

Sports Agents Face Significant Liabilities

by Marc P. Miles, Principal, Callahan & Blaine

Much has been made in recent years regarding the improprieties of sports agents in representing their professional and student athletes. Sports agents are routinely called out for their improper activities. Recently, the FBI joined the investigation into the agent representing Auburn quarterback, Cam Newton. However, what is little known is that the liability for agents can be enormous based upon the failure to file what many may consider to be needless, unimportant paperwork.

In California, the law that governs sports agents who represent professional and student athletes is called the Miller-Ayala Athlete Agents Act (*Business & Professions Code* § 18995) (the "Act"). The Act is relatively brief and seemingly innocuous, yet it potentially imposes significant liability on sports agents. It was the intent of the California Legislature to put in place guidelines to help regulate an industry, which is often plagued with the bad rap of agents acting unscrupulously to profit off of the hard work and talent of athletes. While there is still no licensing requirement by the State of California for sports agents, like there is for other professions such as doctors, lawyers and accountants, the Act provides a system of mandatory disclosures to help protect the public.

Prior to engaging in the business of an athlete agent, the agent must file a Disclosure Statement with the California Secretary of State. This Disclosure Statement contains information such as the name and address of the agent, whether he or she has been convicted of a felony, and a list of the athletes that the agent represents. The Act also requires that the agent obtain at least \$100,000 in security for any claims levied against the agent. There are other required formalities that must be followed during the formation of the relationship between the agent and the athlete, such as (1) any contract between the athlete and the agent must be in writing, (2) the contract must include a statement indicating that the agent has a current Disclosure Statement on file with the Secretary of State, and (3) there must be a notification as to how the athlete can obtain the public disclosure information about the agent from the Secretary of State. There are also other various provisions within the Act which provide some structure for the business of being a sports agent, such as a prohibition against splitting fees or commissions with a professional sports league or team and not having a financial interest in the entity for whom the agent is attempting to obtain endorsement contracts.

What appears to be under-emphasized in the sports agency world is the importance in complying with each and every provision of the Act, as well as the grave consequences for not doing so. The Act is a strict liability law, which means there is no room for excuses as to why an agent did not comply. Rather, the agent becomes liable for any and all non-compliance (like driving a vehicle in excess of the posted speed limit). The impact of not complying with the letter of the law is substantial.

By imposing strict penalties, the California Legislature clearly intended for agents to be 100% compliant with all requirements of the Act. If the agent does not comply, the contract

between the agent and the athlete becomes void and unenforceable. In addition, any future fees or commissions which would otherwise be owed by the athlete to the agent are no longer payable. Most significantly though, if the agent fails to comply with the requirements of the Act, the athlete is entitled to a refund of commissions or fees previously paid to the agent.

Agents should further understand that failure to comply with the requirements of the Act constitutes a misdemeanor, for which they can be prosecuted criminally. However, the California Legislature apparently recognized that district attorneys are overwhelmed with other more significant crimes, and as such provided that the enforcement of the Act be through civil lawsuits. To encourage enforcement against non-compliant agents through private lawsuits, the Act also includes provisions for the recovery of attorney's fees and costs, as well as punitive damages. In addition, not only can the affected athlete sue, but anyone who has suffered damages as a result of the agent's failure to comply with the Act can also bring a lawsuit. A prevailing plaintiff is entitled to recover actual damages, including a refund of the commissions paid to the agent, or \$50,000, whichever is greater.

It is important for agents and athletes alike to realize the requirements of the Act and the imposition of significant liability for failure to comply. As for the agents, compliance with the Act is relatively simple, in that they only need do such things as make the proper disclosures, amend their Disclosure Statement timely, obtain the proper security or insurance, and not engage in the conduct prohibited by the Act. Doing these simple things will help the agent avoid significant liability. On the other hand, the athletes should be privy to all of the disclosure information required to be provided prior to hiring the agent and throughout the relationship. If the agent does not provide the proper disclosures, does not obtain the necessary insurance, or engages in conduct which is prohibited by the Act, the athlete may file an action against the agent to void the contract between them, relieve the athlete of any further payments, obtain a refund of previous commissions paid, and recover attorney's fees and punitive damages.

Considering the important policies underlying the Act and the significant liabilities for not complying with it, agents and athletes should be properly advised as to the intricacies of the Miller-Ayala Athlete Agents Act.

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Marc P. Miles is an experienced civil litigator who specializes in complex business litigation, as well as employment law and intellectual property cases. In addition to obtaining multi-million dollar verdicts and settlements, Mr. Miles has handled a variety of complex appeals, which include having successfully argued before the federal Fourth Circuit Court of Appeals and the U.S. Supreme Court.

Mr. Miles was recognized as a "Rising Star" by Super Lawyers magazine. This honor is reserved for the top 2.5% of lawyers in Southern California under the age of 40. This is the sixth year in a row he has received this honor. Mr. Miles also received the honor of being named a National Finalist of Lawdragon's 500 Leading Lawyers in America.

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