



## **ADVISING VS. REPRESENTATION**

**Q: What activities by an agent or financial advisor are considered “advising” student-athletes, which does not jeopardize their eligibility, as opposed to “representing” student-athletes, which does jeopardize their eligibility?**

**A:** These situations tend to be fact-specific and depend on specific circumstances. It’s best to use the following as guidance:

- When you are interacting on a one-on-one basis with student-athletes and providing advice regarding their future, you are likely to be advising them (unless your discussions include an oral or written agreement to represent them now or in the future, even if you do not act upon that agreement).
- When you are interacting with individuals other than a student-athlete (e.g., third parties) on behalf of or regarding the student-athlete, it is likely that you are representing the student-athlete.

*Andrea, an agent, has agreed to provide Paul, a student-athlete with remaining eligibility, advice about a professional sports contract. Andrea and Paul have agreed that Paul will not have to pay Andrea any fee for her services until Paul is drafted by the professional sports team.*

**Q: Is Paul’s collegiate eligibility in jeopardy?**

**A:** YES. Paul jeopardizes his eligibility if an agent, advisor or financial advisor provides advice to him about a professional contract with the understanding that he will pay the agent, advisor or financial advisor for such services once he has been drafted by the professional sports organization, regardless of the fact that the agent, advisor or financial advisor provides the service only to student-athletes and has the same fee arrangement for all clients.

*Doug, an agent, has been advising Roger, a baseball prospective student-athlete. Roger is a senior in high school and was recently selected in the Major League Baseball draft. Roger has asked Doug to help him determine the value of the contract he could expect to be offered based on his draft slot so that he can decide if he wants to pursue professional baseball or attend college and play baseball at a Division I institution.*

**Q: Can Doug help Roger without jeopardizing his collegiate eligibility?**

**A:** YES. Doug may advise Roger as to his opinion of Roger’s likely contract value based on his expertise in the industry. Doug can also advise Roger about any contract proposal he receives from the professional team that drafted him. However, Doug cannot have an oral or written agreement to represent Roger. Further, Doug cannot contact teams, scouts or any other third parties to ask their opinion of Roger’s value. In addition, Doug may not arrange workouts or tryouts for Roger with professional teams, or negotiate with the team that drafted Roger. Also, keep in mind that Doug must charge Roger the going rate for whatever services he provides in order to avoid providing an impermissible benefit to Roger.



*Steve is an agent who represents Martin, a football and baseball student-athlete, at an NCAA member institution. Steve represents Martin only in his football pursuits. Steve has been providing services to Martin, such as trainers and nutritionists, to assist him in developing his professional football career.*

**Q: Is Martin eligible to compete as a baseball studentathlete at the NCAA member institution as a result of the benefits Steve has provided to him?**

**A:** YES. A student-athlete who receives money or other benefits from an agent who is representing the student-athlete only in a particular sport would remain eligible to compete in a second sport at the member institution.

**Q: Would Martin be eligible to compete as a baseball student-athlete if Steve's contract or agreement with Martin was not specifically limited in writing to representation in the sport of football?**

**A:** NO. An agency contract not specifically limited in writing to a particular sport or sports shall be deemed applicable to all sports, and the individual shall be ineligible to participate in any sport.

**Q: Can Sam, an attorney, or Bill, an agent, provide advice to a student-athlete regarding a professional contract without jeopardizing the student-athlete's collegiate eligibility?**

**A:** YES. Both Sam and Bill can provide advice to the student-athlete regarding a proposed contract, but neither Sam nor Bill can represent the student-athlete in negotiations or market the student-athlete's athletics ability to professional teams without jeopardizing the student-athlete's intercollegiate eligibility. Also, keep in mind that Sam and Bill must charge the student-athlete the going rate for whatever services they provide in order to avoid providing an impermissible benefit to the student-athlete.

**Q: Frank is a financial advisor, not an agent. In his capacity as a financial advisor, can he represent student-athletes with remaining eligibility (or the family members of such student-athletes) in negotiations with professional teams without jeopardizing their NCAA eligibility?**

**A:** NO. Financial advisors are treated as an agent for the purposes of NCAA legislation if they act as an agent and represent student-athletes in marketing their athletics ability.

**Q: Can a financial advisor or agent provide information to a student-athlete regarding lending institutions that may be interested in providing financing for insurance against a disabling injury that would prevent the student-athlete from pursuing a chosen career?**

**A:** YES. An agent, attorney or financial advisor may provide information to the student-athlete, but the agent, attorney or financial advisor cannot be involved in any way in making the arrangements to secure a loan or negotiating the terms of the financing.



## **EMPLOYMENT BY A SPORTS AGENT OF STUDENT-ATHLETES**

**Q: James is a sports agent. He typically hires a college student on a part-time basis to assist him in his office.**

**Can Jim hire a student-athlete for this position?**

**A: YES.** An agent can employ a student-athlete provided:

- They are paid only for work actually performed and at a rate commensurate with the going rate.
- The student-athlete is qualified to perform the work, and there is no marketing of the student-athlete's athletics ability or reputation.
- The student-athlete's duties do not include recruiting prospective clients for James, acting as a runner, or marketing the athletics ability of a prospective or enrolled student-athlete.

## **NCAA CASE STUDY – FAMILY ADVISORS**

(the role of family advisors is very similar for baseball and hockey student-athletes – please see case below)

### **Facts:**

After enrolling at an NCAA Division I member institution, a baseball student-athlete with one season of collegiate eligibility remaining was drafted by a professional baseball team. The student-athlete had been consulting with an advisor, with whom he had met to discuss the services the advisor could provide. The student-athlete indicated that he was interested in the advisor's services and kept in touch with him by telephone. The student-athlete did not sign an agreement with the advisor or pay the advisor for providing services to him. After the student-athlete was drafted, the student-athlete asked the advisor to contact the professional team that had drafted the student-athlete to review the details of the proposed contract. It was the student-athlete's understanding that the advisor would not negotiate the provisions of the contract with the team during this discussion. The institution's coach had reviewed the NCAA rules related to agents and advisors with the student-athlete. The coach also contacted the student-athlete after the Major League Baseball draft to encourage him to return to school. The student-athlete made no mention of an advisor at this time.

The student-athlete signed a contract with the professional team and received expenses to travel to meet with representatives of the team. After signing the contract, a medical examination by the professional team discovered a possible health problem and the professional team voided the contract. The student-athlete returned to school and sought to compete on the institution's baseball team.

### **Outcome:**

The institution sought reinstatement of the student-athlete's collegiate eligibility. **The NCAA student-athlete reinstatement staff declined to reinstate the student-athlete.** The staff determined that the student-athlete caused his advisor to act as an agent when he asked him to contact the professional team to review the details of the proposed contract. Further, the student-athlete had knowingly signed a professional contract, an act that clearly professionalized him.