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Uniform Alternative Dispute Resolution: The Answer to Preventing Unscrupulous Agent Activity

Scott Kestenbaum

I. INTRODUCTION

This Note addresses whether there should be an arbitration and mediation section added to both the Uniform Athlete Agent Act (UAAA),¹ and Sports Agent Responsibility and Trust Act (SPARTA)² to establish a uniform dispute resolution process for dealing with unscrupulous acts of athlete agents. This issue is distinctive because while all four professional sports leagues' players associations have specific arbitration procedures in their athlete agent regulations, the two statutes governing athlete agent conduct do not adopt a uniform policy relating to arbitration procedures. This Note addresses the prior history of state and federal legislation pertaining to an athlete agent, including how the UAAA and SPARTA regulate athlete agents working with both students and professionals. This Note then analyzes the similarities and differences among the arbitration and mediation procedures used by each of the four professional sports leagues' players associations. It next discusses the successes and failures of both the professional leagues' arbitration methods and other legal literature propositions for most effectively dealing with sports agents. Finally, this Note proposes that the most effective processes for dealing with the alleged

1. Uniform Athlete Agents Act 7(b) (2000). (The National Conference of Commissioners on Uniform State Laws ("NCCUSL") enacted the UAAA to protect educational institutions and student-athletes against the conduct of unscrupulous agents.)

2. Sports Agent Responsibility and Trust Act, S. 1170, 108th Cong. 5(a)(1) (2003). The Federal Trade Commission and the State Attorney General authorize SPARTA to bring a civil action against a violating agent. SPARTA also provides a private cause of action to the educational institution against a sports agent for damages caused by a violation of SPARTA. It also allows for common law causes of action including the right of an institution and/or the student athlete to bring a tortious interference with contractual relations action against the agent. *See generally* John A. Gray, *Sports Agent's Liability After Sparta?* 6 VA. SPORTS & ENT. L.J. 141 (2006).

unscrupulous acts of sports agents will result from modifying both the UAAA and SPARTA to include a uniform sports agent act and a uniform arbitration and mediation section.

II. THE NECESSITY FOR LAWS GOVERNING ATHLETE AGENTS

One can tell the story of athlete agent misconduct in six short action sentences, and is similar in the reader's mind to a "flip-book."³ Athlete becomes a juggernaut in his or her respective sport. Athlete is recruited, or more literally befriended by new, wealthy "friends," who shower the athlete with lavish gifts. Athlete chooses to work with agent, creating a legally binding athlete-agent relationship. After short-lived professional athletic success, athlete is knowingly steered in the wrong direction by money and power hungry agent. Agent is not regulated uniformly, and finds a way to exploit professional athlete, team, or league. Process repeats itself in a cyclic fashion.

The sports agent business is a highly competitive and ruthless occupation that is rampant with agent misconduct.⁴ The athlete-agent relationship is well-chronicled in three stories. In the first, Marcus Camby, a highly-touted basketball recruit out of high school,⁵ became embroiled in dark side of college athletics when two young, relatively inexperienced agents, John Lounsbury and Wesley Spears, gave Camby everything from prostitutes to rental cars during his playing years at the University of Massachusetts with the hope that he would allow them to represent him when he turned pro.⁶

Ultimately, after the agents spent an overwhelming sum of money and risked criminal punishment, they lost Camby—the number two pick in that

3. See generally Flipbook History <http://www.flipbook.info/history.php> (last visited Nov. 17, 2012) (A "flip book" is a book with a series of pictures that vary from one page to the next, so that when the pages are turned rapidly, the pictures appear to animate by simulating motion or some other change.").

4. Richard T. Karcher, *Fundamental Fairness in Union Regulation of Sports Agents*, 40 CONN. L. REV. 355, 357 (2007) (addressing "whether the agent regulations unilaterally adopted by the players associations in the four professional sports leagues afford agents a sufficiently fair enforcement process.").

5. Marcus Camby is an American professional basketball player who played collegiate basketball for the University of Massachusetts Minutemen, and professional basketball for the Toronto Raptors, New York Knicks, Denver Nuggets, Los Angeles Clippers, Portland Trailblazers, and Houston Rockets. See *Marcus Camby Player Profile*, NBA, http://www.nba.com/playerfile/marcus_camby/ (last visited Nov. 17, 2012).

6. Bryan Couch, *How Agent Competition and Corruption Affect Sports*, 10 SETON HALL J. SPORT L. 111, 124–25; see, e.g., Phil Taylor, *Tangled Web: Marcus Camby Was Both Victim and Villain in His Illicit Dealings with Agents While at UMASS*, SPORTS ILLUSTRATED, Sept. 15, 1997, at 66.

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year's NBA draft—to a different agency, Proserv.⁷ Camby claims that when he signed with Proserv, “Spears allegedly threatened to expose an improper relationship that he initiated.”⁸ In addition, out of fear for his life, Camby paid \$28,500 to Lounsbury, who had tried to build a family-like relationship with Camby's mother.⁹

This experience had lasting effects on all members involved: it forced the two agents into bankruptcy court and caused them to face criminal prosecution, left the UMass basketball program tarnished, and forced the school to both return any revenue it earned that year and forfeit all four of its NCAA tournament victories because Camby's involvement made him “retroactively ineligible.”¹⁰

In yet another example, the same agency from the previous case, Proserv, became entangled in a dispute of its own. In 1991, Ivan Rodriguez, a former Major League Baseball Player,¹¹ signed a one-year terminable at-will agreement with Speakers of Sport (Speakers) to have the company act as his agent.¹² In 1995, Rodriguez lost faith in Speakers, and scheduled a meeting with Proserv, whose agents led him to believe he was capable of earning up to four million dollars a year in endorsements if he signed with Proserv.¹³ Thereafter, Rodriguez left Speakers and signed with Proserv, but when he did not earn the money he was promised, he fired Proserv and hired a new agent.¹⁴

Speakers filed suit against Proserv in 1997 and alleged that Proserv's actions constituted “tortious interference with prospective business relations.”¹⁵ The District court granted summary judgment for Proserv, and held that Proserv's “promise” was not fraud or improper conduct, and absent evidence demonstrating the contrary by Speakers, was not unreasonable.¹⁶ The Seventh Circuit affirmed the decision of the District Court, and

7. Couch, *supra* note 6, at 125. Proserv is a Washington D.C. corporation that represents professional athletes. *Speakers of Sport v. Proserv, Inc.*, 1998 WL 473469, at *1 (N.D. Ill.).

8. See Couch, *supra* note 6, at 125.

9. *Id.* at 125–26.

10. *Id.* at 126.

11. Ivan Rodriguez is a retired Major League Baseball Player. He is considered one of the best catchers to ever play professional baseball. See *Ivan Rodriguez Profile and Scouting Report*, ESPN, http://espn.go.com/mlb/player/stats/_id/2523/ivan-rodriguez (last visited Nov. 1, 2012).

12. Couch, *supra* note 6, at 116.

13. See *id.*; *Speakers of Sport v. Proserv, Inc.*, 1998 WL 473469, at *1 (N.D. Ill.).

14. Couch, *supra* note 6, at 116–17; *Speakers of Sport*, 1998 WL 473469, at *2.

15. Couch, *supra* note 6, at 117; *Speakers of Sport*, 1998 WL 473469, at *1.

16. Couch, *supra* note 6, at 117; *Speakers of Sport*, 1998 WL 473469, at *5.

concluded that Proserv's actions were nothing more than mere competition.¹⁷

As the court heard this case ten years after the enactment of the MLBPA Regulations Governing Player Agents, the court cited the Major League Baseball rule "forbidding players' agents to compete by means of misrepresentations."¹⁸ The regulations outlined in § 4(L), "Relations Among Player Agents, Applicants, and their Employees and Business Associates," establish the rules that an agent must abide by in dealing with another agent.¹⁹

Finally, in *United States v. Walters*, the defendants, Norby Walters and Lloyd Bloom, business agents for entertainment and sports figures in the 1980s, allegedly contracted to represent undergraduate student-athletes who were still competing in intercollegiate athletics.²⁰ The defendants set up the contracts so that the students were not officially signed until their college eligibility expired.²¹ The defendants not only offered numerous gifts to the student-athletes, but also threatened them with physical harm in order to control them.²² On one occasion, there was an attack on an associate in his office after three former clients of his competitor signed with him.²³ A number of athletes brought suit against Walters and Bloom for breach of contract and physical violence, which occurred when an athlete tried to sign with another agent.²⁴

In 1988, a federal grand jury found Walters and Bloom guilty of seven counts, including racketeering, racketeering conspiracy, extortion, conspiracy to commit mail fraud, mail fraud and wire fraud.²⁵ This case extended white-collar criminal statutes to include the sport agent profession, and there are now criminal type penalties outlined in each player association agreement.²⁶

These cases are important beyond their analysis of the law. First, they highlight that sports agent competition has led to crimes of violence.²⁷

17. Couch, *supra* note 6, at 117–18.

18. MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION, MLBPA REGULATIONS GOVERNING PLAYER AGENTS, § 4(L) [hereinafter MLBPA REGULATIONS].

19. *Id.*

20. *United States v. Walters*, 711 F. Supp. 1435, 1437 (N.D. Ill. 1989); *see* Couch, *supra* note 6, at 121.

21. Couch, *supra* note 6, at 121.

22. *Id.* at 122.

23. *Id.*

24. Walters, 711 F. Supp. at 1438; *see* Couch, *supra* note 6, at 122.

25. *See* Couch, *supra* note 6, at 122.

26. *See id.* at 122–23.

27. *Id.* at 123.

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Second, they demonstrate the necessity for comprehensive athlete agent regulation.²⁸

III. ATHLETE AGENT DEFINITIONS AND REGULATIONS

An agent is “one who is authorized to act for or in place of another . . . a business representative, whose function is to bring about, modify, accept, affect accept performance of, or terminate contractual obligations between principal and third persons.”²⁹ More specifically, Black’s Law Dictionary defines an agency relationship as “an employment for purpose of representation in establishing legal relations between principal and third persons.”³⁰ Within the context of sports, an agent is known by a number of different names, such as “sports agent, attorney-agent, athlete representative, athlete agent, player representative, student-athlete advisor, or player agent.”³¹ These definitions only define an athlete agent role, and do not point to how an athlete agent is regulated.

A. *NCAA and Regulation of Athlete Agents*

The National College Athletic Association (NCAA) establishes a clear line between intercollegiate and professional competition.³² The provisions of the NCAA Bylaws advance the goal of “maintaining a clear line of demarcation between college athletics and professional sports.”³³ In what many refer to as the “no agent rule,” the NCAA’s athlete agent regulation renders a student-athlete ineligible for intercollegiate competition “if he or she ever has agreed (orally or in writing) to be represented by an agent for the purpose of marketing his or her athletics ability or reputation in that sport.”³⁴ Further, all agency contracts are applicable to all sports the student

28. *Id.*

29. BLACK’S LAW DICTIONARY 72 (9th ed. 2009).

30. *Id.*

31. *Id.*

32. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 2009–10 NCAA DIVISION I MANUAL §§ 1.2–1.3 (2009), [hereinafter NCAA BYLAWS], available at <http://www.ncaapublications.com/productdownloads/D110.pdf>; R. Alexander Payne, *Rebuilding the Prevent Defense: Why Unethical Agents Continue to Score and What Can Be Done to Change the Game*, 13 VAND. J. ENT. & TECH. L. 657, 661–62 (2001) (discussing NCAA Regulations in relation to agents).

33. *Id.* § 12.01.2.

34. *Id.* § 12.3.1.

athlete participates in.³⁵ This renders the athlete ineligible to participate in any future NCAA athletic competition, regardless of sport, unless contractual language explicitly states otherwise.³⁶ This same prohibition on agency contracts also applies to high school athletes or graduates before college enrollment. For example, anti-remuneration rules prohibit student-athletes from leveraging their athletic ability “directly or indirectly” for any form of pay, promise of future pay, or financial aid not available to the student body at-large.³⁷ Barrier regulations also restrict the interactions between student-athletes, coaches, agents, and professional sports organizations.³⁸

Under these regulations, student-athletes and their guardians may interact with professional teams on their own, including by negotiating a professional contract, without loss of eligibility.³⁹ An NCAA member institution may also establish a “professional sports counseling panel,” which provides an alternative mechanism for providing some traditional agent functions, including advising the students about professional prospects, helping them secure a personal injury insurance policy, reviewing proposed professional contracts, and determining an athlete’s market value.⁴⁰ By referring to the receipt of benefits by an “individual,” the NCAA explicitly states that the regulations not only apply to enrolled college athletes, but also apply to future college recruits still enrolled in high school or preparatory institutions.⁴¹ The NCAA’s comprehensive and far-reaching guidelines delineate the exclusion of an agent until the athlete becomes a professional. NCAA sanctions against institutions provide an effective means for achieving agent compliance.⁴² In doing so, the NCAA makes the professional players associations the leading voices in athlete agent regulation.

B. Players Associations and Regulation of Athlete Agents

Pursuant to § 9(a) of the National Labor Relations Act (NLRA),⁴³ the players associations in the four major professional sports leagues represent all of their players “for the purposes of collective bargaining in respect to

35. *Id.*

36. *Id.*

37. *Id.* at § 13.2.1.

38. *See id.* §§ 12.1.2, 12.3.1.1, 13.01.4.

39. *Id.* § 12.2.4.3.

40. *Id.* § 12.3.4.

41. *Id.* § 12.3.1.2(a).

42. *Id.* § 19.5.2.2.

43. National Labor Relations Act, 29 U.S.C. §§ 151–169 (2012).

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rates of pay, wages, hours of employment, or other conditions of employment.”⁴⁴ The four players associations—National Football League Players Association (NFLPA), National Basketball Players Association (NBPA), Major League Baseball Players Association (MLBPA), and National Hockey League Players’ Association (NHLPA)—have utilized this statutory authority in order to negotiate a level of basic compensation guaranteed to every player in the form of minimum salaries, benefits, job protections, eligibility for arbitration and free agency, salary caps, rookie salary pools, and grievance procedures.⁴⁵ Each league has relied upon this statutory framework that affects players and groups of players differently. However, the players associations have each established that it is in the best interest of the player to have a representation system that involves the use of third party agents. As a result, each association has delegated to third party agents the authority to negotiate individual contracts between players and teams.⁴⁶ Section 9(a) of the NLRA supports the use of third party agents, which states that players associations are “entitled to forbid any other person or organization from negotiating for its members.”⁴⁷ Thus, the players

44. National Labor Relations Act § 9(a), 29 U.S.C. § 159(a) (2012) (“Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.”).

45. PAUL C. WEILER & GARY R. ROBERTS, *SPORTS AND THE LAW: TEXT, CASES, PROBLEMS* 324 (2d ed. 1998); *see* Karcher, *supra* note 4, at 358.

46. NATIONAL BASKETBALL PLAYERS ASSOCIATION, *NBPA REGULATIONS GOVERNING PLAYER AGENTS* 3 (June 1991) (“The NBA and Players Association agree that, notwithstanding the foregoing, the Players Association has delegated its authority to individual employees and prospective employees . . . to bargain with clubs and to reach agreement upon the provisions of Player Contracts.”); NHL & NHLPA, *COLLECTIVE BARGAINING AGREEMENT BETWEEN NATIONAL HOCKEY LEAGUE AND NATIONAL HOCKEY LEAGUE PLAYERS’ ASSOCIATION* 2 (2013) (“‘Agent Certification Program’ means the program by which the NHLPA certifies agents to represent Players in individual SPC negotiations with Clubs.”); NFL PLAYERS ASSOCIATION, *NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS* 3 (June 2012) (“No person (other than a player representing himself) shall be permitted to conduct individual contract negotiations on behalf of a player and/or assist in or advise with respect to such negotiations with NFL Clubs. . . .”); MLBPA REGULATIONS, *supra* note 18, § 1(A) (Oct. 2010) (“To afford each Player the opportunity to make better-informed decisions about his choice of certified Player Agent . . . and providing Client Maintenance Services for players.”).

47. *Collins v. National Basketball Players Association*, 850 F. Supp. 1468, 1475 (D. Color. 1991), *aff’d*, 976 F.2d 740 (10th Cir. 1992). “The NBPA is legally entitled to forbid *any* other person or organization from negotiating for its members. Its right to exclude all others is central to the federal labor policy embodied in the NLRA.” *Id.* (citing *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180 (1967)).

associations have chosen to utilize a third party agent system, whereby players compensate their agents for negotiating their final contracts, and the players may hire or fire their own agents.⁴⁸ In granting such rights to the player and agent, the association essentially removed itself from the bargaining process. As players associations are non-governmental, private agencies, they are not subject to the due process requirements of the Constitution.⁴⁹ To combat agent misconduct that may result from this lack of a due process requirement, the players associations each have enacted agent regulations that they enforce. In addition, forty states require each agent to register as an athlete agent.⁵⁰ The registration process involves filling out a registration form, paying an initial registration and bi-yearly renewal fee, and, if applicable, providing evidence of athlete agent registration in a different state for reciprocity.⁵¹

IV. STATE LEGISLATION AND REGULATION OF ATHLETE AGENTS

Although the role of an athlete agent varies slightly in each respective sport, two statutes, the UAAA and SPARTA, attempt to regulate agent conduct.

A. *Uniform Athlete Agents Act (UAAA)*

In 1997, the National Conference of Commissioners on Uniform State Laws (NCCUSL) started development of a model uniform agent

48. Karcher, *supra* note 4, at 360–61.

49. *Id.* at 361; *see* Finley & Co. v. Kuhn, 569 F.2d 527, 544 (7th Cir. 1978) (“[T]he general rule of nonreviewability which governs the actions of private associations is subject to exceptions 1) where the rules, regulations or judgments of the association are in contravention to the laws of the land or in disregard of the charter or bylaws of the association and 2) where the association has failed to follow the basic rudiments of due process of law.”); JAMES A.R. NAFZIGER, INTERNATIONAL SPORTS LAW 73 (2d ed. 2004) (“Courts in the United States ordinarily refuse to overrule the decisions of sports associations because these decisions do not involve the requisite ‘state action’ that would subject them to constitutional scrutiny. . . . United States courts have, however, become more willing to address claims of procedural fairness as a constitutional requirement.”).

50. NCAA FAQ on Uniform Athlete Agent Act, NCAA, [hereinafter NCAA FAQ], <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Resources/Latest+News/2010+news+stories/July+latest+news/FAQ+on+Uniform+Athlete+Agents+Act> (last visited Nov. 17, 2012).

51. *Athlete Agents*, TEXAS SECRETARY OF STATE, <http://www.sos.state.tx.us/statdoc/athlete-agents.shtml> (last visited Nov. 17, 2012) (“Athlete agents are governed by Chapter 2051 of the Texas Occupations Code and the secretary of state’s administrative rules found in title 1, Chapter 78 of the Texas Administrative Code. Before an agent may recruit or solicit an athlete to enter into an agent contract, a financial services contract, or a professional sports services contract, an agent must obtain a certificate of registration from the secretary of state.”).

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regulation.⁵² In 2000, the NCCUSL created the Uniform Athlete Agents Act (UAAA) to regulate agents and protect educational institutions and student-athletes.⁵³ The UAAA sought to establish a uniform scheme of state regulation by “standardizing agent registration, reporting, record keeping, and punishable misconduct across all adopting states.”⁵⁴ As of July 2010, forty states have adopted the UAAA, and three states operate under non-UAAA athlete-agent regulatory schemes.⁵⁵

The UAAA’s principal regulatory mechanism is a uniform registration requirement.⁵⁶ The UAAA requires “disclosure of potential agent’s (1) training, experience, and education; (2) criminal history regarding felonies and crimes of moral turpitude; (3) legal history of false or deceptive representations; (4) previous denial, suspension, or revocation of licensure in any state; and (5) prior sanctions, suspensions, or declarations of student-athlete ineligibility.”⁵⁷ “The UAAA further regulates the form of an agency contract, and provides for notice to the contracting student-athlete’s educational institution.”⁵⁸ “The UAAA also prohibits certain agent conduct and imposes civil and criminal penalties on violators.”⁵⁹ In addition, the UAAA provides criminal penalties if the agent provides “materially false or misleading information or make[s] a materially false promise or representation with the intent of inducing an agency contract.”⁶⁰ Under the UAAA, agents cannot provide anything of monetary or other value to a student athlete or anyone associated with the student athlete.⁶¹

“In addition to criminalizing the above [agent] [mis]conduct, the UAAA provides for civil remedies by granting educational institutions a cause of

52. Payne, *supra* note 32, at 667.

53. UAAA, *supra* note 1, at Prefatory Note; Payne, *supra* note 32, at 667–68.

54. Payne, *supra* note 32, at 668.

55. NCAA FAQ, *supra* note 50.

56. Payne, *supra* note 32, at 668.

57. *Id.*

58. *Id.* at 668–69 (“Agency contracts must disclose compensation arrangements, the names of any unregistered persons receiving compensation due to contract formation, and a description of services to be rendered. Additionally, the UAAA also requires that all agency contracts contain a conspicuous provision informing the student- athlete of the possible forfeiture of NCAA eligibility, the required notice to his educational institution, and the right to cancel the contract. Agents may not pre- or-post- date any agency contract under penalty of criminal sanctions. . . . Contracts that violate the notice and dating requirements are voidable by the student-athlete, who need not reimburse the agent.”).

59. *Id.* at 670

60. *Id.*

61. *Id.*; see UAAA, *supra* note 1, § 14.

action against an agent or student-athlete for any damages suffered as a result of violating the Act. . . .”⁶² Such damages include “losses and expenses incurred [by the institution] from sanctions by the NCAA or athletic conference, self-imposed sanctions undertaken in anticipation of and to mitigate potential penalties, and associated party costs and [reasonable] attorney’s fees.”⁶³ In affected states, the UAAA allows for an official, such as the Secretary of State, “to assess a civil penalty of up to \$25,000 against an agent for violating the Act,” and gives the Secretary of State the right to “suspend, revoke, or refuse to renew an agent’s registration for any conduct violating the UAAA.”⁶⁴ The UAAA was fashioned to apply to all athlete agents who “enter[] into an agency contract with a student-athlete or, directly or indirectly, recruit[] or solicit[] a student-athlete to enter into an agency contract.”⁶⁵ Thus, the intention of the UAAA is to apply a uniform set of guidelines for all agents, regardless of whether the individual is a student or professional athlete. Although the UAAA may appear to be all-inclusive, it is missing one vital section included in all four professional sports leagues players associations regulations: a uniform set of arbitration procedures for resolving disputes.

B. Federal Sports Agent Responsibility and Trust Act (SPARTA)

In 2004, Congress enacted the Sports Agent Responsibility and Trust Act (SPARTA), the only federal statute that regulates sports agents.⁶⁶ Modeled after the UAAA, SPARTA was intended “to protect educational institutions and student-athletes from agent malfeasance.”⁶⁷ “Congress’ primary goal in passing SPARTA was to deter agents from offering improper inducements and misleading information to student-athletes, and to discourage student-athletes from accepting such inducements.”⁶⁸ SPARTA also “prohibits agents from directly or indirectly recruiting or soliciting a student-athlete’s entry into an agency contract [through] false or misleading information, . . . or providing anything of value to a student-athlete” or

62. Payne, *supra* note 32, at 670; *see* UAAA, *supra* note 1, § 16.

63. Payne, *supra* note 32, at 670.

64. *Id.* “The UAAA designates the Secretary of State as the default enforcement officer; however, states may designate the state officer of their choosing as the primary enforcer when adopting the Act.” *Id.* at 670 n.107. “Again, \$25,000 is the default penalty provided by the UAAA, but a state may elect to use whatever fine it decides when enacting the Act.” *Id.* at 670 n.108.

65. UAAA, *supra* note 1, § 2(2).

66. Sports Agent Responsibility and Trust Act, H.R. 361, 108th Cong. § 5(a)(1) (2004).

67. Payne, *supra* note 32, at 671; *see* Darren Heitner, *Duties of Sports Agents to Athletes and Statutory Regulation Thereof*, 7 DARTMOUTH L.J. 246, 246–47 (2009).

68. Payne, *supra* note 32, at 671.

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anyone associated with the athlete.⁶⁹ SPARTA encourages states to adopt the UAAA for such purposes although SPARTA does not have a uniform registration system.⁷⁰

“SPARTA also establishes a system of sanctions for deceptive acts or practices [by an agent] and grants enforcement powers to the Federal Trade Commission (FTC).”⁷¹ The statute grants the FTC the right to “issue injunctions or impose monetary penalties of up to \$16,000 for each SPARTA violation.”⁷² Further, the statute authorizes state attorneys general to bring civil actions in federal court on behalf of a state if a SPARTA violation has adverse effects on the interests of a state’s residents.⁷³ “SPARTA also provides educational institutions a federal cause of action against agents and student-athletes if such violations result” in an expense to the educational institution.⁷⁴

C. Non-Statute Based Regulation of Sports Agents

The language above indicates that the UAAA and SPARTA both serve to protect professional athletes, student-athletes, professional teams, and educational institutions against “harmful acts by unscrupulous sports agents.”⁷⁵ Although both the state-regulated agent regulations and SPARTA specifically define the activities prohibited by agents, they do not do enough to deter unscrupulous conduct.⁷⁶ SPARTA, for example, only addresses agents’ activity involving student-athletes, leaving states and professional sports league rules and regulations to monitor professional athlete agent

69. *Id.*; 15 U.S.C. § 7802(a)(1) (2012).

70. Payne, *supra* note 32, at 671; 15 U.S.C. § 7807 (2012) (“It is the sense of Congress that States should enact the Uniform Athlete Agents Act of 2000 drafted by the National Conference of Commissioners on Uniform State Laws, to protect student athletes and the integrity of amateur sports from unscrupulous sports agents.”).

71. Payne, *supra* note 32, at 671; 15 U.S.C. § 7803 (2012) (“The FTC is empowered to enforce violations of SPARTA as an unfair deceptive trade practice if all applicable sections of the Federal Trade Commission Act, 15 U.S.C. §§ 41-58 (2006), were incorporated into SPARTA.”).

72. Payne, *supra* note 32, at 671.

73. Payne, *supra* note 32, at 671; 15 U.S.C. § 7804(a) (2012)

74. Payne, *supra* note 32, at 671; 15 U.S.C. § 7805(b) (2012).

75. See Heitner, *supra* note 67, at 246.

76. *Id.* at 255.

activity.⁷⁷ There is no vigorous enforcement of the statutes, which makes them under-inclusive.⁷⁸

While the “Big Four,” the National Basketball League (NBA), National Football League (NFL), National Hockey League (NHL), and Major League Baseball (MLB) have players associations that regulate sports agents in their respective sports,⁷⁹ not all professional athletes play one of these sports. For example, athletes who are professional bowlers or golfers do not have a union or players’ association that makes certain that an agent has a clean criminal record, or prevent a sports agents from engaging in activities that could create conflicts of interest.⁸⁰ SPARTA and the UAAA do not apply to professional bowlers and golfers who are not student-athletes.⁸¹ Instead, bowling agents are simply bound by the Rules of Professional Conduct, which are too broad and do not provide for enforcement of these regulations of the illegal acts of agents.⁸²

Sports agents, whether employed by a corporation or serving as sole practitioners, must register with, and be certified by, any state in which they have established minimum contacts.⁸³ This is true in both a state where a sports agent wishes to contact student-athletes and a state in which the sports agent resides, because once an athlete no longer has NCAA eligibility, SPARTA and the UAAA become inapplicable to athletes, and an agent may contact any non-eligible student-athlete at will. Further, even though the UAAA creates a duty of disclosure, it does not address the resolution methods for disputes dealing with student athletes or professional athletes.⁸⁴ Because the Federal Trade Commission has broad-reaching powers for enforcement of SPARTA, without any uniform arbitration or mediation methods, a uniform method of dispute resolution for athlete agents still does not exist. Additionally, without such processes, it agents may be held accountable for their actions in one of the “Big Four” leagues, for example, but the agent still has the opportunity to exploit other professional athletes in other sports.

This Note attempts to address the shortcomings of the current legislation by suggesting a uniform system of conflict resolution to help regulate the unscrupulous agent on both the student and professional athlete levels. This

77. *Id.* at 255–56.

78. *Id.* at 255.

79. *Id.* at 256.

80. *Id.*

81. *Id.*

82. *Id.*

83. Payne, *supra* note 32, at 668; *see* UAAA, *supra* note 1, § 7(b).

84. *See* Heitner, *supra* note 67, at 252.

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Note further proposes to create a uniform sports agent act with a dispute resolution section through an amalgamation of the most effective procedures used by the four major professional sports leagues. There should be a proposal to amend both the UAAA and SPARTA. This uniform method of dispute resolution will hold agents accountable for unscrupulous actions in any sport they are licensed in, so that agents cannot take advantage of professional league differences in athlete agent rules or in a lack thereof.⁸⁵

V. WHY RELY ON FOUR PROFESSIONAL LEAGUES FOR MOST EFFECTIVE DISPUTE RESOLUTION

Before analyzing the effectiveness of the four major professional sports leagues arbitration sections, it is important to establish why these four agreements should serve as the benchmark for the new dispute resolution section of the UAAA and SPARTA. Utilizing recent data on professional sports yearly revenue, the National Basketball League, National Football League, National Hockey League, and Major League Baseball are the top four grossing professional leagues in the United States, totaling \$26 billion.⁸⁶ The four leagues also represent the four highest average salaries and four largest salary caps. These statistics demonstrate the enormous role these four professional sports leagues have on the agent industry. While an agent can represent a player from any professional sport, the economic significance the four major sports leagues play in professional sports makes the four players associations the strongest benchmark for analysis.

More importantly, the “Big Four” each include a specific set of agent regulations, which have a three-stage process. In addition, there are roughly 120 NFL agencies, 70 MLB agencies, 80 NBA agencies, and 18 NHL agencies, in comparison to only 13 professional soccer agencies, 15 professional golf agencies, 10 professional tennis agencies, 4 professional softball agencies, and 5 professional volleyball agencies.⁸⁷ The large discrepancy between the number of agencies by sport demonstrates why

85. For example, in the case of professional bowling, there is a Professional Bowling Association (PBA), but there are no guidelines for athlete agents.

86. *Professional Sports Average Salary/Revenue/Salary Cap*, STATISTIC BRAIN, <http://www.statisticbrain.com/professional-sports-average-salary-revenue-salary-cap/> (last visited Nov. 18, 2012).

87. *Agencies by Sport*, SPORTS AGENT BLOG, <http://www.sportsagentblog.com/agencies/agencies-by-sport/> (last visited Jan. 18, 2013).

relying on the “Big Four” player-agent regulations will provide the strongest dispute resolution rules.

VI. PROCESS FOR ESTABLISHING DISPUTE RESOLUTION IN PROFESSIONAL SPORTS

Stage One: “The agent certification process, and the enactment of regulations that affect all agents and prospective agents.”⁸⁸

Stage Two: “The union’s investigatory process of an individual agent it suspects of violating its regulations, the factual determinations made by the union, and the union’s decision to discipline an agent including the disciplinary sanction imposed by the union.”⁸⁹

Stage Three: “The dispute resolution process of claims by the union against an individual agent for alleged violations, including the agent’s ability to appeal the union’s determination or to have the union’s determination reviewed by a neutral arbiter.”⁹⁰

All of the four professional sports leagues fulfill Stage One and provide a certification process for registering and certifying an athlete agent.⁹¹ Also, all leagues outline both a union investigatory process if an individual agent is suspected of violating its regulations as well as a resulting set of procedures for dispute resolution. While each player’s association may have legitimate and specific interests regarding their respective sport in determining collective bargaining requirements, the role of an athlete agent remains nearly identical in all sports: the agent acts as the representative for the individual player in contract negotiations with teams.⁹²

A. *Stage One: Regulation and Certification Process*

In order for an agent to become certified to represent an individual player and negotiate with the respective team, the players association must first certify the agent. Pursuant to NLRA 9(a), the collective bargaining agreements designated the players associations as the “exclusive collective bargaining representatives of person[s] who are employed” in each

88. See Karcher, *supra* note 4, at 362.

89. *Id.*

90. *Id.*

91. See NBPA REGULATIONS GOVERNING PLAYER AGENTS, *supra* note 46, §§ B-E; NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS, *supra* note 46, §2; NHLPA COLLECTIVE BARGAINING AGREEMENT, *supra* note 46, §6.4; MLBPA REGULATIONS, *supra* note 46, §4.

92. See Karcher, *supra* note 4, at 363.

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respective sport.⁹³ Each players association expressly includes the scope of regulation, requirements for certification, grounds for denial of certification, and an appeal process for denial of certification of agents.⁹⁴ Initial certification may include submitting an application to the players association, which includes education experience, prior work experience, and financial and other personal information.⁹⁵

Each players association also includes procedural standards of conduct for agents. These “unions have also established, unilaterally, regulations that all agents must abide by in order to maintain certification.†.†. .”⁹⁶ When an agent submits a signed application to the professional league for approval, he is presumed to have consented to all provisions contained therein. The respective players associations can and have amended these regulations, and the agent must both be aware of and consent to all provisions contained in submitting an application for certification.⁹⁷

In balancing the interests of NLRA § 9(a) and the players associations’ agent regulations, the agent conduct rules have proved successful because the regulations and certification requirements tip the balance of agent-union power in favor of the union. First, the interest of the players associations is compelling because it gives the union a legitimate interest in making sure the agents maintain a high level of competency, do not charge excessive fees to players, and do not violate fiduciary duties owed to players.⁹⁸ The associations’ interest under § 9(a) is analogous to a state’s police power. In certain occupations where the state requires a license as a prerequisite to practicing within state boundaries, the state has a legitimate interest in monitoring and regulating the actions of the licensees.⁹⁹ Moreover, licensing laws are deemed within the state’s police power where:

- [(1)] the licensing law extends the public trust only to those with proven qualifications,
- [(2)] the licensing law protects the public from incompetence and dishonesty in those who provide the licensed services,

93. See, e.g., NBPA REGULATIONS, *supra* note 46, at 3 (“The NBA recognizes the Players Association as the exclusive bargaining representatives of persons who are employed by NBA members as professional basketball players.”).

94. See, e.g., MLBPA REGULATIONS, *supra* note 46, § 7(B).

95. See, e.g., NBPA Agent Certification Application.

96. See Karcher, *supra* note 4, at 363; see David Lawrence Dunn, *Regulation of Sports Agents: Since at First It Hasn’t Succeeded, Try Federal Legislation*, 39 HASTINGS L.J. 1031, 1043-44 (1988).

97. See, e.g., NFLPA REGULATIONS, *supra* note 46 (“As amended through June 2012”).

98. Karcher, *supra* note 4, at 364.

99. *Id.*

[(3)] in the law's absence, the likelihood of fraud or other injuries would greatly increase, [(4)] the activity or profession sought to be regulated is often associated with criminal activity, or [(5)] the law protects the health and safety of the general public from unqualified practitioners.¹⁰⁰

These same goals are at play when a union protects its players' interests by regulating agents. In this same regard, the interests of agents in all professional sports, whether with a union or not, should be addressed by the UAAA. A component of the union's interest under § 9(a) that makes this uniform interest compelling is the "nexus that exists between the union's interest and all of its player-members collectively."¹⁰¹ The players associations role in regulating and certifying agents is in some ways aligned with the union's role in negotiating benefits on behalf of all player members in collective bargaining. Courts have recognized the players associations interest in the antitrust arena in claims by agents against unions unsuccessfully alleging that agent regulations constitute an illegal restraint on trade.

In *H.A. Artists & Associates v. Actors' Equity Association*, the theatrical agents sued the actors union, alleging that the union's system for franchising agents violated the Sherman Act.¹⁰² The United States Supreme Court held that, "labor unions acting in their own self-interest and not in combination with nonlabor groups"—for example, by enacting regulations that govern agents—are statutorily exempt from the antitrust laws. "*H.A. Artists* supports the union's interest under § 9(a) in the enactment of agent regulations and the agent certification process." But, it was not until *Collins v. National Basketball Players Association*,¹⁰³ ten years after *H.A. Artists*, that the court expansively addressed the tension between labor and anti-trust law. In *Collins*, a former agent brought action against the union because the National Basketball Players Association denied him certification.¹⁰⁴ The agent claimed the NBPA's action to create a "group boycott against him constituted a per se violation of the Sherman Act by restraining him from representing individual players in salary negotiations with their teams," and was not justified for denying re-certification.¹⁰⁵ The federal district court held the NBPA was immune from antitrust claims pursuant to the statutory labor exemption under the Clayton and Norris-LaGuardia Acts. When the

100. *Id.*; see 51. AM. JUR. 2D *Licenses & Permits* § 11 (2000) ("As a justification for a licensing requirement as a proper exercise of the police power, the courts generally require a showing that the requirement at least tends to promote the public health, morals, safety, or welfare.").

101. Karcher, *supra* note 4, at 364.

102. *H.A. Artists & Associates, Inc. v. Actors' Equity Ass'n*, 451 U.S. 704, 704 (1981).

103. *Collins*, *supra* note 47, at 1474.

104. *Id.* at 1473.

105. *Id.* at 1474.

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unions' activities are in the "union's legitimate self interest and [are] not undertaken in combination with an employer, business or non labor group to restrain competition or control prices in the employer's or business group's product market."¹⁰⁶ The court also recognized the union's legitimate interests in enacting agent regulations.

The NBPA regulatory program fulfills legitimate union purposes and was the result of legitimate concerns: it protects the player wage scale by eliminating percentage fees where the agent does not achieve a result better than the collectively bargained minimum; it keeps agent fees generally to a reasonable and uniform level, prevents unlawful kickbacks, bribes, and fiduciary violations and protects the NBPA's interest in assuring that its role in representing professional basketball players is properly carried out.¹⁰⁷

These cases demonstrate the union's legitimate interest in "mandatory certification process[es] and the enactment of [such] regulations by the players associations." The certification requirements are conditions that must be met by all agents that seek to represent players, and "do not, on their face, single out or give preference to one [] agent over another."¹⁰⁸ This same analogy can again be drawn to state occupational licensing requirements in that a state licensing statute does not violate due process guarantees if it "clearly and precisely delineates the regulated activity, the method and procedure for obtaining a license and the specific grounds upon which a license may be denied, as that it is sufficiently clear to allow an applicant to reasonably understand what conduct is proscribed by the statute."¹⁰⁹ In the context of state licensing statutes, due process requirements are violated "only where the legislation is so unreasonable or extravagant as to arbitrarily and unnecessarily interfere with, or destroy, personal or property rights."¹¹⁰

In summary, these cases illustrate that the interest of the union outweighs the interest of the agent. In establishing a uniform set of dispute resolution procedures under the UAAA, the state would not be infringing in any way on the due process rights of an agent. The new procedures would instead provide a state-wide, and ultimately a federal statute enforcement process whereby the agents are held accountable for any acts of malfeasance within the specific state in which they are held accountable. In registering

106. *Id.* at 1477.

107. *Id.* at 1477.

108. *See* Karcher, *supra* note 4, at 366.

109. *Id.*

110. *Id.*

and certifying oneself as an athlete agent within a state, the individual is presumed accountable under UAAA adopted state law.

B. Stage Two: Investigation and Discipline

Once the union has determined an agent is subject to disciplinary action for violating its regulations, a committee formed by the union, or the union itself, issues a complaint or notice to the agent specifically setting forth the action or conduct that gives rise to the complaint.¹¹¹ In the National Basketball Players Association (NBPA), the Committee on Agent Regulation, which consists of the NBPA's Officers assisted by outside legal counsel, are responsible for both receiving and acting upon application for certification and serving as the Disciplinary Committee.¹¹² In this latter capacity, the NBPA has the "authority and responsibility of initiating, and then presenting disciplinary cases against player agents who engage in prohibited conduct as defined in Section 3, B(a-q)."¹¹³ The Committee also has the assistance of the same outside legal counsel used for certification of applications.¹¹⁴ In contrast, in the National Football League Player's Association (NFLPA), the President of the NFLPA appoints a three to five person Committee on Agent Regulations and Discipline, often referred to as "CARD," or "the Committee," which is responsible for prosecuting disciplinary procedures against Contract Advisors who violate such regulations.¹¹⁵ The NFLPA specifies that the makeup of the Committee consists of active or retired NFL players chosen at the President's discretion.¹¹⁶ Additionally, the General Counsel of the NFLPA serves as a non-voting advisor on the Committee.¹¹⁷ The National Hockey League Player's Association (NHLPA) and Major League Baseball Players Association (MLBPA) are not specific in defining a disciplinary committee and instead submit all grievances among players, agents, and applicants to the player's association's main office.¹¹⁸ Under these players' associations'

111. NBPA REGULATIONS GOVERNING PLAYER AGENTS, *supra* note 46, §6(B).

112. *Id.* at § 1, § 5, & § 6.

113. *Id.* at § 6.

114. *Id.* at § 6.

115. NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS, *supra* note 46, §6(A).

116. *Id.*

117. *Id.*

118. NHLPA COLLECTIVE BARGAINING AGREEMENT, *supra* note 46, article 17; MLBPA REGULATIONS, *supra* note 18 (as amended effective October 1, 2010), § 7 [hereinafter MLBPA REGULATIONS GOVERNING PLAYERS AGENTS].

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regulations, the agent is not afforded an opportunity to be heard by the union before the complaint is issued.¹¹⁹

Each players association's regulations lists prohibited conduct with varying specificity. For example, the MLBPA lists three types of disputes: those between Players and Player Agents or Applicants, those relating to representation and recruitment among Player Agents or Applicants, and any appeals by a Player Agent in respect to certification or discipline.¹²⁰ However, the NFLPA, in Section 5,¹²¹ lists six different possible disputes, establishing a broader sweep of disputes between an agent and player. Each of the four leagues utilizes a similar chronological process for the investigation and discipline process. A disciplinary process begins with the filing of a written complaint against the agent specifying the complaint against the agent. The NBPA and NFLPA have regulations that are more comprehensive and require that:

A complaint must be filed by the Committee within six (6) months from the date of the occurrence which gave rise to the complaint, or within six (6) months from the date on which the information sufficient to create reasonable cause became known or reasonably should have become known to the Committee, whichever is later.¹²²

The agent against whom the complaint has been filed is then given ten (10) (NHLPA), twenty (20) (NBPA and NFLPA), or thirty (30) (MLBPA) days to file and serve a written answer to the party who filed the initial grievance.¹²³ The answer must admit or deny the facts alleged in the grievance and set forth reasons why the grievance should be denied.¹²⁴ Within an identified number of days after receiving the answer, either the players associations or the committee informs the agent in writing of the

119. See Karcher, *supra* note 4, at 370.

120. MLBPA REGULATIONS, *supra* note 18, § 7.

121. NFLPA AGENT REGULATIONS GOVERNING CONTRACT ADVISORS, § 5.

122. NBPA REGULATIONS GOVERNING PLAYER AGENTS, *supra* note 46, § 6(b); See NFLPA AGENT REGULATIONS GOVERNING CONTRACT ADVISORS, *supra* note 46, § 5(b).

123. NHLPA COLLECTIVE BARGAINING AGREEMENT, *supra* note 46, article 17.3(b); NBPA AGENT REGULATIONS GOVERNING PLAYER AGENTS, *supra* note 46, § 6(c); NFLPA AGENT REGULATIONS GOVERNING CONTRACT ADVISORS, *supra* note 46, § 5(c); MLBPA REGULATIONS, *supra* note 46, § 7(A)(3).

124. MLBPA REGULATIONS, *supra* note 18, § 7(A)(1)(a-b); NFLPA AGENT REGULATIONS GOVERNING CONTRACT ADVISORS, *supra* note 46, § 5(c); NBPA REGULATIONS GOVERNING PLAYER AGENTS, *supra* note 46, § 5(b); NHLPA COLLECTIVE BARGAINING AGREEMENT, *supra* note 46, § 17.3(c).

disciplinary action proposed by the union.¹²⁵ The players' associations have the discretion to propose any number of sanctions, which may include but are not limited to: "a formal letter of reprimand, suspension or revocation of an agent's license, and imposition of a fine."¹²⁶ The agent against whom the complaint has been filed can also appeal the decision of the committee.¹²⁷ In the event that the grievance is not resolved by the parties, each of the four players' associations' regulations grant the aggrieved party the right to appeal the union's disciplinary action to arbitration, the exclusive method for dispute resolution provided.

Before addressing the arbitration procedures used by the four players associations, it is critical to point out the compelling interest surrounding an agent's disciplinary process. First, a players' association or committee's interpretation of its regulations regarding prohibited agent conduct could result in suspension, which could substantially affect the livelihood of the agent and his freedom to practice his professional occupation.¹²⁸ In *Loudermill*,¹²⁹ the Supreme Court recognized the significance of this interest in the context of public employment:

The significance of the private interest in retaining employment cannot be gainsaid. We have frequently recognized the severity of depriving a person of the means of livelihood. (citations omitted) While a fired worker may find employment elsewhere, doing so will take some time and is likely to be burdened by the questionable circumstances under which he left his previous job.¹³⁰

The concerns stated above are equally applicable to the suspension or revocation of an agent's license. Unlike a fired employee who may typically find work elsewhere, an agent who is subject to punishment is precluded from working in that particular industry, making the harm even more substantial.¹³¹ Although unions have an implied obligation of good faith in the interpretation of its rules and regulations, courts generally do not question the merits of the players' associations' interpretations and

125. NBPA REGULATIONS GOVERNING PLAYER AGENTS, *supra* note 46, § 6(d); NFLPA AGENT REGULATIONS GOVERNING CONTRACT ADVISORS, *supra* note 46, § 6(d); NHLPA COLLECTIVE BARGAINING AGREEMENT, *supra* note 46, article 17.3(c); MLBPA REGULATIONS, *supra* note 18 § 7(a)(3).

126. See Karcher, *supra* note 4 at 368.

127. See, e.g., NFLPA AGENT REGULATIONS GOVERNING CONTRACT ADVISORS, *supra* note 46, § 6(e) ("The Contract advisor against whom a complaint has been filed under this section may appeal the Committee on Agent Regulation and Discipline's proposed disciplinary action to the outside Arbitrator by filing a written Notice of Appeal with the Arbitrator within twenty (20) days following the Contract Advisor's receipt of notification of the proposed disciplinary action.")

128. See Karcher, *supra* note 4, at 372; *Crouch v. NASCAR*, 845 F.2d 397, 399 (2d Cir. 1988).

129. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985).

130. *Loudermill*, 470 U.S. at 543.

131. Karcher, *supra* note 4, at 372-73.

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enforcement decisions.¹³² However, a player-agent who is no longer allowed to participate in a specific professional sport is able to apply and participate as a player-agent in other professional sports. This highlights the necessity for explicit disciplinary procedures in the UAAA, and SPARTA, and the importance of a national check on the union's reign. An agent should have the opportunity to present his case before he is reinstated into either the sport he once practiced in or a different professional sport.¹³³

C. *Stage Three: Dispute Resolution and Arbitration*

Alternative dispute resolution methods, such as arbitration, provide a cost-efficient and swift process for the resolution of a dispute. Arbitration is currently the preferred means for resolving sports-related disputes.¹³⁴ All four players' associations contain substantially similar provisions regarding the conduct of arbitration hearings in which the agent can appeal the union's disciplinary action. The players' association or committee has the burden of proving the allegations of its complaint. The two sides may each appear with counsel or a representative of their choosing. Each side has a full opportunity to present, through testimony or otherwise, all evidence pertaining to the action or conduct of the agent that is prohibited by the players' association regulations. The hearings are conducted in accordance with the Voluntary Labor Arbitration Rules of the American Arbitration Association.¹³⁵ There is neither a right to discovery nor a right to file pre-hearing or post-hearing briefs. The arbitration process is the exclusive method of challenging any disciplinary action and the decision of the arbitrator is final and binding on all parties.¹³⁶

132. See Crouch, *supra* note 6, at 403 (concluding that the district court should have deferred to NASCAR's interpretation of its own rules.).

133. *Loudermill*, 470 U.S. 532 at 544 (establishing a check on player agents who have acted improperly in other professional sports came from "the fact that the Commission saw fit to reinstate Donnelly suggests that error might have been avoided had he been provided an opportunity to make his case to the Board. As for *Loudermill*, given the Commission's ruling we cannot say that the discharge was mistaken.").

134. See Karcher, *supra* note 4, at 380.

135. See Voluntary Labor Arbitration Rules of the American Arbitration Association (as amended and effective on January 1, 1996).

136. NBPA REGULATIONS GOVERNING PLAYER AGENTS, *supra* note 46, § 5(D); NFLPA AGENT REGULATIONS GOVERNING CONTRACT ADVISORS, *supra* note 46, § 6(G); NHLPA COLLECTIVE BARGAINING AGREEMENT, *supra* note 46, article 17.13; MLBPA REGULATIONS, *supra* note 46, § 7(B)(6-15).

While the players' associations offer similar processes for arbitration, they differ in one very significant respect in regards to their arbitration procedures: the process the unions utilize for the selection of the arbitrator. Under the MLBPA Regulations, the arbitrator is selected through a process in which the union and agent mutually agree. The MLBPA then selects five "professional and skilled labor arbitrators."¹³⁷ "Within seven days of the receipt of the list, the parties select an arbitrator by alternatively striking names off the list until only one name remains." The MLBPA uses a coin flip system for deciding which party strikes the first name.¹³⁸ This appears to be a very fair method as both the agent and the MLBPA jointly request a list of arbitrators and then each have a fifty percent chance of striking the first name until one remains. Because both parties are involved throughout each step of the process, there is no bias towards one side.

Under the NHLPA agent regulation, the union unilaterally selects a panel of three arbitrators, and the arbitrator assigned to hear the appeal is determined on a rotation basis. In this case, the NHLPA appoints a panel of three "skilled, experienced and impartial persons to serve as single Arbitrators for a one year term, which is automatically renewed unless the member resigns or is discharged by the NHLPA."¹³⁹ The arbitrator that is next in the rotation will hear the grievance, pursuant to Section 5, unless that arbitrator has already heard a previous case involving the same agent and factual circumstances that are the subject of the disciplinary action, in which case the next arbitrator in the rotation will hear the appeal. The arbitrator selected must hear the case under the Voluntary Tribunal Rules of the American Arbitration Association then in effect.¹⁴⁰

Although this method is slightly different than that of the MLBPA, it has proved to be successful for the NHL. While the NHLPA does not work in tandem with the agent in selecting the arbitrators, the fact that the arbitrator is appointed for a one year term and can be discharged at any point by the NHLPA demonstrates the comprehensive review the NHLPA utilizes in selecting each arbitrator.¹⁴¹

In contrast to the MLBPA and NHLPA selection process regulations, the NBPA and NFLPA have the respective players association "select a skilled and experienced person to serve as the outside Impartial Arbitrator

137. MLBPA REGULATIONS §7(B)(7).

138. *Id.*

139. NHLPA COLLECTIVE BARGAINING AGREEMENT, *supra* note 46, § 6(F).

140. *See* Voluntary Labor Arbitration Rules of the American Arbitration Association, *supra* note 135.

141. NHLPA COLLECTIVE BARGAINING AGREEMENT, *supra* note 46, article 17.6

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for all cases arising hereunder.”¹⁴² The NFLPA has an additional regulation in which the Committee on Agent Regulation and Discipline “may, at its discretion, appoint two (2) additional arbitrators so as to create a panel of three (3) arbitrators to hear cases arising hereunder.” There is also a provision in each of their regulations that states that the fees and expenses of the arbitrator shall be borne by the union.¹⁴³

Because every league has different rules and guidelines for agent activity, it is permissible for the selection of the arbitrator to be determined by the sport’s agent regulations. Although it would likely prove more comprehensive if all four leagues had both sides jointly select the arbitrator(s), the arbitration methods used in each individual league are primarily in place to assist a player with internal manners concerning any unscrupulous agent acts. Because such methods have proved successful for each league, this Note relies on such methods in developing a federal guideline so that all professional sports leagues can employ a similar method for monitoring agent activity.

VII. WHERE THE UAAA AND SPARTA FALL SHORT

In the 2004 Sports Business Journal article titled “Agents Use Their Influence to Help Shape New Labor Agreements,” former interim NFLPA Executive Director Richard Berthelsen states, “agents in nearly all respects, are like employees of the sports unions themselves. . . [t]hey are agents of the union.”¹⁴⁴ Although courts have upheld the authority of such unions,¹⁴⁵ the regulatory systems of the players associations only address two broad categories in the agent industry, competence and ethics. While the different leagues have enacted several amendments to their agent regulations that demonstrate a renewed commitment to combating illegal agent activity

142. NFLPA AGENT REGULATIONS GOVERNING CONTRACT ADVISORS, *supra* note 46, §5(D); *see also* NBPA REGULATIONS GOVERNING PLAYERS AGENTS, *supra* note 46, §5(C).

143. NFLPA AGENT REGULATIONS GOVERNING CONTRACT ADVISORS, *supra* note 46, §5(G); *see also* NBPA REGULATIONS GOVERNING PLAYERS AGENTS, *supra* note 46, §5(E)

144. Timothy Davis, *Regulating The Athlete-Agent Industry: Intended And Unintended Consequences*, 42 WILLAMETTE L. REV. 781, 817 (2006).

145. *Id.*; Davis *supra* note 144 at 817; *see generally* Collins v. National Basketball Players Association, No. 92-1022, 976 F.2d 740, (D. Colo. Sept. 21, 1992); White v. National Football League, 92 F. Supp. 2d 918 (D. Minn. 2000); Black v. National Football League Players Association, 87 F. Supp. 2d 1 (D.D.C. 2000).

within their respective sport,¹⁴⁶ and more than 40 states have passed the UAAA, there still does not exist a uniform sports agent act with a dispute resolution guideline within the UAAA¹⁴⁷ or SPARTA¹⁴⁸ that all leagues can utilize as a uniform method of requiring competency, ethics, and wrongdoing.

The UAAA and SPARTA were both instituted to further protect professional athletes, student-athletes, professional teams, and educational institutions against “harmful acts by unscrupulous sports agents.”¹⁴⁹ Although the UAAA and SPARTA specifically define the activities prohibited by agents, SPARTA only refers to athlete agent activity with regard to student athletes. In addition, both statutes do not provide a means of dispute resolution following such type of violation by an agent.

146. See Davis, *supra* note 144 at 820 (“In 2002, the NFLPA adopted the one-in-three rule. NFLPA certified agents are required to negotiate at least one contract during a three-year period in order to retain certification. Agents who failed to comply with the rule may reapply to become certified. An estimated 150 NFLPA certified agents lost their certification since the requirement went into effect.”); NFLPA AGENT REGULATIONS GOVERNING CONTRACT ADVISORS, at §2(G); Liz Mullen, *One-in-Three Rule’s Arrival may Decertify About 150 NFL Agents*, SPORTS BUS. J. Sept. 26-Oct. 2, 2005, at 14.

147. (a) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not: (1) Give any materially false or misleading information or make a materially false promise or representation; (2) Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or (3) Furnish anything of value to any individual other than the student-athlete or another registered athlete agent. (b) An athlete agent may not intentionally: (1) Initiate contact with a student-athlete unless registered under this [Act]; (2) Refuse or fail to retain or permit inspection of the records required to be retained by Section 13; (3) Fail to register when required by Section 4; (4) Provide materially false or misleading information in an application for registration or renewal of registration; (5) Predate or postdate an agency contract; or (6) Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

Uniform Athlete Agents Act 7(b) (2000).

148. The only section of SPARTA that deals with prohibited agent conduct lists the following provisions: (a) Conduct Prohibited- It is unlawful for an athlete agent to (1) Directly or indirectly recruit or solicit a student athlete to enter into an agency contract, by (A) Giving any false or misleading information or making a false promise or representation; or (B) Providing anything of value to a student athlete or anyone associated with the student athlete before the student athlete enters into an agency contract, including any consideration in the form of a loan, or acting in the capacity of a guarantor or co-guarantor for any debt; (2) Enter into an agency contract with a student athlete without providing the student athlete with the disclosure document described in subsection (b); or (3) Predate or postdate an agency contract. Sports Agent Responsibility and Trust Act, S. 1170, 108th Cong. 3(a)(1) (2003).

149. Darren Heitner, *Duties of Sports Agents to Athletes and Statutory Regulation Thereof*, LexisNexis Communities Litigation Resource Community (April 21, 2010 at 4:10 PM EST), <http://www.lexisnexis.com/community/litigationresourcecenter/blogs/lit...s-of-sports-agents-to-athletes-and-statutory-regulation-thereof-1.aspx>.

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While reasonable deference will be given to established agent regulations within the four major leagues, the goals for adding a uniform sports agent act with a tailored dispute resolution section are: (1) to create a uniform minimum set of standards for all agents in all professional sports; (2) to create nationalized, uniform checks on agents in all sports; and (3) to provide a repository database for all arbitrators to access in connection with their respective sport's arbitration rules in order to prevent future unscrupulous conduct by agents.

PROPOSED DISPUTE RESOLUTION SECTION

In addition to modifying SPARTA so that it addresses professional athletes as well as student athletes,¹⁵⁰ a draft of the proposed Dispute Resolution section with comments as to why the specific sections below should be included is listed below.¹⁵¹

VIII. DISPUTE RESOLUTION PROCEDURES

A. Introduction

This new system for regulating agents in all professional sports is based upon the intention of the UAAA and SPARTA that these procedures be instituted in addition to the arbitration procedures set forth in the athlete agent rules or regulations. This new system will be the exclusive method for resolving any and all disputes that arise from denying certification to an agent or from the interpretation, application, or enforcement of these rules and regulations and the resulting fee agreements between the agents and individual players. These procedures will ensure that the UAAA and SPARTA will assist in expeditiously resolving allegations of unscrupulous acts of agents, as well as disputes traditionally resolved by the existing arbitration procedures by the decision maker established herein.¹⁵²

Therefore, the provisions of this section shall apply with respect to two types of disputes that may arise under these Regulations: (1) if the

150. In order to properly modify SPARTA, the new bill would replace "student athletes" with "student and professional athletes" throughout the federal statute.

151. The information below was created through a combination of: NFLPA Agent Regulations § 6; NHLPA Collective Bargaining Agreement §17; NBPA Regulations Governing Player Agents § 6.

152. NFLPA AGENT REGULATIONS GOVERNING CONTRACT ADVISORS, *supra* note 34, § 6(A); NHLPA COLLECTIVE BARGAINING AGREEMENT, *supra* note 34, article §17.1; NBPA REGULATIONS GOVERNING PLAYER AGENTS, *supra* note 4, § 6(A).

Committee on Agent Regulation denies an Application for Certification and the applicant wishes to appeal from that decision; and (2) when a dispute arises with respect to the meaning, interpretation or enforcement of a fee agreement entered into between player and his or her agent.¹⁵³

The next two sections, the filing and answer sections, are modeled almost identically to the big four's filing and answer rules. The only major difference is that the written grievance is furnished to the Federal Trade Commission and Attorney General of the state in which the filing occurs. Because SPARTA already "makes certain activities of sports agents come within the regulations of the Federal Trade Commission (FTC)," the FTC is rooted as the adjudicative body for dealing with the unscrupulous acts of agents.¹⁵⁴ In addition, the Federal Trade Commission Act (FTCA) was passed by Congress "to protect businesses and consumers from unfair competition and unjust or deceptive acts in the conduct of business," making the FTC the most effective adjudicative body for monitoring such agent actions.¹⁵⁵ By providing the FTC with the initial grievance, it allows them to have the materials on record from every step of the dispute resolution process.¹⁵⁶

B. Filing

The arbitration shall be initiated by the filing of a written grievance either by the player, his agent, or the players association. Any such grievance must be filed within thirty days from the date of the occurrence of the event upon which the grievance is based, within thirty days from the date on which the facts of the matter become known or reasonably should have become known to the grievant, or within thirty days from the effective date of these regulations, whichever date is later. A player need not be under contract of a professional club at the time a grievance arises or at the time such grievance is initiated or processed. A player may initiate a grievance against a player agent if he or she: (1) sends the written grievance by prepaid certified mail to the player agent's business address or by personal delivery at such address, (2) to the professional league in which the agent misconduct pertains to, (3) and furnishes a copy to the Federal Trade

153. *Supra* note 139 and discussion.

154. Sports Agent Responsibility and Trust Act, § 1170, 15 U.S.C.A. § 7803(b) (West).

155. Sports Agent Responsibility and Trust Act, *supra* note 154, § 1170.

156. *Supra* note 154, § 1170.

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Commission (FTC)¹⁵⁷ and State Attorney General within which the unscrupulous act occurred.¹⁵⁸ The written grievance shall set forth in simple, concise, and direct terms the facts and circumstances giving rise to the grievance and the relief sought.¹⁵⁹

C. Answer

The party against whom a grievance is filed (“the Respondent”) shall answer the grievance in writing by certified mail or personal delivery within thirty calendar days of receipt of the grievance. The Answer shall admit or deny the facts alleged in the grievance and shall also briefly set forth the reasons why the respondent believes the grievance should be denied. The Respondent must also provide a copy of this Answer to the FTC and the State’s Attorney General. Once the Answer is filed, the FTC and State’s Attorney General shall promptly provide the Arbitrator with copies of the grievance and answer all other relevant documents. If an Answer is not filed within this time limit, the Arbitrator, in his discretion, may issue an order where appropriate, granting the grievance and the requested relief upon satisfactory proof of the claim.¹⁶⁰

Once the grievance is filed, there must be a selection process for the arbitrator(s). As demonstrated above, each of the big four have their own process for selecting the arbitrator in an impartial manner.¹⁶¹ In this same context, the arbitration selection section will grant the professional league in which the agent issue occurs the right to establish their own impartial process. By instituting this on a federal level, the professional league will be

157. The Federal Trade Commission (FTC) is an independent agency of the United States government established in 1914 by the Federal Trade Commission Act. Its principal mission is to promote consumer protection and the elimination and prevention of anti-competitive business practices.

158. 15 U.S.C. § 7803 (2005).

159. NFLPA AGENT REGULATIONS GOVERNING CONTRACT ADVISORS, *supra* note 46, at § 6(B); NHLPA COLLECTIVE BARGAINING AGREEMENT, *supra* note 46, article 17.2; NBPA REGULATIONS GOVERNING PLAYER AGENT, § 6(B); MLBPA REGULATIONS, *supra* note 46, § 7(A)(1)-(A)(2).

160. NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS, *supra* note 46, at § 6(C); NHLPA COLLECTIVE BARGAINING AGREEMENT, *supra* note 46, article 17.3; NBPA REGULATIONS GOVERNING PLAYER AGENTS, *supra* note 46, § 6(C); MLBPA REGULATIONS, *supra* note 46, § 7(A)(3).

161. NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS, *supra* note 46, § 6(F); NHLPA COLLECTIVE BARGAINING AGREEMENT, *supra* note 46, article 17.6; MLBPA REGULATIONS, *supra* note 46, § 7(A)(16).

required to have arbitrators already selected to help facilitate the process if a grievance is filed.

D. Arbitrator Selection

The respective professional league shall use their discretion, whether through player agent rules and regulations, or a standardized process, to select an experienced arbitrator(s) to serve as the outside impartial arbitrator(s) for the cases arising hereunder.¹⁶²

The arbitrator will then hold a hearing. This section is also modeled nearly identically to the big four's hearing sections because an arbitration hearing is typically standardized regardless of the professional sport.¹⁶³

E. Hearing

The arbitrator(s) shall schedule a hearing on the dispute through the standardized process used within the professional league. At such hearings, the parties may appear in person or by counsel or other representative. The parties to the dispute will have the right to present, by testimony or otherwise, any evidence relevant to the grievance. Within thirty (30) days after the close of the hearing, the Arbitrator(s) shall issue a written award. That award shall constitute full, final, and complete resolution of the grievance, and will be binding upon the player and player agent involved. Given the uniquely internal nature of any such dispute that may be presented to the arbitrator, the award issued by the arbitrator shall not be subject to judicial review on any grounds.¹⁶⁴

The next section is the most critical and novel part of the proposed statute. It requires every arbitrator in every sport, to submit a description of the claim and any remedy the arbitration committee proposes to the FTC, which will in turn create and maintain a document database of all agent arbitration cases. Every arbitrator must include the contents of the database in their deliberative process to formulate the most effective decision. This database will make it impossible for an agent who commits an unscrupulous act to exploit a different professional league because his or her prior record will already be filed with the FTC. This concept has already proven to be effective in medical practice; the United States Department of Health and

162. *Id.*

163. NHLPA COLLECTIVE BARGAINING AGREEMENT, *supra* note 46, article 17.9; NBPA REGULATIONS GOVERNING PLAYER AGENTS, *supra* note 46, § 6(F).

164. NHLPA COLLECTIVE BARGAINING AGREEMENT, *supra* note 46, article 17.9; NBPA REGULATIONS GOVERNING PLAYER AGENTS, *supra* note 46, § 6(F).

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Human Services has created both the National Practitioner Data Bank¹⁶⁵ and the Healthcare Integrity and Protection Data Bank,¹⁶⁶ which are confidential information clearinghouses created to improve health care quality, protect the public, and reduce health care fraud and abuse in the United States.¹⁶⁷ This database will be cost effective, in that the main costs are in the development of the database, and will hold all agents accountable in every state and every professional league.

F. Proposed Disciplinary Action: Database of Agent Cases

Within thirty days after the receipt of the Answer, the Arbitrator(s) shall inform the player agent, FTC, and State's Attorney General in writing (by prepaid certified mail) of the nature of the discipline and any remedies the Committee imposes. Regardless of which professional sport, every agent arbitration decision will be placed in the FTC repository database titled "National Database for the Unscrupulous Acts of Agents." Before proposing disciplinary action, the arbitrator is required to access this database in order to provide a comprehensive understanding of the player agent's past and present wrongdoings.¹⁶⁸

The remaining two sections, "Time Limits; Cost" and "Amendment" are also almost identical to the big four.¹⁶⁹ The Amendment portion below grants the FTC the right to amend any section if necessary.

G. Time Limits; Cost

Each of the time limits set forth in this section may be extended by mutual written agreement between the parties involved and the arbitrator(s). The fees and expenses of the arbitrators will be paid for by the professional league. Each party will bear the costs of its own witness, counsel, etc.¹⁷⁰

165. Title IV of Public Law 99-660; Section 1921 of the Social Security Act.

166. Health Insurance Portability and Accountability Act of 1996, § 221(a), P. L. 104-91.

167. See The National Practitioner Data Bank, available at <http://www.npdb-hipdb.hrsa.gov> (last visited January 31, 2013).

168. NFLPA Agent Regulations, § 6(D); NBPA Regulations Governing Player Agents § 6(D).

169. NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS, *supra* note 168, at §6(H); NHLPA COLLECTIVE BARGAINING AGREEMENT, *supra* note 46, article 17.14-17.15; NBPA REGULATIONS GOVERNING PLAYER AGREEMENTS, *supra* note 46, at § 6(G); MLBPA REGULATIONS, *supra* note 46, at § 7(A)(17).

170. *Id.*

H. Amendment

These regulations may be amended periodically by the action of the FTC.¹⁷¹

IX. PROPOSED CLAUSES AND SUGGESTIONS FOR UAAA AND SPARTA: WHY AN ALTERNATIVE DISPUTE RESOLUTION APPROACH IS A NECESSITY

The proposed statute above is a necessary amendment to the UAAA and SPARTA statutes for a number of reasons. Although the four major professional leagues already have a dispute resolution section, a review of prior scholastic and academic criticism of the UAAA and SPARTA illustrate why this section will be necessary in both statutes. This note analyzes previous proposals of amendments to the dispute resolution proceeding, determines what is and is not effective about them, and suggests a comprehensive and effective dispute resolution section.

A. Sports Law Association: “Uniform Sports Agent Act”

In 1997, the Sports Law Association coordinated a drafting committee and presented their draft of the “Uniform Sports Agents Act” at the National Conference of Commissioners on Uniform State Laws.¹⁷² This proved to be a precursor to the UAAA and ultimately the federal statute SPARTA. Despite the suggestion for uniform state legislation and its advantages, the draft failed to lobby for a uniform dispute resolution act.¹⁷³ Although SPARTA was supposed to provide federal regulations that the UAAA was unable to accomplish, Eric Willenbacher concluded that SPARTA was not successful.¹⁷⁴ Willenbacher argues “the deterrents, i.e., the potential civil and criminal penalties under SPARTA, will not deter unscrupulous agents.”¹⁷⁵ While Willenbacher presents no systematic, empirical data to support this judgment, he argues that he believes there is too large a

171. NBPA REGULATIONS GOVERNING PLAYER AGENTS, *supra* note 46, at § 7.

172. See Uniform Sports Agents Act (Draft Only), National Conference of Commissioners on Uniform State Laws (1997), available at http://www.uniformlaws.org/shared/docs/athlete_agents/aa597.pdf.

173. See generally Kenneth L. Shropshire, Comment, Sports Agents, Role Models and Race-Consciousness, 6 MARQ. SPORTS L.J. 267, 274 (1996) (exploring the role of the African-American sports agent in representing African-American athletes, and concluding that race-consciousness should be an important factor in choosing an agent.).

174. Eric Willenbacher, *Regulating Sports Agents: Why Current Federal and State Efforts Do not Deter the Unscrupulous Athlete-Agent and How a National Licensing System May Cure the Problem*, 78 ST. JOHN'S L. REV. 1225, 1235 (2004).

175. Willenbacher, *supra* note 174, at 1226.

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discrepancy between the monetary gain for agents and minimal federal and state administrative fines for unethical and illegal tactics.¹⁷⁶ To solve this problem, he suggests a national registry of federally licensed sports agents, that can be used to monitor agent activities, including a section that states that an agent can be removed from the national registry of agents if he or she acts in an unscrupulous manner.¹⁷⁷

The dispute resolution scheme proposed above solves Willenbacher's criticism and suggestion for a national registry. However, instead of only utilizing the registry to add or remove an agent, it would be more effective to have a repository where all agent arbitration results are uniformly reported so that an agent is held accountable for all prior unscrupulous actions in any professional sport. By making it a requirement for all arbitrators to both consult this database before making a decision and update it following the decision, the registry will allow no prior illegal or unethical activity to go unnoticed. This will prevent any agent from exploiting another sport after becoming subject to a penalty for their previous actions.

As Willenbacher notes, SPARTA is not silent on the issue of creating agent registries and licensing systems, and the UAAA has, "as one of its centerpieces, the creation of a state licensing system similar to the one proposed in this [Willenbacher's] Note."¹⁷⁸ However, a dispute resolution section proves more effective than a national licensing system because it creates a more expansive platform of the already existing resolution process. As each professional league has its own arbitration processes, this proposal would elevate those procedures to a national level through the repository database of arbitration cases, which, as mentioned previously in this Note, is a primary objective for effectively dealing with the unscrupulous acts of agents in professional sports leagues. In addition, by monitoring arbitration through SPARTA by the FTC and through the State's Attorney General, it will provide access on both the state and federal level for monitoring player agents. Further, a submission by the professional league will provide three different checks on the system and make it nearly impossible for an agent's acts to go unnoticed.

176. Willenbacher, *supra* note 174, at 1243-44.

177. Willenbacher, *supra* note 174, at 1249-53.

178. See Willenbacher, *supra* note 174, at 1251; see Uniform Athlete Agents Act § 4, 6, 8 (2000).

B. SPARTA and the Model Rules of Professional Conduct

Melissa Steedle Bogad pointed out that SPARTA has a number of similarities to the Model Rules of Professional Conduct.¹⁷⁹ For example, Bogad notes that “SPARTA’s rule requiring the agent to disclose that a contract will jeopardize the student athlete’s eligibility is merely a particularized version of . . . Model Rules 1.4(a)(1) and (4),” which require that the lawyer promptly inform her client of decisions that require the client’s informed consent, and require that the lawyer promptly respond to the requests for information regarding the matter.¹⁸⁰ In pointing out such similarities, Bogad suggests that SPARTA is no more effective than the Model Rules.

Utilizing both the four professional sports player-agent regulations as a guide and Bogad’s statements that SPARTA does not do more than the Model Rules, this Note suggests that adding a dispute resolution section will create a more effective federal statute for agents. Similar to Rule 2.4(a) of the Model Rules, in which “a lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them,”¹⁸¹ the proposed section will allow an arbitrator to act as the third-party. Thus, in expanding on Bogad’s proposal, this section will create a more comprehensive statute because it specifies not only that the arbitrator(s) must be selected, but more importantly that all cases, regardless of professional sport, are kept in one database as to assist the arbitrator(s) in making a well-informed decision.

C. Oversight Program

Although Damon Moore was writing specifically about the role of agents with regard to the NCAA, his proposal for an oversight program is also accomplished through the dispute resolution section.¹⁸² Moore suggested an oversight program where an “NCAA committee would periodically review the inventory and accounts of student-athletes to determine whether they are in compliance with NCAA regulations.”¹⁸³ The

179. See Melissa Steedle Bogad, *Maybe Jerry Maguire Should Have Stuck with Law School: How the Sports Agent Responsibility and Trust Act Implements Lawyer-Like Rules for Sports Agents*, 27 CARDOZO L. REV. 1889, 1896-97 (2006).

180. *Id.* at 1909; MODEL RULES OF PROF’L CONDUCT R. 1.4(a)(1), (4) (1983).

181. MODEL RULES OF PROF’L CONDUCT R. 2.4(a) (1983).

182. Damon Moore, *Proposals for Reform to Agent Regulations*, 59 DRAKE L. REV. 517, 519 (2011).

183. Moore, *supra* note 182, at 551.

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database of dispute resolution cases established in the dispute resolution section would accomplish this program's goals because every arbitrator would be required to look through the database of prior agent cases and can use an agent's prior actions to assist them in making the appropriate decision.

D. Committee Creation

In a closer context to the goals of this Note, R. Alexander Payne recently published an article in the *Vanderbilt Journal of Entertainment and Technology Law*, in which he determined “the greatest problems facing the UAAA regime are what faced the system it replaced—a lack of uniformity, difficulties with compliance, penalties without bite, and apathy towards enforcement.”¹⁸⁴ Payne established that although the UAAA was not effective, it did not need to be rescinded but instead made more comprehensive through “a useful monitoring and enforcement supplement to federal regulation.”

In order to achieve this goal, Payne suggested two major revisions to the UAAA: “(1) explicit deference to the federal registration and reporting schemes and (2) removal of state application fees.”¹⁸⁵ However, Payne believes that to create a more effective check, he must establish a Sports Agent Licensing and Oversight Commission (SALOC) by amending SPARTA in order to create a centralized mechanism to: “(1) enforce the registration disclosure requirements of the UAAA; (2) established a single application process and fee; (3) monitor registered agents; and (4) bring suits both criminal and civil, against non-registered agents who violate the law.”¹⁸⁶ Payne also proposes that Congress should criminalize bad acts of an agent or the entering into any agency agreement without a federal license to encourage agents to weigh the prospect of liability more seriously. The author also proposes that Congress should require “professional sports teams and other entities to verify that the athlete-agents with whom they negotiate and contract are federally licensed.”¹⁸⁷

These proposals are achieved through the acceptance of the proposed dispute resolution section within the UAAA and SPARTA. While a new

184. Payne, *see supra* note 32, at 683.

185. *Id.*

186. *Id.* at 684.

187. *Id.* at 685.

committee like SALOC¹⁸⁸ could prove to be effective, SPARTA already grants the FTC the right to police the unscrupulous acts of player agents. Instead of creating an additional committee, which may ultimately generate less uniformity, this Note's proposal for the National Database for the Unscrupulous Acts of Agents proves to be a cost effective alternative to the formation of a committee. The FTC will be responsible for building a document database and making sure it is updated, but the arbitrators will be responsible for checking the database and utilizing the previous cases so as to make the best decision. Thus, the committee essentially places the responsibility on the arbitrators to act in a comprehensive fashion when making their decision in a particular case. As mentioned above, this concept has already proven effective in the medical practice and is cost effective in that the main costs are in the development and building of the database. The only work that will be needed is to maintain and update the database on a yearly basis.

X. CONCLUSION

The sports agent industry is a ruthless, competitive world, and a sports agent often employs a "whatever it takes"¹⁸⁹ mentality to land a client. If the sports agent is not a member of a professional league with a players' association, there are no current guidelines for monitoring the agent's unscrupulous acts. While athlete-agent laws already exist in forty-one of the fifty states, there remains no national uniformity for the dispute resolution of such unscrupulous acts. Thus, even if the professional sport has a players' association with athlete agent guidelines, the UAAA and SPARTA do not have a dispute resolution method for preventing an agent from exploiting athletes in different sports.

Both the States' attempt to regulate this activity through the UAAA and Congress's attempt to regulate this activity through SPARTA demonstrates a step in the right direction in protecting individuals from misguided agents. However, this uniformity is not comprehensive enough—adequate dispute resolution on a national scale is a necessity in order to deter agents from making repeated unethical decisions. To combat these problems, both the states, under the UAAA, and Congress, under SPARTA, should add a dispute resolution section in order to create a uniform minimum set of standards for all agents in professional sports. This section will provide a repository database for all arbitrators to access in connection with their

188. *See id.* at 684.

189. "Whatever it takes" mentality is one where a sports agent will do whatever is in his power, regardless of its legality, to represent a professional athlete.

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respective sports' arbitration rules in order to create a nationalized uniform check on agents. The database will be utilized by arbitrators so that the decision is both comprehensive and well informed. The selection of the arbitrator(s) shall be at the discretion of the respective professional league, and the decision of the arbitrator(s) shall be final and binding. It is through this approach that Congress will best be able to monitor unscrupulous sports agents' acts on a national scale and deter future acts.

The "whatever it takes" sports agent mentality must come to a stop. Although the prohibition of certain sports agent activities is outlined adequately, enforcement provisions, specifically those related to dispute resolution, are deficient on a national scale. By incorporating the proposals outlined above, the interested parties will create an environment that enhances sports agents' accountability and forces such individuals to relinquish unethical agent activity.