

Entertainment, Media & Sports Group's Areas of Practice

Agent Registration

Regulatory Compliance

Players Association

Grievance Proceedings

Corporate & Transactional

Services

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Today's professional sports agent faces a litany of legal, regulatory, litigation, and other practical risks involved with the recruitment of student and professional athletes and the ultimate negotiation of their professional sports contracts and/or endorsement contracts. Simply being certified by the professional sports players associations is no longer the only requirement to perform agent services for student and professional athletes. The business of professional sports agents is also governed by federal laws, numerous and often differing state laws, and, with respect to student-athletes only, the National Collegiate Athletic Association (NCAA) regulations. Failure to fully comply with the federal and state registration requirements and recruiting policies, as well as ongoing reporting and disclosure requirements, subjects an agent to criminal and civil penalties, invalidation of athlete-agent contract(s), and, most importantly, de-certification by the players associations.

Locke Lord Bissell & Liddell LLP has helped a number of professional sports management firms and individual agents design, implement, and maintain comprehensive compliance procedures to satisfy the numerous and often overlapping regulations at the federal, state, union and collegiate levels. Our services include preparing and filing appropriate registration and certification paperwork with federal and state regulatory bodies, maintaining insurance and bonding requirements, preparing and submitting the yearly disclosures to the state and union authorities, and counseling on the state-specific required disclosures to be made to an agent's prospective clients (i.e., student and professional athletes), educational institutions, and the professional and amateur sports governing bodies. Utilizing Locke Lord Bissell & Liddell's experience, our clients are able to confidently conduct their business knowing they are in full compliance with regulations at the federal, state, union and collegiate levels.

As there are many facets to designing and implementing an effective compliance system, this brochure sets forth a general overview of certain laws with which all agents should be familiar.

THE LAWS GOVERNING ATHLETE-AGENTS

Federal Law Requirements: Sports Agent Responsibility and Trust Act

The Sports Agent Responsibility and Trust Act ("SPARTA") was signed into law by President Bush on September 24, 2004. The law imposes strict standards for agents' conduct relating to recruiting and contracting with student-athletes. Specifically, SPARTA provides express limitations on what can be promised or provided to a student-athlete, whether directly by the agent or indirectly through the use of a runner. Further, SPARTA restricts agent contact with student-athletes before the student-athlete enters into an agency contract and requires specific disclosures by the agent to student-athletes and their parents or guardians. To the extent that an agent is not in full compliance with SPARTA, the Act provides that a state Attorney General, an educational institution, or any person who has been damaged by the agent's conduct may bring suit against the agent for damages arising from the violation(s). In addition, SPARTA provides that any violation of its provisions is an unfair or deceptive act or practice under the Federal Trade Commission Act ("FTCA"). Commission of an unfair or deceptive act or practice under the FTCA authorizes the Federal Trade Commission to issue cease and desist orders, file equitable actions in federal court to halt agent activities, seek civil penalties, and disgorge all commissions received by the agent while not in compliance.

State Law Requirements: The Uniform Athlete Agent Act

The Uniform Athlete Agent Act ("UAAA") was drafted in 2000 by the National Conference of Commissioners on Uniform State Laws. Forty-two states have adopted some version of the UAAA, which broadly governs the relationship among athlete-agents, student-athletes, and educational institutions. Although each state's version of the UAAA is based upon the framework of the model act, there are considerable differences among the states relating to registration procedures, mandatory disclosures, reporting, renewal, notice, record maintenance, and security. However, there is one common thread shared by all states—any agent contract that was pro-

cured in violation of the UAAA registration and disclosure requirements is void and unenforceable, thereby permitting the aggrieved athlete to avoid paying commissions owed.

The UAAA is comprised of 22 sections covering a range of topics, with sections four through nine providing specific registration requirements. All states mandate that an agent, prior to recruiting or otherwise engaging in the business of representation, must register with the appropriate state authorities, satisfy specific filing requirements, pay the required registration fee, and obtain a security bond. Applications for registration require varying disclosures for different states, with each state utilizing a different set of factors in determining whether to issue the requisite certification or license. Other sections of the UAAA that vary greatly by state include Section 6 (duration of registration), Section 11 (notification requirements to educational institutions), Section 13 (recordkeeping), and Section 14 (prohibited conduct). Failure to adhere to these basic registration requirements, or the ongoing reporting and disclosure requirements, constitutes a violation of the UAAA, which may result in the invalidation of the agent contract, as well as criminal and administrative penalties.

Although the UAAA has been adopted by the vast majority of states, California's version of the UAAA, known as the Miller-Ayala Athlete Agent Act ("Miller-Ayala"), goes even further. Miller-Ayala applies to both professional athletes and student-athletes. Miller-Ayala also imposes harsher penalties on agents who do not register with the Secretary of State or who fail to comply with the Act's more stringent reporting and disclosure requirements. As such, knowledge of, and compliance with, Miller-Ayala is integral to maintaining a successful agent practice as California is home to many agents and professional athletes.

In addition to the stringent registration requirements, Miller-Ayala requires that a registered agent provide specific written notifications of his or her registration status to a prospective client upon the initial contact, as well as specific notifications to the student-athlete's parents and educational institutions concerning the time, date, and substance of the recruiting contact, maintenance of recruiting and payment records for at least seven years, and prohibitions against making certain investments in related industries. Lastly, beyond the limitations set forth in the UAAA, Miller-Ayala imposes requirements governing the form, content, and enforceability of agent contracts.

It is critical for agents to comply with each and every regulation imposed by the UAAA and/or Miller-Ayala because any agent contract negotiated by an athlete-agent that fails to strictly comply with those regulations is void and unenforceable. The invalidation of an agent contract as a result of non-compliance with Miller-Ayala can, under California law, result in a refund to an aggrieved athlete of all commissions already paid, in addition to relieving the athlete of any obligation to pay future commissions. Additionally, statutory damages can be assessed against an agent in the amount of \$50,000 for each breach of the Act. In the case of student-athletes, the educational institution may bring a direct cause of action against the agent for any and all damages flowing from the agent's failure to comply (i.e. where non-compliance endangers the student-athlete's eligibility and/or causes the educational institution to forfeit games or championships). Furthermore, an athlete-agent found to be non-compliant with either the UAAA or Miller-Ayala risks de-certification by the applicable players association. In sum, the penalties for non-compliance with the UAAA and/or Miller-Ayala are vast and potentially career-ending.

Players Associations

As is well known, athlete-agents must initially be certified by the respective major sports players associations ("Players Associations"). The Players Associations typically require a prospective athlete-agent to apply for certification by providing a statement of information, in addition to requiring yearly itemized statements detailing fees charged and expenses incurred for all services performed for their athletes. Moreover, athlete-agents must be prepared to allow the Players Association to conduct audits of relevant records whenever the Association deems such a review necessary. Finally, and most importantly, each Players Association expressly requires agents to be in full compliance with the applicable state and federal laws identified above. Therefore, non-compliance with SPARTA, UAAA, and/or Miller-Ayala can lead to de-certification by a Players Association.

NCAA Regulations

For agents who primarily recruit student-athletes, awareness of, and strict adherence to, the National Collegiate Athletic Association ("NCAA") bylaws is essential. The relevant NCAA bylaws provide a framework for recruiting student-athletes by specifying who may recruit and what benefits or services provided to a student-athlete jeopardize his or her eligibility. Further, the NCAA agent bylaws outline eligibility requirements, define the role of legal counsel and the scope of permissible negotiations between the agent and athlete. In addition, the NCAA requires adherence to the UAAA, as adopted by the various states wherein the agent performs recruiting activities. This is because compliance with the applicable state laws is critical to preserve the amateur status of an athlete, protect an educational institution from sanctions, and, most importantly, will safeguard your recruiting activities from challenge.

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WHY LOCKE LORD BISSELL & LIDDELL LLP?

The above synopsis only touches upon the key requirements for being a properly registered and authorized athlete-agent. As explained, athlete-agents must ensure they are in compliance with the numerous and often complex regulatory requirements and failure to do so can be career-ending. Therefore, before recruiting or contracting with student or professional athletes, a prospective agent should consult with counsel who can ensure the agent is in full compliance. Locke Lord Bissell & Liddell ensures that its clients comply with the laws and regulations discussed above by:

- Making certain that we understand our clients' short term and long term business objectives; and
- Offering clear, practical suggestions based on extensive experience with the registration, reporting, and ongoing compliance requirements.

We provide a strategic advantage to our clients in a variety of ways. Some clients prefer to rely on our team to perform "quick reviews" of their recruiting activities and offer suggestions on how to best comply with the various, federal, state, union and NCAA requirements. Other clients prefer for us to work in conjunction with their staff to prepare and file the necessary registration materials with the state authorities wherein the client intends to engage in recruiting activities or intends to negotiate a player contract with a professional sports team. Still other clients depend on our team to implement a comprehensive compliance system wherein we prepare and file the required documentation with the relevant, federal, state and players association governing bodies, manage the ongoing disclosure and update requirements, prepare all agent contracts, prepare and serve the necessary notification materials following our client's contact with a student-athlete, and otherwise counsel the client on best practices of the profession.

In sum, Locke Lord Bissell & Liddell LLP helps clients design, implement and execute tactics and strategies to navigate the rapidly changing agent regulatory landscape, including all aspects of registering, recruiting, marketing, soliciting and contracting with student and professional athletes.

For additional information about our experience or to obtain additional information on how we may assist you, please contact **Brandon J. Witkow** at 213-687-6781 or bwitkow@lockelord.com, or any of our lawyers listed under the Entertainment, Media & Sports Group's Key Contacts.