

## THE FLORIDA LEGISLATURE REVISITS THE REGULATION AND LIABILITY OF SPORTS AGENTS AND STUDENT ATHLETES

Linda S. Calvert Hanson \*

The headlines read:

- ▶ “Den of Vipers, A Sports Scourge: Bad Agents”<sup>1</sup>
- ▶ “Anatomy of a Scandal”<sup>2</sup>
- ▶ “Would-Be Agent Sentenced, Agrees to Help FSU Probe; Paul Williams was Sentenced to 30 Days in Jail and Has Agreed to Cooperate in the University's Probe of the \$5,900 Shopping Spree”<sup>3</sup>
- ▶ “FSU ‘Agent’ is Penalized; A Student, the First Person Prosecuted Under Florida's Sports Agent Law, Pleads No Contest”<sup>4</sup>

Attention getting headlines such as these tell the graphic tales of what has prompted the federal government<sup>5</sup> and almost half of

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\* Director, Sports Law & Policy Project and Assistant Professor, Criminal Justice and Legal Studies Department, University of Central Florida; B.A., University of Florida, 1983; J.D., University of Florida, 1986; Member of Board of Directors of University of Florida Athletic Association 1992–93; Member of the Florida Bar, Entertainment, Arts and Sports Law Section, Sports Lawyers Association, and Society for the Study of Legal Aspects of Sport and Physical Activity. The author wishes to acknowledge the research, proofreading and computer assistance of Mr. Rob Klingler, a Political Science major at the University of Florida.

1. Headline in Sports Illustrated by Craig Neff. Craig Neff, *Den of Vipers, A Sports Scourge: Bad Agents*, SPORTS ILLUSTRATED, Oct. 1987, at 76.

2. Headline in Sports Illustrated May 16, 1994. Sonja Steptoe & E.M. Swift, *Anatomy of a Scandal*, SPORTS ILLUSTRATED, May 1994, at 18.

3. Headline in Orlando Sentinel July 22, 1994. Alan Schradtko, *Would-Be Agent Sentenced, Agrees to Help FSU Probe; Paul Williams was Sentenced to 30 Days in Jail and Has Agreed to Cooperate in the University's Probe of the \$5,900 Shopping Spree*, ORLANDO SENTINEL, July 22, 1994, at D1.

4. Headline in Orlando Sentinel July 15, 1994. John Kennedy, *FSU “Agent” is Penalized; A Student, the First Person Prosecuted Under Florida's Sports Agent Law, Pleads No Contest*, ORLANDO SENTINEL, July 15, 1994, at D1.

5. Intercollegiate Sports, Subcommittee Commerce, Consumer Protection and

the states across the nation including Florida to either consider enacting<sup>6</sup> or to have legislated statutes regulating sports agents<sup>7</sup> in an attempt to curb the unscrupulous practices of some agents perpetrated on trusting, unsavvy student athletes. In 1988, Florida first enacted legislation intended to protect the economic and education interests<sup>8</sup> of both the student athletes and the colleges and universities for which they play.<sup>9</sup> The laws, as modified by only modest amendments up until 1994,<sup>10</sup> were sufficient to enable Florida to earn the dubious distinction of being the first state in the nation to successfully prosecute and send to jail offending sports agents based upon state athlete agent registration legislation.<sup>11</sup>

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Competitiveness, United States House of Representatives, July 28, 1994. Also in the early 1980's the National Sports Lawyer Association drafted an act regulating sports agents which was presented to Congress in 1985 for passage. This unsuccessful initiative is detailed by David L. Dunn, Note, *Regulation of Sports Agents: Since at First It Hasn't Succeeded, Try Federal Legislation*, 39 HASTINGS L.J. 1031 (1988).

6. For example, Nebraska, 95 Neb. Leg. Resol. 139; New Jersey, N.J. Assy. Bill 572.

7. ALA. CODE §§ 8-26-1 to -40 (1995); ARK. CODE ANN. §§ 17-48-101 to -203 (Michie 1995); CAL. LAB. CODE ANN. §§ 1500-1547 (Deering 1995); 1995 CONN P.A. 331, H.B. 5068 (1995); FLA. STAT. §§ 468.451-457 (1995); GA. CODE ANN. §§ 43-4A-1 to -19 (1995); IND. CODE ANN. §§ 35-46-4-1 to -4 (Burns 1995); IOWA CODE §§ 9A.1-.12 (West Supp. 1995); KY. REV. STAT. ANN. §§ 518.010-080 (Baldwin 1995); LA. REV. STAT. ANN. §§ 4:421-430 (West 1995); MD. BUS. REG. CODE ANN. §§ 4-401 to -426 (1995); MICH. STAT. ANN. § 750.411e (1993); MINN. STAT. §§ 325E.33-.99 (West 1994); Miss. Code Ann. § 73-41-1 to -23 (1995); NEV. REV. STAT. ANN. §§ 398.015-.065 (Michie 1993); N.C. GEN. STAT. § 78C-71 to -81 (1995); N.D. CENT. CODE § 9-15-01 to -05 (1995); Ohio Rev. Code Ann. §§ 4771.01-.99 (Anderson 1995); OKLA. STAT. tit. 70, §§ 821.61-.70 (1995); PA. CONS. STAT. ANN. tit. 18 § 7107 (1995); S.C. CODE ANN. § 59-102-10 (Law. Co-op. 1993); TENN. CODE ANN. §§ 49-7-2101 to -2109 (1995); TEX. REV. CIV. STAT. ANN. art. 8871, §§ 1-11 (West 1995) and TEX. PENAL CODE ANN. § 832.44 (West 1993); WASH. REV. CODE § 18.175.010-.080 (1995).

8. FLA. ADMIN. CODE ANN. r. 61-24.001 (1995).

9. FLA. STAT. §§ 468.451-468.457 (1995). Note that the legislation did not attempt to regulate all athlete agents conducting business in Florida, only those agents interacting with college eligible student athletes as defined in FLA. STAT. § 468.452 (1995). Sports agents who represent professional athletes, or high school student athletes, who have not signed a letter of intent with a college, therefore, do not fall within the purview of this legislation.

10. The amendment in 1994, 1994 Fla. Laws ch. 119, § 30, contained in three lines in a 436-page bill, while modest, was nonetheless controversial. The amendment excluded Florida lawyers from the rules for the sports agents registration requirements, a move unpopular with non-Florida Bar sports agents. See Curtis Krueger, *Agent Ethics, Agent Law Draws Fire*, ST. PETERSBURG TIMES, May 10, 1994, at 1C.

11. Georgia has now prosecuted two cases for non-compliance with its registration statute and Texas has now convicted at least 10 individuals for non-compliance according to a February 24, 1995 document prepared by the NCAA entitled "Total Number of

On the heels of this distinction, the 1995 Florida legislature substantially rewrote and broadened the laws by enacting additional provisions with even more stringent requirements to regulate athlete agents which took effect on October 1, 1995.<sup>12</sup> Florida again took the lead by being the first state to require athlete agents to take an examination testing competency of the laws and rules applicable to athlete agents working in Florida.<sup>13</sup> The new legislation still provides a number of remedies available against the agent for violation of the provisions regulating athlete agent and student athlete contracts, ranging from rescission of the contract to a declaration that the contract is void and unenforceable, to a revocation of the athlete agent's Florida registration. Further, the legislation imposes both criminal and civil liability on the agent.<sup>14</sup> This article will review the status of the new Florida law and rules regulating both the conduct of the athlete agent recruiting student athletes, and the impact on the student athlete and the university. It will begin with an overview of the magnitude of the problem, shift to a focus on changes in the licensing process for prospective athlete agents under the new Florida law, discuss prohibited conduct, and examine athlete agent liability before concluding with a look at the changes in student athlete liability.

### THE PROBLEM

Recognition of the unsavory practices of some sports agents and teams is well established.<sup>15</sup> While these dishonest practices have

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Agents Registered." Most recently, the Texas Secretary of State agreed to settle with Jeffrey Newport, a Houston attorney who allegedly violated that athlete agent laws in dealings with a Texas Christian University football player, for \$16,500 accompanied by a prohibition against acting as a sports agent for two years. *Agent Fined for Giving Money*, GAINESVILLE SUN, Jan. 20, 1996, at S10.

12. See 1995 Fla. Laws ch. 307. To be more specific, the 1995 legislature substantially amended six sections, created eight new sections and repealed three statutes. The amended provisions include FLA. STAT. §§ 468.451, 468.452, 468.453, 468.454, 468.456 and 468.457. The newly created provisions are contained within FLA. STAT. §§ 468.4535, 468.4536, 468.4561, 468.4562, 468.4563, 468.4564, 468.4565, 468.4571. The repealed statutes include FLA. STAT. §§ 240.5337, 240.5338 and 468.455.

13. FLA. STAT. § 468.453(1)(c) (1995).

14. For a recent view challenging the constitutionality of Florida's athlete agent statutes, see Richard M. Summa, *The "Foot Locker" Defense*, FLA. B.J., Oct. 1995, at 87.

15. See MEL LEVINE, *LIFE IN THE TRASH LANE: CASH, CARS & CORRUPTION, A SPORTS AGENT'S TRUE STORY* (1993); KENNETH L. SHROPSHIRE, *AGENTS OF OPPORTUNITY: SPORTS AGENTS AND CORRUPTION IN COLLEGIATE SPORTS* (1990); Craig Neff, *Den of Vi-*

hurt professional athletes and college athletes alike, the focus of this Article, and indeed most of the legislative efforts, have been on the injury to the unworldly, vulnerable college-level student athletes. The acts of professional sports agents can have a detrimental and damaging impact on the unsuspecting college as well as upon the individual athlete.<sup>16</sup> Factual situations have emerged in which college athletes surreptitiously signed with a professional team while continuing to play for the university.<sup>17</sup> Circumstances have come to light in which college players were denied re-eligibility by the NCAA after signing contracts with sports agents.<sup>18</sup> Cases in which sports agents have signed a naive college athlete with promises of glory and wealth only to abscond with the athlete's financial assets are not new.<sup>19</sup> The recent Florida State University (FSU) fiasco wherein several agents picked up a tab of nearly \$6,000 to enable almost a dozen Florida State football players to go on a shopping spree at Footlocker, jeopardizing both the players' and University's status with the NCAA, documents that the problem is still ever present.<sup>20</sup>

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*pers*, *A Sports Scourge: Bad Agents*, SPORTS ILLUSTRATED, Oct. 19, 1987, at 76; Craig Neff, *Agents of Turmoil*, SPORTS ILLUSTRATED, Aug. 3, 1987, at 40; Mark C. Goodman, *The Federal Mail Fraud Statute: The Government's Colt 45 Renders Norby Walters and Lloyd Bloom Agents of Misfortune*, 10 LOY. ENT. L.J. 315 (1990); Mark T. Gould, *Further Trials and Tribulations of Sports Agents*, ENT. & SPORTS LAW., Mar. 1993, at 9; Albert Gross, *When Agents Pull the Strings*, 26 TRIAL 36 (1990); Gary Roberts, *Protecting the College Athlete from Unscrupulous Agents*, SPORTS LAW., Fall 1987, at 8; Lionel S. Sobel, *Throwing the Book at Sports Agents*, 9 ENT. L. REP. 8 (1988).

16. See, e.g., Frank J. Remington, *Universities, Student-Athletes, and Sports Agents: It is Time for Change*, 67 N.D. LAW REV. 197 (1991); Robert H. Ruxin, *Unsportsmanlike Conduct: The Student-Athlete, the NCAA, and Agents*, 8 J.C. & U.L. 347 (1981-82).

17. For example, University of Mississippi football player Flowers who illegally played in the Sugar Bowl in 1960 against Louisiana State University (New York Football Giants v. Los Angeles Chargers Football Club, 291 F.2d 471 (5th Cir. 1961)); Louisiana State University football player Billy Cannon who jeopardized his participation in the same Sugar Bowl of 1960 by signing with the Los Angeles Rams (Los Angeles Rams Football Club v. Cannon, 185 F. Supp. 717 (S.D. Cal. 1960)); and Derrick McKey and Terry Coner, University of Alabama basketball players lured by agents Norby Walters and Lloyd Bloom which resulted in a sizeable forfeiture of tournament receipts by the University of Alabama in 1987 and ineligibility for the two players. *Case Against Walters Settled*, UPI, June 2, 1988, available in LEXIS, Nexis Library, UPI File; *Walters Pleads Innocent on Tampering Charges*, UPI, Mar. 16, 1988, available in LEXIS, Nexis Library, UPI File.

18. *Alabama's Langham Finished as a Collegian*, N.Y. TIMES, Dec. 4, 1993, at 33.

19. See, e.g., *People v. Sorokin*, No. 46429 (Nassau County Ct., Nov. 28, 1977), *aff'd*, 64 A.D.2d 680 (N.Y. App. Div. 1978).

20. Mike Fish, *The Continuing FSU Controversy: The Go-Between*, ATLANTA J. & CONST., Nov. 4, 1994, at E6; Franz Lidz & Richard O'Brien, *Seminole Justice*, SPORTS IL-

According to media reports, Raul Bey, who operated Sports Entertainment Enterprises in Las Vegas, was interested in some FSU football players. He allegedly bankrolled the efforts of Nate Cebrun, also of Las Vegas, who was in Tallahassee to scout and court key players. Cebrun, as "bird dog," enlisted the assistance of Ms. Meirley (Nell) Lockhart, a Tallahassee resident, (the alleged whistleblower) to gain entrees to the FSU football players. Ms. Lockhart introduced Cebrun to Paul Williams of Tallahassee, a former grocery store worker and part time high school football coach, to help with "on the scene recruiting." With Williams as the "bagman" it is alleged that cash payments were supplied on a routine basis for a period of time to certain Florida State football players as well as the nefarious November 1993 shopping spree at a local athletic store which netted the football players involved almost \$6,000 in athletic shoes, apparel and supplies.<sup>21</sup> Steve Endicott, a Dallas based agent who had been tied by the media to Cebrun and Bey, eventually went to Tallahassee to unsuccessfully meet with some of the football players that Cebrun had been courting. None of the parties involved, Bey, Cebrun, Williams, Lockhart or Endicott had followed the Florida law which required registration and the payment of a \$250.00 license fee to enable them to recruit Florida student athletes.

After allegations of improprieties surfaced, a full investigation followed and all five individuals were charged with failure to register as a sports agent in the State of Florida pursuant to Florida laws, a third degree felony punishable by imprisonment not exceeding five years and/or a fine of up to \$5,000.<sup>22</sup> These individuals pled no contest and were assessed fines and jail terms.<sup>23</sup> Moreover, as a

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LUSTRATED, Aug. 1994, at 10; Douglas S. Looney & John Walters, *Seminole Shame*, SPORTS ILLUSTRATED, June 1994, at 34; Sonja Steptoe & E.M. Swift, *Anatomy of a Scandal*, SPORTS ILLUSTRATED, May 1994, at 18.

21. Mike Fish, *The Continuing FSU Controversy: The Go-Between*, ATLANTA J. & CONST., Nov. 4, 1994, at E6; Franz Lidz & Richard O'Brien, *Seminole Justice*, SPORTS ILLUSTRATED, Aug. 1994, at 10; Douglas S. Looney & John Walters, *Seminole Shame*, SPORTS ILLUSTRATED, June 1994, at 34; Sonja Steptoe & E.M. Swift, *Anatomy of a Scandal*, SPORTS ILLUSTRATED, May 1994, at 18.

22. FLA. STAT. §§ 468.454(2), 775.082-775.083 (1995). However, the statutes also permit enhanced penalties under Florida's Habitual Offender Statute, FLA. STAT. § 775.084 (1995).

23. Cebrun pleaded no contest, was assessed \$2,255 in fines and court costs, and sentenced to 30 days in jail and 18 months probation. Williams pled no contest, was fined and sentenced to 30 days in jail. Endicott pled no contest, was fined \$3,000 in court and investigation costs and sentenced to one year probation. Frank Lidz & Richard

result of the University's internal investigation and the NCAA investigation, at least five football players were suspended from games and the University faced the possibility of sanctions imposed by the NCAA.<sup>24</sup>

While it is true that, as a direct result of the legislative efforts, the sports agents and others involved in the FSU event were apprehended and punished, that just is not sufficient. As pointed out by Leon County (Tallahassee), Florida prosecutor, Willie Megs, "It's not this is the crime of the century or anything . . . . If these people had just paid a \$250 fee and registered in the state as agents, nothing would be wrong."<sup>25</sup> A rather startling realization is that the payment of \$250 would have permitted these individuals to escape criminal charges although their misconduct would have subjected them to agency action which could include license revocation. Given the involvement by some of the individuals who provided money and gifts in violation of the NCAA rules which would result in penalties imposed upon the University, as well as the players involved, in a strict legal sense it is true that at that time, the Florida statute only prohibited the "offer [of] anything of value to induce a student athlete to enter into an agreement by which the agent will represent the student athlete."<sup>26</sup> It has never been established that any representation contracts were ever signed by the involved parties. Therefore, the giving of gifts and money did not violate the state statute as it existed at the time.<sup>27</sup>

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O'Brien, *Seminole Justice*, SPORTS ILLUSTRATED, Aug. 1994, at 10. A warrant issued on Lockhart remains unserved as it is reported that she is in hiding out of state. Bryan Burwell, *Fla. State Whistle Blower Ends Up a Fugitive*, USA TODAY, Sept. 23, 1994, at 3C.

24. Following a February 5, 1996 hearing by the NCAA Committee on Infractions, the NCAA handed down penalties against Florida State University. *Infraction Case: Florida State University*, NCAA REGISTER, April 1, 1996, at 6. These sanctions included a public reprimand and censure, one year probation, a mandate to develop and implement an athletics compliance education program and the required recertification of current athletics policies and practices. *Id.* at 7. It is of interest to note the sources of two of the complaints lodged. According to NCAA Register, the first complaint was registered by a FSU student, athlete agent while the second was reported by a local Tallahassee athlete agent. *Id.* Perhaps industry self-policing may be a viable goal.

25. Statement of Willie Megs, quoted in Bryan Burwell, *Fla. State Whistle Blower Ends Up a Fugitive*, USA TODAY, Sept. 23, 1994, at 3C.

26. FLA. STAT. § 468.456(4) (1993), amended by 1995 Fla. Laws ch. 307.

27. Note however, that these acts would have violated the NCAA rules which specify that an individual receiving benefits from a prospective agent is ineligible for participation in intercollegiate sports. NCAA MANUAL, § 12.3.1.2 (1995-96).

It can be hoped that the lessons to be learned from the sanctions imposed upon those agents and stringers will serve as a deterrent to others. However, in light of the substantial financial gain to be obtained by signing just one top named student athlete, unprincipled agents and their cohorts may determine that it is worth the risk of financial sanctions.<sup>28</sup> The adverse publicity, potential career damage, as well as facing possible jail time would seem to be more effective deterrents. For example, Endicott represented such notables as the Cowboys' Michael Irvin, Charlotte Hornets' Larry Johnson and Orlando Magic's, Brooks Thompson. The felony charge could give rise to the revocation of his agent's certification by the National Football League Player's Association or the National Basketball Association Player's Association. If Endicott were no longer able to represent professional athletes, it would personally and professionally have a substantial financial impact on him.

Numerous initiatives to increase the level of accountability of sports agents have been suggested and tried ranging from control through regulation,<sup>29</sup> legislation,<sup>30</sup> certification,<sup>31</sup> and litiga

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28. As a result of the recent University of Southern California scandal wherein football players accepted airline tickets, rent, phone cards and other benefits allegedly supplied on behalf of a prospective athlete agent recruiter, USC sued the sports agent and settled the suit for \$50,000. Robert Troy Caron, the sports agent and head of Pro Manage, "did not admit to wrongdoing but agreed to abide by a permanent injunction forbidding him to induce Southern California athletes to violate NCAA rules." *Sports Agent Settles Lawsuit with Southern California*, NCAA NEWS, Oct. 30, 1995; Douglas Lederman, *Agent Sued by U. of Southern California Accepts Settlement*, CHRONICLE OF HIGHER EDUCATION, Oct. 27, 1995, at A41.

29. W. Jack Grosse & Eric Warren, *The Regulation, Control, and Protection of Athletic Agents*, 19 N. KY. L. REV. 49 (1991); David V. Johnson, *Athlete Agents: Regulate*, 5 GA. ST. U. L. REV. 451 (1988); Craig Massey, *The Crystal Cruise Cut Short: A Survey of the Increasing Regulatory Influences Over the Athlete-Agent in the National Football League*, 1 ENT. & SPORTS L.J. 53 (1984); Alec Powers, *The Need to Regulate Sports Agents*, 4 SETON HALL J. SPORT L. 253 (1994); Paul A. Ruschmann, *Are Sports Agents Facing a Regulatory Blitz?*, 65 MICH. B.J. 1124 (1986); Lionel S. Sobel, *The Regulation of Player Agents*, 5 ENT. L. REP. 3 (1984); Lionel S. Sobel, *The Regulation of Sports Agents: An Analytical Primer*, 39 BAYLOR L. REV. 701, (1987); Jan Stiglitz, *NCAA-Based Agent Regulation: Who Are We Protecting?*, 67 N.D. L. REV. 215 (1991); Michael A. Weiss, *The Regulation of Sports Agents: Fact or Fiction?*, 1 SPORTS LAW. J. 329 (1994); Dana Alden Fox, Comment, *Regulating the Professional Sports Agent: Is California in the Right Ballpark?*, 15 PAC. L.J. 1231 (1984); Jeffrey P. Crandall, Comment, *The Agent-Athlete Relationship in Professional and Amateur Sports: The Inherent Potential for Abuse and the Need For Regulation*, 30 BUFF. L. REV. 815 (1981).

30. Charles W. Ehrhardt & J. Mark Rodgers, *Tightening the Defense Against Offensive Sports Agents*, 16 FLA. ST. U.L. REV. 633 (1988); John Rodgers, *States Revamp Defense Against Agents*, SPORTS LAW., Winter 1988-89, at 1; Kenneth L. Shropshire, *Athlete*

tion.<sup>32</sup> Respected sports law authorities have been involved by writing books and articles to better enlighten sports agents in the ethical representation of athletes.<sup>33</sup> Groups such as the Sports Lawyers Association offer annual seminars and conferences to improve sports agents.<sup>34</sup> These combined efforts still have been insufficient to combat the abuses by some agents which have prompted the Florida legislature to revamp Florida's statutes pertaining to athlete agents.<sup>35</sup>

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*Agent Regulation: Proposed Legislative Revisions and the Need for Reforms Beyond Legislation*, 8 CARDOZO ARTS & ENT. L.J. 85 (1989); David B. Cosgrove, Note, *A Survey of State Athlete-Agent Legislation: Origins and Effects*, 16 J.C. & U.L. 433 (1990); T. Andrew Dow, Comment, *Out of Bounds: Time to Revamp Texas Sports Agent Legislation*, 43 SW. L.J. 1091 (1990); David L. Dunn, Note, *Regulation of Sports Agents: Since at First It Hasn't Succeeded, Try Federal Legislation*, 39 HASTINGS L.J. 1031 (1988); Curtis D. Rypma, Note, *Sports Agents Representing Athletes: The Need for Comprehensive State Legislation*, 24 VAL. U. L. REV. 481 (1990).

31. Bart I. Ring, *An Analysis of Athlete Agent Certification and Regulation: New Incentives with Old Problems*, 7 LOY. ENT. L.J. 321 (1987).

32. Kevin M. McKenna & Joseph DiGiuseppe, *Policing Sports Agents: The First Four Years*, 8 U. MIAMI ENT. & SPORTS L. REV. 1 (1991); Richard P. Woods & Michael R. Mills, *Tortious Interference With An Athletic Scholarship: A University's Remedy for the Unscrupulous Sports Agent*, 40 ALA. L. REV. 141 (1988); Landis Cox, Note, *Targeting Sports Agents with the Mail Fraud Statute: United States v. Norby Walters & Lloyd Bloom*, 41 DUKE L.J. 1157 (1992); Ash Narayanan, Comment, *Criminal Liability of Sports Agents: It is Time to Reline the Playing Field*, 24 LOY. L.A. L. REV. 273 (1990); Michael J. Sullivan, Comment, *Remedying Athlete-Agent Abuse: A Securities Law Approach*, 2 ENT. & SPORTS L.J. 53 (1984).

33. PRACTICING LAW INSTITUTE, REPRESENTING PROFESSIONAL ATHLETES AND TEAMS (1993); RON SIMON, THE GAME BEHIND THE GAME: NEGOTIATING IN THE BIG LEAGUES (1993); GLENN M. WONG & T. JESSE WILDE, THE SPORTS LAWYER'S GUIDE TO LEGAL PERIODICALS (1993); Paul T. Dee, *Ethical Aspects of Representing Professional Athletes*, 3 MARQ. SPORTS L.J. 111 (1992); Daniel M. Faber, *The Evolution of Techniques for Negotiation of Sports Employment Contracts in the Era of the Agent*, 10 U. MIAMI ENT. & SPORTS L. REV. 165 (1993); Robert E. Fraley & Fred R. Harwell, *Sports Law and the "Evils" of Solicitation*, 9 LOY. ENT. L.J. 21 (1989); Gary P. Kohn, *Sports Agents Representing Professional Athletes: Being Certified Means Never Having to Say You're Qualified*, ENT. & SPORTS LAW, Winter 1988, at 1; Barbara S. Wahl, *Representation of Athletes: The Team Approach*, ENT. & SPORTS LAW., June 1993, at 1; Richard C. Webb, *Personal Services Lawyering: Sport, Entertainment, Art . . . Or Just Plain Risky Business?* S.C. LAW., Nov.-Dec. 1993, at 11; Brian Weiss, *Athlete Agents: Expand Protection for Student Athletes from Athlete Agents*, 10 GA. ST. U. L. REV. 189 (1993); Bill Winter, *Is The Sports Lawyer Getting Dunked?*, 66 A.B.A. J. 701 (1980); James J. Giulietti, Note, *Agents of Professional Athletes*, 15 NEW ENG. L. REV. 545 (1979-80).

34. For example, the Sports Lawyers Association sponsored its 21st annual conference in Boston in May of 1995 and many state bar associations have sports law groups which sponsor seminars.

35. This discussion of Florida's statutory requirement for athlete agent registration is not meant to imply that it is the only registration process for sports agents. In fact, there are a number of other organizations which have licensing and registration require-



### LICENSING REQUIREMENT

Numerous amendments to the law regulating athlete agents affect the licensing procedures for prospective Florida sports agents. These include providing specific qualifications, the application process, the posting of a bond, the taking of an examination, and fulfilling continuing education requirements. These procedures will apply to “any person who practices as an athlete agent” in Florida.<sup>36</sup> An “athlete agent” is now defined as

a person who, directly or indirectly, recruits or solicits a student athlete to enter into an agent contract, or who, for any type of financial gain, procures, offers, promises, or attempts to obtain employment or promotional fees or benefits for a student athlete with a professional sports team or as a professional athlete . . . .<sup>37</sup>

It is important to acknowledge the conspicuous absence of language exempting Florida Bar members from the definition of athlete agent which first appeared in the 1994 amendment.<sup>38</sup> That is, Florida lawyers must now follow the same procedures and be regulated in the same manner as any other athlete agent in Florida.<sup>39</sup>

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ments. For example, the National Football League Players Association requires “contract advisors” to pay a fee and become certified. The National Basketball Players Association requires “player agents” to become certified and pay a registration fee. The Major League Baseball Players Association requires “player agents” to be certified and the National Collegiate Athletic Association has a voluntary registration program.

36. FLA. STAT. § 468.453(1) (1995).

37. FLA. STAT. § 468.452(2) (1995).

38. FLA. STAT. § 468.452(2) was amended in 1994 to define an athlete agent as “a person, other than a member of the Florida Bar in good standing as defined by Rule 1-3.2 of the Rules Regulating the Florida Bar, . . . .” 1994 Fla. Laws ch. 119, § 30. Hence, members of the Florida Bar were expressly exempted for the athlete agent regulations. This statute was further amended by 1995 Fla. Laws ch. 307.

39. This is true with the one exception which provides that “[m]embers of The Florida Bar are exempt from the state laws and rules component, and the fee for such, of the examination required by this section.” FLA. STAT. § 468.453 (1995). It was not immediately clear whether this exemption applied solely to the examination and the examination fee or was intended to exempt the Florida attorney from the athlete agent regulation altogether. Clarification was obtained from Charles Tunnicliff, Chief Attorney for the Florida Department of Business and Professional Regulation. It was his understanding that the deletion of the reference to exempting Florida attorneys from the definition section of “athlete agents” of the statute was deliberate and that his interpretation of the exemption contained in this statute would only exempt Florida attorneys from the examination and fee for examination requirements. Telephone Interview with Charles

The stated qualifications for an athlete agent require that the applicant be at least eighteen years old,<sup>40</sup> be of good moral character,<sup>41</sup> and pass a proficiency exam to demonstrate comprehension of the Florida laws and rules pertaining to athlete agents.<sup>42</sup> Additionally, the potential athlete agent must submit an application accompanied by fees of not more than \$2000,<sup>43</sup> and must undergo a criminal records verification through the Federal Bureau of Investigation,<sup>44</sup> to establish that the candidate has not "been convicted or found guilty of or entered a plea of *nolo contendere*," within the past five years of a crime relating "to the applicant's practice or ability to practice as an athlete agent."<sup>45</sup> The last requirement calls for the posting of a \$15,000 surety bond designating the Florida Department of Business and Professional Regulation to provide financial redress including costs and attorney's fees to any injured student athlete or college or university when the injury was caused by the athlete agent.<sup>46</sup> These new requirements provide a sharp contrast to the previous requirements which called for the athlete agent to register biennially with the Florida Department of Professional Regulation<sup>47</sup> and pay a fee of \$500 in order to operate in Florida.<sup>48</sup> The registration requirements apply equally to out-of-state agents soliciting Florida student athletes as well as to in-state athlete agents. The new provisions also mandate that an athlete agent who contracts with a student athlete<sup>49</sup> must provide written notification to the

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Tunncliff, Chief Attorney, Florida Department of Business and Professional Regulation, June 13, 1995.

40. FLA. STAT. § 468.453(2)(a) (1995).

41. *Id.* § 468.453(2)(b).

42. *Id.* § 468.453(2)(c).

43. *Id.* § 468.453(2)(d).

44. *Id.* § 468.453(2)(e).

45. FLA. STAT. § 468.453(2)(f) (1995).

46. *Id.* § 468.453(2)(g). The surety bond requirement is common to a number of other states' athlete agent regulations and range from \$100,000 in Texas (TEX. REV. CIV. STAT. ANN. art. 8871(2)(h) (1995)) to \$10,000 in Georgia (GA. CODE ANN. § 43-4A-8 (1995)).

47. FLA. STAT. § 468.453(1) (1993 & Supp. 1994) (current version at FLA. STAT. § 468.453(1) (1995)). Interested persons can call their local state office of the Department of Professional Regulation or the main office in Tallahassee to ascertain whether a particular athlete agent is properly registered.

48. FLA. STAT. § 468.453(1) (1993 & Supp. 1994) (current version at FLA. STAT. § 468.453(1) (1995)) and FLA. ADMIN. CODE ANN. r. 61-24.005 (1995). Note that the fee ranged from \$250 to \$500 depending upon the time of the application.

49. FLA. STAT. § 468.452(5) (1995) defines "student athlete" as any student, whether

athletic director or president of the academic institution either prior to the student athlete's participation in practice or events "or within 72 hours after entering into the contract, whichever occurs first."<sup>50</sup> Failure to provide the required notification or to conduct business as an athlete agent are both criminal offenses, punishable as third degree felonies.

### *PROHIBITED CONDUCT*

The new Florida Athlete Agent statute contains a list of three times as many prohibited acts than were listed in the former statute, ranging from failing to notify the college or university when contacting a student athlete<sup>51</sup> to aiding and abetting another to violate the rules governing the student athlete<sup>52</sup> to failing to include the agent's name and license number in all athlete agent advertisements.<sup>53</sup> This provision also seeks to regulate financial transactions of the athlete agent in that it prohibits the commingling of the agent's assets with the property or money of another,<sup>54</sup> prohibits mismanagement by the agent which causes financial harm to the athlete or school,<sup>55</sup> and requires the agent to account for or pay within thirty days assets belonging to another, over which the agent exerts control.<sup>56</sup> Additional acts forbidden include acts of bad faith or dishonesty,<sup>57</sup> having the agent's professional athletic certification "acted against,"<sup>58</sup> and "knowingly providing financial benefit from the licensee's conduct of business as an athlete agent to another athlete agent whose license to practice as an athlete agent is suspended or has been permanently revoked within the previous 5

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a resident of Florida or not, who has provided a written intent to participate in the college or university's intercollegiate athletics program or who is eligible and does participate in that school's intercollegiate athletics.

50. *Id.* § 468.454(1). By implication, high school student athlete recruiting by sports agents would not be subject to these laws unless the athlete had signed a letter of intent with the college.

51. *Id.* § 468.456(2).

52. *Id.* § 468.456 (1)(k).

53. *Id.* § 468.456(1)(i).

54. FLA. STAT. § 468.456(1)(d) (1995).

55. *Id.* § 468.456(1)(h).

56. *Id.* § 468.456(b).

57. *Id.* § 468.456(1)(c).

58. *Id.* § 468.456(1)(n).

years.”<sup>59</sup>

A statute giving general reasons for disciplinary action for all regulated professions contains additional grounds which would pertain to athlete agents.<sup>60</sup> The cited grounds include making deceptive or fraudulent representations regarding the practice of a profession,<sup>61</sup> failing to report to the Department of Business Regulation any other holder of a license who violates the rules of the Department,<sup>62</sup> failing to perform any legal obligation placed upon the licensee,<sup>63</sup> and performing professional services that the licensee knows or should have reason to know is beyond his or her area of competence.<sup>64</sup>

In addition to these acts of misconduct, other impermissible acts by the athlete agent include: furnishing or publishing false or misleading information or advertisements or promises to the student athlete in contemplation of employment,<sup>65</sup> making an offer of any-

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59. FLA. STAT. § 468.456(1)(g) (1995).

60. *Id.* § 455.227.

61. *Id.* § 455.227(1)(m).

62. *Id.* § 455.227(1)(i).

63. *Id.* § 455.227(1)(k).

64. *Id.* § 455.227(1)(o).

65. FLA. STAT. § 468.456(1)(j) (1995) and FLA. ADMIN. CODE ANN. r. 61-24.009(2) (1995). The regulation defines the terms “false” and “misleading” to include without limitation representations or statements that:

- (a) involve a material misrepresentation of facts;
- (b) involve failure to state any material fact necessary to make the statement, in the light of all circumstances, not misleading;
- (c) are intended or are likely to create an unjustified expectation;
- (d) represent that beneficial results from any representation of a student athlete will be guaranteed;
- (e) involve express or implied representations that the athlete agent has greater experience or resources for representation of the student athlete than actually exist at the time those representations are made;
- (f) involve a representation or implication that is likely to cause an ordinary prudent person to misunderstand or be deceived or fails to contain reasonable warnings or disclaimers necessary to make a representation or implication not deceptive;
- (g) include falsification or misrepresentations of the extent of the athlete agent's education, training, or experience to any person or to the public at large, tending to establish or imply qualification or justification for selection for employment as an athlete agent or for modification of an existing agent contract. An athlete agent shall not misrepresent or exaggerate his degree of responsibility in or for the subject matter of a prior representation;
- (h) in any brochure or other presentation made to any person or to the public at large, incident to the solicitation of employment as an athlete agent, misrepresent pertinent facts concerning an athlete agent's clients, employer,

thing of value to induce a student athlete to agree to permit the agent to represent the student athlete,<sup>66</sup> or offering anything of value to an "employee of or a coach for a college or university" in Florida in exchange for a referral of a student athlete for sports representation services.<sup>67</sup>

Disciplinary actions available against a violating athlete agent include the refusal to certify the applicant, suspension or permanent revocation of a license, probation, a reprimand, an administrative fine not to exceed \$5000 for each offense, the assessment of investigative costs and/or injunctive relief.<sup>68</sup> Furthermore, the State of Florida can revoke the business registration of a sports agent engaging in improper conduct.<sup>69</sup> Pursuant to the disciplinary guidelines, the commission of any of the above acts can give rise to a suspension of the agent's registration for a period of up to four years or an immediate, permanent revocation of their registration<sup>70</sup> following a probable cause determination.<sup>71</sup>

#### *ATHLETE AGENT LIABILITY*

As we have witnessed, failure to comply with either the provision requiring registration as an athlete agent in Florida<sup>72</sup> or the section requiring timely notification of executing a contract subjects the agent to a third degree felony punishable under Florida law by imprisonment not exceeding five years and/or a fine of up to \$5000.<sup>73</sup> Further, misconduct constituting fraud, false pretenses and/or misleading advertising can also support the filing of criminal charges in

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employees, associates, joint ventures, or his or their past accomplishments with the intent and purpose of enhancing his or their qualifications and works.

FLA. ADMIN. CODE ANN. r. 61-24.009(2)(a)-(h) (1995).

66. FLA. STAT. § 468.456(1)(f) (1995).

67. *Id.* § 468.456(1)(e).

68. *Id.* § 455.227(2) to (4).

69. *Id.* § 468.455.

70. FLA. ADMIN. CODE ANN. r. 61-24.010 (1995).

71. FLA. ADMIN. CODE ANN. r. 61-24.008 (1995).

72. It is significant to note that a random sampling of ten agent solicitation letters received by a senior University of Florida football player in 1993 revealed that only one agent was registered with the Department of Professional Regulation in accordance with Florida law. Thus, 90% of the agent solicitation letters were sent to this college athlete by agents not registered in Florida.

73. FLA. STAT. §§ 468.454(2), 775.083(1)(c), 775.082(3)(d) (1995). The statutes also permit enhanced penalties under Florida's Habitual Offender Statute, FLA. STAT. § 775.084 (1995).

Florida.<sup>74</sup>

In addition to the criminal law penalties and the licensing revocation penalties previously discussed, additional civil remedies include those available in contract law, designed to restore the injured party to the pre-contract position, and under tort law, designed to compensate the victim. Several contract law remedies are provided in the new statutes. One statutory provision mandates that a printed notice in ten-point boldfaced type appear near the space for the student athlete's signature warning of the need to notify officials under penalty of the criminal laws<sup>75</sup> and the contract must state the amount of the agent's fees and commission.<sup>76</sup> The statutes also offer the remedy of declaring the contract void and unenforceable under contract law. Irregularities in the contracts' terms which can result in the contract being set aside consist of agent representation contracts which fail to provide the necessary warning provision and/or postdated contracts.<sup>77</sup> Also, contract language which seeks to prohibit the student athletes from exercising their right to rescind the contract within the statutorily prescribed time period can render the contract void and unenforceable.<sup>78</sup> The previous statutes were silent as to whether a contract entered into between a non-registered athlete agent and a student athlete would be void. The new statute

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74. *Id.* §§ 817.06, 817.155.

75. *Id.* § 468.454(2). The pertinent section reads:

WARNING TO THE STUDENT ATHLETE: WHEN YOU SIGN THIS CONTRACT, YOU WILL LIKELY IMMEDIATELY LOSE YOUR ELIGIBILITY TO COMPETE IN INTERCOLLEGIATE ATHLETICS. TO AVOID CRIMINAL PROSECUTION YOU MUST GIVE WRITTEN NOTICE THAT YOU HAVE ENTERED INTO THIS CONTRACT TO THE ATHLETIC DIRECTOR OR PRESIDENT OF YOUR COLLEGE OR UNIVERSITY WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT OR PRIOR TO PARTICIPATING IN INTERCOLLEGIATE ATHLETICS, WHICHEVER COMES FIRST. FAILURE TO PROVIDE THIS NOTICE IS A CRIMINAL OFFENSE. DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ IT AND FILLED IN ANY BLANK SPACES. YOU MAY CANCEL THIS CONTRACT BY NOTIFYING THE ATHLETE AGENT IN WRITING OF YOUR DESIRE TO CANCEL NOT LATER THAN THE 15TH DAY AFTER THE DATE YOU SIGNED THIS CONTRACT. HOWEVER, EVEN IF YOU CANCEL THIS CONTRACT, THE INTERCOLLEGIATE ATHLETIC ASSOCIATION OR CONFERENCE TO WHICH YOUR COLLEGE OR UNIVERSITY BELONGS MAY NOT RESTORE YOUR ELIGIBILITY TO PARTICIPATE IN INTERCOLLEGIATE ATHLETICS.

76. FLA. STAT. § 468.454(2) (1995).

77. *Id.* § 468.454.

78. *Id.* § 468.454(4).

rectified this omission.<sup>79</sup>

In addition to potential criminal penalties and declaring a non-conforming contract null and void, a further deterrent appears within the legislation. Civil law remedies of equitable relief in the form of injunctions and/or recovering damages from the athlete agent are available to the academic institution.<sup>80</sup> Any person, not just athlete agents, failing to follow the statutes and who causes the national association to penalize or disqualify or suspend a college university from participation, may be liable for actual damages, punitive damages, court costs and reasonable attorney's fees.<sup>81</sup>

Moreover, under the new statute, an offending athlete agent would forfeit the \$15,000 surety bond which then would be used for the benefit of the injured student athlete or the damaged college or university.<sup>82</sup> Additional legal remedies would be available against an athlete agent who made false statements justifiably relied upon to the detriment of the student athlete.

These remedies could be premised in the torts of misrepresentation or fraud<sup>83</sup> and perhaps interference with prospective advantage or interference with contractual relations. Facts involving an unscrupulous agent may also give rise to the filing of a charge of

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79. *See id.* § 468.454. Prior to this enactment, attorneys argued that Florida courts should therefore set aside contractual arrangements between athlete agents and non-registered student athletes. Because the courts do not recognize illegal contracts, nor will the court enforce a contract that is against public policy, they could have argued that a contract entered into by an agent who is violating Florida law by not registering is illegal and unenforceable. *See* FLA. JUR. 2D *Contracts* §§ 81-94 (1979). Furthermore, the new statute leads one to conclude that the legislators did not intend for a contract executed by a non-registered agent to be valid, as the contract violates public policy.

80. FLA. STAT. § 468.4562 (1995).

81. *Id.* § 468.4562. The statute further delineates the types of losses to the institution which can constitute being penalized. One discouraging change is the conspicuous absence of the previous provision authorizing the assessment of damages "in an amount equal to *three times* the value of the athletic scholarship furnished by the institution to the student athlete during the student athlete's period of eligibility" formerly contained within FLA. STAT. § 468.454(6) (1993 & Supp. 1994) (emphasis added) (current version at FLA. STAT. § 468.454(6) (1995)).

82. FLA. STAT. § 468.453(2) (1995). This change is far less of a deterrent to violators under the old statute. For example, under the old statute, a treble damage award for a University of Florida athlete who received a scholarship of approximately \$6000 per year for four years would be about \$72,000, whereas a treble damage award for a University of Miami athlete in the fourth year of eligibility would total roughly \$144,000.

83. Additionally, FLA. STAT. § 772.101 (1995) provides "Civil Remedies for Criminal Practices" which may be available in addition to the traditional tort law remedies.

commercial misappropriation,<sup>84</sup> and/or civil remedies for theft which can include treble damage awards.<sup>85</sup> In all, the Florida Legislature, combined with the Department of Professional Regulation, has promulgated an assortment of criminal sanctions and penalties, civil and contractual law remedies and rules for an administrative registration revocation in an effort to inhibit improper conduct by athlete agents in this state.<sup>86</sup> Florida clearly requires athlete agents operating within the state to: (1) register, (2) conform to the solicitation requirement which mandates the athlete agent to provide a copy of the materials sent to the student athlete to the athletic department simultaneously,<sup>87</sup> and (3) conduct themselves within the legal and ethical boundaries of the agent's fiduciary duty to the student athlete.

#### STUDENT ATHLETE LIABILITY

One area which underwent massive transformation by the 1995 legislature involves the liability and responsibility of the student athlete. An examination of the pre-1995 Florida Statutes reveals that the athlete agent was not the only target of regulation. Unfamiliar to most was the statutory provisions placing equal accountability and liability on the student athlete, with criminal sanctions as well as civil law remedies imposed on violators.<sup>88</sup> The previous statutes included a section requiring notification by student athletes analogous to that which pertains to the athlete agent. The college athlete had the same duty to provide written notification to the college or university official within seventy-two hours of the signing of a representation contract or professional employment contract, or prior to the next practice or participation in an athletic event,

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84. See FLA. STAT. § 540.08 (1995). Commercial misappropriation is using someone's name or likeness for commercial gain. *Id.*

85. FLA. STAT. § 772.11 (1995).

86. There is a separate mechanism to regulate all athlete agents in Florida who are also lawyers. The Florida Bar and the Florida Supreme Court can institute disciplinary proceedings against an attorney/athlete agent engaging in unethical conduct. A call to the Florida Bar will reveal whether or not there have been any grievances or complaints lodged against a particular attorney.

87. FLA. STAT. § 468.456(2)(a) (1995).

88. Note that identical provisions appear at FLA. STAT. § 468.454(1) (1993) (current version at FLA. STAT. § 468.454(1) (1995)), and FLA. STAT. § 240.5337(2) (1993) (repealed 1995).



whichever transpired first.<sup>89</sup> The distinction, however, was that the athlete's provision imposed an obligation on the student athlete under criminal penalty of up to one year imprisonment and/or a fine of up to \$1000 for the commission of a first degree misdemeanor.<sup>90</sup> Consequently, in Florida, it was a crime for a student athlete to not promptly provide written notification to the appropriate school officials, regardless of whether the agent fulfilled his or her obligation to notify the academic institution. This language imposing penalties upon the student athlete is no longer contained within the 1995 statutes.

Like an agent, the student athlete, under the previous statutes, could be held liable for civil law damages in addition to criminal charges for violating the notification provision. The provision which imposed liability for damages resulting from a student athlete's subsequent ineligibility for failure to notify officials of the contractual relationship between the student and the agent was identical to the athlete agent's provision. Not only was the student athlete potentially liable for damages, but the student was also potentially liable for treble damages "equal to three times the value of the athletic scholarship furnished by the institution to the student athlete during the student athlete's period of eligibility."<sup>91</sup> This civil liability provision for the student athlete was not retained by the 1995 legislature either. The new statutes imply that the student athletes will no longer be held accountable for their actions in contracting with agents when it jeopardizes the academic institutions eligibility and integrity under either criminal or civil law.<sup>92</sup> The reason for this dramatic change in an athlete's responsibility could be because the punitive remedies previously available against an irresponsible student athlete may have been too harsh in light of the protective purpose of the legislation.

The legislators recognized the need to shield student athletes

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89. FLA. STAT. §§ 240.5337(2) (repealed 1995), 468.454(1) (1993) (current version at FLA. STAT. § 468.454(1) (1995)).

90. FLA. STAT. §§ 240.5337(2) (1993) (repealed 1995), 468.454(1) (1993) (current version at FLA. STAT. § 468.454(1) (1995)).

91. FLA. STAT. §§ 240.5337(7) (repealed 1995) 468.454(6) (1993) (current version at FLA. STAT. § 468.454(6) (1995)).

92. An argument can be advanced that a student athlete may be exposed to liability under FLA. STAT. § 468.4562(1) (1995) which permits an institution to sue "any person" who violates that athlete agent regulations which damages the institution (emphasis added).

from overzealous agents. This was accomplished through a section granting the student athlete fifteen days (increased from the previous ten days) from the date the school authorities were notified of the contract to reevaluate their contract decision.<sup>93</sup> Within this time, the student athletes can cancel the contract by giving written notice of their decision to rescind the contract to the agent.<sup>94</sup> The former statute decrees that the rescission or cancellation is effective upon the athlete's repayment of any funds paid to the athlete "exclusive of travel, lodging, meals, and entertainment or reimbursement therefore, furnished by the athlete agent to the student athlete."<sup>95</sup> However, that provision is absent in the new statute. It is important to note however, that this "cooling off" period during which the athlete has an opportunity to reconsider and cancel the contract, does not ensure that the student athlete will remain eligible for competition under the rules of the educational institution or athletic associations. The ability to rescind the contract merely provides that the athlete can cancel the contract without being liable for damages for a breach of contract. At the same time, the laws also offer contractual remedies to safeguard the rights of the unsuspecting athlete, thus protecting both the academic institutions and the student athletes which fulfill the expressed intent of the legislature.

### CONCLUSION

Florida has demonstrated that athlete agents can and will be held accountable for their misconduct by a variety of legal mechanisms. The fortification of the statutes facilitates legal actions against violating sports agents. This is vital because the interests jeopardized by improper agent contacts have the greatest impact on the innocent college athletes at that school who did not participate in the misconduct and the educational institution. The university and its athletes stand to lose significant revenues and possible forfeiture of games or championship titles, not to mention the stigma of collegiate athletic organization sanctions. Florida recognized that it has an important benefit to safeguard. That is, it has become a leading state in producing several solid intercollegiate athletic

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93. FLA. STAT. § 468.454(4) (1995).

94. *Id.* § 468.454(4).

95. FLA. STAT. § 468.454(7) (1993) (current version at FLA. STAT. § 468.454(7) (1995)).

programs.

While the laws seek to shield the educational institutions from inappropriate conduct by student athletes and agents, the legislature also seeks to protect the student athlete by providing the athletes with remedies in contract law against unprincipled agents. However, remedies, whether available to the educational institution or the student athlete, are designed to correct a wrong. The most effective course of action, therefore, is to prevent the wrong from occurring. This proactive goal can best be achieved by educating college athletes about the pitfalls and legalities of conducting business with athlete agents in Florida. These teachings will produce more knowledgeable, better prepared student athletes who possess enough savvy to preserve their own interests and indirectly, the interests of their colleges and universities.