete agent offers anything of value to any employee of an institution of higher education located in Kansas in return for the referral of any clients by that employee.
8. An athlete agent shall keep records and provide the secretary of state with the information contained in the records on request, including:
  - a. The amount of any fees received from the athlete; and
  - b. The specific services performed on behalf of the athlete.

### **KENTUCKY**

*[Ken. Rev. Stat. Ann. § 518.080 and § 164.04 (Michie 1998)]*

1. A sports agent can not:
  - a. Have any financial interest in any entity which is directly involved in the same sport as a student athlete with whom he has entered into a contractual relationship;
  - b. Offer advice to any student athlete concerning the investment of money without first disclosing to that student athlete any financial interest that he has in any entity involved in the advice that he is offering; or
  - c. Offer anything of value, including free or discounted legal services, to an employee of an educational institution in return for the referral of clients by the employee.
2. An athlete agent may not fail to disclose to a student athlete:

- a. Any financial interest in any entity that is directly involved in the same sport as a student athlete with whom he or she has entered into a contractual relationship; or
  - b. Any financial interest that the athlete agent has in any entity in which he or she has advised a student athlete to invest.
3. An athlete agent may not accept as a client a student athlete referred by or in exchange for any consideration made to an employee of, or a coach for, a college or university.

### **LOUISIANA**

*[La. Rev. Stat. Ann. §§ 4:423, -424 (1999)]*

1. A written contract between an athlete and an athlete agent must state the fees and percentages to be paid by the athlete to the agent.
2. A registered athlete agent shall file with the public protection division of the Department of Justice:
  - a. A schedule of fees that the agent may charge to and collect from an athlete; and
  - b. A description of the various professional services to be rendered in return for each fee.
3. The athlete agent may impose charges only in accordance with the fee schedule.
4. Changes in the fee schedule may be made, but a change does not become effective until 7th day after the date on which a copy of the contract as changed is filed with the secretary of state.
5. If a multi-year professional sport services contract is negotiated by a registered athlete agent for an athlete, the athlete agent shall not collect, in any 12-month period, for the services of the agent in negotiating the contract, a fee that exceeds the amount the athlete will receive under the contract in that 12-month period.
6. An athlete agent can not sell, transfer, or give away any interest in or the right to participate in the profits of the athlete agent without the prior written disclosure to the division and the written consent of the athlete.
7. An athlete agent can not divide fees with or receive compensation from a professional sports league or franchise, or its representative or employee.
8. An athlete agent can not enter into any agreement, written or oral, by which the athlete agent offers anything of value, including the rendition of free or reduced-price legal services, to any employee of an institution of higher education located in this state in return for the referral of any clients by that employee.

### **MARYLAND**

*[Md. Code Ann. Bus. Reg. §§ 4-415, -416, -419, -420 (1998)]*

1. The sports agent contract must include:
  - a. A schedule of each fee that the sports agent charges and collects from a local athlete; and
  - b. A description of the service to be performed for the fee.
2. The sports agent shall charge a fee only in accordance with the fee schedule.
3. A change in a fee schedule is in effect 7 days after the day on which a sports agent submits to the Secretary of State a copy of the revised sports agent contract.

4. If a sports agent negotiates a sports agent contract for the professional sports services of a local athlete, the sports agent may not collect in a 12-month period a fee that exceeds the amount that the local athlete will receive in the same period.
5. A sports agent shall keep records and, on request, give the Secretary the information contained in the records, including:
  - a. The amount of any fee received from the local athlete; and
  - b. The specific services that the sports agent performs for the local athlete
6. A sports agent may not split a fee with or receive compensation from:
  - a. A professional sports league;
  - b. A professional sports franchise; or
  - c. A representative or employee of a professional sports league or franchise.
7. A sports agent may not make an oral or written agreement with an employee of an institution of higher education or high school in the State by which the sports agent offers anything of value to the employee in return for a referral of a potential client.

### **MICHIGAN**

*[Mich. Comp. Laws Ann. § 750.411e (West 1997)]*

1. An athlete agent shall not enter into an agreement whereby the athlete agent gives, offers, or promises anything of value to an employee of an institution of higher education in return for the referral of a student athlete by that employee.

### **MINNESOTA**

*[Minn. Stat. Ann. § 325E.33(4) (West 1997)]*

1. A person may not offer, give, or promise to give an employee of an educational institution, directly or indirectly, any benefit, reward, or consideration to which the employee is not legally entitled, with the intent that:
  - a. The employee will influence a student athlete to enter into a contract with the person to serve as the athlete's agent or to enter into a professional sports contract; or
  - b. The employee will refer student athletes to the person.

### **MISSISSIPPI**

*[Miss. Code Ann. § 73-41-11 (1997)]*

1. An athlete agent may not:
  - a. Sell, transfer, or give away any interest in or the right to participate in the profits of an athlete agent without prior written disclosure to the secretary of state;
  - b. Divide fees with or receive compensation from a professional sports league or franchise, or its representative or employee, in regard to a particular NCAA athlete; or
  - c. Enter into any agreement, written or oral, by which the athlete agent offers anything of value, including the rendition of free or reduced-price legal services, to any employee of an institution of

higher learning located in this state in return for the referral of any clients by that employee.

### **MISSOURI**

*[Mo. Ann. Stat. § 436.212 (West Supp. 2000)]*

1. An athlete agent may not accept as a client a student athlete referred by an employee of or a coach for a college or university located within this state in exchange for any consideration.
2. An athlete agent may not enter into any agreement, written or oral, by which the athlete agent offers anything of value to any employee of or coach for a college or university located within this state in return for the referral of any student athlete clients by that employee or coach.

### **NEVADA**

*[Nev. Rev. Stat. Ann. § 597.920 (Michie 1995)]*

1. A sports agent may not:
  - a. Have any financial interest in any entity which is directly involved in the same sport as a person with whom he has entered into a contractual relationship;
  - b. Offer advice to any person concerning the investment of money without first disclosing to that person any financial interest he has in any entity involved in the advice he is offering; or
  - c. Offer anything of value, including free or discounted legal services, to an employee of an educational institution in return for the referral of clients by the employee.

### **NORTH CAROLINA**

*[N.C. Gen. Stat. § 78C-75, -76, -80 (1996)]*

1. Any agent contract or financial services contract must state the fees and percentages to be paid by the athlete to the athlete agent.
2. An athlete agent may not divide fees with or receive compensation from a professional sports league or franchise or its representative or employee.
3. An athlete agent may not enter into any agreement, written or oral, by which the athlete agent offers anything of value to any employee of a high school or of an institution of higher education located in this State in return for the referral of any clients by that employee.
4. An athlete agent must keep records as provided by this section and must provide the Secretary of State with the information contained in the records on request, including:
  - a. The amount of any fees received from the athlete; and
  - b. The specific services performed on behalf of the athlete.

### **NORTH DAKOTA**

*[N.D. Cent. Code § 9-15-03, -04 (1995)]*

1. The contract between the athlete and athlete agent must:
  - a. Include a schedule of fees that the athlete agent may collect from the athlete;

- b. State all fees and percentages to be paid by the athlete to the athlete agent; and
  - c. Describe all professional services to be rendered in return for each fee.
2. The athlete agent may impose charges only in accordance with the fee schedule.
  3. The fee schedule may be changed, but a change does not become effective until the 7th day after the date on which the change was made.
  4. If a multi-year professional sport services contract is negotiated by an athlete agent for an athlete, the athlete agent may not collect in any 12-month period, for services in negotiating the contract, a fee in excess of the amount the athlete will receive under the contract in the 12th month.
  5. An athlete agent may not divide fees with or receive compensation from a person exempt from this chapter or a professional sports league or franchise.
  6. An athlete agent may not have any financial interest in any entity that is directly involved in the same sport as a person with whom the athlete agent has entered into a contractual relationship.
  7. An athlete agent may not enter any agreement by which the athlete agent offers anything of value to any employee of an institution of higher education located in this state in return for the referral of any client by that employee.

### OHIO

*\* Not Enumerated in Athlete Agent Statute*

### OKLAHOMA

*[70 Okla. Stat. Ann. §§ 821.63, -.64, -.67 (West 1997)]*

1. A registered athlete agent must file with the Secretary of State:
  - a. A schedule of fees that the agent may charge to and collect from an Oklahoma non-NCAA athlete who has never before signed a contract of employment with a professional sports team;
  - b. A description of the various professional services to be rendered in return for each fee; and
  - c. The amount of fees received and services performed for each person employing the athlete agent.
2. The athlete agent may impose charges only in accordance with the fee schedule;
3. Changes in the fee schedule may be made from time to time, but a change does not become effective until the 7th day after the date the change is filed with the Secretary of State;
4. If a multi-year professional sport services contract is negotiated by a registered athlete agent for an Oklahoma non-NCAA athlete who has never before signed a contract of employment with a professional sports team, the athlete agent may not collect, in any 12-month period, for the services of the agent in negotiating the contract, a fee that exceeds the amount the athlete will receive under the contract in that 12-month period.
5. A registered athlete agent may not :
  - a. Sell, transfer, or give away any interest in or the right to participate in the profits of the athlete agent without the prior written consent of the Secretary of State,
  - b. Divide fees with or receive compensation from a professional sports league or franchise, or its representative or employee, or

- c. Enter into any agreement, written or oral, by which the athlete agent offers anything of value, including the rendition of free or reduced-price legal services, to any employee of an institution of higher education located in this state in return for the referral of any clients by that employee.

### **OREGON**

*[Or. Rev. Stat. § 7 (Or. H.B. No. 3628 (1999))]*

1. An athlete agent may not offer or provide money or anything of benefit or value, including but not limited to free or reduced price legal services, to any educational institution or any representative or employee of any educational institution in return for the referral of any clients or initiation of any contact described in section 6 of this 1999 Act.

### **PENNSYLVANIA**

*[5 Pa. Cons. Stat. Ann. § 3305 (West 1998),  
18 Pa. Cons. Stat. Ann. § 7107 (West 1997)]*

1. An athlete agent may not give, offer, or promise an oral or written contract which would require the athletic agent to give, offer, or promise anything of value to any employee of an institution of higher education in return for a referral of a student athlete by the employee.

### **SOUTH CAROLINA**

*[S.C. Code Ann. § 59-102-40 (Law. Co-op. 1996)]*

1. An athlete agent may not accept as a client a student athlete referred by an employee of or a coach for a college or university located in this State in exchange for the rendition of free legal services, the rendition of legal services for a reduced fee, or any other consideration.
2. An athlete agent may not enter into an agreement, written or oral, by which the athlete agent offers anything of value to an employee of or a coach for a college or university located in this State in return for the referral of student athlete clients by that employee or coach.

### **TENNESSEE**

*[Tenn. Code Ann. §§ 49-7-2113, -2114 (1998)]*

1. A contract between a sports agent and a student athlete must state the fees, percentages, or other remuneration to be paid by the student athlete to the sports agent;
2. An athlete agent may not accept as a client a student athlete referred by and in exchange for any consideration made to an employee of or a coach for an institution located in this state.

### **TEXAS**

*[Tex. Rev. Civ. Stat. art. 8871, §§ 5, -6, -10 (West 1997)]*

1. The athlete agent must file with the Secretary of State a copy of each agent contract and financial services contract entered into with an athlete by the athlete agent. Such contract must include:
  - a. A schedule of fees that the agent may charge to and collect from an athlete; and
  - b. A description of the various professional services to be rendered in return for each fee.
2. The athlete agent may impose charges only in accordance with the fee schedule.
3. Changes in the fee schedule may be made, but a change does not become effective until the 7th day after the date on which a copy of the contract as changed is filed with the Secretary.
4. If a multi-year professional sport services contract is negotiated by a registered athlete agent for an athlete, the athlete agent may not collect in any 12-month period for the agent's services in negotiating the contract a fee that exceeds the amount the athlete will receive under the contract in that 12-month period.
5. An athlete agent may not:
  - a. Divide fees with or receive compensation from a person exempt under Section 2A of this Act or a professional sports league or franchise or its representative or employee; or
  - b. Enter into any agreement, written or oral, by which the athlete agent offers anything of value to any employee of an institution of higher education located in this state in return for the referral of any clients by that employee.
6. An athlete agent must provide the secretary, on request, with records containing the amount of any fees received and services performed for each athlete employing the athlete agent.

**CAVEAT:**

Appendix A excludes those statutory provisions contained in some athlete agent statutes requiring trust accounts for deposit of fees received, record-keeping requirements for fees received, specific statutory notices which must be included on the face of the agent contract regarding fee charges, and forfeiture of fees as a form of penalty against the athlete agent. For a detailed analysis of such provisions, see *Remis, Remedies and Penalties*, *supra* note 2, and *Remis, Registration and Reporting*, *supra* note 3.

Appendix A also does not include restrictions on fee-sharing within members of the athlete agent's own firm. Further, Appendix A does not list those states that prohibit an athlete agent from providing things of value to the athlete herself or a member of her family; rather, it only lists those states expressly prohibiting an athlete agent from offering things of value to an educational institution or its employees or representatives for referral of athlete clients. Appendix A also does not list statutes requiring athlete agents to maintain complete business records; rather, it lists only those expressly requiring disclosure of agent fees and services. Neither does it set forth any exemptions for attorneys or other individuals. For an analysis of those sections that provide loopholes and exemptions throughout the athlete agent statutes, see *Remis & Sudia, Escaping Athlete Agent Regulation*, *supra* note 4.

**APPENDIX B****SUMMARY OF STATUTORY REGULATION OF AGENT FEES,  
REFERRALS, AND OWNERSHIP INTERESTS**

As Expressly Enumerated in Athlete Agents Statutes

STATE	Agent Fee Limited to Percentage of Compensation	Agent Fee Limited in 12-Month Period on Multi-Year Contracts	Required Disclosure of Agent Fees or Limit on When Fee Changes Effective	Fee Limited When No Professional Sports Contract Obtained by Athlete or Athlete Not Paid
AL	10% of Total Compensation in Calendar Year	*	Yes	1. Reasonable out-of-pocket expenses; and 2. No more than the greater of 10% of athlete's signing bonus or \$1000
AR	*	*	*	*
AZ	*	*	*	*
CA	*	*	Yes / 7 Days	*
CO	*	*	Yes	*
CT	State Shall Adopt Regs	*	Yes / 7 Days	*
FL	*	*	Yes	*
GA	*	*	*	*
IN	*	*	*	*
IA	*	*	Yes / 7 Days	*
KS	*	Yes	Yes / 7 Days	*
KY	*	*	*	*
LA	*	Yes	Yes / 7 Days	*
MD	*	Yes	Yes / 7 Days	*
MI	*	*	*	*
MN	*	*	*	*
MS	*	*	*	*
MO	*	*	*	*
NV	*	*	*	*
NC	*	*	Yes	*
ND	*	Yes	Yes / 7 Days	*
OH	*	*	*	*
OK	*	Yes	Yes / 7 Days	*
OR	*	*	*	*
PA	*	*	*	*
SC	*	*	*	*
TN	*	*	Yes	*
TX	*	Yes	Yes / 7 Days	*

\* Not enumerated in the athlete agent statute.

Prohibition: Referral of Athletes by Educational Institution Employees	Prohibition/ Restriction: Agent Ownership Interest in Sport Entity	Prohibition/ Restriction: Agent Investment Commission/ Fees/ Ownership Interests	Prohibition/ Restriction: Fee Division with or Compensation from Sport Entities or Individuals	Prohibition/ Restriction: Selling or Transferring Agent's Profits	Agent May Require Security for Fees
Yes	Yes	Yes	Yes	Yes	Yes
Yes	*	*	*	*	*
Yes (ee or coach)	*	*	*	*	*
Yes (educat'l inst'n/ ee/ represent.)	Yes	Yes	Yes	*	*
Yes	*	*	*	*	*
Yes	*	*	Yes	State Shall Adopt Regs	*
Yes (ee or coach)	*	*	*	*	*
Yes	*	*	*	*	*
*	*	*	*	*	*
Yes (ee or stud.)	*	*	*	*	*
Yes	*	*	Yes	*	*
Yes (ee or coach)	Yes	Yes	*	*	*
Yes	*	*	Yes	Yes	*
Yes	*	*	Yes	*	*
Yes	*	*	*	*	*
Yes	*	*	*	*	*
Yes	*	*	Yes	Yes	*
Yes (ee or coach)	*	*	*	*	*
Yes	Yes	Yes	*	*	*
Yes	*	*	Yes	*	*
Yes	Yes	*	Yes	*	*
*	*	*	*	*	*
Yes	*	*	Yes	Yes	*
Yes	*	*	*	*	*
Yes	*	*	*	*	*
Yes (ee or coach)	*	*	*	*	*
Yes (ee or coach)	*	*	*	*	*
Yes	*	*	Yes	*	*

