



Protecting and Promoting the **Health of NFL Players:** Legal and Ethical Analysis and Recommendations

Part 5: **Player Advisors**



**Contract
Advisors
(Agents)**



**Financial
Advisors**



Family

Christopher R. Deubert
I. Glenn Cohen
Holly Fernandez Lynch

Petrie-Flom Center for Health Law
Policy, Biotechnology, and Bioethics

Harvard Law School





Part 5 discusses those individuals closest to the players and who should always be looking out for the players' best interests: contract advisors, financial advisors, and family members.



In reading this part, it is important to remember our broad definition of health, which includes and extends beyond clinical measurements to the social determinants of health, including financial wellbeing, education, and social support. The stakeholders discussed in this part are particularly important in these broader aspects of health. As a result, these stakeholders are also critical stakeholders in protecting and promoting players' long-term health.

Additionally, we remind the reader that while we have tried to make the chapters accessible for standalone reading, certain background or relevant information may be contained in other parts or chapters, specifically Part 1 discussing Players and Part 3 discussing the NFL and NFLPA. Thus, we encourage the reader to review other parts as needed for important context.



Chapter 12

Contract Advisors (aka “Agents”)



Contract advisors, more commonly known as “agents,” are often players’ most trusted and important resources and allies when it comes to protecting them during their NFL career, including their health. In fact, as will be explained below, contract advisors are “agents” of both players and the NFLPA. They often communicate with players on a nearly daily basis during the season and are obligated to represent the players’ interests, particularly when those interests conflict with those of the club. Consequently, contract advisors are typically the first and most important line in ensuring that player’s health-related rights (and other rights) are followed and enforced. As we emphasized in the Introduction to the Report, we employ a broad definition of “health,” which includes and extends beyond clinical measurements to the social determinants of health, including financial wellbeing, education, and social support. Contract advisors play a key role concerning these issues, as well as those related to the player’s medical health. Below, we describe the

legal and regulatory background of contract advisors, how they come to represent NFL players, and the types of services they generally provide to players, current and former. Additionally, it is useful to keep in mind that approximately 62 percent of contract advisors are attorneys, creating unique obligations and relationships, as will be discussed in more detail below.

To better inform our understanding of contract advisors' obligations and practices, we conducted approximately hour-long interviews with six currently active contract advisors. On average, those interviewed had been NFLPA-certified contract advisors for 17 years, had each represented an estimated 275 players in their careers, and currently represent 23 players. The interviews were not intended to be representative of the entire contract advisor population or to draw scientifically valid inferences, but were instead meant to be informative of general practices among these advisors. We provide anonymous quotes from these interviews throughout this Report, and urge the reader to keep that caveat in mind throughout. We then invited all six contract advisors to review a draft of this chapter prior to publication. Although five agreed to review a draft, only three provided comments. In addition, we interviewed an NFLPA representative to understand the NFLPA's perspective of the contract advisor industry.^a

Finally, this chapter contains significant discussion about the contract advisor industry and practices. On their face, these items may not seem directly related to player health. However, as mentioned above and as will be explained below, contract advisors are a crucial advocate and defender of players concerning all matters, and their health in particular. For example, it would be a very rare occurrence for a player to commence a Non-Injury Grievance, Injury Grievance, or lawsuit without the support and advice of his contract advisor. Nevertheless, as will also be explained below, there are serious problems in the contract advisor industry. Until and unless these problems are addressed, there will continue to be problems promoting and protecting player health. Hence, resolving issues in the contract advisor industry is an important step in promoting and protecting player health.

(A) Background

Pursuant to the National Labor Relations Act (NLRA), the NFLPA is currently “the exclusive representative[] of all the employees in [the bargaining] unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.”¹ The NFLPA thus has “exclusive authority to negotiate with NFL Clubs on behalf of NFL players.”² The NFLPA, as is its prerogative, nevertheless delegates a portion of its exclusive representational authority to contract advisors,³ more commonly known as “agents.” If the NFLPA so chose, it has the right under the NLRA to itself negotiate every NFL player's contract. Thus, contract advisors only exist as a profession because the NFLPA allows them to exist. Since the 1993 collective bargaining agreement (CBA), the NFL has explicitly recognized the NFLPA's authority to govern contract advisors and has agreed to fine clubs that negotiate with contract advisors not certified by the NFLPA.⁴

Contract advisors were not historically well received by clubs. Vince Lombardi, the Hall of Fame coach of the Green Bay Packers from 1959 to 1967 who also negotiated the Club's contracts, famously refused to deal with agents, including trading a player who had shown up to a contract negotiation with a lawyer.⁵

Nevertheless, as the business of football grew, so did the concept of players using advisors to assist with contract negotiations, marketing, and other business items. Today, all but a handful of NFL players retain contract advisors. The NFLPA has been certifying contract advisors in at least some fashion since 1983.⁶ However, the NFLPA's certification and enforcement procedures in the 1980s were largely considered ineffective.⁷

When the NFLPA de-certified itself as the official and exclusive bargaining representative of NFL players in 1989,⁸ it also lost the legal authority to regulate contract advisors pursuant to the NLRA.⁹ Thus, no progress was made on tightening contract advisor regulation until the NFLPA re-certified itself in 1993.¹⁰

In 1994 and the years shortly thereafter, the NFLPA released new and more comprehensive Regulations Governing Contract Advisors (“Contract Advisor Regulations”), including new certification requirements, a standard code of conduct for contract advisors, an arbitration mechanism for disputes between or among players and/or contract advisors, and a cap on contract advisor's fees equal to 3 percent of a player's negotiated compensation. Of note, the new Contract Advisor Regulations explicitly obligated contract advisors to “[a]ct at all times in a fiduciary capacity on behalf of players,”¹¹ an obligation that continues to this day.

^a During the course of reviewing this Report for confidential information, the NFLPA requested information obtained from the NFLPA be attributed to the NFLPA generally, rather than specific NFLPA employees. For our purposes, the specific individual that provided the information was irrelevant, so long as the NFLPA provided the information. Thus, we agreed not to identify specific NFLPA employees.

The Contract Advisor Regulations have been amended from time to time since 1994, most recently in 2012,¹² but still largely follow the structure and rules set forth in the 1990s. The 2012 Contract Advisor Regulations, discussed in more detail below, require individuals seeking certification as contract advisors to have a college degree and post-graduate degree or, as an alternative, at least seven years of sufficient negotiating experience at the NFLPA's discretion.¹³ In addition, they must pass a written examination covering the provisions of the Contract Advisor Regulations and CBA.¹⁴

Contract advisors who represent fewer than 10 active players pay an annual fee to the NFLPA of \$1,500.¹⁵ Contract advisors who represent 10 or more active players pay an annual fee of \$2,000.¹⁶

1) FORMATION OF THE PLAYER-CONTRACT ADVISOR RELATIONSHIP

Contract advisors typically begin recruiting players as soon as the player demonstrates that he might become an NFL player. For some players, this might mean they will begin receiving phone calls, text messages and recruitment materials from contract advisors their freshman year of college—even though they cannot enter the NFL Draft until after their junior year.¹⁷ For most players, the recruiting efforts become most intense in the summer preceding their senior season. Beginning with that summer and continuing through the season, players will hear from contract advisors according to their perceived Draft status: top prospects will hear from dozens of contract advisors, while players who are questionable to be drafted might only hear from a few.

Ultimately, the college players, with the help of their family, friends, and college, will sort through the multitude of contract advisors, meet with a few, and choose one. The player and contract advisor formalize the relationship by executing the NFLPA's Standard Representation Agreement (SRA), which dictates the parties' obligations to one another with minimal permitted variation.^b The SRA is typically executed within days of the player's collegiate season being completed.

Within weeks (if not days) of the SRA's execution, the contract advisor will typically arrange (*i.e.*, pay) for the player to be flown to a training facility. Over the next few months, the player, under the tutelage of professional athletic trainers and football coaches (often former NFL players or

coaches), will prepare for the NFL Combine in February as well as additional workouts that may be held at the player's college or at an NFL club's facility around the same time to help advance the player's stock before the NFL Draft in April or May. The costs of training are typically between \$15,000 and \$35,000 per player.

If the NFLPA so chose, it has the right under the NLRA to itself negotiate every NFL player's contract. Thus, contract advisors only exist as a profession because the NFLPA allows them to exist.

The contract advisors almost always pay the full cost of the player's training and housing during this crucial time period. However, most contract advisors require players to execute an agreement obligating the player to repay the costs of training in the event the player terminates the contract advisor prior to the contract advisor negotiating a contract on behalf of the player (at which point the player will be obligated to pay the contract advisor commissions on that contract).

Contract advisors will also look to make sure their client is in optimal physical health for the NFL Combine and NFL Draft. The contract advisor will often receive the player's college medical records and have any condition that might cause concern to an NFL club (such as a prior injury) be examined and treated by a doctor trusted by the contract advisor. The contract advisor will also often enlist the services of nutritionists, massage therapists, tutors, and others to ensure the players are maximally prepared for the Combine and other workouts.

In addition to paying for training, many (but not all) contract advisors routinely provide new clients with tens or hundreds of thousands of dollars in loans or advances which generally do not have to be repaid if the player continues to retain the contract advisor. The legality of these advances will be discussed in further detail below.

In sum, the contract advisor and his staff will be involved in the player's life on a near constant basis from the moment the player signs the SRA until he is drafted. What happens after the player is officially a member of an NFL club is discussed below.

^b The SRA requires the parties to set forth the contract advisor's compensation, up to the maximum of 3 percent. Additionally, the SRA permits the parties to execute other agreements concerning the representation, including loans or advances paid to the player by the contract advisor.

2) SERVICES PROVIDED TO CURRENT PLAYERS

A contract advisor's duties run the gamut of almost every service a professional could offer a client. Services range from the more intellectual tasks of negotiating contracts, securing endorsements, handling relations with the club, providing career and post-career counseling (including taking advantage of programs and benefits offered by the NFL and NFLPA), and providing legal services and financial advice, to the most mundane and personal tasks, such as making travel and dinner reservations, resolving housing and parking issues, purchasing the latest cellular phones and technological gadgets, arranging for free clothing, and helping handle domestic issues.¹⁸ More established contract advisors generally enlist client service representatives, recently certified contract advisors, and interns to handle these pettier matters. Nevertheless, in general, contract advisors provide advice for every aspect of an NFL player's life. Contract Advisor 4:

I end up, in the role of agent as being the quarterback for everything that happens in their life or in their career. And so it ends up being a wide range of things from 'I want to go on vacation,' 'I want to rent a car,' to 'I just blew out my knee, what do I do.'

For their efforts, contract advisors can be compensated a maximum of 3 percent of the compensation¹⁹ a player receives in each playing season covered by the contract negotiated by the contract advisor.²⁰ Contracts executed pursuant to the Franchise or Transition tag provisions of the CBA,²¹ are further limited to between 1 percent and 2 percent depending on how many times the player has previously been so designated.²² Nevertheless, competition among contract advisors routinely drives them to offer their services for less than 3 percent. Importantly, a "Contract Advisor is prohibited from receiving any fee for his/her services until and unless the player receives the compensation upon which the fee is based."^{23,c}

Players can and do switch contract advisors very easily. Players can terminate the Standard Representation Agreement at any time, effective five days after written notice of termination to the contract advisor.²⁴

3) RELATIONSHIP WITH FORMER PLAYER-CLIENTS

Once a player's NFL career has ended, his relationship with the contract advisor is generally no longer governed by the Contract Advisor Regulations^d and the contract advisor and player have no more contractual obligations to one another. Thus, contract advisors generally do not receive any compensation from a player after his playing career ends (unless they represent them in marketing, coaching or broadcasting deals). Nevertheless, the contract advisors interviewed generally expressed that they believe their role is unchanged—to provide the player with whatever guidance and support he needs. The contract advisors we interviewed admitted that the degree of assistance provided to a player after his career is over depends on the strength of the relationship between the contract advisor and player; some former players will communicate with their contract advisor almost every day, just as they did when they were playing; while those who communicated less with their contract advisor during their career could easily break off all communication with their former contract advisor.^e

Contract advisors have multiple reasons for continuing to help players after their career. First, many develop very close, almost sibling-like relationships with their clients. Second, they can often continue to benefit from their association with their former clients. In particular, if a former NFL player happens to stay involved with his former college football team, the contract advisor might use his former client to facilitate meetings with players from that team. Generally speaking, success in the contract advisor industry is very reputation-driven; thus, contract advisors will generally try to avoid doing things that could make them look bad in the eye of players—current, former, and future.

Not surprisingly, multiple contract advisors discussed the difficulty players have in transitioning from a highly competitive and structured life in the NFL to being unsure of what to do next. Contract advisors explained that those who prepare themselves for the transition understandably handle it much better. Thus, all of the interviewed contract advisors expressed the importance of preparing for a

d The contract advisor will still be subject to the contract advisor's broad prohibition against "[e]ngaging in unlawful conduct and/or conduct involving dishonesty, fraud, deceit, misrepresentation, or other activity which reflects adversely on his/her fitness as a Contract Advisor or jeopardizes his/her effective representation of NFL players." 2012 NFLPA Contract Advisor Regulations, § 3(B)(14).

e Contract Advisor 3: "[I]t all depends on the player. Some I'm still pretty involved with, others just kind of disappear and fade away. It really depends on what your relationship was with the guy during their career and kind of what their motivations are post career. So you know there's a few that I still send Christmas cards to. There's others that I don't even know if they have my e-mail."

c Current Player 9: "One thing that guys aren't as happy about, I think across the board, is agent fees and paying agents 3 percent."

player's exit from the NFL as soon as possible. To prepare players for their life after football, the contract advisors often encourage players to finish their degree if necessary in the offseason, consult with a financial advisor (assuming it is one the contract advisor trusts), get media training, take advantage of workshops offered by the NFL and NFLPA, and participate in internships in the offseason.

(B) Current Legal Obligations^f

Contract advisors are regulated by several bodies of law: 1) common law; 2) Contract Advisor Regulations; 3) state statutes; and, 4) federal statutes.

1) COMMON LAW

First and foremost, pursuant to the NLRA, contract advisors exist to represent and protect the player's best interests in dealings with the club. More broadly, contract advisors are "agents," which, by law, are authorized to act on the behalf of another individual (the "principal") and must act in the best interests of the principal at all times.²⁵ The agent has many duties to the principal, including loyalty, care, good faith, competence and diligence.²⁶ These duties are more generally known as fiduciary duties. Generally speaking, a fiduciary is "a person who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, trust, confidence, and candor."²⁷ While the existence of a fiduciary relationship generally requires a fact-based inquiry,²⁸ there is little doubt that contract advisors and their player-clients are in a fiduciary relationship.

2) CONTRACT ADVISOR REGULATIONS

The Contract Advisor Regulations are a set of obligations established by the NFLPA by which contract advisors have agreed to abide.

The Contract Advisor Regulations include a comprehensive list of 19 actions a contract advisor is "required" to take.²⁹ Of the most relevance, they must:

- (7) Advise the affected player and report to the NFLPA any known violations by an NFL Club of a player's individual contract or of his rights under any applicable Collective Bargaining Agreement;

* * *

- (14) Fully comply with applicable state and federal laws;
- (15) Become and remain sufficiently educated with regard to NFL structure and economics, applicable Collective Bargaining Agreements and other governing documents, basic negotiating techniques, and developments in sports law and related subjects[.];
- (16) Disclose in an addendum (in the form attached as Appendix G) attached to the Standard Representation Agreement between the Contract Advisor and player, the names and current positions of any NFL management personnel or coaches whom Contract Advisor represents or has represented in matters pertaining to their employment by or association with any NFL club;
- (17) Act at all times in a fiduciary capacity on behalf of players;

* * *

- (20) Educate player-clients as to their benefits, rights and obligations pursuant to the Collective Bargaining Agreement; and to advise and assist those player-clients in taking maximum advantage of those benefits and rights, including, without limitation, Termination Pay, Severance Pay, Bert Bell/Pete Rozelle disability benefits, workers compensation benefits, second medical opinions, and right to chose (sic) their own surgeon.⁹

Just as importantly, the Contract Advisor Regulations list 31 specific actions in which contract advisors are **prohibited** from engaging. Of particular relevance, they are prohibited from:

- (2) Providing or offering money or any other thing of value to any player or prospective player to induce or encourage that player to utilize his/her services;
- (3) Providing or offering money or any other thing of value to a member of the player's or prospective player's family or any other person for the purpose of inducing or encouraging that person to recommend the services of the Contract Advisor;
- (4) Providing materially false or misleading information to any player or prospective player in the context of recruiting the player as a client or in the course of representing that player as his Contract Advisor;

* * *

^f The legal obligations described herein are not an exhaustive list but are those we believe are most relevant to player health.

^g The contract advisor's obligation to help players obtain second medical opinions and to receive treatment from the surgeon of their choice demonstrates the unique and significant role contract advisors play in player health.

- (8) Engaging in any other activity which creates an actual or potential conflict of interest with the effective representation of NFL players;

* * *

- (12) Concealing material facts from any player whom the Contract Advisor is representing which relate to the subject of the player's individual contract negotiation;
- (13) Failing to advise the player and to report to the NFLPA any known violations by an NFL Club of a player's individual contract;
- (14) Engaging in unlawful conduct and/or conduct involving dishonesty, fraud, deceit, misrepresentation, or other activity which reflects adversely on his/her fitness as a Contract Advisor or jeopardizes his/her effective representation of NFL players;

* * *

- (19) Violating the confidentiality provisions of the National Football League Policy and Program for Substances of Abuse. The NFLPA Executive Director in consultation with the Disciplinary Committee may fine a Contract Advisor in accordance with the terms of the National Football League Policy and Program for Substances of Abuse. Such fine, if imposed, shall be in addition to, and not a substitute for, discipline which may be imposed pursuant to Section 6 of these Regulations;

* * *

- (21) (a) Initiating any communication, directly or indirectly, with a player who has entered into a Standard Representation Agreement with another Contract Advisor and such Standard Representation Agreement is on file with the NFLPA if the communication concerns a matter relating to the: (i) Player's current Contract Advisor; (ii) Player's current Standard Representation Agreement; (iii) Player's contract status with any NFL Club(s); or (iv) Services to be provided by prospective Contract Advisor either through a Standard Representation Agreement or otherwise.
- (b) If a player, already a party to a Standard Representation Agreement, initiates communication with a Contract Advisor relating to any of the subject matters listed in Section 3(B) (21)(a) the Contract Advisor may continue communications with the Player regarding any of those matters.
- (c) Section 3(B)(21) shall not apply to any player who has less than sixty (60) days remaining before his NFL Player Contract expires, and he has not yet signed a new Standard Representation Agreement with a Contract Advisor within the sixty (60) day period.

- (d) Section 3(B)(21) shall not prohibit a Contract Advisor from sending a player written materials which may be reasonably interpreted as advertising directed at players in general and not targeted at a specific player.

* * *

- (24) Affiliating with or advising players to use the services of a person who is not an NFLPA Registered Player Financial Advisor for purposes of providing financial advice to the player; or acting as a "Financial Advisor" and/or providing "Financial Advice" to an NFL player as those terms are defined in the NFLPA Regulations and Code of Conduct Governing Registered Player Financial Advisors, without first becoming a Registered Player Financial Advisor pursuant to the NFLPA Regulations and Code of Conduct Governing Registered Player Financial Advisors;

* * *

- (28) Referring a player to a workers compensation attorney who is not a member of the NFLPA Panel of Workers Compensation Attorneys;

* * *

- (32) Using, associating with, employing or entering into any business relationship with any individual in the recruitment of prospective player-clients who is not Certified and in good standing as a Contract Advisor pursuant to these Regulations[.]

3) STATE STATUTES

Forty-three states have enacted some version of the Uniform Athlete Agents Act (UAAA).^h The UAAA is principally concerned with the transition from college student-athlete to professional athlete but also governs contract advisors' conduct more generally as well. The UAAA requires persons representing athletes,³⁰ *i.e.*, "agents," to register with the relevant state's Secretary of State and to notify the college when an agent signs an agreement with a college player in the process of turning professional.³¹ The UAAA also prohibits many of the actions discussed in the Contract Advisor Regulations, including "giv[ing] any materially false or misleading information or mak[ing] a materially false promise or representation," and, "furnish[ing] anything of value to a student-athlete before the student-athlete enters into the agency contract."³² Finally, the UAAA gives colleges the right to sue agents for failing to comply with

h In 2015, the Uniform Law Commission of the National Conference of Commissioners on Uniform State Laws approved a revised version of the UAAA, first approved in 2000. Nevertheless, the revised law does not substantially implicate player health in any new ways and, as of October 2016, had only been adopted by three states.

the law,³³ since colleges could be forced to declare players ineligible under National Collegiate Athletic Association (NCAA) Bylaws for having accepted gifts or money from an agent.

While the UAAA was designed to protect colleges and players from unscrupulous agents, unfortunately, it has done little but increase agents' costs of doing business through increased registration fees since few states take any measures to enforce the law.³⁴ In addition, California, Michigan, and Ohio have passed their own agent laws that also require registration and forbid certain acts.³⁵

Research has not revealed any litigation involving any state's version of the UAAA. However, in 2006, former NFL player Chad Morton sued former contract advisor Leigh Steinberg alleging Steinberg had violated California's Miller-Ayala Athlete Agents Act.³⁶ Morton alleged Steinberg and his firm failed to repay \$500,000 in loans.³⁷ The case was settled when Steinberg agreed to repay the loan.³⁸

The UAAA does not contain any language directly concerning player health, safety, or welfare.

4) FEDERAL STATUTES

Contract advisors must comply with the federal Sports Agent Responsibility and Trust Act (SPARTA),³⁹ passed in 2004. SPARTA, like the UAAA, is principally concerned with student-athlete recruitment but also governs contract advisors more generally. SPARTA prohibits sports agents from soliciting clients with misleading information, making false promises, providing anything of value as an inducement, or neglecting to provide a required disclosure statement warning the student-athlete that he or she may lose his or her eligibility.⁴⁰ The Federal Trade Commission is responsible for enforcing SPARTA but has never brought any legal action against an agent.⁴¹

SPARTA does not contain any language directly concerning player health, safety, or welfare.

5) OTHER CONSIDERATIONS – NCAA BYLAWS

The NCAA bears mentioning in this context, as many might believe (incorrectly) that it has some authority over agents. The NCAA is a private organization through which the nation's colleges and universities govern their athletic programs. The NCAA consists of more than 1,200 member institutions, all of which participate in the creation of

NCAA rules and voluntarily submit to its authority.⁴² As a voluntary organization, the NCAA can only exercise plenary power over its member institutions, their employees, and their student-athletes.⁴³ Consequently, while the NCAA prohibits student-athletes from entering into agreements with agents,⁴⁴ the NCAA has no authority to discipline contract advisors.

Although the NCAA has no direct jurisdiction over agents, as described earlier, the UAAA does empower educational institutions with certain regulatory powers and the ability to file civil suits against agents.⁴⁵ Many NCAA member institutions require each agent wishing to recruit a player at that school to also register with the school's athletic department or compliance office.⁴⁶ Contract advisors wishing to remain in the good graces of the school will comply with the school's regulations.

(C) Current Ethical Codes

Attorney's Rules of Professional Conduct, like the Contract Advisor Regulations, are quasi-legal/quasi-ethical in nature, in that they are ethical rules that can be legally enforced.

Contract advisors who are also attorneys must comply with their respective state bar's attorney ethics rules. In 2015, 545 of the 875 certified contract advisors (62 percent) had a law degree.⁴⁷ While we do not know the number of contract advisors who subsequently were admitted to practice law by a state bar, it seems likely that many did. The Model Rules of Professional Conduct (which serve as guidance for every state's Attorney's Rules of Professional Conduct) include several rules that could be implicated by some of the alleged wrongful behavior of contract advisors. For example, Rule 1.1 requires "competent" representation, Rule 1.7 governs conflicts of interest, Rule 1.15 strictly directs how a lawyer is to handle client money, and Rule 5.3 holds attorneys liable for the conduct of non-lawyer employees, such as the "runners" often employed by contract advisors.⁴⁸ In addition, Rule 7.1 prohibits false or misleading communications about a lawyer's services, Rule 7.2 prohibits a lawyer from giving anything of value to a person for recommending the lawyer's services, and Rule 7.3 limits a lawyer's ability to solicit clients.⁴⁹

(D) Current Practices

Players generally have mixed feelings about the contract advisor industry.ⁱ While many like their advisors, they have also heard horror stories about others. In particular, players believe many contract advisors look to take advantage of players in whatever way they can.^j Below, we discuss some most important areas where contract advisors have an opportunity to influence player health, including Recruiting, Negotiating Contracts, Assisting with Medical Care, Engaging with the NFLPA, and Potential Conflicts of Interest.

1) RECRUITING

The extreme competitiveness of the industry prevents contract advisors from promoting and protecting player health as one might hope they could. Entering the 2015 NFL season, there were 869 NFLPA-certified contract advisors but only 420 actually had clients (48.3 percent).⁵⁰ Importantly, “[t]he Certification of any Contract Advisor who has failed to negotiate and sign a player to an NFL Player Contract (excluding Practice Squad Contracts) for at least one NFL player during any three-year period shall automatically expire at the end of such three-year period.”⁵¹ Thus, in the rare case that a contract advisor has one or multiple clients and none of their contracts expire during a three-year period, those advisors will need to go through the contract advisor certification process again, including retaking the contract advisor examination.⁵² The NFLPA representative we interviewed explained that the purpose of the rule is to ensure that contract advisors remain “active in the business.”

Entering the 2015 NFL season, there were 869 NFLPA-certified contract advisors but only 420 actually had clients (48.3 percent).

Contract advisors interviewed, on average, spent 30 percent of their time recruiting players, a proportion that has only increased over time. Recruiting thus diminishes the amount of time and resources available for contract advisors to devote to their current clients.

Some scholars have commented that the competition and allure of the industry have resulted in a ruthless professional environment and nearly continuous allegations of wrongdoing.⁵³ Contract advisors engage in protracted recruiting battles for the right to represent college football players entering the NFL.⁵⁴ Even though the Contract Advisor Regulations have long forbid “[p]roviding or offering money or any other thing of value to any player or prospective player to induce or encourage that player to utilize his/her services,”⁵⁵ as discussed above, many (but not all) contract advisors routinely provide new clients with tens or hundreds of thousands of dollars in loans or advances which generally do not have to be repaid if the player continues to retain the contract advisor.⁵⁶ Perhaps counterintuitively, such arrangements have repeatedly been approved by NFLPA arbitrator Roger Kaplan^k in disputes between players and contract advisors.⁵⁷ Recently, in *Rosenhaus v. Jackson*, NFLPA Case No. 13-31 (Kaplan, Arb. Apr. 10, 2014), Kaplan held that since the loan agreements between contract advisor Drew Rosenhaus and player DeSean Jackson explicitly stated that the loans were not conditioned on the signing of an SRA, “[t]he mere existence of the loan and/or the possibility that some or all of it might be interest free or forgiven entirely does not render it an improper inducement.”⁵⁸

Also as discussed above, contract advisors typically pay \$15,000 to \$35,000 to prepare their clients for the NFL Combine and Draft. Players are typically only obligated to repay the training costs in the event they terminate the contract advisor prior to signing an NFL contract. Arbitrator Kaplan has held that such expenses are reasonable and necessary to the negotiation of the player’s first contract and thus the player is obligated to repay them if he has agreed to do so as part of the SRA.⁵⁹

Former Player 1 explained that the loans and advances are “one of the biggest selling points for most kids out of college”:

[T]hose kids for the most part come from modest means and haven’t seen the type of money thrown around and thrown at them and all of a sudden

i Current Player 5: “Some guys love their agents, have a great relationship and some guys don’t. I think it would be split pretty close down the middle.” Current Player 6: “Most agents don’t really do anything apart from negotiating the contract.” Current Player 10: “Agents do a good job of looking after players.” Former Player 3: “For the most part, agents do a pretty good job.”

j Current Player 4: “I think there are a lot of those guys that are preying on players.”

k Arbitrator Roger Kaplan has presided over almost every NFLPA arbitration since 1994. See *Weinberg v. Nat’l Football League Players Ass’n*, 06-cv-2332, 2008 WL 4808920, at *2 (N.D. Tex. Nov. 5, 2008) (citing affidavit from Kaplan in which he explained he has been the NFLPA arbitrator since 1994).

you have this guy that's willing to put up the cash for cars and jewelry and clothes and everything else and you know it's quite alluring for a lot of kids that have never seen that.¹

Several current players also expressed concern with the loans and advances from contract advisors to players:

- **Current Player 4:** *"It definitely creates a problem where guys are in the hole that amount of money before they've ever made a dollar."*
- **Current Player 5:** *"I think it's one of the worst things that you can possibly do. I'm 100 percent against it. I think that it's basically agents buying players . . . I can understand why a player may need money . . . before the draft to help him train and all that. But I think it's gotten way out of control."*
- **Current Player 8:** *"I think that it's highway robbery because I've seen some of the interest rates that they've charged these guys. I think that's a person of power taking advantage of an uneducated kid . . . I think it's become kind of a competitive market that definitely has its downfalls."*
- **Current Player 9:** *"I view it as a major problem because it's just the player already in debt before he even has money."*

The NFLPA representative we interviewed also explained the players' and NFLPA's concern with these arrangements:

From the agent's perspective, the financial output they have to put into a player prior to the draft has certainly grown exponentially over the last five, ten years.

* * *

[W]ith the increased competition in the agent business—for clients coming out of college especially—it has led to agents having to put out more dollars financially in pre-Combine training and stipends and whatever you want to call it, pre-draft loans, whatever you want to call it.

And it may be that some players make their choice of agent solely based on the amount of money that the agent's willing to pay out, rather than necessarily signing with the one that's the best fit for them. Has that harmed players? That's hard to quantify—whether or not that's harmed anybody. But I think certainly that does put a player in a position where maybe he's making the choice of

an agent not using the right criteria, or at least not prioritizing it the right way.

The NFLPA representative also explained that the possibility of amending the Contract Advisor Regulations to restrict pre-Draft loans and advances in some way has "been discussed," but that "the player rep[resentative]s haven't taken any action to change our rules as of yet."

2) NEGOTIATING CONTRACTS

The principle responsibility of contract advisors, in accord with the delegation of that responsibility to them by the NFLPA as discussed above, is to represent players in contract negotiations with clubs. However, contract advisors generally only negotiate contracts in two windows: (1) around the beginning of a new League Year in March when veteran players become free agents; and, (2) in the summer after rookies have been drafted. However, the 2011 CBA significantly reduced and restricted rookie compensation and thus also the rookie contract negotiations. While veteran players might sign contract extensions or renegotiations at a variety of times during the year, the truth is that negotiating contracts does not consume a majority of a contract advisor's time.

This is not to say, however, that contract advisor's negotiating services are not important. They are extremely important. A skilled contract advisor will perform comprehensive statistical and economic analysis of a player's worth in preparation for a contract negotiation. Moreover, quality contract advisors will be able to negotiate with multiple clubs, judge the market, and sell the player's skill to obtain a contract acceptable to the player. Contract advisors and their negotiations are a critical component to maximizing career earnings, an important consideration when discussing player health.

3) ASSISTING WITH MEDICAL CARE

As the player's principal advocate and advisor, contract advisors play an important role in player health matters. Indeed, they have an important obligation to ensure players understand and take advantage of the myriad of programs and benefits offered by the NFL and NFLPA. Many of the contract advisors interviewed explained that very early on in the contract advisor-player relationship, they have a meeting or telephone call with the player to explain the realities of the business, *i.e.*, that they are likely to get injured and have short careers and thus must be responsible and plan accordingly. Whether players are receptive to and understand this advice is another question.

¹ We reiterate that our interviews were intended to be informational but not representative of all players' views and should be read with that limitation in mind.

Contract advisors also guide players after they have been injured. In a typical scenario where a player suffers an in-season or in-game injury, the contract advisor will often be in touch with the player and someone from the club's front office as soon as possible to learn the extent of the injury. Within 24 hours, the player will undergo a variety of possible examinations by club doctors, including but not limited to X-rays, MRIs,⁶⁰ or CT scans.⁶¹ The contract advisor will then obtain the films from the examinations, by requesting them from the player, the club's medical staff, or the club's front office. The contract advisor will then have the films sent to another doctor chosen by them for a second opinion.

Of the six contract advisors interviewed, five stated that they obtain a second opinion every time or nearly every time a player is injured while another stated he obtains a second opinion about 50 percent of the time.⁶² The motivation behind obtaining the second opinions stems from both general and specific distrust of club doctors by the contract advisors. Some contract advisors indicated that by almost always obtaining a second opinion, it removes any concern that the club doctor might have been making a recommendation that was in the club's interest and not the player's.^m One contract advisor even stated that when assessing a player's injury, "the club doctor has nothing to do with it . . . the club doctor's input means nothing to us."ⁿ Some contract advisors also indicated that their experience with, and the reputation of, a particular club or club medical staff will color the decision of whether to obtain a second opinion or to proceed with the club

doctor's recommended course of treatment.^o It is important to emphasize that we are merely reporting the perception of the contract advisors. We lack the relevant data to evaluate whether second opinion doctors are superior to club doctors in any way.

The second opinion doctor typically only reviews the film but occasionally will request to see the player in person if the doctor believes it is necessary. Contract advisors' estimates of how often a second opinion doctor's diagnosis differed from the club doctor's were generally low ("10 to 20 percent," "as much as 20 percent," "about a third of the time," "not incredibly often"). "According to the Patient Advocate Foundation, 30 percent of patients who sought second opinions for elective surgery found the two opinions differed."⁶³ However, it is difficult to compare the figures because, as discussed above, players obtain second opinions almost as a matter of course while the average patient might only seek a second opinion about serious diagnoses.

If the second opinion doctor's diagnosis does differ, a decision then must be made as to which course of treatment to pursue and which doctor will perform the surgery (if necessary). In some cases, the contract advisor might arrange for the second opinion doctor to talk with the club doctor to see if a consensus can be reached.^p Sometimes a third doctor will provide an opinion. Nevertheless, the prevailing sentiment among the advisors interviewed is that the second opinion doctor's recommended course of treatment almost always is the one taken in today's NFL.

There are two main reasons why the second opinion doctor's recommended course is followed. First, as discussed above, some contract advisors regard the club doctor's opinion as meaningless and will not follow it (unless, of course, it concurs with that of the second opinion doctor). Second, some contract advisors believe that in recent years clubs and club medical staff have resigned themselves to doing what the player wants to do (as recommended by the contract advisor and second opinion doctor).

In the course of this process, contract advisors are also likely to review the player's contract to refresh their understanding as to any provisions which might be relevant to the player's health and gauge how the injury might

Of the six contract advisors interviewed, five stated that they obtain a second opinion every time or nearly every time a player is injured while another stated he obtains a second opinion about 50 percent of the time.

m Contract Advisor 1: "I've effectively removed any of that [concern]. I've said okay, where I feel like I need to get a second opinion almost every time, I get a second opinion. So it's become a nonissue." Contract Advisor 5: "I'm always concerned that the doctor is involved because he's, you know, an employee of the club."

n Contract Advisor 4: "[T]he team doctor is there to advise the team on how they should approach a player. The team doctor has nothing to do as far as I'm concerned with how the player should approach his own health The team doctor is a medical advisor to the team."

o Contract Advisor 2: "[I]t depends sometimes on the organization that we're dealing with." Nevertheless, Clubs seem to have become less adversarial about a player choosing to obtain a second opinion. Contract Advisor 1: "I will say there was a lot more pushback early in my career about second opinions and going somewhere else."

p Yet, Contract Advisor 1 explained that the club doctor "will have to make a very good argument" to the second opinion doctor to convince the second opinion doctor and contract advisor to follow the club doctor's recommendation.

affect the player's contract status. In addition, the contract advisor will likely review relevant CBA provisions and advise the player of his rights, such as the right to a second opinion, the surgeon of his choice, workers' compensation benefits, and the Injury Protection benefit. Contract advisors generally stressed the importance of taking advantage of these safeguards to protect a player's health.

There was also a general consensus among the contract advisors that they themselves have become, and are, increasingly sensitive to player health issues, and to concussions in particular.⁶⁴ Of course, such self-evaluations have to be viewed with that perspective in mind. One contract advisor explained an effort he made to prevent a player from suffering a future injury. Understanding that his client had played defensive end on only one side of the line his entire career, the contract advisor was concerned that the player's hips and legs would become unbalanced, increasing the risk of injury. The contract advisor worked with the player and the player's athletic trainer to make sure the player's hips were equally strong and flexible.

Another contract advisor had a creative idea for helping his players. Throughout his career, he has recommended his clients to maintain an "injury diary," contemporaneously listing each condition the player has and the treatment recommended and received. The contract advisor believes the diary could serve multiple purposes: (1) ensure the player's medical condition is accurately described and understood to assist with treatment; (2) help the player improve treatment in the future in the event the condition recurs; and, (3) for possible use during an Injury Grievance against the club.

4) ENGAGING WITH THE NFLPA

Contract advisors and the NFLPA are two stakeholders intimately involved in protecting players' health. However, some of the contract advisors we interviewed suggested that a poor relationship between the two groups reduces the effectiveness of both groups in assisting players.

The sentiment among the contract advisors interviewed was near universal that the relationship between contract advisors and the NFLPA is mediocre at best, "horrible" at worst. Contract Advisor 1 explained that, in his opinion:

[I]f you can't win the war with 32 owners, you show the players that you're saving money, say cutting agent fees or having the ability to do certain things with the agents and showing that power[.]

The contract advisors we spoke to indicated their view that the principle issue preventing the NFLPA and contract advisors from working well together centers around a lack of communication and trust. In general, contract advisors seem to believe that the NFLPA is missing out on a valuable opportunity to help players by not engaging contract advisors more fully. As explained by Contract Advisor 1:

[N]obody knows the players as well as we do and nobody has more day-to-day interaction with them. So the issues they face—while we're told we have a platform and an avenue to articulate [the issues to the NFLPA]—never really comes to bear.

Similarly, Contract Advisor 4, explained "they [the NFLPA] don't quite understand the influence that we could have and that we may have in a player's life." Contract Advisor 6 expressed his opinion that the NFLPA thinks contract advisors are "idiots . . . , a nuisance." Of course, this may just be their own biases as to their importance and relevance, and the opinions need to be evaluated in that light.

Multiple contract advisors did, however, recognize the difficulty the NFLPA faces with such a large and constantly changing membership. Additionally, several contract advisors believed the NFLPA's work on player health matters has improved in recent years and that the NFLPA is taking those issues seriously.^q

In reviewing a draft of this Report, peer reviewer and former contract advisor and club executive Andrew Brandt had this to say about the relationship between contract advisors and the NFLPA:

The Chapter does a good job of explaining the tense relationship—or lack of relationship between agents and the NFLPA. Even though they are both on the same side of looking out for the best interests of players, there is an apprehension from each side in dealing with the other. The reasons are several, often due to personalities, but emanate from the collective versus individual nature of their representation. The union is looking out for the overall constituency and providing collective benefit; agents are concerned about maximizing income and benefits for their clients rather than the general population of players. I know that, as the Chapter says, there are annual meetings at the Combine for all agents and for a select group of agents with union representatives, but I often hear negative viewpoints about

q Contract Advisor 1: "[O]ne of the good things that the NFL has done and the PA has done is ensuring that these guys can have an easy way to get their degree[.]"

*these meetings, especially from agents that are excluded.*⁶⁵

For the NFLPA's part, the NFLPA representative we interviewed was more optimistic and generally praised contract advisors:

To the best of my knowledge, they're doing fine . . . 99 times out of 100 they are aware of filing deadlines for grievance purposes and stuff like that. I think most agents genuinely care about the welfare of their players. It's in their best interest. The longer the player plays, the more money the agent's going to make.^r

The NFLPA representative also believed that the NFLPA's relationship with agents was "generally . . . good." Nevertheless, the NFLPA representative acknowledged that "a lot of [contract advisors] would probably say we need to do more in the discipline area."

At the conclusion of each season, the NFLPA provides the contract advisors an "End of Season Player Checklist." The Checklist is a multi-page document summarizing many of the players' important rights, benefits, and opportunities, such as obtaining medical records, obtaining second medical opinions, filing for workers' compensation, Injury Protection or disability benefits, understanding their insurance options, understanding off-season compliance with the Policies on Performance-Enhancing Substances and Substances of Abuse, and preparing for life after football by engaging the benefits and programs offered by the NFL and NFLPA. Contract advisors are required to provide the Checklist to all of their clients and certify in writing to the NFLPA that they have discussed the Checklist with their clients. In short, the Checklist is an excellent document and the NFLPA should be commended for its creation and use.

Nevertheless, contract advisors we interviewed expressed that there is an insufficient opportunity for contract advisors and the NFLPA to discuss issues affecting players. Several contract advisors indicated that the NFLPA only ever solicits advice from, or listens to, the most successful and powerful contract advisors. The NFLPA representative we interviewed explained that every year at the NFL Combine, the NFLPA holds an invitation-only meeting with approximately 20 contract advisors to discuss issues

affecting contract advisors and players. The invited contract advisors are selected by the NFLPA.

5) POTENTIAL CONFLICTS OF INTEREST

While contract advisors' and players' interests are generally well-aligned, an NFL player should be aware of a variety of situations in which his contract advisor's interests might conflict with his own. It is quite clear that there are many situations which on their face present the perception of a conflict.^s What is not clear is the extent to which these conflicts are real or hurt players. It is, however, paramount that players be aware of the potential conflicts. As discussed above, contract advisors are typically the player's most trusted and involved advocate. They play a critical role in protecting and advancing player health. A situation in which a contract advisor is not wholly committed to the player's interests undermines the contract advisor's representation and zealous advocacy on behalf of the player, potentially damaging to the player's short-term and/or long-term health.

Before turning to the explanation of each potential conflict, it is important to recognize that conflicts and potential conflicts—including those of the type faced by contract advisors—are common in many professional industries. Thus, that contract advisors face potential conflicts is not necessarily problematic. Instead, what is important is that players (like all professional clients) be aware of the potential conflict and that the contract advisor (like all professionals) attempt to minimize those conflicts, and where not possible to do so, be transparent about the conflict and attempt to manage it appropriately.

The potential conflicts include:

- **The contract advisor's relationship with club officials.**

Generally speaking, contract advisors rely on their professional network and contacts as much as any other industry. Club officials—particularly general managers and other front office executives such as the Directors of Football Administration—are important and powerful contacts for contract advisors. Contract advisors can obtain important information from club officials about any number of football-related items (perhaps most importantly, information, *e.g.*, telephone numbers, of college players the contract advisor might want to recruit). Contract advisors might even be able to secure favorable contract terms for a player when he has a good relationship with a particular club. As a result, contract advisors occasionally walk a fine line between zealous advocacy on behalf of their client and refraining from angering club

^r The NFLPA representative also explained that contract advisors might pressure players to continue their careers: "I'm not saying there's agents that are encouraging players to continue their careers when maybe the player shouldn't. But I wouldn't be surprised if that's happened a few times."

^s Current Player 2: "There's always going to be agents out there that are just doing what they do to benefit themselves personally."

officials. To this end, the possibility exists that a contract advisor might avoid a confrontation with a club for one player to benefit another player that is a member, or potential member, of the same club. Contract Advisor 4 confirmed this rare but troublesome practice:

I've heard of some larger scale agents kind of wheeling and dealing in order to make one thing better for someone [saying] "I let you have a point last time on the last player, so you owe me on this player."^t

Moreover, the contract advisor business is highly competitive and fraught with challenges, as described above. Some contract advisors might decide they are more interested in working for an NFL club than representing NFL players.^u Thus, the possibility exists that some contract advisors might have an interest in maintaining a good relationship with a club at the expense of his client (even if unconsciously).

- **The contract advisor's compensation structure.** As discussed above, contract advisors are paid a percentage of the player's contract. Thus, until a contract is finally signed, a contract advisor is entitled to nothing. The contract advisor business model revolves around players reaching a "second contract." In other words, contract advisors generally do not generate a profit from representing players during the term of their rookie contracts, particularly after the 2011 CBA, which significantly reduced rookie compensation.^v A player's

- financial value is generally at its maximum when his rookie contract expires (or is near expiration) and he reaches (or nears) free agency for the first time (usually after four seasons in the NFL). It is at this point that players are able to offer their services to any and all clubs for whatever price the free agency market will bear. This "second contract" is a significant financial moment for the player, the club, and the contract advisor.

As a result of the significance of the second contract, contract advisors are under pressure to successfully negotiate the second contract. Not surprisingly, these more important and costly contract negotiations tend to be more difficult and subject to media attention. Players therefore may begin questioning whether another contract advisor might be more successful at "closing the deal" on the second contract (often at the prompting of a competing contract advisor). In this environment, a contract advisor likely feels pressure to have a contract executed before he or she can be terminated by the player or else the contract advisor risks losing out on a significant income stream. Contract advisors with a questionably committed client might therefore refrain from continued difficult negotiations with a club and instead recommend a player sign a contract of perhaps less than maximum value to ensure that the contract advisor will be paid. Contract Advisor 4 also confirmed this practice:

[I]f players are incentivized to leave their agent by other agents, at some point in time, an agent is going to recognize that "Hey, it's in my best interest personally to get a deal done." I am sure that has occurred multiple times, many times.

* * *

^t Interviewer: Do you think sometimes agents are reluctant to push hard on teams because they don't want to ruin the relationship with the club?

Contract Advisor 4: Yes, I do.

^u For example, Andrew Brandt was a contract advisor before becoming Vice President of the Green Bay Packers in 1999. *WSBI Bios*, Wharton Sports Bus. Inst., <http://wsb.wharton.upenn.edu/wsbi-bios-brandt.html> (last visited Aug. 7, 2015), *archived at* <http://perma.cc/RWN7-2E7T>. Brandt's switch came soon after he was representing top draft pick Ricky Williams; he was approached by the Packers within a week after Williams informed Brandt he wanted him to work with the rapper Master P, who was starting a sports management firm. Andrew Brandt, Peer Review Response (Oct. 30, 2015). Similarly, Cliff Stein, current Vice President of Football Administration and General Counsel for the Chicago Bears, was a contract advisor for nine years before joining the Bears in 2002. *Front Office – Cliff Stein*, Chi. Bears, <http://www.chicagobears.com/team/staff/Cliff-Stein/8dbdd7b5-9ffa-4612-8ddd-902086ec91a3>, *archived at* <http://perma.cc/ZKL9-JX7H> (last visited Aug. 7, 2015). Both Stein and Brandt are very well-regarded in the sports industry and thus we do not mean to suggest that either engaged in a conflicted manner while contract advisors.

^v For example, the Houston Texans selected C.J. Fiedorowicz with the first pick of the third round in the 2014 NFL Draft. *C.J. Fiedorowicz*, Spotrac, <http://www.spotrac.com/nfl/houston-texans/c.j.-fiedorowicz> (last visited Aug. 7, 2015), *archived at* <http://perma.cc/DBU2-MBRV>. Fiedorowicz signed a four-year contract with a maximum value of \$3,195,114. *Id.* If a contract advisor were to recoup 3% of Fiedorowicz' contract, and Fiedorowicz is able to play all four years of the contract (far from a guarantee) the contract advisor would make \$95,853. A contract advisor could easily spend \$35,000 recruiting a player and preparing him for the NFL Draft, not to mention the contract advisor's other professional and administrative costs. If the contract advisor were only receiving a 2% commission, which is often the case, he or she would only earn \$63,902. Thus, the contract advisor stands to make very little, if any, profit from a player's rookie contract.

Contract advisors with a questionably committed client might therefore refrain from continued difficult negotiations with a club and instead recommend a player sign a contract of perhaps less than maximum value to ensure that the contract advisor will be paid.

You have to choose. You have to decide what side of the line do you want to come down on. Do you want to come down on the side of the line where you want to do the best job? Or do you want to come down on the side of the line where you got a deal done and locked in a commission when it could be a fine deal, but not the best deal. That's the choice agents have to make, and . . . I'd be pretty sure on a regular basis, agents come down on the side of the line where it's, "Okay, let me get this done."

* * *

I think some agents are just looking to get deals done . . . I've seen the agents that just want to sign off and move on to the next one."

The contract advisor-player Standard Representation Agreement (SRA) attempts to alleviate these concerns by providing terminated contract advisors "the reasonable value of the services performed in the attempted negotiation of such contract(s) provided such services and time spent thereon are adequately documented by Contract Advisor."⁶⁶ Indeed, this *quantum meruit* provision of the SRA is a frequent subject of arbitrations between players and their former contract advisors.⁶⁷ However, NFLPA Arbitrator Kaplan strictly applies the documentation requirements and limits the hourly rate a contract advisor can obtain to \$250/hour,⁶⁸ and the amounts awarded are generally far less than the commission would have been had the contract advisor completed negotiations.^x

Relatedly, there is a potential conflict concerning short- and long-term interests. The contract advisor only gets paid while the player is playing, and thus may have an interest in having the player continue playing, even when it might not be in the best interests of the player's long-term health.

w Contract Advisor 4 also believes that the NFLPA's failure to enforce the Contract Advisor Regulations prohibitions against soliciting and offering inducements to players that are other contract advisors' clients contributes to this conflicted scenario: "[T]he NFLPA doesn't really care about [these situations; they have] turned a blind eye." Relatedly, Contract Advisor 4 explained: "I think we agents probably feel the most pressure, and that's where the conflicts come from, is the idea of losing players for no good reason when you're trying to do your best job. There are a lot of agents who do try to do their best job but have to worry about the idea of a player being scooped up because someone else stole them."

x In rare instances, Arbitrator Kaplan has awarded the terminated contract advisor a percentage of the contract ultimately negotiated by the player or another contract advisor if the terms were significantly similar to those negotiated by the terminated contract advisor. See *Harrison v. Peek*, NFLPA Case No. 07-38 (Kaplan, Arb. 2007) (awarding terminated contract advisor the agreed-upon 2 percent commission where player terminated contract advisor but signed contract negotiated by contract advisor); *Lock/Metz v. Galloway*, NFLPA Case No. 00-26 (Kaplan, Arb. 2001) (awarding terminated Contract Advisors 1.25% of \$12 million signing bonus where contract's elements "had been primarily and substantially negotiated" by prior Contract Advisors); *Professional Stars, Inc. v. Townsend*, NFLPA Case No. 95-11 (Kaplan, Arb. 1996) (awarding terminated Contract Advisor the agreed-upon 2% commission where player terminated Contract Advisor but signed contract negotiated by Contract Advisor).

- **The contract advisor's representation of multiple players on the same club.** Each NFL club is only permitted to pay players in aggregate up to the limit of the Salary Cap. Thus, there is a finite amount of money to be divided among the club's players. If a contract advisor represents two players on the same club, every dollar a contract advisor is able to secure for one player is one less dollar that is available to the other player.

- **The contract advisor's representation of multiple players at the same position.** If the players are comparably skilled, contract advisors might market one player's services at the expense of the other. Creative Artists Agency (CAA) Contract Advisor Tom Condon and former CAA Contract Advisor Ben Dogra,⁶⁹ among the most powerful in the business, have faced some scrutiny for being in such a situation. For example, in the 2012 NFL Draft, CAA was recruiting top quarterback prospect Andrew Luck who was expected to be and ultimately was chosen with the first overall pick by the Indianapolis Colts.⁷⁰ However, at the same time, CAA represented then Colts quarterback Peyton Manning, recovering from an injury.⁷¹ Some commentators thus questioned whether CAA could encourage the Colts to draft Luck while also looking out for the best interests of Manning.⁷² In addition, CAA represented several of the other top quarterbacks in the NFL at the time, including Drew Brees, Eli Manning, Matt Ryan, Matthew Stafford, and Sam Bradford.⁷³ In the end, Luck decided not to sign with CAA.⁷⁴

Moreover, in that same offseason, San Francisco 49ers quarterback Alex Smith, also represented by CAA, reportedly contemplated terminating CAA as his representatives because there was speculation that the 49ers wanted Manning as their quarterback.⁷⁵ Smith was ultimately traded to the Kansas City Chiefs, did not terminate CAA,⁷⁶ and Manning signed with the Denver Broncos. In CAA's defense, CAA's experience in negotiating quarterback contracts, generally the richest in the NFL, certainly serves Smith and the other quarterbacks represented by CAA well.

- **The contract advisor's representation of multiple players contemplated to be the top pick in the NFL Draft.** For example, speculation has been raised in multiple NFL Drafts that contract advisors, by representing several of the top prospects, could not properly advocate for each player to be considered the top pick and thus receive a larger contract.⁷⁷ Although the issue has been raised,⁷⁸ no known action has been taken against any contract advisor (which is not to necessarily suggest that any conflicts of interest rules have been violated).

In each of the above-described situations where a contract advisor's loyalties to two clients might seem at odds, the contract advisor's defense is likely to be that his or her role or ability to influence NFL clubs is being overstated, that clubs carefully make personnel and contract decisions and are not likely to be influenced in any way by a contract advisor's sales pitches. As Contract Advisor 4 explained: "The team is deciding who they want. I would describe the agent's role more in terms of helping the player get as much money as possible."

- **The contract advisor's representation of club executives and coaches.** Contract advisors are permitted to represent club executives and coaches provided they disclose those representations to the player-clients.⁷⁹ These relationships (which are not uncommon)^y are not surprising considering many players go on to become coaches or executives and wish to retain the services of the contract advisor from their playing days. The potential conflicts in these situations are obvious—a contract advisor's advocacy and negotiation efforts on behalf of a player could be in direct conflict with the interests (financial or otherwise) of the club executive or coach the contract advisor also represents.

Figure 12-A: Potential Conflicts of Interest for Contract Advisors

1	The contract advisor's relationship with club officials.
2	The contract advisor's compensation structure.
3	The contract advisor's representation of multiple players on the same club.
4	The contract advisor's representation of multiple players at the same position.
5	The contract advisor's representation of multiple players contemplated to be the top pick in the NFL Draft.
6	The contract advisor's representation of club executives and coaches.

^y There are and have been several successful contract advisors who represent both NFL players and club personnel. See Pete Thamel, *How Jimmy Sexton became college football's most powerful agent*, Sports Illustrated, Jan. 3, 2014, <http://www.si.com/college-football/2014/01/03/jimmy-sexton-college-football>, archived at <http://perma.cc/N5UT-HXMF>; Anthony L. Salvador, *The Regulation of Dual Representation in the NFL*, 13 Tex. Rev. Ent. & Sports L. 63, 65–66 (2011).

(E) Enforcement of Legal and Ethical Obligations^z

The Contract Advisor Regulations provide an arbitration mechanism that is generally the exclusive mechanism by which NFL players can bring a claim against a contract advisor for a violation of the contract advisor's obligations. Specifically, the Contract Advisor Regulations arbitration procedures govern, in relevant part, "[a]ny dispute between an NFL player and a Contract Advisor with respect to the conduct of individual negotiations by a Contract Advisor," "[t]he meaning, interpretation or enforcement of a fee agreement," and "[a]ny other activities of a Contract Advisor within the scope of the[] [NFLPA] Regulations."⁸⁰

The arbitrations are commenced with the filing of a grievance, generally followed by a hearing where each side has the opportunity to present evidence and witnesses.⁸¹ Arbitrator Roger Kaplan has presided over almost every NFLPA arbitration since 1994.⁸² Kaplan is empowered to and regularly awards monetary damages to both contract advisors and players.

The NFLPA's arbitration provisions preempt civil lawsuits and thus have effectively eliminated player-contract advisor litigation. Consequently, a player's best recourse against a contract advisor is to pursue damages through the NFLPA arbitration process.⁸³ Each year there are dozens of grievances filed between contract advisors and players. However, a review of the NFLPA's arbitration cases reveals only one case concerning player health, safety or welfare: *Mayes v. Zucker*.

In *Mayes v. Zucker*,⁸⁴ the arbitrator awarded former Miami Dolphin Alonzo Mayes \$100,000 in damages against his former contract advisor. The Dolphins had cut Mayes after he suffered a knee injury and his contract advisor failed to file an Injury Grievance on Mayes' behalf, which would have entitled Mayes to his salary for the amount of games for which the injury would have prevented him from playing. The contract advisor's NFLPA-certification was also revoked in a separate decision arising out of the same facts.

Importantly, while the arbitration process settles disputes between contract advisors and players (or other contract advisors), it is not the process by which contract advisors are disciplined for violations of the Contract Advisor Regulations. The NFLPA has a three- to five-player Committee on Agent Regulation and Discipline (CARD), which is responsible for investigating and taking disciplinary action against contract advisors.⁸⁵ CARD issues a complaint to the contract advisor and, after the contract advisor files an answer, CARD issues its discipline.⁸⁶ CARD's disciplinary authority includes letters of reprimand, suspensions, fines, prohibitions on recruiting, and revocation of the contract advisor's NFLPA-certification.⁸⁷ The contract advisor can appeal any discipline to Kaplan, who will hold a hearing as he would pursuant to a dispute between or among contract advisors and players.⁸⁸

At the 2015 Harvard Symposium on Sports & Entertainment Law, NFLPA Assistant General Counsel Heather McPhee explained that the quality of contract advisors "run[s] the gamut" and that enforcement of the Contract Advisor Regulations is difficult because the NFLPA only has five attorneys who work on those types of issues in addition to their other legal work.^{aa} McPhee further explained that "evidentiary" issues create enforcement issues, *e.g.*, allegations are hard to prove, particularly if players are unwilling to testify. Consequently, McPhee expressed that the NFLPA is often only able to enforce "really egregious" violations of the Contract Advisor Regulations.

The NFLPA representative we interviewed echoed McPhee's comments in many respects, explaining that when it comes to proving a violation of the Contract Advisor Regulations, "filing a sworn statement or turning over proof, all of a sudden [the Contract Advisors] start clamming up." The NFLPA representative believes that the NFLPA has done "a pretty good job" of enforcing the Contract Advisor Regulations, but that "[i]t could always be improved." Finally, the NFLPA representative affirmed that "where a player's being harmed financially, that's something that we go after hard and heavy."

^z Appendix K is a summary of players' options to enforce legal and ethical obligations against the stakeholders discussed in this Report.

^{aa} As discussed in Chapter 7: The NFL and NFLPA, Section J: Current Practices of the NFLPA, many contract advisors also believe the NFLPA is understaffed. One contract advisor that we spoke with expressed the belief that "the NFLPA is severely understaffed," while another explained that in his opinion the NFLPA does a "terrible job" of policing club medical staff and enforcing player health and safety provisions of the CBA because, in part, it is "absolutely not" adequately staffed. Similarly, another contract advisor said it would help "100 percent" if the NFLPA hired more attorneys focused on health issues.

(F) Recommendations Concerning Contract Advisors

Contract advisors are a critical stakeholder in protecting and advancing player health.^{ab} Indeed, peer reviewer and former contract advisor and NFL club executive Andrew Brandt noted in his comments that contract advisors “are the gateway to the player” and thus are “key stakeholders in player health issues.”⁸⁹ A contract advisor is typically involved in all aspects of a player’s life, including but not limited to his personal, career, medical, legal, and financial matters. They have the ability to ensure that the player receives proper medical care during his career, that the player’s health-related rights are respected and that the player considers the risks of an NFL career while at the same time helping to prepare the player for a life after football.

While some may think that the role of contract advisors is further afield from health than other stakeholders in this Report, it is important to bear in mind our broad definition of health, as explained in the Introduction. We define health for purposes of this Report as “a state of overall wellbeing in fundamental aspects of a person’s life, including physical, mental, emotional, social, familial, and financial components.” To truly improve player health we cannot focus solely on avoiding brain injury, protecting joints, and promoting cardiovascular health, for example, but we must also address well-being more generally, which depends on other factors, such as the existence of family and social support, the ability to meet economic needs, and life satisfaction. Contract advisors play a critical role in all of these aspects of player health.

Nevertheless, as explained above, there are structural and regulatory issues with the contract advisor industry that prevent players from receiving the best possible representation and the best possible protection of their health-related rights. Improvements to the contract advisor industry should increase the level of professionalism in the industry, reduce unethical behavior, increase stability in contract advisor operations, and most importantly, help players receive the guidance and representation they deserve, particularly on health-related matters. Simply put, improvements in player health require sufficient representation and enforcement concerning player rights. Sufficient representation and enforcement will not come unless the contract advisor industry is improved.

Before getting to contract advisor-specific recommendations, there are additional recommendations concerning contract advisors that are made in other chapters:

- Chapter 1: Players— Recommendation 1:1-A: With assistance from contract advisors, the NFL, the NFLPA, and others, players should familiarize themselves with their rights and obligations related to health and other benefits, and should avail themselves of applicable benefits.
- Chapter 13: Financial Advisors— Recommendation 13:1-A: Players should be encouraged by the NFL, NFLPA, and contract advisors to work exclusively with NFLPA-registered financial advisors.

In addition to these recommendations, and in light of the above background and the important role that contract advisors are capable of playing in protecting and promoting player health, we recommend the following:

Goal 1: To recognize contract advisors as an important resource alongside the NFLPA in their shared endeavor to advance player interests, and to seek opportunities to strengthen their connections whenever possible.

Principles Advanced: Respect; Health Primacy; and, Collaboration and Engagement.

^{ab} Current Player 8 explained that “there are many, many guys that . . . need an agent to help them transition, and help them in their everyday lives of the NFL.”

Recommendations Concerning Contract Advisors – continued

Recommendation 12:1-A: The NFLPA should create a Contract Advisor Committee that meets with NFLPA representatives at least twice a year to discuss issues affecting NFL player health, as defined broadly in this Report to include health, finances, education, and the like.

It seems clear that the relationship between the NFLPA and contract advisors could be considerably stronger. By law, contract advisors are agents of the NFLPA—acting in largely the same capacity as the NFLPA, *i.e.*, protecting players’ best interests. Contract advisors are typically players’ most trusted guides and the ones who take on almost all dealings with NFL clubs. For these reasons, the NFLPA should view contract advisors as partners in protecting players’ rights, particularly when it comes to their health, and should develop formal mechanisms for contract advisors to pass along their knowledge, experience, concerns, and suggestions. A committee comprised of contract advisors would provide such a mechanism. Without getting into the specifics of the precise structure and terms of this proposed committee, we simply emphasize that the committee members should reflect a wide range of clientele, and systems should be put in place to allow all contract advisors to be heard.

Recommendation 12:1-B: The NFLPA should provide contract advisors with a copy of all materials and advice that it provides to players concerning player health.

Contract advisors typically serve as the main conduits and filters for information and documents to players. Given their trust in their contract advisors and competing demands for their time, many players might only pay serious attention to information or a document if their contract advisor tells them to read it. The NFLPA provides players with documents during training camp and at other times during the season and offseason concerning various topics, including their rights, current issues, and their health. While the NFLPA does make summaries of the benefit plans available to contract advisors via a password-protected website, contract advisors that we interviewed expressed that the NFLPA does not otherwise provide contract advisors with copies of the documents it is providing to players.^{ac} During its review of this Report, the NFLPA stated that it believes it does provide contract advisors with all such documents. Without resolving this dispute, in order to ensure that the players take the notices seriously, the NFLPA should provide a copy of these documents related to health, as defined broadly by this Report, to contract advisors so that they can confirm that the player received and properly considered the information. Again, the NFLPA should consider contract advisors as its partners in representing and protecting players.

Goal 2: To improve professionalism and ethical conduct within the contract advisor industry.

Principles Advanced: Respect; Health Primacy; Empowered Autonomy; Transparency; Managing Conflicts of Interest; and, Justice.

Recommendation 12:2-A: The NFLPA should amend the Contract Advisor Regulations to prohibit loans or advances from contract advisors to players or prospective players in excess of the costs reasonable and necessary to prepare for the NFL Draft.

^{ac} Contract Advisor 4: “I don’t know what they [the NFLPA] share with the players.”

Recommendations Concerning Contract Advisors – continued

The NFLPA Contract Advisor Regulations forbid “[p]roviding or offering money or any other thing of value to any player or prospective player to induce or encourage that player to utilize his/her services.”⁹⁰ However, many (but not all) contract advisors routinely provide new clients with tens or hundreds of thousands of dollars in loans or advances that generally do not have to be repaid if the player continues to retain the contract advisor. The NFLPA arbitrator has routinely found such arrangements not to be in violation of the NFLPA Contract Advisor Regulations based on a questionable legal analysis.

Although such arrangements would seem to benefit players by providing them with significant amounts of money up front, permitting these loans and advances may actually work to the detriment of players to the extent they cause players to choose their contract advisors for the wrong reasons—cash over competence, integrity, and experience. As a result, what appears to be a windfall in the short-term can result in long-term deficits to the player.

For example, an inadequate contract advisor might fail to tell the player he has the right to a second medical opinion or might arrange for a second medical opinion by an unqualified doctor. The contract advisor might not know how to appropriately work with the NFLPA in protecting a player’s rights, such as filing a grievance. The contract advisor might also avoid filing a grievance to avoid spoiling his or her relationship with the club. Moreover, the contract advisor might not adequately assist the player in taking advantage of the benefits and programs available to him to prepare for life after football.

Accordingly, we recommend limiting loans and advances from contract advisors to the costs reasonable and necessary to prepare players for the NFL Draft. The NFLPA should consider developing a maximum amount (to grow annually at some nominal rate) that contract advisors may loan or advance to players for training purposes and treat any amount above that as presumptively violative. This will help players focus on competence over short-term benefits when selecting contract advisors and allow them more freedom to end relationships with contract advisors who are not working out, as they will avoid having large debts that come due only if and when they select a new contract advisor.

In terms of enforcement, NFLPA Contract Advisor Regulations already require contract advisors to provide the NFLPA with a copy of any agreement between the contract advisor and player.⁹¹ Thus, the NFLPA should review those agreements to determine whether the amounts being advanced or loaned appear to be acceptable and investigate as appropriate. To further assist in enforcement, the NFLPA should also require that all agreements between a contract advisor and a player be in writing.

Recommendation 12:2-B: The NFLPA should consider investing greater resources in investigating and enforcing the Contract Advisor Regulations.

As discussed above, there are serious problems with the contract advisor industry that sometimes result in substandard representation for and advice to the players, including poor handling of player health matters. Additionally, the NFLPA admittedly has difficulty enforcing the Contract Advisor Regulations. Without meaningful enforcement, the Regulations lose their effectiveness to the detriment of players. One possibility is hiring more attorneys to focus on these matters.

Recommendation 12:2-C: Players should be given information to ensure that they choose contract advisors based on their professional qualifications and experience and not the financial benefits the contract advisor has or is willing to provide to the player.

Recommendations Concerning Contract Advisors – continued

As discussed above, prospective NFL players often choose their contract advisors not based on their professional qualifications but instead on how much the contract advisor is willing to “loan” or “advance” to the player. Players understandably are excited about the opportunity to receive large sums from the contract advisors simply for letting the contract advisor represent them. However, players do so at their own peril. As Contract Advisor 4 stated:

“[I]f a player wants to make a business decision based on how much money they’re being given or advanced, well, then that’s their right . . . The sad thing, of course, is when they’re young, they’re from more difficult socioeconomic backgrounds, so they don’t understand that when you take money or you take some sort of favor for the right to represent them, that . . . you’re only going to get what you paid for . . . [J]ust as you wouldn’t go to the heart doctor for your heart surgery that’s going to give you the most money . . . [y]ou want to go to the best doctor. And we see every day players wondering why am I getting improper guidance, why am I getting poor advice, why am I being left to hang out to dry. And sometimes I’ll tell them to look in the mirror and ask why did I choose the people around me that I did. And often times it’s because of the financial advances, financial favors that they were given.”

If the Contract Advisor Regulations are not amended to prohibit such arrangements as recommended above, it is important that the players at least understand the downsides of choosing their contract advisor based on loans or advances.^{ad}

However, presently, there are minimal resources for players about how to choose a contract advisor. While colleges might be able to help players, they are not experts in the contract advisor industry and often have their own interests which might conflict with the player’s—such as when the player is considering leaving college even though he has college eligibility remaining.⁹²

The NFLPA has the potential to be the best resource for helping players choose contract advisors appropriately and does make some effort on this topic. The NFLPA conducts “Pipeline to the Pros” with current college football players to try to inform them about the process of becoming an NFL player, including hiring a contract advisor.⁹³ In addition, the NFLPA’s website includes a page advising “Active Players” on “How to Pick Your Agent,”⁹⁴ but the page is sparse on information. The NFLPA only lists five recommendations for consideration in picking a contract advisor:

- (1) The primary reason you hire an agent is to negotiate your NFL Player Contract. Your agent should be skilled at negotiating the following: Signing Bonus; Paragraph 5 Salary; Roster, Report and Workout Bonuses; and, Incentives.
- (2) Interview several there are more than 850 certified agents (sic).
- (3) Verify clients represented.^{ae}
- (4) Contact the NFLPA and/or utilize the agent search feature on this website to ensure the agent is active and in good standing.
- (5) Familiarize yourself with the NFLPA Regulations Governing Contract Advisors and understand required and prohibited conduct for the agents.

ad Contract Advisor 5: “[P]layers have a tendency to focus in on the fee, focus in on the flavor of the month, so to speak, and just worry about what kind of contract they think they’re gonna get or what the agent promises them. And I think what happens is that the player doesn’t understand that really this is from A, which is the start of their career, to B, the end of their career, to C, which is after their career.”

ae During the recruiting process, the contract advisor will generally make the player aware of other players the contract advisor purportedly represents, to try and demonstrate the contract advisor’s skill. A list of contract advisor’s clients is available to players after they are in the NFL—but not before. Thus, before the player enters the NFL, the best resource for confirming a contract advisor’s clients is the NFLPA. Players should also seek to discuss the quality of a contract advisor’s services with current and/or former clients.

Recommendations Concerning Contract Advisors – continued

Notably, each of these steps is fairly burdensome for the players. Additionally, the NFLPA's site does not include any information on the contract advisor hiring process, the types of services contract advisors must or can provide, potential conflicts of interest, or the types of fee and contractual arrangements between contract advisors and players (such as loans and advances) and the benefits and drawbacks of such arrangements.

The NFLPA is in a powerful position to help prospective NFL players pick contract advisors. While such players are not yet in the NFLPA's bargaining unit (and thus the NFLPA has no legal obligations towards them, see Chapter 7: The NFL and NFLPA), hundreds of college players will soon be NFLPA members and their decisions concerning a contract advisor while still in college can have a significant impact on their NFL career. Although the NFLPA provides some guidance to players about the process, problems clearly remain. The NFLPA could expand and intensify the information made available to prospective NFL players and could work with both the NCAA and the NFL (both of which more closely track potential NFL players) to ensure that the right players are receiving the necessary information. The NFLPA should also consider creating a system whereby players are able to rate their contract advisors' performance and that data could be made available, including but not limited to a regular survey, a Yelp-like service, or some other form of information-sharing.

Recommendation 12:2-D: The Contract Advisor Regulations should be amended to require contract advisors to consider a player's long-term health interests in providing representation and advice.

It is clear that a player's career can be short and that the physical and mental tolls of a career can be permanent. Players will often take physical risks to maximize their earnings, even if those earnings come at the cost of future health. Balancing these risks and rewards is difficult. Nevertheless, the long-term effects of a player's decision—including whether to play through an injury and how to structure a contract—must be taken into consideration. Contract advisors must be aware, and make sure the players are aware, of these short-term versus long-term trade-offs.

Contract advisors should continue to be a resource for players after their careers are over. Even though contract advisors are no longer compensated once a player's career ends, players are still likely to view them as their most trusted and best resource for many matters in life, including, specifically, items related to the CBA, such as various benefits and programs. While contract advisors are likely to help former players because it is in their own business interests, they should also recognize that a player will view ongoing assistance as a logical and natural extension of their relationship during the player's playing days.

Recommendation 12:2-E: The NFLPA should amend the Contract Advisor Regulations to prohibit contract advisors from revealing a player's medical information or condition to anyone without the player's consent.

Players are obligated by the CBA to advise the club of any injury or medical condition. Contract advisors might often be a conduit for this information, particularly where the player has been seen by a second opinion doctor. Thus, it is unclear that there is a problem with contract advisors disclosing player medical information to clubs without the player's consent. Nevertheless, considering the importance of the information, we believe it is a practice that should be more closely examined.

Recommendations Concerning Contract Advisors – continued

There are numerous laws and ethical rules that make clear that an individual's medical history, conditions, and records are entitled to the utmost confidentiality. These laws and rules emanate from respect for people's privacy and recognition that people generally should not be discriminated against based on medical conditions. As explained in Chapter 2: Club Doctors, these confidentiality protections can only be bypassed with the individual's consent or in certain rare situations. Contract advisors should similarly be required to hold in confidence a player's medical condition where the condition is not otherwise public knowledge. While there may be many legitimate reasons for a contract advisor to disclose a player's medical history or condition to a third party, such as a club interested in drafting or signing the player, considering the sensitivity of the information, the contract advisor should involve the player in important processes related to their health and obtain consent to disclose such information.

Recommendation 12:2-F: The NFLPA should consider including at least one non-player member on the Committee on Agent Regulation and Discipline (CARD).

CARD is responsible for investigating and disciplining contract advisors for violations of the NFLPA Contract Advisor Regulations. However, the most egregious and regular violations of the NFLPA Contract Advisor Regulations are those that, on their face, seem to benefit players—large payouts and other improper inducements. As discussed above, these practices undermine the industry's professionalism at the expense of the players and their health. Yet players serving on CARD might not consider these practices to be as detrimental as they are, perhaps because they themselves took benefits or inducements at one time, or know teammates or friends who have, or know and like contract advisors who have provided such inducements.

Adding a law professor or attorney familiar with the sports industry to CARD would provide a different and independent perspective on the relevant issues and practices. Although the NFLPA assists CARD members in their investigations, adding a neutral member to the Committee would strengthen the process.

Recommendation 12:2-G: The NFLPA should consider whether there are structural or regulatory changes that can be made to the contract advisor industry to remove or reduce possible conflicts of interests, including situations where the contract advisor represents players on the same club, players at the same position, and/or players in the same NFL Draft.

As discussed above, there are a variety of situations and practices that could pose conflicts for contract advisors or, at a minimum, present the appearance of a conflict. It is not clear whether these potential conflicts are in fact harming players or how these conflicts can be removed or reduced without also harming players. For example, if a player were to be represented by a contract advisor devoid of any possible conflicts, *i.e.*, one who does not represent any other players at the same position, on the same team, in free agency, or have relationships with club personnel, the player might easily end up being represented by an inexperienced and marginally skilled advisor.

Recommendations Concerning Contract Advisors – continued

One possibility is for contract advisors to disclose these potential conflicts to their clients. Indeed, those contract advisors who are also attorneys are required to obtain their client's informed consent before proceeding with a conflicted representation.⁹⁵ However, research has shown that sometimes disclosing conflicts can actually increase the level of trust between the biased advisor and the person to whom the conflict is disclosed.⁹⁶ Moreover, disclosure does not remove the potential conflict.

There are no clear answers, but the NFLPA should more closely examine the issue via analyzing past and future situations that might present conflicts, and by discussing the issue with players and contract advisors.



Endnotes

- 1 U.S.C. § 159(a).
- 2 *White v. Nat'l Football League*, 92 F. Supp. 2d 918, 924 (D. Minn. 2000).
- 3 See *Black v. Nat'l Football League Players Ass'n*, 87 F. Supp. 2d 1, 2 (D.D.C. 2000) ("NFLPA nevertheless permits individual agents, or 'contract advisors,' to represent individual players in negotiations with NFL Clubs."); *White v. Nat'l Football League*, 92 F. Supp. 2d 918, 924 (D. Minn. 2000) ("Player agents are permitted to negotiate player contracts in the NFL only because the NFLPA has delegated a portion of its exclusive representational authority to them."). See also *Magic Pan, Inc. v. NLRB*, 627 F.2d 105, 109–10 (7th Cir. 1980), *citing* *General Electric Co. v. NLRB*, 412 F.2d 512, 520 n.6 (2d Cir. 1969) (explaining relationship between unions and agents); Richard T. Karcher, *Fundamental Fairness in Union Regulation of Sports Agents*, 40 Conn. L. Rev. 355, 359 (2007) (describing union's authority to delegate responsibility for player contract negotiations to agents).
- 4 See 1993 CBA, Art. VI; see also 2011 CBA, Art. 48 (discussing NFLPA's authority to govern agents and discipline for Clubs which negotiate with non-certified agents).
- 5 See Dan Cook, *Sports agents busy chasing sweetest deals*, San Antonio Express-News, July 4, 1999, available at 1999 WLNR 7890207.
- 6 Anndee Hochman, *Manley Case to Players Union*, Wash. Post, Jan. 26, 1985, available at 1985 WLNR 1507095.
- 7 See Brian Schmitz, *Agents Agree that Unscrupulous Practitioners Give Field Bad Name*, Orlando Sentinel, Jun. 12, 1988, available at 1988 WLNR 2014977 (discussing problems in the sports agency business with focus on football and basketball industries); Doug Bedell, *The Crackdown on Agents*, Dallas Morning News, July 19, 1987, available at 1987 WLNR 1923190 (same); Mitch Lawrence, *A Bad Deal: Player Agents and College Athletes*, Dallas Morning News, Nov. 10, 1985, available at 1985 WLNR 1326922 (same).
- 8 See *NFLPA is no longer labor group*, Dallas Morning News, Dec. 6, 1989, available at 1989 WLNR 3102115.
- 9 See Larry Weisman, *Redskins Get a Good Four-Year Deal in Harvey*, USA Today, Mar. 9, 1994, available at 1994 WLNR 2322485 (referencing NFLPA's inability to regulate Contract Advisors during legal dispute with NFL).
- 10 See Bob Oates, *With Free Agency Won, NFLPA Ready to Recertify as a Union*, L.A. Times, Mar. 14, 1993, available at 1993 WLNR 3986006.
- 11 Contract Advisor Regulations, § 3(A)(17).
- 12 The 2012 Contract Advisor Regulations are available from the NFLPA's website at http://nflparesources.blob.core.windows.net/mediaresources/files/PDFs/SCAA/2012_NFLPA_Regulations_Contract_Advisors.pdf.
- 13 Contract Advisor Regulations, § 2(A).
- 14 *Id.* The NFLPA's enforcement of its rules was tested when the rap and entertainment mogul Jay-Z announced the creation of Roc Nation Sports, a prospective athlete representation firm, in 2013. Jay-Z did not graduate high school and was presumably not interested in taking the NFLPA's exam. Jay-Z evaded the Contract Advisor Regulations by hiring Kim Miale, a certified contract advisor, to work for Roc Nation Sports. Nevertheless, because he was not certified, Jay-Z was thought not to be permitted to engage in recruiting on behalf of Roc Nation Sports. The NFLPA provided Jay-Z a reprieve when it issued a memorandum stating non-Contract Advisor employees could sit in on recruiting meetings held at the contract advisor's office. See Darren A. Heitner and Bryan Saul, *Jay Z Has 99 Problems, And Being a Sports Agent May Be One*, 24 Marq. Sports L. Rev. 59 (2013); Jason Cole, *NFLPA Adopts Jay-Z Rule*, Nat'l Football Post (Dec. 6, 2013, 5:53 PM), <http://www.nationalfootballpost.com/NFLPA-adopts-JayZ-Rule.html>, archived at <http://perma.cc/7YD9-JYLP> (discussing NFLPA's memorandum on the issue).
- 15 Agent Certification FAQs, NFLPA, <https://nflpa.com/agents/faq> (last visited Aug. 7, 2015).
- 16 *Id.*
- 17 A player is not eligible for the NFL Draft "until three NFL regular seasons have begun and ended following either his graduation from high school or graduation of the class with which he entered high school, whichever is earlier." 2011 CBA, Art. 6, § 2. From 2007 to 2012, contract advisors were prohibited from recruiting players until they were eligible for the NFL Draft. The "Junior Rule," as it was known, only empowered those contract advisors who disregarded the Junior Rule as well as "runners," who are not regulated by the NFLPA. As a result, in 2012, the Contract Advisor Regulations were amended to remove the Junior Rule. Mike Florio, *NFLPA dumps "junior rule"* ProFootballTalk (Mar. 27, 2012, 6:00 PM), <http://profootballtalk.nbcsports.com/2012/03/27/nflpa-dumps-junior-rule/>, archived at <http://perma.cc/W53W-KT7H>.
- 18 See Mike Florio, *Good agents do a lot more than negotiate contracts*, ProFootballTalk (July 23, 2015, 11:01 AM), <http://profootballtalk.nbcsports.com/2015/07/23/good-agents-do-a-lot-more-than-negotiate-contracts/>, archived at <http://perma.cc/UWB8-DXC3>.
- 19 "The term 'compensation' shall be deemed to include only salaries, signing bonuses, reporting bonuses, roster bonuses, Practice Squad salary in excess of the minimum Practice Squad salary specified in Article 33 of the Collective Bargaining Agreement, and any performance incentives earned by the player during the term of the contract (including any option year) negotiated by the Contract Advisor. For example, and without limitation, the term compensation shall not include any 'honor' incentive bonuses (e.g. ALL PRO, PRO BOWL, Rookie of the Year), or any collectively bargained benefits or other payments provided for in the player's individual contract." 2012 NFLPA Contract Advisor Regulations, § 4(B)(3).
- 20 NFLPA Contract Advisor Regulations, § 4(B)(1).
- 21 Each year, clubs can designate one unrestricted free agent as a "Franchise Player" and one unrestricted free agent as a "Transition Player." These designations provide the clubs the opportunity to match any offers made to the players and to receive draft picks as compensation in the event the players sign with another club. In exchange, the players are guaranteed a one-year contract that makes them among the highest paid at their position. See 2011 CBA, Art. 10.
- 22 NFLPA Contract Advisor Regulations, § 4(B)(1)(a).
- 23 NFLPA Contract Advisor Regulations, § 4(B)(4).
- 24 ¶ 12 of the NFLPA Standard Representation Agreement, which can be found as Appendix D-4 to the 2012 NFLPA Contract Advisor Regulations.
- 25 See Restatement (Third) of Agency § 1.01 (2006) ("Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act.")
- 26 See *id.* § 8.03, cmt. d (describing agent's duty of undivided loyalty); *id.* § 8.08 (2006) (explaining agent's duty to act with care, competence and diligence of agents in similar circumstances); *id.* § 8.10 (stating that agent has duty "to refrain from conduct that is likely to damage the principal's enterprise").
- 27 "Duty," Black's Law Dictionary (9th ed. 2009).
- 28 *Ritani, LLC v. Aghjayan*, 880 F. Supp. 2d 425, 455 (S.D.N.Y. 2012) (applying New York law); *Carcano v. JBSS, LLC*, 200 N.C.App. 162, 177 (N.C.App. 2009); *L.C. v. R.P.*, 563 N.W.2d 799, 802 (N.D. 1997); *Allen Realty Corp. v. Holbert*, 227 Va. 441, 447 (Va. 1984); *Murphy v. Country House, Inc.*, 307 Minn. 344, 350 (Minn. 1976).
- 29 NFLPA Contract Advisor Regulations, § 3(A).
- 30 The UAAA defines an "athlete agent" as: an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual

- is an athlete agent. The term does not include a spouse, parent, sibling, [or] grandparent[, or guardian] of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization. UAAA, § 2(2).
- 31 *Uniform Athletes Agents Act*, National Conference of Commissioners on Uniform State Laws, Aug. 4, 2000, http://www.uniformlaws.org/shared/docs/athlete_agents/uaaa_finalact_2000.pdf, archived at <https://perma.cc/798J-QENC?type=pdf>.
 - 32 *Id.*
 - 33 Marc Edelman, *Will The New Uniform Athlete Agents Act Continue To Pander To The NCAA?*, *Forbes* (June 4, 2013 9:00 AM), <http://www.forbes.com/sites/marcedelman/2013/06/04/will-the-new-uniform-athlete-agents-act-continue-to-pander-to-the-ncaa/>, archived at <https://perma.cc/ALC6-79CS?type=pdf>; see also *Athlete Agents Acts*, Uniform Laws Comm'n, <http://www.uniformlaws.org/Act.aspx?title=Athlete%20Agents%20Act> (last visited Aug. 7, 2015), archived at <http://perma.cc/V223-PE7Q> (showing the status of the UAAA across the country).
 - 34 See Chris Deubert, *What's A Clean Agent to Do? The Case for a Cause of Action Against a Players Association*, 18 *Vill. Sports & Ent. L.J.* 1, 6–10 (2011) (discussing problems with the UAAA).
 - 35 See *id.* at 10–11 (discussing other states' agent laws).
 - 36 See *Morton v. Steinberg*, No. G037793, 2007 WL 3076934 (Cal.Ct.App. Oct. 22, 2007).
 - 37 *Id.*
 - 38 See Bernie Wilson, *Steinberg is Dealing with the Fallout from Drinking*, *The Augusta Chronicle* Jan. 15, 2012, available at 2012 WLNR 1050482 (discussing Steinberg's outstanding debt to Morton of \$450,000 as of January 2012).
 - 39 Sports Agent Responsibility and Trust Act, 15 U.S.C. §§ 7801–7807.
 - 40 See Deubert, *supra* note 34 at 11–12 (discussing problems with SPARTA).
 - 41 *Id.*
 - 42 See *Who We Are*, Nat'l Collegiate Athletic Ass'n, <http://www.ncaa.org/about/who-we-are> (last visited Aug. 7, 2015), archived at <http://perma.cc/2S7M-GL89>; *Membership*, Nat'l Collegiate Athletic Ass'n, <http://www.ncaa.org/about/who-we-are/membership> (last visited Aug. 7, 2015), archived at <http://perma.cc/5J5P-RQ2V> (describing membership as more than 1,200 schools).
 - 43 See *NCAA v. Tarkanian*, 488 U.S. 179 (1988) (discussing scope of NCAA's power).
 - 44 –14 NCAA Division I Manual, § 12.1.2.
 - 45 See UAAA §§ 15, 17 (2000) (explaining that violations of parts of act prohibiting certain conduct may result in criminal and administrative punishments).
 - 46 Deubert, *supra* note 34 at 14.
 - 47 This information was provided by the NFLPA.
 - 48 “The term ‘runner’ generally describes someone employed by an agent, typically a young person, whose job is to become friendly with the student-athlete, providing the student-athlete with cash, meals, clothes or other gifts and ultimately steering the student-athlete towards the employing agent.” Deubert, *supra* note 34 at 6.
 - 49 *Model Rules of Prof'l Conduct*, Am. Bar Ass'n (2013), available at www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html.
 - 50 Information about the number of Contract Advisors and their clientele is on file with the NFLPA.
 - 51 Contract Advisor Regulations, § 2(G). See also Kivisto v. Nat'l Football League Players Ass'n, 10-cv-24226, 2011 WL 335420 (S.D.Fla. 2011) (dismissing Contract Advisor's challenge to his decertification for having not negotiated an NFL contract in a three-year period), *aff'd* 435 Fed. Appx. 811 (11th Cir. 2011).
 - 52 This information was provided by the NFLPA.
 - 53 See Scott Kestenbaum, *Uniform Alternative Dispute Resolution: The Answer to Preventing Unscrupulous Agent Activity*, 14 *Pepp. Disp. Resol.* L.J. 55, 56–58 (2014) (discussing recent scandals involving sports agents); James Masteralexis, Lisa Masteralexis and Kevin Snyder, *Enough is Enough: The Case for Federal Regulation of Sport Agents*, 20 *Jeffrey S. Moorad Sports L.J.* 69, 71 (2013) (same); Deubert, *supra* note 34 (discussing problems with the current agent regulatory scheme).
 - 54 See Andrew Brandt, *An agent's life isn't all glamour*, ESPN, Nov. 27, 2012, http://espn.go.com/nfl/story/_/id/8681968/nfl-agent-life-all-glamour, archived at <http://perma.cc/7VVL-CYBG> (discussing realities of Contract Advisor industry).
 - 55 See 2012 Contract Advisor Regulations, § 3(B)(2).
 - 56 See *Champion Pro Consulting Group, LLC v. Impact SportsFootball, LLC*, 12-cv-27, 2015 WL 4392994, *2 (M.D.N.C. July 15, 2015) (discussing \$100,000 advanced to NFL player Robert Quinn); Mike Florio, *As rookie money dries up, agents continue to cut great deals for players*, *ProFootballTalk* (Jan. 11, 2012, 1:17 PM), <http://profootballtalk.nbcsports.com/2012/01/11/as-rookie-money-dries-up-agents-continue-to-cut-great-deals-for-players/>, archived at <http://perma.cc/KUM5-WFPB> (discussing large advances and loans being provided to prospective clients).
 - 57 See, e.g., *Rosenhaus v. Jackson*, NFLPA Case No. 13-31 (Kaplan, Arb. Apr. 10, 2014) (player required to repay Contract Advisor \$361,415 in loans made at the time the player became a client or shortly thereafter); *Fleming v. Brown*, NFLPA Case No. 13-29 (Kaplan, Arb. Mar. 18, 2014) (player required to repay Contract Advisor \$60,875.45 in pre-draft loans and advances); *Kiernan v. Rachal*, NFLPA Case No. 13-2 (Kaplan, Arb. Jul. 18, 2013) (player required to repay Contract Advisor \$43,573.76 in loans and advances); *Martin v. Galette*, NFLPA Case No. 10-40 (Kaplan, Arb. Mar. 1, 2011) (player required to repay Contract Advisor \$21,978.10 in pre-draft loans); *Canter v. Lee*, NFLPA Case No. 08-40 (Kaplan, Arb. Apr. 9, 2009) (player required to repay Contract Advisor \$9,228.42 in pre-draft loans).
 - 58 *Rosenhaus v. Jackson*, NFLPA Case No. 13-31 (Kaplan, Arb. Apr. 10, 2014), at 34–35.
 - 59 See, e.g., *Mackler & Archambeau v. Nicks*, NFLPA Case No. 08-38 (Kaplan, Arb. May 7, 2009) (player required to repay Contract Advisors \$25,493.96 in training expenses).
 - 60 “Magnetic resonance imaging (MRI) is a test that uses a magnetic field and pulses of radio wave energy to make pictures of organs and structures inside the body. In many cases, MRI gives different information about structures in the body than can be seen with an X-ray, ultrasound, or computed tomography (CT) scan.” *Magnetic Resonance Imaging (MRI)*, WebMD, May 24, 2013, <http://www.webmd.com/a-to-z-guides/magnetic-resonance-imaging-mri>, archived at <http://perma.cc/QC93-HA5B>.
 - 61 “A computed tomography (CT) scan uses X-rays to make detailed pictures of structures inside of the body.” CT or CAT Scan, WebMD, Jun. 5, 2013, <http://www.webmd.com/hw-popup/ct-or-cat-scan>, archived at <http://perma.cc/FB76-AP2P>.
 - 62 See also David Canter, *From Doctor to Watchdog to Friend*, ESPN (2000), <http://espn.go.com/page2/s/confessions/001115agent.html>, archived at <http://perma.cc/8KTJ-S2CB> (NFL Contract Advisor David Canter: “For some clients, I play doctor. I have to know detailed physical information about the injuries the players have suffered in the past. I have to know whether or not those injuries could be career-threatening or career-ending, and whether or not my client should see a doctor for a second opinion or if he should see a certain specialist.”); Sally Jenkins & Rick Maese, *NFL Medical Standards, Practices Are Different Than Almost Anywhere Else*, *Wash. Post*, Mar. 16, 2013, http://www.washingtonpost.com/sports/redskins/nfl-medical-standards-practices-are-different-than-almost-anywhere-else/2013/03/16/b8c170bc-8be8-11e2-9f54-f3fd70acad2_story.html, archived at <http://perma.cc/AJ9Y-EAGY> (“[NFL Contract Advisor] Smith demands his clients receive an MRI and second opinion for every injury. He estimates they diverge from the club physician's opinion ‘four to five times out of every 25.’”);
 - 63 Jerry Cianciolo, *Get a second opinion*, *Bos. Globe*, Jan. 25, 2015, available at 2015 WLNR 2386857; see also Robert Klitzmann, *Second*

- Opinions, Through a Patient's Eyes*, N.Y. Times, Feb. 12, 2008, http://www.nytimes.com/2008/02/12/health/views/12essa.html?_r=0, archived at <https://perma.cc/Z4AA-S386?type=pdf> ("For 30 percent of patients who voluntarily seek second opinions for elective surgery and 18 percent of those whose insurance companies require it, the second doctors disagree with the first.")
- 64 See also Mark Fainaru-Wada and Steve Fainaru, *League of Denial: The NFL, Concussions, and the Battle for Truth* 76–82 (2013) (discussing the efforts of Leigh Steinberg, at one time one of the most powerful sports agents in the world, to educate his clients on the risks of concussions in the mid-1990s).
 - 65 Andrew Brandt, Peer Review Response (Oct. 30, 2015).
 - 66 NFLPA Contract Advisor Regulations, App. D, ¶ 12.
 - 67 See, e.g., *Elnitski/Redden v. Wake*, NFLPA Case No. 09-28 (Kaplan, Arb. 2010) (awarding terminated Contract Advisors \$6,000 in *quantum meruit* for their efforts in negotiating contract before termination); *Sarnoff v. Boldin*, NFLPA Case No. 06-6 (Kaplan, Arb. 2006) (awarding terminated Contract Advisor \$18,000 in *quantum meruit* for his efforts in negotiating contract before termination); *Segal/Levy v. Lincoln*, NFLPA Case No. 96-3 (Kaplan, Arb. 1997) (awarding terminated Contract Advisors \$11,250 in *quantum meruit* for their efforts in negotiating contract before termination).
 - 68 See, e.g., *Carey v. Quinn*, NFLPA Case No. 12-13 (Kaplan, Arb. 2013) (awarding Contract Advisor Carl Carey only 70 hours of the 650 hours he requested for *quantum meruit* based on Carey's failure to provide sufficient documentary evidence of his alleged work).
 - 69 CAA terminated Dogra in November 2014. Michael David Smith, *High-profile agent Ben Dogra out at CAA*, ProFootballTalk (Nov. 13, 2014, 5:41 PM), <http://profootballtalk.nbcsports.com/2014/11/13/high-profile-agent-ben-dogra-out-at-caa/>, archived at <http://perma.cc/NC6P-LFHB>.
 - 70 Mike Florio, *Report: Luck could be signing with CAA*, ProFootballTalk (Dec. 20, 2011, 6:21 PM), <http://profootballtalk.nbcsports.com/2011/12/20/report-luck-could-be-signing-with-caa/>, archived at <http://perma.cc/7FNU-JX9K>.
 - 71 *Id.*
 - 72 *Id.*; Jarrett Bell, *Condon has big clients, a lot of clout, Elite agent's negotiating plate full*, USA Today, Jan. 27, 2012, available at 2012 WLNR 1855278.
 - 73 Doug Tatum, *The Power Brokers*, New Orleans Times Picayune, Mar. 2, 2012, available at 2012 WLNR 4602944.
 - 74 See Florio, *supra* note 70 (mentioning that Luck's father, Oliver Luck, also West Virginia University's Athletic Director, is an attorney); Mike Florio, *Trent Richardson lands with CAA*, ProFootballTalk (Jan. 25, 2012, 1:32 PM), <http://profootballtalk.nbcsports.com/2012/01/25/trent-richardson-lands-with-caa/>, archived at <http://perma.cc/MW7P-2H62> (mentioning that Luck chose not to be represented by CAA).
 - 75 Mike Florio, *Report: Alex Smith may part ways with CAA*, ProFootballTalk (Mar. 17, 2012, 6:33 PM), <http://profootballtalk.nbcsports.com/2012/03/17/report-alex-smith-may-part-ways-with-caa/>, archived at <http://perma.cc/SPQ3-FQPR>.
 - 76 See Mike Florio, *Impasse lingers between Alex Smith, Chiefs*, ProFootballTalk (Aug. 9, 2014, 8:18 PM) <http://profootballtalk.nbcsports.com/2014/08/09/impasse-lingers-between-alex-smith-chiefs/>, archived at <http://perma.cc/4LA4-UJR2> (discussing contract negotiations between CAA, on Smith's behalf, with the Chiefs prior to the 2014 season).
 - 77 Mike Florio, *Conflict Of Interest Issue Comes Back Into Focus*, ProFootballTalk (Apr. 14, 2009, 12:36 PM), <http://profootballtalk.nbcsports.com/2009/04/14/conflict-of-interest-issue-comes-back-into-focus/>, archived at <http://perma.cc/598K-XM2U>; Mike Florio, *Goff, Wentz have same agents*, ProFootballTalk (Apr. 14, 2016, 7:30 PM), <http://profootballtalk.nbcsports.com/2016/04/14/goff-wentz-have-same-agents/>, archived at <https://perma.cc/MH46-B44V>.
 - 78 For more on potential conflicts of interests among sports agents, see Jeffrey C. Meehan, *Harvard or Hardball? An Examination of the Ethical Issues Faced by Lawyer-Agents*, 21 Sports L.J. 45 (2014); Scott R. Rosner, *Conflicts of Interest and the Shifting Paradigm of Athlete Representation*, 11 UCLA Ent. L. Rev. 193 (2004); Mark Doman, *Attorneys as Athlete-Agents: Reconciling the ABA Rules of Professional Conduct with the Practice of Athlete Representation*, 5 Tex. Rev. Ent. & Sports L. 37 (2003).
 - 79 See 2012 NFLPA Contract Advisor Regulations, § 3(A)(16).
 - 80 Contract Advisor Regulations, § 5(A). The Contract Advisor Regulations also govern disputes between Contract Advisors. See *id.*
 - 81 See 2012 Contract Advisor Regulations, § 5 (discussing the arbitration procedures).
 - 82 See *Weinberg v. Nat'l Football League Players Ass'n*, 06-cv-2332, 2008 WL 4808920, at *2 (N.D.Tex. Nov. 5, 2008) (citing affidavit from Kaplan in which he explained he has been the NFLPA arbitrator since 1994).
 - 83 Contract Advisor-player lawsuits occurred occasionally prior to the NFLPA arbitration mechanism. See, e.g., *Detroit Lions, Inc. v. Argovitz*, 580 F.Supp. 542 (E.D.Mi. 1984) (Court rescinded contract between player and USFL club because of agent's interest in USFL club); *Zinn v. Parrish*, 644 F.2d 360 (7th Cir. 1981) (Contract Advisor entitled to damages for breach of contract on contract commissions). But see also *Hilliard v. Black*, 125 F. Supp. 2d 1071 (2000) (denying contract advisor's motion to dismiss breach of fiduciary duty, conversion, conspiracy and securities law claims); *Total Economic Athletic Management of America, Inc. v. Pickens*, 898 S.W.2d 98 (Mo.App. 1995) (Contract advisor entitled to damages for anticipatory breach of contract). The *Black* case may not have been subject to the NFLPA's arbitration mechanism because it concerned statutory claims. Additionally, the *Pickens* case may not have been subject to the NFLPA's arbitration mechanism because the alleged wrongdoing occurred at the time the NFLPA was dissolved as a union, which would have made the contract advisor Regulations unenforceable.
 - 84 NFLPA Case No. 03-64 (Kaplan, Arb. Nov. 1, 2004).
 - 85 Contract Advisor Regulations, § 6(A).
 - 86 See 2012 Contract Advisor Regulations, § 6 (describing disciplinary process).
 - 87 Contract Advisor Regulations, § 6(D).
 - 88 See 2012 Contract Advisor Regulations, § 6 (describing disciplinary process).
 - 89 Andrew Brandt, Peer Review Response (Oct. 30, 2015).
 - 90 See 2012 Contract Advisor Regulations, § 3(B)(2).
 - 91 NFLPA Contract Advisor Regulations, § 3(A)(6).
 - 92 For more on the complicated process of athletes transferring from the amateur to professional ranks, see Glenn M. Wong, Warren Zola and Chris Deubert, *Going Pro in Sports: Providing Guidance to Student-Athletes in a Complicated Legal & Regulatory Environment*, 28 Cardozo Arts & Ent. L.J. 553 (2011).
 - 93 *Pipeline to the Pros*, NFLPA, <https://www.nflpa.com/pipeline> (last visited Aug. 7, 2015), archived at <https://perma.cc/M8VS-4BM4>; *Getting To Know Mark Levin*, NFLPA, Jun. 19, 2014, <http://www.nflpa.com/news/all-news/getting-to-know-mark-levin>, archived at <http://perma.cc/27VK-G784>.
 - 94 *How to Pick Your Agent*, NFLPA, <https://nflpa.com/active-players/how-to-pick-your-agent> (last visited Aug. 7, 2015), archived at <https://perma.cc/TA4L-8VM9>.
 - 95 See Rule 1.7: *Conflict of Interest: Current Clients*, Am. Bar Ass'n, http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_7_conflict_of_interest_current_clients.html (last visited Aug. 7, 2015), archived at <http://perma.cc/7UVR-44A6>.
 - 96 See Christopher Tarver Robertson, *Biased Advice*, 60 Emory L.J. 653, 666–68 (2011) (explaining study showing that disclosing parties “apparently felt that the disclosure gave them a ‘moral license’ to be even more biased” and that the people to the whom biases are disclosed “failed to effectively use the disclosure to adjust for the inaccuracy of the given advice[.]”)

Chapter 13

Financial Advisors



As we discussed in the Introduction to this Report, our goal is to examine all the inputs that may influence players' health, including the so-called "social determinants of health." Financial health is a major contributor to physical and mental health, and also, in turn, affected by physical and mental health.^a Indeed, many studies have shown a correlation between financial debt and poor physical health.¹ For these reasons, financial advisors are a critical stakeholder in players' long-term health. Despite multiple layers and the availability of well-qualified financial professional regulation (discussed below), there are many stories of NFL players suffering from financial difficulties. While the

^a Many experts have recognized that "financial insecurity can cause people to 'cut corners in ways that may affect their health and well-being,' like spending less on food, clothing, or prescriptions." Nadia N. Sawicki, *Modernizing Informed Consent: Expanding the Boundaries of Materiality*, Univ. Ill. L. Rev. (2016), citing Kevin R. Riggs and Peter A. Ubel, *Overcoming Barriers to Discussing Out-of-Pocket Costs With Patients*, 174 *Jama Int. Med.* 849 (2014); Peter A. Ubel, Amy P. Abernethy, and S. Yousuf Zafar, *Full Disclosure—Out-of-Pocket Costs as Side Effects*, 369 *New Eng. J. Med.* 1484 (2013). Indeed, to many, "financial well-being is certainly within the boundaries of most peoples' concept of health." *Id.*, quoting Michael S. Wilkes and David L. Schriger, *Caution: The Meter is Running: Informing Patients About Health Care Costs*, 165 *Western J. Med.* 74, 78 (1996) (noting that "discussions about the cost of care are an important part of the physician-patient relationship").

actual career earnings of NFL players are difficult to ascertain,^b there have been multiple studies about NFL player financial health with a variety of results.

According to a 2009 *Sports Illustrated* article, by the time NFL players have been retired for two years, 78 percent of them are bankrupt or in financial distress.² However, according to a 2009 NFL-funded study of former NFL players by the University of Michigan, the median income of a former player between the ages of 30 and 49 is \$85,000, compared to \$55,000 for the general population. The study also found that 8.4 percent of former players between ages 30 and 49 were below the poverty level, as compared to 9.5 percent of the general population. A 2015 academic study also refuted the figures in the *Sports Illustrated* article, finding that within two years of the end of their career, only 1.9 percent of players were bankrupt, while also finding that one in six players was bankrupt within 12 years of leaving the NFL.^c Moreover, in 2012, ESPN released the documentary “Broke” detailing the financial problems of professional athletes, and exploring how they had gotten there.³ And in a 2014–2015 survey of 763 former players by *Newsday*, 50.59 percent of former players interviewed said they had struggled financially since their playing career ended.⁴

There are, however, important limitations to the above-mentioned studies.

To support its findings *Sports Illustrated* cited “reports from . . . athletes, players’ associations, agents and financial advisers” but no additional details and no information that can be independently verified.

b Based on an average career length of approximately three years, the NFLPA has estimated that the average career earnings of an NFL player are \$4 million after taxes. See Adam Molon, *Why So Many Ex-NFL Players Struggle With Money*, CNBC (Jan. 31, 2014, 12:29 PM), www.cnbc.com/id/101377457#, archived at <http://perma.cc/F5YN-FJE2>. Using an average salary of \$1.9 million and an average career length of 3.5 years, others have estimated NFL players earn about \$6.7 million in their careers, a figure largely on par with that of the NFLPA’s. See Nick Schwartz, *The Average Career Earnings Of Athletes Across America’s Major Sports Will Shock You*, USA Today, Oct. 24, 2013, <http://ftw.usatoday.com/2013/10/average-career-earnings-nfl-nba-mlb-nhl-mls>, archived at <http://perma.cc/9DFP-WPQ2>. However, the NFL has disputed the 3.5 years figure generally provided by the NFLPA, stating instead that players who actually make an NFL Club have, on average, careers of about 6 years. See *What is average NFL player’s career length? Longer than you might think*, Commissioner Goodell says, NFL (Apr. 18, 2011), <http://nflcommunications.com/2011/04/18/what-is-average-nfl-player%E2%80%99s-career-length-longer-than-you-might-think-commissioner-goodell-says/>, archived at <http://perma.cc/PX5U-9SFK>. Finally, it is important to point out that the average in this case does not reflect the median career earnings of NFL players, *i.e.*, the career earnings of a typical NFL player.

c Kyle Carlson, et al., *Bankruptcy Rates Among NFL Players with Short-Lived Income Spikes*, Nat’l Bureau of Econ. Research (April 2015). The study found that the rate of bankruptcy among the general population in the 25–34 year age group was very similar to the bankruptcy rate of NFL players. However, the general population’s average income is almost certainly substantially less than that of the average NFL player’s.

There are two potential limitations to the Michigan Study. First, the Michigan Study population only included players who had vested rights under the NFL’s Retirement Plan, meaning that the players generally had been on an NFL roster for at least three games in at least three seasons. There is likely a significant but unknown percentage of NFL players who never become vested under the Retirement Plan. Second, responders to the survey were 36.8 percent African American and 61.4 percent white—almost a complete reversal of the NFL’s population of current players. While the racial demographics of former players is likely closer to the population of the Michigan Study, *i.e.*, there were more white players than in the current NFL, the Michigan Study did not provide such data on the former player population and did not adjust or account for the racial demographics of the former player population.

In a telephone call with Dr. David Weir, the lead author of the Michigan Study, he explained that: (1) due to limited resources, the population of players to be studied and contacted was limited to the data and contact information available to and provided by the NFL; and, (2) the NFL did not provide racial demographics of former players and thus the study could not adjust for that factor. Weir also believes that the racial demographics of former players is substantially similar to the racial demographics of the Michigan Study’s participants. Finally, Weir explained that, during the internal review process with the NFL, the study was leaked to the media, preventing the study from being amended and submitted to a peer-reviewed publication.

Finally, there are also limitations to the *Newsday* survey: (1) the survey was sent via email and text message by the NFLPA to more than 7,000 former NFL players, thus eliminating former players who were less technologically savvy and also possibly skewing the sample towards those former players closer to the NFLPA; (2) the response rate for the survey was low (approximately 11 percent); and, (3) the study does not discuss the demographics of those that responded, making it difficult to ascertain whether those who responded are a representative sample of all former players.

Despite these limitations, we provide the reader with the best existing data. Moreover, while there are limitations to the data collected to date as well as differences in the figures presented, it is clear that there are serious concerns about former players’ financial difficulties.⁵

The relationship between physical and financial health goes in both directions. Without adequate savings and benefits during and after NFL play, players may find themselves insufficiently prepared to meet their physical and mental health needs, especially in the event of crisis. On the flip side, crises in physical and mental health are closely tied to bankruptcy, home foreclosure, and other serious financial setbacks.⁶ At its worst, these two outcomes can lead to a vicious cycle—poor health outcomes lead to financial losses, which worsen the ability to combat physical and mental health impairments, which in turn further deplete financial resources.

Financial health is also in and of itself an important component of a person's health. Financial difficulties can cause stress that contributes to or exacerbates psychological and physical ailments.

For all of the above reasons, it is thus critical to consider a stakeholder with a key role in helping players cope and plan financially—financial advisors. It is also critical to recognize that even though NFL players may make a sizeable income during their playing years, they do not all have million dollar contracts, and depending on their career options outside of football, the money they earn may need to see them and their families through decades.

To better inform our understanding of financial advisors' obligations and practices, we conducted 30–60 minute interviews with three active financial advisors. On average, the financial advisors interviewed had been NFLPA-registered financial advisors for 15 years and had 34 active or former NFL players as clients. The interviews were not intended to be representative of the entire financial advisor population or to draw scientifically valid inferences, but were instead meant to be informative of general practices among financial advisors. We provide quotes from these interviews and urge the reader to keep that caveat in mind throughout. We then invited all three financial advisors to review a draft of this chapter prior to publication. Although two agreed to review a draft of the chapter, only one, Mark Doman of The Doman Group, provided comments. Finally, while two of the financial advisors we interviewed preferred to remain anonymous, Doman preferred to be identified by name in the Report.

(A) Background

Financial advisors are a variety of professionals whose services depend on their area of expertise but can include services such as tax planning, investment advice and services, budgeting, financial planning, insurance, estate planning, and retirement planning.^d While many financial advisors working on behalf of NFL players try to focus their efforts in the world of professional sports, the majority of them have a wide range of clients.

As described in Chapter 12: Contract Advisors, under the National Labor Relations Act (NLRA), the NFLPA is the exclusive representation of players in negotiations with NFL clubs. By choosing to delegate this authority to contract advisors, the NFLPA has the legal authority to certify, regulate and discipline contract advisors. The NFLPA is able to further strengthen its control over contract advisors by requiring NFL clubs to only deal with contract advisors who have been certified by the NFLPA, or be subject to a \$30,000 fine.⁷

Without adequate savings and benefits during and after NFL play, players may find themselves insufficiently prepared to meet their physical and mental health needs.

The NFLPA has no such authority over financial advisors. Neither the NLRA nor any other law confers any status on the NFLPA that gives it the right to regulate financial advisors. More specifically, financial advisors are not involved in the labor dynamics that create the NFLPA's legal authority over contract advisors, *i.e.*, financial advisors do not negotiate contracts and generally have no contact with the NFL or NFL clubs.

^d The NFLPA Financial Advisor Regulations define "Financial Advice" as "any form of advice, guidance, recommendation, direction, or control, directly or indirectly, over a Player's funds, property and/or investments, and shall include, but not be limited to, investment advice (including securities, commodities, banking, insurance, or real estate), financial planning, budgeting, money management, retirement planning, the purchase of insurance, tax and estate planning, and any other form of financial consultation that permits the advisor to exercise discretion or control over a Player's funds, property, and/or investments. As such, 'Financial Advisors' includes 'Brokers,' 'Dealers,' 'Investment Advisers,' and 'Financial Planners,' each as defined herein. 'Financial Advisors' also expressly includes insurance agents, accountants, and attorneys." 2012 NFLPA Financial Advisor Regulations, § 1.

Nevertheless, after an estimated 78 players were defrauded of \$42 million in a three-year period, the NFLPA began a system of regulating financial advisors in 2002.⁸ That year, the NFLPA launched a program whereby financial advisors could register with the NFLPA and released its Regulations and Code of Conduct Governing Registered Player Financial Advisors (“Financial Advisor Regulations”).^e The NFLPA’s financial advisor program was, and remains, the only one of its kind among the major American sports unions, and deserves praise in this regard.

It is important to note that the NFLPA only “registers” financial advisors while it “certifies” contract advisors. This distinction likely exists for several reasons: the NFL lacks legal authority over financial advisors as described above; and, the NFLPA does not want to be seen as endorsing any financial advisor and becoming liable for the wrongdoing of any financial advisor.⁹ Indeed, the NFLPA requested and received a No-Action Letter from the Securities and Exchange Commission (SEC) agreeing with the NFLPA’s position that by operating the financial advisor program, the NFLPA would not be considered an investment adviser or solicitor within the meaning of federal securities laws.¹⁰

Significantly, this distinction means that while contract advisors are *required* to be certified by the NFLPA to perform their duties, financial advisors are under no obligation to register with the NFLPA.

There are many financial advisors who refuse to engage in recruiting as a matter of professional ethics.

The Financial Advisor Regulations have been amended from time to time, most recently in 2012.¹¹ Like the NFLPA’s Contract Advisor Regulations, the Financial Advisor Regulations contain extensive eligibility requirements, including: a bachelor’s degree; a minimum of eight years of experience with appropriate financial industry licensure; minimum of \$4 million in insurance coverage; and, no civil, criminal or regulatory history relevant to financial services or fiduciary duties.¹²

While there are currently 262 NFLPA-registered financial advisors, there are many financial advisors working with NFL players who are not NFLPA-registered, many of whom likely could not meet the registration requirements.

I) FORMATION OF THE PLAYER-FINANCIAL ADVISOR RELATIONSHIP

The financial advisor industry has become as competitive as the contract advisor industry, if not more so.¹³ Many financial advisors recruit clients in the same manner as contract advisors, by calling them, texting them, and sending recruitment materials as soon as the player demonstrates that he might become an NFL player.^f In addition, some financial advisors offer financial incentives as inducements to hire them, including payments in the tens or hundreds of thousands of dollars to players. Indeed, it was reported that one firm offered 2015 draft picks six-month loans of \$55,000–75,000.¹⁴ Such payments are not expressly prohibited by the Financial Advisor Regulations, as discussed in more detail below in Section E: Recommendations. Financial Advisor Mark Doman explained that, in addition to receiving interest on the loans provided to the players, some financial advisors (but not he) will advise the players to use some of the loaned money to purchase financial products, such as an annuity or insurance, from or through the financial advisor, off which the financial advisor can make additional income.

Nevertheless, as will be discussed more below, there are many financial advisors who refuse to engage in recruiting as a matter of professional ethics. These financial advisors generally receive their clients through referrals from other players or contract advisors. Because contract advisors are often recruiting the player at the same time as the financial advisor, contract advisors often do not have the ability to recommend a financial advisor to a player. Additionally, since college players are generally permitted by NCAA Bylaws to have financial advisors while they cannot have contract advisors, players often retain a financial advisor before a contract advisor.

Ultimately, the college players, with the help of their family, friends and college, will sort through the multitude of financial advisors, meet with a few, and choose one. The player and financial advisor formalize the relationship by executing the financial advisor’s individualized services agreement,

^e The Financial Advisor Regulations define a “Financial Advisor” as “any person who, for compensation in any form, gives any financial advice with respect to a Player’s funds, property, and/or investments of any kind, including, but not limited to, any ‘Alternative Investment’ as defined herein, as well as any other security, commodity, or financial product, whether or not traded on an organized public market in the United States (e.g., The New York Stock Exchange or the NASDAQ) or abroad.” 2012 NFLPA Financial Advisor Regulations, § 1.

^f During the recruiting process, the financial advisor will generally make the player aware of other players with whom the financial advisor purportedly work, to try and demonstrate the financial advisor’s skill. For those financial advisors registered with the NFLPA, the NFLPA is the best resource for confirming a financial advisor’s bona fides, as is discussed in the Recommendations section. Players should also seek to discuss the quality of a financial advisor’s services with current and/or former clients.

as the NFLPA does not have a standard services agreement like with contract advisors.

II) SERVICES PROVIDED TO PLAYERS (CURRENT AND FORMER)

Financial advisors generally provide advice and assistance concerning any of the player's financial matters, including investment management, income tax preparation, budgeting, estate planning, post-career planning, and insurance (including, *e.g.*, homeowner's, renter's, car, life, disability). In addition, some financial advisors will provide a bill paying service or recommend a firm that can handle these tasks for the players.^g Perhaps one of the financial advisor's most important responsibilities is making sure players are aware of and take advantage of the various financial benefits under the CBA, including but not limited to the Retirement Plan, Player Annuity Program, Tuition Assistance Plan, Severance Pay, Second Career Savings Plan, and Health Reimbursement Account.^h

Financial advisors generally work with players and their family for the player's entire life. In this respect, financial advisors are more important than contract advisors and are crucial stakeholders when it comes to the player's post-career health. A 2014–2015 survey of 763 former players by *Newsday* shows the importance of post-career planning: 34.5 percent of former players interviewed said they had difficulty finding employment after their NFL career ended, and 37.1 percent said they did not prepare for life after football during their playing career.ⁱ The financial advisors interviewed explained that retirement is the opportunity to show the player that the post-career plan they had put together works and to begin to take the next steps, including for the player to potentially finish his education and obtain another job.^j

The level of communication between the financial advisor's firm and the player varies depending on the needs of the player. Younger players may speak with their financial advisor once a week while more experienced players might only

communicate with their financial advisors once a month. The financial advisors generally send monthly statements concerning the player's finances, even though the NFLPA only requires them to be sent quarterly.¹⁵

More specifics on some of these services will be discussed below, in Section C: Current Practices.

(B) Current Legal Obligations^k

The financial advisor industry is heavily regulated by both governmental and private organizations that perform quasi-governmental functions. Financial advisors are subject to federal and state statutes and regulations concerning the various financial industries in which they may practice. Most importantly, all financial advisors must comply with the Securities Exchange Act and its regulations, as enforced by the SEC.

In addition, many financial advisors are subject to oversight by the Financial Industry Regulatory Authority (FINRA). FINRA is a private, non-profit "self-regulatory organization" within the meaning of the Securities and Exchange Act, registered with the SEC, and responsible for enforcing FINRA rules, SEC regulations, and federal securities statutes against FINRA members.¹⁶ FINRA promulgates and enforces rules governing more than 4,000 securities firms and approximately 630,000 financial professionals.¹⁷ FINRA brings disciplinary actions against its members and also provides an arbitration mechanism that is the chief forum for resolving disputes between financial advisors and their clients.¹⁸

A financial advisor's precise legal obligations might depend on his or her qualifications, licensure, and the services he or she provides to a player. While we briefly describe these possible distinctions below, none of our recommendations turns on the exact nature of the financial advisor's legal duty to his or her player-client. Moreover, there is an ongoing debate in the financial services industry about the duties owed by certain types of financial professionals to their clients, and much will depend on specific facts.

Some financial advisors might only be registered as "brokers" or "dealers" under the Securities Exchange Act of 1934. Broker-dealers are individuals engaged in the business of buying and selling stocks,¹⁹ who traditionally earn the majority of their income from commissions on the stock sales or purchases.²⁰ Broker-dealers are historically held to a "suitability," as opposed to a fiduciary standard.²¹

g Bill paying services generally are responsible for ensuring the timely and proper payment of a player's various expenditures, including housing payments, utilities, car payments, cellular telephone payments, contract advisor, financial advisor and attorneys' fees, child support, etc. Nevertheless, Financial Advisor 1 explained that he prefers players pay their own bills so that players are aware of their expenses and "feel[] the same pain that anybody else feels."

h Financial Advisor 1 estimated that the annual value of benefits players are entitled to is "almost \$200,000."

i See Jim Baumbach, *Life After Football*, *Newsday*, Jan. 22, 2015, <http://data.newsday.com/projects/sports/football/life-football/>, archived at <http://perma.cc/77DP-LUUE>. In the introduction to this chapter, we described some limitations to *Newsday's* analysis.

j To assist players in preparing for careers after football, Financial Advisor Mark Doman offers his players the opportunity to intern at his office during the offseason. During the internship, the players study their own financial portfolios and the related concepts.

k The legal obligations described herein are not an exhaustive list but are those we believe are most relevant to player health.

The suitability standard only requires broker-dealers to recommend investments that are suitable based on the client's needs and goals.²² The broker-dealer "must have an adequate and reasonable basis for any recommendation that [he or she] makes,"²³ but are not necessarily required to provide investment advice that puts the client's interest first, as a fiduciary would.²⁴ This looser standard permits broker-dealers to recommend its clients to buy stocks currently owned by the broker-dealer's firm, thus benefiting the firm. Nevertheless, broker-dealers can develop fiduciary relationships with their clients if the broker-dealer takes on greater responsibilities towards the client, such as having discretionary authority over the client's account.²⁵

The potentially limited obligations of broker-dealers are complicated by the Investment Advisers Act of 1940.²⁶ An investment adviser is "any person, who, for compensation is engaged in a business of providing advice to others or issuing reports or analyses regarding securities."²⁷ Traditionally, investment advisers, charge a fee based on the amount of assets managed by the investment adviser.²⁸ Investment advisers *do* have a fiduciary relationship with their clients, requiring them to put the interests of their clients first and to avoid conflicts of interest.²⁹ Under common law,¹ from which the securities statutes and regulations are generally derived, a fiduciary is "a person who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, trust, confidence, and candor; . . . [o]ne who must exercise a high standard of care in managing another's money or property."³⁰

Depending on the broker-dealer's compensation structure, he or she too may also be subject to the higher standards of the 1940 Act. A broker-dealer who provides investment advice to clients is not considered an investment adviser only so long as the broker-dealer's advice is "solely incidental" to the broker-dealer's services and the broker-dealer charges only commissions and not asset-based fees.³¹ Nevertheless, the interpretation of this exception remains open to debate and is often a fact-specific inquiry.³²

In 2016, the Department of Labor potentially further complicated matters with a new regulation set to take effect in April 2017. The new regulation requires that individuals that invest a client's money as part of a tax-deferred retirement account, such as a 401(k) or IRA, act in a fiduciary capacity toward the client, regardless of whether they are a broker-dealer or investment adviser.³³

While the above uncertainty demonstrates that some NFL player financial advisors might be able to avoid having a fiduciary relationship with their clients, they almost certainly cannot if they choose to register with the NFLPA. The Financial Advisor Regulations, which are a quasi-legal/ethical code, dictate that financial advisors "have the duty to act in the best interest of his/her Player-clients."³⁴ Moreover, by agreeing to be registered with the NFLPA, each financial advisor

acknowledges^m that it is a fiduciary with respect to each of its Player-clients and agrees to perform its duties as a Financial Advisor to such Player-client in good faith and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims and consistent with the Registered Player Financial Advisor's obligations and duties under applicable law, and consistent with the Registered Player Financial Advisor's existing practices and procedures, obligations, powers and duties under its written contract with the Player-client required under Section Three (H) of the Regulations.³⁵

Despite the fiduciary standard imposed by the Financial Advisor Regulations, as will be discussed below in Section E: Enforcement, the Financial Advisor Regulations provide players with minimal recourse in the event of a violation.

Generally, the Financial Advisor Regulations require financial advisors to "[f]ully comply with all federal and state laws governing the . . . Financial Advisor's professional activities."³⁶ The Financial Advisor Regulations prohibit a wide variety of conduct subject to abuse in the financial advisor industry, including:

1. Employing any device, scheme, or artifice to defraud a Player;
2. Inducing any activity in a Player's account that is excessive in size or frequency in view of the Player's financial resources and/or sophistication, and the character of the account;
3. Soliciting or obtaining any general power of attorney from a Player over his assets or investment;

¹ Common law refers to "[t]he body of law derived from judicial decisions, rather than from statutes or constitutions." Black's Law Dictionary (9th ed. 2009).

^m A broker-dealer might theoretically argue that since he or she never had a fiduciary relationship with a player-client, he or she cannot "acknowledge" such an obligation. It nonetheless seems more likely that a financial advisor who registers with the NFLPA who otherwise would not be in a fiduciary relationship with his or her clients voluntarily assumes fiduciary obligations as part of the NFLPA registration.

4. Soliciting or obtaining any limited power of attorney or discretionary authority which is not specifically and reasonably necessary for the Registered Player Financial Advisor to perform his/her services;
5. Commingling any Player's funds or other property with the Registered Player Financial Advisor's personal funds. Commingling one or more client funds together is permitted, subject to applicable legal requirements and proper accounting;
6. Having custody of a Player's funds or other property unless the Registered Player Financial Advisor is a Qualified Custodian;
7. Placing an order for the purchase or sale of a security if that security is not either registered or exempt from registration under applicable law;
8. Providing false or misleading information to any Player, or concealing material facts from any Player, in the course of recruiting the Player as a client, or in the course of representing or consulting with that Player as a Registered Player Financial Advisor;
9. Making any false or misleading statement about his or her ability, degree, or area of competence;
10. Engaging in any unlawful conduct and/or conduct involving dishonesty, fraud, deceit, misrepresentation, or any other activity which reflects adversely on his/her honesty, trustworthiness, professional competence, and fitness as a Registered Player Financial Advisor, or which otherwise jeopardizes his/her effective representation of Players;
11. Representing or suggesting to anyone that his/her status as a Registered Player Financial Advisor constitutes an endorsement or recommendation by the NFLPA of the Registered Player Financial Advisor, or his/her qualifications, or services;
12. Providing or offering money or any other thing of value, or extending credit or loaning money, to any Player, or member of a Player's family, or anyone in a position to influence the Player, where such payment or loan would violate any applicable law, regulations, rule, or ethical standard;
13. Engaging in any activity which creates an actual or potential conflict of interest with the effective representation of a Player, including, but not limited to, the following:
 - a) Convincing a Player to purchase stock or property, or to invest in any manner, or loan money or extend credit from, any enterprise or entity in which the Registered Player Financial Advisor fails to disclose, in advance and in writing, his/her own financial or ownership interest, or that of an affiliate or a family member, to the Player;
 - b) Failing to disclose, in advance and in writing, any commission, finder's fee, or other thing of value that the Registered Player Financial Advisor receives, or is to receive, from any third party or entity, in return for convincing a Player to make or not make an investment, or to retain or not to retain a Certified Contract Advisor, or any other person;
 - c) Failing to disclose, in advance and in writing, any commission, finder's fee, or referral fee, promised and/or paid to, any third party, in return for that party's agreement to refer a Player to him or her[.]³⁷

(C) Current Ethical Codes

In addition to legal obligations, depending on the financial advisor's expertise or experience, he or she is likely subject to additional ethics rules. For example, the Chartered Financial Analyst Institute (CFA Institute),³⁸ Certified Financial Planner Board of Standards (CFP Board),³⁹ National Association of Personal Financial Advisors (NAPFA),⁴⁰ National Association of Insurance and Financial Advisors (NAIFA),⁴¹ and American Institute of Certified Public Accountants (AICPA)⁴² all have an ethics code of some kind regulating the professional responsibilities of their members.

The codes of ethics for the CFP Board, NAPFA, and NAIFA are not particularly lengthy and instead generally identify principles by which members are required to act. For example, the totality of the CFP Board's Code of Ethics and Professional Responsibility reads as follows:

Principle 1—Integrity: Provide professional services with integrity.

Integrity demands honesty and candor which must not be subordinated to personal gain and advantage. Certificants are placed in positions of trust by clients, and the ultimate source of that trust is the certificant's personal integrity. Allowance can be made for innocent error and legitimate differences of opinion, but integrity cannot co-exist with deceit or subordination of one's principles.

Principle 2—Objectivity: Provide professional services objectively.

Objectivity requires intellectual honesty and impartiality. Regardless of the particular service rendered or the capacity in which a certificant functions, certificants should protect the integrity of their work, maintain objectivity and avoid subordination of their judgment.

Principle 3—Competence: Maintain the knowledge and skill necessary to provide professional services competently.

Competence means attaining and maintaining an adequate level of knowledge and skill, and application of that knowledge and skill in providing services to clients. Competence also includes the wisdom to recognize the limitations of that knowledge and when consultation with other professionals is appropriate or referral to other professionals necessary. Certificants make a continuing commitment to learning and professional improvement.

Principle 4–Fairness: Be fair and reasonable in all professional relationships. Disclose conflicts of interest.

Fairness requires impartiality, intellectual honesty and disclosure of material conflicts of interest. It involves a subordination of one's own feelings, prejudices and desires so as to achieve a proper balance of conflicting interests. Fairness is treating others in the same fashion that you would want to be treated.

Principle 5–Confidentiality: Protect the confidentiality of all client information.

Confidentiality means ensuring that information is accessible only to those authorized to have access. A relationship of trust and confidence with the client can only be built upon the understanding that the client's information will remain confidential.

Principle 6–Professionalism: Act in a manner that demonstrates exemplary professional conduct.

Professionalism requires behaving with dignity and courtesy to clients, fellow professionals, and others in business-related activities. Certificants cooperate with fellow certificants to enhance and maintain the profession's public image and improve the quality of services.

Principle 7–Diligence: Provide professional services diligently.

Diligence is the provision of services in a reasonably prompt and thorough manner, including the proper planning for, and supervision of, the rendering of professional services.

The CFA Institute's Code of Ethics and Standards of Professional Conduct is similar, but provides more specific guidance in the following areas: professionalism; integrity of capital markets; duties to clients; duties to employers; investment analysis, recommendations, and actions; conflicts of interest; and, responsibilities as a CFA Institute member or CFA candidate.

In contrast, the AICPA's Code of Professional Conduct is far more complicated and includes interpretations of the relevant rules. Moreover, the AICPA's Code is divided into

the following sections: Principles of Professional Conduct; Independence, Integrity and Objectivity; General Standards Accounting Principles; Responsibilities to Clients; Responsibilities to Colleagues; and, Other Responsibilities and Practices. The AICPA's Code is likely longer to ensure its' members compliance with generally accepted accounting principles.

(D) Current Practices

Players were near unanimous in explaining the importance of financial advisors and financial health, while having mixed feelings about financial advisors themselves:ⁿ

- **Current Player 2:** "Those financial advisors are huge." "[F]inancial health is important and that is a great opportunity for a young man to jumpstart their lives financially, and put themselves at an advantage moving forward to their next career."
- **Current Player 4:** "I personally was able to find a financial advisor who I trust and I think he's doing an excellent job. But I would say probably about one in three guys have a problem with their Financial Advisor."
- **Current Player 5:** "Financial education is hugely important. And we get some but not nearly enough." "I think there are some good financial advisors, some bad financial advisors . . . They have a vested interest in helping to make sure the player keeps his money but they have a bigger vested interest in keeping the player as a client. So, whether the player is burning through his money or not, the financial advisor he keeps getting paid a percentage until the player runs out of money . . . [but] in general, financial advisors do a pretty good job of advising their clients and preparing them for life outside the NFL."
- **Current Player 6:** "That's the biggest question I'd like to try to figure out. What can be done to help players be better with their finances?"
- **Current Player 9:** "Financial health is important to NFL players and everybody . . . So I think planning and education is very important."

ⁿ We reiterate that our interviews were intended to be informational but not representative of all players' views.

- **Former Player 3:** “You have the full gamut . . . Good financial advisors are the ones that can tell their clients ‘no,’ [but] you’ll probably get fired but players need to hear ‘no’ a lot more than they tell them ‘yes.’”

The financial advisors interviewed were similarly unanimous in their assessment that players are generally not well served by the current crop of financial advisors.^o The financial advisors’ sentiment matched that of contract advisors interviewed. The contract advisors noted that while there are some well-qualified and ethical financial advisors, there are many who are not. However, some contract advisors recognized that financial advisors often have difficulty convincing the players to take certain financially responsible actions.^p Below, we discuss the most important areas where financial advisors have an opportunity to influence player health, including Recruiting, Educating and Budgeting, Insurance, and Fees.

1) RECRUITING

As discussed in the background to this chapter, the recruiting of prospective clients is intensely competitive in the financial advisor industry. As a result, some financial advisors offer players payments and other inducements in order to obtain the client. All of the financial advisors we interviewed worried about this practice. Mark Doman, one of the financial advisors we interviewed, explained:

I think [financial advisor recruiting] is without any exaggeration or hyperbole, the most dangerous of the issues that face professional athletes off the field. Aside from their own personal health, the financial health of these young men and these horrible statistics of them going bankrupt due to . . . being exposed to people that are not sophisticated enough to actively manage the financial needs of these athletes. And even more specifically providing the financial literacy that they so desperately need.^q

- o Financial Advisor 2: “I think there are a lot of people that don’t know what they’re doing . . . And you see some of the people in the room [at the NFLPA Financial Advisor conferences] and . . . it’s scary that they’re thinking about trying to work with players. They don’t know anything.” Also Financial Advisor 2: There are “a lot of people out there running around trying to work with players for all the wrong reasons . . . but I don’t know how you regulate incompetency.” We reiterate that our interviews were intended to be informational but not representative of all financial advisors’ views. Additionally, we acknowledge the possibility of bias among the financial advisors we interviewed—they believe they are conducting themselves competently and professionally while their competitors are not.
- p Contract Advisor 1: “[Y]ou can only take a horse to water, you can’t make them drink.”
- q Doman also explained that he thinks the problem “has gotten infinitely worse” since he started working with NFL players.

While competition in industry is often good,^r the intensity and form of competition in the financial advisor industry may raise concerns. Indeed, Former Player 1 described being recruited by financial advisors as “a crazy experience . . . a meat market.”

The financial advisors interviewed further explained that their firms refused to recruit out of principle. Instead, these financial advisors generally obtain clients via referrals from players and contract advisors.

2) EDUCATING AND BUDGETING

The financial advisors and players we interviewed expressed that financial literacy among the players remains a major issue.^s Most NFL players and their families are unlikely to have ever had the type of money that is available through an NFL career. In addition, most NFL players are young men in their 20s with limited time spent having lived on their own. Thus, most NFL players are unfamiliar with the different types of financial products and services that might be available to them and are unlikely to have a good understanding of how to spend and save their money.

All of the financial advisors we interviewed stressed the importance of an initial meeting with their clients where they can try to explain to the player the various financial issues he will likely have to address, how to develop responsible financial habits, and to plan properly for the future.^t Financial Advisor 1 also explained a method his firm uses to help reign in client spending. The player’s paycheck is directly deposited into an account to which the financial advisor has access. On the first of each month, a budgeted amount is transferred from the initial account to a checking account that the player is able to access for his personal spending. The arrangement prevents the player from

- r Indeed, in *Speakers of Sport, Inc. v. ProServ, Inc.*, 178 F.3d 862 (7th Cir. 1999), Judge Richard Posner dismissed tortious interference and unfair competition claims brought by one sports agent against another, stating “[t]here is in general nothing wrong with one sports agent trying to take a client from another if this can be done without precipitating a breach of contract. That is the process known as competition, which though painful, fierce, frequently ruthless, sometimes Darwinian in its pitilessness, is the cornerstone of our highly successful economic system.”
- s Financial Advisor 1: “[I]t’s really just about capitalizing on [the benefits offered], understanding them and capitalizing on them. Most guys just don’t understand them.” Financial advisor Mark Doman: “I emphasize to them that trust is great but knowledge is better. I don’t need them to trust me. I need them to understand what we’re doing. And if they understand what we’re doing then they don’t need to trust. Trust is a luxury.” Current Player 9: “The PA and the NFL, there are some programs in place that players can learn [about financial matters]. But you know a lot of it is about motivating guys to actually take hold of it and actually become involved and engaged.”
- t Financial Advisor 1: “If I have a guy who’s in his first year in the league, we’re already talking about post-career. . . . I think it goes without saying that the NFL career has a very short life expectancy. So we usually talk to the guys right from the beginning about worst case scenario and this might be your only year in the league, so you need to plan as such.”

spending beyond his means while still having control over his spending choices.

In addition to their financial advisors, players also are exposed to some financial education through the Rookie Transition Program. The Rookie Transition Program is a three-day program offered by each club in which rookies are presented with seminars, discussions, and information on a variety of topics intended to help the rookie make a successful transition to the NFL and to avoid some of the problems past NFL players have suffered.⁴³ The Rookie Transition Program replaced the Rookie Symposium in 2016, an event which previously hosted all incoming NFL rookies in one central location and provided the same types of services.⁴⁴ Nevertheless, there are questions as to whether players are sufficiently understanding the information presented to them.

Despite the Rookie Symposium and Transition Program, the financial advisors interviewed were mixed in their feelings towards existing programs and support for players in their financial matters. Appendix D includes a list of programs offered by the NFL's Player Engagement Department on financial and other matters. Financial Advisor 1 believes the NFLPA has not done a good job of educating players about financial issues but does provide useful resources to the financial advisors. Doman believes that both the NFL and NFLPA "could do a lot better" when it comes to educating players about financial matters.^u Meanwhile, Financial Advisor 2 expressed uncertainty as to whether the NFLPA could do anything more to educate players. Additionally, the financial advisors were generally pleased with the type and availability of benefits (Financial Advisor 2: "I think they've done a tremendous job of improving the benefits.")

3) INSURANCE

One potentially important aspect of a financial advisor's duties is obtaining a disability or career ending insurance policy for the player. The financial advisors are generally responsible for soliciting, reviewing, and negotiating the insurance policies on behalf of the player. The financial

advisors interviewed explained that whether players require the insurance is judged on a case-by-case basis, including an analysis of the player's age, contract structure, and status and financial security. For \$1 million in coverage, a rookie will pay approximately \$10,000 (1 percent) in premiums while a player in his mid-thirties can easily pay over \$100,000 (10 percent) in premiums.^v

There are other insurance options players might consider. For example, players might obtain an insurance policy on the unguaranteed portions of their contract in the event their contracts are terminated. Players might also obtain "loss of value" insurance policies when they are approaching free agency. The loss of value insurance policy will let a player recover in the event his next contract is not as expected due to injury or diminished skill.⁴⁵

4) FEES

For their services, financial advisors are generally paid an amount equal to 1 percent (annualized) of assets under management. Thus, if a financial advisor is overseeing \$1 million of a player's money, he or she will be paid \$10,000 per year. Financial advisors with more total assets under management may charge lower fees.

There are concerns that financial advisors find a number of ways to inflate their fees. For example, some financial advisors include as assets under management the amount in the player's retail checking account, even though the financial advisor is not investing those assets. Additionally, some financial advisors invest players' money in investment vehicles which provide the financial advisor a referral fee or commission, even though such fees are in violation of the Financial Advisor Regulations. Doman explained:

[T]he other things that these advisors are doing these days is they will tell the client that they'll do investment services and they won't charge them And the reality is what they are, are conduits to mutual funds and other very basic types of structured bank investment vehicles where there are built-in expense ratios and people who refer those funds money are able to get some sort of fee. Now, separately what they do is instead of charging them for business management . . . they'll sell a young person who has no dependents a multimillion dollar annuity or whole life product which has an enormous commission for [the financial advisor].

^u The St. Louis Rams provide an interesting example of a Club that perhaps takes educating its rookies on financial matters seriously. In 2012, Rams head coach Jeff Fisher had a Brinks truck deliver \$1 million in cash to the Club's facility. Fisher put the money on the table in front of his rookies and took away portions for taxes, parents, cars, and living and other expenses to show how much money the rookies would actually have left. Jason La Canfora, *Rams' Calculated Risk-Taking On Prospects Working Wonders So Far*, CBS Sports (Aug. 9, 2013, 10:52 AM), <http://www.cbssports.com/nfl/writer/jason-la-canfora/23082070/rams-calculated-risktaking-on-prospects-working-wonders-so-far>, archived at <http://perma.cc/X3HV-FYCZ>. In addition, the Rams hold educational classes on financial planning, home ownership, investing and other everyday items. Nick Wagoner, *Rams Will Have Rookies Signed Soon*, ESPN (Jun. 10, 2014), http://espn.go.com/blog/st-louis-rams/post/_/id/9148/rams-will-have-rookies-signed-soon, archived at <http://perma.cc/G6UJ-FXL4>.

^v Financial Advisor 1 explained that each week his firm reviews which of its clients were injured and provides notice to disability insurers to protect the player's right to a possible future claim.

(E) Enforcement of Legal and Ethical Obligations^w

Despite the Financial Advisor Regulations' rigorous standards, the NFLPA currently lacks meaningful enforcement authority over financial advisors. The NFLPA requires registered financial advisors to consent to arbitration, but the arbitration mechanism only governs disputes concerning denial, suspension or revocation of the financial advisor's registration.⁴⁶ The totality of the NFLPA's disciplinary authority where the Financial Advisor Regulations have been violated is the issuance of a letter of reprimand or to suspend or revoke the financial advisor's registration.⁴⁷ Moreover, the NFLPA and its arbitration mechanism, unlike the contract advisor arbitration mechanism, have no authority to provide damages to a player adversely affected by a financial advisor as a result of a breach of the Financial Advisor Regulations.⁴⁸

The relatively meek regulatory enforcement scheme begs the question why financial advisors register with the NFLPA at all. Indeed, while there are currently about 262 NFLPA-registered financial advisors, there are many players involved with financial advisors who are not NFLPA-registered and the NFLPA has no recourse other than to advise its players to only use registered financial advisors.^x

^w Appendix K is a summary of players' options to enforce legal and ethical obligations against the stakeholders discussed in this Report.

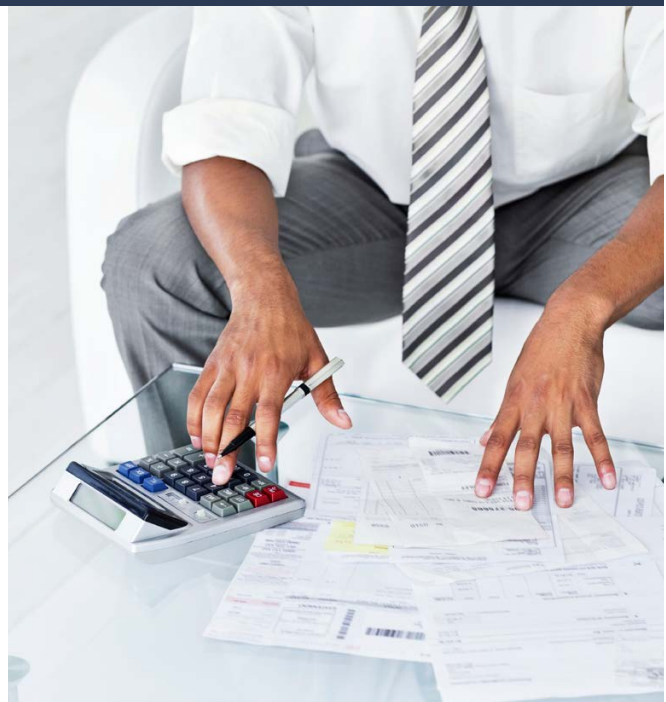
^x There are no data on how many players use financial advisors not registered with the NFLPA. Current Player 10 commended the NFLPA for its financial advisor program: "I think the NFLPA has done a good job in terms of making financial advisors register and doing background checks and the criminal checks on all the financial advisors that are trying to come in. So there's a long list of guys that have been okayed by the PA."

As discussed above, financial advisor recruiting is extremely intense and thus players are inundated with recruitment pitches and might choose to hire a non-registered financial advisor. Nevertheless, it benefits financial advisors to register with the NFLPA for a variety of reasons: the financial advisor can explain the importance of meeting the NFLPA's registration requirements and having been vetted by the NFLPA; the NFLPA gives financial advisors financial, salary and benefit information relevant to NFL players, which can assist in their work;⁴⁹ and, a quality contract advisor will likely encourage the player to use only an NFLPA-registered financial advisor for the same reasons.

NFL players seeking recompense for damages caused by a financial advisor cannot rely on the Financial Advisor Regulations. Players can and have brought lawsuits or arbitrations (typically via FINRA) against financial advisors alleging breach of fiduciary duty, negligence, breach of contract, fraud, and other relevant causes of action.⁵⁰ Some courts have recognized a cause of action for financial advisor or stockbroker malpractice,⁵¹ and most recognize a cause of action for accountant malpractice, if appropriate.⁵² Lastly, causes of action and restitution claims likely exist under various federal and state securities laws.⁵³

Enforcement of the ethics codes of the CFA Institute, CFP Board, NAPFA, NAIFA, and AICPA are of minimal importance to NFL players. While the organizations are empowered to expel their members and retract their certifications, these punishments provide no benefit to NFL player-clients.

While there are currently about 262 NFLPA-registered financial advisors, there are many players involved with financial advisors who are not NFLPA-registered.



(F) Recommendations Concerning Financial Advisors

Financial advisors play perhaps the most important role in a player's long-term health. Proper financial advice and planning can help a player determine when to retire (if he has that choice), maximize a player's career earnings, potentially provide the player with a comfortable retirement, help mitigate the consequences of the health issues suffered by many former players, and help avoid financial distress evolving into physical or mental distress. Additionally, financial advisors are governed by many robust codes of ethics that echo some of the same principles we incorporated into this Report, including Respect, Health Primacy, Empowered Autonomy, Transparency, Managing Conflicts of Interest, and Collaboration and Engagement. However, there are a variety of industry practices and realities that are preventing players from receiving the best possible financial guidance. Below are recommendations designed to improve the financial support provided to players.

Goal 1: To make sure players get the best financial advice possible.

Principles Advanced: Respect; Empowered Autonomy; Transparency; and, Collaborative Engagement.

Recommendation 13:1-A: Players should be encouraged by the NFL, NFLPA, and contract advisors to work exclusively with NFLPA-registered financial advisors.

There is significant concern and evidence that players are not well-served by the financial advisor industry and otherwise are prone to mishandling their finances. The NFLPA's financial advisor program is a well-intentioned program that at least sets basic requirements for financial advisors and attempts to weed out those with criminal and otherwise concerning pasts. In addition, the financial advisor registration scheme provides the NFLPA with at least some oversight over the financial advisor industry as it concerns NFL players. Nevertheless, a significant (but unknown) portion of players are persuaded to retain financial advisors who do not register with the NFLPA and whose experience and intentions may be questionable. The NFLPA should encourage players to use those financial advisors which it has determined have at least the minimal qualifications it is able to impose through its registration program. In so doing, the NFLPA should remind players of the advantages of using NFLPA-registered financial advisors, including access to NFL-specific benefit and financial information through the NFLPA.

One possible mechanism by which the NFLPA could encourage players to use NFLPA-registered financial advisors is to collect the names of players' financial advisors each preseason. If a player is using a financial advisor who is not registered with the NFLPA, the NFLPA should advise the player of the purposes and benefits of the NFLPA's registration system. If the player does not have a financial advisor, the NFLPA could advise the player to retain one and follow-up with the player to ensure that he does.⁵⁴

Although the NFLPA financial advisor registration system does not guarantee a player will receive sound financial advice and assistance, it increases the odds as compared to non-registered financial advisors.

Recommendation 13:1-B: The NFLPA should strengthen its Financial Advisor Regulations.

The current Financial Advisor Regulations are robust and align well with other regulations and codes of ethics in the financial industry. Nevertheless, there are potential areas of improvement, including:

- **Requiring financial advisors to pass an examination concerning NFL economic and benefit provisions in order to be registered.** The NFLPA has long required contract advisors to pass an examination concerning the NFL CBA to be certified. There is no reason why financial advisors should be treated differently. It is clear that financial advisors are as much a part of players' lives as contract advisors

Recommendations Concerning Financial Advisors – continued

and perhaps even more important considering that they handle players' money. Nevertheless, financial advisors are not regulated as closely as contract advisors and thus have the potential to be more destructive to the health of players. An examination would provide an additional and meritorious barrier to entry into the NFL player-financial advisor industry. Financial advisors should understand the unique circumstances of NFL player employment while also understanding the variety of benefits available to players. An examination will force financial advisors to educate themselves on these issues while also eliminating the financial advisors unable or unwilling to do so.

- **Prohibiting registered financial advisors from providing or offering money or any other thing of value to any player or any other person (e.g., the player's family member) to induce or encourage the player to utilize the financial advisor's services.** The Financial Advisor Regulations currently prohibit "[p]roviding or offering money or any other thing of value, or extending credit or loaning money, to any Player, or member of a Player's family, or anyone in a position to influence the Player, where such payment or loan would violate any applicable law, regulations, rule, or ethical standard."⁵⁵ This rule, however, is unnecessarily vague. There is no reason for the NFLPA to defer to other laws, regulations, rules or ethical standards. There is clearly a problem whereby financial advisors are inducing players to retain them with large payments and players are thereafter receiving poor financial advice and assistance. The NFLPA should prohibit such payments to ensure players are choosing financial advisors based exclusively on their merit and qualifications.
- **Providing the NFLPA with greater authority to conduct audits of financial advisors' activities.** Section 3(I)(D) requires financial advisors to consent to audits by a Certified Public Accountant (CPA) at the player's request. Players are unlikely to know when an audit might be necessary and are also unlikely to take advantage of this right. The NFLPA in coordination with the right financial professionals could undertake this action on behalf of players randomly. Even though the NFLPA would be unable to catch every bad actor, making it known that it conducts such audits should have at least some deterrent effect.

The NFLPA could also require financial advisors to provide the NFLPA with copies of the itemized statements they provide to players. Section 3(I)(A) of the Financial Advisor Regulations requires financial advisors to provide players "at regular intervals, but in no event less than quarterly, itemized statements setting forth the amount charged to the Player-client for Financial Advice, the identity of any investments made in conjunction with that advice, and an accurate account of the increase or decrease in the economic value of any such investments." However, the majority of players are unlikely to review or understand the statements provided to them, and thus identify possible inconsistencies or troubling activities. While the NFLPA likely does not have the resources (and would probably have to hire financial experts) to check quarterly statements for all of its members, it could at a minimum conduct a random review of selected statements. Collection of the statements would identify those financial advisors who failed to follow a simple record production requirement while also having at least some deterrent effect. An alternative approach would be to rely on contract advisors to police financial advisors through inspection of these statements. More broadly, this recommendation could be extended from audits of itemized statements to audits of any financial advisor's activity concerning NFL players.

- **Requiring financial advisors to send the itemized statements required by Section 3(I)(A) of the Financial Advisor Regulations to the player's contract advisor, unless the player objects.** As discussed above, there is currently a lack of oversight concerning financial advisor fees and services. Contract advisors, like financial advisors, are professionals with a fiduciary obligation to look out for the player's best interests. Almost every player has a contract advisor and almost every player has a financial advisor. Thus, in the absence of NFLPA resources to do the same, contract advisors can provide a valuable check on financial advisor fees and activities.^y
- **Requiring that financial advisors provide the NFLPA with a copy of any agreement with a player.** Section 3(I)(H) of the Financial Advisor Regulations requires all agreements between a financial advisor and player comply with applicable laws and regulations and be in writing. However, financial advisors are only required to provide a copy of the agreement to the NFLPA "upon request." In contrast, contract advisors are required to provide the NFLPA with a copy of any agreement between the contract advisor and player.⁵⁶ The NFLPA also generally reviews the contract advisor-player agreements to ensure they are in compliance with Contract Advisor Regulations. Similarly, the NFLPA should review financial advisor-player agreements to ensure they are in compliance with the Financial Advisor Regulations and not otherwise concerning.

^y Conversely, there is no need for contract advisors to provide statements of their fees to financial advisors. First, the financial advisors likely have access to the accounts and can see the fees anyway. Second, contract advisor fees are capped at 3 percent of a player's compensation by the Contract Advisor Regulations, eliminating much of the worry that contract advisors can financially take advantage of players.

Recommendations Concerning Financial Advisors – continued

- **Requiring financial advisors to stay abreast of current issues affecting NFL players (with the NFLPA providing the necessary courses and information).** The economics of the NFL are unique, complicated and often changing. Moreover, the application of mainstream financial issues might incur unexpected complications due to the dynamics of the NFL. It is thus important that financial advisors remain current on issues affecting NFL players. The NFLPA could provide relevant information, materials, and updates to financial advisors on a more regular basis or also require financial advisors to attend conferences more regularly. Section 3(l)(J) of the Financial Advisor Regulations only requires financial advisors to attend a conference every two years. In contrast, contract advisors are required to attend a conference every year. Requiring financial advisors to attend conferences more regularly not only ensures that they stay abreast of current financial issues affecting NFL players but also serves as another opportunity to weed out those who are less professional and do not attend.

* * *

We recognize that the above recommendations would increase the NFLPA's involvement in the financial advisor industry and would potentially require delicate maneuvering through complicated financial laws and regulations. Nevertheless, the NFLPA is in the most powerful position, and has as its mission to help players. Thus, it should take every step that it reasonably can to help players by overseeing the actions of financial advisors.

Recommendation 13:1-C: The NFLPA should consider investing greater resources in investigating and enforcing the Financial Advisor Regulations.

As discussed above, there are serious problems with the financial advisor industry that frequently result in substandard representation for and advice to the players, including poor handling of player health matters. Without meaningful enforcement, the Regulations lose their effectiveness to the detriment of players. One possibility is hiring more attorneys to focus on these matters.

Recommendation 13:1-D: Players should be given information to ensure that they choose financial advisors based on their professional qualifications and experience and not the financial benefits the financial advisor has or is willing to provide to the player.

As discussed in more detail above, prospective NFL players are routinely choosing their financial advisors not based on the financial advisor's professional qualifications but instead on how much the financial advisor provides the player at the outset. The players are excited about the opportunity to receive tens if not hundreds of thousands of dollars from the financial advisors for letting the financial advisor provide services to them. However, players do so at their own peril, sometimes agreeing to retain substandard financial advisors.

If the Financial Advisor Regulations are not amended to explicitly prohibit such arrangements as recommended above, it is important that the players understand the downsides of choosing their financial advisor based on loans or advances.

However, presently, there are minimal to no resources for players about how to choose a financial advisor. The NFLPA has the potential to be the best resource for helping players choose financial advisors appropriately but it is unclear what efforts it makes on this topic. The NFLPA conducts "Pipeline to the Pros" with current college football players to try to inform them about the process of becoming an NFL player, including hiring a contract advisor,⁵⁷ but it is unknown whether that advice also extends to financial advisors. Similarly, while the NFLPA's website includes a page advising "Active Players" on "How to Pick Your Agent,"⁵⁸ there is no similar advice concerning financial advisors.

Recommendations Concerning Financial Advisors – continued

The NFLPA is in a powerful position to help prospective NFL players pick financial advisors. While such players are not yet in the NFLPA's bargaining unit (and thus the NFLPA has no legal obligations toward them, see Chapter 7: The NFL and NFLPA), hundreds of college players will soon be NFLPA members and their decisions concerning a financial advisor while still in college can have a significant impact on their NFL career. Yet it does not appear that the NFLPA currently provides players with any assistance concerning the selection of financial advisors. The NFLPA could expand and intensify the information made available to prospective NFL players and could work with both the NCAA and the NFL (both of which more closely track potential NFL players) to ensure that the right players are receiving the necessary information. The NFLPA should also consider creating a system whereby players able to rate their financial advisors' performance and that data could be made available, including but not limited to a regular survey, a Yelp-like service, or some other means of information-sharing.

Goal 2: To help players better manage their finances.

Principles: Health Primacy; and, Empowered Autonomy.

Recommendation 13:2-A: The NFLPA and NFL should consider holding regular courses on financial issues for players.

As is true of the population more generally, players often lack the financial sophistication to make sound financial decisions, such as budgeting expenditures, saving for retirement, and planning for a post-career life. Additionally, players' lack of financial sophistication prevents them from monitoring the actions of their financial advisors and leaves them vulnerable to others who might seek to take advantage of them.

To assist players in learning important financial skills, the NFL has partnered with Money Management International, the country's largest non-profit credit and counseling service, to provide players with an educational website and a 24 hours a day, seven days a week advice hotline.⁵⁹ The NFLPA has established a near identical partnership with Financial Finesse, a company that provides financial education services.⁶⁰ Both the NFL and NFLPA should be commended for these partnerships.

However, players might not take advantage of these services. Consequently, an in-person introductory financial course would help to bridge the knowledge gap. Although the NFL's annual Rookie Transition Program likely includes discussions of financial issues (as its predecessor the Rookie Symposium did⁶¹), those are just some of the many issues players are presented with in a three-day event. Moreover, the Rookie Transition Program occurs before the player's first season and thus before players begin to receive their weekly pay, which is almost certainly the largest check the player has ever received. It would be beneficial to hold additional financial-focused courses or seminars after players begin to receive (and thus have the ability to spend) money. Two of the financial advisors interviewed recommended players take such a course. These would be useful supplements to the kinds of courses already offered by the NFL and NFLPA.

Relatedly, such courses could advise players of their rights concerning financial advisors, including the right to have their financial advisors' work audited.

Recommendations Concerning Financial Advisors – continued

Recommendation 13:2-B: The NFL and NFLPA should consider amending the player payment schedule so that players, by default, are paid over a 12-month period.

Players receive a check for each game they play. Thus, players generally only receive pay during the season.^z As discussed above, some players might spend recklessly during the season, causing financial problems in the off-season or when their career is over. By paying a player over an entire year or deferring a player's salary payments for some period of time, the player will have additional income at a later point when he may not have otherwise saved for it. Indeed, in June 2014, the NFLPA was reportedly considering approaching the NFL about players being paid in 26 installments over a year,⁶² and the issue is regularly considered at NFLPA Executive Committee meetings.⁶³

In reviewing a draft of this Report, the NFL stated that “[t]here is no evidence cited in the Report that players face short-term stress during the year (or that they do so any more than other people), or that any longer-term financial problems would be alleviated by moving to a 12-month payment schedule.”⁶⁴ Nevertheless, at least one club, the Tennessee Titans, does pay their players over a longer period of time, through March (when the League Year ends).⁶⁵ While it is uncertain if there is a problem with players spending too much money during the season, many players and contract advisors believe there is.⁶⁶ At a minimum, it is an issue in need of further consideration.

Andrew Brandt, a peer reviewer of this Report and a former Green Bay Packers executive, noted in his review that he used to provide players with the option of receiving their salary year-round in light of concerns he had about players' spending. While some players took the Packers up on the offer, the majority of players did not, as contract advisors often wanted interest to be paid on the deferred compensation.⁶⁷ While contract advisors are correct that players paid year round would be receiving slightly less based on the time value of money, a revised payment schedule would likely benefit players more than hurt them.

Making a 12-month payment schedule the default option could help ensure that all players have the opportunity to benefit from this possible change in payment schedule. Players should be free to opt out of a 12-month payment schedule if they like, but research suggests that most players will stay with the default option.⁶⁸

Our recommendation supplements deferred compensation plans that the NFL offers, including the Player Annuity Plan and a 401(k) plan (the Second Career Savings Plan), discussed in detail in Appendix C. While these deferred compensation plans are retirement-focused, our recommendation is meant to help players better handle their income in the short term.^{aa}

^z Players might receive bonuses during the offseason.

^{aa} In Chapter 7: The NFL and NFLPA, Recommendation 7:3-B recommends that the NFL and NFLPA undertake a comprehensive actuarial and choice architecture analysis of the various benefit and retirement programs to ensure they are maximally beneficial to players.

Endnotes

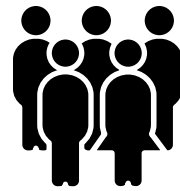
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Chapter 14

Family Members



Families can play a crucial role in protecting and promoting player health, including by encouraging players to seek proper medical care and appropriately consider long-term interests, and they can offer support through challenging times. Unfortunately, in some cases, family members can also put inappropriate pressure on players or otherwise negatively influence their health. Thus, players' families, which include spouses, siblings, parents, adult children, and extended relatives, are an important set of stakeholders whose roles we must address.^a

Additionally, friends often play a similar role to that of family members and thus much of what we say in this chapter can also apply to them.

^a We acknowledge that the issue of NFL players and domestic violence is an important one. However, these issues are outside the scope of this Report. Our focus here is on the effect of a family on the player and his health, not the effect of a player on family health.

In order to ensure that this chapter was as accurate and valuable as possible, the President of the Off the Field Players' Wives Association (a group of NFL player wives), Ericka Lassiter, who is also a Family Advisor to The Football Players Health Study at Harvard University, arranged for three wives of former NFL players to review a draft of this chapter prior to publication. Two of the wives provided comments.

(A) Background

When it comes to a person's health, family is extremely important.¹ NFL players are no different. Family members can provide guidance, comfort, love and support. NFL players—given the multitude of issues with which they must deal—certainly benefit from having a caring and supportive family.

However, NFL family members sometimes may be the source of problems for players. In 2016, the minimum salary for an NFL player is \$450,000 for a rookie and \$675,000 for a player with at least three years' experience.² Clearly, NFL players are paid well while playing as compared to the general population. Thus, it should not be surprising that NFL players frequently feel pressure from family members for financial support.³ Coupled with the short careers of NFL players, it is also not surprising that family pressure can financially ruin current or former professional athletes.⁴

As with the general population, NFL players marry and divorce. A 2009 NFL-funded study of former NFL players by the University of Michigan (Michigan Study) provides some data.⁵ The Michigan Study found that, of 1,063 former players interviewed, 76.3 percent between the ages of 30 and 49 at the time of the study were married before or during their NFL careers.⁶ In addition, of the former players interviewed and between 30 and 49, 75.5 percent were currently married (a statistic that would include second marriages).⁷ By comparison, only 64.4 percent of American men between 30 and 49 are married.⁸

The divorce rate for professional athletes has been estimated at 60 to 80 percent,⁹ though the figures obtained as part of the Michigan Study are very different. The Michigan Study found that only 19.7 percent of former players between 30 and 49 had ever been divorced.¹⁰ By contrast, 25.6 percent of all American men between 30 and 49 have been divorced.¹¹

Of those former players aged 30–49 at the time of the study and who had married before or during their NFL career, 7.6 percent had their marriage end during their career, 13.3 percent had their marriage end less than five years after their career ended, and 6.9 percent had their marriage end five or more years after their career ended.¹²

Figures from a 2014–2015 survey of 763 former players by *Newsday* paint a different picture than those from the Michigan Study. The *Newsday* survey found that 29.8 percent of former players interviewed experienced “marital problems” during their career and 48.2 percent experienced “marital problems” after their career.¹³ While “marital problems” are different from divorce, the *Newsday* survey suggests that former players' family lives are not as stable as was suggested in the earlier Michigan Study.

Also, the Michigan Study found that former players between 30 and 49 had a mean of 2.28 children.¹⁴

Clearly there are many factors that affect the constitution and stability of NFL families. Some players are lucky to have excellent support systems before, during, and after their careers, while others do not. The question is what are the legal and ethical obligations of family members as they concern an NFL player's health?

Before moving on, it is important to know that there are limitations to the *Newsday* and Michigan Study analyses.

The *Newsday* survey is limited as follows: (1) the survey was sent via email and text message by the NFLPA to more than 7,000 former NFL players, thus eliminating former players who were less technologically savvy and also possibly skewing the sample towards those former players closer to the NFLPA; (2) the response rate for the survey was low (approximately 11 percent); and, (3) the study does not discuss the demographics of those that responded, making it difficult to ascertain whether those who responded are a representative sample of all former players.

There are also two potential limitations to the Michigan Study. First, the Michigan Study population only included players who had vested rights under the NFL's Retirement Plan; meaning, the players generally had been on an NFL roster for at least three games in at least three seasons. There is likely a significant but unknown percentage of NFL players who never become vested under the Retirement Plan. Second, responders to the survey were 36.8 percent African American and 61.4 percent white—almost a complete reversal of the NFL's population of current players. While the racial demographics of former players is likely closer to the population of the Michigan

Study, *i.e.*, there were more white players than in the current NFL, the Michigan Study did not provide such data on the former player population and did not adjust or account for the racial demographics of the former player population. In a telephone call with Dr. David Weir, the lead author of the Michigan Study, he explained that: (1) due to limited resources, the population of players to be studied and contacted was limited to the data and contact information available to and provided by the NFL; and, (2) the NFL did not provide racial demographics of former players and thus the study could not adjust for that factor. Weir also believes that the racial demographics of former players is substantially similar to the racial demographics of the Michigan Study's participants. Finally, Weir explained that, during the internal review process with the NFL, the study was leaked to the media, preventing the study from being amended and submitted to a peer-reviewed publication.

(B) Current Legal Obligations^b

At the outset, it is important to be clear that we are analyzing the obligations of family members to players, rather than the obligations of players to their families. Although players have obligations to their families, that is outside the scope of this Report.

When it comes to legal obligations of family members, there is a significant body of law, family law, that governs these relationships but little of it is relevant to the health of NFL players. The most common understanding of the legal relationship between spouses results from cases of divorce, where the parties have to divide their property and determine alimony and child support obligations in accordance with state law. However, divorce law generally does not elucidate the obligations of spouses to one another while married. Moreover, any such obligations would generally extinguish upon divorce.^c

There is some case law holding spouses and parents to be fiduciaries and thus subject to fiduciary duties under law.¹⁵ Generally speaking, a fiduciary is “a person who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, trust, confidence, and candor; . . . [o]ne who must exercise a high standard of care

in managing another's money or property.”¹⁶ Whether a fiduciary relationship exists is a fact-based inquiry into the nature of the relationship.¹⁷ In other words, where an individual trusts and relies on a person to look out for his or her best interests, a fiduciary, and thus a legal, relationship can be formed.

If an NFL player consults with his family about health concerns, *and* a family member is held to be a fiduciary to the player (which may be unlikely), then the family member is legally obligated to provide advice that is in the best interests of the player, regardless of the effect on the family member. For example, if a player explains to his wife-as-fiduciary that he is suffering from post-concussion symptoms and is considering retirement, the wife's advice must be principally concerned with the player's best interests as opposed to how the wife might benefit from the player's continued playing. As a practical matter, these types of conversations and balancing of pros and cons often occur naturally and are the subject of a mutual decision making process. Nevertheless, it is important to understand that family members may have legal obligations to one another. That said, these obligations, even where legally recognized, may not often be enforced.

Several professional athletes claim to have been led to bankruptcy as a result of letting their parents handle their financial affairs.

In addition, family members might assume fiduciary, contractual or other legal obligations by virtue of taking on roles and responsibilities beyond just being a family member. For example, if a family member undertakes to handle a player's financial or legal affairs, then the family member will likely have assumed a fiduciary role on behalf of the player and could be held to the legal and ethical standards of financial and legal professionals. Indeed, several professional athletes claim to have been led to bankruptcy as a result of letting their parents handle their financial affairs.¹⁸ The legal and ethical obligations of contract advisors are discussed in Chapter 12, and the obligations of financial advisors are discussed in Chapter 13. If and when family members play either of these roles, the content of those chapters would also apply.

^b The legal obligations described herein are not an exhaustive list but are those we believe are most relevant to player health.

^c Similarly, family law statutes control the obligations of parents to their children, but only until the child reaches a certain age (typically 18). As all NFL players are legally adults, their parents no longer have any obligations to them that would be governed by family law statutes.

(C) Current Ethical Codes

There are no known ethical codes for family members.

(D) Current Practices

Interviews with players and contract advisors confirmed that family members play a role, but often a secondary one, in player health decisions. Players, of course, have varying relationships with their families, which dictate how involved a family member might be in advising a player or the player's contract advisor on various matters. A family member's involvement might vary depending on the player's point in his career.

When it comes to current players, while they generally discuss their current injuries and health concerns with their partners or other significant family members, they tend to rely most on their contract advisor and the doctors involved (e.g., club and second opinion) to determine the appropriate course of action. Relatedly, it is likely the contract advisor who will handle the logistics of the care.

The below quotations show the differences in player opinion about the involvement of family in player health matters:^d

- **Current Player 1:** “[T]hey just kinda offer moral support . . . whatever happened they would have my back . . . [B]ut it’s really up to me – I’ll make those decisions for myself.”
- **Current Player 2:** “[Family members] play a huge role in the mental and emotional health of players.”
- **Current Player 4:** “I think parents are huge.”
- **Current Player 5:** “I’m very close to my parents. And they’re always actively informed of what my injuries are, they make suggestions. But I would say my family’s very, very limited in their involvement in my health and safety.”
- **Current Player 6:** “As far as career decisions, I think family is a major, major factor . . . The family can be helpful if somebody has a wife and kids to come home to and they have this structure at home.”
- **Former Player 3:** “I don’t think you can overstate the importance of a solid family unit behind you.”

Players approaching retirement are particularly likely to consult with their family members concerning their health. The players we interviewed discussed sometimes being

“torn” between the desires of their family members that they stop playing and their own desires to keep playing.^e Family members often see a player when he is at his worst, perhaps even unable to move after a game, practice or particular injury. It is in these moments that family members often encourage players to stop playing for the sake of their future health. Nevertheless, encouragement and convincing are often two very different things.

Anna Welker, the wife of wide receiver Wes Welker, provides a positive example. As Wes continued to suffer concussions during his career, Anna educated herself about brain injuries in professional football. Then, at Anna’s behest, Wes agreed to get regular MRIs and to see his own neurologist twice a week.¹⁹ Although Anna still had concerns about Wes’ continuing to play, she took a proactive step in furthering the health of her husband.

Several players, contract advisors, and financial advisors also affirmed that family members sometimes place excessive pressures, particularly financial, on players. Family members might expect or request gifts, jobs or cash.²⁰ Former NFL player Phillip Buchanon claimed that his mother demanded \$1 million from him when he was drafted in 2002.²¹ Current players explained these concerns:

- **Current Player 2:** “[T]he wrong kind of family member can put a strain on your health. . . . [Y]ou have those family members that are maybe looking for handouts.” “They think it’s an easy meal ticket. I think some women are smart enough to see that and try to take advantage of it.”
- **Current Player 4:** “There’s definitely family members, girlfriends, friends, acquaintances, all those people [that] will ask you for money.”
- **Current Player 6:** “I know situations where families were a cancer to players . . . Football players have gotten into a lot of trouble because they have problems with their brother who is a troublemaker and they trust in their brother but their brother might have been the worst thing for them.”
- **Current Player 9:** “It’s family members, it’s friends, it’s those people that it’s very hard to say ‘no’ to.”
- **Former Player 3:** Players might feel pressure from family to continue playing “because the players might be the breadwinner for, not just for themselves, but maybe for a parent, or taking care of siblings, cousins, uncles, etc.”

^d We reiterate that our interviews were intended to be informational but not representative of all players’ views and should be read with that limitation in mind.

^e Family members might also want players to keep playing, as was apparently the case when former San Francisco 9ers defensive end Justin Smith retired after the 2014 season. See Josh Alper, *Eric Reid: Even Justin Smith’s Wife Wants Him To Come Back*, ProFootballTalk (Apr. 9, 2015, 6:33 AM), <http://profootballtalk.nbcsports.com/2015/04/09/eric-reid-even-justin-smiths-wife-wants-him-to-come-back/>, archived at <http://perma.cc/9E8F-RRCG>.

Additionally, family members might set out to be substantially involved in the player's career, including potentially handling the player's financial matters. These situations can lead to mismanaged finances and broken family relationships. During the 2014 Rookie Symposium, when discussing family members or old friends or girlfriends that do not have the player's best interests in mind, St. Louis Rams running back Zac Stacy bluntly advised rookie players to "cut 'em off."²² At the same Symposium, former NFL player Donovan Darius discussed the "most consistent concerns of players: How do you deal with females understanding that you're now a target? How do you deal with the entitlement of family members who now see you for what you can give them? Who can I trust to support my interests in the NFL?"²³

(E) Enforcement of Legal and Ethical Obligations^f

Litigation between professional athletes and their family members is rare but not without precedent.

In 2013, Philadelphia Phillies (Major League Baseball) first baseman Ryan Howard was sued by his twin brother, Corey Howard, alleging that Ryan had breached agreements to employ Corey and other family members.²⁴ Ryan countersued, alleging that Corey and his family members had fraudulently stolen millions of dollars from Ryan under the guise of handling Ryan's financial and legal affairs.²⁵ Ryan specifically alleged that Corey had abused the relationship of "trust and confidence,"²⁶ *i.e.*, a fiduciary relationship, between the brothers. The lawsuit was settled on undisclosed terms in October 2014.²⁷

In 2012, Dallas Cowboys offensive lineman Tyron Smith was forced to obtain a protective order against his parents and siblings after they allegedly continued to harass him with financial requests.²⁸

However, as discussed above, there are minimal legal and ethical obligations between NFL players and their family members in the absence of additional duties like those alleged in the *Howard* case. Thus, while NFL players could conceivably sue family members for breach of contract or breach of fiduciary duty in the appropriate circumstances, such claims are not unique to the relationships between NFL players and their family members.

^f Appendix K is a summary of players' options to enforce legal and ethical obligations against the stakeholders discussed in this Report.



(F) Recommendations Concerning Family Members

Family members often are and should be one of a player's most trusted allies and confidants in matters concerning their health. In most cases, family members love and care for the players who are their husbands, fathers, sons, or brothers. Nevertheless, just as some players are not prepared for an NFL career, the same is sometimes true for family members. Below are recommendations concerning family members that can help improve the ways in which they support players.

Goal 1: To maximize the supportive role of players' family members in protecting and promoting player health.

Principles Advanced: Respect; Health Primacy; Empowered Autonomy; and, Collaboration and Engagement.

Recommendation 14:1-A: Family members should be cognizant of the gaps in their knowledge concerning the realities of an NFL career, and the NFL and NFLPA should offer programs or materials to help them become better health advocates.

The lives of players and their families are obviously intertwined. A player's career can have meaningful implications for his family members, particularly financially. Nevertheless, despite their best intentions, family members, like most people, might not have an accurate understanding of an NFL player's likely career length and earnings, as well as the physical risks players face in playing the game. Ideally, family members, with the help of the NFL and NFLPA, can understand the tenuous nature of an NFL career and encourage players to think long term. At the same time, family members should be careful about the pressures they might place on players.

Family members often are more in touch with concerns about the player's life than a contract advisor or financial advisor might be. Consequently, family members can help themselves and players by learning about a player's health situations and understanding what might be done to safeguard them, including but not limited to the player's physical, mental, and financial situations.

We do not suggest any formal legal or ethical responsibility for family members to advance player health in these ways, but we do recommend that interested family members be supported with adequate resources. For example, the NFL and NFLPA could provide information and seminars on relevant health issues or support systems and programs for players and families suffering from various conditions.

Goal 2: To separate family members from professional management of players' careers and affairs.

Principles Advanced: Empowered Autonomy; and, Managing Conflicts of Interest.

Recommendation 14:2-A: Players should select and rely on professionals rather than family members for managing their business, financial, and legal affairs.

Player financial and legal matters are complicated issues that should be handled by qualified professionals. Even if a player's family member is qualified, it is often best to preserve relationships by avoiding the conflicts that may arise by mixing family and finances. In Chapter 12: Contract Advisors and Chapter 13: Financial Advisors, we make recommendations for improving those industries to ensure that the professionals player do rely on are well-qualified.

Endnotes

- 1 See Laura A. Siminoff, *Incorporating patient and family preferences into evidence-based medicine*, 13(Suppl. 3) BMC Med. Informatics and Decision Making S6 (2013) (“recognition of the influences family members and other caregivers have within the clinical encounter—by offering opinions and participating in treatment-related decision making—is needed and could lead to more efficient and effective health care.”); Carin Reust, *Family involvement in medical decision making*, 28 Fam. Med. 39 (1996) (“patients acknowledge the context of family life in medical decision making, while families actively promote patient autonomy. Consideration of nonmedical burdens related to family roles and relationships takes an equal or higher priority than consideration of medical burdens. Family is, and should be treated as, a significant moral participant in medical decision making.”)
- 2 CBA, Art. 26, § 1(a).
- 3 See Tim Keown, *Financial Requests Overwhelm Smith*, ESPN (Nov. 26, 2014), http://espn.go.com/nfl/story/_/page/hotread141125/dallas-cowboys-tyro, archived at <http://perma.cc/G8QQ-FUEK>; Anna Katherine Clemmons et al., *Money Confidential*, ESPN (Nov. 25, 2014), http://espn.go.com/espn/story/_/id/11931251/nfl-nba-nhl-mlb-stars-divul, archived at <http://perma.cc/MT5K-CHM9> (survey of 37 professional athletes revealed that, on average, players were asked for a loan from a friend or family member 25.5 times in the last year and that only 27.6 percent of loans are paid back); Robert Pagliarini, *Why Pro Athletes Go Broke*, Chi. Trib., Aug. 6, 2013, http://articles.chicagotribune.com/2013-08-06/lifestyle/sns-201308061630--tms--pagliarictrnp-a20130806-20130806_1_athletes-nfl-player-financial-stability, archived at <http://perma.cc/M49C-6UST>; Pablo S. Torre, *How (and Why) Athletes Go Broke*, Sports Illustrated, Mar. 23, 2009, <http://www.si.com/vault/2009/03/23/105789480/how-and-why-athletes-go-broke>, archived at <http://perma.cc/4E3Z-NHL6>; Melissa Isaacson, *Paradise Lost, Paradise Found, Big Money Brings Out ‘Friends’ Young Stars Don’t Know They Had*, Chi. Trib., Mar. 5, 2000, available at 2000 WLNR 8289967; Mary Judice, *Pro Football Players Make More Money in a Few Years than Most People Do in a Lifetime, But Spend it Like There’s No Tomorrow*, New Orleans Times Picayune, Sept. 12, 1999, available at 1999 WLNR 1256308.
- 4 *Id.*
- 5 David R. Weir, et al., *National Football League Player Care Foundation Study of Retired NFL Players*, Inst. for Social Research at Univ. of Mich. (2009), <https://ns.umich.edu/Releases/2009/Sep09/FinalReport.pdf>, archived at <https://perma.cc/6G5Q-LN2M?type=pdf>.
- 6 *Id.*
- 7 *Id.*
- 8 *Id.*
- 9 Torre, *supra* note 3.
- 10 Weir *supra* note 5.
- 11 *Id.*
- 12 *Id.* at 15.
- 13 See Jim Baumbach, *Life After Football*, Newsday, Jan. 22, 2015, <http://data.newsday.com/projects/sports/football/life-football/>, archived at <http://perma.cc/77DP-LUUE>.
- 14 Jim Baumbach, *Life After Football*, Newsday, Jan. 22, 2015, <http://data.newsday.com/projects/sports/football/life-football/>, archived at <http://perma.cc/77DP-LUUE>.
- 15 See Swanson v. Morrison, 172 Wash.App. 1040, *2 (Wash. Ct. App. 2013) (“spouses... owe each other the highest fiduciary duties”) (internal quotations omitted); Vickery v. Vickery, 999 S.W.2d 342, 357 (Tex. 1999) (“A husband and wife owe each other special fiduciary duties”); Smith v. Smith, 860 P.2d 634, 643 (Idaho 1993) (“The marital relationship imposes the high duty of care of a fiduciary upon each of the parties”); Unander v. Unander, 506 P.2d 719, 722 n.2 (Or. 1973) (“spouses . . . have a fiduciary duty to each other”); Murphy v. Murphy, 694 A.2d 932, 936 (Me. 1997) (discussing fiduciary duty owed by parent to child); L.C. v. A.D., 971 S.W.2d 512, 517 (Tex. App. 1997) (same); Robinson v. State, Dept. of Health and Rehabilitative Services on Behalf of Robinson, 473 So.2d 228, 230 (Fla. Dist. Ct. App. 1985) (same).
- 16 “Duty,” Black’s Law Dictionary (9th ed. 2009).
- 17 Ritani, LLC v. Aghjayan, 880 F. Supp. 2d 425, 455 (S.D.N.Y. 2012) (applying New York law); Carcano v. JBSS, LLC, 684 S.E.2d 41, 53 (N.C. Ct. App. 2009); L.C. v. R.P., 563 N.W.2d 799, 802 (N.D. 1997); Allen Realty Corp. v. Holbert, 318 S.E.2d 592, 595 (Va. 1984); Murphy v. Country House, Inc., 240 N.W.2d 507, 511 (Minn. 1976).
- 18 See Katie Strang, *Jack Johnson: Little Left Of Earnings*, ESPN (Nov. 21, 2014), http://espn.go.com/nhl/story/_/id/11908361/columbus-blue-jackets-d-jack-johnson-files-bankruptcy-parents-reportedly-blame, archived at <http://perma.cc/5UEA-CNMK> (Columbus Blue Jackets defenseman Jack Johnson forced to file for bankruptcy after entrusting \$18 million in career earnings to his parents); Tim Russo, *Bernie Kosar & His Cowardly Dad on ESPN Outside The Lines Story*, Cleveland Leader, Nov. 2, 2014, <http://www.clevelandleader.com/node/23339>, archived at <http://perma.cc/7499-HMD5> (former Cleveland Browns quarterback Bernie Kosar forced to file for bankruptcy after entrusting his career earnings to his father).
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- 20 See Michael David Smith, *Trent Richardson says greedy friends and family affected his career*, ProFootballTalk (Aug. 6, 2016, 5:45 AM), <http://profootballtalk.nbcsports.com/2016/08/06/trent-richardson-says-greedy-friends-and-family-affected-his-career/>, archived at <https://perma.cc/5FZV-GYC7>.
- 21 Michael David Smith, *Phillip Buchanan’s Cautionary Tale: My Mom Demanded \$1 Million*, ProFootballTalk (Apr. 11, 2015, 9:50 AM), <http://profootballtalk.nbcsports.com/2015/04/11/phillip-buchanons-cautionary-tale-my-mom-demanded-1-million/>, archived at <http://perma.cc/3ASQ-FZXN>; see also Michael David Smith, *When T-Rich got rich, friends and family had their hands out*, ProFootballTalk (Mar. 26, 2016, 1:09 PM), <http://profootballtalk.nbcsports.com/2016/03/26/when-t-rich-got-rich-friends-and-family-had-their-hands-out/>, archived at <https://perma.cc/Z8EX-QZXR>.
- 22 Robert Klemko, *So This is the NFL, Part I*, MMQB (Jul. 8, 2014), <http://mmqb.si.com/2014/07/08/nfl-rookie-symposium-part-1/>, archived at <http://perma.cc/2E8R-3S38>.
- 23 Robert Klemko, *So This is the NFL, Part II*, MMQB (Jul. 9, 2014), <http://mmqb.si.com/2014/07/09/nfl-rookie-symposium-part-2/>, archived at <http://perma.cc/A9ZM-3WDD>.
- 24 See Complaint, Howard v. RJH Enterprises, LLC, 13-cv-2518 (E.D.Mo. Dec. 18, 2013), ECF #1.
- 25 See Answer and Counterclaim, Howard v. RJH Enterprises, LLC, 13-cv-2518 (E.D.Mo. Jan. 27, 2014), ECF #8.
- 26 *Id.* at ¶ 36.
- 27 Joint Stipulation of Dismissal With Prejudice, Howard v. RJH Enterprises, LLC, 13-cv-2518 (E.D.Mo. Oct. 22, 2014), ECF #40; David Murphy, *The Family Legal Fight Over Ryan Howard’s Finances*, Philly (Nov. 19, 2014, 8:43 AM), http://www.philly.com/philly/sports/phillies/The_family_legal_fight_over_Ryan_Howards_finances.html, archived at <http://perma.cc/H7LD-GNAQ>.
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