



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

Chapter 12

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SUMMARY: **Contract Advisors**



This document is a summary of the full chapter on contract advisors in the Report *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*. The full chapter includes the following sections: (A) Background; (B) Current Legal Obligations; (C) Current Ethical Codes; (D) Current Practices; (E) Enforcement of Legal and Ethical Obligations; and, (F) Recommendations. Here, we provide our Recommendations, with only the minimum necessary background information. For more information and analysis of the role and responsibilities of contract advisors, including relevant citations, please see the full chapter.

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 protecting their health. In fact, contract advisors are “agents” of both players and the National Football League Players Association (NFLPA), pursuant to the National Labor Relations Act. The NFLPA has a program whereby it certifies contract advisors and subjects them to its Regulations Governing Contract Advisors (“Contract Advisor Regulations”). Entering the 2015 NFL

season, there were 869 NFLPA-certified contract advisors but only 420 actually had clients (48.3%).

Contract advisors often communicate with players on a near 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 are followed and enforced.

Recommendations Concerning Contract Advisors

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. Nevertheless, 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. We therefore make the following recommendations.

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.

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.

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.

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.

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

Recommendations Concerning Contract Advisors – continued

not otherwise provide contract advisors with copies of the documents it is providing to players. 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 their players received and properly considered the information.

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

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.

The NFLPA’s 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.” However, 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 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.

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

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.

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. If the Contract Advisor Regulations are not amended to prohibit such

Recommendations Concerning Contract Advisors – continued

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.

However, presently, there are minimal resources for players about how to choose a contract advisor. 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 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 share their experiences with others.

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.

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.

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 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.

Recommendations Concerning Contract Advisors – continued

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.

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. 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.