

To: Amended Uniform Athlete Agents Act Drafting Committee

From: Paul Pogge, Associate Athletic Director, University of North Carolina at Chapel Hill and Tony Agnone, Immediate Past President of the Sports Lawyers Association and NFLPA Certified Agent

Date: October 10, 2013

RE: Recommendations for the Amended Uniform Athlete Agents Act Drafting Committee

Individuals representing and working with athletes in various professional capacities have caused a litany of issues for their clients, student-athletes, and institutions of higher education in recent years.¹ These problems have included lost eligibility and amateur status,² severe penalties and damages incurred by universities,³ and many athletes making uninformed choices regarding professional representation.⁴ The financial difficulties of a staggering number of current and former professional athletes are well documented,⁵ as are the direct links that often exist between these economic woes and professional representatives who failed at their most basic duties of helping avoid such troubles.⁶

¹ See Justin Albers, *Recent issues with agents present conflicts even for IU football players*, INDIANA DAILY STUDENT (Oct. 22, 2010, 12:29 AM), <http://www.idsnews.com/news/story.aspx?id=77891>; Robert N. Davis, *Exploring the Contours of Agent Regulation: The Uniform Athlete Agents Act*, 8 VILL. SPORTS & ENT. L. J. 1, 1-2 (2001); Eric Willenbacher, *Regulation Sports Agents: Why Current Federal and State Efforts Do Not Deter the Unscrupulous Athlete-Agent and How a National Licensing System May Cure the Problem*, 78 ST. JOHN'S L. REV. 1225, 1229-32 (2004)

² See *Agent Scandal Costs UNC Three Players*, ESPN (Oct. 11, 2010, 6:52 PM), <http://sports.espn.go.com/ncf/news/story?id=5673405>

³ See e.g., Kelly Parsons, *NCAA Hands Down Sanctions to UNC Football Program*, THE DAILY TAR HEEL (Mar. 14, 2012, 12:06 AM),

http://www.dailytarheel.com/article/2012/03/ncaa_hands_down_sanctions_to_unc_football_program Lynn Zinser, *U.S.C. Sports Receive Harsh Penalties*, THE NEW YORK TIMES (June 10, 2010)

http://www.nytimes.com/2010/06/11/sports/ncaafotball/11usc.html?_r=2&

⁴ See Mike Florio, *Vince Young Suing Former Agent, Financial Adviser*, PROFOOTBALLTALK.COM (June 12, 2012, 7:16 AM), <http://profootballtalk.nbcsports.com/2012/06/12/vince-young-suing-former-agent-financial-adviser/>; Gregg Rosenthal, *Vince Young Sues Former Agent for Stealing Money*, NFL.COM (June 12, 2012, 8:21 AM),

<http://www.nfl.com/news/story/09000d5d829c19ca/article/vince-young-sues-former-agent-for-stealing-money>

⁵ See Pablo S. Torre, *How (And Why) Athletes Go Broke*, SPORTSILLUSTRATED.COM (Mar. 23, 2009)

<http://sportsillustrated.cnn.com/vault/article/magazine/MAG1153364>; BROKE (ESPN Films 2012)

⁶ See Rand Getlin and Jason Cole, *Document: Terrell Owens Suing Financial Adviser*, YAHOO SPORTS (Jan. 16, 2013) <http://sports.yahoo.com/news/nfl--document--terrell-owens-suing-financial-adviser-190525972.html>

Legislation at both the state and federal levels has been largely ineffective in combatting these issues.⁷ It is therefore critical that the ULC's redrafting of the Uniform Athlete Agent Act (UAAA) help address the scope and complexity of these problems. It is extremely important that new legislation increase the incentives for and ease of prosecuting violators, as substantive change cannot happen without heightened accountability.

Issues with professional representatives have been the subject of much dialogue across the country.⁸ In the interests of developing an environment to better protect the athletes involved and safeguarding traditional notions of fair competition in the representation industry, we have made the recommendations below in hopes the committee will integrate these concepts into the language they develop. We believe each of these concepts is vital to the success of future renditions of the UAAA.

I. Broadened Applicability

Problems in this area do not only arise from the improper actions of those who self-identify as "agents." Individuals billing themselves as "advisors," "marketers," "business managers," and a host of other titles⁹ have also cost student-athletes their eligibility, used inappropriate recruiting tactics, and caused significant financial loss and other harm to athletes.¹⁰ In addition, some individuals use unregistered "runners" in their recruitment. Some "runners" are affiliated with one particular agent, advisor, or other representative,¹¹ while others merely serve as a conduit willing to deliver money or other items of value on behalf of multiple professional

⁷ See Alan Scher Zagier, *Laws on Sports Agents Rarely Enforced*, HUFFINGTON POST (Aug. 17, 2010, 4:15 PM) http://www.huffingtonpost.com/2010/08/17/laws-on-sports-agents-rar_n_685000.html; *Report: State Agent Laws Unenforced*, ESPN (Aug. 17, 2010, 4:20 PM) <http://sports.espn.go.com/ncaa/news/story?id=5470067>

⁸ See e.g., *Slive: Agent Rules Part of the Problem*, ESPN (Sept. 20, 2013, 5:16 PM) http://espn.go.com/college-football/story/_/id/9695377/sec-commissioner-mike-slive-says-ncaa-rules-agents-part-problem; *Saban Compares Agents to a Pimp*, ESPN (July 22, 2010, 2:22 AM) <http://sports.espn.go.com/ncf/news/story?id=5399270>; *Mark Emmert Wants to Police Agents*, ESPN (Sept. 14, 2010, 6:20 PM) <http://sports.espn.go.com/ncaa/news/story?id=5572636>

⁹ See Cindy George, *Vince Young Sues Former Agent, Financial Adviser*, HOUSTON CHRONICLE (June 11, 2012) <http://blog.chron.com/newswatch/2012/06/vince-young-sues-former-agent-financial-adviser/>; *Young, Ex-advisers Differ on Who Squandered His Fortune*, HOUSTON CHRONICLE (Sept. 18, 2012, 10:51 PM) <http://www.chron.com/default/article/Young-ex-advisers-differ-on-who-squandered-his-3875818.php>

¹⁰ See Liz Mullen, *Financial Advisers Face Lawsuits from NFL Players*, SPORTS BUSINESS JOURNAL (Nov. 15, 2010) <http://www.sportsbusinessdaily.com/Journal/Issues/2010/11/20101115/This-Weeks-Issue/Financial-Advisers-Face-Lawsuits-From-NFL-Players.aspx>; Liz Mullen, *NFL Players Sue H.P. Wealth Advisers*, THE BUSINESS JOURNAL (Nov. 19, 2010, 6:00 AM) <http://www.bizjournals.com/triad/print-edition/2010/11/19/nfl-players-sue-hp-wealth-advisers.html?page=all>

¹¹ See Associated Press, *Agents Relying on 'Runners' for Dirty Work*, THE SEATTLE TIMES (Sep. 10, 1995) <http://community.seattletimes.nwsources.com/archive/?date=19950910&slug=2140889>

representatives.¹² Another category of “recruiters” also includes unregistered individuals who will earn the trust of a student-athlete, then proactively attempt to facilitate “bids” from competing professional representatives in exchange for the student-athlete’s commitment to enter into an agreement.

The wide variety of individuals involved in recruiting student-athletes have countless means of causing significant issues not only for the student-athletes themselves, but for universities and law-abiding professional representatives as well. Whether someone is termed an “agent,” “advisor,” “marketer,” “business manager,” “client acquisition specialist,” provider of “client services,” or is merely some form of “runner,” they have the ability to corrupt the recruiting process and violate basic principles of fair competition. This not only causes harm to professional representatives who comply with legislation and policies, it also creates an environment in which athletes and their families can be easily coerced into uninformed decisions.

For these reasons, we believe it is essential that future legislation broaden the applicability of the UAAA to a functionally-defined class of “professional representatives” in this area that includes:

- (i) any individual in the business of or attempting to engage in the business of:
 - (a) representing, in any professional capacity (including, but not limited to, representation as an athlete agent), any athlete for purposes related to their participation in athletics;*
 - (b) serving in an advisory capacity for any athlete on matters related to finances, business pursuits or ventures, or career management or decisions;*
 - (c) managing the business or affairs of any athlete (including, but not limited to, providing assistance with bills, payments, contracts, or taxes); or*
 - (d) marketing, publicizing, or promoting any athlete through any means or medium (including, but not limited to, securing or attempting to secure public appearances, securing or attempting to secure endorsements or marketing agreements; and providing assistance with brand development).**

¹² See Charles Robinson & Rand Getlin, *Ties Between Former Alabama Player and Agents Documented by Text Messages*, YAHOO SPORTS.COM (Sept. 11, 2013, 4:31 PM) <http://sports.yahoo.com/news/ncaaf--ties-between-former-alabama-player-and-agents-documented-by-text-messages-203153323.html>; Andrew Gribble, *Who is Luther Davis? A Look Back at His Alabama Career Before He Was Linked to D.J. Fluker*, AL.COM (Sept. 12, 2013, 11:13 AM) http://www.al.com/alabamafootball/index.ssf/2013/09/who_is_luther_davis_former_ala.html; Tim Tucker, *Report: Former UNC Player, Considered Agent by NCAA, Bought Green’s Jersey*, ATLANTA JOURNAL CONSTITUTION (Sept. 9, 2010, 10:01 PM) <http://blogs.ajc.com/uga-sports-blog/2010/09/09/report-former-unc-player-considered-agent-by-ncaa-bought-greens-jersey/>; Mark Schlabach, *Chris Hawkins: ‘I’m Not an Agent’*, ESPN.COM (Sept. 10, 2010, 10:50 PM) <http://sports.espn.go.com/ncf/news/story?id=5551923>

In addition, provisions of the UAAA should also apply to:

- (i) any individual who directly or indirectly recruits or attempts to recruit an athlete to enter into a professional representation agreement;*
- (ii) any individual who solicits compensation in exchange for an athlete's entering or commitment to enter into a professional representation agreement; and*
- (iii) any other individual affiliated in any capacity with any firm, agency, or other organization providing any services described in this section.*

II. Registration

Over forty states have adopted some version of the UAAA.¹³ Forms required for registration in states across the country vary significantly in form and substance.¹⁴ This can often cause unnecessary duplication of efforts. Nevertheless, registration is an important means of gathering information which helps student-athletes and their families make more educated decisions regarding professional representation. It also keeps states apprised of individuals recruiting in their jurisdiction. Under current legislation, many professional representatives are able to circumvent any registration requirement because they are not an "agent." This *must* change.

To fulfill each of these objectives, we recommend the following:

(1) Any future codifications of the UAAA should provide for reciprocity in registrations between states using a thorough, standardized form that is submitted annually. Secretaries of State or other governmental offices receiving a registration form should be required to forward the form to their appropriate counterparts in other jurisdictions requested by the submitter, provided that any and all such additional jurisdictions utilize or are authorized to accept the submitted registration form in fulfillment of their respective registration requirements.

(2) Any individual identified in Section I, above, must be required to fulfill this registration requirement in the appropriate jurisdiction each year before they:

- (i) recruit or attempt to recruit any student-athlete in the jurisdiction to enter into a professional representation agreement;*

¹³ See *Uniform Athlete Agents Act*, National Collegiate Athletic Association <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Uniform+Athlete+Agents+Act+Homepage> (As of July 2010, the UAAA has been passed in 40 states, the District of Columbia and the U.S. Virgin Islands.) *Id.*

¹⁴ Compare APPLICATION FOR REGISTRATION AS AN ATHLETE AGENT, NORTH CAROLINA DEPARTMENT OF THE SECRETARY OF STATE, <http://www.secretary.state.nc.us/athlete/forms.aspx>, with APPLICATION FOR REGISTRATION AS AN ATHLETE AGENT, STATE OF ALABAMA OFFICE OF SECRETARY OF STATE, <http://www.sos.state.al.us/downloads/sports/sa-app-2003.pdf>

(ii) communicate in any way with a student-athlete regarding professional representation;

(iii) communicate with any individual affiliated with a student-athlete for purposes of discussing potential professional representation of the student-athlete; or

(iv) contact or attempt to contact, through any means whatsoever, a student-athlete or other individual for purposes of promoting the services, acumen, or business of the contacting individual or any organization with which the contacting individual is associated.

(3) To combat the use of “runners,” implement significant penalties for any instance in which an unregistered individual:

(i) directly or indirectly recruits or attempts to recruit a student-athlete into entering a professional representation agreement;

(ii) communicates in any way with a student-athlete regarding professional representation;

(iii) communicates with any individual affiliated with a student-athlete for purposes of discussing potential professional representation of the student-athlete; or

(iv) contacts or attempts to contact, through any means whatsoever, a student-athlete or other individual for purposes of promoting the services, acumen, or business of the contacting individual or contacting individual’s organization.

(4) Because of the widespread abuse in this area, any violation of this section should be punishable with a fine per occurrence for both the involved individual and any other individual(s) complicit in or directing such acts. This fine must be significant and large enough to affect any cost-benefit analysis that may otherwise encourage violating legislation to try to secure agreements which could potentially involve millions of dollars. Additionally, the per-occurrence fine must be large enough that it incentivizes state officers to hold violators accountable. We do not believe it would be excessive to provide for a six figure fine per occurrence and also encourage the committee to consider any additional means of punishment that would strengthen this component of the legislation.

III. Notice Prior to Initiating Contact

Despite many universities’ good faith efforts to educate their student-athletes on this subject matter and to establish a structure regarding communication with professional representatives,

the recruiting process still often occurs outside of regulation and “behind the scenes.”¹⁵ This makes it extremely challenging for institutions to provide the information and support necessary such that student-athletes may make educated choices regarding representation. It also puts rules-abiding professional representatives willing to operate in a transparent, compliant manner at a disadvantage.

To increase competitive equity in the recruiting process and foster an environment more conducive to student-athletes and their families receiving accurate information, it is absolutely essential that any future legislation incorporate the following elements:

(1) Any individual identified in Section I must be required to provide written notice to the Director of Athletics at the university at which the student-athlete is enrolled prior to each communication or attempt to communicate with a student-athlete through any means or medium whatsoever. These means or mediums should include, but not be limited to:

(i) In-person communication;

(ii) Direct mailings;

(iii) Telephonic communication (including, but not limited to, phone calls and text messages);

(iv) Video communication; and

(v) Electronic correspondence of any kind (including, but not limited to, social media and email).

(2) Such notice as described above should also be required for any individual identified in Section I before communicating or attempting to communicate with any other individual for purposes of influencing or attempting to influence a student-athlete’s decision to enter into a professional representation agreement.

(3) Within ten business days after a student-athlete enrolls at a college or university, any individual identified in Section I should be required to notify the Director of Athletics of any preexisting relationship or past contact with such student-athlete or family member(s) of such student-athlete.

(4) If a student-athlete or other individual on behalf of a student-athlete initiates contact with any individual identified in Section I, such notified individual should be required to inform the appropriate university’s Director of Athletics of such contact within ten business days.

¹⁵ See George Dohrmann, *Confessions of an Agent*, SPORTSILLUSTRATED.COM (Oct. 12, 2010, 1:20 PM) <http://sportsillustrated.cnn.com/2010/magazine/10/12/agent/index.html>

(5) The Director of Athletics at a university should be permitted to designate another individual to receive the requisite notices by clearly articulating the intended alternate recipient's name and contact information on the university's official website or other comparable platform.

(6) Failure by any individual to provide the requisite notice should be punishable by a significant fine (perhaps \$20,000) per occurrence.

IV. Notice after Entering into a Professional Representation Agreement

Some jurisdictions' codification of the UAAA already requires notice to be provided to the appropriate educational institution after a student-athlete enters into an agency contract.¹⁶ This notice is important because it helps institutions avoid allowing an ineligible athlete to participate in amateur competition. Unfortunately, this notice is not always provided.

Therefore, we recommend imposing a fine of \$50,000 per occurrence for any individual who enters into a professional representation contract with a student-athlete and fails to notify the appropriate university's Director of Athletics or their designee in writing within 72 hours of entering into such an agreement.

V. Civil Cause of Action for Athletes

We have reason to believe that there is a serious problem with the dissemination of inaccurate information to student-athletes during the time in which they are recruited to enter into professional representation agreements. *Thus, we recommend the provision of a civil cause of action in future legislation whereby athletes have a means of recourse against any individual identified in Section I who induces them to enter into a professional representation agreement by presenting falsified, inaccurate, or misleading information.*

Additionally, we find value in inclusion of the elements below, some of which are already incorporated in various states' versions of the UAAA.¹⁷

(1) Provide a civil cause of action for universities harmed by the actions of individuals to whom the legislation applies.

¹⁶ See, e.g. N.C.G.S. § 78C-95

¹⁷ E.g., N.C.G.S. § 78C-100; O.R.S. § 702.057; N.C.G.S. § 78C-94; O.R.S. § 702.047; N.C.G.S. § 78C-96; O.R.S. § 702.052

(2) Require any professional representation contract offered to a student-athlete to include mandatory language clearly articulating that entering into such an agreement will result in the loss of the student-athlete's collegiate eligibility.

(3) Provide a period of time after execution of a professional representation agreement during which the student-athlete can nullify and void the agreement without penalty.

(4) Clearly define the term "student-athlete" in a way that also includes student-athletes who are enrolled at a university but have yet to enter into a professional representation agreement, regardless of whether they have exhausted their collegiate eligibility.

Individuals who have expressed support for this memo include, but are not limited to:

Lawrence R. Cunningham	(Director of Athletics, University of North Carolina at Chapel Hill)
Vince Ille	(Senior Associate Athletic Director, University of North Carolina at Chapel Hill)
Mike Alden	(Director of Athletics, University of Missouri)
Whit Babcock	(Director of Athletics, University of Cincinnati)
Scott Barnes	(Vice President and Athletics Director, Utah State University)
Sandy Barbour	(Director of Athletics, University of California)
Gary Barta	(Director of Athletics, University of Iowa)
Jack Bechta	(NFLPA Certified Agent and President and CEO of JB Sports)
Ross Bjork	(Director of Intercollegiate Athletics, University of Mississippi)
Gene Bleymaier	(Director of Athletics, San Jose State University)
Mike Bobinski	(Director of Athletics, Georgia Institute of Technology)
McKinley Boston	(Director of Athletics, New Mexico State University)
Tom Bowen	(Director of Athletics, University of Memphis)
Peg Bradley-Doppes	(Vice Chancellor for Athletics and Recreation, University of Denver)
Morgan Burke	(Director of Intercollegiate Athletics, Purdue University)
Tom Burman	(Director of Athletics, University of Wyoming)
Greg Byrne	(Director of Athletics, University of Arizona)
Patrick Chun	(Director of Athletics, Florida Atlantic University)
Jeff Compher	(Director of Athletics, East Carolina University)
William Conaty	(NFLPA Certified Agent, Eastern Athletic Services)
Mark Coyle	(Director of Athletics, Boise State University)
John Currie	(Director of Athletics, Kansas State University)
Joel Erdmann	(Director of Athletics, University of South Alabama)
Rick Evrard	(Member, Collegiate Sports Practice Group of Bond, Schoeneck and King, PLLC)
Jeremy Foley	(Athletics Director, University of Florida)
Chet Gladchuk	(Director of Athletics, United States Naval Academy)
Scott Farmer	(Director of Athletics, University of Louisiana)
Derrick Gragg	(Vice President and Director of Athletics, University of Tulsa)
Jack Graham	(Director of Athletics, Colorado State University)
Daryl Gross	(Director of Athletics, Syracuse University)
Rick Hart	(Director of Athletics, Southern Methodist University)
John Hartwell	(Director of Athletics, Troy University)

Jeff Hawkins (Chairman of the Directors of Football Operations Committee/American Football Coaches Association and Senior Associate Athletic Director, University of Oregon)

Lynn Hickey (Director of Athletics, University of Texas at San Antonio)
Kirby Hocutt (Director of Athletics, Texas Tech University)
Mike Holder (Vice President for Athletic Programs and Director of Intercollegiate Athletics, Oklahoma State University)

Mark Hollis (Athletics Director, Michigan State University)
Eric Hyman (Director of Athletics, Texas A&M University)
Jay Jacobs (Director of Athletics, Auburn University)
Edward Johnson (NFLPA Certified Agent and Partner, Eastern Athletic Services)
Paul Krebs (Vice President, Athletics, University of New Mexico)
Noel LaMontagne (NFLPA Certified Agent, Eastern Athletic Services)
Craig Littlepage (Director of Athletics, University of Virginia)
Jim Livengood (Former Director of Athletics at the University of Arizona and University of Nevada-Las Vegas)

Jeff Long (Vice Chancellor and Director of Athletics, University of Arkansas)
Warde Manuel (Director of Athletics, University of Connecticut)
Chris Massaro (Director of Athletics, Middle Tennessee State University)
Ian McCaw (Director of Athletics, Baylor University)
Terry Mohajir (Director of Athletics, Arkansas State University)
Hans Mueh (Director of Athletics, United States Air Force Academy)
Bernard Muir (Director of Athletics, Stanford University)
Rob Mullens (Director of Intercollegiate Athletics, University of Oregon)
Michael O'Brien (Vice President and Director of Athletics, University of Toledo)
Jim Phillips (Vice President for Athletics and Recreation, Northwestern University)
Jamie Pollard (Director of Athletics, Iowa State University)
Dan Radakovich (Director of Athletics, Clemson University)
Mack Rhoades (Vice President for Intercollegiate Athletics, University of Houston)
Judy Rose (Director of Athletics, UNC Charlotte)
David Sayler (Director of Athletics, Miami University)
Jim Schaus (Director of Athletics, Ohio University)
Rob Spear (Director of Athletics, University of Idaho)
Todd Stansbury (Vice President and Director of Athletics, University of Central Florida)
Todd Stewart (Director of Athletics, Western Kentucky University)
Scott Stricklin (Director of Athletics, Mississippi State University)
Jack Swarbrick (Vice President and Director of Athletics, University of Notre Dame)
Norwood Teague (Director of Athletics, University of Minnesota)
Mike Thomas (Director of Athletics, University of Illinois)
Todd Turner (President and Founder, Collegiate Sports Associates)
Ron Wellman (Director of Athletics, Wake Forest University)
Daniel White (Director of Athletics, State University of New York at Buffalo)
Kevin White (Vice President and Director of Athletics, Duke University)
Brian Wickstrom (Athletic Director, University of Louisiana at Monroe)
Stan Wilcox (Athletics Director, Florida State University)
Doug Woolard (Director of Intercollegiate Athletics, University of South Florida)
Deborah Yow (Director of Athletics, North Carolina State University)