



1982

The Role of the Sports Agent

Madelyn J. Belanger

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/lf>



Part of the [Law Commons](#)

Recommended Citation

Belanger, Madelyn J. (1982) "The Role of the Sports Agent," *University of Baltimore Law Forum*: Vol. 12: No. 3, Article 8.
Available at: <http://scholarworks.law.ubalt.edu/lf/vol12/iss3/8>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized administrator of ScholarWorks@University of Baltimore School of Law. For more information, please contact snolan@ubalt.edu.

The Role of the Sports Agent

By Madalyn J. Belanger

The sports' section of newspapers is beginning to look more and more like the business section. Restricted trades, contract negotiations, wage disputes and strikes are as important as last night's score. Professional athletics is becoming more sophisticated, and players are looking out for number one. In doing so, most pro-athletes are hiring agents to represent them.

Who can be an agent? As Donald Dell, a Washington sports lawyer aptly puts it, "[m]y sister can be an agent. No qualifications. No canon of ethics. An agent can be anybody. A used car salesman. Your next-door neighbor." Jenkins, *Washington's Hard Hitting Sports Lawyers*, 6 DIST. LAWYER 29 (1981). However, many lawyers who find themselves in the role of sports agent discover their legal background to be a great asset. A lawyer is better equipped to handle such areas as contract negotiations. In addition, an attorney is better prepared to aid in enforcement of that contract, as well as assisting the athlete in handling his finances and endorsements.

The most important difference between lawyer and non-lawyer agents is that the lawyer is sworn to uphold the Code of Professional Responsibility. The non-lawyer is not governed by integrity and legal competence as is a lawyer. CODE PROF. RESP. EC 3-3. The lawyer, when rendering services that call for professional judgment, must rely on his educated ability to apply the general body and philosophy of law to the specific legal problem. CODE PROF. RESP. EC 3-5. The client also gets the benefit of the attorney-client privilege. CODE PROF. RESP. EC 3-3; EC 4-1; DR 4-101(A). proper overtures. CODE PROF. RESP. EC 3-3. Canon 9's prohibition on the appearance of impropriety could also curtail the lawyer's ability to find clients. Most often this leads to difficulty when lawyers are competing with other agents who are plying

prospective clients with cars, money and more. Non-lawyer agents use these tactics because they have no fear of punishment as long as their ownings are legal. However, the attorney-agent is faced with possible disbarment if he engages in these same practices.

With these constraints on soliciting clients, how does an attorney find athlete-clients? Several methods may be used, but most are based on luck. While studying for the New York State Bar, Jimmy Walsh was lucky enough to room with Joe Namath. Richard Bennett of Washington, D.C. roomed in college with two hockey players now with the St. Louis Blues. They later put Bennett in contact with Terry Metcalf (then with the St. Louis Cardinals). Jeffery Jacobs of

Chicago accidentally entered the field after winning a civil suit for Virgil Livers, a Chicago Bears cornerback, who then asked Jacobs to negotiate his contract. Jenkins, *supra*. Word of mouth among teammates can be the greatest help.

Without fortunate circumstances, snaring the college athlete is risky, primarily because of the NCAA restrictions on college athletes. A college athlete who contracts, orally or in writing, to be represented by an agent in the marketing of his athletic ability is no longer eligible for inter-collegiate activities in that sport. NCAA CONST. 3-1(c) (1980). However, he is permitted to talk to a lawyer in regard to a professional contract proposal, unless that lawyer also is representing the student-athlete in negotiations for such contract. *Id.* In addition, the school may suffer forfeiture on all games played during the period of ineligibility. NCAA Enforcement Program §10 (1980). But officials say the practice is so widespread



that the rules are enforced sporadically. As might be expected, the non-lawyer representatives are more free-wheeling in contacting and negotiating with college athletes.

After an athlete-client retains his agent, the agent could become the "exclusive representative" of the athlete. The athlete should be cautious in this situation, however, as "exclusive representative" clauses written by unscrupulous agents could bind the athlete to pay an agent a certain percentage regardless of the work the agent does. A naive athlete might be oblivious to the impact of this type of clause and to his rights and remedies.

Most attorney representatives operate on a handshake basis, and dismiss the thought of suing an athlete if he later hires a non-lawyer agent. The bad publicity would assure the lawyer of few new clients. However, Robert Berry, a specialist in Sports Law at Boston College Law School, recommends a written contract, explaining that athletes are not the most stable individuals. *Is the Sports Lawyer Getting Dunked?*, 66 A.B.A.J. 79 (Winter, 1980).

Another problem can arise when an agent negotiates a deferred payment contract, with payments spread over a number of years, and he then takes his own cut, up front in today's dollars. Most reputable firms collect a percentage on a certain portion of the contract and receive money whenever the contract calls for the player to receive a payment.

Agent fee arrangements are usually based on a percentage of the negotiated contract. Ethical constraints prohibit an attorney from having a stake in the outcome of a case and from collecting clearly excessive fees. CODE PROF. RESP. DR 2-106. Percentage-based fees are customary, but Richard Bennett takes a unique approach. He takes neither a percentage cut nor an hourly fee. "After the work's completed, I discuss the fee with the player, and he pays me what he thinks is fair." Jenkins, *supra*. It works!

The attorney-agent also must consider the team's ability to meet a con-

tract proposal. Such factors as the owner's wealth and commitment, gate receipts, television revenue, number of players and location of the team should be considered.

An ambitious agent can also bargain for perks such as cars, houses and interest-free loans for his client. Performance incentives may be added to the basic contract. In football, for example, for each interception turned into a touchdown, a certain NFL player receives \$1,000. For an All-Star performance or All-Pro award, the player could receive extra. Likewise, if the player participates in 25, 50 or 75 percent of the total plays, he will get more. These incentives compensate a player who is put in a starting assignment or performs better than anticipated. Says Jacobs, "[i]t protects you in case the player really does well. I don't renegotiate contracts. I try to cover these contingencies beforehand." Jenkins, *supra*. Human nature being what it is, these incentives also give the fans a better show.

It is possible that a lawyer-agent can find himself faced with a serious ethical problem when he represents several members of the same team. Possibilities arise when the team wants to trade favors for one player to the disadvantage of another. To protect himself, the lawyer-agent must apprise his client of the agent relationship with other players, and allow the client to consent or withdraw from representation by that particular attorney. CODE PROF. RESP. DR 5-105 (c); EC 5-15, 5-16. This sort of bargaining with management must be scrutinized by the agent and team alike.

After the agent secures a contract for the player, his service doesn't necessarily end. Sports attorneys such as Dell, Bennett and Jacobs provide other management services. Sometimes it is in the best financial interests of the player to incorporate. For example, Tracy Austin's incorporation allows her certain profit sharing and pension contributions.

Investment of salaries and other accounting and management services are provided by the more reputable

firms. The knowledgeable lawyer-agents invest in tax shelters such as oil and gas. Proper investment management can reduce taxes to as low as 15-20 cents on the dollar. Tax expertise also comes into play with income averaging and deferred compensations.

Some agents also handle endorsement contracts. One example is tennis pro Stan Smith's \$450,000 per year royalties on his Adidas tennis shoes. Personal appearances, commercials, charitable community involvement and other related activities can all be handled properly through the lawyer-agent.

The lawyer-agent is frequently called on by his client to assist him with general legal problems as well. These can range from domestic relations problems to wills and real estate. Drunk driving and drug charges are becoming as commonplace among athletes as in the general public. With the advent of tort claims arising from injuries on the playing field, and tortious interference with contracts, lawyers have new areas in which to litigate. Other lawyers, such as Richard Berthelsen of Washington, D.C., act as lobbyists with Congress on matters such as relaxing regulations that now prohibit active professional athletes from appearing in television beer commercials.

Many athletes have found an alter ego in their agents. The agents are friends, business partners, advisors and psychiatrists. Players rid themselves of hassles simply by saying, "[t]alk to my agent." The agent best be prepared or he'll turn into a scapegoat.

In what many people consider a specialty, sports law has great diversity. Contract negotiations, tax law, investments, torts, workman's compensation and even criminal defense work are in the realm of the sports lawyer. To do his client justice, the sports lawyer must be knowledgeable, assertive and creative.