SPORTS AGENCY –
PROCESS TO PLAYER
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I. Introduction

This paper is dedicated first to my dad, Leonard Drake, the ultimate sports junkie, who I promised that one day I would become a sports agent. Next, this paper is for those who have ever thought about becoming a sports agent but had no idea where to start. This paper will outline the steps necessary for basketball, which includes a discussion and analysis of what is required by the National Basketball League, the NCAA (the Uniform Athlete Agent Act), FIBA, and the State of Texas. This paper will also discuss some of the practical issues that surrounds the representation of athlete-agents. A special thanks also goes to Kathleen Boettiger, Attorney at Law, for her assistance in drafting this paper.

II. Process to Player

The first step to establishing yourself as an NBA athlete agent is the National Basketball Players Association Agent Application (attached hereto at Tab 1).

1. The basics of the NBA Application and their Rules:

According to the NBPA regulations a determination of certification will be awarded within 30 days of filing – unless they provide you written notice of an extension in review. The questions are straight forward, and yet fairly in depth. Do not be surprised. The NBA’s questions will require that you give considerable thought out how you are going to run your athlete agent business.

As a general rule, agent status will not be awarded to anyone without a degree from a four (4) year accredited college. Any person wishing to apply for athlete agent status without a degree must list the negotiating experience that you wish the Committee to consider in lieu of education. The requirements for certification as set out in the NBPA regulations require a degree, but give the committee the authority to determine if any negotiating experience can substitute for education. Any occupational or professional licenses you obtained other than college or graduate school degrees are also requested. Naturally the application also requests employment history from the last ten (10) years.

You have to satisfy the moral fitness component to become an agent, and the application requires you admit to any conviction or guilty plea to a criminal charge other than a minor traffic violation ($100 or less). You will also have to list any instances wherein you were a Defendant in any civil proceeding in which allegations of fraud, misrepresentation, embezzlement, misappropriation of funds, conversion, breach of fiduciary duty, forgery or legal malpractice were made. The application requests further information regarding bonds or surety on which the applicant was covered and was paid out on the applicant’s behalf, as well as any unsatisfied or pending judgments.

A good portion of the application addresses the other services you plan on providing to represented athletes. As fees for the agent/athlete contract are strictly covered by the Players’
Association, these other services and the fees charged for them are also concern of the Players’ Association. The Players’ Association wants to ensure that players are protected from any potential for threat of being taken advantage of by an agent.

If you provide any other services to players, financial planning, investment counseling, estate planning, tax planning, legal advice, and/or appearances/endorsements, or are affiliated with a firm or organization who provides these services, you must indicate your fees for said services. You must also indicate the other parties who have a financial interest in your organization or firm. Included in this are questions regarding how you will players for expenses you incur in providing services to them, and when fees will be due. Are you going to manage money for players, if so are you bonded for this service and for how much?

Even if you are not planning on offering financial or tax services directly to those you represent, are you going to refer them to someone else for these services? This is important to ensure that those individuals that the agents associate with likewise have the players’ best interest in mind. This is a growing concern for sports in general, as there have been many instances of those who are charged with a fiduciary duty to the athletes being the ones that take advantage of the athletes. Who are you referring players to, what kind of relationship do you have with these organizations, what kind of fee splitting or referral fees are involved? If there are any affiliated organizations or people who receive fees, commissions, rebates or other compensation other than as directly paid by a player you must report this information.

Application Fees

The application fee is $100; however, you must also remit $1,500.00 in annual dues upon registration. However, these fees only get you a license as a player agent. Each state also requires that you register with them, for a fee, in order to operate as a player agent, which will be discussed further in this paper. It is important to note, however, that the agent dues may increase significantly over the course of the next several months.  

Agent Rules

The National Basketball Players Association provides the regulations that govern all athlete agents and their actions as set out in the NBPA Regulations Governing Player Agents (attached hereto). The stated intent of the NBPA governing rules is “the increasing recognition among NBA players of the need (1) to insure that agents representing players (including rookies) in individual contract negotiations with NBA teams provide services of a high quality at fee levels that are fair and equitable; and (2) to establish a program for assisting players and rookies in selecting individual agents.” Once you have your license, you are bound by these rules.

The most important of these rules is: No person shall be permitted to conduct individual contract negotiations on behalf of a player (including a rookie) unless said person is (1) currently certified as a player agent and (2) signs the standard form fee

The NBPA met this summer to discuss a possible increase as follows: Agents with 0-9 players: $5,000, Agents with 10-19 players: $10,000, Agents with 20 or more players: $15,000. However; the decision has been tabled and will be discussed again in February, 2016.
agreement with the player. The NBPA does not take its rules lightly and both you and the player can be penalized for failure to adhere to its rules.

Your Basic Do’s and Don’ts

The do’s:

(1) You must provide your player with a copy of any compensation contract you negotiate on their behalf within 48 hours of its execution.

(2) On or before March 1st, you must provide each player you represent and to the Association, an itemized statement covering January 1 thru December 31st of the preceding year which sets forth the fee charged to the player for, and any expenses incurred in connection with the performance of: (a) individual player salary negotiations and/or grievance arbitration, (b) management of the player’s assets, (c) provision to the player of financial, investment, legal, tax, and/or other advice, and (d) any other miscellaneous services.

(3) Notify the NBPA of any significant changes in your status relevant to your continuing to be certified as a player agent.

The don’ts:

(1) Provide or offer monetary inducement to encourage a player to use your services

(2) Provide or offer anything of value to a player or a member of the player’s family or any other person for the purpose of encouraging the player to use your services.

(3) Hold or seek to hold either directly or indirectly a financial interest in any pro basketball team or any other business venture that would create an actual or appearance of a conflict of interest between player and agent

(4) Represent the manager or coach or management representative of any NBA team

(5) Solicit or accept money or anything of value from any NBA club where the acceptance would create a conflict or apparent conflict of interest of any player you represent

(6) Indirectly circumventing the fee limits of the standard form maximum fee agreement by knowingly and intentionally increasing the fees that he had charged or otherwise would charge the player for other services – including but not limited to financial consulting, advice concerning money managing, and/or negotiating endorsement agreements.

The obvious biggest of the don’ts in this case are the absolute ban on offering monetary inducement as a way to encourage a player to sign with you and the offering of anything of value to a player or anyone else to encourage a player to sign with you. “Anything of value” is a broad term, and it is reviewed broadly by the NBPA. Promises of endorsements, promises of contracts, monies paid or promised to family members – all of these are strictly forbidden. The basic theory here is that you cannot bribe a player into signing with you.

If you recall, the Athlete Agent Application contains numerous questions regarding other services offered by the prospective athlete agent, and here’s why…the compensation of agents is directly controlled by the NBPA regulations.
Compensation paid to an agent is dependent upon the contract agreed to by the player in connection with the NBA-NBPA collective bargaining agreement. If player receives only the minimum compensation under the NBA-NBPA collective bargaining agreement for the season(s) covered by the individual contract, the agent shall receive 2% of that compensation as his/her fee for each season. If the player makes over minimum compensation under the collective bargaining agreement then the agent gets up to 4% of that compensation as his/her fee for each season, however the player and agent can agree to percentage lower than 4%. The calculation of compensation includes the player’s base salary, signing bonus and any actually realized performance bonuses. The 2014-2015 league minimum for a player with zero NBA experience was $507,336, if the player had no signing bonus and no performance bonuses then the agent’s cut would be around $10,146 for the season.\(^2\)

In addition to controlling the amount of compensation that an agent can be paid, the NBPA also regulates disputes and serves as its own disciplinary committee. Arbitration is required under the NBPA Regulations for all disputes of denial of certification and any dispute arising out of the meaning, interpretation, or enforcement of a fee agreement entered into between a player and his agent. The NBPA selects the arbitrator for all cases arising out of the regulations.

The same Committee on Agent Regulation who oversees application for certification as a player agent also serves as the as the Disciplinary Committee and holds the authority and responsibility of initiating cases against agents, and presenting said cases against any agent who engages in prohibited conduct. The Disciplinary Committee files a written complaint against an agent, who then has twenty (20) days to respond. Within thirty (30) days of receipt of the response the Disciplinary Committee shall inform the agent of the nature of the discipline that they shall impose. The Committee can choose to simply reprimand the agent or can go as far as to revoke their certification. The agent does have the opportunity to appeal the ruling, and seek review by the NBPA appointed arbitrator.

2. **The Uniform Athlete Agent Act:**

   Just as the NBPA governs the player agents once they have signed an athlete, the NCAA governs athletes before they sign to play professionally. One of the key facets of the Act relates to eligibility of a player.\(^3\) The NCAA has also established rules to govern agents as they approach and attempt to sign prospective players who have not finished their eligibility. In 2000, the Uniform Athlete Agents Act was drafted and adopted by the National Conference of

\(^2\) Compensation for agents for players who receive minimum compensation under the NBA-NBPA collective bargaining agreement (“CBA”) applicable for the playing season or seasons covered by the individual contract, the agent shall receive a fee of two (2%) of the compensation received by the player under each season, unless a lesser percent (%) has been agreed to the parties and is noted the standard player agent contract. (See Tab 2, Standard Player Agent Contract). See also Tab 3, the Minimum Annual Salary Scale for 2014-2015)

\(^3\) In order to be eligible to play in the NBA, you must be 19 years old and one year out of high school. This is commonly referred to as “one and done”. However, to play in the NBA Developmental League, you only have to be 18 years old.
Commissioners on Uniform State Laws. Some would argue that the interpretation of the Uniform Act (and its application to players and agents) is subject to multiple interpretations.

This Act was drafted in an attempt to rectify the lack of uniformity across the states when dealing with the regulation of athlete agents, with the main focus being in protecting the athlete and the universities from loss of eligibility by players and sanctions against schools. Texas is one of the states that has adopted the Act. Further, deceptive practices by athlete-agents are also governed by 15 US Code § 7801, et. seq.

The most important point of the Uniform Athlete Agents Act holds that an athlete agent must be registered in each State that he/she plans on representing a player from. However, while the NCAA encourages that each state adopt the Act, not every state in America has adopted it. Registration is submitted to the Secretary of State in a form provided by the Secretary of State and then filed for public record. Registrations must be in the name of an individual; you cannot register a firm or corporation and then let multiple agents work under the registration. If, for example, you are based in Texas and seek to make contacts regarding future representation of a player in Arizona, you must be registered in both states. Agents who are issued a valid certificate of registration in one state are allowed to cross file that with other states, although the registration process has not yet been standardized across the states. The NCAA has also created a guideline for athlete-agents that is helpful in understanding some of the most important aspects of the Act.

Currently each state has a different application forms and fees. The NCAA has left the issues of registration fees, renewal fees, and expiration of registration up to each state to establish. Additionally, a handful of states require that you post a bond to be registered – in

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4 See Tab 4.
5 For example, Adidas created a jersey for Baylor’s men’s basketball team that had the phrase “Sic ‘Em Bears” on it. However, the NCAA in March, 2014, ruled that Baylor could not wear the jerseys. In so determining the NCAA stated that their rules provide that the neutral zone of a men’s basketball player’s jersey may only contain a player’s name or an institutional name mascot. Further, the rules provide that no more than two identifying names or abbreviations may be placed on the front or back of a game jersey. Pursuant to the rules, the identifying names must identify the school, the school’s nickname or mascot, or the player’s name. Thus, even though this phrase – Sic ‘Em Bears is historically a part of the Baylor culture, it is not a direct indicator of the school or its nickname and they could not wear the jerseys. (See Tab 5, NCAA Men’s Basketball 2013-2014 and 2014-2015 Rules).
6 § 7802 provides that (a) Conduct prohibited: It is unlawful for an athlete agent to—(1) directly or indirectly recruit or solicit a student athlete to enter into an agency contract, by—(A) giving any false or misleading information or making a false promise or representation; or (B) providing anything of value to a student athlete or anyone associated with the student athlete before the student athlete enters into an agency contract, including any consideration in the form of a loan, or acting in the capacity of a guarantor or co-guarantor for any debt; (2) enter into an agency contract with a student athlete without providing the student athlete with the disclosure document described in subsection (b); or (3) predate or postdate an agency contract.
7 See Tab 6, a list of each state that has adopted the Uniform Act.
8 See Tab 7, NCAA Guideline for Athlete-Agents.
Texas the surety bond required to register as an athlete agent is Fifty Thousand Dollars ($50,000).\(^9\)

As a certified agent you do not have to register in a state until you have established minimum contacts – if a player or his representative reaches out to you, or within seven (7) days of you establishing contact with a player you must submit an application for registration with the state in which the player is located. If you were to register with every state that has adopted the Act, you would spend application fees of over Twelve Thousand Dollars ($12,000) and renewal fees of over Nine Thousand Dollars ($9,000.00); the majority of states have adopted a two (2) year term of registration. Any contract executed in a state where the athlete agent is not registered is completely void under the Act.\(^{10}\)

The Uniform Athlete Agent Act also addresses and makes standards for certain terms of the player-agent contract. The contract must state, the amount and method of calculating consideration paid by the student-athlete for services to be provided by the agent under the contract. It must state the names of any persons who will be compensated because the student-athlete entered into the contract. Furthermore, the contract must the following notice in boldface, capital lettering, in close proximity to the signature of the student-athlete:

**WARNING TO STUDENT-ATHLETE**
**IF YOU SIGN THIS CONTRACT:**

1. YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;
2. IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND
3. YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

Failure to include the above makes the contract voidable by the student-athlete.

Within 72 hours of execution of a contract with a student athlete, or before the next scheduled athletic event in which the student-athlete may participate, you must give notice to the athletic director of the educational institution that a contract has been signed. This rule is to protect educational institutions from being sanctioned for having ineligible players participating in athletics. The sanctions and penalties that can be leveled against a school for the participation of ineligible students can be quite substantial. Although the student athlete also bears the burden of reporting the contract to their athletic director, the agent must not depend on the student to give notice to the athletic director.

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\(^9\) See Tab 8, Texas Occupations Code Chapter 2051.

\(^{10}\) See Tab 9, Spreadsheet of costs for registering in states that have adopted the Act.
It is understood that the student-athlete is the unsophisticated party in this transaction. As so, the Uniform Athlete Agent Act takes care of the students first and provides them an out. A student-athlete may cancel a signed contract, for any reason, within fourteen (14) days after execution and they may not waive this right to cancellation.

When contacting or signing student-athletes, there are the basics of what you cannot do under the UAAA in order to induce a student-athlete to enter into an agency contract with you, they are similar to those held by the NBPA under their governing rules:

- Give any false or misleading information, or make any materially false promises or representations.
- Furnish anything of value to a student-athlete before they enter into the agency contract or
- Furnish anything of value to any individual other than the student athlete or another registered student-athlete. (You cannot give the family or the girlfriend money, or a job or other benefits that have a monetary value.)

An interesting and important side note about the UAAA, the definition of student-athlete was promulgated to encompass all student athletes or potential student athletes. The definition states that the UAAA applies to any individual who “engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport.” See 15 U.S.C. § 7801(9). As so, the UAAA absolutely covers high school athletes and must be adhered to by agents when contacting them or their parents.

At the 2014 Annual Meeting a number of changes to the UAAA were proposed. One of the more interesting changes is the proposed expanded definition of athlete agent. The proposed change keeps the wording of the current UAAA which makes an individual who directly or indirectly recruits or solicits a student athlete to enter into an agency contract an athlete agent, but then extends the definition to encompass any individual who, for compensation:

1. Procurers or attempts to procure employment for a student-athlete as a professional athlete
2. Represents a student athlete as an athlete
3. Advises a student-athlete on finances, business ventures, or career management
4. Manages the business affairs of a student athlete; or
5. Secures the enrollment of a student athlete at a particular institution.

This new definition of recruit or solicit excludes advice to select a particular athlete agent given in a family, coaching, or social situation unless the advice is given because the advisor is in receipt of, or anticipating receipt of compensation from the agent.

The new proposed changes to the UAAA also revise the definition of educational institution. The new definition makes it clear that the Act applies to a student athlete at any level of a public or private education. The UAAA annual meeting notes reflect that the proposed definition of student athlete is being expanded because agents are providing benefits to student athletes as early as elementary school if the student appears to have long-term professional sports
capability. What this could potential mean is that a children, an elementary age child, could lose his eligibility to participate in intercollegiate sports because any agent provided him with athletic equipment, shoes, etc. So, if you do become an athlete-agent the best rule of thumb is to make sure that you do not give anything of value to any athlete, regardless of age.

The most positive of the proposed changes, at least to agents, would be the establishment of both a true reciprocal registration and a central registration point.

A true reciprocal registration would mean that if you apply and are registered in one state another state is required to grant registration when you file, unless it determines that its laws are more restrictive. The existing system states that while you can file your accepted registration in another state the second state can require additional information or refuse to issue their registration based upon various grounds. Given the onerous nature of complying with each state’s requirement, this would be a welcomed change for all agents.

The proposed central registration would be the easiest way to facilitate the proposed reciprocal licensing provisions. Sadly, the way the meeting notes were adopted it seems that a central registration, which would require a central registration office might be cost prohibitive at this time. However, the proposed changes do leave a glimmer of hope in that they encourage the establishment of a standard form for reciprocity.

Registration With Colleges

Just when you thought you had gone through enough layers to comply with all athlete-agent rules, you need to know that each university has their own separate approval system for athlete-agents. The form of registration is different for each college, and you will need to contact the athletic director for the college you want to go to in order to speak to the athletes. Each college conducts its athlete-agent interviews in a specific window of time, which is off-season. For basketball, athlete-agent interviews are conducted in the summer months. So, just because you have your national and state registration, do not be under a false sense of impression that you can communicate with athletes prior to the completion of their eligibility. You must go through their process and comply with their interview process. Their forms are similar to what you see referenced herein, i.e., you will be answering many of the same questions with each college to give that college the satisfaction that you meet the national and state requirements to be on their campus. Further, each college wants to ensure the moral fitness of the agents before letting them onto their campus. You must also designate which athletes you want to interview and those athletes have the right to determine if they want to meet with you.

3. The Texas Athlete Agent Application:

Before an agent may recruit or solicit an athlete to enter into an agent contract, a financial services contract, or a professional sports services contract in the State of Texas, the agent must obtain a certificate of registration from the secretary of state. The Application for Registration as
an Athlete Agent. Agents are governed by the Texas Occupations Code, Title 13, Chapter 2051 and the Secretary of State’s administrative rules found in the Texas Administrative Code, Title 1, Chapter 78. Texas has adopted the Uniform Athlete Agent Act and any athlete agent licensed in Texas must comply not only with the Texas Occupations Code but also with the UAAA.

Prior to filling out an application to become an athlete agent in Texas, the prospective athlete agent must decide what kind of athletes they are looking to represent. There are two (2) types of athlete agent registrations in Texas the professional agent and the limited agent. Individuals may be registered as either type of agent. Organizations cannot be registered as an athlete agent. The athlete agent registration does not carry between people, i.e., an agent cannot operate under someone else’s license.

The professional athlete agents operating in Texas must be must be certified by at least one (1) professional sports association (NBA, NFL, MLB, NHL or US Soccer Federation). The limited athlete agents represent athletes in sports that do not have a national professional association such as golf, tennis, etc. An agent certified as a limited athlete agent may ONLY represent athletes in these sports that do not have national professional associations that certify or license agents. As a professional agent you may also represent those athletes in sports that do not have a professional organization.

What Information Texas Requires to Obtain Athlete-Agent Status

The application mirrors many of the questions of the National Basketball Players Association Agent Application referenced earlier. The Application requires the potential agent’s background, experience and list of any athletes represented for the last five (5) years; a detailed list of any certifications the potential agent already possesses; and moral fitness questions – has the applicant been accused of a crime other than a class C misdemeanor, any findings of fraudulent representation or deceptive representation, sanctions stemming from any occupational or professional conduct? The application also requires at least three (3) non-familial professional references.

Then, as with the NBPA agent application, Texas requires that the applicant provide the name and address of any parties with an ownership or right to receive profits from the applicant’s athlete agent business. For lawyers the applicant must provide a list of any members of their firm who are involved with or will be involved with athlete agent activities. There is also included, as a supplement to the application, a document on each financially interested party in which the applicant must testify to the fitness of the person – as with the applicant this includes questions regarding the commission of crimes, sanctions imposed for professional or occupational conduct, and the denial or revocation of an athlete agent license or denial of

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11 See Tab 10, Texas Athlete-Agent Registration
registration. So, it is possible to be certified by the NBA but then be denied agent status in any given state you apply to become an agent in.

The fee for initial registration as an athlete agent in the State of Texas is Five Hundred Dollars ($500). In addition to this registration fee, Texas requires that an athlete agent obtain and maintain a surety bond in the amount of Fifty Thousand Dollars ($50,000). This bond must be maintained for at least two (2) years after the later of (1) the date that you cease to provide financial services to an athlete; or (2) the date your certification of registration expires, or is revoked, surrendered or cancelled. There are numerous bonding companies that charge different rates for obtaining the bond. You can expect to pay around $1,500.00 per year for the bond.\textsuperscript{12}

In the event the athlete agent intends to provide financial services to the athletes that he/she represents then a One Hundred Thousand Dollar ($100,000) surety bond is also required. If the athlete agent is not providing these types of services an affidavit must be submitted with the application stating that the agent has not entered into a financial services contract or provided financial services for an athlete and does not intend to do so. All of these documents and fees must be submitted with the application. The registration, once granted is valid in Texas for one (1) year. The renewal fee in Texas is an additionally Five Hundred Dollars ($500.00) per year.

The Secretary of State of Texas has the authority to revoke or suspend an athlete agent’s registration. In addition, the Secretary of State can assess an administrative penalty in an amount up to Fifty Thousand Dollars ($50,000.00) for a violation of the Uniform Athlete Agent Act or an administrative rule adopted pursuant to the Act. An athlete agent who intentionally or knowingly commits a violation of the Uniform Athlete Agents Act is also subject to criminal penalties.

\textbf{AGENT RESPONSIBILITIES}

First and foremost, an athlete agent licensed in Texas is responsible for knowing the applicable law and being truthful and complete in all dealings as an athlete agent. Ignorance of the law has never and will never be a defense. Other responsibilities of Texas athlete agents include:

- Timely file with the secretary of state:
  - Copies of athlete agent contracts (10 days after execution)\textsuperscript{13}

\textsuperscript{12} This is the current rate of my yearly bond.
\textsuperscript{13} It is important to note the definition of an athlete under the Occupations Code. An "Athlete" means an individual who: (A) is eligible to participate in intercollegiate sports contests as a member of a sports team or as an individual competitor in a sport at an institution of higher education; or (B) has participated as a member of an intercollegiate sports team or as an individual competitor in an intercollegiate sport at an institution of higher education \textit{and has never signed an employment contract with a professional sports team}. Texas Occupations Code, Title 13, Chapter 2051(2)(A)\&(B).
Bonds to act as an agent, and, if applicable, to enter into financial services contracts
- Annual registration renewals
- Notification of any criminal convictions for offenses other than Class C misdemeanors
- Notification of decertification by a national professional sports association

- Retain and permit inspection of records
- Disclose required information:
  - To athletes related to college eligibility
  - To athletes in athlete agent contracts
  - To the secretary of state related to registration, renewal, and individual solicitors
  - To the public in advertising
  - To athletic directors regarding parent- or guardian-initiated contact

Violating Chapter 2051, the administrative rules or the UAAA can result in serious penalties, including thousands of dollars in monetary fines, as well as subject an athlete agent to civil suit or conviction of a criminal offense. Violations include:

- Failing to fulfill the responsibilities of a Texas athlete agent (discussed in the above section)
- Initiating unauthorized contact with an athlete
- Contact or contract with athlete before completion of last college game
- Offering or furnishing something of value in return for a contract
- Certain types of referral and fee sharing agreements

4. **So what if your player wants to play overseas? The Process for FIBA (International Basketball Federation)**

   *So, what if your athlete wants to play overseas?* Many athletes do not get signed to play in the United States. In basketball, these athletes have many leagues all over the world that are open opportunities to them to gain the experience they need and play the sport that they love. To represent these overseas athletes the athlete agent needs to be a member of the International Basketball Federation (FIBA). So, if the above requirements seem onerous, know that there are additional steps required for international representation. Further, it is important to note that this is where the bulk of basketball players play post their college career. Additionally, NBA players, when finished their NBA careers, can still find lucrative opportunities overseas. In short, it makes business sense to obtain your FIBA license.

**THE APPLICATION PROCEDURE**

The FIBA application is a simple one (1) page, with this the application must include a copy of a valid passport, a Certificate of No Conviction or Letter of Good Standing (a criminal
record check issued by state government authority and no older than 6 months) and a valid copy of any other licenses held (NBPA, Bar or any issued by your national federation).

FIBA then requires the applicant submit to a personal interview and test – unless the applicant qualifies for an exemption. Any United States licensed attorney, in good standing, qualifies for the test exemption, which is nice since the test if offered in Switzerland twice a year, or on FIBA set dates for those in The Americas (it’s in Miami this year) or Oceania (Australia this time around) according to demand. Once granted, the FIBA license is valid for twelve (12) months. The fee for the license is in Swiss Francs.

FIBA rules and regulations are governed by a tribunal. The tribunal was established by FIBA in 2006 under the name “FIBA Arbitral Tribunal (FAT)”. In accordance with the 2010 FIBA General Statutes, the tribunal was renamed into “Basketball Arbitral Tribunal (BAT)” and is an organization officially recognized by FIBA.

The Basketball Arbitral Tribunal provides services for the resolution of disputes between players, agents and clubs through arbitration. Please find below the main features of the BAT:

- True Arbitration under Swiss Law (seat of each arbitration is Geneva),
- Single Arbitrator appointed by the BAT President,
- Simple procedure,
- English language only,
- Hearing and hearing of witnesses upon application only,
- Provisional and conservatory measures available,
- Arbitrator decides ex-aequo et bono, i.e. on the basis of general considerations of justice and fairness without reference to any particular national or international law,
- Decision within six weeks of end of proceedings.

Failure to honor a BAT Award may entail sanctions by FIBA such as, as the case may be, a monetary fine, the withdrawal of a FIBA Agent's License, a ban on international transfers of players or a ban on registration of new players, as provided in the FIBA Internal Regulations.

Making Contacts in the International Community

The avenues for developing relationships overseas vary. One of the most effective tools for researching players and available opportunities is the Eurobasket web site. This site is the international host for players and teams in Europe. It is also a connecting point between agents. Agents should upload their players’ information to the site for exposure. Additionally, overseas agents will reach out to you once you obtain your FIBA license. They want relationships with American agents so that there is reciprocity in marketing their players in the states. When working with an overseas agent, be prepared to share whatever fee they obtain in placing the player. Fees for players going into the international arena are typically set at ten (10%) of the contract and the contract typically stems over two years.


15 See Tab 11, FIBA contract.
5. To Pay or Not to Pay College Athletes; that is the Question:

Edward O’Bannon, Jr. on behalf of himself and all other similarly situated V. National Collegiate Athletic Association and Electronic Arts, Inc.; Collegiate Licensing Company, Northern District of California, No. 09-cv-03329, decided August 8, 2014.

It is no secret that college sports generates millions of dollars each year. The athletes that “leave it all on the court” are regulated by the National Collegiate Athletic Association and the NCAA mandates that student-athletes shall not be paid for their college performance. For decades, the NCAA has come against opposition in its position that student athletes should not be paid. The National Collegiate Athletic Association is an unincorporated, non-profit membership association composed of over 1200 member schools and conferences. It has no corporate parent, and no publicly held corporation owns ten (10) percent or more of its stock.

Thirty years ago in NCAA v. Board of Regents of Univ. of Okla., 468 U.S. 85, 102 (1984), the Supreme Court declared that, to “preserve the character and quality of “collegiate sports, “athletes must not be paid.” This ruling still holds true, but new a new case, out of California stands in opposition to this decades’ long rule of unpaid student athletes.

Edward O’Bannon, Jr., et al, – is a certified class of former NCAA players. They brought suit against NCAA and Collegiate Licensing Company under the Sherman Anti-Trust Act based on the theory that student-athletes should receive payments for the dissemination of their “names, image and likeness” in sports broadcast and other media.

The Background

Plaintiff Edward O’Bannon, a Nevada resident, competed as a student athlete on the University of California, Los Angeles men's basketball team from 1991 to 1995. Plaintiff Craig Newsome, a Wisconsin resident, competed as a student athlete on the Arizona State University football team from 1993 to 1994. Both maintain that they participated on their respective teams pursuant to the rules and regulations of NCAA.

O’Bannon alleged in the complaint that the NCAA rules and regulations constitute anticompetitive conduct. The plaintiff cites NCAA Form 08–3a, which NCAA requires student athletes to sign each year. By signing Form 08–3a, student athletes agree to the following:

“You authorize the NCAA [or a third party acting on behalf of the NCAA (e.g., host institution, conference, local organizing committee)] to use your name or picture to generally promote NCAA championships or other NCAA events, activities or programs.”

O’Bannon claims that the form requires student athletes to “relinquish all rights in perpetuity to the commercial use of their images, including after they graduate and are no longer subject to NCAA regulations.” He asserts that student athletes' participation in intercollegiate athletics events is conditioned on signing this form.

O’Bannon also cites NCAA Bylaw Article 12.5.1.1, which provides:
A member institution or recognized entity thereof (e.g., fraternity, sorority or student government organization), a member conference or a non-institutional charitable, educational or nonprofit agency may use a student-athlete's name, picture or appearance to support its charitable or educational activities or to support activities considered incidental to the student-athlete's participation in intercollegiate athletics, provided the following conditions are met:

(i) The student-athlete and an authorized representative of the charitable, educational or nonprofit agency sign a release statement ensuring that the student-athlete's name, image or appearance is used in a manner consistent with the requirements of this section.

O'Bannon claimed that, among other things, Form 08–3a and Article 12.5.1.1 enable the NCAA to enter into licensing agreements with companies that distribute products containing student athletes' images. The plaintiff alleges that neither he nor other student athletes consented to these agreements and that they do not receive compensation for the use of their images. The plaintiff claimed that Collegiate Licensing Company (CLC), which is incorporated and has a principal place of business in Georgia, serves as NCAA's “licensing arm” and facilitates these arrangements.

O'Bannon asserted that NCAA's and CLC's actions excluded him and other former student athletes from the collegiate licensing market. He claims that, because NCAA has rights to images of him from his collegiate career, it, along with its co-conspirators, fix the price for the use of his image at “zero.” He maintained that this conduct “has artificially limited supply and depressed prices paid by Defendants and their coconspirators to Plaintiff and the members of the Class for use of their images after cessation of participation in intercollegiate sports.”

Based on this alleged conduct, O'Bannon and Newsome pleaded that Defendants violated section 1 of the Sherman Act by agreeing to fix prices and to engage in a group boycott, both of which constitute unreasonable restraints of trade. In addition, they asserted related claims for unjust enrichment and an accounting. The remedies they sought included monetary relief, disgorgement of profits from the wrongful use of putative class members' images and a permanent injunction prohibiting Defendants from using former student athletes' images without valid consent. O'Bannon v. Nat'l Collegiate Athletic Ass'n, No. C 09-1967 CW, 2010 WL 445190, at *1-2 (N.D. Cal. Feb. 8, 2010).

**The Ruling**

On August 8, 2014, Judge Claudia Wilken ruled in favor of Plaintiffs declaring that the NCAA’s challenged rules unreasonably restrained trade in violation of the Section 1 of the Sherman Act. Judge Wilken granted an injunction declaring that as of August 1, 2015, the NCAA will be enjoined from “enforcing any rules or bylaws that would prohibit its member schools and conferences from offering their FBS football or Division 1 basketball recruits a limited share of revenues generated from the use of their names, images, and likeness in addition to a full grant-in-aid.”

The injunction did not preclude, however, the NCAA from capping the amount of compensation that may be paid to student athletes, however, the NCAA will not be permitted to
set the cap below the cost of attendance. The injunction additionally prohibits the NCAA from enforcing any rules to prevent its member schools from offering to deposit a limited share of licensing revenue in trust for the FBS football and Division 1 basketball recruits. These trust amounts would be payable when the athletes leave school or their eligibility expires. The NCAA will be permitted to set a cap on these amounts so long as said cap is not less than Five Thousand Dollars ($5,000.00) per year for every year the student-athlete remains academically eligible.

The NCAA appealed this ruling; arguments were heard in July, 2015, but the 9th Circuit has yet to hand down judgment on the appeal. However, the Court has granted a stay on the injunction until the appeal has been decided.

**What this means for Athletes**

The O’Bannon decision was a win for student-athletes. One portion of the decision states that “the NCAA could permit its schools to hold in trust limited and equal shares of its licensing revenue to be distributed to its student-athletes after they leave college or their eligibility expires.” *Id.*, at 92. What this could mean for some student athletes that are permanently injured during their eligibility period is that they could continue to go to college if paid out of this trust fund. Many college athletes only are able to go to college because of their athletic scholarship and if they lose their scholarship, the chances of them finishing school are very slim. Others are concerned that the “business” of college sports could take the heart and soul out of the college player who plays for their love of the game.

6. **Sports Law in Texas:**


Joscelin Yeo brought action against NCAA for sanctions imposed upon her in allegedly violations of NCAA rules. Yeo, a swimmer from Singapore, began her collegiate career at UC-Berkley. After a competing for a year at Berkley she transferred, with her coach, to UT-Austin. NCAA rules generally prohibit a student who transfers from one four-year member institution to another from participating in intercollegiate athletic competitions for one full academic year, but this restriction may be waived under certain circumstances if the former institution does not object. Berkeley refused to waive the restriction, and thus Yeo was ineligible to compete at UT–Austin for an academic year.

As permitted by NCAA rules, Yeo did not enroll in classes for the fall semester of 2000 in order to compete in the Olympics. In compliance with the one-year restriction, she did not participate in intercollegiate events during that semester or the spring semester, when she was enrolled in classes. UT–Austin mistakenly believed that Yeo's first semester had counted toward satisfying the restriction and that she was free to engage in competition beginning the fall semester of 2001. After Yeo competed in four events, Berkeley complained to the NCAA. UT–Austin confessed its error and agreed that Yeo would sit out the remainder of the semester, but the NCAA required that she not participate in the first four events the following spring, to match the four events in which she had been disqualified. Yeo did not know of UT–Austin's discussions with the NCAA and simply did as UT–Austin told her.
On March 20, Yeo sued UT–Austin and its vice president for institutional relations and legal affairs, Patricia Ohlendorf, to enjoin them from disqualifying her from competing in the championship meet two days later and for a declaration that UT–Austin had denied her procedural due process as guaranteed by the Texas Constitution. On March 21, the NCAA intervened in the action, but Yeo moved to strike the intervention, and after a hearing later that day, the trial court granted Yeo's motion. The next morning, the NCAA sought mandamus relief from the court of appeals, and UT–Austin appealed from the temporary restraining order. That afternoon, the court of appeals denied the petition for mandamus and dismissed the interlocutory appeal for want of jurisdiction. Yeo competed in the championship meet.

In November 2002, after a trial to the bench, the trial court rendered judgment for Yeo, declaring that UT–Austin had denied Yeo procedural due process guaranteed by the Texas Constitution, thereby depriving her of protected liberty and property interests.

Yeo argued that she was entitled to notice and a meaningful hearing before NCAA rules were applied to her because of her unique reputation and earning potential. Had she been disqualified from competing in the championship meet, she contends, people would have suspected that it was for her own misconduct and not for UT–Austin's mistakes in attempting to comply with NCAA rules. Yeo acknowledges that the United States Supreme Court has held that reputation alone is not a protected liberty or property interest. But it is the degree of her interests, Yeo contends, and not merely their character, that bring them within constitutional protection. A student-athlete with a lesser reputation or less certain of her earning potential, she concedes, would not have the same rights. The Texas Supreme Court did agree with the lower courts and overturned the decision. The Court found that:

"Yeo's claimed interest in future financial opportunities is too speculative for due process protection. There must be an actual legal entitlement. While student-athletes remain amateurs, their future financial opportunities remain expectations. Nat'1 Collegiate Athletic Assn v. Yeo, 171 S.W.3d 863, 870 (Tex. 2005). The Court overturned the lower courts stating that "We have twice reminded the lower courts that "judicial intervention in [student athletic disputes] often does more harm than good."24 As the Fifth Circuit has said, judges are not "super referees". Along the same vein, the United States Supreme Court has observed: "Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values." We reiterate this counsel to the trial courts and courts of appeals. Id., at 870.

7. The Practical Side to Sports Agency:

After all of the forms and fees and registrations you wonder, should I embark on this exciting career in sports agency? My recommendation would be to not give up your law practice just yet. For me, my sports agency is a compliment to the services that my law practice already provides. If you want to do this you have to have reasonable expectations going in. No superstar athlete is going to track you down your first year as a sports agent. Relationships with a small group of players that you feel have the right combination of talent, character and commitment will ensure steady growth in an organic matter. Your commitment to integrity and honesty and just caring
for your players like they are an extension of your family will mean more to building your reputation than landing the superstar. You will not be able to represent every player that asks you to represent them. You will have to make decisions that embody the time you are able to commit to that player while doing a good job for them. No player wants you to agree to representation of them and then that player is a name on your player list, for whom you do absolutely nothing for. If you are not sure you can help a player, it is better to be honest and just say no. They would rather you say no than to tell them you are going to help them and then you do not help them.

Conclusion

Do what you are passionate about. I am in this industry for the love of the sport and the player. If you have the right motivation, you can be great in this field. Do not let the obstacles that surround becoming a sports agent stop you.