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ETHICS AND THE REPRESENTATION OF PROFESSIONAL ATHLETES

GEORGE COHEN*

I. INTRODUCTION

I believe that each individual has a certain moment of truth when he knows what his career is going to have in store for him. My moment—in terms of the world of ethics—took place in June 1960. I was one of approximately 500 young people herded into a large room to be admitted to the practice of law in the State of New York, in the 2nd Department, Brooklyn, New York.

After we collectively took the solemn oath to practice law, and my wife, family, parents, and friends waited with anticipation, a gentleman in a black robe, who was introduced as a judge, stood up and gave the following stirring invocation. He said: “Ladies and gentlemen, welcome to the bar of the State of New York. We have far too many lawyers, and there are far too few clients in need of representation. We know, therefore, that each and every one of you is about to go out into the world and commit various violations of the Canons of Ethics. Rest assured, that whatever your ingenuity, we will be watching and we will catch a number of you. When we catch you, we will impose appropriate punishment. I want to, once again, welcome you to the bar of the State of New York.”

On the heels of those stirring remarks, I made three decisions that day. In order, they were as follows: 1) I would never practice law in the State of New York; 2) I would leave the State of New York as quickly as I could; and, 3) there would, undoubtedly, come a day when I would somehow become involved in regulating the ethics of agents in the sports world.

The first two decisions became reality in 1960 when I left New York. Much later, the third became reality in 1986 when the baseball players and the basketball players asked me to get involved with them in this interesting, challenging, and quite bizarre subject area of agent regulation.

Unlike some of the other authors contributing to this issue, I am not the “leading”, the “outstanding”, or the “best” in my field. I apparently

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am, however, the only living member of the bar who is actively involved in assisting sports unions in this subject area. So, I am now going to try to share with you some of my more memorable experiences.

II. PLAYER CONCERNS IN THE '80s

There were many serious concerns voiced by baseball and basketball players in the 1980s which led to the commencement of agent regulation programs.

The number one concern was the breadth of the "powers of attorney" that players were being induced to sign over to their agents. For want of a better term, they were signing over their lives . . . certainly their financial and economic lives. What is more, the players were led by the agents to understand that, once a player selected an agent, that player was stuck with the agent for the rest of his professional career.

The number two concern was fees. The consensus among the players was that excessive fees were being charged for an agent to negotiate a player's contract with his team.

The number three concern of the players was that agents who were serving in a fiduciary capacity were engaging in misconduct.

Because of these concerns, each of the two organizations—the Major League Baseball Players Association (MLBPA) and the National Basketball Player's Association (NBPA)—sat down and drafted a comprehensive and understandable regulatory program to implement the concerns of the players. I want to emphasize that very fundamental fact. These regulatory schemes were not the product of the Association staff or outside counsel like myself. Rather, they were the product of the input that players and player representatives from the various teams had given to us. Our direction was to translate those concerns into a living, workable document. We basically ended up with the program summarized below. Because there are numerous variations between the basketball and the baseball program, I will only refer to the basketball regulations.

A. *NBPA Agent Certification*

In the NBA, we have a program whereby, in order for any person to be able to represent a basketball player in individual salary negotiations with an NBA team, that person must be certified as an agent by the

NBPA.¹ There is a provision in the collective bargaining agreement between the NBA and the Players Association which gives “teeth” to this rule: no team is allowed to enter into negotiations with any agent on behalf of any player if that agent is not certified.² Furthermore, if by some chance a team should inadvertently negotiate a contract with a non-certified agent, that contract, under the terms of the collective bargaining agreement, would be deemed null and void. At bottom, this means that there will not be a valid player-team contract if a player uses a non-certified agent to perform that function. Thus, we have an extremely powerful enforcement mechanism in place.

To achieve “certified” status, you must apply to the Agent Committee. The standard form applications the agents have to file with the Players Association are very much like the applications filed with a bar association.³ The application entails providing answers to numerous questions concerning your education, training, professional associations and prior employment in general, and representation of athletes in particular. The applicant is also asked to supply details concerning his fee structure for providing various designated services as well as the method by which he charges for expenses incurred in providing those services. In addition, our object is to identify any instance in which a player—or, indeed, any other client—has initiated a lawsuit or otherwise complained about the applicant for any reason relating to the manner in which he carried out any fiduciary responsibilities (*e.g.*, as an executor of an estate.)

Over the past five years or so, the manner in which agents have handled players’ financial affairs (including managing bank accounts, advising re investment opportunities, etc.) has come under increased scrutiny because of numerous horror stories of agent misconduct. As a result, the Association has amended its application form to include questions directed as ascertaining whether the agent provides the following services and, if so, what he/she charges for: investment management; handling the books and records of players; marketing, merchandising and endorsements; investment counseling; and even tax advice and counseling.

It is critically important to understand what the Association does with the information provided in the application and the periodic up-

1. NATIONAL BASKETBALL ASSOCIATION COLLECTIVE BARGAINING AGREEMENT (CBA), APPENDIX H, § H-17, Sec. 1 [SCOPE OF REGULATION] (1988).

2. *Id.*

3. *Id.* at Sec. 2, Part A [Applying for Certification]; Exhibit A [APPLICATION FOR CERTIFICATION AS AN NBPA PLAYER AGENT].

dates that the Regulations require. It is not the Association's intent merely to store this information in a file cabinet; rather, it is the Association's intent to provide this information to veteran players and prospective NBA players who are in the process of selecting an agent from among several competitors (*e.g.*) and who are interested in comparing the fee structures, prior experience and current complement of player-clients of each of the agents under consideration.

B. Standard Form Player-Agent Agreement

In addition to certification, the Regulations provide that a player and his agent must execute a standard form player-agent fee agreement as a prerequisite to an agent being entitled to negotiate a player's contract.⁴ To eliminate any possible ambiguity concerning the nature of the relationship between the player and his agent, the Association took the revolutionary step of declaring that oral understandings were no longer acceptable.⁵ Believe me, players telling agents "I think so much of you that I don't want to burden our relationship by having something in writing," may sound awfully good on Tuesday morning, July 1st. The difficulty arises when a problem thereafter emerges and, lo and behold, there's a dispute as to what the parties agreed to, and we have no written agreement.

Second, the basketball players' rules say that (as in baseball) the agreement must be in the language in which the player is fluent. This rule has taken on added importance as more and more professional athletes are drawn to the U.S. from many diverse countries throughout the world.

The standard form written player-agent agreement not only establishes the fee structure between the player and his agent but also gives the player the right to terminate the agreement with his agent on 15 days' written notice. This right to terminate is an absolute right, although, obviously, if the agent has provided legal services that provide player benefits that go beyond that 15 day period, the agent is entitled to a fee based on quantum meruit relief (*i.e.* the fair and reasonable value of the services already rendered) even after having been discharged.

4. NATIONAL BASKETBALL ASSOCIATION COLLECTIVE BARGAINING AGREEMENT, APPENDIX H, § H-1 [NBPA STANDARD PLAYER AGENT CONTRACT].

5. *Id.*

C. NBA Fee Structures

Now, I will turn to an overview of the basketball players' fee structure. The basketball players' view on fees in 1986 was very clear. The bottom line in basketball is that the maximum, I want to underline that word, the *maximum*, fee that any agent can charge a player for negotiating salary compensation and representing the player in grievance arbitration, is 4% of defined "compensation."⁶ In a quick, shorthand way, what that means is that in calculating his fee the agent can take into account the base salary, the signing bonus, and performance bonuses (when and if they are earned). Those are the items that the agent's percentage can be based upon. Deferred compensation is also applicable, but no agent may charge a player for deferred compensation payments until the player has actually been paid the money by the team. In other words, the agent cannot get a payment "up front" when the player is only getting it at a later date based on a deferred principle.

Beyond that, there are other specific provisions in the Regulations, such as: no agent can earn any fee based on having negotiated a "guaranteed" agreement; no agent is entitled to any fee based on a personal loan to a player that a club may have agreed to; and no agent is entitled to any fee based on the value of an automobile a team may have agreed to furnish to a player.⁷

In 1985 the average salary for an NBA player was probably in the five to six hundred thousand dollar range. In the fall of 1993 salaries now average in the neighborhood of \$ 1.3 million.⁸ Thus, if an agent negotiates a four year contract beginning at \$1.3 million in the first year and increasing to \$1.5, \$1.7, and \$2 million over the following years, the agent's 4% fee would be worth \$260,000 over four years—an average of \$65,000 per year. In recent years, as salaries have increased significantly, more and more players have negotiated fee agreements at less than 4%.

D. Comments on the Free Market

If anyone reading this has an interest in breaking into the very select club of NBA player agents, there is a group of people who are advising

6. NATIONAL BASKETBALL ASSOCIATION COLLECTIVE BARGAINING AGREEMENT, APPENDIX H, § H-17, Sec. 4 [AGREEMENTS BETWEEN PLAYER AGENTS AND PLAYERS; MAXIMUM FEES].

7. *Id.*

8. Incidentally, the NBA and the Players Association will be back in collective bargaining this coming winter with a contract due to expire in June 1994. Since the existing contract has been in place now for almost six years, you can expect there is a lot of anxiety and tension built up on both sides. We should have a fascinating next round.

prospective clients that they will work for them on an hourly rate or at a percentage fee significantly below the maximum of 4%.

Equally as interesting is the following thought process that some of the players we represent are now going through. If a player, having played three years at a very high quality level is completing a three-year contract with a salary of \$ 2.2 million, and he asks his agent to go and negotiate an improvement for him, some players are asking the following rhetorical question: "Why is it that I should have to pay 4% on the first \$ 2.2 million when I've already demonstrated that I am a \$ 2.2 million dollar player? So George, why shouldn't I say to my agent: 'Whatever you get me above \$2.2 million, that is the area in which I should be paying you the big percent or some percent different than the percent I might be paying you for the first \$ 2 million.'" Please understand that there is nothing in the Regulations that forecloses a player from having that discussion with his agent and/or the parties rearranging their relationship along the lines suggested by the rhetorical question.

As I see the world unfolding, I would expect those types of conversations are likely to begin taking place throughout sports. I believe that as life unfolds and as player salaries increase in leaps, it is almost inevitable that there will be many more diverse fee relationships between players and their agents. The marketplace surely will invite such arrangements.

E. Code of Conduct

In addition to the standard player-agent fee agreement and the certification process, the Regulations address two other subjects of note.

One, the Association put in place a laundry list of "no-no's"—prohibited conduct—in the format of a code of conduct.⁹ The officers sat down with the players in 1985 and asked them to describe every tale of horrible conduct on the part of agents that players could recall. Anytime that you start to put together a comprehensive list of no-no's, what you inevitably do not contemplate is all those other things that, if you had been aware of at the time, you would also have proscribed when you wrote your document. As a result, even though the Regulations reflect an effort to create a comprehensive code of conduct, we have by no means actually achieved that objective.

The code, much like the U.S. Constitution, is a living document that can be changed by the officers of the union as circumstances warrant

9. NATIONAL BASKETBALL ASSOCIATION COLLECTIVE BARGAINING AGREEMENT, APPENDIX H, § H-17, Sec. 3, Part B [PROHIBITED CONDUCT SUBJECT TO DISCIPLINE].

(e.g., when loopholes are identified). And, as expected, the reality is that the Regulations already have been amended on several occasions since their inception in 1986.

F. *Undivided Loyalty*

The basic premise of this regulatory scheme is that each certified agent owes a duty of *undivided* loyalty to each player that he/she represents. This is hardly a surprise, given the fact that agents serve as the Association's delegated representatives for certain specified purposes. They are part of the Association's overall program of representing NBA players.

Undivided loyalty means that the agent cannot get himself in a situation in which there is an actual, or even apparent, conflict between his interests and the interests of the player he represents. For that reason, the rules expressly state that: no player agent can represent the general manager, the coach of an NBA team, or any other NBA official responsible for negotiating player contracts with players.¹⁰ Agents who do this will have an actual conflict. To illustrate, an agent who represents both the coach and the player who is about to be disciplined by that coach is in a classic conflict of interest.

After the Association officers and I explained this provision in connection with initially promulgating the Regulations in 1986, some agents in the audience were not amused. A typical reaction went something as follows:

I'm a lawyer . . . no one is going to tell me who I can represent. I will represent anyone who retains me—a player, a coach, the general manager, the vice president of labor relations. Don't worry about any conflicts of interest. There is a long-standing practice in California (because we are much more laid back than people in Washington and New York) whereby we waive conflicts. Now, what do I mean when I say we waive conflicts? Well, [this gentleman continued] last month I represented an executive producer in the motion picture industry in a contract dispute with the director. And two weeks ago, in a dispute under the same standard form contract, I represented another director against a producer. No problem. I just went to each of the parties and I got everybody to waive the conflicts. I just don't understand why the Players Association is so hung up about this.

I felt compelled to reply:

10. *Id.*

Please understand that there are four parties in our situation—the player, the team, the agent, and the union. The Players Association will not waive any of these conflicts because we expect—indeed, we insist—that you are going to conduct your activities based on undivided loyalty to each player you represent.

G. Solicitation

The Regulations also contain some fairly comprehensive rules prohibiting the solicitation of clients, including prohibitions against an agent providing money or anything of value to the player, his parents or friends, or his college or high school coaches in an effort to induce those persons to persuade the player to use the services of that agent.

III. ENFORCEMENT

One important thought to remember is that you cannot enforce a regulatory scheme unless people come forward and tell you what is going on. In this endeavor, anytime the Association finds out directly or indirectly about a potential problem, we commence an immediate investigation, and every single time that we have found reasonable cause to believe the allegations concerning the possible misconduct, we initiated the formal complaint process under the Regulations. Our track record is excellent when we have the facts. In a nutshell, the key is meaningful enforcement of those Regulations.

The Association needs your help. If an agent knows of any improper conduct by any other agent that is tearing down this system or undermining what we are trying to do accomplish, I can assure you that we stand ready, willing, and able to do something about it as long as we get hard information about the misconduct.

Under our procedure, if we in fact conclude that we have such credible evidence, I have the high honor of serving in a prosecutorial function on behalf of the Committee. Any agent charged with misconduct and faced with the imposition of discipline is entitled to the full panoply of due process: written notice of the specific charges; the right to a full-scale evidentiary hearing before an impartial arbitrator; the right to call and cross-examine witnesses, with the burden of proof on the Committee to prove that the Regulations were violated. The decision of the impartial arbitrator is final and binding on all parties: the Association strongly believes that these disputes should be kept out of the public arena.

IV. PLAYER/AGENT DISPUTES OVER FEES

The other area in which we have a great interest is disputes between agents and players that arise under the standard fee agreement. The Players Association came to the following conclusion several years ago when this program began: it was going to be counterproductive to have agents suing players or players suing agents. Our friends in the NBA and Major League Baseball love those kinds of disputes when the "family" goes at each other. The reality of the situation is that when we have internecine warfare, this is not good for the Association in its relationship with the employer.

We thus put into place an exclusive dispute mechanism: if any agent claims that a player owes him money under the player-agent agreement, the agent must use the grievance-arbitration procedure we have established.¹¹ It is informal, expeditious, inexpensive, and final and binding on all of the parties. Moreover, if a player has a fee dispute under the agreement with the agent, the player must do the same thing as well.

Overall, this has worked incredibly well. The arbitrator that we have retained has been available on a regular basis. We get the matters disposed of quickly and quietly. It is a program that we believe should be utilized to an even greater extent than it has been, when and if the relationship between the parties deteriorates to the point that that kind of initiative is necessary.

V. THE CALIFORNIA CASE

What happened in the California case is quite simple.¹² An agent under the standard agent-player agreement had a claim against the player which, in fancy terms, went something as follows: "You agreed, Charlie, to pay me 3% of your compensation for having negotiated your contract. The year has come to an end and you have paid me nothing. I am, therefore, filing a grievance. I've tried every way informally to get you to pay that 3%." The player knew the following: yes, he had signed the standard agreement; yes, he had been compensated X number of dollars; yes, he was satisfied with the quality of his agent's representation; yes, he owed 3%; and yes, he had not made that payment. So the player had, what we would say in the trade, no defenses under the contract. However, the player and his lawyer, as we all tend to do in life,

11. *In the Matter of the Arbitration between All-Star Management (Grievant) and Donnie Moore (Respondent)*, Gr. No. 89-1, Award issued March 22, 1991 (Theodore St. Antoine, Arbitrator.)

12. *Id.* at Sec. 5 [ARBITRATION PROCEDURES].

were looking for some "defense" to explain away what was a flagrant disregard of his obligation to pay the person for services rendered.

This is the argument he developed. The agent had never registered under California law, and that is a felony. And so "that's my affirmative defense to a claim that I owe this person X number of dollars under a uniform player contract." Lo and behold, the arbitrator, the former Dean of Michigan Law School and highly respected labor lawyer, Ted St. Antoine, reviewed the whole situation and he came to the following Solomon-like wisdom: the player has to pay the agent what he owes him. Player, if you think that agent is committing a crime under California law, file a complaint and pursue California law.

VI. CONCLUSION

Each agent is told that as a condition of representing individual NBA players, pursuant to the collective bargaining agreement he/she must obtain "certified" status from the Players Association. Separate and apart from the registration and regulatory system that the Players Association administers, numerous states have enacted legislation which, among other things, requires agents to become certified and pay registration fees—sometimes quite expensive.

I will leave for discussion at another seminar the complex question whether those state laws are subject to preemption by virtue of the existing Players Association regulations and whether, instead, an act of Congress would be necessary to achieve that result.

APPENDIX A

AGENTS

SEC. H-1. NBPA STANDARD PLAYER AGENT CONTRACT

EXHIBIT C

STANDARD PLAYER AGENT CONTRACT

AGREEMENT made this ____ day of _____, 1986, by and between _____ (hereinafter the "Agent") and _____ (hereinafter the "Player").

WITNESSETH:

In consideration of the mutual promises hereinafter contained, the parties hereto promise and agree as follows:

1. *General Principles*

This agreement is entered into pursuant to and in accordance with the National Basketball Players Association's (hereinafter the "NBPA") Regulations Governing Player Agents (hereinafter "the Regulations") as promulgated effective March 7, 1986, and as may be amended thereafter from time to time. The Agent represents that in advance of executing this Agreement, he has read and familiarized himself with the Regulations and has applied for and been certified as a Player Agent by the NBPA.

This Agreement shall apply only with respect to the Agent's performance of the services described below.

2. *Contract Services*

Commencing on the date of this Agreement, the Agent agrees to represent the Player — to the extent requested by the Player — in conducting individual compensation negotiations for the performance of the Player's services as a professional basketball player with the Player's NBA club.

[If the Agent will not be "conducting individual compensation negotiations," then INSERT in lieu of those quoted words "in assisting, advising or counselling the Player in connection with individual compensation negotiations."] After a contract with the Player's club is executed the Agent agrees to continue to assist, advise and counsel the Player in enforcing his rights under that contract.

In performing these services the Agent is the NBPA's delegated representative and is acting in a fiduciary capacity on behalf of the Player.

In no event shall the Agent have the authority to bind or commit the Player in any manner without the express prior consent of the Player and in no event shall the Agent execute a player contract on behalf of the Player.

3. *Compensation for Services*

The Player shall pay fees to the Agent for services performed pursuant to this Agreement in accordance with the following provisions:

(1) If the Player receives only the minimum compensation under the NBA-NBPA collective bargaining agreement applicable for the playing season or seasons covered by the individual contract, the Agent shall receive a \$2,000 fee for each such season, unless any lesser amount has been agreed to by the parties and is noted in the space below. The parties hereto have agreed to the following lesser fee:

Player shall pay the Agent the sum of One Hundred Fifty Dollars (\$150.00) per hour for work performed with a maximum fee of \$10,000. Said payment to be paid within ten (10) days of Player's execution of Contract and after a bill thereafter detailing the services rendered.

(2) The Player received compensation in excess of the minimum "compensation" applicable under the NBA-NBPA collective bargaining agreement for one or more playing seasons, the Agent shall receive a fee of four percent (4%) of the "compensation" received by the Player for each such playing season, unless a lesser percent (%) or amount has been agreed to by the parties and is noted in the space below.

[The parties hereto have agreed to the following lesser fee: _____]

4. *Time for Receipt of Payment of Agent's Fee*

The Agent shall not be entitled to receive any fee for the performance of his services pursuant to this Agreement until the Player receives the compensation upon which the fee is based; within fifteen (15) days of the Player's receipt of each compensation payment (as defined in paragraph 3 above) during the term of this Agreement or any extension, renewal, or modification thereof, the Player shall make his fee payment to the Agent in an amount computed in accordance with paragraph 3 above.

The Player has the sole discretion to decide that it is in his best interest to make an advance fee payment(s) to his Agent, in which case the Agent is authorized to accept that advance payment; provided, however, that (a) the advance payment cannot exceed the fee prescribed in para-

graph 3 above, and (b) with respect to any advance payment relating to deferred compensation the fee shall be based upon the present value of that compensation.

In no case shall the Agent accept, directly or indirectly, payment of his fee from the Player's club. Further, the amount of the Agent's fee shall not be discussed with the NBA club with whom the Agent is negotiating on behalf of the Player, nor shall the Agent or Player secure an agreement from the NBA club respecting the amount of the Agent's fee.

5. *Expenses*

All expenses incurred by the Agent in the performance of the services hereunder shall be solely the Agent's responsibility and shall not be reimbursable by the Player, except that with respect to each player contract negotiated under this Agreement (irrespective of the number of playing seasons covered) the Player shall (i) reimburse the Agent for reasonable travel, living and communications expenses (e.g., telephone, postage) actually incurred by the Agent up to One Thousand Dollars (\$1,000.00); provided, however, if the expenses exceed One Thousand Dollars (\$1,000.00), the Player shall be obligated to reimburse the Agent for the amount of the excess only if he gave express prior consent to the Agent to incur those expenses, and the player shall (ii) pay or reimburse the Agent for the fees and expenses of any attorney, accountant, tax consultant or other professional engaged by the Agent at the Player's express request to render services to the Player, but only if such services are other than in connection with the negotiation and execution of such player contracts. The Player shall promptly pay all expenses, fees and costs for which he is obligated under this paragraph 5 upon receipt of an itemized statement therefor.

6. *Term*

The term of this Agreement shall begin on the date hereof and shall continue in effect until the expiration date of any player contract executed pursuant to this Agreement or any extension, renewal or modification of the Player's contract, whichever occurs later; provided, however, that either party may terminate this Agreement effective fifteen (15) days after written notice of termination is given to the other party; and, provided, further, that if the Agent's certification is suspended or revoked by the NBPA or the Agent is otherwise prohibited by the NBPA from performing the services he has agreed to perform herein, this Agreement automatically shall terminate effective as of the date of such suspension or termination.

Upon being terminated pursuant to either of the above provisions, the Agent shall be entitled to be compensated for the reasonable value of the services he had already performed based upon the fee schedule contained in paragraph 3 above.

7. Arbitration: Resolution of All Disputes Arising Out of This Agreement

Any and all disputes between the Player and the Agent involving the meaning, interpretation, application, or enforcement of this Agreement or the obligations of the parties under this Agreement shall be resolved exclusively through the Arbitration procedure set forth in Section 5 of the NBPA Regulations Governing Player Agents. As provided in Section 5F of those Regulations, if any arbitration hearing takes place, the NBPA may participate and present, by testimony or otherwise, any evidence relevant to the dispute. Because of the uniquely internal nature of any such dispute that may arise under this Agreement, the Player and the Agent agree that the arbitrator's award shall constitute a final and binding resolution of the dispute and neither party will seek judicial review on any ground.

8. Notices

All notices hereunder shall be effective if sent by certified mail, postage prepaid, return receipt requested, as follows:

If to the Agent:

If to the Player:

9. Entire Agreement

This Agreement sets forth the entire agreement between the parties. The Agreement cannot be amended or changed orally and any written amendments or changes shall be effective only to the extent that they are consistent with the Standard Form Agreement approved by the NBPA.

This Agreement replaces and supersedes any agreement between the parties entered into at any time or after March 7, 1986 providing fees for services performed as defined in Sections 2 and 3 above.

10. Governing Law

This Agreement shall be construed, interpreted and enforced according to the laws of the State of New York.

11. Filing

This contract should be signed in triplicate. One copy must be promptly delivered by the Agent to the NBPA Committee on Agent Regulation within five (5) days of its execution; one copy should be retained by the Agent.

EXAMINE THIS CONTRACT CAREFULLY BEFORE SIGNING IT

IN WITNESS WHEREOF, the parties hereto have hereunder signed their names as hereinafter set forth.

PLAYER AGENT

PLAYER

PARENT OR GUARDIAN (if Player
is under 21 years of Age

APPENDIX B

§ H-2. SAMPLE REPRESENTATION AGREEMENT BETWEEN NFLPA CONTRACT ADVISOR AND PLAYER.

EXHIBIT C

REPRESENTATION AGREEMENT BETWEEN NFLPA
MEMBER CONTRACT ADVISOR AND
PLAYER

This Agreement is made this ____ day of _____, 19____, by and between _____, hereinafter "Player," and _____, hereinafter "Member Contract Advisor," pursuant to and in accordance with the Code of Conduct for NFLPA Member Contract Advisors. In consideration of the promises made by each to the other, Player and Member Contract Advisor agree as follows:

1. *CONTRACT SERVICES* — Member Contract Advisor hereby warrants and represents that he has been duly approved as an NFLPA Member Contract Advisor pursuant to the Code of Conduct for NFLPA Member Contract Advisors. Player hereby retains Member Contract Advisor to:

- (A) Represent, advise, counsel, and assist Player in the negotiation, execution, and enforcement of his playing contract(s) in the National Football League.
- (B) (*Other Services*)

Such services are to be rendered by Member Contract Advisor pursuant to and in full compliance with the Code of Conduct for NFLPA Member Contract Advisors. Member Contract Advisor, serving in a fiduciary capacity, shall act in such manner as to protect the best interests of Player and assure effective representation of Player in individual contract negotiations with NFL clubs. The Member Contract Advisor shall be the exclusive representative for the purpose of negotiating player contracts for Player. However, the Member Contract Advisor shall not have the authority to bind or commit Player to enter into any contract without actual execution hereof by the Player.

2. *CONTRACT ADVISOR'S COMPENSATION* — If Member Contract Advisor succeeds in negotiating an NFL player contract or con-

tracts acceptable to Player and signed by Player during the term hereof, Member Contract Advisor shall be paid a fee as follows:

NOTE! In accordance with Section 3A(3) of the Code of Conduct for NFLPA Member Contract Advisors, such fee should not be due and payable to Member Contract Advisor unless and until layer receives the compensation provided for in the Player contract(s) negotiated by Member Contract Advisor.

3. *EXPENSES* — Player shall reimburse Member Contract Advisor for all reasonable expenses and necessary communication expenses (i.e., telephone and postage) actually incurred by Member Contract Advisor during the term hereof in the negotiation of Player's NFL contract(s). Player shall also reimburse Member Contract Advisor for all reasonable and necessary travel expenses actually incurred by Member Contract Advisor during the term hereof in the negotiation of Player's NFL contract(s), but only if such expenses and approximate amounts thereof are approved in advance by Player. Player shall promptly pay all such expenses upon receipt of an itemized, written statement therefore from Member Contract Advisor.

4. *DISPUTES* — Any disputes between Player and Member Contract Advisor involving the interpretation or application of this Agreement or obligations of the parties hereunder shall be resolved exclusively through the arbitration procedures set forth in Section 5 of the Code of Conduct for NFLPA Member Contract Advisors.

5. *DISCLAIMER OF LIABILITY* — Player and Member Contract Advisor, by virtue of entry into this Agreement, agree that they are not subject to the control or direction of any other person with respect to the timing, place, manner of fashion in which individual negotiations are to be conducted (except to the extent that Member Contract Advisor shall comply with the Code of Conduct) and that they will save and hold harmless the NFLPA, its officers, employees and representatives from any liability whatsoever with respect to their conduct and activities relating to or in connection with this Agreement.

6. *TERM* — The term of this Agreement shall begin on the date hereof and shall continue in effect until the expiration date of any player contract executed pursuant to this Agreement provided, however, that either party may terminate this Agreement effective fifteen (15) days after written notice of termination is given to the other party.

Notice shall be effective for purposes of this paragraph if sent by certified mail, postage prepaid, return receipt requested to the appropriate address contained in this Agreement.

If termination pursuant to the above provision occurs prior to the completion of negotiations for an NFL Player contract(s) acceptable to Player and signed by Player, Member Contract Advisor shall be entitled to compensation for the reasonable value of the services performed in the attempted negotiation of such contract(s). If termination pursuant to the above provision occurs after Player has signed an NFL player contract(s) negotiated by Member Contract Advisor, Member Contract Advisor shall be entitled to the fee prescribed by paragraph 2 above for negotiation of such contract(s).

In the event that Player is able to renegotiate any contract(s) previously negotiated by Member Contract Advisor prior to expiration thereof, Member Contract Advisor shall still be entitled to the fee he would have been paid pursuant to paragraph 2 above if such original contract(s) had not been renegotiated. If Member Contract Advisor represents Player in renegotiation of the original contract(s), the fee for such renegotiation shall be based solely upon the amount by which the compensation in the renegotiated contract(s) exceeds the compensation in the original contract(s), whether or not Member Contract Advisor negotiated the original contract(s).

7. *FILING* — This contract should be signed in triplicate. One (1) copy shall be submitted to the NFLPA by Member Contract Advisor within ten (10) days of execution; one (1) copy shall be promptly delivered by Member Contract Advisor to Player; and one (1) copy shall be retained by Member Contract Advisor.

8. *ENTIRE AGREEMENT: GOVERNING LAW* — This Agreement, along with the Code of Conduct for NFLPA Member Contract Advisors, governs the relationship between the parties hereto and cannot be modified or supplemented orally. This Agreement supersedes all prior agreements between the parties on the same subject and shall be interpreted in accordance with laws of the State of _____

_____.

EXAMINE THIS CONTRACT CAREFULLY BEFORE
SIGNING IT

IN WITNESS WHEREOF, the parties hereto have hereunder signed
their names as hereinafter set forth.

Player

Member Contract Advisor

College and Position

Name of Firm

Permanent Address

Firm Address

Phone Number

Phone Number

Signature of Player (Date)

Signature of Member (Date)
Contract Advisor

Signature of Parent or Guardian
if Player is under 21 years of age

APPENDIX C

§ H-17. NBPA REGULATIONS GOVERNING PLAYER AGENTS.

NBPA Regulations Governing Player Agents

FOREWORD

This booklet is designed to provide you with pertinent information concerning the new player agent regulation system developed by the National Basketball Players Association. The impetus for this system was the increasing recognition of NBA players of the need: (a) to insure that agents representing players (including rookies) in individual contract negotiations with NBA teams provide services of high quality at fee levels that are fair and equitable; and (2) to establish a program for assisting players and rookies in selecting individual agents. In response, the Association engaged in a comprehensive study of this subject area, which included an evaluation of the National Football Player's Association's experience to date under its agent regulation program and valuable input from agents representing basketball players. The culmination of this effort is the promulgation of the documents included in this booklet: the NBPA Regulations Governing Players Agents and the attached exhibits — Exhibit A (Application for Certification as an NBPA Player Agent), Exhibit B (National Basketball Players Association Certification for Player Agents), and Exhibit C (Standard Player Agent Contract).

The effective date of the Regulations (and the accompanying documents) is March 7, 1986. Persons who wish to represent NBA players in individual contract negotiations after that date must comply with the Regulations and become certified as an NBPA Player Agent *BEFORE* they are eligible to participate in such negotiations. Persons wishing to become certified should first review the entire contents of this booklet and then promptly file a complete Application (see Exhibit A to the Regulations) with the NBPA office at 15 Columbus Circle, New York, NY 10023.¹³

On behalf of my fellow officers and the Player Representative of each club, I would like to take this opportunity to thank you in advance for your wholehearted cooperation in this undertaking. I am confident

13. To receive copies of Exhibits or other information on Regulations Governing Player Agents, contact the Committee on Regulations, NBPA Office, 15 Columbus Circle, New York, NY 10023.

that you share the Association's commitment to achieving the salutary objectives of this program.

JUNIOR BRIDGEMEN, *President*
National Basketball Association

INTRODUCTION

The Officers and Player Representatives of the National Basketball Players Association ("NBPA") hereby adopt the following Regulations governing player agents who provide representation services to players (including rookies) by conducting individual contract negotiations and/or assisting in or advising with respect to such negotiations with the employer/clubs of the National Basketball Association ("NBA"). These Regulations are adopted pursuant to the authority and duty conferred upon the NBPA as the exclusive bargaining representative of NBA players pursuant to Section 9 (a) of the National Labor Relations Act, which provides in pertinent part:

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the *exclusive* representatives of *all* the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hour of employment, or other conditions of employment.

In Article XXIII ("Recognition" clause) of the April, 1983 Collective Bargaining Agreement between the NBA and the Players Association, as amended effective February 1986, the parties to that Agreement have agreed as follows:

The NBA recognizes the Players Association as the exclusive collective bargaining representative of persons who are employed by NBA members as professional basketball players (and/or who become so employed at any time during the term of this Agreement); and the Players Association warrants that it is duly empowered to enter into this Agreement for and on behalf of such persons. The NBA and the Players Association agree that notwithstanding the foregoing, the Players Association has delegated its authority to individual employees and prospective employees (including persons not previously employed as professional basketball players by NBA members), but only when they are acting on their own behalf or through agents certified by the Players Association, to bargain with clubs and to reach agreement upon the provisions of Player Contracts. The provisions

of any such Player Contracts will be operative only as to the extent that they are permitted by this Collective Bargaining Agreement.

Commencing March 7, 1986, the Players Association shall submit to the NBA and to each of its clubs a list of certified agents; that list shall be updated by the Players Association on a continuing basis. The NBA, in carrying out its reviewing authority with respect to individual Player Contracts, agrees to implement the following procedure:

Effective March 7, 1986, the NBA shall issue a directive to each of its clubs stating that: (a) the club shall not enter into any negotiations for Player Contracts unless (i) the player is represented by an agent whose name appears on the list of certified agents furnished such club by the Players Association, or (ii) the player is acting on his own behalf; and (b) each club, when submitting individual Player Contracts for approval by the NBA, shall provide the name of the player agent who negotiated the contract or state that the player acted on his own behalf in the negotiations.

If, notwithstanding the foregoing, negotiations involving any team and a non-certified player agent take place and a contract is executed, that contract shall be deemed void.

SECTION 1: SCOPE OF REGULATION

A. No person (other than a player) shall be permitted to conduct individual contract negotiations on behalf of a player (including a rookie)¹⁴ and/or assist in or advise with respect to such negotiations with NBA clubs after the effective date of these Regulations unless he¹⁵ is (1) currently certified as a player agent pursuant to these Regulations, and (2) signs the standard form fee agreement with the player (See Section 4).

B. The activities or conduct of that are governed by these Regulations include:

The providing of advice, counsel, information or assistance to players (including rookies)¹⁶ with respect to negotiating their individual contracts with clubs and/or thereafter enforcing those contracts; the conduct of compensation negotiations with the clubs on behalf of

14. Throughout these Regulations the term "rookie" shall mean any player who has not played in the NBA in a season prior to entering his first contract with an NBA club.

15. Throughout these Regulations references to "he" or "his" shall apply equally to she/her.

16. For purposes of these Regulations all references to "players" also shall apply to "rookies," unless expressly stated otherwise.

individual players; and any other activity or conduct which directly bears upon the player agent's integrity, competence or ability to properly represent individual NBA players and the NBPA in individual contract negotiations.

C. All provisions of these Regulations, including this one, may be amended by the Officers and Player Representatives of the NBPA periodically as they deem appropriate.

SECTION 2: REQUIREMENTS FOR CERTIFICATION

Effective March 7, 1986, any person who wishes to perform the functions of a player agent described in § 1.A. above must be certified by the NBPA, pursuant to the following procedure:

To be eligible for certification, the applicant must have received a degree from an accredited four year college/university. The Committee shall have the authority to determine whether relevant negotiating experience can substitute for any year(s) of education.

Within thirty (30) days of the filing of an Application for Certification, the Committee shall determine whether certification shall be granted to the applicant; provided, however, that this period may be extended for an ADDITIONAL NINETY (90) DAYS upon written notification to the applicant before the expiration of the initial thirty (30) day period. Upon receipt of an agent's Application for Certification, the Committee may, in the context of reviewing the Application, request further written materials from the applicant and/or conduct whatever further investigation it deems appropriate, including an informal conference with the applicant.

A. Applying for Certification

The person must file a verified Application for Certification in the form attached as Exhibit A. (The form is to be submitted by prepaid certified mail to the NBPA Committee on Agent Regulation — "the Committee" — designated to receive and act upon such applications.) The Committee shall consist of the NBPA's five officers assisted by outside legal counsel, George C. Cohen, Bredhoff & Kaiser, Washington, D.C. The Committee will not entertain any Application filed in the name of any corporation, company, partnership, or any other business entity; only individual person's are eligible for certification. There is no limit on the number of individual's in any one corporation or other business entity who are eligible for certification.

B. Interim Certification

During the period that an Application for Certification is pending the Committee may authorize any agent who has filed an application to provide representational services to one or more players engaged in individual contract negotiations with clubs if the Committee deems such authorization to be in the player's best interests. However, such interim action shall be specifically limited to the terms contained in the Committee's authorization and, in any event, shall not constitute a waiver of the Committee's right thereafter to deny certification under these Regulations.

C. Grounds for Denial Of Certification

Given the important function that player agents perform for the individual players they represent, it is the NBPA's intention in promulgating these Regulations to ensure that only those persons who can reasonably be expected to faithfully carry out those responsibilities will be entitled to certification. Consistent with this objective, the Committee is authorized to deny certification to any applicant:

Upon the Committee determining that the applicant has made false or misleading statements of a material nature in the Application;

Upon the Committee determining that the applicant has ever misappropriated funds, or engaged in other specific acts such as embezzlement, theft, or fraud, which would render him unfit to serve in a fiduciary capacity on behalf of players;

Upon the Committee determining that the applicant has engaged in any other conduct that significantly impacts adversely on his credibility, integrity or competence to serve in a fiduciary capacity on behalf of players;

Upon the Committee determining that the applicant is willing to swear or affirm that he will comply with these Regulations and any amendments thereto and that he will abide by the fee structure contained in the standard form player-agent contract incorporated into these Regulations.

D. Appeal from Denial of Certification

In the event an application for certification is denied pursuant to this section, the applicant shall be notified in writing (by prepaid certified mail) of the reasons for the denial. The applicant may appeal such action to the Arbitrator appointed pursuant to Section 5 of the Regulations; provided that such appeal must be initiated by filing by preprint

certified mail a written notice of appeal upon the Committee and to the Arbitrator within 30 days of receipt of the notice denying his Application for Certification. The appeal shall be processed and resolved in accordance with the arbitration procedures set forth in Section 5, paragraphs E through H of these Regulations. The appeal to arbitration shall constitute the exclusive method of challenging any denial of certification.

E. Suspension or Revocation of Certification

At any time subsequent to granting a certification to a player agent the Committee can, based upon information brought to its attention or acting on its own initiative, propose suspending or revoking such certification on any ground that would have provided a basis for denying certification in the first place (see Section 2C) and/or for conduct prohibited in Section 3 B(a)-(p) of these Regulations.¹⁷ Any such proposed suspension or revocation must be sent by prepaid certified mail to the player agent's office or residence. The agent may appeal any such proposed suspension or revocation by complying with the procedure for invoking arbitration as set forth in Section 6 at paragraphs B through G. The appeal to arbitration shall constitute the exclusive method of challenging any proposed suspension or revocation of certification.

F. Form of Certification

Upon approving an Application for Certification as a player agent, the Committee shall provide the applicant with a written certification in the form attached hereto as Exhibit B. The agent will thereupon be authorized to serve as a player agent in conducting individual player negotiations with NBA clubs and/or assisting in or advising with respect to such negotiations.

In granting certification the Committee shall not be deemed to have endorsed any particular agent; and, in no event, shall the grant of certification be deemed to impose liability upon the NBPA or its Committee on Agent Regulation for any acts or omissions of the player agent in providing representation to any player.

17. In the extraordinary circumstance where the Committee's investigation discloses that the agent's conduct is of such a serious nature as to justify immediately invalidating his certification, the Committee is authorized to take such action. In such event, the agent may appeal that action in the same manner as he could appeal from a proposed suspension or termination set forth in Section 6.

SECTION 3: STANDARDS OF CONDUCT FOR PLAYER AGENTS IN PROVIDING SERVICES GOVERNED BY THESE REGULATIONS

As described above, the objective of the NBPA in issuing these Regulations is the enable player to make informed selection of agents and to ensure that the palyer agents shall provide to the individual palyers whom they repreosent in contract negotialtions with NBA clubs effective representation at fair and reasonable rates that are uniformly applicable.

A. *General Requirements*

Consistent with this objective, a player agent shall be required to:

- (1) Disclose on his Application and thereafter upon request of the Committee all information relevant to his or her qualifications to serve as a player agent, including, but not limited to, background, special training, experience in negotialtions, past representation of professional atherletes, and relevant business associations or memberships in professional organizations;
- (2) Pay the annual agent fees no later than the first of July every year for the upcoming season. Any new agnet certified after the first of January will be required to pay one-half of the dues for that particular season. All agents must attend an NPBA seminar each year except when the Committee determines not to require that the attnedance of its experienced agents at tany seminar.
- (3) Comply with the maximum fee schedule and all other provisions of these Regulations and any amendments thereto;
- (4) Advise a player and report to the NBPA any known violations by an NBA club of a player's individual contract; and
- (5) Provide the NPBA a copy of any player agent contract entered into pursuant to these regulations within five days of the date of execution of such contract.

B. *Prohibited Conduct Subject to Dicipline*

To futher efectuate the objectives of these Regulations player agents are prohibited from:

- (a) Representing any player in individual contrat negotiations with any club unless the agnet (i) has a current certification, and (ii) has signed a standard player agnet fee agreement with each such player;

- (b) Providing or offering a monetary inducement (other than a fee less than the maximum fee contained in the standard fee agreement established by these Regulations) to any player (including a rookie) or college athlete to induce or encourage that person to utilize his services;
- (c) Providing or offering money or any other thing of value to a member of a player's family or any other person for the purpose of inducing or encouraging the player to utilize his services or for the purpose of inducing or encouraging that person to recommend that a player (including a rookie) or college athlete utilize the services of the agent;
- (e) Holding or seeking to hold, directly or indirectly, a financial interest in any professional basketball team or in any other business venture that would create an actual conflict of interest or that appearance of a conflict of interest between the individual player and his agent;
- (f) Representing the General Manager or coach of any NBA team (or any other management representative who participates in the team's deliberations or decision concerning what compensation is to be offered individual players) in matters pertaining to his employment by or association with any NBA team; or any other matters in which he has any financial stake;
- (g) Engaging in any other activity which creates an actual or potential conflict of interest with the effective representation of NBA players; provided that the representation of two or more players on any one club shall not itself be deemed to be prohibited by this provision;
- (h) Soliciting or accepting money or anything of value from any NBA club in circumstances where to do so would create a conflict or an apparent conflict with the interests of any player he represents
- (i) Negotiating and/or agreeing to any provision in a player contract which deprives that player of any benefit contained in any collectively bargained agreement between the NBA and the Association;
- (j) Negotiating and/or agreeing to any provision in a player contract which directly or indirectly violates any stated policies, rules, or requirements established by the NBPA;
- (k) Concealing material facts from any player whom the agent is representing which relate to the subject of the individual's contract negotiations;

- (l) Failing to advise the player and to report to the NBPA any known violations by an NBA club of a player's individual contract;
- (m) Engaging in unlawful conduct and/or involving dishonesty, fraud, deceit, misrepresentation, or other conduct which reflects adversely on his or her fitness as a Player Agent or jeopardizes the effective representation of NBA players;
- (n) Breaching the provisions of the maximum fee schedule agreement that the agent is required to enter into pursuant to these Regulations; provided, however, that grounds for discipline shall not exist when, in the circumstances of a particular case, there was a reasonable basis for doubting whether the agent's conduct was in breach of contract;
- (o) Indirectly circumventing the fee limits of the standard form maximum fee agreement by knowingly and intentionally increasing the fees that he had charged or otherwise would have charged the player for other services, including but not limited to, financial consultation, advice concerning money management, and/or negotiating endorsement agreements on behalf of players;
- (p) Violating any of the requirements of Section 3 A(1)-(5), above;
- (q) Violating any of the requirements of Section 3 A(1-11) or Section 4(A).

A player agent who engages in any prohibited conduct defined above shall be subject to discipline in accordance with the procedures of Section 6 of these Regulations.

C. *Miscellaneous*

In addition to refraining from the foregoing prohibited conduct, the NBPA further expects that every agent will carry out the representational services covered by these Regulations with the highest degree of professional competence and integrity. In this connection, the NBPA likewise expects that to achieve and maintain high quality performance every player agent, at a minimum, will take the necessary steps to become knowledgeable about the Association's structure and the economics of the industry, applicable collective bargaining agreements, basic negotiating techniques, and all areas of the law relevant to his professional duties. If, after these Regulations become effective, the Committee determines that there is a need to impose additional requirements with respect to the quality of agent performance, the Committee reserves the right to amend these Regulations accordingly.

SECTION 4: AGREEMENT BETWEEN PLAYER AGENTS AND PLAYERS; MAXIMUM FEES

A. *Standard Form*

To qualify to perform the services of a player agent under these Regulations, a person must satisfy two prerequisites: (1) He/She must be certified; and (2) he/she must have signed an NBPA standard form written agreement with player. *Retyped contracts will not be accepted.*

A copy of the executed agreement shall be sent by prepaid certified mail by the player agent to the NBPA Committee within five (5) days of execution.

Once the agent satisfies the two prerequisites stated above, he shall be authorized to function as a player agent under these Regulations.

Any agreement between a player agent and a player entered into after the effective date of these Regulations which is not in writing or which does not meet the requirements of these Regulations shall be of no force and effect, and no player agent shall have the right to assert any claim against the player for compensation on the basis of any such purported contract.

Any agreement entered into after the effective date of these Regulations shall include a provision whereby either party may terminate that agreement upon fifteen (15) days within notice to the other party.

B. *Player Agent's Compensation*

The maximum fees which the player agent may charge or collect shall be as follows:

- (1) If the player agent negotiates an agreement whereby the player receives only the minimum compensation under the NBA-NBPA collective bargaining agreement applicable for the playing season or seasons covered by the individual contract, the agent shall receive a \$2,000 fee for each such season;
- (2) If the player agent negotiates a contract whereby the compensation the individual player agent receives is in excess of the minimum compensation applicable under the NBA-NBPA collective bargaining agreement for one or more playing seasons, the agent shall receive a fee of four percent (4%) of the compensation negotiated for the player for each playing season, unless the player and his agent have agreed to a lesser percentage.

In computing the maximum allowable fee, the term "compensation" shall include base salary, signing bonus and any performance bonus actu-

ally received by the player;¹⁸ no other benefits negotiated on behalf of the individual player shall be taken into consideration-including, but not limited to, the value of a personal loan, and insurance policy, an automobile, or a residence, etc.¹⁹ Any portion of a fee based on player compensation that is unascertainable at the time the player contract is negotiated (e.g., a performance bonus) shall not be collected by the agent until the player has received such compensation.

It is the intent of these Regulations that the player agent shall not be entitled to receive any fee for his services until the player receives the compensation upon which the fee is based. Consistent with this objective a player agent is prohibited from including any provision in a fee agreement with a player whereby the player becomes obligated to make any fee payment to the agent in advance of the player's receipt of the compensation upon which the fee is based. However, in promulgating these Regulations the NBPA recognizes that in certain circumstances a player may decide that it is in his best interest to pay his agent's fee in advance to the receipt of any compensation whether it be his salary for the current playing season or deferred compensation.²⁰ Accordingly, it is the intent of these Regulations that an option be accorded to the PLAYER to make advance fee payments to his agent if the player chooses to do so. In any such situation the agent is authorized to accept the advance payment.

C. *Effective Date and Existing Agreements*

Effective March 7, 1986, any player agent who *thereafter* wishes to provide representational services to any player in connection with that player's contract negotiations with any NBA team commencing with the 1986-87 playing season must comply with the maximum fee schedule requirements set forth above.

18. For example, if the individual player contract provides for \$70,000 in compensation for playing season 1985-86 (the minimum under the NBA-NBPA collective bargaining agreement), \$100,000 in compensation for playing season 1986-87, and \$120,000 in compensation for playing season 1987-88 (plus a performance bonus that yields \$25,000 by the completion of the 1987-88 playing season), the maximum fee to which the agent is entitled shall be \$2,000 for the 1985-86; \$4,000 for 1986-87; and \$5,800 for 1987-88, provided that \$1,000 (i.e., 4% of the performance bonus actually earned) of the \$5,800 is not payable to the agent until the bonus has been received by the player.

19. The amount of the agent's fee shall not be affected by the fact that the player receives a guaranteed contract from an NBA club.

20. With respect to deferred compensation, the agent shall only be entitled to a fee based on the present value of that compensation.

If, prior to March 6, 1986, the agent has entered into an agreement with any player providing a fee schedule for the agent's performance of services relating to contract negotiations AND as a result of the agent's services the player and an NBA team have executed a contract on or before March 6, 1986 which covers playing season 1986-87 or thereafter, that fee schedule shall remain in full force and effect for the duration of that agreement; provided, however, that the player shall have the right to terminate the agent's future services upon written notice in accordance with the standard agreement attached as Exhibit C.

If a player agent and a player entered into an agreement prior to March 6, 1986, whereby the player agreed to utilize the services of that agent relating to contract negotiations for one or more playing seasons at a specified fee but no written contract between the player and an NBA team has been executed as of March 7, 1986, (the effective date of these Regulations) the player shall have the right to terminate the agent's future services upon written notice in accordance the standard agreement attached as Exhibit C; provided, however, if the player exercises his option to terminate and thereafter enters into a compensation agreement with an NBA club, the player shall be obligated to compensate his former agent for the reasonable value of his services computed on the basis of the fee schedule set forth in the Regulations. To the extent the latter fee schedule provides the former agent a lesser fee than he might have received under his agreement with the player, that agreement shall be deemed to be superseded by and modified in accordance with these Regulations.

Any dispute covering the proper application of these Regulations to any existing agreement between a player and his agent shall be subject to the arbitration procedure set forth in Section 5 herein which shall constitute the exclusive method for the resolution thereof.

Any provision for fees in any agreement between an agent and a player in effect as of March 6, 1986, or entered into anytime thereafter which relates to any service OTHER than negotiating player contracts or assisting in or advising with respect to such negotiations (e.g., financial consulting or money management services), shall be considered severable from the fee provisions of this section.

SECTION 5: ARBITRATION PROCEDURES:

INTRODUCTION

In establishing this new system for regulating agents it is the intention of the NBPA that the arbitration process shall be the exclusive

method for resolving any and all disputes that may arise from the interpretation, application, or enforcement of these Regulations and the resulting fee agreements between player agents and individual players. This will insure that those disputes — which involve essentially internal matters concerning the relationship between individual players, the NBPA in its capacity as their exclusive bargaining representative, and player agents performing certain delegated representative functions relating particularly to individual player compensation negotiations — will be handled and resolved expeditiously by the decisionmaker established herein, without need to resort to costly and time-consuming formal adjudication.

The provisions of this section shall apply with respect to two types of disputes that may arise under these Regulations:

(1) When the Committee on Agent Regulation denies an Application for Certification and the applicant wishes to appeal from that action; and

(2) when a dispute arises with respect to the meaning, interpretation, or enforcement of a fee agreement (described in Section 4) entered into between a player and his agent.

With respect to any dispute that may arise pursuant to paragraph (1) above, the procedure for filing an appeal and invoking arbitration is set forth in these Regulations at Section 2, par. D. Once arbitration has been invoked, the procedure set forth in subparagraphs F-H, below, shall apply:

A. *Filing*

The arbitration of a dispute under subparagraph (2) above shall be initiated by the filing of a written grievance either by the player or his agent.

Any such grievance must be filed within thirty (30) days from the date of the occurrence of the event upon which the grievance is based or within thirty (30) days from the date on which the facts of the matter became known or reasonably should have become known to the grievant or within thirty (30) days from the effective date of these Regulations, whichever is later. A player need not be under contract to an NBA club at the time a grievance relating him hereunder arises or at the time such grievance is initiated or processed.

A player may initiate a grievance against a player agent if he (i) sends the written grievance by prepaid certified mail to the player agent's business address or by personal delivery at such address, AND (ii) sends a copy to the NBPA; a player agent may initiate a grievance

against a player if he (i) sends a written grievance by prepaid certified mail to the player or by personal delivery of the grievance to the player, AND (ii) furnishes a copy thereof to the NBPA. The written grievance shall set forth in plain and understandable terms the facts and circumstances giving rise to the grievance, the provision(s) of the agreement between the player and his agent alleged to have been violated, and the relief sought.

B. Answer

The party against whom a grievance has been filed ("the respondent") shall answer the grievance in writing by certified mail or personal delivery within thirty (30) calendar days of receipt of the grievance. The Answer shall admit or deny the facts alleged in the grievance and shall also briefly set forth the reasons why the respondent believes the grievance should be denied. The respondent must also provide a copy of his Answer to the NBPA at the same time. Once the Answer is filed the NBPA shall promptly provide the Arbitrator with copies of the grievance and Answer and all other relevant documents. If an Answer is not filed within the time limit, the Arbitrator, in his discretion, may issue an order where appropriate, granting the grievance and the requested relief upon satisfactory proof of the claim.

C. Arbitrator

The NBPA has selected a skilled and experienced person to serve as the outside impartial Arbitrator for all cases arising hereunder.

D. Hearing

After receipt of a Notice of Appeal, the arbitrator shall schedule a hearing on the dispute in New York City, except that the parties may mutually agree on Chicago or Los Angeles. At such a hearing, the parties-i.e., the player and his agent²¹-may appear in person or by counsel or other representative. The parties to the dispute and the NBPA, as well, will have the right to present, by testimony or otherwise, any evidence relevant to the grievance. Within thirty (30) days after the close of the hearing, the arbitrator shall issue a written award. That award shall constitute full, final and complete resolution of the grievance, and will be binding upon the player and the player agent involved. Given the uniquely internal nature of any such dispute that may be presented to

21. In an appeal from the denial of certification the parties will be the player agent and the Committee on Agent Regulation.

the arbitrator, it is the NBPA's intention that an award issued by the arbitrator not be subject to judicial review on any grounds.

E. *Costs*

Each party will bear the costs of its own witnesses and counsel. Costs of arbitration, including fees and expenses of the arbitrator, will be borne equally between the parties to the grievance; provided, however, that the arbitrator may assess some or all of a party's costs to an opposing party if he deems a party's conduct to be frivolous. If the arbitrator grants a money award, it shall be paid within ten (10) days.

F. *Time Limits*

The time limits of this Section may be extended by written agreement of the parties.

SECTION 6: OVERSIGHT AND COMPLIANCE PROCEDURE

A. *Disciplinary Committee*

In addition to performing the function of reviewing and acting upon all Applications for Certification, the Committee on Agent Regulation also shall serve as the Disciplinary Committee. In the latter capacity, it shall have the authority and responsibility of initiating and then presenting disciplinary cases against player agents who engage in prohibited conduct as described in Section 3. B(a)-(p), above. In carrying out this function the Committee also will have the assistance of its outside legal counsel.

B. *Complaint; Filing*

Disciplinary proceedings against any certified player agent shall be initiated by the filing of a written complaint against the agent by the Disciplinary Committee when it has reasonable cause to believe that the agent has engaged in or is engaging in prohibited conduct. The Disciplinary Committee may act on the basis of its own knowledge or on the basis of information obtained from any person having knowledge of the action or conduct of the player agent in question, including, but not limited to, players, NBPA staff, or other persons associated with professional or intercollegiate basketball. The Complaint shall be sent to the player agent by prepaid certified mail addressed to the agent's business address, or may be hand-delivered to the agent personally at his business address. The Complaint shall set forth the specific action or conduct giv-

ing rise to the Complaint and cite the Regulation(s) alleged to have been violated.

A Complaint must be filed by the Disciplinary Committee within six month from the date of the occurrence which gave rise to the Complaint, or within six months from the date on which the information sufficient to create reasonable cause became known or reasonably should have become known to the Disciplinary Committee, whichever is later.

C. *Answer*

The player agent against whom the Complaint has been filed shall have twenty (20) days in which to file a written Answer to the Complaint. Such Answer shall be sent by prepaid certified mail to the Disciplinary Committee at the offices of the NBPA. The Answer must admit or deny the facts alleged in the Complaint, and shall also assert any facts or arguments which the player agent wishes to state in his defense.

D. *Proposed Disciplinary Action*

Within thirty (30) days after receipt of the Answer, the Disciplinary Committee shall inform the player agent in writing by prepaid certified mail of the nature of the discipline, if any, which the Committee proposes²² to impose, which discipline may include one or more of the following:

- (1) Issuance by the Committee of an informal order of reprimand to be retained in the player agent's file at the Committee's offices;
- (2) Issuance of a formal letter of reprimand which may be made public;
- (3) Suspending a player agent's certified status for a specified period of time during which he is prohibited from representing the NBPA in conducting individual contract negotiations for any NBA player or assisting in or advising with respect to such negotiations; and
- (4) Revocation of the player agent's Certification hereunder.

E. *Appeal*

The player agent against whom a Complaint has been filed under this Section may appeal the Disciplinary Committee's proposed disciplinary action to the outside arbitrator by filing a written Notice of Appeal with

22. If the Committee already has invalidated the agent's certification, the same appeal procedure as contained herein shall apply.

the arbitrator (who shall be the same person used for resolution of disputes under Section 5 of these Regulations) within twenty (20) days following his receipt of notification of the proposed disciplinary action. Within thirty (30) days of receipt of the Notice of Appeal, the arbitrator shall set a time and place for a hearing on the appeal, which hearing shall take place in New York City, unless the parties mutually agree upon Chicago or Los Angeles.

The failure of a player agent to file a timely appeal shall be deemed to constitute an acceptance of the proposed discipline which shall then be promptly administered.

F. Conduct of Hearing

At the hearing of any appeal, the Committee shall have the burden of proving the allegations of its Complaint. The Committee and the player agent shall be afforded a full opportunity to present, through testimony or otherwise, its evidence pertaining to the action or conduct of the player agent alleged to be prohibited by the Regulations. The hearing shall be conducted in accordance with the Voluntary Labor Arbitration Rules of the American Arbitration Association. Each of the parties may appear with counsel or a representative of its choosing. The hearing will be transcribed.

At the close of the hearing or within thirty (30) days thereafter, the Arbitrator shall issue a decision on the appeal, which decision shall either affirm, vacate or modify the proposed action of the Disciplinary Committee. The arbitrator shall decide two issues: first, whether the agent has engaged in or is engaging in prohibited conduct as alleged by the Committee; and, second, if so, whether the discipline proposed by the Committee is reasonable in the circumstances of the case under review. If he decides both questions affirmatively, he shall issue an order affirming the proposed discipline; if he decides that the player agent has not engaged in any prohibited conduct, he shall issue an order vacating the proposed discipline and dismissing the case; and, if he decides the first question affirmatively but concludes that the proposed penalty is unreasonable, he shall issue an order modifying the penalty (provided, however, that no modification can result in the imposition of more severe discipline than proposed by the Committee).

The decision of the arbitrator will constitute full, final and complete disposition of the dispute, and will be binding upon the player agent involved and that NBPA. Given the uniquely internal nature of the subject matter of the disputes that may arise under this Section, it is the

NBPA's intention that the arbitrator's decision not be subject to judicial review on any grounds.

G. Time Limits; Costs

Each of the time limits set forth in this Section may be extended by mutual written agreement of the parties involved. The fees and expenses of the arbitrator will be paid by the NBPA. Each party will bear the costs of its own witnesses and counsel, etc.

SECTION 7: EFFECTIVE DATE: AMENDMENT

These Regulations shall become effective on March 7, 1986.

These Regulations may be amended periodically by the action of the Officers of the NBPA and the Player Representatives.

EXHIBIT A

APPLICATION FOR CERTIFICATION AS AN NBPA
PLAYER AGENT

I, _____, SSN _____
(Full Name)

(Business address and affiliation, if any)

(Zip Code)

(Telephone)

hereby apply for certification as an NBPA Player Agent pursuant to the NBPA Regulations Governing Player Agents as adopted effective March 7, 1986.

In advance of filling out and signing this application, I have read the NBPA Regulations Governing Player Agents and the attached three exhibits, a copy of which has been provided to me along with this application form.

In submitting this application, I voluntarily agree to comply with and be bound by those Regulations (including but not limited to the maximum fee schedule) which are incorporated herein by reference and any subsequent amendments that may be promulgated thereto.

I understand that making any false or misleading statement of a material nature in answering any question on this Application can result in denial or revocation of certification.

I understand that all the information contained in this Application is designed to benefit the NBPA and its members both present and future, by helping to insure qualified representation, and I unconditionally agree that the information contained herein can be maintained and used by the NBPA Committee on Agent Regulation in performing its function and can be provided by the Committee to individual NBA players, including rookies.

I understand and agree that only persons who have been certified by the Committee will be permitted to represent NBA players, including rookies, in performing services described in the Regulation (Section 1.A).

I understand and agree that a precondition to being granted certification is that I swear or affirm that every agreement for the performance of an Agent's services (as defined in paragraph 2 herein) which I enter into with a Player on or after March 7, 1986 (including and modification, extension or renewal of an agreement that was in effect prior to March 7, 1986) shall conform to the Standard Player Agent Contract set forth in Exhibit C of these Regulations and incorporated herein by reference.

I agree that if I am granted certification I will save and hold harmless the NBPA, its Officers, employees and representatives (including, but not limited to, the Committee on Agent Regulation and the individual members thereof) from any liability whatsoever resulting from my acts of commission or omission in providing services to any Player in connection with his individual compensation negotiations with an NBA club or in connection with any subsequent enforcement of such individual contract.

I agree that if I am denied certification or if subsequent to obtaining certification it is revoked or suspended pursuant to the Regulations, the exclusive method for appealing from any such action is through the arbitration procedure set forth in the Regulations.

In consideration for being accorded the opportunity to obtain certification status, I further agree that this application and the certification, if one is issued to me, and the NBPA Regulations Governing Player Agents shall constitute a contract between the NBPA and myself.

ALL QUESTIONS MUST BE ANSWERED COMPLETELY

1. *General*

- a. Have you ever been known by any other surname?
(yes or no) _____ If so, state all names used and when used:

If a married woman, please give maiden name:

b. Date of birth ___/___/___

c. Birthplace _____

d. Name of spouse: _____

e. Spouse's Employer and address: _____

f. Does spouse have any business relationship with the National Basketball Association or its clubs? If so, specify in detail:

2. *Education*

a. Law school or other graduate school attended:

(School) (City & State)

Dates of Attendance: From _____ to _____
(month & year) (month & year)

Degree _____ Date awarded _____

b. Colleges or Universities attended: _____

<small>(name)</small>		
<small>(city & state)</small>	<small>(dates attended)</small>	<small>(degree)</small>

<small>(name)</small>		
<small>(city & state)</small>	<small>(dates attended)</small>	<small>(degree)</small>

<small>(name)</small>		
<small>(city & state)</small>	<small>(dates attended)</small>	<small>(degree)</small>

c. High School attended:

(name) (city & state) (date degree received)

d. If you have not received a degree from an accredited four year college/university, list below the negotiating experience you wish the Committee to consider in lieu of any year(s) of education: _____

3. Current Occupation/Employment

a. I am currently: (check one)

_____ employed by:

_____(name of employer) (address) _____()_____
(telephone)

(dates of employment)

(nature of employment)

self-employed

b. If self-employed, please state nature and location of the business: _____

c. Please list below the names of employers, addresses, positions held, and dates of all employment you have held for the past ten years: _____

4. *Lawyers and Law Graduates*

a. Have you been admitted to the Bar in any jurisdiction?

_____ (yes or no)

If yes, please list jurisdictions and dates of admission:

_____ (jurisdiction) _____ (date of admission)

_____ (jurisdiction) _____ (date of admission)

_____ (jurisdiction) _____ (date of admission)

b. Do you have any applications for Bar admission currently pending? _____

(yes or no)

If yes, please state where you have applied and the status of that application: _____

c. Have you ever been disbarred, suspended, reprimanded, censured or otherwise disciplined or disqualified as an attorney, as a member of any other profession, or as a holder of any public office? _____

(yes or no)

If yes, please describe each such action, the dates of occurrence, and the name and address of the authority imposing the action in question: _____

d. Are any charges or complaints currently pending against you regarding your conduct as an attorney, as a member of any profession, or as a holder of public office? _____

(yes or no)

If yes, please indicate the nature of the charge or complaint and the name and address of the authority considering it: _____

-
-
- e. Has your right to practice before any governmental office, bureau, agency, commission, etc., ever been disqualified, suspended, withdrawn, denied, or terminated? _____

(yes or no)

If yes, please explain fully: _____

5. *Other Applicants*

- a. Are you a member of any business or professional organizations which directly relate to your occupation or profession? _____ If so, please list:

(yes or no)

- b. Please list any occupational or professional licenses or other similar credentials (i.e., Certified Public Accountant, Chartered Life Underwriter, Registered Investment Advisor, etc.) you have obtained other than college or graduate school degrees, including dates obtained: _____

- c. Have you ever been denied an occupational or professional license, franchise or other similar credentials for which you applied? _____

(yes or no)

If yes, please explain fully: _____

d. Do you have currently pending any application for an occupational or professional license, franchise or other similar credentials? _____

(yes or no)

If yes, please describe and indicate the status of each such application: _____

e. Have you ever been suspended, reprimanded, censured or otherwise disciplined or disqualified as a member of any other profession, or as a holder of any public office? _____

(yes or no)

If yes, please describe each such action, the date(s) of occurrence, and the name and address of the authority imposing the action in question: _____

f. Are any charges or complaints currently pending against you regarding your conduct as a member of any profession, or as a holder of public office? _____

(yes or no)

If yes, please indicate the nature of the charge or complaint and the name and address of the authority considering it: _____

g. Has your right to engage in any profession or occupation ever been disqualified, suspended, withdrawn, or terminated? _____

(yes or no)

If yes, please explain fully: _____

6. For All Applicants

- a. Have you ever been convicted of or pled guilty to a criminal charge, other than minor traffic violations (\$100 fine or less)?

_____ (yes or no)

If yes, please indicate the nature of the offense, date of conviction, criminal authority involved, and punishment assessed: _____

- b. Have you ever been a defendant in any civil proceedings, including bankruptcy proceedings, in which allegations of fraud, misrepresentation, embezzlement, misappropriation of funds, conversion, breach of fiduciary duty, forgery, or legal malpractice were made against you? _____

(yes or no)

If yes, please describe fully and indicate the results of the civil proceeding(s) in question: _____

- c. Have you ever been sued by any player (NBA or otherwise) for any reason? _____

(yes or no)

If yes, please describe fully and indicate the results of the civil action in question: _____

d. Have you ever been adjudicated insane or legally incompetent by any court? _____
(yes or no)

If yes, please provide details: _____

e. Were you ever suspended or expelled from any college, university, law school, or graduate school? _____
(yes or no)

If yes, please explain fully: _____

f. Has any surety or any bond on which you were covered been required to pay any money on your behalf? _____
(yes or no)

If so, please describe circumstances: _____

g. Are there any unsatisfied judgments of continuing effect against you (other than alimony or child support)? _____
(yes or no)

If yes, provide full details: _____

7. *References*

Please list below the names, addresses, and telephone numbers of at least five persons, not related to you, who have known you for at least the last five years and who can attest to your character. (Names of officers, player representatives, or staff members of the NBPA MAY NOT be used):

8. *Professional Sports Experience*

a. Please list below the names of every NBA player, including rookies, you are NOW representing or have represented IN THE PAST in individual contract negotiations with NBA clubs, indicating the dates of such representation and the NBA club(s) involved: _____

b. (Optional — applicant may refrain from answering if he or she desires.)

Please list below the names of any other professional athletes, entertainers, or celebrities you are now representing or have represented in the past, indicating the type of representation, the dates of representation, and the employers involved: _____

c. Do you manage, invest or in any manner handle funds for NBA players? _____
(yes or no)

If so, are you bonded? _____
(yes or no)

If yes, please provide details as to the amount of the bond, the name and address of the surety or bonding company, etc.: _____

9. List the names of any General Managers or other management officials of any team that you presently are representing or have represented in the past in individual contract negotiations with their respective teams: _____

ACKNOWLEDGEMENT

CITY OF: _____

STATE OF: _____

I, _____, being first duly sworn, say that I have read the foregoing questions and have personally answered the same fully and honestly and the answers to said questions are true to my knowledge.

Signature of Applicant

Subscribed and sworn to before me this ____ day of _____, 19____.

EXHIBIT B

NATIONAL BASKETBALL PLAYERS ASSOCIATION
CERTIFICATION FOR PLAYER AGENTS

On the basis of the information contained in an Application for Certification filed on _____, 19____, the National Basketball Players Association, acting through its Committee on Agent Regulation, hereby certifies _____ to act as an NBPA Player Agent pursuant to the NBPA Regulations Governing Player Agents adopted March 7, 1986, as may be amended hereafter.

This Certification is effective commencing the date set forth below and shall continue in full force and effect until and unless revoked, superseded or terminated in accordance with those Regulations.

Dated at New York City, New York, this ____ day of _____, 19____.

NATIONAL BASKETBALL PLAYERS ASSOCIATION

By: _____
President

