

DRAFTING COMMITTEE CHAIR REPORT

Submitted by Dale G. Higer, Chair

Committee Name: Drafting Committee to Revise the Uniform Athlete Agents Act

Dates and Location of Committee Meeting: October 25-26, 2013, Chicago, Illinois

Committee members absent: Robert G. Bailey

ABA advisors absent: None

Observers absent: Gail Adler, Mark Bartelstein, Michael A.R. Bernasconi, Joe Bertagna, Brian Bledsoe, Sherman J. Clark, Phillip J. Closius, Marc Edelman, Larry Gallo, Richard Guggolz, Jim Haney, Jeff Hawkins, Harry Howell, Stu Jackson, Nathan Leffler, Mark Levin, Shane Lyons, Michael Maciszewski, Pat Manak, , James E. McPherson, Eric Metz, Doug Neustadt, Tom Osborne, Mike Powell, Leslie Reynolds, Dave Roberts, , Nick Saban, Dave Scott, Mike Slive, Rick Smith, Grant Teaff, , Troy Vincent and Roy Williams

Results of committee discussion of other entities who should be invited to send observers, and who is responsible for contacting them: The National District Attorneys Association, the National Federation of State High School Association and the National Association of Intercollegiate Athletics. ULC staff will follow up and make contact with these organizations.

Report on progress made and significant developments during the meeting:

ACTIONS TAKEN ON THE ISSUES IDENTIFIED IN THE SEPTEMBER, 2013
BACKGROUND AND ISSUES MEMORANDUM

DEFINITION OF ATHLETE AGENT

The committee reduced the number of alternatives from four to two. The first alternative will be Alternative B from the meeting draft. That language is based on the California law and includes the concept of both recruiting and/or soliciting a student-athlete to enter into an agency contract and one who, for compensation, seeks to obtain employment for a student-athlete as a professional athlete. The definition also excludes professionals such as attorneys, stock brokers, financial planners, etc. acting within the normal scope of business of that profession from the definition unless they also recruit or solicit or, for compensation, seek to obtain employment for a student athlete as a professional athlete.

The California definition applies to agents representing any athlete, not just student athletes and will be revised so that it only applies to student-athletes.

In conjunction with that definition, there will be a new definition of “recruits or solicits” added that will make it clear that advice or recommendations made by a coach or

family member that is not done for compensation or the expectation of compensation is not included.

The second alternative will be a new definition based on the revised California definition discussed above, except that instead of excluding certain professional services, would INCLUDE “professional representatives” within the class of persons who are athlete agents, as set forth in the Pogge/Agnone memo. “Professional representative” would be defined to include any person:

- (1) representing a student-athlete in a professional capacity related to the student-athlete’s participation in athletics;
- (2) serving in an advisory capacity on matters related to business, finance, career management, etc.;
- (3) managing the business affairs of a student-athlete, including paying bills, taxes, etc.; and
- (4) marketing, promoting, or publicizing a student-athlete through any means or media.

REGISTRATION SYSTEM DESIGN

There was no final decision made on the registration issue. The committee would like to look at four different alternatives at the next meeting.

The first alternative would be the existing act, which basically is the application in state A can be used as the application in state B.

The second alternative would be the version contained in the meeting draft which required state B to issue a license to an individual licensed in state A if state A had the UAAA and the license was in good standing.

The third alternative would be based on the concepts of the Uniform Foreign Judgments Act in which the licensure in state A would be presumed to be valid in state B unless state B made a contrary finding.

The fourth alternative would be a variation of the second alternative, but would make the licensure in the second state good for a limited period, perhaps [30] days, to give the second state the opportunity to investigate the applicant. During the [30] days the athlete agent could operate as an agent for all purposes but signing an agency contract.

All of the alternatives would incorporate the concepts of Section 5 (c) of the meeting draft which would require the [Secretary of State] to cooperate with national groups in sharing information. The provision would be revised to require the information to be available in each state electronically on a website as well.

The committee discussed at length the issue of a central registry through NASS, NCAA, Sports Agents Association, etc. on the FINRA model, as opposed to registration at the state level with a central clearing house of some kind, but no decision was made. However, a decision was made to explore a uniform application form that would be part of the act and used by the states adopting the act with addendums appropriate for each state. Paul Pogge will take the lead on drafting the form. Committee members, Rebecca Rockwell and Anne McGihon will serve as contacts for the committee.

SURETY BOND

Based on a consensus that bonds were not readily available and were very expensive, the committee decided against adding a surety bond requirement.

NOTIFICATION OF EDUCATIONAL INSTITUTIONS PRIOR TO CONTACTING A STUDENT-ATHLETE

The committee decided to include a requirement as Section 14(d) that an athlete agent notify the athletic director of an institution prior to initiating any communication, as defined, with a student-athlete enrolled at the institution at which the agent has reason to believe the student-athlete will attend per the Pogge-Agnone memo. In addition, within 10 days of enrollment of a student-athlete at an institution, an athlete agent would be required to notify the institution of any pre-existing relationship with the athlete. Also, an agent with an agency contract with a student-athlete signed prior to enrollment at an institution would be required to notify the institution of the contract within 72 hours of enrollment.

REPRESENTATION OF BOTH STUDENT-ATHLETE AND COACHES FROM THE SAME INSTITUTION

The committee was not inclined to prohibit an athlete agent from representing both a coach and a student-athlete from the same institution. The committee did decide that if the coach, for compensation or the expectation of compensation, convinced a student-athlete to sign with a particular agent, then the coach would be within the definition of athlete agent.

ENFORCEMENT AUTHORITY

The committee did not resolve the enforcement issue. With regard to criminal penalties, two members of the committee stated that the actions of acting as an agent without being licensed were not criminal in nature and should have only civil enforcement. Other committee members and observers believed that criminal penalties were necessary. There was also sentiment for Alternative B in the meeting draft which provides only misdemeanor penalties (with a substantial fine and county jail time), requires revocation of the license for a conviction, requires disgorgement, and contains an incentive for enforcement by providing a portion of the fine goes to the prosecuting entity. As a minimum, Alternative B will be revised to limit the criminal penalties to actions that violate Section 14 of the act, as the existing act provides.

With regard to civil penalties, there are currently two alternatives. The committee requested that the two alternatives be retained with Alternative B being refined to make it clear that if the NCAA disciplined institution A that the NCAA would not have a cause of action against an agent or student-athlete because of that discipline. The third and fourth alternatives would be the two current alternatives, as modified above, but limiting the

civil recovery to actions for violations of Section 14, as the current act limits with regard to criminal penalties.

Areas of concern and recommendations concerning future actions by the committee, leadership, or the staff: This was an excellent first meeting. Both the committee members and observers were fully engaged. Almost on all issues, there was total agreement in the direction the draft amendments were headed. At the next meeting an effort will be made to narrow the alternatives to certain sections.

Comments, suggestions and kudos for the chair, reporter or commissioners: Jerry Bassett, the reporter, did an excellent job of preparing the first meeting memo and draft amendments. He helped tee up the issues the chair felt important to discuss at the meeting. John Sebert provided excellent support for the first meeting memo and draft amendments.

Thank you notes that should be written: None at this time, but I do want to thank Paul Pogge and Tony Agnone for their recommendations for the UAAA as set out in their memo dated October 10, 2013. It was very helpful to the discussions on the issues raised by the memo.