

**SOLVING PROBLEMS IN THE PLAYER
REPRESENTATION BUSINESS: UNIONS SHOULD BE
THE “EXCLUSIVE” REPRESENTATIVES OF THE
PLAYERS**

*By RICHARD T. KARCHER**

Introduction.....	738
I.A Change In “Culture” Is Desperately Needed	739
A. The Economics of the Player Representation Business and the Commission Fee Arrangement.....	739
B. The Competition among Suppliers of Services is Actually Harmful to the Consumer in the Player Representation Business	745
1. Client Solicitation	747
2. Agent Incompetence	755
3. Conflicts of Interest.....	757
II.The Players Unions and the Leagues Need to Change the Current System of Player Representation.....	760
A. Existing Laws and Regulations Are Ineffective in Monitoring Agents.....	760
B. Players Unions Need to Consider the Best Interests of the Players Collectively	762
C. The Current Player Representation System Harms the Players, the Teams and the Leagues	767
III.Proposed Solutions.....	772
A. The Unions and the Leagues Have Incentives to Collectively Bargain For Changes to the Current Player-Agent System	772
B. An Internal Player Management Agency: Bring It In House	774
1. The Professional Footballers’ Association: A Model for Change	774
2. Economic Efficiencies and Alleviating the	

* Assistant Professor of Law and Director of the Center for Law and Sports at Florida Coastal School of Law. I especially want to thank Tiffany Meeks (FCSL 3L), my research assistant on this article.

Harmful Effects of Competition Among Agents	775
C. Change the Economic Incentives by Revising the Union Agent Regulations on Fees and Solicitation	778
Conclusion	780

INTRODUCTION

This article criticizes sports agents and the way in which the current player representation business is operated. Professional athletes need competent agents and advisors working diligently on the athletes' business and financial needs. As the compensation paid to athletes increases, the number of lawyers, statisticians and other assistants employed by the teams also increases. There has always been, and will always be, a compelling need for good player representation in the professional sports industry.¹ The question presented by this article is whether there is a better system that can be employed that would both improve the way the player representation business is operated and provide players with quality representation services.

There are highly publicized cases involving all sorts of illegal behavior, including fraud by sports agents in their dealings with professional athletes.² But there is also behavior by sports agents that is harmful to players, individual teams and the leagues, but that may not necessarily be "illegal." Such behavior is all too common in the player representation business. It is widely known that professional

1. Don Fehr, head of the Major League Baseball Players Association (hereinafter MLBPA), commented on the way it used to be when a player walked into the owner's office before agents were permitted to represent players: "You are my potential employee, or you are my actual employee, and if you want to talk to me about a new contract or a raise, I will be glad to talk to you, by yourself, on my terms, for as long as I want to, and you cannot bring anyone with you." Donald Fehr, *The Second Annual Sports Dollars & Sense Conference: A Symposium On Sports Industry Contracts And Negotiations, Union Views Concerning Agents: With Commentary on the Present Situation in Major League Baseball*, 4 MARQ. SPORTS L. J. 71, 72 (1993).

2. Beginning in 1999, the agent most aggressively pursued by state and federal forces was William "Tank" Black. KENNETH L. SHROPSHIRE & TIMOTHY DAVIS, *THE BUSINESS OF SPORTS AGENTS* 5 (2003). One of the most notable criminal cases involved sports agents Norby Walters and Lloyd Bloom, both of whom were charged with, and convicted of, multiple crimes, including mail fraud, conspiracy, and racketeering for offering student athletes money, cars, trips, and other gifts in exchange for the players' agreeing to sign post-dated representation agreements. *See United States v. Walters*, 704 F.Supp. 844 (N.D. Ill. 1989), *rev'd on procedural grounds*, 913 F.2d 388 (1990). *See also* MEL LEVINE, *LIFE IN THE TRASH LANE: CASH, CARS & CORRUPTION, A SPORT'S AGENT'S TRUE STORY* (1993) (Sports agent Mel Levine was sentenced to 30 months in federal prison for tax and financial fraud in his dealings with professional athletes.).

athletes and premier amateur prospects are routinely offered all sorts of inducements, benefits, and false promises by aggressive agents who seek to represent them.³ Lack of competence, client stealing and overly aggressive negotiating tactics are common themes in the sports agent environment as well. While there are differing views as to the egregiousness of such routine behavior in the player representation business, everyone, including players, heads of the players associations, and even many agents, universally agrees that such behavior is a problem.

This article will first discuss the current system of the player-agent business in the four major sports in the United States, the inherent major problems associated with the player-agent system, and the “culture change” that is desperately needed. Next, this article will address why the players associations and the leagues are the proper parties that need to work together to change the current system of player representation and to craft a solution to resolve the problems with the system. Finally, this article proposes that the players associations be more proactive in their role as the “exclusive” representative of the players by (1) giving each player the option to hire a union-employed agent to represent him in player contract negotiations, and (2) changing the economic incentives of the current agent business by substantially revising the union-agent regulations regarding agent fees and client solicitation.

I. A CHANGE IN “CULTURE” IS DESPERATELY NEEDED

A. *The Economics of the Player Representation Business and the Commission Fee Arrangement*

The last decade has witnessed a mind-boggling increase in the compensation paid to professional athletes. In the four major sports leagues—the NFL, MLB, NBA and NHL—players were collectively paid \$7.685 billion during the 2004-05 seasons.⁴ That amount represents a 125 percent increase from the \$3.412 billion paid to the players during the 1995-96 seasons.⁵ The industry norm is for a

3. For specific examples of improper inducements and payments made to athletes by agents, see SHROPSHIRE & DAVIS, *supra* note 2, at 50-55.

4. Liz Mullen, *Financial Game Plan: Advisers Try to Get Athletes Focused on Reaching Long-Term Goals*, SPORTS BUS. J., Vol. 8, Issue 24, Oct. 17-23, 2005, at 13.

5. *Id.* In the past four seasons, total player salaries in the four leagues increased 16.6 percent from \$6.593 billion to \$7.685 billion. *Id.* Kurt Schoeppler, senior vice president of