

Chicago Daily Law Bulletin®

Volume 160, No. 119

MLB rules on legal counsel catch players in a Catch-22

Earlier this month, Major League Baseball conducted its annual first-year player draft, in which all 30 MLB clubs selected a collective total of 1,215 high school, college and junior college players from the United States, Canada and Puerto Rico whom they feel will be the next group of future stars.

Every player selected has until July 18 to negotiate the terms of a contract with the team by whom they were drafted or decline the offer and attend college.

On its surface, these negotiations would seem to encompass the standard give-and-take involved in employment service contracts between an employer and a potential employee. However, the NCAA, the organization that governs the student-athletes of its member institutions, set forth rules prohibiting amateur baseball players from having legal counsel negotiate contracts with a professional sports team on their behalf.

What's that, you say? Surely the NCAA — an organization whose original reason of existence was to protect student-athletes — would never allow such an egregious disadvantage to exist for these inexperienced and easily influenced young men (some of whom are 17 years old) in contract negotiations against multimillion-dollar corporations who have savvy baseball "lifers" working for them.

Sadly, and unbelievably, it does.

Although the NCAA extends a perceived "helping hand" to drafted baseball players via its Bylaw 12.3.2, which states that draftees are allowed to obtain "advice from a lawyer

concerning a proposed professional sports contract," the NCAA quickly pulls the hand back from the grasp of the draftees by adding Bylaw 12.3.2.1, which states that "a lawyer may not be present during discussions of a contract offer with a professional organization or have any direct contact ... with a professional sports organization on behalf of the individual."

If these bylaws, often referred to as the "no-agent rules," are violated, the NCAA will deem the player to have utilized the services of an agent, and therefore, the player will lose some, or all, of his collegiate baseball eligibility.

In essence, an amateur baseball player who is drafted can hire an attorney to obtain advice about a proposed contract offer, but said attorney cannot negotiate with the employer, discuss terms of the contract with the employer or even be in the same room as the employer and player when they are discussing terms of the contract.

Here's how the NCAA wants it to play out: A team makes an offer to the player; player consults with his attorney; attorney gives advice to player; player goes back to team with counteroffer; team makes new offer to player; player goes back to attorney; attorney advises player how to respond; player goes back to team, etc., etc.

Round and round we go. Cue the circus music.

A baseball student-athlete can hire an attorney to negotiate a real estate contract. A baseball student-athlete can hire an attorney to negotiate terms of a divorce settlement. But hiring an attorney to help directly negotiate terms of an employment services contract is forbidden.

AGENT OF CHANGE



NELLO P. GAMBERDINO II

Nello P. Gamberdino II has represented professional athletes from three different sports in eight countries. He is a Major League Baseball Players Association certified agent and director of Midwest operations for Paragon Sports International. He represents professional baseball players and acts as an adviser to amateur baseball players who are eligible for MLB's annual first-year player draft. In addition, he is the employer outreach coordinator at The John Marshall Law School, where he earned his J.D.

Ironically, players who are deemed in violation of these bylaws and are subsequently suspended by the NCAA are allowed to have an attorney represent them in proceedings to either try to reverse the suspension or reduce the length of the suspension.

Let this marinate in your brain for a minute: The NCAA's thought process dictates that a player can only have counsel help him when he is suspended for having counsel help him. It's next to impossible to reason with people or organizations who find this way of thinking to be logical.

The draconian NCAA "no-agent rules" have previously come under legal attack in *Oliver vs. National Collegiate Athletic Association*, 920 N.E. 2d 203 (2009, Ohio), in which a college baseball player was suspended for violating the bylaws and subsequently sued the NCAA.

The trial court judge, Tygh M. Tone, ruled that "not even the defendant can circumvent an individual's right to counsel." Tone further opined that "[I]t is impossible to allow student-athletes to hire lawyers and attempt to control what that lawyer does for his client by [d]efendant's Bylaws 12.3.2 or 12.3.2.1."

The judge concluded that Bylaw 12.3.2.1, in particular, is overreaching, "capricious and ... arbitrary and indeed stifles what attorneys are trained and retained to do."

In the end, the court ruled that NCAA Bylaw 12.3.2.1 is void. Unfortunately for current amateur baseball players, the case was ultimately dismissed when the parties agreed to a settlement in which the plaintiff received \$750,000 from the NCAA.

For now, the NCAA's immoral and unjust rules prohibiting drafted baseball players from having legal representation directly assist in their dealings with MLB teams remains in place.

Of course, the simplest and easiest remedy to fix this issue without litigation is for the NCAA to simply change its bylaws to allow, at the very least, licensed attorneys to negotiate terms of the contract directly with the teams on behalf of their clients.

This would actually make the negotiation process more efficient and more productive for both sides involved. MLB clubs would much rather work with experienced baseball advisers rather than players and families who have no clue as to what they are doing.

This solution makes perfect sense, right? Which is exactly why the NCAA will never do it.