

# Chicago Daily Law Bulletin®

Volume 160, No. 212

## Shouldn't the pros in the field help NCAA athletes?

Dear NCAA, How are you, my old friend? Judging by all of the lawsuits and negative stories I come across on a seemingly weekly basis, I'd say you're not doing so hot.

Not to worry, little buddy! I have an idea for one of your more glaring and egregious rules (of which you have many): Bylaw 12.3.2.1, otherwise infamously known as the "no agent rule."

In previous correspondence, I discussed in detail this particular bylaw and its exquisite ridiculousness. Just in case you forgot, you (the NCAA) allow baseball student-athletes who are drafted by an MLB team the opportunity to hire an attorney to advise them on a proposed contract offer.

However, Bylaw 12.3.2.1 prohibits those same attorneys from directly negotiating with the club or even being present in the same room with the client and the club during contract discussions.

LOL! What's up with that?

My solution to this contentious issue — which, as you know, has been the subject matter of previous litigation — is quite simple. Perhaps even too simple for you to comprehend.

Ready?

Amend your bylaws to allow licensed attorneys the ability to negotiate directly with teams.

OMG, that is insane, I know!

But look at this way, if you can: This change will allow attorneys to do what we are trained and retained to do — zealously advocate on behalf of our clients for their betterment, while at the same time level the playing field and help prevent naive and inexperienced players and families from being taken advantage of during the negotiation process.

After all, isn't this why the NCAA was formed in the first place? To help student-athletes?

My proposed solution will also allow you to keep some type of

restriction in place, in that only licensed attorneys will be allowed to advise and negotiate.

If I were to tell you that the American Bar Association is intrigued by my proposal and may be willing to become involved with this issue, is that something you might be interested in? I think it might, especially given the fact that you have already shown your willingness to embrace change by your recent action of allowing your top five conferences the ability to write many of their own rules.

Just between us, I must tell you that a few months ago I contacted the president of the ABA, James Silkenat, with my idea. He responded by stating that I make "an interesting point, and one I had not appreciated before." I was then directed to contact a member of the ABA who also happens to be a member of your committee on infractions regarding this issue.

Not surprisingly, efforts to start a dialogue with your committee member have proved fruitless so far. But have no fear, my little baklava, I will continue forth with my efforts. In the immortal words of the Glenn Close character from "Fatal Attraction," I'm not gonna be ignored, NCAA!

As you can imagine, the advantages and benefits of permitting licensed attorneys to enter into negotiations on behalf of drafted baseball student-athletes are many. At its most basic level, attorneys have survived three to four years of intense legal education. This is followed by the excruciating task of having to pass a state bar exam.

Next, throw in the requirement of taking and passing an ethics exam, as well as being subject to the scrutiny of a character and fitness board, which can hold up a license even for those who have already passed the bar exam. Finally,

### 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.*

there is the added requirement of paying for, and completing, a specified amount of Continuing Legal Education.

And I haven't even begun to tell you about the burdensome financial requirements that attorneys must endure in order to keep their licenses active. Don't even get me started on that one!

At a more advanced level, baseball advisers who are attorneys are bound by the Model Rules of Professional Conduct, something by which non-attorney advisers are not bound. Granted, not every licensed attorney abides by the MRPC, and I know there are plenty of non-attorneys who are ethical, but licensed attorneys are the ones who have everything to lose should they be found in violation of these rules. Non-attorneys have no such worry.

These rules run the gamut from the solicitation of clients (Rule 7.3) to assessing potential conflicts of interest (Rule 1.7) to the expectation of competency

(Rule 1.1) to the charging of fees (Rule 1.5). Collectively, all of the rules contained in the MRPC provide the non-attorney adviser with a distinct competitive advantage over his/her attorney-adviser brethren.

Knowing you as I do, I bet you will point out that there are laws and regulations currently in place which regulate the athlete representation industry and create a level playing field between attorneys and non-attorneys, all in the name of protecting student-athletes. You will probably refer to the Uniform Athlete Agent Act and the Sports Agent Responsibility and Trust Act, not to mention individual state statutes concerning athlete representatives.

C'mon, man! You know that all of those rules and statutes are nothing more than unenforced, money-making window dressing. Moreover, I would argue that all of these regulations, which were purportedly implemented to "clean up" the industry, actually prevent the ethical and competent advisers and agents from entering, and remaining, in the business.

Only licensed attorneys can represent a client in a court of law, right? So why not create the same requirement for the representation of baseball student-athletes who are selected in the MLB draft? This will help avoid future lawsuits (which you know are coming) and help make you look good in the eyes of the public (for once) by voluntarily doing something that actually benefits the student-athletes of your member institutions.

Who knows? You might even stir up an ancillary benefit by creating a new employment source for the plethora of unemployed and underemployed attorneys out there.

Don't mind me, NCAA, I'm just trying to help you out.

Warm hugs, Nello.