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ARBITRATION PROCESS OF THE NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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ARBITRATION PROCESS OF THE NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION

THURSDAY, DECEMBER 7, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCIAL
AND ADMINISTRATIVE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:45 a.m., in Room 2237, Rayburn House Office Building, the Honorable Chris Cannon (Chairman of the Subcommittee) presiding.

Mr. CANNON. Given the constraints on time, I would like to call this hearing to order, and I intend to submit my opening statement for the record. I hope you will forgive me for that but I think all the witnesses know what we are doing here.

So I would like to yield to Mr. Coble for 5 minutes and then we will come back, and I will introduce the witnesses and we will begin the testimony.

Mr. Coble.

[The prepared statement of Mr. Cannon follows:]

PREPARED STATEMENT OF THE HONORABLE CHRIS CANNON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH, AND CHAIRMAN, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

I would like to begin with a brief explanation of the jurisdictional underpinnings of this hearing.

As many of you know, the Subcommittee on Commercial and Administrative Law has jurisdiction over title 9 of the United States Code, which deals with arbitration. That title was adopted nearly 60 years ago in an effort to alleviate pressure on the federal courts by encouraging parties to arbitrate and settle differences before they reached the stage of active litigation.

By facilitating settlements through arbitration, title 9 provides a strong presumption that courts will enforce determinations arrived at under this process.

Various aspects of title 9 have been considered by the Subcommittee over the years. During the 106th Congress, the Subcommittee considered the "Fairness and Voluntary Arbitration Act," legislation dealing with the arbitration procedure utilized to resolve disputes between automobile manufacturers and their sales franchisees. The principal item of contention was that franchisees asserted that they were forced into contracts of adhesion that required them to agree to arbitrators who, because of their relationship to the manufacturers, were not perceived to be neutral.

Ultimately, legislation was passed by the 107th Congress and signed into law. This measure provides a more even playing field between the manufacturers and the franchisees in resolving disputes through arbitration.

The Subcommittee has on other occasions exercised its jurisdiction in this area. Also during the 106th Congress, the Subcommittee conducted an oversight hearing entitled on the fundamental relationship between franchisees and franchisors and whether there was any need for more regulation. No further action was taken by the Subcommittee with regard to that issue.

With respect to today's hearing, I approach this issue with a completely open mind. I also want to note that it is not my intention that this hearing be construed to influence any pending arbitration or litigation. Rather, my intention is to objectively consider such issues as whether the arbitration procedures employed by the National Football League Players Association adequately protect the rights of all interested parties and whether these procedures comport with the intent underlying the Federal Arbitration Act.

Mr. COBLE. Mr. Chairman, I thank you for that and I will not take—Marty, I won't take as long as it takes to replay a play on the NFL. I will be very brief, Mr. Chairman.

At one time professional players had little, if any, ability to negotiate their salaries and contracts and now they benefit from the ability to unionize and negotiate the collective bargaining agreements which are supposed to serve the best interest of all involved.

While I was not immediately concerned when I learned there were potential problems with the National Football League Players Association arbitration process, a close friend of mine thought very differently about the matter. He recently passed and I am saddened that he cannot be with us today to examine what will be forthcoming at today's hearing.

His name, Mr. Chairman, was known to many of us. His name was Jerris Leonard, a distinguished private attorney, elected to the Wisconsin Senate, where he served as the Senate leader and he then joined the Nixon administration to work in the Justice Department's Civil Rights Division. Throughout Jerris' legal practice and public service he spent a career furthering and promoting civil rights and speaking out against injustice.

When Jerris said to me, on several times, that a flawed process is more harmful than no process at all, I think he was correct about that. Now, Mr. Chairman and colleagues, I have not drawn a conclusion prior to today's hearing, but I want all the members of our panel to know that if this process is indeed flawed it is a serious problem because it undermines all that has been done to protect the rights of professional football players, which should be no different than any other citizen or profession.

Mr. Chairman, I thank you for your patience and efforts in conducting today's hearing. As you pointed out, the timing couldn't be any worse in the waning hours of this session, but I thank you for that, Mr. Chairman, and I yield back.

Mr. CANNON. I thank the gentleman. I am hoping there is something historic that comes out of this. This is great.

For the record, I would like to ask unanimous consent that it be admitted into the record, a statement by Ms. Jackson Lee and a statement by Carl Poston with some addenda. Without objection, so ordered.

[The information referred to can be found in the Appendix.]

Mr. CANNON. We would also like to ask unanimous consent that Ms. Jackson Lee and Mr. Meehan be allowed to join us at the dais and be allowed to ask questions. Without objection, so ordered.

Without objection, all Members may place their statements in the record at this point. Hearing no objection, so ordered.

Without objection, the Chair will be authorized to declare recesses at this hearing at any point. Hearing no objection, so ordered.

I ask unanimous consent that Members have 5 calendar days to submit written statements for inclusion in today's hearing record. Hearing no objection, so ordered.

Our first witness is Dr. Richard Karcher. He is the Director of the Center for Law and Sports at the Florida Coastal School of Law. Professor Karcher obtained his undergraduate degree from the University of Michigan, Dearborn, and his law degree from Michigan State University College of Law. Professor Karcher is an active commentator on sports law. He has contributed to a sports law blog and has written several law journal articles relating to athletes and sports agents. Professor Karcher himself was a professional athlete, and looks like one, by the way. Welcome. He spent 4 years prior to college in the Atlanta Braves farm system.

Our next witness is Mr. LaVar Arrington, who is a linebacker with the New York Giants. He is well known to the people of Washington as he was a star player for the Washington Redskins. Mr. Arrington was selected in the first round, second overall, by the Redskins in the 2000 NFL draft. In the summer of 2006, Mr. Arrington bought out his contract with the Washington Redskins and became a free agent. He then signed a contract with the New York Giants.

Mr. Arrington graduated from Penn State University in 1999. During his last year at Penn State, Mr. Arrington earned the Chuck Bednarik Award as the Nation's top defensive player and the Dick Butkus Award as college football's premier linebacker. He is a very scary guy in his line of work, but we are pleased to have you.

Mr. Arrington has also developed himself into an off-field NFL personality, starring in television shows, commercials and feature stars in non-NFL magazines, including GQ, Maxim and the Rolling Stone. Thank you for coming today.

Our next witness is Richard Berthelsen, General Counsel for the NFLPA. Mr. Berthelsen has represented the NFLPA for 34 years. During his tenure at the NFLPA Mr. Berthelsen has also been involved with professional soccer. Throughout the 1980's, he served as General Counsel for two soccer league players associations.

Mr. Berthelsen received his undergraduate degree from the University of Wisconsin, and graduated in the top 10 from the University of Wisconsin Law School. He served on the Board of Directors of the Sports Lawyers Association since 1986 and was a cofounder of the Association of Representatives of Professional Athletes. He is also a member of the Board of Advisers of the National Sports Law Institute.

Thank you for being here today.

Larry Friedman is our final witness. He is an attorney with an extensive background in arbitration law. He currently represents a sports agent who has been suspended by the NFLPA and has filed a lawsuit in a Texas court against that organization. He received his undergraduate degree from Queens College, the City of New York, University of New York. He received his law degree with honors from the University of Minnesota. He is the managing partner of Friedman & Feiger, LLP, a Dallas law firm.

I extend to our warmest regards and appreciation for you being here.

You have 5 minutes. Please feel free to summarize. There is a lighting system in front of you. This is a room that needs to be revamped. Your lighting system is up here. We will tap the dais when the red light goes on. You should feel comfortable wrapping up at that point.

Pursuant to the direction of the Chairman of the Judiciary Committee, I ask you all stand and raise your hand and be sworn in.

[Witnesses sworn.]

Mr. CANNON. The record should show that the witnesses have all answered in the affirmative.

Mr. Karcher, we would be pleased to hear your testimony now. Thank you.

TESTIMONY OF PROFESSOR RICHARD KARCHER, DIRECTOR, CENTER FOR LAW AND SPORTS, FLORIDA COASTAL SCHOOL OF LAW

Mr. KARCHER. Thank you. Mr. Chairman and Members of the Subcommittee, good morning and thank you for inviting me today to give my testimony.

The NFLPA, unlike unions in the other sports, have been aggressively disciplining agents over recent years. The NFLPA would claim that there's an entire system of rules and regulations that protect the NFLPA's disciplinary process as a shield, more or less, from claims of arbitrary enforcement and violations of due process. That system is made of the following points, briefly.

The NFLPA is the exclusive representative of the players under the NLRA, but they have chosen a unique system in which third party agents represent the players in individual contract negotiations. As a condition to certification, agents must consent to the NFLPA's agent regulations unilaterally created and amended by the union without any negotiation whatsoever. The NFLPA's regulations have been upheld by the courts, allowing the union unfettered discretion in its creation of the regulations and amendments.

The NFLPA's regulations are drafted very broadly, leaving the NFLPA complete discretion to determine whether an agent's conduct falls within its provisions regarding what constitutes prohibited conduct. As an example, they prohibit, quote, any activity which reflects adversely on his or her fitness as a contract adviser or jeopardizes his or her effective representation of players.

CARD, which is a disciplinary committee of the NFLPA, has the power to immediately suspend or revoke an agent's license without a hearing and without an opportunity to be heard in, quote, extraordinary circumstances, end quote. That definition is determined by CARD, so CARD'S authority is not limited to merely proposing discipline. If an agent appeals CARD's suspension under such circumstances, the appeal shall not stay the disciplinary action.

The same arbitrator has been both selected and paid for by the NFLPA for the past 13 years. There's no right to discovery, no prehearing or post-hearing briefs. Arbitrators' decisions are not readily available so there really is no precedent. The arbitrator is the last resort for the disciplined agent because courts will typically not review the arbitrator's decision even if the court believes that there

were factual errors made by the arbitrator or that the arbitrator applied the law wrongly.

So the question worth exploring today is whether the NFLPA should be permitted to use this system as a shield and whether one or more of the points making up this system should be changed in a way that makes the disciplinary process more fair to agents but at the same time preserves the legitimate function of the union in looking after the best interest of the players.

Under this system the NFLPA makes subjective assessments about particular agents over others and these decisions will naturally be affected by certain biases that the union may or may not have against certain agents.

There are some recent suspensions that at least raise some questions regarding arbitrary enforcement and due process.

Mr. Carl Poston's case. At the beginning of this year CARD filed a complaint against Carl Poston for alleged malpractice, recommending a 2-year suspension. Thus CARD made a unilateral determination that Poston committed malpractice despite all of the factual issues in dispute in that matter.

Poston then filed an appeal to the arbitrator and then simultaneously filed suit in Federal court alleging that the NFLPA violated its regulations in certain respects as well as to seek a neutral arbitrator.

After Poston had to twice postpone the arbitration hearing for legitimate reasons, the NFLPA officially suspended him because according to them he, quote, used bad faith efforts to delay, frustrate and undermine the hearing. Executive Director Gene Upshaw criticized Poston publicly in the media for, quote, making a mockery of our system and that this is not about him, it's about our authority as the exclusive bargaining agent for the players. They, the agents, work at our beck and call.

So a few questions arise out of the Poston situation: Is this an extraordinary circumstance, as I referred to earlier, under section 6B of the regulations that warrants immediate suspension without a stay pending the appeal to the arbitrator? What about the damage to Poston's reputation when he hasn't even had a fact finder decide many factual issues and consider his defenses? Is a 2-year suspension warranted under these circumstances, especially when his client is not upset?

Upshaw's comments seem to indicate at least in part that they are making decisions based upon emotion leading to—it just leads to questions regarding arbitrary enforcement and due process. That's the point, I think today, to raise the questions about arbitrary enforcement and the due process of the agents.

David Dunn is another situation in which he was suspended for soliciting clients. Soliciting clients in the agent business is very commonplace. However, the NFLPA singled out Dunn for soliciting clients after he left his partnership with Leigh Steinberg and suspended him for 2 years.

First, there's wide debate among lawyers, scholars, including this one sitting here at the table speaking, and judges whether soliciting clients is even misconduct. There's a court decision that said that that's perfectly fine in competition for client services.

Second, is the suspension warranted for 2 years when the alleged solicitation involves clients that he used to represent when he was with his partner Leigh Steinberg? Again, is the 2-year suspension warranted when his own clients vehemently oppose any disciplinary action whatsoever, just as in the Poston case?

Dunn—I'll wrap this up. Dunn agreed to an 18-month suspension which was essentially the effect of the original 2-year suspension imposed upon him.

In light of the foregoing I believe that further hearings on this issue are important and warranted, and I thank you for your time.

[The prepared statement of Mr. Karcher follows:]

PREPARED STATEMENT OF RICHARD T. KARCHER

Testimony of Richard T. Karcher

Oversight Hearing on "The Arbitration Process of the National Football League Players Association"

December 7, 2006

Mr. Chairman and Members of the Subcommittee,

Good morning. Thank you for providing me the opportunity to provide testimony today regarding the NFLPA's use of the laws as a shield to interpret its regulations however it deems fit and to exercise unfettered discretion in imposing any number of sanctions, including suspension and revocation of an agent's license. My perspective on the issue comes from three different vantage points: As a former minor league baseball player, as a former partner at a large and prestigious corporate law firm, and now as a full time sports law professor.

I have reviewed the NFLPA's agent regulations. The current version of those regulations, as amended through March 2006, is available at http://www.nflpa.org/pdfs/Agents/NFLPA_Regulations_Contract_Advisor.pdf. I have also reviewed the current version of the collective bargaining agreement (CBA) between the NFL and the NFLPA relating to agent certification and the resolution of disputes between the parties to the CBA. I request that my written statement and attachments be included in the record.

There is no dispute among anybody here at the table, or the general public for that matter, that the sports agent business is highly competitive and cutthroat, involving all sorts of agent misconduct. However, the underlying discussion today involves two fundamental questions. The first is the substantive question as to whether the NFLPA is enforcing its agent regulations in a manner that is unreasonable or arbitrary. The second is the procedural question as to whether agents are afforded the basic rudiments of due process of law.

I. The NFLPA's Disciplinary Process

As the "exclusive" representative of the players under the labor laws, the NFLPA has determined that it is in the best interest of the players to have a player representation system that involves the use of third party agents. Thus, the union has delegated to third party agents its authority to negotiate the individual contracts of the players. In conjunction therewith, the unions have established strict regulations that agents must abide by in order to be certified and represent players. The CBA provides that "[t]he NFLPA shall have sole and exclusive authority to determine the number of agents to be certified, and the grounds for withdrawing or denying certification of an agent." (CBA, Article VI, Section 1). The CBA further provides that clubs will be fined $10,000 if they

negotiate any player contract with an agent not certified by the NFLPA in accordance with the NFLPA agent regulation system. (CBA, Article VI, Section 3)

The current version of the NFLPA regulations contains 30 separate provisions addressing prohibited agent conduct. Some provisions are very specific in stating what particular conduct is prohibited, for example, the initiation of any direct or indirect communication with a player represented by another agent (Section 3. B. 21(a)). Some provisions do not specify what particular conduct is prohibited but ban a specific outcome, for example, engaging in any activity "which creates an actual or potential conflict of interest with the effective representation of NFL players" (Section 3. B. 8.). Finally, some provisions are open-ended with respect to the prohibited conduct and outcome, for example, any activity "which reflects adversely on his/her fitness as a Contract Advisor or jeopardizes his/her effective representation of NFL players." (Section 3. B. 14.). Pursuant to the terms of the regulations, agents are deemed to have consented to all of the provisions in the regulations as a result of the certification process.

It is worth noting that state and federal statutes designed to aggressively combat agent misconduct are much more specific and narrowly define what an agent cannot do. For example, the Uniform Athlete Agents Act (2000), which has been adopted in 35 states, provides as follows:

> SECTION 14. PROHIBITED CONDUCT.
>
> (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.

The federal Sports Agent Responsibility and Trust Act (2003)(SPARTA) defines prohibited conduct narrowly as well:

> (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.

When I was practicing as a corporate lawyer, if I had allowed my client to sign a document in a commercial transaction containing provisions analogous to the NFLPA regulation's ambiguous and open-ended terms, I would have most likely committed an act of malpractice. Ordinarily, in a dispute between the parties as to the meaning of the terms of a contract, a court or jury determines whether the provisions are ambiguous as well as ascertain the intent of the parties. One could even argue that the NFLPA's regulations are akin to an unconscionable adhesion contract because agents have no ability to negotiate the terms and they have no choice but to "take it or leave it". The NFLPA also unilaterally amends its regulations without the consent of agents and the input of, or negotiation with, agents. Therefore, agents have not actually agreed to the regulations, but instead are forced to accept their terms. The NFLPA takes the position that its regulations cannot be challenged by agents, relying on two federal court cases holding that the regulations are exempt from antitrust attack.[1] However, the issue presented here today involves concerns over fairness and due process with respect to individuals accused of misconduct, not the goals of the Sherman Act in preserving competition.

Agents have an extremely difficult time challenging the meaning of any provision in the agent regulations because the law affords private associations the discretion to interpret their own rules and regulations. In *Crouch v. NASCAR*, 845 F.2d 397 (2nd Cir. 1988), NASCAR's regulations permitted drivers to file an appeal to NASCAR's headquarters when a track official's ruling constituted a race "scoring" decision, but did not permit appeals when the ruling involved a race "procedure" decision. The court held, "[W]e conclude that the district court should have deferred to NASCAR's interpretation of its own rules in the absence of an allegation that NASCAR acted in bad faith or in violation of any local, state or federal laws." *Id.* at 403.

Within the last three years, the NFLPA has been aggressively disciplining agents and using the existing legal landscape as a shield in making its own subjective determinations as to what constitutes misconduct. However, unlike the situation in *NASCAR*, the NFLPA's interpretations substantially affect the livelihood of individuals and their freedom to engage in their chosen profession. Agents are operating under a system in which there are no written opinions issued by the union's disciplinary committee -- all that is required is that the committee issue a complaint that merely sets forth the specific action or conduct giving rise to the complaint and cites the regulation alleged to have been violated (Section 6 B.). Also, when the law permits the NFLPA to make its own interpretations about what constitutes misconduct, it requires the NFLPA to

[1] *See* Collins v. National Basketball Players Ass'n, 976 F.2d 740 (10th Cir. 1992)(unpublished), *aff'g*, 850 F. Supp. 1468 (D. Colo. 1991) (alleging that the NBPA's certification process constituted a group boycott as a result of being denied certification).

make subjective assessments about particular agents over others. Those decisions will naturally be affected by certain biases that the union may or may not have against certain individual agents, which then has the potential to result in arbitrary enforcement. I will now briefly summarize three separate instances that raise some questions about whether the NFLPA's authority and power to discipline the agents is being abused.

A. David Dunn's Two-Year Suspension

Soliciting clients represented by other agents is, unfortunately, commonplace in the agent business. But the NFLPA singled out David Dunn for soliciting clients after he left his partnership with Leigh Steinberg, and suspended his license for two years. Aside from the issue of selective enforcement and the substantial impact that the suspension has on Dunn's livelihood, there are additional questions raised by this suspension. First, there is wide debate among lawyers, scholars and judges as to whether solicitation in the agent business is even bad to begin with. In *Speakers of Sport, Inc. v. ProServ, Inc.*, 178 F.3d 862 (7th Cir. 1999), Ivan Rodriguez was solicited by an agent and promised millions in endorsements at a time when he was already represented by Speakers of Sport. The Seventh Circuit, in dismissing the suit, stated that "[a]llowing Speakers to prevail would hurt consumers by reducing the vigor of competition between sports agents. The Rodriguezes of this world would be disserved, as Rodriguez himself, a most reluctant witness, appears to believe." *Id.* at 868. Secondly, Dunn's suspension raises questions when his clients, who are members of the union, strongly oppose any action against him whatsoever, let alone a two-year suspension:

> *Drew Bledsoe*: "It's ridiculous. There is no reason for the [players association] to be seeking punishment against Dave after so many NFL players freely chose Dave to continue as their representative after he left Leigh Steinberg's firm to start Athletes First."
> *John Lynch*: "The decision to discipline Dave is misguided and completely unjustified. He did nothing wrong, and frankly, I am astounded that the union didn't call me, one of its members, to learn the truth before taking this step." Liz Mullen, *NFLPA's vote to suspend Dunn shows it will take on big agents*, Street & Smith's Sports Business Journal Oct. 23-29, 2006.

Finally, one must question whether a two-year suspension is warranted when the conduct involves soliciting clients *that he used to represent*. Under the agent regulations, the NFLPA instead could have exercised discretion and issued a fine or prohibited him from representing any new player-clients for a specified period of time.

B. Carl Poston's Two-Year Suspension

LaVar Arrington has echoed similar statements in favor of his agent, Carl Poston, in the context of Poston's two-year suspension for alleged malpractice in the negotiation of Arrington's contract with the Redskins. In Poston's situation, the union first filed a grievance on behalf of Arrington against the Redskins for bad faith negotiations in the Redskins' failure to include a $6.5 million bonus in the contract that Arrington signed in

Washington without the presence of Poston, despite the fact that Poston had not "signed off" on the language of the contract. The NFLPA's disciplinary committee subsequently filed an action against Poston for malpractice and recommended a two-year suspension.

Poston's situation also raises interesting questions. First, it seems highly suspect that Poston would just overlook a $6.5 million bonus in the contract of one of his elite clients. Carl is notorious for being a zealous advocate on behalf of his clients and obtaining some record-breaking contracts over the years. Secondly, Poston has a financial incentive to make sure the dollars are accurately stated in the contract when his commission fee is based upon the value of the contract. Third, what constitutes agent malpractice in this industry is an unsettled question in and of itself. In any event, at a minimum, there is a factual dispute as to whether Poston breached his duty owed to Arrington. Thus, another question is whether this is a dispute better left between Arrington and Poston. However, Arrington is not upset with Poston, but instead Arrington is upset with the union for suspending his agent. Again, as with the Dunn suspension, is a two-year suspension warranted under the circumstances? The issue also raises some due process concerns as will be discussed shortly.

C. Neil Cornrich's One-Year Suspension

Neil Cornrich had his license suspended by the union for one year for allegedly violating the conflict of interest provision previously noted. According to the union, Cornrich was paid $1,000 per hour by General Motors to testify at a deposition that the earning capacity of an NFL player, who was not his client, was on the decline before he died in an accident while driving a Chevrolet Suburban. This deposition testimony contradicted that of the player's agent, Leigh Steinberg. The player's family sued GM and the circuit court found that GM was not at fault. The NFLPA asserted that Cornrich was required to avoid conflicts of interest, not only with his own clients but also involving NFL players as a whole.

Like the Dunn and Poston suspensions, the Cornrich suspension raises many questions as well. First, arguably there was no "actual or potential conflict of interest with the effective representation of NFL players." Cornrich was hired as an expert witness based upon his knowledge of player contracts and their market value. While the union owes a duty to the players collectively, Cornrich does not owe a duty to any players he does not represent. Furthermore, he is not employed by the union. In this situation, the union interpreted its conflict of interest provision in a way that is much broader than the way it is actually drafted. It appears the union might have based its decision on emotion, as opposed to a true conflict of interest, because an agent testified against a deceased player. This is evident through a comment made by arbitrator Roger Kaplan when he upheld the union's one-year suspension: "The act of undermining the case of a dead, former player makes him appear less able or disposed to be of genuine and unalloyed assistance to NFL players." Nick Cafardo, *He's a chip off the old blocker*, The Boston Globe (December 18, 2005). The second question raised is why the union was so adamant in suspending Cornrich, when the issue of damages for which he testified never even became an issue in the case because the jury found that GM was not at fault.

Thus, even if it was a conflict, there was no harm flowing from the conflict – the only harm was incurred by Cornrich. Once again, it is highly questionable whether the suspension was warranted as opposed to issuance of a fine. Also, the fact that Leigh Steinberg was an adversary to both Dunn and Cornrich in the matters that lead to their suspensions is something that should at least raise an eyebrow.

What is even more intriguing is that there are many known actual and potential conflicts of interest in the agent business that, for some reason, the NFLPA has turned a blind eye to. For example, consolidation in the agency business this year has left one particular agency, lead by former IMG agent Tom Condon, with over 140 NFL clients. No agency has ever had this many clients in one sport under one roof. When an agent represents more than one player in the same position during the same free agency year, it raises questions whether the agent can serve the best interests of all such players, and with 140 clients there is sure to be conflicts. At a minimum, the NFLPA should be investigating it, and maybe they are. Many have questioned whether it is a conflict of interest for Condon to also be representing Gene Upshaw, the Executive Director of the NFLPA. But even if it is not a conflict, it dovetails back to the earlier discussion of potential biases in favor of certain agents which has the natural tendency to result in arbitrary enforcement of the regulations.

II. The Arbitration Process

Under the regulations, the NFLPA's disciplinary committee (comprised of three to five active or retired players appointed by the President of the NFLPA) has the power to immediately suspend or revoke an agent's license without a hearing and without an opportunity to be heard (Sections 6. A. and B.). The agent then has the right to appeal the disciplinary action to an arbitrator, but it is within the committee's discretion whether the pending appeal stays the disciplinary action (Section 6. B.). The parties are not permitted to file pre-hearing or post-hearing briefs. The regulations state: "The NFLPA shall select a skilled and experienced person to serve as the outside impartial Arbitrator for all cases arising hereunder." There is also a provision stating that the fees and expenses shall be borne by the NFLPA. Is an arbitrator that is selected, and paid for, by one of the parties to a dispute really "impartial"? And when the same arbitrator, Roger Kaplan, is selected by the NFLPA for each disciplinary arbitration hearing, is he really an "outside" arbitrator? At what point does he gradually evolve into an "insider" through repeated use?

Once again, it is worth noting that the UAAA and SPARTA provide much greater procedural safeguards when attempting to strip an agent of his livelihood. The UAAA provides that the state may deny, suspend, revoke, or refuse to renew an agent's license only after proper notice and an opportunity for a hearing (UAAA, Section 7(b)). The UAAA even incorporates the Administrative Procedures Act, which affords agents with many due process procedural safeguards. SPARTA mandates that any civil action by a state attorney general against an agent be brought in a district court of the United States with appropriate jurisdiction (SPARTA, Section 5(a)).

It is also worth noting that the collective bargaining agreement between the NFLPA and the NFL contains detailed provisions that provide fair and reasonable process for the selection of an arbitrator in disputes between the players and the league involving non-injury. *See* Article IX attached as Exhibit A. If a grievance is not resolved after it has been filed and answered, any party may appeal to an arbitration panel. The CBA contains detailed provisions on the process of selection of the arbitrators as well as filling any vacancies. There are also detailed provisions regarding discovery, and the arbitrators' fees and expenses are borne equally by the parties. The point here is that the entire arbitration process set forth in the CBA for the resolution of disputes, including the process of selecting the arbitrators, provides for a fair and reasonable arbitration process with due process safeguards.[2] Why shouldn't the same fair and reasonable process be afforded to agents, who are connected to the collective bargaining relationship via their representation of the players in contract negotiations with the clubs?

The NFLPA does not make data readily available pertaining to its arbitration process, including arbitrator Kaplan's written opinions. Nor is there readily available data on the number of times that arbitrator Kaplan has ruled in favor of the agent in arbitration. The NFLPA vigorously fights any agent who seeks a different arbitrator. It is understandable how a disciplined agent would view the NFLPA's arbitration process as just a "rubber stamp". Furthermore, if the agent appeals to the arbitrator and loses, courts typically will not review the arbitrator's decision even if the court believes that there were factual errors made by the arbitrator or that the arbitrator applied the law wrongly.

The case of *Poston v. NFLPA*, No. 02CV871, 2002, WL 31190142 (E.D. Va. Aug. 26, 2002) demonstrates how the agent is "caught between a rock and a hard place" under the NFLPA's system. In 2001, the NFLPA disciplined Poston alleging that one of Poston's employees improperly purchased airline tickets on behalf of four FSU football players and that the employee then attempted to persuade the travel agent who processed the transaction to lie to FSU officials concerning the identity of the purchaser of the tickets. Thus, the NFLPA unilaterally decided two factual issues and imposed disciplinary action. Poston then appealed to arbitrator Kaplan and he affirmed it. Poston then filed suit in federal court to vacate the award alleging "evident partiality" on the part of arbitrator Kaplan, and that arbitrator Kaplan exceeded his powers and misapplied the law of *respondeat superior*. Footnote 6 of the case contains a transcript of the arbitration

[2] There are also detailed provisions regarding the arbitration process for resolving injury grievances (Article X) and other specified contractual disputes, for example, related to drafted players (Article XVI) and veteran free agency (Article XIX). *See* Article XXVII attached as Exhibit A. Pursuant to Article XXVII, the parties must agree on the identity of the arbitrator, and if the parties cannot agree, the parties submit the issue to the President of the ABA who shall submit to the parties a list of eleven attorneys (none of whom shall have nor whose firm shall have represented within the past five years players, player representatives, clubs, or owners in any professional sport). If the parties cannot agree to the identity of the arbitrator from among the names on such list, they alternatively strike names from said list, until only one name remains, and that person shall be the arbitrator. The first strike is determined by a coin flip. The term of the arbitrator is limited to a two year term, unless the parties agree otherwise, and the arbitrator continues to serve for successive two-year terms unless notice to the contrary is given either by the NFL or the NFLPA. The compensation and costs of the arbitrator are borne equally by the NFL and the NFLPA. Finally, the arbitrator has discretion to grant discovery requests by either party. Article XXVII of the CBA would serve as a good model for a revised arbitration process in dealing with agents.

hearing at which Poston disputed the factual determination by the NFLPA that *the employee in fact had done something wrong*. In reviewing Kaplan's decision, the federal district court's hands were tied:

> Accordingly, a district court's review of an arbitration proceeding "is limited to determining whether the arbitrators did the job they were told to do -- not whether they did it well, or correctly, or reasonably, but simply whether they did it." "Courts are not free to overturn an arbitral result because they would have reached a different conclusion if presented with the same facts." Furthermore, courts must give substantial deference to an arbitrator's findings of fact and interpretations of law. Accordingly, an arbitrator's legal determination "may only be overturned where it is in manifest disregard of the law." The arbitrator's award "is enforceable even if the award resulted from a misinterpretation of the law, faulty legal reasoning or erroneous legal conclusion." *Id.* at *2 (citations omitted).

In rejecting Poston's claim of evident partiality, the district court, in reliance on precedent, stated: "An NFL-selected arbitrator may have an incentive to appease his or her employer, but 'the parties to an arbitration choose their method of dispute resolution, and can ask no more impartiality than inheres in the method they have chosen.'" *Id.* at *3 (citations omitted).

As I discussed earlier, it begs the question whether agents really "choose" the dispute resolution method established by the NFLPA.[3] Even assuming *arguendo* that agents validly consent to the regulations, they appear to have consented to an impartial

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[3] The case of *Morris v. New York Football Giants, Inc.*, 575 N.Y.S.2d 1013 (N.Y.Sup. 1991), is instructive. That case involved a dispute between two players and their former clubs over the amount of compensation owed to the players for their services. The player contracts executed by the two players with their clubs provided that, "if no collective bargaining agreement is in existence at such time, the dispute will be submitted within a reasonable time to the League Commissioner for final and binding arbitration by him." *Id.* at 1015. The CBA had expired and, in an attempt to avoid having the commissioner arbitrate the dispute as required by their player contracts, the players argued that the arbitration clause of their contract should be stricken as an unenforceable adhesion contract because they had no opportunity to bargain or negotiate any contract terms other than compensation and length of contractual commitment. *Id.* **Unlike agents who have no ability whatsoever to negotiate any of the NFLPA agent regulations**, the *Morris* court explained that the two players had the ability to negotiate away the arbitration clause:

> "Despite plaintiffs' contentions, the record clearly establishes that plaintiffs are highly paid, sophisticated professional athletes, who possessed considerable bargaining power over the terms of their contracts. They were represented by experienced agents and/or counsel during the negotiation and execution of their player contracts. Significantly, there is absolutely no evidence presented that the plaintiffs ever sought to delete or bargain over the arbitration clause. The arbitration clause is clearly prominently set forth, and is not a trap for the unwary. Nor is there any direct claim made by either plaintiff, by affidavit or otherwise, that they felt that their contracts were presented "on a take-it-or-leave-it basis." *Id.* at 1015-16.

and outside arbitrator, not one that is arguably an "insider". But regardless, the district court stated that Poston "knew or should have known that the arbitrator used in this case is the one regularly used by the NFLPA, and therefore should have raised any concerns regarding the arbitrator's potential partiality prior to the arbitration proceeding at issue."

Ironically, that is exactly what Poston is doing right now. Poston took note of the district court's advice and, in March of this year, filed suit in federal court simultaneously with exercising his appeal rights to the arbitrator. That lawsuit is currently pending, and has raised concerns over the arbitrator's partiality as well as the lack of due process inherent in the system. In late July of this year, the NFLPA officially suspended him for two years after Poston had to twice postpone arbitration hearings as a result of having suffered a serious injury. An AP press release stated that the NFLPA suspended him on the grounds that he used "bad faith efforts to delay, frustrate and undermine" the hearing. NFLPA executive director Gene Upshaw openly criticized Poston for "making a mockery of our system." He further added, "This is not about him, it is about our authority as the exclusive bargaining agent for the players....They, the agents, work at our beck and call." (http://sports.espn.go.com/espn/print?id=2530936&type=story).

Similar to arbitrator Kaplan's comment about Neil Cornrich, Upshaw's comments indicate that the NFLPA is making disciplinary decisions, at least in part, based upon emotion, which can lead to concerns over arbitrary enforcement. Upshaw's comments coupled with the suspension without a hearing also raise questions about procedural fairness and due process. *See NASCAR*, 845 F.2d at 402 (noting an exception to the general rule of nonreviewability of the actions of private associations "where the association had failed to follow the basic rudiments of due process of law.")(quoting *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 544 (7th Cir. 1978)); *Kuhn*, 569 F.2d at 544-45 (held that waiver of recourse clause is invalid as against public policy under circumstances where the waiver of rights to the courts is not voluntary or was not freely negotiated by parties occupying equal bargaining positions).

Rather than fight the uphill battle, David Dunn decided not to even arbitrate his two-year suspension. He acceded to the authority of the NFLPA and agreed to an 18-month suspension. But NFLPA general counsel Richard Berthelsen noted, "This suspension will take Dunn through two drafts and two free agency periods, so it is essentially equivalent to a two-year suspension." Liz Mullen, *Dunn and NFLPA agree suspension will last 18 months*, Street & Smith's Sports Business Journal (Nov. 27, 2006). The settlement seems to suggest that Dunn felt he had no chance whatsoever in defending his case in front of arbitrator Kaplan. As Berthelsen correctly noted, the end result here is essentially a two-year suspension, which is no different than the suspension originally imposed by the NFLPA. So one cannot help but inquire whether this really constitutes a settlement. Indeed, Dunn represents over sixty NFL players. The ramifications of this suspension, which include the strong likelihood that he will lose clients to other agents as well as the lost revenue on contracts he would have negotiated during this suspension period, would seem to give Dunn every incentive to vigorously fight it. He could have at least tried to convince the arbitrator to reduce the suspension to one year. In other words, what does he have to lose? Dunn's suspension raises some

questions regarding due process and overall fairness of the NFLPA's enforcement of its regulations against agents.

In concluding, I hope that my testimony has been helpful to you. I believe that further hearings on this matter are important and warranted. Thank you for your time, and I would be happy to answer any questions you may have.

EXHIBIT A

ARTICLE IX

NON-INJURY GRIEVANCE

Section 1. Definition: Any dispute (hereinafter referred to as a "grievance") arising after the execution of this Agreement and involving the interpretation of, application of, or compliance with, any provision of this Agreement, the NFL Player Contract, or any applicable provision of the NFL Constitution and Bylaws pertaining to terms and conditions of employment of NFL players, will be resolved exclusively in accordance with the procedure set forth in this Article, except wherever another method of dispute resolution is set forth elsewhere in this Agreement, and except wherever the Settlement Agreement provides that the Special Master, Impartial Arbitrator, the Federal District Court or the Accountants shall resolve a dispute.

Section 2. Initiation: A grievance may be initiated by a player, a Club, the Management Council, or the NFLPA. A grievance must be initiated within forty-five (45) days from the date of the occurrence or non-occurrence upon which the grievance is based, or within forty-five (45) days from the date on which the facts of the matter became known or reasonably should have been known to the party initiating the grievance, whichever is later. A player need not be under contract to a Club at the time a grievance relating to him arises or at the time such grievance is initiated or processed.

Section 3. Filing: Subject to the provisions of Section 2 above, a player or the NFLPA may initiate a grievance by filing a written notice by certified mail or fax with the Management Council and furnishing a copy of such notice to the Club(s) involved; a Club or the Management Council may initiate a grievance by filing written notice by certified mail or fax with the NFLPA and furnishing a copy of such notice to the player(s) involved. The notice will set forth the specifics of the alleged action or inaction giving rise to the grievance. If a grievance is filed by a player without the involvement of the NFLPA, the Management Council will promptly send copies of the grievance and the answer to the NFLPA. The party to whom a non-injury grievance has been presented will answer in writing by certified mail or fax within seven (7) days of receipt of the grievance. The answer will set forth admissions or denials as to the facts alleged in the grievance. If the answer denies the grievance, the specific grounds for denial will be set forth. The answering party will provide a copy of the answer to the player(s) or Club(s) involved and the NFLPA or the Management Council as may be applicable.

Section 4. Appeal: If a grievance is not resolved after it has been filed and answered, either the player(s) or Club(s) involved, or the NFLPA, or the Management Council may appeal such grievance by filing a written notice of appeal with the Notice Arbitrator and mailing copies thereof to the party or parties against whom such appeal is taken, and either the NFLPA or the Management Council as may be appropriate. If the grievance involves a suspension of a player by a Club, the player or NFLPA will have the option to appeal it immediately upon filing to the Notice Arbitrator and a hearing will be held by an arbitrator designated by the Notice Arbitrator within seven (7) days of the filing of the grievance. In addition, the NFLPA and the Management Council will each have the right of immediate appeal and hearing within seven (7) days with respect to four (4) grievances of their respective choice each calendar year. The arbitrator(s) designated to hear such grievances will issue their decision(s) within five (5) days of the completion of the hearing. Prehearing briefs may be filed by either party and, if filed, will be exchanged prior to hearing.

Section 5. Discovery: No later than ten (10) days prior to the hearing, each party will submit to the other copies of all documents, reports and records relevant to the dispute. Failure to submit such documents, reports and records no later than ten (10) days prior to the hearing will preclude the non-complying party from submitting such documents, reports and records into evidence at the hearing, but the other party will have the opportunity to examine such documents, reports and records at the hearing and to introduce those it desires into evidence, except that relevant documents submitted to the opposing party less than ten (10) days before the hearing will be admissible provided that the proffering party and the custodian(s) of the documents made a good faith effort to obtain (or discover the existence of) said documents or that the document's relevance was not discovered until the hearing date. In the case of an expedited grievance pursuant to Section 4, such documentary evidence shall be exchanged on or before two (2) days prior to the hearing unless the arbitrator indicates otherwise.

Section 6. Arbitration Panel: There will be a panel of four (4) arbitrators, whose appointment must be accepted in writing by the NFLPA and the Management Council. The parties will designate the Notice Arbitrator within ten (10) days of the execution of this Agreement. In the event of a vacancy in the position of Notice Arbitrator, the senior arbitrator in terms of affiliation with this Agreement will succeed to the position of Notice Arbitrator, and the resultant vacancy on the panel will be filled according to the procedures of this Section. Either party to this Agreement may discharge a member of the arbitration panel by serving written notice upon the arbitrator and the other party to this Agreement between December 1 and 10 of each year, but at no time shall such discharges result in no arbitrators remaining on the panel. If either party discharges an arbitrator, the other party shall have two (2) business days to discharge any other arbitrator. If the parties are unable to agree on a new arbitrator within thirty (30) days of any vacancy, the Notice Arbitrator shall submit a list of ten (10) qualified and experienced arbitrators to the NFLPA and the Management Council. Within fourteen (14) days of the receipt of the list, the NFLPA and the Management Council shall select one arbitrator from the list by alternately striking names until only one remains, with a coin flip determining the first strike. The next vacancy occurring will be filled in similar fashion, with the party who initially struck first then striking second. The parties will alternate striking first for future vacancies occurring thereafter during the term of this Agreement. If either party fails to cooperate in the striking process, the other party may select one of the nominees on the list and the other party will be bound by such selection.

Section 7. Hearing: Each arbitrator will designate a minimum of twelve (12) hearing dates per year, exclusive of the period July 15 through September 10 for non-expedited cases, for use by the parties to this Agreement. Upon being appointed, each arbitrator will, after consultation with the Notice Arbitrator, provide to the NFLPA and the Management Council specified hearing dates for such ensuing period, which process will be repeated on an annual basis thereafter. The parties will notify each arbitrator thirty (30) days in advance of which dates the following month are going to be used by the parties. The designated arbitrator will set the hearing on his next reserved date in the Club city unless the parties agree otherwise. If a grievance is set for hearing and the hearing date is then postponed by a party within thirty (30) days of the hearing date, the postponement fee of the arbitrator will be borne by the postponing party unless the arbitrator determines that the postponement was for good cause. Should good cause be found, the parties will share any postponement costs equally. If the arbitrator in question cannot reschedule the hearing within thirty (30) days of the postponed date, the case may be reassigned by the Notice Arbitrator to another panel member who has a hearing date available within the thirty (30) day period. At the hearing, the parties to the grievance and the NFLPA and Management Council will have the right to present, by testimony or otherwise, and subject to Section 5, any evidence relevant to the grievance. All hearings will be transcribed.

If a witness is unable to attend the hearing, the party offering the testimony shall inform the other party of the identity and unavailability of the witness to attend the hearing. At the hearing or within fourteen (14) days thereafter, the party offering the testimony of the unavailable witness must offer the other party two possible dates within the next forty-five (45) days to take the witness' testimony. The other party shall have the opportunity to choose the date. The record should be closed sixty (60) days after the hearing date unless mutually extended notwithstanding any party's failure to present post-hearing testimony within the above-mentioned time period. If a witness is unavailable to come to the hearing, the witness' testimony may be taken by telephone conference call if the parties agree. In cases where the amount claimed is less than $25,000, the parties may agree to hold the hearing by telephone conference call. If either party requests post-hearing briefs, the parties shall prepare and simultaneously submit briefs except in grievances involving non-suspension Club discipline where less than $25,000 is at issue, in which cases briefs will not be submitted. Briefs must be submitted to the arbitrator postmarked no later than sixty (60) days after receipt of the last transcript.

Section 8. Arbitrator's Decision and Award: The arbitrator will issue a written decision within thirty (30) days of the submission of briefs, but in no event shall he consider briefs filed by either party more than sixty (60) days after receipt of the last transcript, unless the parties agree otherwise. The decision of the arbitrator will constitute full, final and complete disposition of the grievance, and will be binding upon the player(s) and Club(s) involved and the parties to this Agreement; provided, however, that the arbitrator will not have the jurisdiction or authority: (a) to add to, subtract from, or alter in any way the provisions of this Agreement or any other applicable document; or (b) to grant any remedy other than a money award, an order of reinstatement, suspension without pay, a stay of suspension pending decision, a cease and desist order, a credit or benefit award under the Bert Bell/Pete Rozelle NFL Player Retirement Plan, or an order of compliance, with a specific term of this Agreement or any other applicable document, or an advisory opinion pursuant to Article XIII (Committees), Section 1(c). In the event the arbitrator finds liability on the part of the Club, he shall award interest beginning one year from the date of the last regular season game of the season of the grievance. The interest shall be calculated at the one-year Treasury Bill rate published in the

Wall Street Journal as of March 1 (or the next date published) of each year, and such rate shall apply to any interest awarded during each such subsequent twelve (12) month period.

Section 9. Time Limits: Each of the time limits set forth in this Article may be extended by mutual written agreement of the parties involved. If any grievance is not processed or resolved in accordance with the prescribed time limits within any step, unless an extension of time has been mutually agreed upon in writing, either the player, the NFLPA, the Club or the Management Council, as the case may be, after notifying the other party of its intent in writing, may proceed to the next step.

Section 10. Representation: In any hearing provided for in this Article, a player may be accompanied by counsel of his choice and/or a representative of the NFLPA. In any such hearing, a Club representative may be accompanied by counsel of his choice and/or a representative of the Management Council.

Section 11. Costs: All costs of arbitration, including the fees and expenses of the arbitrator and the transcript costs, will be borne equally between the parties. Notwithstanding the above, if the hearing occurs in the Club city and if the arbitrator finds liability on the part of the Club, the arbitrator shall award the player reasonable expenses incurred in traveling to and from his residence to the Club city and one night's lodging.

Section 12. Payment: If an award is made by the arbitrator, payment will be made within thirty (30) days of the receipt of the award to the player or jointly to the player and the NFLPA provided the player has given written authorization for such joint payment. The time limit for payment may be extended by mutual consent of the parties or by a finding of good cause for the extension by the arbitrator. Where payment is unduly delayed beyond thirty (30) days, interest will be assessed against the Club from the date of the decision. Interest shall be calculated at double the one-year Treasury Bill rate published in the Wall Street Journal as of March 1 (or next date published) of each year, and such rate shall apply to the interest awarded during each subsequent twelve (12) month period in lieu of continuation of any pre-award interest. The arbitrator shall retain jurisdiction of the case for the purpose of awarding post-hearing interest pursuant to this Section.

Section 13. Grievance Settlement Committee: A grievance settlement committee consisting of the Executive Director of the NFLPA and the Executive Vice President for Labor Relations of the NFL shall have the authority to resolve any grievance filed under this Article. This committee shall meet periodically to discuss and consider pending grievances. No evidence will be taken at such meetings, except parties involved in the grievance may be contacted to obtain information about their dispute. If the committee resolves any grievance by mutual agreement of the two members, such resolution will be made in writing and will constitute full, final and complete disposition of the grievance and will be binding upon the player(s) and the Club(s) involved and the parties to this Agreement. Consideration of any grievance by this committee shall not in any way delay its processing through the non-injury grievance procedure described in this Article, and no grievance may be resolved pursuant to this Section once an arbitration hearing has been convened pursuant to Section 7 hereof.

ARTICLE XXVII

IMPARTIAL ARBITRATOR

Section 1. Selection: The parties shall agree upon an Impartial Arbitrator who shall have exclusive jurisdiction to determine disputes that are specifically referred to the Impartial Arbitrator pursuant to the express terms of this Agreement.

Section 2. Scope of Authority: The powers of the Impartial Arbitrator and the rights of the parties in any proceeding before him or her shall be solely to determine disputes that are specifically referred to the Impartial Arbitrator pursuant to the express terms of this Agreement. In no event shall the Impartial Arbitrator have any authority to add to, subtract from, or alter in any way the provisions of this Agreement.

Section 3. Effect of Rulings: Rulings of the Impartial Arbitrator shall upon their issuance be final and binding upon all parties, except as expressly specified under this Agreement or as expressly agreed to among all parties.

Section 4. Discovery: In any of the disputes described in this Agreement over which the Impartial Arbitrator has authority, the Impartial Arbitrator shall, for good cause shown, grant reasonable and expedited discovery upon the application of any party where, and to the extent, he determines it is reasonable to do so and it is possible to do so within the time period provided for his determination. Such discovery may include the production of documents and the taking of depositions.

Section 5. Compensation of Impartial Arbitrator: The compensation to and costs of the Impartial Arbitrator in any proceeding brought pursuant to this Agreement shall be equally borne by the NFL and the NFLPA. In no event shall any party be liable for the attorneys' fees incurred in any such proceeding by any other party.

Section 6. Procedures: All matters in proceedings before the Impartial Arbitrator shall be heard and determined in an expedited manner. A proceeding may be commenced upon 48 hours written notice served upon the party against whom the proceeding is brought and the Impartial Arbitrator, and the arbitration, shall be deemed to have been commenced on the second business day after such notice was given. All such notices and all orders and notices issued and directed by the Impartial Arbitrator shall be served upon the NFL and the NFLPA, in addition to any counsel appearing for individual NFL players or individual Clubs. The NFL and the NFLPA shall have the right to participate in all such proceedings, and the NFLPA may appear in any proceedings on behalf of any NFL player who has given authority for such appearance.

Section 7. Selection of Impartial Arbitrator: In the event that the NFL and the NFLPA cannot agree on the identity of an Impartial Arbitrator, the parties agree to submit the issue to the President of the ABA who shall submit to the parties a list of eleven attorneys (none of whom shall have nor whose firm shall have represented within the past five years players, player representatives, clubs, or owners in any professional sport). If the parties cannot within thirty days of receipt of such list agree to the identity of the Impartial Arbitrator from among the names on such list, they shall alternatively strike names from said list, until only one name remains, and that person shall be the Impartial Arbitrator. The first strike shall be determined by a coin flip. The Impartial Arbitrator shall serve for a two-year term commencing on the date of entry of the order of appointment, unless the parties agree otherwise. The Impartial Arbitrator shall continue to serve for successive two-year terms unless notice to the contrary is given either by the NFL or the NFLPA. Such notice shall be given to the other party and the Impartial Arbitrator within the ninety days preceding the end of any term, but no later than thirty days prior to the end of such term. If necessary, a new Impartial Arbitrator shall be selected in accordance with the procedures of this Section. The NFL and NFLPA may dismiss the Impartial Arbitrator at any time and for any reason upon their mutual consent.

Mr. COBLE. [Presiding]. I thank you, Professor.

Mr. Arrington, you are recognized for 5 minutes.

TESTIMONY OF LaVAR ARRINGTON, LINEBACKER, NEW YORK GIANTS

Mr. ARRINGTON. First let me start by saying thanks for having this hearing, Chairman Cannon.

Mr. COBLE. Pull that mike closer, please.

Mr. ARRINGTON. I usually don't have a mike to speak into. Usually got to be loud.

But like I said, to reiterate, I'd first like to thank you all for having this hearing. The Chairman isn't available, Representative Lee isn't here, but thank you all for being here to hear my testimony.

I have my written statement and it's been presented and rather than read it I'll just, I guess, take a spin off of Mr. Karcher and what he basically said about the process of how things are conducted by the NFLPA, also as a current player in the NFL. No one in this situation with Carl Poston and myself, other than the representatives of the Washington Redskins, are intimate with the details of the situation like we are so I feel at liberty to be able to say that I have a firm understanding and a firm grasp on what transpired during the course of those contract negotiations.

With that being said, speaking from the heart, not reading my statement, I just basically feel like in this situation as a player when the player shows that he has a firm understanding of what is transpiring, what is going on, and something happens, then in that process I feel like as an employee for the NFLPA, which is an association to help us and for us, that our opinions should be valid, they should be heard, and ultimately they should be respected. And I don't think that a comment or comments being made about the player not understanding well enough or not being able to understand enough to represent himself enough to make a decision in terms of whether an agent or anything else that has to do with the player's personal affairs should be made by other individuals.

I think that once you take that from a player, it's on the fence of what do you represent. Are you just somebody who puts on pads and goes out on the field and give people entertainment for a couple hours on Sunday, or are we legitimate people in this society that make decisions? And I think in this situation that comes into play because I definitely on numerous occasions made sure that I communicated to the NFLPA that I did not have anything inside of me that would warrant me to take action against Carl Poston and what happened in the contract negotiation process.

Ultimately in that situation, I call it ordeal because now I'm a New York Giant I feel like as a result of it, and in that ordeal there was an agreement made between the Redskins and myself that there was no one at fault in this situation. And, to me, if there's an agreement, a settlement that no one is at fault, then how, and maybe—I'm not a law scholar or anything like that, I'm not a lawyer, but I just think that using common sense, how does a disciplinary act toward Carl Poston come about when there was a compromise that was agreed to and it was a no-fault compromise, but yet still out of that situation there's a disciplinary act being taken against Carl Poston.

For me, I feel like that's a violation of Carl Poston and his right to represent me as the athlete, but also it's a violation to me as an NFL player. This is my seventh year in the NFL, it's not my first or second, so I'd like to believe I understand a lot about what this game is about. I'm actually a well-versed historian on the game. I enjoy learning the game, I enjoy knowing about the players and different things like that.

So taking that all into consideration, I am a professional, avid professional in this game. I'm not someone who has come in and gone just as quick as I came in. So I have been in this game quite a while. I would say 7 years is quite a while. I think the average is 3 minutes.

Anyway, wrapping it up, I'd like to say hopefully you guys will take a look seriously as how what Mr. Karcher basically alluded to, is how this process is done, how the arbitration process is done within the NFL and with NFLPA and also present some rule-making decisions that kind of puts everybody on an equal playing field.

Thank you for your time.

[The prepared statement of Mr. Arrington follows:]

PREPARED STATEMENT OF LAVAR ARRINGTON

TESTIMONY OF LAVAR ARRINGTON,
NFL LINEBACKER OF THE NEW YORK GIANTS

MR. ARRINGTON. Thank you, Chairman Cannon. Thank you for holding this hearing today and for affording me the opportunity to testify. I would also like to thank Representative Sheila Jackson Lee both for her efforts to support this hearing and to allow me to testify before this Committee.

My comments will focus on the arbitration process of the National Football League Players Association ("NFLPA"), including its agent disciplinary proceedings.

I am testifying today on my behalf as an NFL player and as an active member of the NFLPA.

I am presently an NFL player with the New York Giants and was formerly an NFL player with the Washington Redskins for six seasons. The NFLPA's stated purpose is to act in the best interests of its players. Unfortunately, in my case, the NFLPA acted against my interest and continues to.

In 2004, I filed a grievance against the Washington Redskins which was settled on August 25, 2005 resulting in a no-fault, win-win resolution. However, that fully settled dispute with both parties acknowledging that no one was at fault became the basis of a disciplinary complaint filed against my agent, Carl Poston, by the NFLPA. This grievance against my agent was not well taken; was against my interest and should not have been filed.

After representing to Congress that a decision would be made by an arbitrator, the NFLPA proceeded in July of 2006 **to summarily suspended my agent for, in part, petitioning Congress** without providing him notice and without a hearing

I know the facts better than anyone as I have lived them. During the entire time that Mr. Poston has acted as my agent, Mr. Poston has acted honestly, appropriately, professionally and in my best interest. Specifically, Mr. Poston has acted with the highest level of professional integrity when he negotiated my December 26, 2003 player's contract with the Washington Redskins.

I have advised Gene Upshaw, Executive Director of the NFLPA, and Troy Vincent, President of the NFLPA, that the Disciplinary Complaint filed against Mr. Poston was not well founded and against my interests and that I was opposed to any proceeding brought against Mr. Poston on such basis. I requested that the Disciplinary Complaint be withdrawn, however, those requests have been ignored by the NFLPA.

The NFLPA denied Mr. Poston's and my request to attend the disciplinary hearing conducted by the NFLPA Committee on Agent Regulation and Discipline ("CARD") in Indianapolis, Indiana and, in doing so, denied Mr. Poston's right to due process and fundamental fairness. The NFLPA refused to disclose the identity of Mr. Poston's

accusers, refused to allow Mr. Poston to hear the accusations made against him, refused to allow Mr. Poston the opportunity to cross examine witnesses and refused to allow Mr. Poston an opportunity to present rebuttal evidence or testimony. Furthermore, it is my understanding that certain individual(s) at this hearing were not CARD members and that one of the CARD members that was present arrived late and did not read Mr. Poston's answer to the allegations set forth in the Disciplinary Complaint.

Mr. Poston deserves to have a neutral and unbiased arbitrator to determine whether any basis exists for the NFLPA to take away his livelihood. The NFLPA unilaterally selected the arbitrator in this matter who has consistently ruled in the NFLPA's favor with rare exceptions. Under the present NFLPA regulations regarding agent discipline, neither I nor my agent has the ability to suggest, object or offer alternatives to the selection of an arbitrator.

Furthermore, certain "facts" brought before this Committee by the NFLPA are not only unfounded but are not true. For example, on page 4 of a letter to this Committee from the NFLPA dated July 14, 2006, the NFLPA discusses the relevance of my forgiveness of certain alleged conduct of my agent. I have never been asked by Mr. Poston to forgive him, nor have I ever had the need to forgive him. I have always supported the decisions that he made and the actions that he took as my agent which relate to my career as a professional football player in the National Football League. To suggest that I forgave Mr. Poston for alleged conduct regarding a contract with the Washington Redskins is not only ludicrous but is a complete fabrication.

Finally, this Committee should further investigate the underlying reasons for the NFLPA's disciplinary actions taken against Mr. Poston which should be explored in future hearings, including my previous opting out of the NFLPA's group licensing agreement.

As a result of the NFLPA's actions against Mr. Poston and the arbitration related thereto, my abilities as player in the National Football League as well as my livelihood have been and will continue to be affected.

I would also like to join with Chairman Henry J. Hyde and Representative Sheila Jackson Lee, and request with a sense of fairness, that this Committee investigate the following issues that were included on page 2 and 3 of their June 30, 2006 joint letter to the NFLPA:

1. Require a verified complaint.

2. Changing the process by which the arbitrator is selected, to ensure that the arbitrator is neutral, impartial, and unbiased. Perhaps a system such as that used by other arbitration forums, such as the American Arbitration Association, would be more appropriate.

3. Requiring any arbitrator to make appropriate disclosures so that those who are parties to the arbitration can fairly evaluate whether the arbitrator does or does not have or does or does not appear to have an interest or potential for bias which would give rise to challenge or disqualification. That would include implementing a challenge/disqualification procedure.

4. Depending upon the severity of the sanctions sought, and particularly in circumstances when revocation of certification or suspension is sought, permitting discovery to be taken by each of the parties, which would typically include discovery from the parties as well a non-parties. Typically, that would include basic discovery tools such as depositions, document requests, and interrogatories.

5. Implementing procedures to prevent surprise at the arbitration, including identification, in advance of the arbitration, of witnesses and perhaps a brief summary of anticipated testimony, together with pre-hearing exchange of exhibits, as we often understand is engaged in other arbitration forums.

6. Providing the arbitrator with subpoena power, enforceable in a court of law, so that a person subject to potential suspension or revocation can compel others to testify.

7. Prohibiting *ex parte* communications with the arbitrators.

Also, I would request that Congress investigate the following additional issues:

1. Should the NFLPA have the sole authority to determine who will or will not be permitted to become an agent based upon an application with the rules being determined solely by the NFLPA?

2. The NFLPA present [or lack thereof] rule making process.

I request the opportunity to supplement my testimony. I also request that this Committee schedule additional hearings related to this matter.

Thank you for the opportunity to be a part of the record. If you or any other member of Congress wishes to obtain additional information or comments, please do not hesitate to contact me.

Very Truly Yours,

LaVar Arrington

Mr. COBLE. Mr. Arrington, thank you. You heard my comments about my late friend Mr. Leonard. I guess you knew him. For the record I want you all to know I come into this hearing with an open mind. Jerris Leonard was a very dear friend, and I know he felt very compassionately about this issue, but I am open-minded.

Now let me go informal here a minute. I think you and I need to go vote.

Mr. DELAHUNT. I was going to suggest, Mr. Chairman, that since you and I would probably cancel each other out, and that's just speculation on my part, of course. And I don't think it's a matter of substance, I think it's a procedural matter.

Mr. COBLE. I hate to miss the vote. He's on his way back now. So why don't we suspend very briefly, gentlemen. As soon as Mr. Cannon comes back, we'll resume. I'll go vote. And often times, as my friends from Massachusetts says, often times we do cancel each other out but we do so harmoniously, right?

Mr. DELAHUNT. Absolutely. We're pals.

Mr. COBLE. You all suspend for a moment and we'll resume as soon as he comes back.

[Brief recess.]

Mr. CANNON. [presiding.] We won't reconvene until the people who have serious questions return. So at ease or whatever we do.

Why don't we come back to order. Life is tough when you're big and handsome and done something worthy to be remembered. Thank you, Mr. Arrington, for your willingness to do those pictures. It's very kind of you. When we shift majority there's a lot of transition, especially on staff, and this may be the highlight of the week for some our folks here.

My understanding is that Mr. Arrington has given his testimony but we're still waiting to hear from Mr. Berthelsen. So we'll just take a moment while people sit down and get some order here. Then we'll proceed.

I apologize. We had a vote. I ran over early to vote, so I apologize for missing your testimony, both Mr. Karcher and Mr. Arrington. Those who were here will be on their way back, and Ms. Jackson Lee was really one of the principal reasons why we've done this hearing and she's here now. If others get back, fine; if not, we'll give her some time to do questioning and go from there.

Again, we appreciate your indulgence here. Our process is awkward, the day is awkward, but the issue is important.

Mr. Berthelsen, would you like to—we recognize you for 5 minutes.

TESTIMONY OF RICHARD BERTHELSEN, GENERAL COUNSEL, NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION

Mr. BERTHELSEN. Thank you, Mr. Chairman, Members of the Subcommittee. I'm very fortunate to have the opportunity to speak with you this morning. I appreciate the invitation. I wish I would have a little bit more than 5 minutes, but I will try to be as brief as I can.

Mr. CANNON. I'm sure you will have an opportunity to expound during the questioning period.

Mr. BERTHELSEN. Thank you very much.

A bit about myself. I have been an attorney employed full time by the National Football League Players Association since 1972, so I have been with the organization for over 34 years. We were the first sports union to implement an agent regulation program, and as general counsel of the union at the time it became my job to research this area and to see what was done in other industries and what was legal and what was not legal, and I read among other things a Supreme Court case by the name of H.A. Artists, which established and is still good law that unions not only have the right but the obligation to regulate agents who do individual salary bargaining for their members, and in fact the agent really is the agent for the union under that approach and under the law. And so I have always followed that.

It's been suggested that we use the law as a shield. Quite the contrary. I looked at the law to begin with and saw what was allowed and proposed a more liberal system to the board of player reps, but they are our governing body. They are the ones who implemented these regulations with several changes which they desired.

The format for the disciplinary nature of our program is first, last and always dependent on the actions of players like Mr. Arrington. Mr. Arrington is a player in a real sense. I'm here representing seven other players who happen to disagree with him about what happened in this case. We call it CARD, it's the Committee on Agent Regulation and Discipline. It includes Troy Vincent, our current President who plays for the Redskins; Trace Armstrong, a past President; Robert Smith, who played for the Vikings; Tony Richardson, who now plays for the Vikings; Brian Dawkins with the Eagles, Robert Porcher, retired, and Larry Izzo, who's with the Patriots.

That committee met about every discipline case that we have had. They are the ones who decide whether to issue a complaint, which is the first step, they are the ones to decide after the agent answers that complaint whether discipline is appropriate, and if they do, they propose discipline.

Unlike what Mr. Karcher said, they don't dictate the discipline, they don't determine it. They propose the discipline. And the next step in that process is that if the agent wishes to challenge the discipline as proposed by this committee of players, then it goes to arbitration. Our current arbitrator is Roger Kaplan.

This system has worked extremely well. It's worked for over 23 years. We have not had any complaints from any of the agents who we meet with on a periodic annual basis. We have a committee known as the Agent Advisory Committee. We meet with them every year. And contrary to what Mr. Karcher represents, we do not act unilaterally. This committee of agents has input on everything we do in the regulations. An example of that is this past year where we met with the committee as our board of reps had proposed the reduction in agents' fees and this group convinced our CARD committee not to do that and they carried the agents' message to the meeting and that got defeated.

But in this particular case, and it's unfortunate the subject of pending cases has been brought up, I do have to address the situation with Mr. Arrington. His agent left 6.5 million dollars out of a

contract that he negotiated for Mr. Arrington. He allowed Mr. Arrington to sign that contract without it being in it.

When our committee looked at this situation one of the first things they did was to talk to Mr. Arrington. He spoke to them for over 45 minutes by telephone conference call in their meeting. But they also looked at some realities in the NFL because every contract in this league depends on every other contract. When a player who's an all pro linebacker negotiates a deal, the next linebacker who's up for a deal says to the club I want the deal that he got or I want a better deal than him because I'm better than him. And if the last relevant contract is missing $6.5 million, that has an effect on that player and several other players and on the whole system. That's point number one.

Point number two, we have in our agreement something called the franchise player. That's a player who's an exception to being a free agent. The club can say you are our franchise player and our agreement says that the consequence of that is that that player gets the average of the top 5 salaries at his position in the league guaranteed for 1 year.

Mr. Arrington's contract, had it contained the terms it should have contained, would have caused that top 5 average to go up the year that this occurred, but because it was missing that money it had impact on franchise players in that category.

Thirdly, and just as importantly, it is true as Mr. Karcher says that we have been active in disciplining agents. Our committee has disciplined agents on frequent past occasions for gross negligence, and those agents in question have served their suspensions. If we say that in this case there's not going to be any action, what we're saying to the people who have been disciplined in the past and who went through the procedure is that we're going to treat you differently than someone else, and to have disparate treatment within a system is something that you cannot do under any stretch of principle or law.

So our committee as a group listened to Mr. Arrington but disagreed with him as to the appropriate action to be taken in this case.

One final point, if I could. Mr. Karcher said that we act unilaterally; that Mr. Poston was suspended immediately without a hearing. The reality is quite the contrary. Mr. Poston had three hearings scheduled, one in May, one in June and one in July. On all three occasions at the very last minute he happened to find circumstances, create circumstances or incurred circumstances which caused him to request a postponement.

Our committee looked very skeptically on what had happened because it appeared to them that he did not want to come to present his case or his defense. So it took this action, which it's allowed to under the regulations, to say your suspension goes into effect immediately. But what wasn't mentioned here was that in the same letter and in the same regulation that allows that it says the person affected is entitled to an expedited immediate hearing.

That was offered to Mr. Poston if he wanted to challenge our action. He chose not to. Although he technically appealed the immediate action of suspending him, his counsel chose not to pursue that appeal, not to challenge the committee's actions and its doubts

about Mr. Poston's constant postponements, and instead chose to go forward on the original appeal of the underlying case.

So Mr. Poston, although he's been offered since day one the right to come to Washington at his convenience to challenge what has been done, has deliberately chosen not to, and this is what our committee is having to deal with in this situation.

[The prepared statement of Mr. Berthelsen follows:]

PREPARED STATEMENT OF RICHARD A. BERTHELSEN

TESTIMONY OF
RICHARD A. BERTHELSEN
GENERAL COUNSEL
NFL PLAYERS ASSOCIATION

BEFORE

SUBCOMMITTEE ON COMMERCIAL AND
ADMINISTRATIVE LAW
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

"Oversight Hearing on the Arbitration Process of the National Football League Players Association"

ON

DECEMBER 7, 2006

Mr. Chairman, Members of the Subcommittee, I am Richard Berthelsen, General Counsel to the NFL Players Association ("NFLPA"). I appear today at the Subcommittee's invitation to discuss the arbitration procedure under the NFLPA's Regulations Governing Contract Advisors.

We are aware that some Members of Congress have expressed concern with respect to a specific pending arbitration proceeding concerning Mr. Carl Poston. Previously, the NFLPA addressed those concerns in writing and copies of that correspondence are submitted to the Subcommittee. I do not intend to address the specifics of that pending arbitration proceeding today. Rather, I will discuss the arbitration procedures as they are implemented under the NFLPA Regulations Governing Contract Advisors.

The NFLPA is the exclusive bargaining representative of NFL players, pursuant to § 9(a) of the National Labor Relation Act ("NLRA"), 29 U.S.C. § 159(a). See NFL Collective Bargaining Agreement ("CBA"), Art. VI, sec. 1. The NFLPA has, pursuant to the NLRA, the sole and exclusive right to bargain with NFL clubs with respect to all terms and conditions for the employment of NFL players. Nonetheless, the NFLPA has delegated certain of its rights to a limited number of sports agents (referred to as "Contract Advisors"), who are permitted to negotiate, on behalf of the NFLPA, the individual salaries of those players who select them for that purpose. Because, as explained hereafter, the authority of an NFLPA agent to negotiate on behalf of any NFL player derives from the federal labor law authority delegated to the agent by the NFLPA, it is well settled that the NFLPA (and other players' unions) has the absolute right to appoint its agents and to regulate the conduct of such agents as the union sees fit.

The NFLPA takes its responsibility to promote the interests of NFL players seriously and recently agreed with the NFL on an historic labor agreement. The agreement guarantees significant increases in the overall compensation and benefits received by all NFL players and guarantees labor peace in professional football for many years to come.

NFLPA Agent Regulations

In order to ensure that NFLPA agents fulfill their delegated responsibilities to the satisfaction of the Board of Representatives of the NFLPA, that Board

promulgated a comprehensive set of regulations ("Agent Regulations") governing the conduct of NFLPA agents. A copy of the Regulations has been submitted to the Subcommittee. As a condition to receiving delegated authority from the NFLPA, the agents agree, in writing, to be bound by the NFLPA Agent Regulations. Indeed, all NFLPA agents execute an "Application For Certification As An NFLPA Contract Advisor." That Application states: "In submitting this Application, I agree to comply with and be bound by the [Agent] Regulations." The Application makes clear that the terms therein "shall constitute a contract between the NFLPA and myself." This is referred to herein as the "NFLPA Agent Contract." The Agent Regulations are extremely broad and cover all facets of the agent's duties. See Agent Regulations § 1(B).[1]

To become a Contract Advisor and be able to receive the delegated authority from the NFLPA, to represent individual players in salary negotiations with NFL Clubs, one must undergo a background examination, meet educational requirements, engage in continuing education, and agree to be bound by the NFLPA's Regulations Governing Contract Advisors. The NFLPA's Regulations have been repeatedly upheld by the federal courts. See Black v. Nat'l Football League Players Ass'n, 87 F.Supp. 2d 1 (D.D.C. 2000); Poston v. Nat'l Football League Players Ass'n, 2002 WL 31190142 (E.D.Va. Aug. 26, 2002).

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[1] The Agent Regulations set forth a "Code of Conduct" which identifies twenty affirmative responsibilities, and twenty-nine explicitly prohibited acts. See Agent Regulations § 3. The Agent Regulations also direct the agent to use a pre-printed form to govern his/her relationship with the player-client, and caps the agent's fees. See Agent Regulations § 4.

Most importantly with reference to Arbitration Procedures, the Agent Regulations set forth, at Section 6, a comprehensive regime for disciplining agents who violate the Regulations. This regime is specifically incorporated into the NFLPA Agent Contract ("the exclusive method for challenging any such [disciplinary] action is through the procedure set forth in the [Agent] Regulations"). The procedure for disciplining agents under the Agent Regulations is as follows: The President of the NFLPA appoints a Committee on Agent Regulation and Discipline ("CARD"), consisting of active or retired players. CARD decides whether to initiate disciplinary action. If CARD decides that discipline is appropriate, it may initiate a disciplinary proceeding by filing a written complaint. See Agent Regulations § 6(B). The agent is permitted to file an answer, and to present a defense in writing. See Agent Regulations § 6(C). The Agent Regulations do not require CARD to hold any hearing. Rather, within ninety days after receiving the agent's answer, CARD must advise the agent "of the nature of the discipline, if any, which the Committee proposes to impose." See Agent Regulations § 6(D) (emphasis added). That is, CARD does not impose any discipline itself; rather, it merely proposes discipline. If the agent agrees with the discipline, the agent can accept CARD's proposal. See Agent Regulations § 6(E) ("The failure of Contract Advisor to file a timely appeal shall be deemed to constitute an acceptance of the discipline which shall then be promptly imposed"). Conversely, if the agent contests CARD's proposed discipline, then:

> The Contract Advisor against whom a Complaint has been filed under this Section may appeal [CARD's] proposed disciplinary action to the outside Arbitrator by filing a written Notice of Appeal with the Arbitrator within twenty (20) days following Contract Advisor's receipt of notification of the proposed disciplinary action.

See Agent Regulations § 6(E). If the agent rejects CARD's proposed discipline by filing an appeal to the arbitrator, there is an "automatic stay of any disciplinary action" in most circumstances. Id.

Section 6(F) of the Agent Regulations makes clear that the arbitrator who will decide the case "shall be the same Arbitrator selected to serve pursuant to Section 5." Section 5 of the Agent Regulations, in turn, promulgates rules pertaining to arbitration generally.[2] Section 5 makes clear that "[t]his arbitration procedure shall be the exclusive method for resolving any and all disputes that may arise" (emphasis added). And Section 5(D) of the Agent Regulations permits the NFLPA to select the arbitrator: "The NFLPA shall select a skilled and experienced person to serve as the outside impartial Arbitrator for all cases arising hereunder."

NFLPA Authority To Select Arbitrator

As noted, the NFLPA has the exclusive authority under § 9(a) of the NLRA to engage in employment bargaining with NFL Clubs on behalf of all NFL players. As a result of this exclusive authority, "player agents are permitted to negotiate

[2] The Agent Regulations provide for arbitrations between players and agents, between agents and the NFLPA, and between agents. Section 5 sets forth uniform rules for these arbitrations, subject to the more specific rules promulgated in other sections addressing each specific kind of dispute.

player contracts in the NFL only because the NFLPA has designated a portion of its exclusive representational authority to them." White v. Nat'l Football League, 92 F. Supp. 2d 918, 924 (D. Minn. 2000) (emphasis added). And, because the NFLPA has the sole authority under federal law to represent its bargaining unit, it has total discretion in determining whether to delegate its bargaining authority, and to whom. See In re David Dunn, CV 05-1000, (C.D. Cal. March 1, 2006) ("Section 9(a) of the National Labor Relations Act provides that the NFLPA's Collective Bargaining Agreement gives the NFLPA, as the exclusive bargaining representative of NFL players, sole discretion in choosing its agents") (emphasis added). As stated by one court regarding the similar labor law authority of the National Basketball Players Association ("NBPA") to delegate authority to agents:

> As the exclusive representative for all of the NBA players, 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. NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 180, 87 S.Ct. 2001, 2006, 18 L.Ed.2d 1123 (1967) ... Under the NLRA the employer - the NBA member team - may not bargain with any agent other than one designated by the union and must bargain with the agent chosen by the union. General Electric Co. v. NLRB, 412 F.2d 512, 517 (2nd Cir.1969); Emporium Capwell Co. v. Western Addition Community Organization, 420 U.S. 50, 63-69, 95 S.Ct. 977, 985-88, 43 L.Ed.2d 12 (1975) (Union may forbid employees or any other agent chosen by individual employees, from bargaining separately with the employer over any issue). A union may delegate some of its exclusive representational authority on terms that serve union purposes, as the NBPA has done here. The decision whether, to what extent and

> to whom to delegate that authority lies solely with the union.

Collins v. Nat'l Basketball Players Ass'n, 850 F. Supp. 1468, 1475 (D. Colo. 1991), aff'd 976 F.2d 740 (10th Cir. 1992) (italics in original) (underline added).

In accordance with its express powers under federal labor law to determine "whether, to what extent and to whom to delegate" its authority to negotiate individual employment contracts on behalf of NFL players, the NFLPA has established comprehensive regulations governing the conduct of its agents. Those regulations could have provided that the NFLPA reserved the right to decertify any agent for any reason or no reason at all. But the regulations are generous. They provide a comprehensive mechanism for CARD to consider whether to propose any discipline, and the agent is entitled to a full labor arbitration before an arbitrator bound by the ethical rules of the American Arbitration Association ("AAA"), in which CARD has the burden of proof and the agent is entitled to present evidence, before any discipline is imposed. The fairness of this process cannot seriously be questioned.

Under federal labor law, the unilateral appointment of an arbitrator is commonplace and perfectly lawful. See Aviall, Inc. v. Ryder System, Inc., 110 F.3d 892, 895 (2d Cir. 1997) (one party may select the arbitrator if the parties agreed to that arrangement); see also, Poston v. NFLPA, 2002 WL 31190142 (E.D. Va. Aug. 26, 2002). Black v. Nat'l Football League Players Ass'n, 87 F.Supp. 2d 1 (D.D.C. 2000), is on all fours with this case. There, William Black, a

sports agent like Mr. Poston, sued the NFLPA for proposing to revoke Mr. Black's contract advisor certification for a minimum of three years. The court explained:

> Mr. Black admits that he was aware of and freely agreed to the arbitration terms contained in the regulations, and he makes no allegation about infirmities in the drafting of the regulations. As Aviall makes clear, it is of no moment that Mr. Black did not have a hand in the structuring of the arbitration process. See Aviall, 100 F.3d at 895. An NFL-selected arbitrator may have an incentive to appease his or her employer, but "[t]he parties to an arbitration choose their method of dispute resolution, and can ask no more impartiality than inheres in the method they have chosen."

Black, 87 F.Supp. 2d at 6 (internal citation omitted) (emphasis added).

Nat'l Hockey League Players Ass'n v. Bettman, 1994 WL 738835 (S.D.N.Y. Nov. 9, 1994), is also directly on point. There, the National Hockey League Players Association sued the National Hockey League and its President and Commissioner, Gary B. Bettman, challenging the validity of two arbitral decisions by Mr. Bettman on the basis that he was inherently biased against the players. The Court rejected plaintiffs' "inherent bias" argument, based on the fact that the Players Association had agreed in the NHL CBA to have the NHL Commissioner serve as arbitrator. Bettman, 1994 WL 738835 at *13 ("These limitations on the power of the federal courts to interfere with arbitration awards based on the asserted arbitral bias are still more pronounced when the parties have agreed to a particular arbitrator or a specified method of selection that will predictably lead to arbitration by individuals with ties to one side of the controversy").

Alexander v. Minn. Vikings Football Club LLC, 649 N.W.2d 464 (Minn. Ct. App. 2002), provides a further illustration of this principle. There, NFL coaches brought a declaratory judgment action to remove the NFL Commissioner, Paul Tagliabue, as arbitrator of their disputes, arguing that it was "unfair" to allow the league to select its own Commissioner as arbitrator. The court disagreed:

> [the] appellants did not ask the district court to invalidate the arbitration clauses; they asked the district court to reform those clauses, that is, to remove Tagliabue as the arbitrator and to appoint another arbitrator ... appellants cite no legal authority supporting their proposition that the district court may reform the clauses to replace Tagliabue.

Alexander, 649 N.W.2d at 967-68 (internal citation omitted).[3]

In Poston v. Nat'l Football League Players Ass'n, 2002 WL 31190142 (E.D.Va. Aug. 26, 2002), Mr. Poston brought suit to vacate Arbitrator Kaplan's award, which exonerated Mr. Poston's brother of any wrongdoing and imposed discipline on Mr. Poston to a much lesser extent than proposed by CARD. Mr. Poston argued that Arbitrator Kaplan was not neutral because he was selected by the NFLPA. Mr. Poston also argued that Arbitrator Kaplan is "regularly used by the NFLPA... [so] he is evidently partial toward the NFLPA." Poston, 2002 WL 31190142, at *2. The District Court rejected these arguments, holding that Mr. Poston failed to establish Arbitrator Kaplan's partiality. Id. at *3-4. The court also held that the award could not be vacated on the basis of bias because Mr.

[3] See also, Madich v. North Star P'ship, 450 N.W.2d 173 (Minn. Ct. App. 1990) (NHL President could serve as arbitrator in dispute between player and club because that is what the parties agreed to in the CBA); Langevin v. Nassau Sports, 1991 WL 222437 (Minn. Ct. App. Nov. 5, 1991) (same).

Poston agreed to adhere to the Agent Regulations that permitted the NFLPA to appoint the arbitrator. Furthermore, the Court ruled that there was no evidence that Arbitrator Kaplan was biased, "particularly in light of the fact that he also works with both the National Basketball Association and Major League Baseball." Id. at *3.

As the history under its Regulations has shown, the NFLPA does not take lightly its obligation to select "a skilled and experienced person to serve as the outside impartial arbitrator" to decide agent cases. The first person chosen to serve in this capacity was former FMCS Director Ken Moffet. Mr. Moffet was succeeded by former Senator John Culver of Iowa. Arbitrator Roger Kaplan has served as the agent system arbitrator since 1994.

Mr. Kaplan, the longest tenured of the three, is a member of the National Academy of Arbitrators (and thereby bound by its Canons of Ethics) and has been performing arbitration work for over 30 years in both the public and private sectors. His credentials as an arbitrator are impeccable, and his vast experience in professional sports has included appointments to serve in professional baseball, professional basketball, and professional hockey. He has a highly specialized knowledge of the relationships between players and agents and between agents and the NFLPA.

Thanks in part to Mr. Kaplan and Messrs. Moffet and Culver, before him, the NFLPA system has served the parties well by keeping the process

inexpensive and efficient for both agents and players, while avoiding the procedural complexities and delay inherent in the court system.

Indeed, Mr. Kaplan has decided hundreds of player-agent disputes over fees and other matters, and has ruled in favor of agents far more often than not (including cases involving Carl Poston and his brother and business partner, Kevin Poston). On the disciplinary side, the record also shows that Mr. Kaplan has reduced or vacated discipline proposed by CARD more often than he has sustained it, to the obvious benefit of the agents involved. This is exemplified by his decision in a prior disciplinary case against the Postons, cited above, where he vacated the discipline against Kevin Poston and reduced Carl Poston's reprimand and fine to a reprimand.

Conclusion

The NFLPA believes that individual contract negotiations serve the interests of its members. Therefore, like sports unions in the NBA, NHL and Major League Baseball, the NFLPA has implemented an agent regulation system since 1983. It is patterned after the system in the entertainment industry and expressly endorsed by the Supreme Court in 1981, H.A. Artists & Assoc. v. Actors Equity Ass'n., 451 U.S. 704 (1981).

Finally, it bears noting that the National Football League and its Clubs recognize that the NFLPA regulates the conduct of agents who represent players' individual contract negotiations with the Clubs. The Clubs and the NFL Management Council, pursuant to the 1993 Collective Bargaining Agreement

("CBA"), agree that they are prohibited from engaging in individual contract negotiations with any agent not duly certified by the NFLPA as the exclusive bargaining agent.

The CBA further provides that the NFLPA shall have sole and exclusive authority to determine the number of agents to be certified, and the grounds for withdrawing or denying certification of an agent.

Mr. Chairman, I shall be pleased to respond to questions by the Subcommittee on the NFLPA arbitration system.

Testimony of
Richard A. Berthelsen, Esq.
NFL Players Association
December 7, 2006

ATTACHMENT

July 14, 2006

BY HAND AND FIRST-CLASS MAIL

Honorable Henry J. Hyde
Chairman, Committee on International Relations
U.S. House of Representatives
2110 Rayburn House Office Building
Washington, D.C. 20515-1306

NFL Players Association
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Honorable Sheila Jackson Lee
U.S. House of Representatives
2435 Rayburn House Office Building
Washington, DC 20515-4318

Dear Chairman Hyde and Representative Jackson Lee:

Your letter inquiring about the pending discipline of Carl Poston, an agent certified by the National Football League Players Association ("NFLPA") to represent NFL players in individual salary negotiations, has been carefully reviewed with our attorneys. This response discusses the facts and circumstances of the matter as well as the NFLPA's system of agent regulation.

Pursuant to Section 9(a) the National Labor Relations Act, 29 U.S.C. § 159(a), the NFLPA is the sole, exclusive bargaining agent of players in the NFL. The NFLPA has always promoted the interests of NFL players, and takes this responsibility seriously. Recently, the NFLPA and the NFL agreed to an historic labor agreement that guarantees labor peace in professional football for many years to come, with significant increases in the overall compensation and benefits received by all NFL players.

As the NLRB-certified bargaining representative of all football players in the National Football League ("NFL"), the NFLPA could insist, under established principles of federal labor law, on exclusively bargaining all terms and conditions of employment for all NFL players, and it could exclude agents from representing players in individual contract negotiations with NFL Clubs. *J.I. Case Co. v. National Labor Relations Board*, 321 U.S. 332 (1944). The NFLPA nevertheless believes that individual contract negotiations serve the interests of its members. To that end, the NFLPA, like the unions in the NBA, NHL and Major League Baseball, has utilized an agent-regulation system since 1983 that is patterned after the system in the entertainment industry that the Supreme Court expressly endorsed in *H.A.Artists & Assoc. v. Actors Equity Ass'n*, 451 U.S. 704 (1981).

Specifically, the NFLPA, in its sole discretion, delegates to a select group of individuals, known as "Contract Advisors," the right to represent individual players in individual salary negotiations with NFL Clubs. To become a Contract Advisor and be able to receive this delegated authority from the NFLPA, one must undergo a background examination, meet educational requirements, engage in continuing education, and agree to be bound by the NFLPA's Regulations Governing Contract Advisors (the "Regulations"). The NFLPA's Regulations have been repeatedly upheld by the federal courts. *See Black v. Nat'l Football League Players Ass'n*, 87 F.Supp. 2d 1 (D.D.C. 2000); *Poston v. Nat'l Football League Players Ass'n*, 2002 WL 31190142 (E.D.Va. Aug. 26, 2002).

Mr. Poston is a Contract Advisor and has agreed in writing to be bound by the NFLPA's Regulations. The Regulations, which were voluntarily adopted by the NFLPA, could have provided the NFLPA with the authority to decertify or suspend Contract Advisors for any reason or no reason at all, and without any hearing. But, in the spirit of fairness underlying the role of the NFLPA and labor unions generally, the Regulations are generous to the Contract Advisor by providing for a full evidentiary hearing before an arbitrator, in which the NFLPA has the burden of proof, before any discipline is imposed.

The NFLPA has selected Roger Kaplan as the arbitrator to handle cases arising under the Regulations. Arbitrator Kaplan has been a professional arbitrator since 1981 and is on the National Labor Panel of the American Arbitration Association, the Federal Mediation & Conciliation Service, and the National Mediation Board, and he is a Member of the National Academy of Arbitrators. He has heard cases arising under the Regulations since 1994, and he has served as an arbitrator involving player-club disputes arising under collective bargaining agreements in Major League Baseball, the National Basketball Association, and professional hockey.

The NFLPA's Committee on Agent Regulation and Discipline ("CARD"), in accordance with the Regulations, commenced a disciplinary proceeding against Mr. Poston in connection with his representation of an NFL player, LaVar Arrington, who is part of the NFLPA's bargaining group. Mr. Poston has admitted to the central allegations of wrongdoing made against him, namely, that he signed, initialed and certified Mr. Arrington's player contract with the Washington Redskins without reading it, only to later discover that it was missing $6.5 million in compensation to Mr. Arrington. Mr. Poston thereafter concealed his mistake from both Mr. Arrington and the NFLPA, while he secretly tried to resolve the issue with the Redskins. In response, CARD proposed that Mr. Poston be suspended for a period of two years, after which he would automatically be able to resume his role as a Contract Advisor. In making its decision, the Committee considered the fact that Mr. Poston had also been disciplined on one prior occasion, and was therefore a repeat offender under the Regulations.

Pursuant to the Regulations, Mr. Poston appealed the NFLPA's proposed suspension by commencing the arbitration proceedings now in issue. (Under the Regulations, except in extraordinary circumstances, no discipline can be imposed except by an arbitrator, and hence, Mr. Poston continues to retain his privileges as a Contract Advisor while the arbitration is pending.) Thereafter, Mr. Poston filed an action in federal court in the Southern District of New York to stay the arbitration he himself commenced. In the federal action, Mr. Poston made various claims regarding the NFLPA's disciplinary process, including that it was unfair for the arbitration to proceed in front of an arbitrator selected by the NFLPA. The Honorable Barbara S. Jones, U.S.D.J., rejected *all* of Mr. Poston's claims in a decision rendered in May of this year (a copy of the Order is attached hereto as Exh. A).

This was not the first time Mr. Poston *unsuccessfully* tried to forestall the application of the NFLPA disciplinary process against him by filing meritless litigation against the NFLPA and its agent Regulations. In *Poston v. Nat'l Football League Players Ass'n*, 2002 WL 31190142 (E.D.Va. Aug. 26, 2002), Mr. Poston brought suit to vacate the arbitrator's award in the prior disciplinary case against him and his brother. In that case, our Disciplinary Committee proved that an employee working under the direction of Carl Poston arranged for the purchase of an airline ticket for Laveranues Coles, then a player at Florida State University, in violation of NCAA rules. As a direct result, Coles was suspended from his next game, and the Committee held Mr. Poston accountable for his employee's actions by proposing a letter of reprimand and fine against Poston and his brother, who were the two principals in the sports agency in question. After hearing the evidence in the case, the Arbitrator, Roger Kaplan (the same arbitrator who is presiding over Mr. Poston's current case), exonerated Mr. Poston's brother of any wrongdoing and imposed discipline on Carl Poston to a lesser extent than proposed by CARD. Mr. Poston nonetheless challenged the result of the arbitration arguing, just as he did before Judge Jones, that Arbitrator Kaplan was not neutral because he was selected by the NFLPA. The District Court summarily rejected Mr. Poston's arguments.

Another local federal court had previously reached the same result. In *Black v. Nat'l Football League Players Ass'n*, 87 F.Supp. 2d 1 (D.D.C. 2000), William "Tank" Black, a sports agent like Mr.

Poston, sued the NFLPA for proposing to revoke his contract advisor certification for a minimum of three years. In Mr. Black's case, the arbitrator was to be Arbitrator Kaplan, the same arbitrator selected to decide Mr. Poston's recently-commenced arbitration. Mr. Black argued, just as Mr. Poston did in his prior case, that Arbitrator Kaplan was biased because he was selected by the NFLPA, and should therefore be removed. Relying on well established principles of federal law, the court soundly rejected this argument. *Black*, 87 F.Supp. 2d at 6.

When Congress passed the National Labor Relations Act and the Federal Arbitration Act, it delegated to the judicial branch responsibility for resolving private disputes that touch upon the very issues raised by Mr. Poston. Mr. Poston has availed himself of all the remedies Congress provides for him, including filing an action in federal court. Mr. Poston, pursuant to Section 10 of the Federal Arbitration Act, also will have the opportunity, should he lose the arbitration, to petition the federal court to vacate any arbitral award. In the meantime, Mr. Poston will enjoy all the rights afforded to him under the NFLPA's Regulations, as well as the protections Congress affords him in the Federal Arbitration Act.

In addition, we do not believe that the NFLPA's regulatory system raises, or can possibly raise, any antitrust concerns. In Section 6 of the Clayton Act, 15 U.S.C. § 17, Congress specifically exempted labor unions from suits under the federal antitrust laws. This conclusion is sound, since the entire purpose of unions is to permit them to act collectively on behalf of their members, with any issues of union conduct to be addressed by the exercise of union democracy and the extensive federal regulatory structure administered by the NLRB and the U.S. Department of Labor.

With the foregoing in mind, we will address each of the concerns raised in your letter. With respect to the six numbered paragraphs on the first and second pages of your letter, we note the following:

1. The right of a union representing athletes to determine who can serve as an agent is well settled under federal law. *See e.g., White v. Nat'l Football League*, 92 F. Supp. 2d 918, 924 (D. Minn. 2000). Indeed, the NFLPA has total discretion in determining whether to delegate its bargaining authority, and to whom. *See In re David Dunn*, CV 05-1000, (C.D. Cal. March 1, 2006) (Slip Op., attached as Exh. B) ("Section 9(a) of the National Labor Relations Act provides that the NFLPA's Collective Bargaining Agreement gives the NFLPA, as the exclusive bargaining representative of NFL players, *sole discretion in choosing its agents*") (emphasis added). As stated by a federal appeals court in articulating the similar labor law authority of the National Basketball Players Association ("NBPA") to delegate authority to agents:

> As the exclusive representative for all of the NBA players, 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. *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180, 87 S.Ct. 2001, 2006, 18 L.Ed.2d 1123 (1967) ... Under the NLRA the employer - the NBA member team - may not bargain with any agent other than one designated by the union and must bargain with the agent chosen by the union. *General Electric Co. v. NLRB*, 412 F.2d 512, 517 (2nd Cir.1969); *Emporium Capwell Co. v. Western Addition Community Organization*, 420 U.S. 50, 63-69, 95 S.Ct. 977, 985-88, 43 L.Ed.2d 12 (1975) (Union may forbid employees or any other agent chosen by individual employees, from bargaining separately with the employer over any issue). A union may delegate some of its exclusive representational authority on terms that serve union purposes, as the NBPA has done here. The

> decision whether, to what extent and to whom to delegate that authority lies solely with the union.

Collins v. Nat'l Basketball Players Ass'n, 850 F. Supp. 1468, 1475 (D. Colo. 1991), *aff'd* 976 F.2d 740 (10th Cir. 1992) (italics in original) (underline added).

2. Mr. Arrington has advised CARD that he did not discharge Mr. Poston because he, Mr. Poston, "admitted to his mistake." While Mr. Arrington's willingness to forgive is notable, it is not the issue. Indeed, the willingness of individual players to forgive or tolerate misconduct by agents is one of the main reasons the NFLPA's broad supervisory authority over agents is absolutely essential. The NFLPA has an obligation to ensure that its certified Contract Advisors are fit to represent *all* of its members. Mr. Poston has admitted, both to CARD and Mr. Arrington, that he certified a player contract without reading it -- a mistake that cost Mr. Arrington $6.5 million and breached his fiduciary obligations to him and to players generally. Mr. Arrington is not Mr. Poston's only client. Should Mr. Poston make a similar mistake in the future, the aggrieved player would rightly demand to know why Mr. Poston was permitted to continue to serve as an agent despite his admitted egregious conduct. The NFLPA must act to protect the interests of *all* of its members, and no one member has the right to "veto" the union's proposed discipline of an agent. Players can often be led astray, and that is precisely why the NFLPA's authority in this area is fundamental to protecting NFL players.[1] Indeed, agents such as Mr. Poston are agents of the NFLPA, first and foremost, as shown by the fact that no one can represent NFL players without the express authorization of the NFLPA consistent with its Regulations.[2]

3. It is established law, especially in the field of professional sports, that arbitration agreements permitting one side to chose the arbitrator are valid, subject to any party's right, under Section 10 of the FAA, to challenge the award on the basis of bias. *See Aviall, Inc. v. Ryder System, Inc.*, 110 F.3d 892, 895 (2d Cir. 1997); *Nat'l Hockey League Players Ass'n v. Bettman*, 1994 WL 738835 (S.D.N.Y. Nov. 9, 1994); *Alexander v. Minn. Vikings Football Club LLC*, 649 N.W.2d 464 (Minn. Ct. App. 2002); *Poston v. Nat'l Football League Players Ass'n*, 2002 WL 31190142 (E.D.Va. Aug. 26, 2002); *Black v. Nat'l Football League Players Ass'n*, 87 F.Supp. 2d 1 (D.D.C. 2000). As for the payment of the arbitrator's fees, the union would be happy to share costs with the agents, but the union has undertaken to pay all such fees at the request of the agents, acting through an advisory committee. The NFLPA would not oppose an offer from Mr. Poston to have Mr. Poston pay half of Arbitrator Kaplan's fees in this case.

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1 As the District Court in the *Collins* case noted, sports unions regulate the conduct of agents because there is a history of agents leading players astray and taking advantage of them. *See Collins v. National Basketball Players Association*, 850 F. Supp. 1468, 1471 (D. Colo. 1991) ("players complained that the agents imposed high and non-uniform fees for negotiation services, insisted on the execution of open-ended powers of attorney giving the agents broad powers over players' professional and financial decisions, failed to keep players apprised of the status of negotiations with NBA teams, failed to submit itemized bills for fees and services, and, in some cases, had conflicts of interest arising out of representing coaches and/or general managers of NBA teams as well as players. Many players believed they were bound by contract not to dismiss their agents regardless of dissatisfaction with their services and fees, because the agents had insisted on the execution of long-term agreements. Some agents offered money and other inducements to players, their families and coaches to obtain player clients. In response to these abuses, the NBPA established the Regulations, a comprehensive system of agent certification and regulation, to insure that players would receive agent services that meet minimum standards of quality ...").

2 This is quite analogous, in fact, to disciplinary procedures against attorneys by the bar, where the proposed suspension of an attorney does not depend upon the complaint of a client. It is instead the protection of all other existing or potential clients that is at stake.

4. As set forth above, Arbitrator Kaplan is an experienced arbitrator, and the courts have uniformly upheld arbitration agreements where one side is authorized to select an arbitrator, subject to each party's rights under Section 10 of the FAA to challenge the award.

5. The mention of Mr. Poston's race in your letter is unfortunate. The NFLPA does not discriminate against African Americans. I, a majority of our Board of Player Representatives, and a majority of the Committee on Agent Regulation and Discipline, are African Americans. The NFLPA cannot create exceptions to its procedures and programs based upon race or ethnicity because to do so could violate the law. Further, ignoring the misconduct of an African American agent because of his race will not further our common goal of eradicating discrimination from our society. In addition, while Mr. Poston may have been successful in obtaining contracts for many of his clients, he has not increased the income of NFL players. Rather, the amount of money paid to all players is negotiated by the NFLPA and NFL at the bargaining table. The NFLPA has secured approximately $3.2 billion per year to be paid to players under the most recently negotiated extension of the CBA. Mr. Poston, like other agents, will try to obtain the biggest piece of that pie for his clients, but the salaries paid to NFL players globally is not determined by agents, but by what the NFLPA can obtain at the bargaining table. The NFLPA has been effective and responsible in its role as the exclusive bargaining representative for all NFL players, and Mr. Poston's role in the process is limited and should be kept in perspective.

With respect to the seven numbered paragraphs on the second and third pages of your letter, we note the following:

1. The Regulations do require that disciplinary complaints issued by CARD be based upon verified information. Here, CARD's complaint was based upon information which Poston himself verified. Mr. Poston has admitted to engaging in the conduct alleged in the complaint. The question of "verification" is therefore not an issue.

2. We believe that Arbitrator Kaplan is neutral, impartial and unbiased. Indeed, he has ruled partially in favor of Mr. Poston, and his brother Kevin Poston, in an earlier disciplinary matter, eliminating any fine against Mr. Poston and dismissing the complaint against Kevin Poston altogether. Mr. Kaplan has also ruled in favor of Mr. Poston in fee disputes with his player-clients. Federal courts have upheld Arbitrator Kaplan's decisions, finding that he is not at all biased. Further, it is important to have a single arbitrator, to ensure that discipline is uniform and that the Arbitrator applies what the Supreme Court has called the "law of the shop." As stated last year by one court in a case involving arbitrations in the NBA:

> The ablest judge cannot be expected to bring the same experience and competence to bear upon the determination of a grievance, because he cannot be similarly informed ... parties have bargained for a decision by an arbitrator because they thus have the benefit of his creativity and expertise that are in no small measure due to his knowledge of and familiarity with the industry and shop practices constituting the environment ...

Nat'l Basketball Ass'n v. Nat'l Basketball Players Ass'n, 2005 WL 22869, at *7 (S.D.N.Y. Jan. 3, 2005) (citations omitted). A system involving a number of different arbitrators who have little or no experience in this very unique field would be cumbersome and lead to inconsistent discipline.

3. This is addressed in "3" above.

4. The Regulations do not specifically address discovery, but Arbitrator Kaplan typically permits document discovery, consistent with the expedited nature of arbitration. Moreover, Mr. Poston has not sought any discovery in this case under any appropriate procedures, apparently preferring instead to focus his resources on delaying the application of the NFLPA's disciplinary process against him through meritless federal lawsuits, and urging members of Congress to take actions which would amount to an amendment of the NLRA, the Clayton Act and the FAA to help his case. In any event, it is not correct that discovery is typically available in arbitration. Indeed, the American Arbitration Association ("AAA") has over a dozen different sets of arbitration rules, and many, if not most of them, such as the Labor Arbitration Rules, provide for no discovery at all. Other AAA rules, such as the Employment Dispute Rules, permit discovery only at the direction of the arbitrator. We therefore believe that Arbitrator's Kaplan's conduct of arbitrations, as well as CARD's Regulations, provide at least as much discovery and due process as that afforded elsewhere. Moreover, it must be recognized that arbitration is typically seen (and therefore encouraged by the courts) as a less expensive and less time-consuming alternative to litigation in the state or federal courts. As recognized by the U.S. Court of Appeals for the Fourth Circuit in a highly relevant case (this arbitration is being conducted in Virginia), parties to arbitration relinquish "certain procedural niceties" to promote the "speed, efficiency and reduction of litigation expenses" that are the "hallmarks" of arbitration. *Comsat Corp. v. National Science Foundation*, 190 F.3d 269, 276 (4th Cir. 1999).

5. There are no surprises at CARD hearings. Typically, as in Mr. Poston's case, CARD's complaint contains a detailed account of the facts at issue, and a precise description of the alleged misconduct and the particular Regulations that the agent is alleged to have breached. Moreover, the types of pre-hearing disclosures you reference are not required by AAA rules.

6. The Regulations do not address subpoenas one way or another, but do not alter the traditional use of subpoenas in arbitrations. Generally, as a legal matter, arbitrators are permitted under the FAA to issue subpoenas to compel attendance at an arbitration hearing, although there is conflicting precedent as to the extent of the arbitrator's authority to do so, or to order pre-hearing third party discovery by way of subpoena.

We are proud of our agent regulation system and believe that it works well. It is critical to the ability of the NFLPA, as the exclusive collective bargaining representative of NFL players, to protect players from agents who unfortunately may breach their duties to represent players under the NFLPA's Regulations. Only our governing body, the NFLPA Board of Player Representatives, has the authority to change those Regulations, and I will therefore share your comments with the Board at its next meeting. Meanwhile, however, it is the job of myself and my staff to enforce the Regulations as written.

Respectfully,

Gene Upshaw/JD

Eugene Upshaw

Enclosures.

CHAMBERS OF
HON. BARBARA S. JONES
UNITED STATES DISTRICT COURT
FOLEY SQUARE
NEW YORK, NEW YORK 10007
TEL: (212) 805-6186
FAX: (212) 805-6191

MAY 1, 2006

FAX COVER SHEET

To: Paul Aloe
Attorney for Plaintiff
Fax: 212-504-8317

Jeffrey Kessler
Attorney for Defendant
Fax: 212-259-6333

RE: POSTON V. NFLPA
06 CV 2249

THIS PAGE AND 2 OTHERS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARL POSTON,	:	
Plaintiff,	:	06 Civ. 2249(BSJ)
v.	:	
	:	**ORDER**
NFL PLAYERS ASSOCIATION,	:	
Defendant.	:	

BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

On April 20, 2006, this Court heard argument on Plaintiff's motion for a stay of the arbitration pending between the parties. For purposes of this order, familiarity with the facts is assumed.

Plaintiff has failed to demonstrate that he will be irreparably harmed absent the stay he seeks. *See Emery Air Freight Corp. v. Local Union 295*, 786 F.2d 93, 100-01 (2d Cir. 1986) (being compelled to arbitrate not irreparable harm); *see also Woodlawn Cemetery v. Local 365*, 930 F.2d 154, 157 (2d Cir. 1991) (finding that enforcement of collective bargaining agreement compelling arbitration would work irreparable harm because of the "extraordinarily rare" circumstance that same matter had already been fully argued in separate arbitration before National Labor Relations Board, whose decision was pending).

Plaintiff has also failed to show that he is likely to succeed on the merits of his claim here. Plaintiff admits that the subject matter of the disciplinary complaint against him is arbitrable. Therefore his argument, that procedural issues arising out of the prosecution of that complaint are not arbitrable, is without merit. *See Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84, 123 S.Ct. 588, 154 L.Ed.2d 491 (2002); *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 557, 84 S.Ct. 909, 11 L.Ed.2d 898 (1964).

Plaintiff has thus failed to meet his burden to obtain an injunction against the pending arbitration. *See, e.g., Covino v. Patrissi*, 967 F.2d 73, 77 (2d Cir. 1992). The motion is accordingly DENIED.

SO ORDERED:

Barbara S. Jones
UNITED STATES DISTRICT JUDGE

Dated: May 1, 2006
New York, New York

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CENTRAL DISTRICT OF CALIFORNIA
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CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Steinberg, Moorad & Dunn, Inc., Plaintiff, v. David L. Dunn, Athletes First, LLC, David C. Hunnewell, Centurion Capital Management, LLC, Platinum Equity, LLC, Donald Housman, Broad Opportunity Yield System, LLC (a/k/a BOYS), Defendants.	CV 01-7009 RSWL (RZx) **ORDER DENYING IN PART AND GRANTING IN PART PLAINTIFF STEINBERG, MOORAD & DUNN INC.'S REQUESTED INJUNCTIVE AND OTHER EQUITABLE RELIEF**

Plaintiff Steinberg, Moorad & Dunn, Inc.'s ("SMD") Request for Injunctive and Other Equitable Relief came on hearing before the Honorable Roald S.W. Lew on January 8, 2003 at 10:00 a.m. Having fully considered the papers

(103)

FEB - 6 2003

submitted in support of and in opposition to Plaintiff's Requests, as well as counsels' arguments offered in connection therewith, this Court finds the following:

A jury has found Defendant David Dunn liable on Plaintiff'S claims for Breach of Contract, Unfair Competition, Tortious Inducement of Breach of Contract, and Tortious Interference with Prospective Economic Advantage and awarded Two Million Dollars ($2,000,000) in compensatory damages, as well as Two Million Six Hundred Sixty Thousand Dollars ($2,660,000) in punitive damages.

Defendant Athletes First was found liable for Unfair Competition, Tortious Inducement of Breach of Contract, and Tortious Interference with Prospective Economic Advantage. The jury awarded Plaintiff Twenty Million ($20,000,000) in compensatory damages plus Twenty Million ($20,000,000) in punitive damages on these claims.

Now sitting as a Court of Equity, the Court will consider Plaintiff's remaining equitable claims.

REGARDING PLAINTIFF'S REQUEST FOR INJUNCTIVE RELIEF

The Court hereby determines that the permanent injunction requested by Plaintiff is not equitable.

The conduct at issue in this case occurred almost two years ago, and Plaintiff has not shown that Dunn and Athletes First will engage in future acts of this kind.

The jury award explicitly compensates SMD for the claims against Dunn and Athletes First.

Plaintiff's requested injunction would prevent Dunn from earning a living in the profession of his choice and prevent athletes from having the representation of their choice.

Although the Intervenor National Football League Players Association ("NFLPA"), in its Motion for Partial Summary Judgment, did not demonstrate that the injunctive relief sought was barred by Federal Labor Law, including §9(a) of the National Labor Relations Act, the facts currently before the Court support a denial of the injunction on this ground as well.

The Court finds that the NFLPA is the exclusive representative of NFL players, and that it delegates a portion of such authority to Certified Contract Agents to negotiate on behalf of the players. The proposed injunction would impermissibly usurp that statutory authority by denying the NFLPA the right to appoint or decertify Certified Contract Advisors according to its own regulations.

Therefore, due to a failure of likelihood of success on the merits and of a finding of irreparable injury, the requested injunctive relief, including the requested Permanent Injunction to prevent future unfair competition by Athletes First and Dunn, and seeking specific performance of

Dunn's Employment Agreements, is **DENIED**.

REGARDING PLAINTIFF'S REQUEST FOR UNJUST ENRICHMENT, CONSTRUCTIVE TRUST, AND AN ACCOUNTING

The jury verdict adequately compensated Plaintiff for the damages it suffered as a result of Defendants' conduct. Plaintiff has not adequately shown that the Defendants have been enriched beyond what the jury awarded.

Plaintiff's argument to base an unjust enrichment award on the potential worth of Athletes First at its creation to determine the amount Defendants actually gained from their acts is improper.

Therefore, because Plaintiff has not shown, and the Court does not find, that Defendants have benefitted from their conduct beyond what has already been awarded to Plaintiff, the claim for Unjust Enrichment is **DENIED**.

Because the Court has ruled that an unjust enrichment award is not appropriate, neither a constructive trust nor an accounting is necessary, and both are hereby **DENIED**.

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REGARDING PLAINTIFF'S REQUEST FOR DECLARATORY RELIEF

Plaintiff is entitled to judgment against Defendant Dunn on the Breach of Contract claim. Therefore, Plaintiff's request for a Declaration that David Dunn's Employment Agreement with SMD is valid is hereby GRANTED.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Court will exercise its discretion to stay execution of the judgment in this case until all post-trial motions are heard and the final judgment is entered.

RONALD S.W. LEW

RONALD S.W. LEW
United States District Judge

DATED: Feb 4, 2003

Mr. CANNON. Thank you, Mr. Berthelsen.

Mr. Friedman, you're recognized for 5 minutes.

TESTIMONY OF LARRY FRIEDMAN, ESQUIRE, MANAGING DIRECTOR, FRIEDMAN & FEIGER, LLP, DALLAS, TX

Mr. FRIEDMAN. Mr. Chairman, thank you very much for inviting me here today, and Members of the Subcommittee. My name is Larry Friedman. I'm an attorney. I practice law in Dallas County, Texas, and I have practiced there for over 28 years. I'm here today on behalf of Steven Weinberg, who is here with me today, along with my partner Bart Higgins, and I am here representing Mr. Weinberg as well.

I paid very close attention when Mr. Coble spoke and quoted his friend Jerris Leonard and said that "a flawed process is worse than no process at all." Well, I am here to relate to you Mr. Weinberg's story. He was a certified contract adviser and I am here to say that the NFLPA's arbitration process is a flawed process and it is worse than no process at all.

Let me relate that to modern terms. Mr. Cannon, Mr. Chairman, if you were Donald Trump and this was The Apprentice, and this was the show, The Apprentice, and you had assembled a team of tremendous talent, including Gene Upshaw, NFLPA Executive Director; Richard Berthelsen, General Counsel; Tom DePaso, Staff Counsel; Regional Director, Mark Levin, Director of Salary Caps and Agent Administration; Trace Armstrong, former President of CARD; and Roger Kaplan, the specially appointed arbitrator of NFLPA disciplinary actions—and you said to these people, with all your talent we want you to put together an arbitration process with all the proper procedural safeguards that you can put together. We want you to put together an arbitration process that would deter arbitrary and capricious decision making, we want you to put together an arbitration process that gives every participant proper notice and an opportunity to be heard, and we want you to allow disciplinary procedures to be heard by an impartial decision maker. And, if these people brought you the current arbitration process that's in effect at the NFLPA, Mr. Chairman, you would look at these people spread out across your board room and you would have two words for them, you would say, "You're fired." Because the process that is in effect doesn't allow the participants the procedural safeguards that we in this country allow people who are accused of a crime or accused of wrongdoing, and what you have here is a valuable property right, the right of a man or a woman to earn a living.

With regard to my client, Steve Weinberg was a very successful player agent. He had 42 clients when he was decertified, including Stephen Davis on whose behalf Mr. Weinberg negotiated a $135 million contract. Mr. Weinberg lost his right to earn a living because of the capricious and arbitrary nature of the arbitration process.

Had there been standards, had there been safeguards, had he had the ability to participate in a process, had he had the ability to bring witnesses, to present evidence, to cross-examine his accusers, he would still be an agent today. He would still be earning a living today.

Today, Mr. Weinberg doesn't have a job. His wife is sick and her health is failing. He doesn't have a job and he doesn't have an opportunity to earn a living. The NFLPA agent certification says that the NFLPA agrees that it shall not delete any agent from its list until that agent has exhausted the opportunity to appeal the deletion to a neutral arbitrator pursuant to its agent regulation system. Well, that would be great if that's what happened. It didn't happen in this case.

In Mr. Weinberg's case his punishment took effect before his appeal was final. In fact, why was he decertified? He was decertified because he and his former partner were in a dispute over the distribution of partnership funds. Mr. Weinberg was told by someone employed by the NFLPA, hey, file a grievance against your former partner, will help you out. So he did. Mr. Weinberg's former partner then filed a retaliatory grievance against him.

Fifteen of Mr. Weinberg's clients, player clients filed a grievance against Mr. Weinberg's former partner. The NFLPA, Mr. Berthelsen, arbitrarily decided to pursue Mr. Weinberg's former partner's grievance against Mr. Weinberg and did not pursue the 15 grievances against Mr. Weinberg's former partner, did not pursue those grievances and did pursue the one grievance. That's not fair. That matter should have been fully heard.

Mr. Chairman, the process needs a thorough investigation. We would encourage this Committee to look into it, to hold more elaborate hearings, to get more information, to hear from the players themselves, to hear more from the agents who have been subject to the process and who are also part of the process now.

I have read Mr. Carl Poston's testimony that was submitted to the Committee, and Mr. Poston has some very good suggestions at the end of his testimony. He lists seven points.

Mr. CANNON. We have that in the record.

Mr. FRIEDMAN. I'm not going to repeat it. I'm just saying we endorse it.

[The prepared statement of Mr. Friedman follows:]

PREPARED STATEMENT OF LAWRENCE J. FRIEDMAN

TESTIMONY OF
LAWRENCE J. FRIEDMAN
COUNSEL FOR STEVE WEINBERG

BEFORE

SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

"Oversight Hearing on the Arbitration Process of the National Football League Players Association"

ON

DECEMBER 7, 2006

Mr. Chairman, Members of the Subcommittee, my name is Larry Friedman. I am an attorney in Dallas, Texas. I have been licensed to practice law for over twenty-eight years. I appear before you today at the request of the Subcommittee to discuss the arbitration procedure under the NFLPA's Regulations Governing Contract Advisors (the "Regulations"). I am also here today as a representative of Steve Weinberg, who is a professional sports agent.

Mr. Weinberg was a certified Contract Advisor under a regulatory system set up pursuant to the Collective Bargaining Agreement (the "CBA") between the NFL Management Counsel and the National Football League Players Association (the "NFLPA"). He obtained NFLPA certification in 1983, and he is also an attorney at law, duly licensed and in good standing, in the State of Texas. In the twenty years between 1983 and 2003, Mr. Weinberg built a very successful practice

representing NFL players. He was responsible for negotiating some of the most innovative and lucrative contracts in NFL history.

Mr. Weinberg was decertified as a Contract Advisor in 2003; at the time, he represented forty-two (42) NFL players, including the Washington Redskins' All-Pro running back, Stephen Davis, on behalf of whom Mr. Weinberg negotiated a contract worth $135 million. Mr. Weinberg's decertification, and the actions taken against other Contract Advisors discussed here today, are directly attributable to the fact that the NFLPA enforces its Regulations in an arbitrary and capricious manner, using its status as the exclusive bargaining representative of NFL players, under Section 9 of the National Labor Relation Act ("NLRA"), as justification for any number of arbitrary sanctions, including suspension and decertification, against its Agents, especially against those Agents who draw the ire of top NFLPA officials for one reason or another.

Mr. Weinberg recently filed a lawsuit in State District Court in Dallas, Texas, against the NFLPA, Gene Upshaw, Richard Berthelsen, Tom DePaso, Roger Kaplan, and others, based in part on their violation of his right to due process under the CBA and the NFLPA regulations governing Agent conduct—and based, in part, on Mr. Weinberg's inability to obtain an arbitration proceeding that was fundamentally fair. I understand that each of you has been provided with a copy of Mr. Weinberg's lawsuit.

I did not come here today to try Mr. Weinberg's case. It is my intention to address the inherently unfair manner in which the NFLPA conducts its agent disciplinary arbitration process. The NFLPA's recordbook is a poor one on arbitration. The NFLPA consistently disregards its own Regulations; it fails to provide its players and agents with a fair arbitration process; it applies its own

rules arbitrarily; and, it fails to ensure that its players and agents get, not just an arbitration hearing, but a fair, impartial, and meaningful arbitration hearing.

In particular, the NFLPA blatantly violates the central provision of the CBA as it relates to Contract Advisors. Article VI, Section 1, states, in part, as follows:

> NFLPA AGENT CERTIFICATION
>
> Section 1. Exclusive Representation: The NFLMC and the Clubs recognize that the NFLPA regulates the conduct of agents who represent players in individual contract negotiations with Clubs. The NFLMC and **the Clubs agree that the Clubs are prohibited from engaging in individual contract negotiations with any agent who is not listed by the NFLPA as being duly certified by the NFLPA in accordance with its role as exclusive bargaining agent for NFL players. The NFLPA shall provide and publish a list of agents who are currently certified in accordance with its agent regulation system, and shall notify the NFLMC and the Clubs of any deletions or additions to the list pursuant to its procedures. The NFLPA agrees that it shall not delete any agent from its list until that agent has exhausted the opportunity to appeal the deletion to a neutral arbitrator pursuant to its agent regulation system.** The NFLPA shall have sole and exclusive authority to determine the number of agents to be certified, and the grounds for withdrawing or denying certification of an agent. The NFLPA agrees that it will not discipline, dismiss or decertify agents based upon the results they achieve or do not achieve in negotiating terms or conditions of employment with NFL Clubs. (emphasis added)
>
> Section 2. Enforcement: Under procedures to be established by agreement between the NFL and the NFLPA, the Commissioner shall disapprove any NFL Player Contract(s) between a player and a Club unless such player: (a) is represented in the negotiations with respect to such NFL Player Contract(s) by an agent or representative duly certified by the NFLPA in accordance with the NFLPA agent regulation system and authorized to represent him; or (b) acts on his own behalf in negotiating such NFL Player Contract(s).
>
> Section 3. Penalty: Under procedures to be established by agreement between the NFL and the NFLPA, the NFL shall impose a fine of $10,000 upon any Club that negotiates any NFL Player Contract(s) with an agent or representative not certified by the NFLPA in accordance with the NFLPA agent regulation system if, at the time of such negotiations, such Club either (a) knows that such agent or representative has not been so certified or (b) fails to make reasonable inquiry of the NFLPA as to whether such agent or representative has been so certified. Such fine shall not apply,

> however, if the negotiation in question is the first violation of this Article by the Club during the term of this Agreement. It shall not be a violation of this Article for a Club to negotiate with any person named on (or not deleted from) the most recently published list of agents certified by the NFLPA to represent players.[1]

The NFLPA maintains a disciplinary committee to oversee and enforce the Agent Regulations. The NFLPA claims that the procedure for disciplining agents under the Agent Regulations is, essentially, as follows.

The President of the NFLPA appoints a Disciplinary Committee (known as "CARD," which stands for Committee on Agent Regulation and Discipline) consisting of three (3) to five (5) active or retired players. CARD is supposed to decide whether or not to initiate disciplinary actions against Agents. If CARD decides that discipline is appropriate, it is supposed to initiate a disciplinary proceeding by filing a written complaint. The Agent is then supposed to file an answer to the complaint, but CARD does not necessarily hold a hearing on the matter. Rather, CARD is merely required to send the Agent written notice of its suggested punishment. CARD is not supposed to impose any discipline itself: it is merely supposed to propose discipline.

The Agent can then either accept proposed discipline or file an appeal to the "outside" Arbitrator. Upon the filing of a Notice of Appeal, there is supposed to be an automatic stay of any disciplinary action proposed by CARD. Hence, under the Regulations, if an agent exhausts his/her appellate remedy, **no discipline is supposed to be imposed, except by an arbitrator**.

If the Agent chooses to appeal the proposed punishment, CARD is supposed to bear the burden of proof at the Appellate Hearing to prove the allegations in the Complaint by a

[1]CBA Section VI.

preponderance of the evidence. And the Agent is supposed to be given the same rights as in a hearing under the American Arbitration Association ("AAA") rules:

> At the hearing of any Appeal pursuant to this Section 6, [CARD] shall have the burden of proving, by a preponderance of the evidence, the allegations of its Complaint. [CARD] and the Contract Advisor shall be afforded a full opportunity to present, though testimony or otherwise, their evidence pertaining to the action or conduct of the Contract Advisor alleged to be in violation of the Regulations. The hearing shall be conducted in accordance with the Voluntary Labor Arbitration Rules of the American Arbitration Association. Each of the parties may appear with Counsel or a representative of its choosing. All hearings pursuant to this Section shall be transcribed. (Emphasis added.)

Thereafter, the Arbitrator has broad discretion to determine whether the Agent violated the Agent Regulations, and, if so, what discipline is appropriate.

Under Section 5 of the Agent Regulations, "this arbitration procedure [is] the exclusive method for resolving any and all disputes." Section 5(E) of the Agent Regulations permits the NFLPA to select the arbitrator: "The NFLPA shall select a skilled and experienced person to serve as the outside impartial Arbitrator for all cases arising hereunder." (Emphasis added.)

And, as you know, in recent years, CARD has aggressively brought actions against numerous Contract Advisors, including Steve Weinberg, David Dunn, and Carl Poston—to name a few.

However, the problem with CARD and the NFLPA's mechanism of enforcing Agent Regulations is this: the system is inherently unfair, and the application of the system is arbitrary, biased, and even more unfair. Let me use Steve Weinberg's case as an example to explain why the current system fails.

For Steve Weinberg, the system broke down in many places along the way. First, the complaint leading up to his decertification was filed by his former partner, with whom he was in a dispute over the division and distribution of partnership funds. The former partner alleged that Mr.

Weinberg had attempted to prevent him from collecting on a judgment by transferring funds off shore. As a result, Mr. Weinberg's former partner attempted to garnish Mr. Weinberg's agent fees from his players. However, just as in Carl Poston's case, none of Mr. Weinberg's clients complained about his conduct; they only complained about his ex-partner's conduct. No financial misconduct was alleged between Mr. Weinberg and the players. There were no bribes, no improper payoffs, as there were in other cases where CARD doled out punishments in the range of a three-year decertification.

Nonetheless, in February 2003, CARD immediately decertified Mr. Weinberg for three (3) years. Although the three-year decertification was ultimately reduced to an eighteen (18) month suspension on appeal, Mr. Weinberg's punishment took effect before his appeal was final, which violated the language in the CBA prohibiting decertification without an appeal and the language in the Regulations allowing for a stay pending appeal.

In total, fifteen (15) different NFL players filed grievances in connection with the incident for which Mr. Weinberg was decertified; however, none of those players ever complained about Mr. Weinberg's conduct: they all complained about his ex-partner's conduct. Despite this, the NFLPA never investigated or took action against Mr. Weinberg's ex-partner; the NFLPA chose instead to aggressively pursue Mr. Weinberg. Interestingly, a similar thing happened to Mr. Poston, who's client, LaVar Arrington, refused to file a complaint against him---but the NFLPA decided to pursue its own grievance against Mr. Poston anyway.

This ties into the second problem with the NFLPA agent discipline/arbitration system: the decision about which grievances get pursued and which ones get ignored is completely arbitrary; it is based on the whim of the NFLPA's General Counsel, Richard Berthelsen, who decides which

complaints to refer to CARD for action. Although the Regulations generally state what conduct is prohibited (though the categories are broad and subject to change at the whim of the NFLPA's leadership), Berthelsen gets to arbitrarily decide which Regulations to enforce, on which days to enforce them, and against whom to enforce them. As a result, the Regulations are not uniformly enforced against all Agents.

Another problems is that, once the disciplinary process is initiated, the system fails to provide Agents accused of misconduct with any forum where they can obtain fundamental due process---where they can get a fair hearing, face their accusers and cross-examine them (the greatest truth-finding tool in American Jurisprudence), present witnesses, offer evidence, and defend the charges brought against them. Instead, the current NFLPA system is one-sided.

Berthelsen controls the charges that are brought against Agents, he controls what evidence the CARD members hear about the Agents, and he then suggests what punishment the Agents should receive. CARD never gets to play the role of an impartial judge, to hear both sides of the story and decide the matter fairly and impartially. The Agent is not even allowed to attend CARD's hearing. For example, Mr. Weinberg requested to attend the Disciplinary Committee Hearing, but permission to do that was denied. Instead, Mr. Weinberg was only allowed to listen to the disciplinary proceedings by telephone. He was not allowed to speak, not allowed to address questions that he knew the answers to, not allowed to correct false statements that were made at his disciplinary hearing and not allowed to clarify any factual inaccuracies. In sum, Mr. Weinberg was not allowed to contest the allegations made against him or to present evidence in his defense. He could not cross-examine the witnesses, could not tell his side of the story, and could not offer an explanation or a defense. It is even hard to call it a "hearing" because the event that occurred did not rise to the level

of a hearing. As a result, CARD routinely makes its decisions based on Mr. Berthelsen's advice, having only heard one side of the evidence, the side Mr. Berthelsen presented.

Although the NFLPA Regulations purportedly give Contract Advisors the right to appeal CARD's proposal to a "neutral" arbitrator, Mr. Weinberg did not have an opportunity to appeal CARD's proposal to a neutral arbitrator before his decertification took effect—CARD made Mr. Weinberg's decertification effective immediately even though under the CBA and the Regulations Mr. Weinberg was entitled to an automatic stay pending his appeal to the neutral arbitrator.

Yet another problem with the NFLPA agent disciplinary system is that the arbitrator is far from really being neutral: Roger Kaplan is always the NFLPA's pick to serve as the "neutral" arbitrator for each disciplinary arbitration hearing. And, when you consider the fact that he is paid by the NFLPA and that he almost always rules in its favor—you have to ask yourself whether a reasonably prudent person would believe that Roger Kaplan is really "neutral" or really an "outside" arbitrator. Can someone who has been serving as the "regular" NFLPA "neutral," "outside" arbitrator for twelve (12) years still really be neutral?

Prior to his decertification, Steve Weinberg represented forty-two (42) NFL players. Approximately half of those players were about to become Free Agents. He was also an outspoken critic of the manner in which the NFLPA's leadership enforced its Regulations—unfairly and arbitrarily. By immediately decertifying Steve Weinberg, the NFLPA intentionally silenced him and punished him by preventing him from participating in his clients' Free Agent contract negotiations, thus robbing hin of the right to an automatic stay under the Regulations and his right to earn a living as a Contract Advisor. This was truly an unfair result. The system failed, and Mr. Weinberg suffered as a result of this very biased process.

In conclusion, on behalf of Mr. Weinberg, I respectfully request that this Committee hold additional hearings concerning the overall fairness and due process with which the NFLPA deals with Agents accused of misconduct. Thank you for your time, and I will be happy to answer any questions you may have.

Mr. CANNON. Thank you. Your time having run, I'm going to ask a couple of questions then we'll turn the time to others who might have questions.

You talked about the 15 complaints against Mr. Weinberg's opponent; I would like to have something in the record on that. And Mr. Berthelsen, we would like to have something in the record, written in the record in response to that, and we will provide time for that to happen.

But I actually want to ask a more theoretical question. We have Mr. Arrington here, who is a star, he is obviously a bright guy, he did well in college and can handle himself, and so I would like to go back to this $6.5 million that you are concerned about, that the Players Union is concerned about, and to balance that, would you tell us about that $6.5 million, whether you wanted it, whether it was a mistake, whether you thought you had a contractual right to work with your agent to get it, or whether you didn't care, and if so, why not, because 6.5 million is enough to care about, I think. But secondly, why you wanted your agent, instead of another agent, given that $6.5 million?

Mr. ARRINGTON. Restate the last part.

Mr. CANNON. Mr. Berthelsen said that you were cheated essentially out of $6.5 million. I would like to know what that was and how you viewed that.

Mr. ARRINGTON. Well, in the situation, during the course of those contract negotiations, what Mr. Berthelsen felt that—discloses that during the course of those negotiations, NFLPA has a deadline on the time that you can get a contract done due to salary cap purposes—at least that is the way it is told to us. So during the course of this time, there were large discussions on getting the contract done before this deadline. And at the time that this contract was being negotiated, it came down to like the waning hour—I think it was about 2 hours or so before the deadline, the stated deadline time of getting the contract done to effect a salary cap of the team had passed.

So in the last, I guess—not too long before the deadline, they—my agent and the Redskins people, whoever were involved with the negotiations—came to an agreement. I then, at this point in time, went to a Redskins facility. He says that my agent was negligent for not being there with me at the time. I don't think that anybody—any agent or anybody that represents an individual that has given and sacrificed as much as I did for the Washington Redskins organization would feel uncomfortable going behind closed doors and getting a deal done to make me a life-long Redskins.

And I think a lot of times, with all of the technical talk that is used, that sounds good, but at the end of the day we are all people. And the bottom line is, when I went there, I was under the firm impression that I am signing an 8-year deal. I was definitely up on all the details of the contract. The 6.5 million of a roster bonus given in July when you go report in for camp, and it was I guess a multi-year deal, or whatever.

But when those documents were being sent to my agent, while I was doing this contract, I had a game the next day against Philadelphia. I am more concerned about being a good employee, making sure that over a contract I am not, you know—things had been

done, in my opinion, things had been done on a professional level on a professional scale thus up to that point. So once we got to that point, I felt like whatever—if there is anything wrong, which in anybody who goes into a business deal, if there is anything wrong with the language or anything that is, you know, I guess inaccurate, you mark those things, you go back and you fix them.

Now, when that came about, the 6.5, yeah, when we found out that it was gone, or it was never put in there, then we went over our files. Once we went through the files and saw that the 6.5 million was not there, then that was when—well, they tried to contact me, but I was getting ready to go to a Pro Bowl, and I was a little younger, I think 2, 3 years ago, so I was having fun at the Super Bowl, so I wasn't really paying too much attention to my cell phone. But once the situation was, you know, recognized, then we then went to NFLPA to have them act on it.

Now, doing that in good faith—we did that in good faith; if something is wrong, just show in the evidence where, you know, that 6.5 should have been on a certain page, and——

Mr. CANNON. Did you get that 6.5 ultimately?

Mr. ARRINGTON. No, I did not. Not only did I not get the 6.5, I didn't finish out the life of the contract either.

Mr. CANNON. You are not unhappy with the Redskins or your agent.

Mr. ARRINGTON. No. The situation was resolved. Like I said earlier, I alluded to earlier, there was a no fault resolution; so it was recognized that there was no fault by the Redskins and it was recognized that there was no fault by me or my agent.

Mr. CANNON. I am going to try to stick closely to the rule. Unfortunately I couldn't see the red light. I am over a minute, so I am going to ask my colleague's permission—I am going to be strict with the gavel at 5 minutes so we can get through everybody who has questions.

Since we have been back and forth, I think that Mr. Delahunt, you are the first on——

Mr. DELAHUNT. Whatever, Mr. Chairman.

Mr. CANNON. We should recognize Mr. Watt has joined us.

Do you have questions, Mr. Delahunt?

Mr. DELAHUNT. Yes.

Mr. CANNON. Good. The gentleman is recognized for 5 minutes.

Mr. DELAHUNT. I will direct this to Mr. Berthelsen.

Did I hear you correctly, in terms of the arbitrator has served for a 13-year period?

Mr. BERTHELSEN. Since 1994. We have had three arbitrators under the system. The first one was Kenneth Moffett, who is a former director at the FMCS. The second one was Senator John Culver, after he served as a senator, he served for several years. And Mr. Kaplan has served since 1994. Mr. Kaplan——

Mr. DELAHUNT. Okay. I will tell you, I have a bit of a problem; you know, there is an assertion by some that the individual who is currently serving—and I know nothing about him—might not fit the definition of "neutral arbitrator." Has the NFLPA considered, as these cases come individually, rotating arbitrators? In other words, I think common sense dictates that over a period of time, there becomes a comfort level with one individual serving as an ar-

bitrator. I am just posing the question to you: Has there ever been consideration by the Players Association to examine the possibility of having a pool of arbitrators to be selected by the opposing parties to ensure neutrality?

Mr. BERTHELSEN. I think you have to understand the system a little bit better, as it operates, for me to fully answer that question.

The arbitrator under the system decides three different types of disputes. He decides disputes between players and agents, usually over fees. And this is a thing that the agents think is extremely good and they think it is working extremely well because in over 80 percent of the cases, the arbitrator rules for the agent over the player. There are other cases where it is agent versus agent, and then there are disciplinary cases. Mr. Kaplan has done all of those things for all of these years——

Mr. DELAHUNT. I understand that, and I am sure he brings an expertise to it. But what I am suggesting is, in terms of—let's call it due process.

Mr. BERTHELSEN. Yes, we have considered more than one arbitrator. And we may be near a time when we have to have an additional arbitrator because the case load is considerable.

Mr. DELAHUNT. And I appreciate that. And my point is, I am looking at it in a systemic way, to ensure that there is a random quality, if you will, to the process itself, to the process of arbitration, as opposed to reliance on a single individual over an extended period of time. Because clearly, after 13 years, you know, you can be Mother Teresa, but you are going to start to develop an attitude on different issues, I mean, that is just human nature. And I wonder if there is a better system in terms of ensuring that the individual selected is a neutral—underscore "neutral"—arbitrator and doesn't have a certain preordained view of individuals, whether they be players or arbitrators, because that does happen.

Mr. BERTHELSEN. We have had arbitrators in the NFL serve much longer than 13 years; it is not at all unusual for that to happen.

Mr. DELAHUNT. I know, but what I am saying is I don't know if that is a healthy component of the arbitration system if you want to ensure that you have a neutral—underscore, again—"neutral" arbitrator.

Mr. BERTHELSEN. Well, Mr. Kaplan is a neutral arbitrator, he is a member of the National Academy——

Mr. DELAHUNT. I am sure he is a great guy, Mr. Berthelsen, and I have no doubt about his expertise, but what I am saying is let's step back and not think about the current system, but just in terms of this discrete issue, a rotation, you know, on an *ad hoc* basis, for example—whether it is Mr. Arrington or whatever the issue is—to ensure that there is confidence in the arbitration system. Someone whom could be selected by agreement among the parties I think is something that should be considered.

Mr. BERTHELSEN. Since I do slightly at least have the floor, I forgot something earlier. I do have letters from our counterparts in the National Hockey League Players Association, and the NBPA, the National Basketball Players Association; one letter from Billy Hunter, who is the Executive Director of the NBPA, another from

Ted Saskin, who is the executive director of the NHLPA. And I would like, if I could, to make this part of the record.

Mr. CANNON. Without objection, that will be made part of the record.

[The information referred to can be found in the Appendix.]

Mr. BERTHELSEN. These organizations have the same system that ours does.

Mr. ARRINGTON. Does that make it correct? That is the question there. You are very accurate in what you are saying now. That is loyalty is what you are saying; 13-year-period of time the man is serving as your arbitrator, there is a loyalty there; whether he wants to acknowledge that or not, there is a loyalty. It doesn't matter what his background is or not, it is loyalty.

Mr. DELAHUNT. I think Mr. Friedman wants to respond, too, Mr. Chairman.

Mr. FRIEDMAN. Let's look at the people who have been most successful in the arbitration business, in being neutral, the American Arbitration Association. Now I am not an expert on that, but I have arbitrated there many times. They offer a panel of arbitrators to select from. They offer you 10 choices. Those people give you a resume and those people disclose conflicts of interest. You get a chance to strike people who have biases, or relations, or know people, or know subject matters, so that you can comb them out to wind up with a panel of either one or three, as neutral an arbitrator as you can get. And then they have those panels in every city. It is a try-hard organization, and the most successful one I know.

Mr. CANNON. Thank you. The gentleman yields back.

Mr. Coble, the gentleman from North Carolina, is recognized from 5 minutes.

Mr. COBLE. Thank you, Mr. Chairman. Gentlemen, it is a privilege to have you all with us.

Mr. Friedman, you have had considerable experience with arbitrations involving automobile dealers and manufacturers, et cetera. If you will—well, strike that. Let me say it a different way.

Compare the procedures employed by NFLPA with other arbitration with which you are familiar.

Mr. FRIEDMAN. Yes, sir. As I mentioned just a moment ago, with the American Arbitration Association and with the dealer franchise organizations and with, not only in the automobile industry, but also in the food industry, McDonalds, Burger King, Church's, Kentucky Fried Chicken, it appears to be me that a greater effort is made in these other places to provide a process that has more procedural safeguards so that the truth gets to the top and impartiality governs, neutrality governs, so that both—there is a system of polite advocacy; one side provides documents, the other side provides documents, one side can ask questions, the other side can request questions. There is an opportunity for cross-examination, which is the greatest tool in American jurisprudence to discover the truth. And then you present that to as neutral an arbitrator as you can get. It is not a perfect system, but it is better than this one.

Mr. COBLE. Mr. Berthelsen, speaking of neutrality, let me put this question to you; it would seem a symptom to some of the complaints that we have heard today is that the NFLPA procedures do

not ensure that the arbitrator chosen to resolve the disciplinary action against the certified contract advisors are sufficiently neutral to render an impartial determination. Now, what say you to that?

Mr. BERTHELSEN. I didn't understand about—sufficiently what?

Mr. COBLE. Are sufficiently neutral to render an impartial determination.

Mr. BERTHELSEN. Well, I would disagree with that. And the previous witness said to you that procedures he knows involve things like cross-examination of witnesses and the ability to confront accusers and what have you; and our system has that and more. In every hearing that we have, there is cross-examination of witnesses, the opportunity to present any and all witnesses who have relevant testimony. There is even opportunity for briefing; there is opportunity for prehearing discoveries through the issuance of subpoenas, which are often done. But the tenor of your question is that the person that we have now is not neutral, and that is what I would disagree with. He has been an arbitrator in the public and private sector for over 25 years——

Mr. COBLE. Mr. Berthelsen, I did not mean that that was my opinion, I was saying consistent with some of the testimony that we have heard today is what I was basing my question on.

Mr. BERTHELSEN. Well, with all due respect, some of the testimony that you have heard—I am not sure what you are referring to—but a lot of it, with the exception of Mr. Arrington, who was describing his feelings to you, has not been factual. And the problem that I have is that with the limited time that I have, I cannot point out, for example, what he said about how we took up the grievance of Mr. Weinberg's former partner, that is just not true, we didn't take up anybody's grievance. Our committee decided that there should be discipline for Mr. Weinberg. So I am sorry if I didn't seem to answer your question, but that is the best I can do.

Mr. COBLE. Before the Chairman gavels me down, Mr. Arrington, do you or the professor want to weigh in on either one of my questions?

Mr. KARCHER. Yes, thank you. I guess I have to respond because I didn't know that I actually made some false statements regarding the regulations. And I just—they are really not that long, I mean, I attached—I included them in the record. And it is not my purpose to, you know, pick a side here on anything, I am just looking at this thing for what it is. It is a system that they have chosen.

And the system simply says that—basically it is a discretionary system. So when I said that CARD—I didn't say that CARD unilaterally makes a suspension, what I said was that CARD basically has the discretion, if it wants to, to unilaterally impose a disciplinary action and stay that appeal to the neutral arbitrator, to the neutral one.

What it says is, and I will read it to you, it is not that very long, in the extraordinary circumstance—that is what I referred to in my original testimony—where the Committee on Agent Regulation and Discipline's investigation discloses that the contract advisor's conduct is of such a serious nature as to justify immediately revoking or suspending his or her certification, the committee, or CARD, may immediately revoke or suspend that certification with the filing of a disciplinary complaint, or thereafter. That is clear to me

that CARD has the discretion to do that. Now whether they do that, I don't know. I am not part of the system. I don't know whether they actually do that.

I see what they did in Mr. Poston's case, which is that they proposed—they didn't initially exercise this clause, exercising discretion, they proposed a discipline, and Mr. Poston immediately filed his appeal within the time frame that he was supposed to to the arbitrator, simultaneously filed a complaint in Federal court. And then a few months later, CARD—which is a committee of the NFLPA, so they are really not—I mean, I look at it as the NFLPA, it is a committee of the NFLPA. The NFLPA basically then officially suspended him for 2 years, not a proposal, an official suspension. And my guess is, I am speculating, that they would rely on this clause and say that this was an extraordinary circumstance. Well, what was the extraordinary circumstance that did it? I don't know——

Mr. COBLE. I am going to have to yield back because my time is expired. Thank you.

Mr. CANNON. Thank you, Mr. Coble.

Mr. Berthelsen, I take it—first of all, Mr. Karcher, did you finish your statement? Because we are getting now I think pretty much to the core of this issue, and obviously there is a lot of concern by this Committee——

Mr. KARCHER. There is one other thing I would just add is that I want to make sure that I finish what the regulation says. In such event, under these extraordinary circumstances, which would be determined by NFLPA, the contract advisor would be entitled to an expedited appeal, as Mr. Berthelsen correctly noted, of that action pursuant to section 6(e), except that such appeal shall not stay a discipline.

So you have a situation where they are disciplined immediately without any opportunity to be heard. And that is all I meant to say. If I misspoke earlier in my statement, you know, I apologize, but that is what I was referring to.

Mr. CANNON. Mr. Berthelsen, you said a couple of times you don't feel like you have enough time. Let me be clear that you can submit things for the record after this time. Obviously we are going to go with the flow of questions, but you seem to be pretty intent to respond to this. We are happy to have you do that, without objection.

Mr. BERTHELSEN. Just to finish the thought, and I think I said it before, we realize that there is a responsibility that goes with immediately taking action, it is only done under extraordinary circumstances, and I believe we only did it 3 or 4 times in our history; the responsibility is to grant that person an immediate hearing. And in Mr. Poston's case, that is what we wanted to have, but that is what we weren't getting because he had postponed three hearings in a row. But he chose not to avail himself of the opportunity to come to a hearing immediately. And we can't force that, we can't go forward without him. And that is what I wanted to point out in this.

With Mr. Karcher, he says he doesn't favor anyone's position here and pretends to be neutral. I really would like the opportunity

to point out about how his statement has a multitude of inaccuracies from the beginning to the end.

Mr. CANNON. You should do that. And I am sure Mr. Karcher would respond to that. That is an appropriate thing to do.

Mr. BERTHELSEN. I appreciate that.

Mr. CANNON. You want to say something here, but I suspect that you can do it by a written statement.

Mr. FRIEDMAN. I will be brief, Mr. Chairman.

I am not neutral, Mr. Chairman. By reading of the regulations, it appears to me that CARD does not allow cross-examination, and that the record will reflect that the arbitration is simply a rubber stamp for the discipline that CARD dishes out. In Steve Weinberg's case, he had 15 players that were willing to testify—that were there to testify on his behalf. Two of them drove through a blizzard to get to a hearing and they were denied access to that hearing. The other 13 were available by speakerphone, they were denied access to that hearing. Steve Weinberg's is a case that ought to be examined.

Mr. CANNON. I am not going to go back to Mr. Berthelsen because we are not—but we do expect some information to go into the record to continue to consider this. This is not Republicans against Democrats here, this is going to be an ongoing issue, I think, and so we are anxious to have your input. It is not my time at this point, Mr. Arrington, so I what I am going to do is yield to Mr. Watt, the gentleman from North Carolina, for 5 minutes.

Mr. WATT. Just long enough to say my apologies to the Chair and to the witnesses for not being here, apologies in this sense; I mean, we come to various choices we have to make quite often in this institution, and sometimes we have committed to do things prior to the scheduling of a hearing. I was at that crossroads when this hearing was scheduled because I had already committed to do a speech over at the Naval Yard to a group of interns. So that doesn't necessarily mean that I put a higher value on that than what you are here to talk about. I am sure this is valuable and important, although from the beginning I would have to say I have questioned how we get into it at this juncture.

So having said that, I haven't read all the testimony, haven't heard the witnesses, so no sense in me starting to cross-examine or examine anybody. Perhaps I could yield 2 minutes of my time to Ms. Jackson Lee and 2 minutes of my time to Mr. Meehan, both of whom have been here and may have greater knowledge and have a greater interest.

Mr. CANNON. Without objection. We actually have authorized them to take the balance of this——

Mr. WATT. So I shouldn't give them 2 more minutes.

Mr. CANNON. They already have five of their own.

Mr. WATT. Okay. In that case, I will yield back my time and let them use their 5 minutes. I don't want to advantage them over the Members of the Subcommittee.

Mr. CANNON. I can assure you that with the discretion of the Chair, they will have as much opportunity to ask questions as they would like.

And let me just add, Mr. Watt has been very gracious, he has said very gracious things here. He had his speech lined up I am

absolutely certain before this hearing was called because it was called and cancelled and then called again as an attempt to let some of the Members of the Committee who are interested in this do the hearing, and we appreciate your being available and flexible on the part of the panel; but Mr. Watt is thoroughly appropriate, it was not a matter of priorities in his case, it was a matter of prior commitments.

Mr. WATT. I guess I should, as a clarifying factor, say that I hope that whatever I said to those interns over there has more impact on them than what this hearing has on this, but I don't know that either.

Mr. CANNON. I will say, this has been a very interesting hearing——

Mr. WATT. They always are.

Mr. CANNON. So with that, we would, by prior unanimous consent, we have allowed Members of the full Committee who are not Members of the Subcommittee the opportunity to participate. And so Ms. Jackson Lee, if you are interested, you are recognized for 5 minutes.

Ms. JACKSON LEE. Mr. Chairman, let me thank you and Mr. Watt for your graciousness and your willingness to provide an opportunity and a forum for what I think is particularly instructive this morning.

Allow me also to thank all of the witnesses, and to express my appreciation for the detail and the respect in which you are offering your testimony this morning.

I believe that, short of this being a legislative hearing in the waning hours of the 109th Congress, frankly, we are looking at a situation that begs for legislative relief.

Mr. Weinberg, let me acknowledge you and thank you for your presence here, and offer my concern and expression of concern for you and your wife. And to say that we are not in a mode of acrimonious one-upsmanship. Frankly, I believe that there are many of us who are on this panel who could battle anyone in our commitment to the existence of unions and your right to exist and the prerogatives that you have and the value that you have.

We realize that the athletic unions have modelled after some of the more senior unions, and we are gratified for your existence, and I know that players in years past have been gratified as well.

But if anyone thinks—and I am delighted that Ranking Member Watt raised the question of the nexus, and the nexus has to do with the overall jurisdiction of the Judiciary Committee in ensuring, if you will, the separation, like the fingers on the hand, the whole issue of antitrust and monopolistic approaches. And unfortunately, athletic leagues have fallen into or could be compared to monopolies. You can't go play football on the golf course, you might, but you would get thrown out I would imagine by some good golfers—and Mr. Arrington, you may be a good golfer, many football players are. But it is a situation of not being able to go anywhere else to, in essence, exercise your profession.

And as I listen to you, Mr. Arrington, I see a budding lawyer coming up, so your attention to details is one that I appreciate.

Mr. WATT. Would the gentlelady yield just for a clarification, and then I will ask unanimous consent to give her the time back that I take from her.

Ms. JACKSON LEE. I would be happy to yield.

Mr. CANNON. Without objection, so ordered.

Mr. WATT. I just want to be clear that I never questioned the nexus, I question the timing. If the Judiciary Committee intervened in every case in which there was a nexus between what is going on in the courts or in the arbitration process, or otherwise, it wouldn't be about nexus, it would be about timing. There are hundreds of people who are being denied Social Security benefits, this benefit, that benefit in a process that is out there. If we took time, as a Judiciary Committee, to intervene ourselves in each one of those cases, there wouldn't be a nexus to any one of them.

The timing of it is the question that I have questioned, and that I have raised. So I just wanted to clarify that. And I will ask that this time not be counted against her time, please.

Mr. CANNON. Without objection, we will extend the gentlelady's time by 2 minutes.

Ms. JACKSON LEE. I thank the distinguished Chairman and I thank the Ranking Member. And the Ranking Member makes a very, very good point, and I intend in my questioning to answer that. Because I don't view this as a scattering of cases of which we might intervene, and he is absolutely right, we cannot use the resources for that.

But let me briefly say a pointed point that Mr. Arrington made, and I would like to pose some questions very quickly. And that is that it was a flurry of the last minute negotiations as relates to your 6.5 million, and as I understand, Mr. Schaffer, who represented the Redskins, had made a commitment to Mr. Poston that that 6.5 million would ultimately be put in. And I think if there is an element of failure to you, it would certainly be that your agent was asleep and didn't even raise the point. And I understand that you are comfortable that that did not happen.

And I am going to pose a question, but I would like to pursue both Mr. Friedman and Mr. Berthelsen. What I believe the line of questioning of Mr. Delahunt was—and it doesn't seem to be received—is that we are not commenting on the prowess, the excellence and the integrity of the existing arbitrator; but what we are saying is, is that as antitrust can get monopolistic, there is a hand in glove, and my fear is that there is a hand-in-glove relationship between the NFL and the NFLPA. My question is, would you not be comfortable with adhering to the American Arbitration Association rules and regulations in terms of establishing who would be an arbitrator in these situations?

Mr. BERTHELSEN. Our regulations specify that those rules do apply to our arbitration hearings.

Ms. JACKSON LEE. Mr. Friedman.

Mr. BERTHELSEN. Those rules also state that whoever the parties have agreed to select as the arbitrator by contract must be the arbitrator in the case, and that is what happens in our situation.

Ms. JACKSON LEE. My time is short.

Mr. Friedman, how to you contravene that? How do you relate to the fact that maybe a more adherence to the American Arbitra-

tion Association which creates an atmosphere that is neutral and impartial and unbiased?

Mr. FRIEDMAN. Well, that would solve the problem.

Ms. JACKSON LEE. He suggests that he is following the rule.

Mr. FRIEDMAN. They are not. The rule says that they have to follow the procedures for arbitration. It suggests that they have to follow the procedures at a particular hearing or at the particular process. It doesn't say that they have to use the procedure to pick the arbitrator. In fact, the regulations say that the NFL will pick the neutral outside arbitrator, and the NFL continues to pick Roger Kaplan for every arbitration over the last 13 years.

Ms. JACKSON LEE. And there lies the hand-in-glove scenario.

Mr. FRIEDMAN. That is the problem.

Ms. JACKSON LEE. What you are saying is you adhere completely to the American Arbitration Association, which might be a legislative fix, which might then make it more transparent, neutral and fair.

Let me ask Mr. Arrington. I am literally shocked at some of what you have said because you would expect you to be a completely—an adversary in this instance; you lost $6.5 million. But I think you pointed out that you saw that everybody was trying to act in good faith, even you, you went to a table to sign a document when you went to a location or knew you were going to play a game.

Mr. ARRINGTON. That is correct.

Ms. JACKSON LEE. So you left Mr. Poston operating—and again, I don't want to focus on one particular fact situation—Mr. Weinberg has a fact situation, but it points to the need for correcting this hand-in-glove relationship that this system has. You thought they were working on your behalf?

Mr. ARRINGTON. Yes.

Ms. JACKSON LEE. Then when we came to the point of trying to assess whether Mr. Poston or Mr. X or Mr. Y had been effective——

Mr. ARRINGTON. That is correct.

Ms. JACKSON LEE. You would have liked an opportunity where all can be heard in this arbitration process; is that right?

Mr. ARRINGTON. That is correct. And also, Mr. Berthelsen referred to the fact that I am speaking purely off of feeling and not off of facts, it is inaccurate. That is not an accurate statement from Mr. Berthelsen. Because I firsthand experienced not being able to be able to be a part of a hearing that was held in Indianapolis. So there was no cross-examination. Carl Poston was not allowed to attend this hearing. So it is not strictly feeling that I am speaking on; there are some facts involved with the things that I am saying.

With that being said, I am not saying that, you know, Carl Poston, you know, don't go through the process with him. I didn't have a problem and different things like that. I said merely as what is being stated today, that just make sure that the process is fair, because in that situation—you know, it is okay to say well, we do have that in our system, we do go through arbitration the way Mr. Berthelsen is saying. And if those things are in there, that is fine, but if they are not being exercised, then what good are they?

Mr. CANNON. The gentlelady's time is expired.

I ask unanimous consent to just ask one question to clarify the record. Hearing no objection.

Mr. Berthelsen, do both parties have a right to object or to choose an arbitrator, or does the NFLPA choose the arbitrator and impose that on the negotiations?

Mr. BERTHELSEN. The regulations state that the NFLPA chooses the arbitrator. I think there is some confusion here because Mr. Arrington referred to a hearing, where he said he wasn't allowed to attend. The hearing hasn't taken place in this case yet. He is referring to a committee of people, players, fellow players who propose discipline in a meeting among themselves, discipline which, on the average, is reduced or vacated much more often by the arbitrator than it is upheld. The arbitrator is not a rubber stamp.

Mr. CANNON. Thank you for that distinction. But as to the question of the arbitrator, I thought you said earlier that the national rules of arbitration apply and therefore there is some choice, but I take it there is no choice as to the arbitrator—for the players, it is only the choice of the NFLPA; is that correct?

Mr. BERTHELSEN. I am referring to the rules of the American Arbitration Association, which is the subject of the question. The AAA has different sets of rules for different kinds of situations. We use the labor arbitration rules. Those rules state that if the parties in the case have agreed to a selection process for an arbitrator, that agreement is to be enforced. When an agent applies to become an agent of the NFLPA, which legally they are, this is a regulatory system, they agree that their application becomes an agreement with the NFLPA to the regulations as they state. And that is the agreement of the——

Mr. CANNON. I think there is some heavy handedness in the concerns raised by Mr. Delahunt, who is not here, but I appreciate that clarification and how that works.

Ms. JACKSON LEE. Just one quick one on your clarification.

Mr. CANNON. Certainly.

Ms. JACKSON LEE. In that process that they sign onto, do they then commit themselves not to be able to subpoena or discover witnesses?

Mr. BERTHELSEN. Absolutely not. There are subpoenas issued in virtually every case. For some unknown reason, Mr. Poston has chosen not to use that. But I get subpoenas signed by the arbitrator. Mr. Weinberg's counsel, his prior counsel, who hasn't pursued his appeal on his disciplinary case, sent me at least four subpoenas, one of which I filed a motion to limit, to quash.

We provide documents all the time. And there is, again, it gets back to my frustration with the limited time we have that I am not able to correct what I think is a lot of inaccurate information.

Mr. CANNON. We do hope that you note what is inaccurate and just inform us. This is not a heavy handed thing, we are just trying to figure out what is going on.

Mr. Meehan, did you have some questions?

Mr. MEEHAN. Yes.

Mr. CANNON. The gentleman from Massachusetts is recognized for 5 minutes.

Mr. MEEHAN. Thank you, Mr. Chairman.

And I don't know any of the parties involved, my interest is basically I follow the NFL, so I am interested in this. And I have to say, your testimony was excellent.

When you were talking about the hustle and bustle of negotiating this contract, and you mentioned preparing for a game in Philadelphia——

Mr. ARRINGTON. It was at home, it was here.

Mr. MEEHAN. Against Philadelphia.

Mr. ARRINGTON. Yes.

Mr. MEEHAN. And then you mentioned other parts where you were at the Super Bowl orpreparing for the Pro Bowl——

Mr. ARRINGTON. That is correct.

Mr. MEEHAN. And I couldn't help but think that one of the reasons why agents have strict rules is because most players are in exactly your position. Preparing for an NFL game is a complicated thing, it requires full attention. Players are young, in some cases you—although I wouldn't say you are inexperienced now, you do very well, and you should think about running for Congress 1 day—but players really need to be protected, and that is one of the reasons that there are the regulations that there are.

And I always worry about players being taken advantage of by agents, and I think that is one of the things that I always, as a fan, want to see is protected. There are times when players negotiate their own contracts, and usually they could have made more money if they had somebody else negotiating for them. But in any event, I admire your loyalty to your agent as well.

And Mr. Berthelsen, it is interesting because in this other case, Mr. Steve Weinberg, there were 15 players that testified or wanted to testify on behalf of him. Should the fact that a player doesn't blame his agent for negligence or malfeasance in representing a player affect whether or not there is a decision to discipline that player? And why or why not?

Mr. BERTHELSEN. Any individual player who is a client of the agent, if he had a veto power, the only agents we could ever discipline would be those agents who have no clients. Players are very loyal people. I do arbitrations for players, that is what I spend most of my time at, and I do a good job for them, I think, but if I made a big mistake in a case, in an arbitration and I lost it, that player may well think that I am still the greatest guy in the world, but Gene Upshaw looks at the mistake I make, and if it is serious enough, he is going to say you are not going to do any more cases for the next year or somebody else is going to do them because he has a responsibility to the other players.

And that is why we say we need a system where we have a committee of players who have no involvement in the particular situation to assess it.

But one of the biggest misconceptions, inaccuracies of this case, what has been said today, what has been said otherwise, has been that there was a deadline that day for LaVar's contract, that therefore there had to be a leap of faith taken and oral representations had to be accepted. If Mr. Poston had called us, if he would have looked at the collective bargaining agreement we had, he would have seen there was no deadline that day. Anybody in the NFL knows that day was not a deadline. The next day was a deadline

of sorts because the rule in question said the contract had to be done before the last game of the season. The last game of the season for Mr. Arrington was more than 24 hours after these things were being said.

Now, we never said that his agent had to be here in Washington with him; we recognize that this happens all the time, it is done by fax machine. But what the evidence in the case will show is that there was a 3½ hour period, beginning with the supposed deadline of 4 o'clock that Friday and ending almost 7 p.m. That night, where there were numerous exchanges of faxes between the Redskins and Mr. Poston's office, and on four separate occasions the very page in which the $6.5 million should have gone and the page where Mr. Poston said it should by putting something in the margin, he saw it 3 or 4 times——

Mr. MEEHAN. How does the collective bargaining agreement between the NFL and the NFL Players Association, how does that impact the rules that we are discussing?

Mr. BERTHELSEN. It has more impact on what an agent does than anything.

Mr. MEEHAN. How though? You just negotiated a new contract with the NFL, how does that relate to rules?

Mr. BERTHELSEN. Well, the basic elements of the deal are the players get a percentage of the gross revenues, about 60 percent of them. We take a very generous benefit package and we subtract it from that, and the rest of it is left over for salaries, and there is a cap. There are certain exceptions, a lot of complex rules. We have deadlines for contracts to be done. In this case, we have a rule that says that in order to renegotiate a contract by the end of the season, it must be done by the last regular season game. Literally that would mean they could be negotiating this contract in the fourth quarter. But an agent is expected to know that collective bargaining agreement; more than any other obligation, that is the one that is most paramount. And we have seminars with the agents every year where we emphasize the importance of the rules, and emphasize and reemphasize the importance of making sure that what you get for player negotiations is in the contract.

Mr. MEEHAN. This will be the last question. Let me ask you, has this arbitration system that we are talking about been challenged in court? I mean, certainly there must be cases? Are there cases, how many are there?

Mr. BERTHELSEN. Yes. Mr. Poston challenged it twice and he lost on both occasions, once in the Southern District of New York. Mr. Karcher said there is a case still pending, well, Mr. Poston's lawyer disagrees with him because he said that case went away when they lost their injunctive effort. The court in New York ruled against Mr. Poston. He tried to get an injunction based on the impartiality of the procedure, the judge rejected his claim saying that he had no likelihood of success on the merits. And that is a dispositive ruling of the court.

He tried, when he was disciplined the last time, when the discipline was reduced by the arbitrator, Mr. Kaplan—in fact, it was reduced by 75 percent—he went into court before Judge Cacheris in Virginia, argued everything that he is arguing here today, and more, and Judge Cacheris ruled that our system was legal, that

Mr. Kaplan as an arbitrator was someone that he had agreed to to arbitrate disputes, and he said in his decision that Mr. Kaplan was a regular arbitrator who had been accepted in other sports. But we have had a case in the District of Columbia that has blessed the system, one in Virginia, one in the Southern District of New York. We have had one in Los Angeles in the last year and a half, where Judge Lau in the Dave Dunn case said basically the same thing.

We are batting a thousand when it comes to challenges in court. There haven't been many of them. And they have basically been two by Mr. Poston, one by Tank Black and one by David Dunn, but all people who had been disciplined and lost on prior occasions.

Mr. CANNON. The gentleman's time is expired.

The gentlelady from Texas would like to ask a couple more questions, and so I ask unanimous consent that she be granted 2 minutes for those questions. And before you start that, without objection, Mr. Meehan, did you have more questions?

Mr. MEEHAN. Maybe afterwards. I mean, I could talk for an hour on this. This is fascinating.

Mr. WATT. We hope you won't.

Mr. CANNON. Maybe you can submit those in writing or something like that.

Ms. JACKSON LEE. I am with Marty Meehan, I could talk for 3 hours on this.

Mr. MEEHAN. The real question is whether Mr. Poston could have gotten Ty Lauder re-signed with New England.

Ms. JACKSON LEE. I hope when we leave this hearing—and I thank the distinguished gentleman from Massachusetts, my good friend, for his line of questioning—really will not be on A or B agent. I think the crux of this has to be how do we make this system work. And we have already found an Achilles Heel that I hope the NFLPA will adhere to and listen, even before legislative response may be pursued, and that is, that you have a system, yes, that agents buy into which says that you select the arbitrator, but who wouldn't buy into it because the only way you can work, you are a designee of the NFLPA, you can't work without getting that authority. I would agree to anything, there is a lot of money in this. So it is a patently built-in unfair system, and there is a hand in glove.

When you say that six or seven individuals dish out punishment, those six or seven individuals are—I respect them greatly, but it is my sense that they are hand in glove to a certain extent. And reason why I say that is we have been getting calls from the Retired Players Association about conflicts in their provisions that they have had.

Let me just quickly say this; to answer the question about Mr. Poston in particular, it was when he contacted Congress that he was immediately suspended, because those particular scheduled days of meetings could have continued on so he would have had his day in court.

Mr. Karcher, could I just simply ask you the question, what procedural safeguards should be required of, A, to ensure that the decertification proceeding are fundamentally fair to agents, players and NFLPA? And do we need to have discovery and subpoena pow-

ers that can be enforced and that can ultimately stand up in court? Because I don't understand why Mr. Weinberg's 15 players were not allowed to testify. Why couldn't Mr. Weinberg have the ability for discovery, calling his 15 players?

Mr. KARCHER. It is a complicated question, I think; it would take me a long time to answer it.

Ms. JACKSON LEE. You can just say do they need discovery and subpoena powers?

Mr. KARCHER. As I said in the initial statement, there are a lot of points here to the overall entire system that just needs to be looked at. I would say that Mr. Meehan made a great point that there is a lot of agent misconduct going on in this business. However—and I have written about agent misconduct, it takes place. And the union must look after the best interests of the players. However—and I have written on this issue—that the union, under the labor laws, has the power, if they wanted to, to start representing players, make it an option to have players be represented by the union, make it an option that they could. But they have chosen a system in which there are third-party agents involved. Now, if that is the system that is chosen, the question is, under that situation when they are not employees of the union, they are not under their control, they are not looking after him like Mr. Berthelsen said when he is working for the NFLPA, and they can see what he is doing on a daily basis, okay, there needs to be some sort of, I would think, minimum due process and fairness in a system when you have third-party agents, and that is a system that you want to have.

And I guess the question would be, why, in my mind, why is it so difficult to have a system of, like we talked about earlier, somebody had proposed where you have people strike arbitrators from a list and ultimately agree on one arbitrator. I mean, that is a typical situation in society where parties in equal bargaining agree to a contract that says that. The problem that you have in this situation, and it is unique, is that you have a third-party system where in order to represent players, you must agree to sign on the dotted line, and you must consent to that with no negotiation powers.

Ms. JACKSON LEE. Thank you very much. I need to get to Mr. Friedman. And I would like to conclude, Mr. Arrington, on this whole idea of having witnesses.

Mr. FRIEDMAN. Ms. Jackson Lee, the answer to your question is yes. If the goal of the arbitration process is to get to the truth and have these grievances heard by an impartial arbitrator——

Ms. JACKSON LEE. That is the key.

Mr. FRIEDMAN. That is the key, that is the goal. Procedural safeguards, due process rights have to be implemented. You have to have discovery, you have to have an honest and fair exchange of documents. In the court system, the discovery is liberal, the discovery is broad, there is no harm in exchanging those documents. You have to get sworn statements.

Ms. JACKSON LEE. But you wouldn't mind it being more restrained on the arbitration system and as well modifying what the agent sign; we want to protect players, but modifying that agreement that says we select the arbitrator?

Mr. FRIEDMAN. Sure.

Ms. JACKSON LEE. Mr. Arrington, with your daily dealings with agents——

Mr. CANNON. Let me ask unanimous consent that the gentlelady be granted one more minute. Without objection, so ordered.

Ms. JACKSON LEE. I thank the distinguished Chairman and the distinguished Ranking Member.

Just in the course of your experience with the NFL and with the Players Union—which I know has many meritorious assets, many good things that it does—in your back and forth, your time with the Redskins and the 6.5 million, I know it came into arbitration, but just the idea of being able to call witnesses, both you and your agent and the Players Union or however it is, the Redskins, would that have been a fairer system?

Mr. ARRINGTON. Well, I think, as has been alluded to, I think if a neutral arbitrator would have been able to have been brought on board, I don't have a problem going through the just process. It is not about trying to beat anything unlawfully or anything like that, or under the table, it is just be fair. You know, this has been I think 3 years now since this has happened, and to me the truth still remains the same. That is why I don't have to stay here and keep referring to my notes or different things that—to me, you know, if you are trying to cover things up, you ought to keep trying to go through pulling out facts and different things to try and justify what it is that you are saying. And I don't need to do that because I know exactly what happened. So all I ask is just to have a fair process, that is it, nothing more, nothing less, just a fair process.

Ms. JACKSON LEE. Mr. Berthelsen, I think you have heard everyone at the table say they just want a fair process. Why wouldn't the NFLPA adhere to the American arbitration system and reform its rules to allow the consensus of agent and opponent—or whoever it is—to have a consensus of who the arbitrator would be?

Mr. BERTHELSEN. We do conform to that system. We do have hearings where there are witnesses and cross-examination——

Ms. JACKSON LEE. Do you have a process where an agent can select as well? Thank you, Mr. Chairman.

Mr. MEEHAN. Can I ask one final question?

Mr. CANNON. I ask unanimous consent that the gentleman from Massachusetts be recognized for 1 minute. Without objection, so ordered.

Mr. MEEHAN. I want to know how the rehab is coming and will you be ready to go next year?

Mr. ARRINGTON. Hopefully I will.

Mr. WATT. Can I ask unanimous consent for 1 minute, please?

Mr. CANNON. Without objection, so ordered. The gentleman is recognized for 1 minute.

Mr. WATT. Just to say a word to Mr. Berthelsen. As strongly as I have expressed my concern about the timing of this hearing, let me say this in public as I would say it to you in private if you asked me to. I think the timing of this hearing is terrible, but I hope that you are listening to what is being said. There is a high degree of interest—not always uniformly applied by this Committee—to fairness. And it is quite possible that the gentlelady who is being so aggressive about this may be sitting in this chair next

year, where the Chairman is sitting. So I hope you have heard this concern about fairness, and I hope you will communicate it to whoever it is you are representing, the Players Association, the union, whoever it is in this mix.

I personally am not a big fan of arbitration, period, but that is not what had hearing is about. I am not a big fan of injecting ourselves into cases on a case-by-case basis, but I hope you get the broader message here about fairness, and I hope you will talk to your clients about it, because this may be one of those situations that it would be better for you all to resolve and define fairness than have this Committee resolve it and define fairness. I yield back the rest of my time.

Mr. CANNON. Let me associate myself with Mr. Watt's words. And I was going to say something very similar to that, and we will just let it be said by Mr. Watt.

Before we adjourn, let me also just point out that this is the—we don't often use this hearing room, this is the first room that I had a hearing in. And as a young green freshman, Mr. Watt showed me great kindness here. So it is a matter of great warmth to be here and chair this as the last hearing that I chair. It may well be that Ms. Jackson Lee takes the gavel of this Committee, and I look forward to working with her. We have some wonderfully important issues, especially those that preceded this hearing, that I look forward to working with her on.

But I just did want to say that it has been a great pleasure to work with Mr. Watt. We have had some hard conflicts, but all—first of all, I cherish audible conflicts. People can yell at each other, that is not fun at all, but Mr. Watt is a worthy opponent. And on a couple of occasions over the past couple of years we have crossed swords, but we have had a very gracious, very thoughtful period together here, and it has been my honor and my privilege and my pleasure to have worked with you, Mr. Watt, over this period of time.

Let me also say that staff has been wonderful, both majority staff—and Stephanie, you have been wonderful in awkward difficult situations. As my staff begins to see itself being paired down and working in your awkward position, we want you to know that you have been a great model, and I appreciate the many, many hours and the many problems that we have resolved together.

This has been a great 4 years as a Committee, and we have done so many wonderful things. And whoever the Chair is, Mrs. Jackson Lee, if that is you, we look forward to that same kind of relationship. I can assure you that I will try to emulate, although poorly, the model of Mr. Watt. And I hope that we can actually make some progress on some of these issues that are not partisan. This is not a partisan issue today. This is not a Democrat or Republican issue, this is not union, non-union, this is about fairness. And I will say the hearing was much more interesting than I expected it to be.

And again, I want to associate myself with what Mr. Watts said about why we are here and what ought to happen out of this hearing.

And with that, without objection, we will adjourn.

Ms. JACKSON LEE. I echo and yield and thank both of you for your kindness. Thank you very much.

Mr. CANNON. Adjourned.

[Whereupon, at 12:37 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, COMMITTEE ON THE JUDICIARY

I thank the gentleman for yielding. Let me also thank you, Chairman Cannon for holding this important and informative hearing. I also thank the Ranking Member, Mr. Watt, for his cooperation. And I thank all the members of the subcommittee for allowing me to join you today.

The purpose of the hearing is to examine the arbitration practices of the National Football League Players Association (NFLPA). I am pleased to extend a warm welcome to each of the witnesses who will help us obtain a better understanding of those practices and how well or poorly they are serving the intended purpose of arbitration. The witnesses are:

- Mr. LaVar Arrington Arrington, an All-Pro linebacker for the Washington Redskins of the NFL and now a player with the New York Giants;
- Mr. Richard Berthelsen, the General Counsel of the NFLPA;
- Professor Richard Karcher of the Florida Coastal School of Law and an expert in the field of sports law; and
- Mr. Larry Friedman, Managing Director of the law firm of Friedman and Fieger, LLP, and an attorney who has represented NFLPA certified player agents in litigation against the NFLPA.

The Collective Bargaining Agreement (CBA) between the NFL and the union for its professional football players (NFLPA) recognizes the NFLPA as the exclusive bargaining agent. The CBA also gives the NFLPA the authority to regulate and discipline contract agents who represent NFL players in contract negotiations with respective franchises in the NFL. Under the CBA only agents certified by the NFLPA may negotiate player contracts.

As I stated, the collective bargaining agreement authorizes the NFLPA to certify and discipline contract agents. But the NFLPA may not decertify an agent—an act akin to disbarring an attorney—without permitting the agent an opportunity to contest the proposed decertification to "a neutral arbitrator pursuant to its agent regulation system."

One would think that a sanction as drastic, extreme, and draconian as decertification would trigger a legal process with all the procedural safeguards necessary to prevent an erroneous deprivation of a property interest and deter arbitrary or capricious decision-making.

I think all of us here would simply assume that before the NFLPA could decertify an agent and deprive him or her of the right to make a living in his or her chosen profession it would be required to afford the agent procedural due process, which, at a minimum, requires notice and a meaningful opportunity to be heard before an impartial decisionmaker.

One would think that the party seeking to deprive the agent of his license would bear the burden of proof, production, and persuasion which must be established by at least clear and convincing evidence introduced in accordance with established rules of evidence. And, of course, we would expect that the accused would be afforded the right of confrontation and compulsory process for obtaining witnesses in his favor.

But then I learned of a disturbing case involving Mr. Carl Poston, which indicates that these assumptions may be unwarranted when it comes to the arbitration processing involving the decertification of NFLPA contract agents. Mr. Poston is the contract agent for LaVar Arrington Arrington, one of the witnesses appearing before

us today. He is also one of my constituents and the subject of an NFLPA decertification arbitration proceeding. Although the merits of that proceeding are not before the subcommittee, I think it useful to describe the factual background which prompted the NFLPA to institute decertification proceedings against Mr. Poston.

ABOUT CARL POSTON

Carl Poston has been a professional sports agent for more than 17 years. The father of three children, he was drawn to the business out of a desire to help professional athletes, particular football players, make good decisions concerning their careers, maximize their income during their playing years, and plan for a safe and secure post-playing career. Mr. Poston also holds four degrees—a mathematics degree, a law degree, a LLM (an advance law degree in taxation) and an MBA. He has developed a reputation as a smart and aggressive agent, who fights hard for his players, and zealously represents their interests.

Since 2000, Mr. Poston has represented LaVar Arrington, the number two overall pick in 2000 NFL draft. He has tremendous respect for LaVar Arrington and at all times has looked out for his interest and represented LaVar Arrington with undivided loyalty. There are no allegations that Mr. Poston did anything to the contrary.

ABOUT THE LAVAR ARRINGTON CONTRACT NEGOTIATION

In 2000, Mr. Poston was able to achieve an outstanding seven year contract for LaVar Arrington worth more than $50 million with several escalator provisions which could yield LaVar Arrington even more money and higher future salary cap values were created which placed the team under pressure for future salary cap renegotiation. Although LaVar Arrington was the second overall pick, his contract was the best contract in the entire draft class. Because of the size of LaVar Arrington's contract, and the various escalators, LaVar Arrington's contract had a major impact on the Redskins salary cap. On several occasions, LaVar Arrington, represented by Mr. Poston, restructured his contract so that the Redskins could make salary cap room and increase their cash flow to sign other players and strengthen the team.

In late fall of 2003, Dan Snyder, the Redskins owner, called Mr. Poston and asked to restructure LaVar Arrington's contract—again. Snyder explained that he wanted to sign additional players, and that in order to do so, the Redskins needed to restructure LaVar Arrington's contract, and wanted to sign him to a long term contract making LaVar Arrington a "lifetime" Redskin. Snyder told Mr. Poston he would receive a call from Eric Schaffer, whom had recently been hired to be the salary cap manager for the Redskins. Mr. Poston called LaVar Arrington and after the call, and the two discussed strategy on how to approach the discussions with Schaffer.

On December 3 Schaffer met Mr. Poston in Houston and the two met for several hours discussing the Redskins salary cap and cash flow problems over the next few years and the impact LaVar Arrington had on both the cash flow and the salary cap. Schaffer explained that the Redskins wanted to stretch out the contract, make LaVar Arrington a lifetime Redskin and that the new deal had to be done by December 26, 2003 to maximize the salary cap effect for the team. Schaffer's proposal to Mr. Poston, however, was far short of the parameters that Mr. Poston and LaVar Arrington established for such a long term contract.

Over the next twenty three days extensive negotiations took place that involved complex contractual issues. Despite these negotiations, the parties remained extremely far apart and it appeared unlikely that they would be able to reach a deal. As the December 26, 2003 deadline approached, the negotiations grew more intense, and continued on Christmas Eve and Christmas Day. The parties' positions grew closer, but there was still no deal. On the morning of December 26, 2006, Mr. Poston arrived at his office in Houston to make arrangements to fly to Washington in case a deal was struck before 9:00 a.m. He received a call from Schaffer, who refused a key demand in the negotiations—that LaVar Arrington receive a 2006 roster bonus of $6.5 million payable in 2006. Without this key provision Poston took the deal off the table and told Schaffer that they were out of time and the deal was dead.

In the early afternoon, however, Schaffer called Poston and advised him that the Redskins would agree to both $6.5 million 2006 roster bonuses. At this point it was too late in the day for Mr. Poston to fly from Houston to Washington D.C. in time to make the deadline.

Mr. Poston called LaVar Arrington and told that the deal appeared to be back on. Unable to fly to Washington at that point, Poston and Schaffer worked over the telephone. Poston and Schaffer proceeded to negotiate the final terns, and at approximately 1:30 p.m., reached a deal. Schaffer promised to fax Mr. Poston the completed

contract. Mr. Poston spoke to LaVar Arrington, who was concerned that he could not get to the Redskins' offices in time to sign. Mr. Poston told LaVar Arrington to go directly to Schaffer at Redskins Park expecting Schaffer to call Mr. Poston before LaVar Arrington signed the deal. Despite this promise, Schaffer never sent the entire contract. He called Mr. Poston and told him that the contact was taking longer than expected, and he would fax pages as they were being finished.

Over the next several hours, Mr. Poston received portions of the contact which contained various errors which Mr. Poston called Schaffer to correct. Among the items that Mr. Poston observed were missing were the second $6.5 million 2006 roster bonus payable in 2006 and the $11.3 million "non exercise fee" with respect to certain options contained in the draft. Mr. Poston observed that the contract contained a 2006 roster bonus payable over three years, which was a sum of money that they had agreed to in the contact in addition to the $6.5 million 2006 roster bonus payable in 2006.

Both roster bonuses were key in order to reach the 4-year total of $27.5 million. The other roster bonus was money that the parties had agreed to, but which Mr. Poston had agreed that Schaffer could structure as he wished. Mr. Poston pointed out to Schaffer that the non-exercise fee and the roster bonus were missing, and Schaffer assured him that they were being included in the document.

Mr. Poston continued to wait for a complete and final contact to arrive, and called several times but could not reach either LaVar Arrington or Schaffer. Then, Schaffer finally took Mr. Poston's call. In that call, Schaffer told Mr. Poston that LaVar Arrington had already signed the contract and had left the office to check into the team hotel. Mr. Poston complained that he still had not received the entire contract. Mr. Poston told Schaffer that he should not have presented the contract to LaVar Arrington without having sent it to Mr. Poston first and then calling him so that Mr. Poston and LaVar Arrington could go over the contract.

Although Schaffer's conduct in presenting the contract to LaVar Arrington without having Mr. Poston's prior authorization was plainly inappropriate, Schaffer told Mr. Poston that given the looming salary cap deadline, he needed both LaVar Arrington's execution and Mr. Poston's certification immediately. Schaffer advised Mr. Poston that the second $6.5 Roster Bonus as well as the $11.3 had been added, and asked that Mr. Poston send signed certification pages. Schaffer then faxed to Mr. Poston the pages he needed Mr. Poston to initial and sign, and Mr. Poston initialed and signed those pages and faxed them back. Had Mr. Poston not done so, then, according to the Redskins, the entire deal would have fallen apart since a major consideration was the creation of salary cap room. Subsequently Mr. Poston has been advised that Schaffer's statement that the deadline was December 26, 2003 was incorrect and that the certification was not required to be submitted until the next day, December 27, 2003.

Mr. Poston has said that he read all the drafts and partial draft pages that Schaffer had sent him and commented on them, corrected various mistakes, and indicated the second 2006 roster bonus and the $113 million non-exercise fee were not included. But according to Mr. Poston, he had little choice but to send back the certification as Schaffer had insisted, because if he had not, the deal that LaVar Arrington wanted and on which he had already signed off on, would have fallen apart.

It was only after Mr. Poston had sent back the signature pages, that Schaffer sent a full copy of the document. In the document that Mr. Poston received from Schaffer he noticed that the signatures were attached to a version that had the $11.3 million non exercise fee interlined in handwriting, but had no interlineation for the second $6.5 million roster bonus payable in 2006.

RESOLUTION OF THE ARRINGTON CONTRACT DISPUTE

Mr. Poston attempted to rectify the problem, and called Schaffer who refused to continue to speak to Mr. Poston without Redskins legal counsel. Schaffer called back with counsel for the Redskins, who claimed that the $6.5 million roster bonus payable in 2006 was not part of the deal. This made absolutely no sense in light of the negotiations between Mr. Poston and Schaffer, and was directly contrary to Schaffer's assurances that second 2006 roster bonus was indeed in the paperwork that LaVar Arrington had signed.

Mr. Poston informed LaVar Arrington of the Redskin's position and also contacted the NFLPA to enlist its support and advice. Mr. Poston also helped LaVar Arrington hire legal counsel to protect LaVar Arrington's rights. On March 12, 2004, LaVar Arrington, through counsel, filed a non-injury grievance against the Redskins asking for (i) addition of the $6.5 million bonus and/or to (ii) void the contract. In the grievance, LaVar Arrington pointed out:

> The Redskins' delay in drafting the language, combined with the deadline, created a situation where trust was paramount. The deal could not occur—without trust—a trust predicated on Arrington's desire to help the Redskins. The Redskins controlled the contract language and the time to draft it. It was not humanly possible for Poston to review the Redskins' version of the contract, compare it on a word-by-word basis with the agreement in principle, and advise Arrington by the 4:00 p.m. deadline. Poston and Arrington were required to trust the Redskins to accurately memorialize their agreement.

On or about March 23, 2004, the NFLPA agreed to represent LaVar Arrington in the matter and retained the law firm of Dewey Ballantine. Mr. Poston had no involvement with the decision but he cooperated fully with the Dewey Ballantine attorneys, meeting with them on two occasions and providing them all information they requested, including his notes.

I am advised that Dewey Ballantine did not meet with LaVar Arrington until shortly before his non-injury grievance arbitration was scheduled to be heard. LaVar Arrington was not impressed with the performance of his legal representatives, and after the hearing called NFLPA President Gene Upshaw to complain. LaVar Arrington asked Mr. Upshaw who had hired the Dewy Ballantine firm, asked how could they be his lawyers if they had not even bothered to meet with him, the client, until shortly before the arbitration. LaVar Arrington told Gene Upshaw was going to hire his own attorney who could give him an objective view and did so shortly thereafter.

After LaVar Arrington retained new counsel, the arbitration was adjourned for the purpose of pursuing settlement negotiations. Through the efforts of new counsel, a settlement was reached. Mr. Poston played an important role in achieving this settlement, including arranging a meeting with Redskins Coach Joe Gibbs to explain LaVar Arrington's feelings concerning the situation. Coach Gibbs helped prevail on the Redskins to reach an acceptable settlement with LaVar Arrington. The settlement provided that no one did anything wrong or improper and provided for a new contract for LaVar Arrington under which he could obtain an additional $4.85 million under certain conditions, including the right to void the contract if he made Pro Bowls in the next four years unless the Redskins paid LaVar Arrington an additional $3.25 million. The settlement agreement provides:

> "This Agreement shall not be construed as an admission of liability or a finding of wrongdoing by any party."

As LaVar Arrington has put it, "[m]y grievance against the Redskins has been settled on no-fault, win-win resolution."

CONCLUSION

Based on the foregoing, it is clear that Mr. Poston did nothing wrong nor improper. So for me, two questions immediately come to the fore: (1) why would the NFLPA would institute a decertification proceeding against Mr. Poston; and (2) as the Chairman rightly indicates, (a) whether the arbitration procedures employed by the NFLPA are fair; (b) whether they ensure a neutral arbitrator; (c) whether adequate opportunity for judicial review exists; and (d) whether the procedures comport with the intent underlying the Federal Arbitration Act and, if not, what might be a proper legislative response.

Mr. Chairman, let me thank you again for convening this hearing, which I hope will be the first of several. The playing career of the typical professional football, baseball, hockey, or basketball player is less than ten years, at which time the athlete in most instances is still under 35 years of age with a remaining working life of at least 30 years.

It is therefore important for Congress to understand whether these professional athletes are being well prepared to lead productive lives in the global economy at the conclusion of their playing careers. That is why, in my view, it would be useful also to examine examination of the effectiveness of the relationship between professional athletes, the representatives that represent players in collective bargaining, the sports agents who represent the individual interests of players, and the professional sports team which employ them.

The Congress' paramount concern should be ensuring that the financial and professional interests of professional athletes are being well served by those who owe them a fiduciary duty of loyalty and care. I believe that professional athletes who are poorly served by their player representatives, agents, or the teams that employ them are much more susceptible to temptations such as the false lure of performance enhancing drugs.

I am looking forward to hearing from the witness and considering their responses to the subcommittee's questions.

Thank you. I yield the balance of my time.

PREPARED STATEMENT OF CARL POSTON

Testimony of Carl Poston,

Good Morning, Chairman Cannon and Members of the Subcommittee. My name is Carl Poston and I first want to thank you, Representatives Sheila Jackson Lee, Henry Hyde and all members for this opportunity to present this statement to this subcommittee on the arbitration procedures and practices of the NFLPA. Please accept my apologizes for not being able to appear in person. I am presently recuperating from knee surgery.

You may wonder why I am not able to be present this morning. I believe that question can be best answered by my reading into the record my Orthopedic Surgeon, Dr. Walter Lowe's letter dated November 29, 2006.

"...[R]E Carl Poston

To Whom It May Concern:

I am currently treating Carl for a left knee injury. I first examined Carl's left knee on November 16th and when I reexamined him yesterday it was apparent to me that his left knee symptoms had worsened. He has swelling, pain, and locking from a large medial meniscal tear. His clinical signs and symptoms are entirely consistent with an unstable medial meniscus tear. Carl requested that the surgery be scheduled after December 5, 2006; however, it is my medical opinion that a left knee arthroscopy with partial medial menisectomy should be performed now, November. 29, 2006. This operation is mandatory to prevent articular cartilage injury (focal arthritis defect) to the medial femoral condyle.

With Carl's previous history of deep vein thrombosis and a family history of deep vein thrombosis (blood clots in the leg), this surgery should be performed now to resolve swelling which will further predispose him to DVT. An Anticoagulant will be required for 6 weeks post surgery. I anticipate a 6 week recovery time for Carl. If you need any further information, please contact my office.

Sincerely,

Walter R. Lowe, M.D."

Copy of Dr. Walter Lowe's letter is attached as Exhibit A for your review.

My operation was performed on November 29th and because of complications, it lasted three times longer than expected. Unfortunately, I had three separated tears in my left knee and my knee presently has grown to the size of a basketball. I am taking medication and have been in serious pain since my operation.

As a result of my medical condition I am testifying today through this written statement. I will attempt to focus on the arbitration process of the National Football League Players Association ("NFLPA") as it relates to my personal experience and knowledge.

On July 25, 2006 without notice and without a hearing the NFLPA suspended me as an agent in part because I petitioned Congress which I believe is a Constitutionally protected right. The NFLPA letter states as the basis for the immediate suspension that I was suspended 1) for seeking and requesting congressional assistance, [Jerris Leonard was my counsel], 2) for petitioning federal court to seek clarity of my rights and for requesting a neutral arbitrator and 3) for adhering to the advice of my doctors after suffering an achilles injury. Not only have I been deprived of income, my chosen livelihood and my craft without notice or a hearing but my clients are also deprived of their agent of choice. I am presently unable to represent LaVar Arrington and any of my former clients as a result of the NFLPA's actions.

I would also like to bring to your attention a June 30, 2006 letter from Representatives Henry Hyde and Sheila Jackson Lee addressed to the Executive Director of the NFLPA, Gene Upshaw "… [w]e have the following concerns which my colleagues support:

1. The NFLPA has the sole authority to determine who will or will not be permitted to become an agent based on an NFLPA Application for Certification and to agree to be bound by and adhere to the NFLPA's Rules. The Rules are as determined solely by NFLPA.
2. The NFLPA has a mechanism for the resolution of disputes between a player and his agent and a player and a team. The NFLPA also has a mechanism for considering complaints against agents. We understand that the NFLPA is pursuing disciplinary action against Mr. Poston although the player involved, Mr. Arrington, has made no complaint about Mr. Poston, has declined to make any

complaint about Mr. Poston, and has affirmatively stated that he is pleased with Mr. Poston's representation of him (with that representation continuing through Mr. Arrington's recent contract negotiations with the New York Giants) and, in fact, wants the matter dismissed. In fact, Mr. Arrington has advised me that this action is against his interest.

3 The NFLPA has the sole right to select the arbitrator to resolve disciplinary matters, and that the NFLPA pays that arbitrator for services rendered.

4 There is no procedure in place for disclosures by an arbitrator along the lines that are typically required in any arbitration, whether sponsored by the American Arbitration Association or otherwise.

5 We are concerned about the possibility of eliminating a significant African American agent who has reportedly been quite successful in obtaining contracts very favorable to his clients and who also has been significant to their success after their athletic career has ended.

...we would like you and the NFLPA to address the following issues voluntarily:

1. Require a verified complaint.

2. Changing the process by which the arbitrator is selected, to ensure that the arbitrator is neutral, impartial, and unbiased. Perhaps a system such as that used by other arbitration forums, such as the American Arbitration Association, would be more appropriate.

3. Requiring any arbitrator to make appropriate disclosures so that those who are parties to the arbitration can fairly evaluate whether the arbitrator does or does not have or does or does not appear to have an interest or potential for bias which would give rise to challenge or disqualification. That would include implementing a challenge/disqualification procedure.

4. Depending upon the severity of the sanctions sought, and particularly in circumstances when revocation of certification or suspension is sought, permitting discovery to be taken by each of the parties, which would typically include discovery from the parties as well as non-parties. Typically, that would include basic discovery tools such as depositions, document requests, and interrogatories.

5. Implementing procedures to prevent surprise at the arbitration, including identification, in advance of the arbitration, of witnesses and perhaps a brief summary of anticipated testimony, together with pre-hearing exchange of exhibits, as we often understand is engaged in other arbitration forums.

6. Providing the arbitrator with subpoena power, enforceable in a court of law, so that a person subject to potential suspension or revocation can compel others to testify.

7. Prohibiting *ex parte* communications with the arbitrators.

The NFLPA response to Representatives Hyde and Jackson Lee's letter contained misstatements of facts and improper conclusions.

The response was off the track and was so outrageous that it highlighted the overreaching strong arm of the NFLPA which is again obfuscating its obligations of good faith and fair dealing. Gene Upshaw, the executive director of the NFLPA said to the Associated Press, "They, the agents, work at our beck and call."

The first five pages of the Upshaw letter would have one believe that Carl Poston has admitted to wrongdoing and that LaVar Arrington has forgiven him. The facts of this matter will not support this position. According to the one person who best knows the facts, LaVar Arrington, Carl Poston acted professionally, appropriately and in his best interest and did not violate any of the NFLPA's rules or regulations.

To highlight how much the NFLPA is obfuscating its obligations of good faith and fair dealing it is important to observe how the NFLPA letter responded to the seven (7) issues that Chairman Hyde and Representative Jackson Lee asked the NFLPA to address:

#1: That the NFLPA Regulations require a verified complaint

NFLPA Response: CARD's complaint was based upon information which Poston himself verified and is therefore not an issue.

The Poston position: CARD did not follow its rules which require verified information before a CARD complaint can be filed. Why did the NFLPA not follow its rules? The answer is simple; because the NFLPA is not interested in fairness or due process, it is only interested in "control"; control of every aspect of a players life including who he chooses as his agent.

#2: Changing the process by which the arbitrator is selected, to ensure that the arbitrator is neutral, impartial and unbiased

NFLPA response: We believe that Arbitrator Kaplan is neutral, impartial and unbiased.

The Poston position: The present NFLPA Rules do not provide for the appointment of a neutral arbitrator but provides the NFLPA has the sole right to select the arbitrator of its choice and further provides that the NFLPA shall pay for such arbitrator. Is an arbitrator appointed by and paid for by a Party to Arbitration neutral, impartial and unbiased? When an arbitrator is subject to

removal from the approved list if the NFLPA does not like his decision then he is bias toward the NFLPA.

#3: Requiring the arbitrator to make appropriate disclosures so that those who are parties to the arbitration can fairly evaluate whether the arbitrator does or does not have or does or does not appear to have an interest or potential for bias which would give rise to challenge or disqualification.

NFLPA response: This is addressed in the previous response.

The Poston position: These disclosures are necessary to assure the arbitrator is neutral, impartial and unbiased. Why has the NFLPA been unresponsive and not addressed the issue of disclosures other than making a statement that Arbitrator Kaplan is neutral, impartial and unbiased? Clearly from his record he is not.

#4: Discovery should be permitted in at least circumstances when suspension is sought.

NFLPA response: The regulations do not specifically address discovery, but Arbitrator Kaplan typically permits document discovery. Moreover, Mr. Poston has not sought any discovery in this case under any appropriate procedures.

The Poston position: Carl Poston's Counsel, an experienced litigator appropriately, in detail and in writing and by conference calls with the Arbitrator requested such discovery. This is fully established in the Arbitration record which has been provided to all Senate and House Counsel who wished to review it.

#5: Implementing procedures to prevent surprises at the arbitration

NFLPA response: There were no surprises at CARD hearings.

The Poston position: The answer is simply not responsive to the question and the statement is another example of the NFLPA arrogance. There were non-CARD people who attended the CARD hearing but neither LaVar Arrington nor Carl Poston nor their Counsel were permitted to attend. He has never been able to confront his accusers and it is proper for him to ask: Who are the people who claim that I have violated the ethics of my profession? It is now more than ever obvious that due process procedures need to be put in place. The NFLPA does not know how to do this and the entire process should be turned over to the AAA so there is due process, transparency and fair play.

#6: Prohibiting *ex parte* communications with the arbitrator.

NFLPA response: No response.

The Poston position: Ex parte communications with the arbitrator should be prohibited by the Rules and why would the NFLPA ignore this question.

Conclusion: Carl Poston believes that unless the Congress in some form acts on this matter that the "assassination" of those agents who do not agree in every respect with the NFLPA will continue. The NFLPA are attempting to keep him from his livelihood. The NFLPA faces major problems, such as those raised by former player Bernard Parish and the Twenty Million Dollar losses sustained by the claimed failure of the NFLPA to properly vet its recommended financial advisors. At the same time it has spent hundreds of thousands and is likely to spend even more on the Carl Poston matter which certainly must be in any good lawyers mind, when compared to all of their other problems, an exercise in trying to convict Carl Poston for "mopery and attempting to gawk". Only Congress can put a stop to this outrage and it needs to do so now!

Respectfully submitted,
Jerris Leonard, Esq.
Legislative Counsel to Carl Poston

Jerris Leonard represented me until his death on July 27, 2006. Jerris considered my suspension one of the worst injustices he'd ever seen in 50 years of practice. "We're going to fight this, and we're going to win," he said.

I was suspended as a result of a conference telephone call that occurred the day after the arbitrator continued the hearing. I was suspended without

Notice,
An opportunity to reply to the outrageous and unjust charges,
An opportunity to be present,
An opportunity to review the evidence against me,
An opportunity to listen to the charges against me or to cross-examine or provide rebuttal testimony

1. The NFLPA has chosen to ignore its own procedures as well as its guarantee to federal court that its process is fair and appropriate. LaVar Arrington personally witnessed the NFLPA's guarantee to the court, as LaVar was present in court to support his former agent.

The NFLPA will provide rules and regulations that they shall provide agents with due process safe guards but in fact conduct themselves to the contrary. For example, attached is the transcript where the NFLPA's attorney states to the court that the …"[u]nion bears the burden of proof at this arbitration…not… propose discipline" but in fact suspended me without affording me these safe guards they promised the court.

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MR. KESSLER: Particularly here, your Honor -- I want
15 to be very clear. There is no punishment imposed upon Mr.
16 Poston at all at the moment.
17 THE COURT: That is a question I have from a practical
18 standpoint.
19 MR. KESSLER: The union bears the burden of proof at
20 this arbitration to demonstrate by a preponderance of the
21 evidence that, in fact, these violations of the regulations
22 occurred, the arbitrator, in effect, considers this de novo.
23 And the arbitrator makes a determination as to all issues with
24 respect to whether or not the proposed discipline should be
25 opposed, whether there should be any discipline at all, whether
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(212) 805-0300
25
64KMPOSC
1 there has been a violation of the regulations. There can't
2 possibly be irreparable harm. And the only thing that was

Brief Personal Background

I was the Contract Advisor for LaVar Arrington, an All Pro linebacker, formerly of the Washington Redskins but presently for the N.Y. Giants and also was a Contract Advisor for numerous other elite professional football players. I was certified as a Contract Advisor in 1990 by the NFLPA. I am the Chairman of Professional Sports Planning, Inc., (PSP) a sports management company that was established to represent and help professional athletes reach their full potential on and off the field. My goal as a sports agent has always been to represent the best interests of my clients and to negotiate the best contracts for them. Although I take great pride in working hard for big contracts for my clients I also advise and help my clients prepare for life after football. Unlike in NBA basketball and major league baseball, NFL contracts are not guaranteed and a player's average tenure in football is less than their counter parts in baseball and basketball. A football player may only have his rookie contract for his career so it important to secure the best contract possible.

By way of background, I have a BS degree in mathematics, a MBA and a JD degree and an LL.M. in tax from NYU. I started my law career in the tax department at the law firm of O'Melveny & Myers. I have been negotiating

NFL contracts for 16 years and I have represented LaVar, as is the case with most of my other clients, since he has entered the NFL from college. In most cases, I am the only agent they have ever had.

I truly enjoy representing my clients and negotiating contracts on their behalf. As an example, I am attaching as Exhibit B a letter that was written by the GM of the Tampa Bay Buccaneers, Mr Bruce Allen. Mr. Allen stated in part "… [w]hat stood out the most about Carl is the manner in which he has always represented his clients. In each and every negotiation he has made it his priority to put the best interests of his clients in the for-front of any negotiations." Mr. Allen who has negotiated more contracts with me than any other GM further stated in his letter that "…[A]dditionally, I have never found him to be careless or dilatory when drafting and reviewing documents on behalf of his clients. To the contrary, he has always been a conscientious negotiator, exercising exemplary attention to detail, displaying a true passion for his work."

It is my desire to request that this Committee investigate NFLPA arbitration process in the following areas:

1. NFLPA present rule making process
2. The appropriateness of the NFLPA's agent rules and regulations
3. Conflict of Interest that favor certain agents and exploit player committee members
4. Retaliatory actions against its own player-members re Group licensing
5. Equal application of rules…….
6. Collusion with NFL teams against the player's interest
7. Due Process and fundamental fairness

The NFLPA has created a system that is unconstutionally unfair to agents and its own player-members. The NFLPA's stated purpose is to act in the best interest of its players. There have been decisions and actions by the NFLPA related to present and former players, agents and financial advisors that would support that the NFLPA is off track and are making decisions and taking actions that are NOT in the player's best interest. For example, the NFLPA according to its own rules, can enact new rules at anytime and can apply them as they see fit and to whomever since agents are at the NFLPA's "Beck and Call." Their motives can stem from Retaliation against a player or agent, Collusion with a Team against a player or agent or Conflicts of

interest against a player or agent. By merely raising these issues or seeking better contract terms such as guaranteed contracts for the players may result in immediate suspensions without due process of law. Such a system. is unconstitutional and fundamentally unfair to the players (present and retired), agents and financial advisors. These actions warrant further investigations and additional hearings.

My health does not allow me to properly focus and I request the opportunity to supplement my testimony as soon as my medical condition allows me to do so. I also request that this Committee schedule additional hearing to further explore matters investigated today.

I want to thank you for the courtesies that you have extended to me including allowing my written statement to be part of the record.

Yours truly,

Carl Poston

ATTACHMENT

exhibit A

Walter R. Lowe, M.D.
Chief of Sports Medicine Section
Department of Orthopedic Surgery
Baylor College of Medicine
Associate Professor

November 29, 2006

RE: CARL POSTON

To Whom It May Concern:

I am currently treating Carl for a left knee injury. I first examined Carl's left knee on November 16th and when I reexamined him yesterday it was apparent to me that his left knee symptoms had worsened. He has swelling, pain, and locking from a large medial meniscal tear. His clinical signs and symptoms are entirely consistent with an unstable medial meniscus tear. Carl requested that the surgery be scheduled after December 5, 2006; however, it is my medical opinion that a left knee arthroscopy with partial medial meniscectomy should be performed now, November 29, 2006. This operation is mandatory to prevent articular cartilage injury (focal arthritis defect) to the medial femoral condyle.

With Carl's previous history of deep vein thrombosis and a family history of deep vein thrombosis (blood clots in the leg), this surgery should be performed now to reduce swelling which will further predispose him to DVT. An Anticoagulant will be required for six weeks post surgery. I anticipate a six week recovery time for Carl. If you need any further information, please contact my office.

Sincerely,

Walter R. Lowe, M.D.

Baylor College of Medicine • Department of Orthopedic Surgery
Medical Center 6620 Main Street, 13th Floor • Houston, Texas 77030 • 713.[illegible] • 713.[illegible] Fax
Sugarland 16200 SW Freeway, Suite 175 • Sugarland, Texas 77479 • 713.[illegible] • 281.494.0145 Fax
wlowe@bcm.edu • www.drwaltlowe.com

FACSIMILE COVER PAGE

To :	Carl Poston	**From :**	Bruce Allen
Sent :	11/30/2006 at 11:12:24 AM	**Pages :**	2 (including Cover)
Subject :			

CONFIDENTIAL

November 29, 2006

NFLPA Committee on Agent Regulations and Discipline
NFL Players Association
2021 L Street, NW
Suite 600
Washington, DC 20036

Re: Carl Poston

Dear NFLPA Committee on Agent Regulations and Discipline:

This letter is being submitted in support of Mr. Carl Poston, as I understand he is facing possible disciplinary action.

I have known, and negotiated against Carl for over eight years and consider him to be a competent NFLPA Contract Advisor. Throughout the years Carl and I have negotiated rookie and veteran player contracts. Over the years, I have also worked with many other contract advisors, and what has stood out the most about Carl is the manner in which he has always represented his clients. In each and every negotiation he has made it his priority to put the best interests of his clients in the for-front of any negotiations. In my opinion, his tireless, diligent approach to getting it done is without question.

Additionally, I have never found him to be careless or dilatory when drafting and reviewing documents on behalf of his clients. To the contrary, he has always been a conscientious negotiator, exercising exemplary attention to detail, displaying a true passion for his work.

I have found Carl to be very professional in our negotiations, someone who works hard and displays the utmost respect for his clients and their needs.

Thank you for consideration.

Sincerely,

Bruce Allen
General Manager
Tampa Bay Buccaneers

LETTER SUBMITTED BY THE NATIONAL BASKETBALL PLAYERS ASSOCIATION (NBPA)

NATIONAL BASKETBALL PLAYERS ASSOCIATION

G. WILLIAM HUNTER EXECUTIVE DIRECTOR

December 6, 2006

Honorable Henry J. Hyde
Chairman, Committee on International Relations
U.S. House of Representatives
2110 Rayburn House Office Building
Washington, D.C. 20515-1306

Representative Sheila Jackson Lee
U.S. House of Representatives
2435 Rayburn House Office Building
Washington, D.C. 20515-4318

Dear Chairman Hyde and Representative Jackson Lee:

The National Basketball Players Association ("NBPA") understands that you have made inquiries about the manner in which the vast majority of players unions in professional sports regulate the conduct of their agents that engage in individual salary bargaining with club employers. Specifically, the NBPA understands that the focus of your inquiry is the system in which sports unions have adopted regulations to govern the conduct of their agents, and then, if a disciplinary matter arises, the agent can appeal the disciplinary determination to an arbitrator, appointed by the union, who regularly hears such appeals.

While the NBPA has been advised that your inquiries mainly relate to the National Football League Players Association ("NFLPA") and NFLPA agent Carl Poston, the NBPA's agent regulation system, like those of other player unions, is very similar to the NFLPA's agent regulation system. Thus, the NBPA strongly believes you should have the NBPA's views on this matter before considering whether any legislative action is appropriate.

It is important to state at the outset that the system of agent regulation by players unions is not solely a function of private contracts, as occurs in other industries where companies or franchisees may enter into arbitration contracts to resolve disputes between them. Rather, the NBPA, like the NFLPA and other sports unions, is the exclusive bargaining representative of all employee players in its collective bargaining unit. As such, the NBPA, as a matter of federal labor law, is the only person authorized to engage in salary bargaining on behalf of NBA players. The federal labor laws, from the time they were first enacted by Congress in the 1930's, make it absolutely clear that a duly elected union's bargaining status is exclusive, and that no one can exercise that

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bargaining authority on behalf of the employees represented by the union without the consent of the union. If that were not so, the foundation of this nation's labor laws would be undermined.

Because the NBPA has determined that a complete wage scale is not in the best interests of its members, the NBPA has agreed to collective bargaining agreements in which its player members offer their services to different employers in the NBA's multi-employer bargaining unit, and the players have the ability to have their wages set through the operation of market forces.[1] But, that does not mean that the NBPA has in any way lost its exclusive authority under the federal labor laws to determine who may or may not represent the NBPA's player members in those individual salary negotiations with employer clubs. Indeed, the union's exclusive authority under the federal labor laws to select and regulate its agents in such bargaining is well established in numerous federal court decisions that have considered prior agent challenges to this system.

In fact, in the first notable challenge to the union/agent regulation system, an agent, Thomas Collins, unfortunately took advantage of an NBA player by engaging in numerous financial improprieties with the player's money, including investing money in risky investments contrary to the player's instructions, converting hundreds of thousands of dollars in corporate indebtedness into personal player obligations without the consent of the player, and lying about his conduct. The NBPA's agent disciplinary committee decided to deny the agent's application to be recertified as an NBPA agent, because the agent was unfit to serve in a fiduciary capacity on behalf of the NBA players the NBPA represents, but advised the agent that he could challenge the disciplinary determination through its binding arbitration process. The agent tried to avoid the NBPA's arbitration process by filing a lawsuit challenging the NBPA agent regulations. The court, however, rejected all of the agent's arguments and affirmed the validity of the NBPA's agent regulation system, and its arbitration procedures, under the federal labor laws. Collins v. NBPA, 850 F. Supp. 1468 (D. Colo. 1991) (Matsch, J.), aff'd, 976 F.2d 740 (10th Cir. 1992).

The Collins court could not have been clearer that, under the federal labor laws, the NBPA has the exclusive authority to pick and regulate its agents: "As the exclusive representative for all of the NBA players, 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." 850 F. Supp. at 1475 (italics in original). "A union may delegate some of its exclusive representational authority on terms that serve union purposes, as the NBPA has done here. The decision whether, to what extent and to whom to delegate that authority lies solely with the

[1] While the NBPA has had to agree in collective bargaining with some limits on player free agency, such as the rookie scale and the so-called 'salary cap,' all NBA players have an opportunity at some point in their careers to offer their services to teams in a market environment.

union." Id. (emphasis added). These principles have since been reaffirmed by many other federal courts. See, e.g., Black v. NFLPA, 87 F. Supp. 2d 1 (D.D.C. 2000); Poston v. NFLPA, 2002 WL 31190142 (E.D. Va. Aug. 26, 2002); cf. H.A. Artists & Assoc. v. Actors Equity Ass'n, 451 U.S. 704 (1981) (upholding actors union agent regulation system).

The exclusive authority of players unions to regulate the conduct of its agents is critical. To begin with, the free agency systems in which player salaries can be negotiated is extremely complex, which means that players are very much at risk if a less than fully qualified agent is permitted to represent them. Agents also unfortunately have a checkered history in which certain agents have taken advantage of players, which, as the Collins court noted, led the NBPA to adopt its agent regulation system in the first place. Id. at 1471 ("In response to these abuses, the NBPA established the Regulations, a comprehensive system of agent certification and regulation, to insure that players would receive agent services that meet minimum standards of quality . . . ."). It is thus crucial that NBA players be protected from agent abuses, but it is also crucial that any disputes about agent conduct be decided in accordance with the NBPA's role as the exclusive bargaining representative of all NBA players, by someone the NBPA knows is fully knowledgeable about the complex "law of the shop" in the NBA and its free agency system.

The NBPA could have addressed these needs by appointing a smaller number of agents, and having the NBPA office decide which individuals would so serve. However, the NBPA, like other players unions, decided to permit a larger number of agents to serve, subject to a certification process, and have agent discipline issues decided by a player disciplinary committee, subject to review by an arbitrator whom the NBA selects, to ensure that the arbitrator is fully familiar with the industry and the law of the shop.

This process has been fair, by permitting player choice of agents, but also regulating agent conduct so that the rampant abuses that occurred before the agent regulation system was adopted do not recur. The linchpin of this system is that, since the agents are delegated a portion of the NBPA's exclusive bargaining authority under the federal labor laws, the NBPA must have direct authority through the agent regulation system and arbitrators whom the NBPA is confident are fully knowledgeable about the industry.

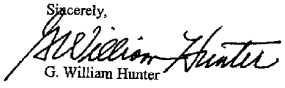
The fact that agent conduct must be aligned with union policies is not a serious issue in the NBA. As stated by highly respected arbitrator George Nicolau, in one of the few cases involving a challenge to NBPA agent discipline, an agent can and should be decertified when "his conduct tended to undermine the position of the Union that had certified him." In re Stephen Woods, Impartial Arbitrator Decision Under NBPA Agent Regulations, dated September 25, 2000, at 11 (upholding discipline for lack of compliance with union policies during labor dispute with NBA); see also id. at 10

("Judge Matsch made it clear [in the Collins case] that the NBPA, like other unions enjoying exclusive representative status, has what he characterized as a legally sanctioned 'representational monopoly'; that no agent has 'tenured position as an agent,' and that inasmuch as the Union could eliminate agents entirely, it was fully within its authority to adopt regulations governing their conduct and to deny certification when the grounds for such denial existed."). The NBPA's agent regulation system has worked well for decades and has contributed to labor peace.

The NBPA also notes that Congressional intervention in this area on just the union side would be very unfair, since the NBA owners and teams themselves resolve internal disputes on the management side by arbitration processes in which the NBA Commissioner often decides the entire dispute, without any avenue for appeal (as was about to occur with the salary dispute between Coach Larry Brown and the New York Knicks, before that dispute was settled by the parties at the urging of Commissioner Stern). The NBPA believes that, after bending over backwards to provide an arbitration process that is nowhere mandated by the federal labor laws, it would be inequitable to say the least to have players unions in effect punished by requiring that arbitrators other than those selected by the NBPA resolve those appeals and otherwise mandating NBPA appeal procedures.

Fundamentally, proposals of the kind being pushed by Mr. Poston, whom the NBPA understands has been subject to NFLPA discipline for serious acts of misconduct that harmed an NFL player in his salary negotiations with an NFL club, are dangerous, because they would in effect withdraw from player unions the ability to control salary bargaining with employer clubs, which would fundamentally alter a central premise of the labor laws -- the exclusive bargaining authority of unions elected by their members. It could potentially result in decisions concerning crucial issues of salary bargaining being made by arbitrators who are not fully versed in the complex and constantly changing law of the shop in the NBA. It would, in short, subject NBA players to a greater risk of abuse from agents whose prior conduct cried out for close union regulation.

Sincerely,



G. William Hunter

LETTER SUBMITTED BY THE NATIONAL HOCKEY LEAGUE PLAYERS' ASSOCIATION (NHLPA)

December 6, 2006

Honorable Henry J. Hyde
Chairman, Committee on International Relations
U.S. House of Representatives
2110 Rayburn House Office Building
Washington, D.C. 20515-1306

Representative Sheila Jackson Lee
U.S. House of Representatives
2435 Rayburn House Office Building
Washington, D.C. 20515-4318

Dear Chairman Hyde and Representative Jackson Lee:

The National Hockey League Players' Association ("NHLPA") has been advised that you have sought information regarding the approaches taken by professional sports unions in the area of agent regulation. We understand that you are specifically interested in the disciplinary processes that have been implemented in connection with the unions' regulatory schemes. The NHLPA's experience in regulating agents extends back to 1996, when NHL Players decided to implement a mandatory agent certification process and a set of binding regulations, collectively referred to as the Regulations Governing Agent Certification ("Regulations"). While the Regulations have been in effect for a relatively short period of time, it is hoped that our experience in implementing and administering the Regulations may be of some value as you consider these issues.

The Players' decision to implement the Regulations was driven in large part by the important role that the NHLPA has conferred on agents through its delegation of the authority to negotiate contracts on a Player's behalf. In an economic system where a salary market is created through the negotiation of each individual player contract, the agent's discharge of his negotiating responsibilities impacts not only his client, but the broader membership. Accordingly, to properly protect the interests of all NHL Players, regulations were adopted that were designed to insure that agents were qualified to properly carry out their delegated authority and that, once certified, they did not engage in conduct that would undermine the Players' interests. We trust that you have already been made aware of the well-established legal support for such regulatory schemes. See, e.g., Collins v. National Basketball Players Ass'n, 850 F. Supp. 1468, 1475 (D. Colo. 1991).

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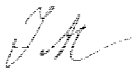
Critical to the regulatory approach adopted by the NHLPA are the agent conduct and related arbitration provisions established by Regulations. Those provisions ensure that the actions of those to whom the NHLPA delegates authority to bargain on the Players' behalf are consistent with the NHLPA's duties as exclusive bargaining agent. To insure that agent disciplinary proceedings are carried out in the most professional manner possible, the NHLPA selects and maintains a panel of three experienced, highly-regarded arbitrators who hear cases on a rotating basis. In addition to disciplinary matters, the panel arbitrators handle all other disputes that arise under the Regulations, including disputes over the payment of agent fees. With their extended tenures and their repeated exposure to the intricacies of the hockey business, the panel arbitrators gain fluency with the issues that are unique to hockey. As a result, they are far better suited to handle disciplinary proceedings that an arbitrator selected on an ad hoc basis.

In this regard, we note that the NHLPA-agent relationship is not a labor-management or employer-employee situation where grievance and arbitration procedures are jointly negotiated in collective bargaining. The fact that the Regulations constitute a regulatory system and not an employer-employee contract distinguishes it from those situations where, as a condition of employment, employers impose an arbitration system on employees. We believe it would be highly inappropriate for an agent to veto potential arbitrators and then select and/or pay the arbitrator who would judge their compliance with the requirements of their certification. Over time the arbitrator panel has proven to be an important and highly effective feature of the NHLPA's regulatory system. In our view, the use of inexperienced arbitrators who may lack distinguished reputations would significantly undermine the efficacy of the Regulations and the ability of the NHLPA to discharge its duty to protect the Players' interests.

We appreciate the opportunity to provide you with our views on these important matters. Please let us know if we can be of any further assistance.

Yours very truly,

NATIONAL HOCKEY LEAGUE
PLAYERS' ASSOCIATION



Ted Saskin
Executive Director and General Counsel

ITEM ENTITLED, "NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS,"LETTER SUBMITTED BY RICHARD BERTHELSEN, GENERAL COUNSEL, NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION (NFLPA), WASHINGTON, DC

[redacted]

NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS

(as amended through March, 2006)

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NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS

INTRODUCTION

In 1994, the Officers and Player Representatives of the National Football League Players Association ("NFLPA") adopted the NFLPA Regulations Governing Contract Advisors ("Regulations") for persons who desired to provide representation services to players (including rookies) by conducting individual contract negotiations and/or assisting in or advising with respect to such negotiations with the member Clubs of the National Football League ("NFL"). Periodically since 1994, these Regulations have been amended by our Board of Player Representatives and the amendments are reflected herein. These Regulations were adopted and amended pursuant to the authority and duty conferred upon the NFLPA as the exclusive collective bargaining representative of NFL players pursuant to Section 9(a) of the National Labor Relations Act, which provides in pertinent part:

> 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.

The authority and duty to promulgate these Regulations are also contained in the 2006 Collective Bargaining Agreement (CBA) between the NFL and the NFLPA, which states as follows:

> [T]he National Football League Players Association . . . is recognized as the sole and exclusive bargaining representative of present and future employee players in the NFL in a bargaining unit described as follows:
>
> 1. All professional football players employed by a member club of the National Football League;
> 2. All professional football players who have been previously employed by a member club of the National Football League who are seeking employment with an NFL Club;
> 3. All rookie players once they are selected in the current year's NFL College Draft; and
> 4. All undrafted rookie players once they commence negotiation with an NFL Club concerning employment as a player.

Article VI, Section 1 of the 2006 Collective Bargaining Agreement as amended further provides, among other things, that:

> The NFLMC [National Football League Management Council] and the Clubs recognize that, pursuant to Federal labor law, the NFLPA regulates

> the conduct of agents who represent players in individual contract negotiations with Clubs. The NFLMC and the Clubs agree that the Clubs are prohibited from engaging in individual contract negotiations with any agent who is not listed by the NFLPA as being duly certified by the NFLPA in accordance with its role as exclusive bargaining agent for NFL players. The NFLPA shall provide and publish a list of agents who are currently certified in accordance with its agent regulation system, and shall notify the NFLMC and the Clubs of any deletions or additions to the list pursuant to its procedures. The NFLPA agrees that it shall not delete any agent from its list until that agent has exhausted the opportunity to appeal the deletion pursuant to the NFLPA's agent regulation system, except: (i) where an agent has failed to pass a written examination given to agents by the NFLPA; or (ii) in extraordinary circumstances where the NFLPA's investigation discloses that the agent's conduct is of such a serious nature as to justify immediately invalidating the agent's certification. The NFLPA shall have sole and exclusive authority to determine the number of agents to be certified, and the grounds for withdrawing or denying certification of an agent. The NFLPA agrees that it will not discipline, dismiss or decertify agents based upon the results they achieve or do not achieve in negotiating terms or conditions of employment with NFL Clubs. This section shall not limit the NFLPA's ability to discipline agents for malfeasance.

The NFL, consistent with the Clubs' obligation to deal only with NFLPA-certified agents, has further agreed that:

> [T]he Commissioner shall disapprove any NFL Player Contract(s) between a player and a Club unless such player: (a) is represented in the negotiations with respect to such NFL Player Contract(s) by an agent or representative duly certified by the NFLPA in accordance with the NFLPA agent regulation system and authorized to represent him; or (b) acts on his own behalf in negotiating such NFL Player Contract(s).…
>
> [T]he NFL shall impose a fine of $15,000 upon any Club that negotiates any NFL Player Contract(s) with an agent or representative not certified by the NFLPA in accordance with the NFLPA agent regulation system if, at the time of such negotiations, such Club either (a) knows that such agent or representative has not been so certified or (b) fails to make reasonable inquiry of the NFLPA as to whether such agent or representative has been so certified. Such fine shall not apply, however, if the negotiation in question is the first violation of this Article by the Club during the term of this Agreement.

Persons serving or wishing to serve as the NFLPA's "agent" pursuant to these provisions of the CBA, which persons are herein referred to as "Contract Advisors," shall be governed by these Regulations.

SECTION 1: SCOPE OF REGULATIONS

A. Persons Subject to Regulations

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 after the effective date of these Regulations unless he/she is (1) currently certified as a Contract Advisor pursuant to these Regulations; (2) signs a Standard Representation Agreement with the player (See Section 4; Appendix D); and (3) files a fully executed copy of the Standard Representation Agreement with the NFLPA, along with any contract(s) between the player and the Contract Advisor for other services to be provided.

B. Activities Covered

The activities of Contract Advisors which are governed by these Regulations include: the providing of advice, counsel, information or assistance to players with respect to negotiating their individual contracts with Clubs and/or thereafter in enforcing those contracts; the conduct of individual compensation negotiations with the Clubs on behalf of players; and any other activity or conduct which directly bears upon the Contract Advisor's integrity, competence or ability to properly represent individual NFL players and the NFLPA in individual contract negotiations, including the handling of player funds, providing tax counseling and preparation services, and providing financial advice and investment services to individual players.

C. Amendments

These Regulations may be amended from time to time by the Officers and Board of Player Representatives of the NFLPA in their sole discretion.

SECTION 2: CERTIFICATION

After the effective date of these Regulations, any person who wishes to perform the functions of a Contract Advisor as described in Section 1 above must be certified by the NFLPA pursuant to the following procedure:

A. Application For Certification

In order to be eligible for Certification as an NFLPA Contract Advisor here under, a person must file a verified Application for Certification as a Contract Advisor (in the form attached as Appendix A) and a completed and signed Authority and Consent to Release Information (in the form attached as Appendix B) with the NFLPA, and pay the required application fee as established by the NFLPA Board of Player Representatives. Certification will be granted hereunder only to individuals and not any firm, corporation, partnership or other business entity. There is no limit on the number of individuals in any one firm, corporation, partnership or other business entity who are eligible for certification.

To be eligible for certification, the applicant must have received an undergraduate degree from an accredited four year college/university and a post-graduate degree from an accredited college/university. However, the NFLPA shall have the authority to grant exceptions to this requirement in cases where the applicant has sufficient negotiating experience. A new applicant shall not be granted Certification (Section 2(F)) without first attending the NFLPA

* For purposes of these Regulations, the term "player" shall mean anyone eligible to play in the National Football League, including a player about to enter his rookie season in the NFL.

seminar for new Contract Advisors to be held on an annual basis and passing a written examination. In the instance that a new applicant fails the written examination on two successive occasions, the applicant shall be barred from applying for Certification and taking the written examination again for no less that five (5) years.

Applications for Certification as a Contract Advisor must be submitted to the NFLPA during a specified application period to be set by the Board of Player Representatives. Upon receipt of an Application for Certification, the NFLPA may, in the context of reviewing the application, request further written materials from the applicant and/or conduct whatever further investigation it deems appropriate, including an informal conference with the applicant and a background check.

B. Certification of Member Contract Advisors Under the NFLPA Code of Conduct

All persons who desire to be certified hereunder, including those who were Member Contract Advisors in good standing under the prior, voluntary Code of Conduct for NFLPA Member Contract Advisors as of the effective date of these Regulations, must file an Application for Certification pursuant to these Regulations. Applicants who were Member Contract Advisors pursuant to the prior Code as of the effective date of these Regulations shall not be required to pay an application fee to become certified, but shall be required to make annual fee payments required by these Regulations.

C. Grounds for Denial for Certification

Grounds for denial of Certification shall include, but not be limited to, the following:

- The applicant has made false or misleading statements of a material nature in his/her application;
- The applicant has misappropriated funds, or engaged in other specific acts such as embezzlement, theft or fraud, which would render him/her unfit to serve in a fiduciary capacity on behalf of players;
- The applicant has engaged in any other conduct that significantly impacts adversely on his/her credibility, integrity or competence to serve in a fiduciary capacity on behalf of players;
- The applicant is unwilling to swear or affirm that he/she will comply with these Regulations and any amendments hereto and/or that he/she will abide by the fee structure contained in the Standard Representation Agreement incorporated into these Regulations;
- The applicant has been denied certification by another professional sports players association;
- The applicant directly or indirectly solicited a player for representation as a Contract Advisor during the period of time between the filing of his/her Application for Certification and Certification by the NFLPA;
- The applicant has not received a degree from an accredited four year college/university and a post-graduate degree from an accredited college/university, unless excepted from this requirement pursuant to Section 2(A);
- The applicant has failed to fully and properly complete his/her Application for Certification.

D. Appeal from Denial of Certification

In the event an Application for Certification is denied pursuant to this Section, the applicant shall be notified in writing (by confirmed facsimile or overnight delivery) of the reasons for

the denial. The applicant may appeal such action to the Arbitrator appointed pursuant to Section 5 of these Regulations. Such appeal shall be initiated by filing (by confirmed facsimile or overnight delivery) a written notice of appeal with the NFLPA within thirty (30) days of receipt of the notice denying his/her Application for Certification. The appeal shall be processed and resolved in accordance with the arbitration procedures set forth in Section 5(E) through 5(H) of these Regulations, which shall be the exclusive procedure for challenging any denial of Certification hereunder. The standard of review for the Arbitrator on an appeal of a denial of an Application for Certification shall be whether there is a reasonable basis in the circumstances of the case under review for the NFLPA's decision to deny the Application.

E. Suspension or Revocation of Certification

At any time subsequent to granting Certification to a Contract Advisor, the NFLPA may, based upon information brought to its attention or acting on its own initiative, immediately revoke such Certification pursuant to Section 6(B) hereof, or propose the suspension or revocation of such Certification on any ground that would have provided a basis for denying Certification in the first place (see Section 2(C)) and/or for conduct prohibited in Section 3(B)(1) through 3(B)(30) of these Regulations and/or for failing to engage in the conduct required in Section 3(A)(1) through 3(A)(20) of these Regulations. Any such proposed suspension or revocation must be sent by confirmed facsimile or overnight delivery to the Contract Advisor's office or residence (see Section 6). The Contract Advisor may challenge any such proposed suspension or revocation by appealing such action pursuant to Section 6(B) through 6(H). The appeal to arbitration shall constitute the exclusive method of challenging any proposed suspension or revocation of Certification.

F. Form of Certification

After the NFLPA approves an applicant's Application for Certification as a Contract Advisor, and the applicant attends the NFLPA seminar for new Contract Advisors and passes a written examination, the NFLPA shall provide the applicant with a written Certification in the form attached hereto as Appendix C. The applicant will thereupon be authorized to serve as a Contract Advisor in conducting individual player negotiations with the NFL Clubs and/or assisting in or advising with respect to such negotiations. In granting Certification, the NFLPA shall not be deemed to have endorsed any Contract Advisor; nor shall the grant of such Certification be deemed to impose liability upon the NFLPA for any acts or omissions of the Contract Advisor in providing representation to any player, whether or not such acts or omissions fall within activities governed by these Regulations.

G. Expiration of Certification

The Certification of any Contract Advisor who has failed to negotiate and sign a player to an NFL Player Contract (excluding Practice Squad Contracts) for at least one NFL player during any three-year period shall automatically expire at the end of such three-year period.

H. Application and Annual Fees

(1) Application Fees

Each applicant for Certification as a Contract Advisor under these Regulations shall submit with his/her fully completed application a one-time fee as set by the Board of Player Repre-

sentatives. (This payment is not required for those persons who were Member Contract Advisors in good standing under the previous Code of Conduct For NFLPA Member Contract Advisors which existed immediately prior to the effective date of these Regulations, and who apply to become Certified Contract Advisors hereunder within a reasonable time.)

(2) Annual Fee

Each Contract Advisor who is Certified shall pay an annual fee to the NFLPA, as set by the Board of Player Representatives, to defray the cost of maintaining this agent-regulation system. The Certification of any Contract Advisor who fails to pay his/her annual fee in a timely manner shall expire automatically upon the expiration of the deadline for payment of such fee.

SECTION 3: STANDARD OF CONDUCT FOR CONTRACT ADVISORS

The objective of the NFLPA in implementing these Regulations is to enable players to make an informed selection of a Contract Advisor and to help assure that the Contract Advisor will provide effective representation at fair, reasonable, and uniformly applicable rates to those individual players he/she represents, and to avoid any conflict of interest which could potentially compromise the best interests of NFL players.

A. General Requirements

A Contract Advisor shall be required to:

(1) Disclose on his/her Application and thereafter upon request of the NFLPA all information relevant to his/her qualifications to serve as a Contract Advisor, including, but not limited to, background, special training, experience in negotiations, past representation of professional athletes, and relevant business associations or memberships in professional organizations;

(2) Pay an application fee pursuant to Section 2 above unless waived;

(3) Pay the annual fee in a timely manner as established by the Board of Player Representatives;

(4) Attend an NFLPA seminar on individual contract negotiations each year;

(5) Comply with the maximum fee schedule and all other provisions of these Regulations and any amendments thereto;

(6) Execute and abide by the printed Standard Representation Agreement with all players represented and file with the NFLPA a copy of that fully executed agreement along with any other agreement(s) for additional services that the Contract Advisor has executed with the player, including, without limitation, agreements or other relevant documents relating to loans, lines of credit, or pre-combine or pre-draft services or benefits being provided to rookie clients. If the Contract Advisor and player enter into any other agreement(s) subsequent to the execution of the Standard Representation Agreement, the Contract Advisor shall submit a copy of such agreement(s) to the NFLPA within ten (10) days of the execution of such additional agreement(s). If the Contract Advisor is unable to file a signed Standard Representation Agreement because of a failure or refusal by the player to sign such an agreement, the Contract Advisor may file a signed affidavit, with a copy to the player, detailing his/her efforts to obtain the player's signature. Such affidavit shall serve as a means of avoiding discipline for violation of this Section 3(A)(6), if submitted in good faith by the Contract Advisor, but shall not operate as an agreement between the Contract Advisor and player;

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

(8) Sign and provide the NFLPA and the club with a copy of any player contract negotiated with that club within 48 hours after the contract is executed (Contract shall be sent by facsimile or overnight mail);

(9) Provide on or before May 1 each year, to every player who he/she represents, with a copy to the NFLPA, an itemized statement covering the period beginning March 1 of the prior year through February 28 or 29 of that year, which separately sets forth both the fee charged to the player for, and any expenses incurred in connection with, the performance of the following services: (a) individual player salary negotiations, (b) management of the player's assets, (c) financial, investment, legal, tax and/or other advice to the player, and (d) any other miscellaneous services;

(10) Permit a person or firm authorized by a former or current player-client to conduct an audit of all relevant books and records pertaining to any services provided to that player;

(11) Complete a notarized updated Application for Certification on or before an annual date to be determined by the NFLPA. Such annual update shall include, without limitation, disclosure of the names of any financial advisors the Contract Advisor is recommending or has recommended to players within the past year. A failure to comply with this Section 3(A)(11) shall result in immediate suspension of the Contract Advisor's Certification.

(12) For those Contract Advisors who are Member Contract Advisors as of the effective date of these Regulations, and who apply for Certification pursuant to Section 2(B) above, provide to each player that Contract Advisor currently represents on or before February 1, 1995, a copy of his/her revised Application for Certification as submitted to the NFLPA;

(13) Provide the NFLPA with all materials that the NFLPA deems relevant with respect to any investigation conducted pursuant to these Regulations and in all other respects cooperate fully with the NFLPA;

(14) Fully comply with applicable state and federal laws;

(15) Become and remain sufficiently educated with regard to NFL structure and economics, applicable Collective Bargaining Agreements and other governing documents, basic negotiating techniques, and developments in sports law and related subjects. To ascertain whether the Contract Advisor is sufficiently educated with regard to the above-related subjects, the NFLPA may require a Contract Advisor to pass a Contract Advisor examination. A failure to pass an examination administered pursuant to this Section 3(A)(15) shall result in immediate suspension of the Contract Advisor's Certification pursuant to Section 6(B). Such suspension shall run until the Contract Advisor passes the next examination given, but in no event shall the suspension be for less than one (1) year;

(16) Disclose in an addendum attached to the Standard Representation Agreement between the Contract Advisor and player, the names and current positions of any NFL management personnel or coaches whom Contract Advisor represents or has represented in matters pertaining to their employment by or association with any NFL club;

(17) Act at all times in a fiduciary capacity on behalf of players;

(18) Comply with and abide by all of the stated policies of the NFLPA;

(19) In connection with payments for assistance in recruiting any player:

(a) Prepare a typewritten SRA Disclosure Form (attached as Appendix E) disclosing any person(s) or other entities to whom the Contract Advisor has paid or has promised to pay money or any other thing of value (excluding salaries paid to employees of the Contract Advisor) in return for recruiting or helping to recruit a player to sign a Standard Representation Agreement;

(b) Provide a copy of that SRA Disclosure Form to the player in advance of signing that player to a Standard Representation Agreement so as to allow the player adequate time to consider the information before the player signs the Standard Representation Agreement;

(c) Have the player sign that SRA Disclosure Form acknowledging that he is aware of the payments and that he approves of them;

(d) Submit a copy of that SRA Disclosure Form along with the Standard Representation Agreement to the NFLPA as required by Section 3(A)(6); and

(e) Prepare, have signed and submit to the NFLPA a new or supplemental SRA Disclosure Form if any such person(s) or other entities are added after the Standard Representation Agreement is signed by the Player.

Any conduct by a person(s) listed on the SRA Disclosure Form required by this Section 3(A)(19) or by employees or associates of the Contract Advisor which would violate the Regulations shall be deemed to be conduct of the Contract Advisor and shall subject the Contract Advisor to discipline under these Regulations;

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

B. Prohibited Conduct

Contract Advisors are prohibited from:

(1) Representing any player in individual contract negotiations with any Club unless he/she (i) is an NFLPA Certified Contract Advisor; (ii) has signed the Standard Representation Agreement with such player; and (iii) has filed a copy of the Standard Representation Agreement with the NFLPA along with any other contract(s) or agreement(s) between the player and the Contract Advisor;

(2) Providing or offering money or any other thing of value to any player or prospective player to induce or encourage that player to utilize his/her services;

(3) Providing or offering money or any other thing of value to a member of the player's or prospective player's family or any other person for the purpose of inducing or encouraging that person to recommend the services of the Contract Advisor;

(4) Providing materially false or misleading information to any player or prospective player in the context of recruiting the player as a client or in the course of representing that player as his Contract Advisor;

(5) Representing or suggesting to any player or prospective player that his/her NFLPA Certification is an endorsement or recommendation by the NFLPA of the Contract Advisor or the Contract Advisor's qualifications or services;

(6) Directly or indirectly borrowing money from any player (whether or not the player is a client), either by receiving the funds directly from the player or by the player providing collateral for or agreeing to guarantee a loan to the Contract Advisor by another party;

(7) Holding or seeking to hold, either directly or indirectly, a financial interest in any professional football club or in any other business entity when such investment could create an actual conflict of interest or the appearance of a conflict of interest in the representation of NFL players;

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

(9) Soliciting or accepting money or anything of value from any NFL Club in a way that would create an actual or apparent conflict with the interests of any player that the Contract Advisor represents;

(10) Negotiating and/or agreeing to any provision in a player contract which deprives or purports to deprive that player of any benefit contained in any collectively bargained agreement between the NFL and the NFLPA or any other provision of any applicable documents which protect the working conditions of NFL players;

(11) Negotiating and/or agreeing to any provision in any agreement involving a player which directly or indirectly violates any stated policies or rules established by the NFLPA;

(12) Concealing material facts from any player whom the Contract Advisor is representing which relate to the subject of the player's individual contract negotiation;

(13) Failing to advise the player and to report to the NFLPA any known violations by an NFL Club of a player's individual contract;

(14) Engaging in unlawful conduct and/or conduct involving dishonesty, fraud, deceit, misrepresentation, or other activity which reflects adversely on his/her fitness as a Contract Advisor or jeopardizes his/her effective representation of NFL players;

(15) Failure to comply with the maximum fee provisions contained in Section 4 of these Regulations;

(16) Circumventing the maximum fee provisions contained in Section 4 of these Regulations by knowingly and intentionally increasing the fees that Contract Advisor charges or otherwise would have charged the player for other services including, but not limited to, financial consultation, money management, and/or negotiating player endorsement agreements;

(17) Failing to provide to each player represented and the NFLPA the annual statements required by Section 3(A)(9) of these Regulations and/or failing to provide the NFLPA copies of all agreements between the Contract Advisor and each player as required by Section 3(A)(6) of these Regulations;

(18) Filing any lawsuit or other proceeding against a player for any matter which is subject to the exclusive arbitration provisions contained in Section 5 of these Regulations;

(19) Violating the confidentiality provisions of the National Football League Policy and Program for Substances of Abuse. The NFLPA Executive Director in consultation with the Disciplinary Committee may fine a Contract Advisor in accordance with the terms of the National Football League Policy and Program for Substances of Abuse. Such fine, if imposed, shall be

in addition to, and not a substitute for, discipline which may be imposed pursuant to Section 6 of these Regulations;

(20) Failing to disclose in writing to any player represented by Contract Advisor any fee paid or received by Contract Advisor to or from a third party in return for providing services to that player;

(21) (a) Initiating any communication, directly or indirectly, with a player who has entered into a Standard Representation Agreement with another Contract Advisor and such Standard Representation Agreement is on file with the NFLPA if the communication concerns a matter relating to the:

(i) Player's current Contract Advisor;

(ii) Player's current Standard Representation Agreement;

(iii) Player's contract status with any NFL Club(s); or

(iv) Services to be provided by prospective Contract Advisor either through a Standard Representation Agreement or otherwise.

(b) If a player, already a party to a Standard Representation Agreement, initiates communication with a Contract Advisor relating to any of the subject matters listed in Section 3(B)(21)(a) the Contract Advisor may continue communications with the Player regarding any of those matters.

(c) Section 3(B)(21) shall not apply to any player who has less than sixty (60) days remaining before his NFL Player Contract expires, and he has not yet signed a new Standard Representation Agreement with a Contract Advisor within the sixty (60) day period.

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

(22) Conditioning the signing of a Standard Representation Agreement upon the signing of a contract for other services or the performance of other services by the Contract Advisor or any affiliated entity; or conditioning the signing of a contract for other services or the performance of other services by the Contract Advisor or any affiliated entity upon the signing of a Standard Representation Agreement;

(23) Attempting to circumvent or circumventing relevant portions of Section 4(B)(5);

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

(25) Entering into any business relationship with another Contract Advisor to share fees and/or provide negotiation services for players during a time period commencing when a Disciplinary Complaint has been filed against such Contract Advisor pursuant to Section 6 of these Regulations and ending when disciplinary sanctions become final or, if the sanctions include a suspension or revocation of Certification, at the end of the period of the suspension or revocation of Certification, whichever is later;

(26) Directly or indirectly soliciting a prospective rookie player for representation as a Contract Advisor (A "rookie" shall be defined as a person who has never signed an NFL Player Contract) if that player has signed a Standard Representation Agreement prior to a date which is thirty (30) days before the NFL Draft and if thirty (30) days have not elapsed since the Agreement was signed and filed with the NFLPA;

(27) Directly or indirectly communicating or attempting to communicate with a member of the Committee on Agent Regulation and Discipline ("CARD") concerning the Contract Advisor's pending disciplinary action pursuant to Section 6 of these Regulations once an investigation has commenced relating to that Contract Advisor and continuing through the final disposition of any Section 6 disciplinary action. Notwithstanding the foregoing, communication with the Committee on Agent Regulation and Discipline concerning a pending disciplinary action is permitted when the Committee as a group requests or agrees to discuss the pending disciplinary action with the Contract Advisor and/or his or her representative;

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

(29) Negotiating and agreeing to an NFL Player Contract containing an incentive clause which is not of any significant value to the player and which instead is primarily intended to help an NFL Club meet its guaranteed Minimum Team Salary under the CBA. (If the player informs the Contract Advisor that he desires to agree to such an incentive with or without the Contract Advisor's participation, the Contract Advisor must present satisfactory evidence to the NFLPA that the Contract Advisor counseled the player that such incentive could significantly undermine the Minimum Team Salary protections for players under the CBA.);

(30) Violating any other provision of these Regulations.

A Contract Advisor who engages in any prohibited conduct as defined above shall be subject to discipline in accordance with the procedures of Section 6 of these Regulations.

SECTION 4: AGREEMENTS BETWEEN CONTRACT ADVISORS AND PLAYERS; MAXIMUM FEES

A. Standard Form

Any agreement between a Contract Advisor and a player entered into after the effective date of these Regulations, which is not in writing in the pre-printed form attached hereto as Appendix D or which does not meet the requirements of these Regulations, shall not be enforceable against any player and no Contract Advisor shall have the right to assert any claim against the player for compensation on the basis of such a purported contract.

B. Contract Advisor's Compensation

(1) The maximum fee which may be charged or collected by a Contract Advisor shall be three percent (3%) of the "compensation" (as defined within this Section) received by the player in each playing season covered by the contract negotiated by the Contract Advisor, except as follows:

(a) The maximum fee which may be charged or collected by a Contract Advisor shall be:

(i) Two percent (2%) for a player who signs a one (1) year tender while subject to a Franchise or Transition designation, or as a Restricted Free Agent;

(ii) One-and-one-half percent (1.5%) for a player who signs a one (1) year tender while subject to a Franchise or Transition designation for the second time he is tagged; and

(iii) One percent (1%) for a player who signs a one (1) year tender while subject to a Franchise or Transition designation for the third time he is tagged.

(2) The Contract Advisor and player may agree to any fee which is less than the maximum fee set forth in (1) above.

(3) As used in this Section 4(B), the term "compensation" shall be deemed to include only salaries, signing bonuses, reporting bonuses, roster bonuses, Practice Squad salary in excess of the minimum Practice Squad salary specified in Article XXXIV of the Collective Bargaining Agreement, and any performance incentives earned by the player during the term of the contract (including any option year) negotiated by the Contract Advisor. For example, and without limitation, the term compensation shall not include any "honor" incentive bonuses (e.g. ALL PRO, PRO BOWL, Rookie of the Year), or any collectively bargained benefits or other payments provided for in the player's individual contract.

(4) A Contract Advisor is prohibited from receiving any fee for his/her services until and unless the player receives the compensation upon which the fee is based. However, these Regulations recognize that in certain circumstances a player may decide that it is in his best interest to pay his Contract Advisor's fee in advance of the receipt of any deferred compensation from his NFL club. Accordingly, a player may enter into an agreement with a Contract Advisor to pay the Contract Advisor a fee advance on deferred compensation due and payable to the player. Such fee advance may only be collected by the Contract Advisor after the player has performed the services necessary under his contract to entitle him to the deferred compensation. Further, such an agreement between a Contract Advisor and a player must be in writing, with a copy sent by the Contract Advisor to the NFLPA.

For purposes of determining the fee advance, the compensation shall be determined to be an amount equal to the present value of the deferred player compensation. The rate used to determine the present value of the deferred compensation shall be the rate used in Article XXIV, Section 7(a)(ii) of the 2006 CBA.

(5) A Contract Advisor who is found to have violated Section 3(B)(2) or (3) of these Regulations shall not be entitled to a fee for services provided to a player who was the subject of an improper inducement under Section 3(B)(2) or (3). In the event that the Contract Advisor collects any fees from the player before a finding of such violation, he/she shall be required to reimburse the player for such fees. If the improper inducement was a loan of money or property which was to be repaid or returned to the Contract Advisor, the money or property need not be repaid or returned by the player who was the subject of the improper inducement under Section 3(B)(2) or (3). This Section 4(B)(5) shall not be subject to any waiver by player, and any attempt by a Contract Advisor to circumvent this provision shall subject the Contract Advisor to discipline under these Regulations. Nothing in this subsection shall preclude the NFLPA from disciplining a Contract Advisor who violates Section 3(B)(2) or (3), it being intended that the forfeiture of fees and/or loaned money or property be in addition to any discipline imposed under these Regulations.

C. Existing Agreements

Any agreement in existence between an NFL player and a Contract Advisor as of the effective

date of these Regulations shall be deemed modified in accordance with these Regulations, except as such agreement shall pertain to the Contract Advisor's fees for the negotiation of NFL player contracts signed on or before the effective date of these Regulations. To the extent that such existing agreement is less favorable to the NFL player than the provisions of these Regulations, these Regulations shall control insofar as they apply to the negotiation of the player's contract with an NFL club. Provisions of agreement(s) which apply to matters other than the negotiation of the player's contract (e.g., financial consulting or money management services), may be considered severable and not affected by these Regulations. Any dispute concerning the proper application of these Regulations to existing agreements shall be resolved exclusively through the Arbitration procedures set forth in Section 5 of these Regulations.

SECTION 5: ARBITRATION PROCEDURES

A. Disputes

This arbitration procedure shall be the exclusive method for resolving any and all disputes that may arise from the following:

(1) Denial by the NFLPA of an Applicant's Application for Certification;

(2) Any dispute between an NFL player and a Contract Advisor with respect to the conduct of individual negotiations by a Contract Advisor;

(3) The meaning, interpretation or enforcement of a fee agreement;

(4) Any other activities of a Contract Advisor within the scope of these Regulations; and/or

(5) A dispute between two or more Contract Advisors with respect to whether or not a Contract Advisor interfered with the contractual relationship of a Contract Advisor and player in violation of Section 3(B)(21). If a Contract Advisor proves such a violation of Section 3(B)(21), then the Arbitrator shall award reasonable damages proven and/or any money award which he/she deems equitable.

(With respect to any dispute that may arise pursuant to paragraph (1) above, the procedure for filing an appeal and invoking arbitration is set forth in these Regulations at Section 2(D). Once arbitration has been invoked, the procedure set forth in Section 5(E)-(H) below shall apply.)

B. Filing

The arbitration of a dispute under Section 5(A)(2)-(5) above shall be initiated by the filing of a written grievance either by the player or Contract Advisor. Any such grievance must be filed within six (6) months from the date of the occurrence of the event upon which the grievance is based or within six (6) months from the date on which the facts of the matter become known or reasonably should have become known to the grievant, whichever is later. A player need not be under contract to an NFL club at the time a grievance relating to him hereunder arises or at the time such grievance is initiated or processed.

A player may initiate a grievance against a Contract Advisor by (i) sending the written grievance by prepaid certified mail to the Contract Advisor's business address or by personal delivery at such address, and (ii) sending a copy to the NFLPA. A Contract Advisor may initiate a grievance against a player or Contract Advisor by (i) sending a written grievance by prepaid certified mail to the player or Contract Advisor or by personal delivery of the grievance to the player or Contract Advisor, and (ii) sending a copy to the NFLPA. The written grievance shall

set forth the facts and circumstances giving rise to the grievance, the provision(s) of the agreement between the player and Contract Advisor alleged to have been violated, if applicable, and the relief sought. In addition, a properly and fully completed Section 5 Grievance Notification Form (Attached as Appendix F) shall be attached to the written grievance and sent to the respondent, with a copy to the NFLPA.

C. Answer

The party against whom a grievance has been filed ("the respondent") shall answer the grievance in writing by certified mail or personal delivery to the grievant and the NFLPA within twenty (20) 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, where applicable, the reasons why the respondent believes the grievance should be denied. No later than thirty days (30) after receipt of the grievance, the NFLPA shall provide the Arbitrator with copies of the grievance and answer and all other relevant documents. If an answer is not filed within this time limit, the Arbitrator, in his/her discretion, may issue an order where appropriate, granting the grievance and the requested relief upon satisfactory proof of the claim.

D. Arbitrator

The NFLPA shall select a skilled and experienced person to serve as the outside impartial Arbitrator for all cases arising hereunder.

E. Hearing

After receipt of the grievance documents pursuant to this Section 5(C), or receipt of an appeal of a denial of Certification pursuant to Section 2(D), the Arbitrator shall select a time and place for a hearing on the dispute, giving due consideration to the convenience of the parties involved and the degree of urgency for resolution of the dispute. Upon written request from either party prior to the hearing, the NFLPA shall provide the parties copies of documents in its possession which are relevant to the dispute. These documents shall include but not be limited to NFL Player Contracts, other salary information, and Standard Representation Agreements. The Arbitrator may, at his/her discretion, order discovery in disputes between Contract Advisors filed pursuant to Section 5(A)(5).

At such hearing, all parties to the dispute and the NFLPA will have the right to present, by testimony or otherwise, any evidence relevant to the grievance. If a witness is unavailable to come to the hearing, the witness' testimony may be taken by telephone conference call at the discretion of the arbitrator. All hearings shall be transcribed. At the close of the hearing or within thirty (30) days thereafter, the Arbitrator shall issue a written decision. At the hearing, the grievant shall have the burden of proving, by a preponderance of the evidence, the allegations of the grievance.

Such decision shall constitute full, final and complete disposition of the grievance, and will be binding upon the player and Contract Advisor involved; provided, however, that the Arbitrator will not have the jurisdiction or authority to add to, subtract from, or alter in any way the provisions of these Regulations or any other applicable document. If the Arbitrator grants a money award, it shall be paid within ten (10) days. The Arbitrator may award interest at his/her discretion.

F. Telephone Conference Call Hearings

Any hearing conducted pursuant to the provisions of this Section in which the amount in

dispute is less than $10,000 shall be conducted via telephone conference call if any party so requests.

G. Costs

Each party will bear the costs of its own witnesses and counsel. Costs of arbitration, including the fees and expenses of the Arbitrator, will be borne by the NFLPA; provided, however, that the Arbitrator may assess some or all of a party's costs to an opposing party if the Arbitrator deems a party's position in the case to be frivolous and/or totally without merit.

H. Time Limits

The time limits of this Section may be extended only by written agreement of the parties.

SECTION 6: OVERSIGHT AND COMPLIANCE PROCEDURE

A. Disciplinary Committee

The President of the NFLPA shall appoint a three to five person Committee on Agent Regulation and Discipline ("CARD" or "the Committee") which may prosecute disciplinary procedures against Contract Advisors who violate these Regulations. Any action taken shall be by a majority vote of the Committee on Agent Regulation and Discipline members. The Committee on Agent Regulation and Discipline shall consist of active or retired NFL players chosen at the discretion of the President. The General Counsel of the NFLPA shall serve as a non-voting advisor to the Committee and will serve as its Counsel in prosecuting disciplinary actions pursuant to this Section.

B. Complaint; Filing

Disciplinary proceedings against any Certified Contract Advisor shall be initiated by the filing of a written Complaint against the Contract Advisor by the Committee on Agent Regulation and Discipline. Such complaint shall be based upon verified information received by the Committee on Agent Regulation and Discipline from any person having knowledge of the action or conduct of the Contract Advisor in question, including, but not limited to, players, NFLPA staff, other Contract Advisors, NFL Management Personnel, or other persons associated with professional or amateur football. The Complaint shall be sent to the Contract Advisor by confirmed facsimile or overnight delivery addressed to the Contract Advisor's business office, or may be hand-delivered to the Contract Advisor personally at his/her business address. The Complaint shall set forth the specific action or conduct giving rise to the Complaint and cite the Regulation(s) alleged to have been violated.

A Complaint must be filed by the Committee on Agent Regulation and Discipline within one year from the date of the occurrence which gave rise to the Complaint, or within one year from the date on which the information became known or reasonably should have become known to the Committee on Agent Regulation and Discipline, whichever is later. The filing deadline for initiating a Complaint arising out of facts which are the subject of a Section 5 dispute, civil or criminal litigation, arbitration, civil or criminal proceedings, administrative hearing or investigation, shall be extended to one year from the date of the Arbitrator's final decision in the Section 5 grievance or final disposition in such other civil or criminal litigation, arbitration, civil or criminal proceedings, administrative hearing or investigation.

In the extraordinary circumstance where the Committee on Agent Regulation and Discipline's investigation discloses that the Contract Advisor's conduct is of such a serious nature as to justify immediately revoking or suspending his/her Certification, the Committee on Agent Regulation and Discipline may immediately revoke or suspend his/her Certification with the filing of the Disciplinary Complaint or thereafter. In such event, the Contract Advisor will be entitled to an expedited appeal of that action pursuant to Section 6(E) of the Regulations, except that such appeal shall not stay the discipline.

A Contract Advisor's Certification shall automatically be revoked pursuant to the above-referenced extraordinary circumstances language if a Contract Advisor: (1) Has his/her annual membership dues check returned for insufficient funds on two or more occasions; (2) Fails to attend a Contract Advisor seminar in any given year as required pursuant to Section 3 (A)(4); or (3) Fails to submit a completed and signed year-end certification as required pursuant to Article XXIX, Section 2 of the Collective Bargaining Agreement. (The preceding sentence shall not limit in any way the Committee on Agent Regulation and Discipline's ability to determine extraordinary circumstances on a case-by-case basis.)

C. Answer

The Contract Advisor against whom the Complaint has been filed shall have thirty (30) days in which to file a written answer to the Complaint. Such answer shall be sent by confirmed facsimile or overnight delivery to the Committee on Agent Regulation and Discipline at the offices of the NFLPA. The answer must admit or deny the facts alleged in the Complaint, and must assert any facts or arguments which the Contract Advisor wishes to state in his/her defense. Failure to file a timely answer shall be deemed an admission of the allegations in the Complaint and a consent to the revocation of the Contract Advisor's Certification and/or to any other discipline imposed by the Committee.

D. Proposed Disciplinary Action

Except in cases where discipline has been imposed prior to the receipt of the answer, the Committee on Agent Regulation and Discipline shall, as soon as possible but no later than ninety (90) days after receipt of the answer, inform the Contract Advisor in writing (by confirmed facsimile or overnight delivery) of the nature of the discipline, if any, the Committee on Agent Regulation and Discipline proposes to impose, which discipline may include one or more of the following:

(1) Issuance by the Committee of an informal order of reprimand to be retained in the Contract Advisor's file at the NFLPA's offices;

(2) Issuance by the Committee of a formal letter of reprimand which may be made public in NFLPA publications and other media;

(3) Suspension of a Contract Advisor's Certification for a specified period of time during which Contract Advisor shall be prohibited from representing any NFL player in individual contract negotiations with an NFL club or assisting in or advising with respect to such negotiations. During such suspension Contract Advisor may, at the discretion of the Committee on Agent Regulation and Discipline, be prohibited from collecting any fees that he/she would otherwise have been entitled to receive pursuant to any Standard Representation Agreement;

(4) Revocation of the Contract Advisor's Certification hereunder;

(5) Prohibit a Contract Advisor from soliciting or representing any new player-clients for a

specified period of time. However, Contract Advisor shall retain the right to represent any player-clients signed to a Standard Representation Agreement with Contract Advisor at the time of the suspension; and/or

(6) Imposition of a fine payable within thirty (30) days of the imposition of such fine.

E. Appeal

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 Contract Advisor's receipt of notification of the proposed disciplinary action. A timely filing of a Notice of Appeal shall result in an automatic stay of any disciplinary action, except in cases of: (1) immediate suspension or revocation of a Certification pursuant to Section 6(B); (2) a failure to pass a Contract Advisor examination pursuant to Section 3(A)(15); or, (3) a denial of an Application for Certification pursuant to Section 2(D).

Within ten (10) days of receipt of the Notice of Appeal, the Arbitrator shall set a date, time and place for a hearing on the Appeal. Such date shall be within forty-five (45) days of receipt of the Notice of Appeal. The failure of Contract Advisor to file a timely appeal shall be deemed to constitute an acceptance of the discipline which shall then be promptly imposed.

F. Arbitrator

The Arbitrator shall be the same Arbitrator selected to serve pursuant to Section 5, unless such Arbitrator has previously heard and decided a grievance under Section 5 involving the same Contract Advisor and the same factual circumstances which are the subject of the disciplinary action herein. In such cases, the NFLPA shall select another skilled and experienced person to serve as the outside impartial Arbitrator.

G. Conduct of Hearing

At the hearing of any Appeal pursuant to this Section 6, the Committee on Agent Regulation and Discipline shall have the burden of proving, by a preponderance of the evidence, the allegations of its Complaint. The Committee and the Contract Advisor shall be afforded a full opportunity to present, through testimony or otherwise, their evidence pertaining to the action or conduct of the Contract Advisor alleged to be in violation of the Regulations. The hearing shall be conducted in accordance with the Voluntary Labor Arbitration Rules of the American Arbitration Association. Each of the parties may appear with counsel or a representative of its choosing. All hearings pursuant to this Section shall be transcribed. There shall be no pre-hearing or post-hearing briefs required in Appeal hearings unless requested by the Arbitrator on a specific legal issue.

At the close of the hearing in expedited appeals or within thirty (30) days thereafter in non-expedited cases, the Arbitrator shall issue a decision on the Appeal, which decision shall either affirm, vacate or modify the proposed action of the Committee on Agent Regulation and Discipline. The Arbitrator shall decide two issues: (1) whether the Contract Advisor has engaged in or is engaging in prohibited conduct as alleged by the Committee; and (2) if so, whether the discipline proposed by the Committee should be affirmed or modified. Such decision shall be made in the form of an appropriate written order reflecting the Arbitrator's opinion and shall be final and binding upon all parties.

SECTION 6(H)

H. Time Limits, Costs

Each of the time limits set forth in this Section may be extended by mutual written agreement of the parties involved. The fees and expenses of the Arbitrator will be paid by the NFLPA, except that the Contract Advisor shall pay any Arbitrator fees or expenses relating to a hearing that is postponed by the Contract Advisor. Each party will bear the costs of its own witnesses and counsel, and other expenses related to its participation in the proceedings.

SECTION 7: EFFECTIVE DATE; AMENDMENTS

These Regulations became effective on December 1, 1994 and include all amendments subsequently adopted by the NFLPA Board of Player Representatives through March 2006.

These Regulations may be amended from time to time by the Executive Committee and/or the Board of Player Representatives of the NFLPA.

APPLICATION FOR CERTIFICATION AS AN NFLPA CONTRACT ADVISOR

I, _____
(Full Name) (Social Security number)

_____
(Business name)

_____
(Business address and affiliation, if any) (Zip Code)

_____
(Telephone) (Fax) E-Mail Address

hereby apply for certification as an NFLPA Contract Advisor pursuant to the NFLPA Regulations Governing Contract Advisors as adopted, effective December 1, 1994, and amended periodically thereafter.

In advance of completing and signing this Application, I have read the NFLPA Regulations Governing Contract Advisors, which were provided to me along with this Application.

In submitting this Application, I agree to comply with and be bound by these Regulations (including but not limited to the maximum fee schedule), which are incorporated herein by reference and any subsequent amendments thereto.

I understand that I am required to fully and properly complete this Application and that my failure to do so prior to the Application filing deadline will result in an automatic denial of my Application.

I understand that making any false or misleading statement of a material nature in answering any question on this Application can result in denial or revocation of Certification. Further, I understand and agree that during the period of time between my filing of this Application for Certification and my Certification by the NFLPA, I am prohibited from directly or indirectly soliciting any players for representation as a Contract Advisor.

I understand that all the information contained in this Application is for the use of the NFLPA and its members, both present and future, in efforts to achieve quality representation for NFL players. I agree that all of the information contained herein can be maintained and used by the NFLPA in performing its functions and can be provided by the NFLPA to individual NFL players or prospective players.

I understand and agree that a precondition to being granted Certification is that I swear and affirm that every agreement which I enter into with a player for the performance of a Contract Advisor's services on or after December 1, 1994 (including any modification, extension or renewal of an agreement that was in effect prior to December 1, 1994) shall conform to the Standard Representation Agreement required by the Regulations.

I agree that if granted Certification I will save and hold harmless the NFLPA, its officers, employees, and representatives from any liability whatsoever resulting from my acts of commission or omission in providing services to any player in connection with his individual contract negotiations with an NFL Club or in connection with any subsequent enforcement of such individual contract or any other contracts involving any player I represent.

I agree that if I am denied Certification or if subsequent to obtaining Certification it is revoked or suspended pursuant to the Regulations, the exclusive method for challenging any such action is through the arbitration procedure set forth in the Regulations.

In consideration for the opportunity to obtain Certification and in consideration of the NFLPA's time and expense incurred in the processing of my application for such Certification, I further agree that this Application and the Certification, if one is issued to me, along with the NFLPA Regulations Governing Contract Advisors shall constitute a contract between the NFLPA and myself.

ALL QUESTIONS MUST BE ANSWERED COMPLETELY AND MUST BE TYPED.

If space provided is not sufficient, attach additional information on a separate sheet and clearly identify the item number the additional sheet(s) represent.

1. General

a. Have you ever been known by any other name or surname?
[ ] YES [ ] NO If yes, state all names used and when used, including a maiden name or any other married names:

_____

_____

b. Date of birth: _____/_____/_____ Birthplace: _____

c. Name of spouse: _____

d. Spouse's employer and address: _____

_____

e. Does your spouse or any other relative have any business relationship with the National Football League or its Clubs?
[ ] YES [ ] NO If yes, specify in detail:

_____

_____

2. Education

a. Law or other graduate school attended:

_____
(full name)

Dates of Attendance: From _____ to _____
(month & year) (month & year)

Degree: _____ Date awarded: _____

b. Colleges or Universities attended:

_____
(school) (city & state) (dates attended) (degree)

(school) (city & state) (dates attended) (degree)

(school) (city & state) (dates attended) (degree)

c. High School attended:

(school) (city & state) (year graduated)

d. If you have not received a degree from an accredited four year college/university and a post-graduate degree from an accredited college/university, list below the negotiating experience you wish the NFLPA to consider in lieu of a college and post-graduate degree (See Regulations, Section 2(A)).

3. Current Occupation/Employment

a. I am currently: (check one)

[ ] EMPLOYED BY:

(name of employer) (address) (telephone)

(dates of employment)

(nature of employment)

[ ] DOING BUSINESS AS:

(name of employer) (address) (telephone)

(dates of employment)

(nature of employment)

b. Please list below the names of employers, addresses, telephone numbers, positions held, and dates of all your employment for the past ten (10) years (use additional pages if necessary).

4. Lawyers and Law Graduates

a. Have you been admitted to the Bar in any jurisdiction?

[ ] YES **[ ] NO** If yes, please list jurisdiction and dates of admissions:

_____
(jurisdiction) (date of admission)

_____
(jurisdiction) (date of admission)

_____
(jurisdiction) (date of admission)

b. Do you have any Application for Bar admission currently pending?

[ ] YES **[ ] NO** If yes, please state where you have applied and the status of that Application:

_____

_____

_____

c. Have you ever been disbarred, suspended, reprimanded, censured, or otherwise disciplined or disqualified as an attorney, as a member of any other profession, or as a holder of any public office?

[ ] YES **[ ] NO** If yes, please describe each such action, the dates of occurrence, and the name and address of the authority imposing the action in question:

_____

_____

_____

d. Are any charges or complaints currently pending against you regarding your conduct as an attorney, as a member of any profession, or as a holder of public office?

[ ] YES **[ ] NO** If yes, please indicate the nature of the charge or complaint and the name and address of the authority considering it:

_____

_____

_____

e. Has your right to practice before any governmental office, bureau, agency, commission, etc., ever been restricted, suspended, withdrawn, denied, or terminated?

[ ] YES **[ ] NO** If yes, please explain fully:

_____

_____

_____

5. All Applicants

(Lawyers and law graduates need not repeat answers given in Section 4 pertaining to your status as a lawyer or law graduate when providing answers in this Section. For example, if a lawyer is also a CPA, answer these questions only as they relate to your status as a CPA.)

a. Are you a member of any business or professional organization which directly relates to your occupation or profession?

[ ] YES **[ ] NO** If yes, please list:

_____

_____

_____

b. Please list any occupational or professional licenses or other similar credentials (i.e., Certified Public Account, Chartered Life Underwriter, Registered Investment Advisor, etc.) you have obtained other than college or graduate school degrees, including dates obtained:

_____

_____

_____

c. Are you registered or have you applied to be registered pursuant to any state statutes regulating athlete agents?

[ ] YES **[ ] NO** If yes, list states and status of registration:

_____

_____

_____

d. Have you ever been denied an occupational or professional license, franchise or other similar credentials for which you applied?

[ ] YES **[ ] NO** If yes, please explain fully:

_____

_____

_____

e. Do you currently have pending any application for an occupational or professional license, franchise or other similar credentials?

[ ] YES **[ ] NO** If yes, please describe and indicate status of each such application:

_____

_____

_____

f. Have you ever been suspended, reprimanded, censured, or otherwise disciplined or disqualified as a member of any profession, or as a holder of any public office?

[ ] YES **[ ] NO** If yes, please describe each such action, the date(s) of occurrence, and the name and address of the authority imposing the action in question:

_____

_____

_____

g. Are any charges or complaints currently pending against you regarding your conduct as a member of any profession, or as a holder of public office?

[ ] YES **[ ] NO** If yes, please indicate the nature of the charge or complaint and the name and address of the authority considering it:

_____

_____

_____

h. Has your right to engage in any profession or occupation ever been restricted, suspended, withdrawn, or terminated?

[ ] YES **[ ] NO** If yes, please explain fully:

_____

_____

_____

6. All Applicants:

a. Have you ever been charged with, indicted for, convicted of, or pled guilty or pled no contest to a criminal charge, other than minor traffic violations ($100 fine or less)?

[ ] YES **[ ] NO** If yes, please indicate nature of offense, date of conviction, criminal authority involved, and punishment assessed:

_____

_____

_____

b. Have you ever been a defendant in any civil proceedings in which allegations of fraud, misrepresentation, embezzlement, misappropriation of funds, conversion, breach of fiduciary duty, forgery, professional negligence, or legal malpractice were made against you?

[ ] YES **[ ] NO** If yes, please describe fully and indicate results of the civil proceeding(s) in question:

c. Have you ever had legal proceedings brought against you by any player, players association, professional sports club or league (NFL or otherwise) for any reason?

[ ] YES **[ ] NO** If yes, please describe fully and indicate the results of the civil action in question:

d. Have you ever been adjudicated insane or legally incompetent by any court?

[ ] YES **[ ] NO** If yes, please provide details:

e. Were you ever suspended or expelled from any college, university, graduate school, or law school?

[ ] YES **[ ] NO** If yes, please explain fully:

f. Has any surety or any bond on which you were covered been required to pay any money on your behalf?

[ ] YES **[ ] NO** If yes, please describe circumstances:

g. Are there any unsatisfied judgments of continuing effect against you (other than alimony or child support)?

[ ] YES [ ] NO If yes, provide full details:

_____

_____

_____

_____

h. Have you ever been declared bankrupt or been an owner or part owner of a business which has declared bankruptcy?

[ ] YES [ ] NO If yes, provide full details:

_____

_____

_____

_____

7. References

a. Please list below the names, addresses, and daytime telephone numbers of at least three (3) persons, not related to you, who have known you for at least the last five (5) years and who can attest to your character. (Names of officers, Player Representatives, or staff members of the NFLPA may not be used):

_____

_____

_____

_____

b. Please list below the names, current addresses, and current telephone numbers of at least two entities which can attest to your financial credit. (i.e., credit card companies, lending institutions, etc):

_____

_____

_____

_____

8. Professional Sports Experience

a. Please list below (or attach a list which includes) the names of every NFL player, including rookies, you are now representing or have represented in the past in individual contract negotiations with NFL Clubs, including the dates of such representation and the NFL Club(s) involved:

b. Apart from professional football, list any other professional sports in which you currently represent or have previously represented any professional athletes, state whether you have been approved or certified as agent in such sport (and the date of approval) and for each such sport specify the number of athletes you currently represent.

c. (Optional - applicant may refrain from answering if he/she desires.)
Please list below the names of any other professional athletes, entertainers, or celebrities you are now representing or have represented in the past, indicating the type of representation, the dates of representation, and the employers involved:

9. NFL Management Personnel

List the names of any coaches, general managers or other management officials of any NFL Club you presently represent or have represented in the past regarding employment with their respective Clubs:

10. Related Businesses and Personnel

a. List the name, address and phone number for each firm or organization with which you are currently affiliated where the business of representing professional athletes is customarily conducted.

b. For each such firm or organization, state whether it is a sole proprietorship, corporation, partnership, or other entity (specify):

c. If a partnership, list the name of each partner; if a corporation, list the name of each officer and member of the board of directors. Designate those partners, officers or members of the board of directors who customarily perform work for professional athletes:

d. List each person, not named in 10.c. above who: (a) has a significant ownership interest in your firm or organization; (b) has wholly or partially financed your firm or organization (other than financing or credit extended in the ordinary course of business by lending institutions); or (c) directly or indirectly exercises or has the power to exercise a controlling influence over the management of your firm or organization:

e. Describe the ownership interest, the amount of financing, and/or basis of controlling influence for each person listed in 10.d.:

f. Describe fully the nature of the business of each of your firm(s) or organization(s) listed in 10.a. above:

_____

_____

_____

_____

_____

g. With respect to your present business, list each person employed by that business who is engaged in the representation of professional athlete(s) and write a description of his/her area(s) of specialty:

_____

_____

_____

_____

_____

_____

h. List all persons employed by you or any of your businesses, either directly or indirectly, who solicit, recruit or recommend players on your behalf. For each person listed include current addresses, phone numbers, and a brief description of your business relationship with them, including any fee arrangements.

_____

_____

_____

_____

_____

_____

11. Business Services

a. What services do you or your firm provide to Players?
(Please check each service provided.)

[ ] Contract Negotiation [ ] Estate Planning
[ ] Tax Planning [ ] Financial Planning
[ ] Investment Counseling [ ] Appearances/Endorsements
Other Services (Explain) _____

b. Do you manage, invest or in any other manner handle funds for NFL players?

[ ] YES [ ] NO If yes, are you bonded?

[ ] YES [ ] NO If yes, please provide details as to the amount of the bond, the name and address of the surety or bonding company, etc.:

If yes, are you currently registered under the Investment Advisor's Act? If no, explain why:

c. If you do not provide services in one or more of the areas listed in 11.a., do you assist the player in securing such services?

[ ] YES [ ] NO If so, describe what you do in this regard (include name and address of each individual/firm to which you customarily refer players for each such service and state whether or not you receive a fee from those individuals for the referral, and the basis of any fee.):

d. With respect to the areas in which you do not provide services, do you: (a) have an ownership interest in; (b) wholly or partially finance; or (c) directly or indirectly exercise a controlling influence over any firm or organization that does provide such services?

[ ] YES [ ] NO If so, list the name and address of each firm or organization, the services it provides, and a detailed explanation of your relationship to and/or involvement with such firm or organization (including financial relationships):

e. Do you have any agreement, understanding or relationship of any kind with any individual, firm or organization pursuant to which such individual, firm or organization solicits or recommends players to use your services?

[ ] YES **[ ] NO** If so, explain fully, including the name and address of each such person, firm or organization, and whether or not you provide any compensation or other consideration to such individual, firm or organization:

_____

_____

_____

_____

f. If you provide services in addition to contract negotiation services, please indicate your customary fees for financial planning, investment counseling, estate planning, tax planning, legal advise, and/or appearances/endorsements. (Specify whether fees are based on a percentage of the player's salary negotiated, on his total income, on an hourly fee, or on some other arrangement.) Specify your customary fees in each such area, and indicate the relationship, if any, of such fees to the fees you charge for player contract negotiations and related services:

_____

_____

_____

g. Do you bill the player for your expenses in connection with the services referred to in number 11.f. above?

[ ] YES **[ ] NO** If so, on what basis do you bill (e.g. itemize out-of-pocket, daily rate or other basis):

_____

_____

_____

h. Do you allocate any expenses among various player clients?

[ ] YES **[ ] NO** If so, describe method of allocation:

_____

_____

_____

ACKNOWLEDGEMENT

CITY OF: _____

STATE OF: _____

I, _____, being first duly sworn, say that I have read the foregoing questions and have personally answered the same fully and honestly and the answers to said questions are true to my knowledge. Further, I agree to be bound by these Regulations in their entirety.

_____
Signature of Applicant

Subscribed and sworn to
before me this _____ day
of _____, 20__.

_____
Notary Public

Appendix B

AUTHORITY AND CONSENT TO RELEASE INFORMATION INCLUDING CONSUMER REPORTS AND CONSUMER INVESTIGATIVE REPORTS UNDER THE FEDERAL FAIR CREDIT REPORTING ACT

(1) SCREENING QUESTIONNAIRE FOR IDENTIFICATION PURPOSES:

Name: _____
(Last) (First) (Middle)

Home Address: _____
(Street) (City) (State) (Zip Code)

Social Security #: _____ **Date of Birth:** _____

Driver's License #: _____ **State:** _____

(2) AUTHORIZATION AND GENERAL RELEASE:

I hereby authorize the **NFL PLAYERS ASSOCIATION** and all of its agents to request and receive any information and records concerning me, including, but not limited to, consumer credit, criminal record history, driving, employment, military, civil, regulatory, educational data, and reports, from any individuals, corporations, partnerships, associations, institutions, schools, governmental agencies, and departments, courts, law enforcement, and licensing agencies, consumer reporting agencies, and other entities, including my present and previous employers.

I further release and discharge the **NFL PLAYERS ASSOCIATION,** all of its agents and all of its subsidiaries and affiliates, and every employee or agent of any of them, and all individuals and personal, business, private, or public entities of any kind, from any and all claims and liability arising out of any request(s) for, or receipt of, information or records pursuant to this authorization, or arising out of any compliance, or attempted compliance, with such request(s). I also authorize the procurement of an investigative consumer report and understand that it may involve personal interviews with sources such as friends, neighbors, and associates, and may contain information about my character, general reputation, personal characteristics, and mode of living, whichever are applicable. I understand that I have the right to make a written request within a reasonable period of time for a complete and accurate disclosure of additional information concerning the nature and scope of the investigation. I acknowledge that I have voluntarily provided the above information for qualification as an NFLPA Certified Contract Advisor, and I have carefully read and I understand this authorization. Further, I understand that the NFLPA has the right to provide any information obtained to players and their family members who are advising them in selecting a Contract Advisor.

I have been given a stand-alone, consumer notification that a report will be requested and used for the purpose of evaluating me for qualification as an NFLPA Certified Contract Advisor. The following is my true and complete legal name, and all the above information is true and correct to the best of my knowledge.

SIGNED: _____ **DATE:** _____

NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION
CONTRACT ADVISOR CERTIFICATION

THE NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION,
relying upon an
Application for Certification previously filed, hereby grants Certification to

_____

to act as an NFLPA Contract Advisor pursuant to the

NFLPA Regulations Governing Contract Advisors

adopted December 1, 1994,

and amended from time to time thereafter.

Sample

This Certification is effective beginning as of the date hereof,

and shall continue in full force in effect until and

unless suspended, revoked, or terminated in accordance with

the foregoing Regulations.

Dated at Washington, DC. this _____ day of _____, 20 ___.

NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION

By _____

By issuing this Certification the NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION does not endorse or recommend the employment of the holder of this Certification and expressly prohibits any Contract Advisor from representing or holding out that this Certification is evidence of the holder's skill, honesty, competence or qualifications to represent players in contract negotiations or otherwise. The NFLPA disclaims any liability for the acts or omissions of any Contract Advisor certified by it.

Appendix D

NOTE: Request official copies of NFLPA Standard Representation Agreement from NFLPA.

STANDARD REPRESENTATION AGREEMENT

This AGREEMENT made this _____ day of _____ , 20 __, by and between _____ (hereinafter "Player") _____ and (hereinafter "Contract Advisor")

WITNESSETH:

In consideration of the mutual promises hereinafter made by each to the other, Player and Contract Advisor agree as follows:

1. General Principles

This Agreement is entered into pursuant to and in accordance with the National Football League Players Association (hereinafter "NFLPA") Regulations Governing Contract Advisors (hereinafter the "Regulations") effective December 1, 1994, and as amended thereafter from time to time.

2. Representations

Contract Advisor represents that in advance of executing this Agreement, he/she has been duly certified as a Contract Advisor by the NFLPA. Player acknowledges that the NFLPA Certification of the Contract Advisor is neither a recommendation of the Contract Advisor, nor a warranty by NFLPA or the Contract Advisor's competence, honesty, skills or qualifications.

Contract Advisor hereby discloses that he/she (check one): [ ] represents or has represented; [ ] does not represent and has not represented NFL management personnel in matters pertaining to their employment by or association with any NFL club. (If Contract Advisor responds in the affirmative, Contract Advisor must attach a written addendum to this Agreement listing names and positions of those NFL Personnel represented).

3. Contract Services

Player hereby retains Contract Advisor to represent, advise, counsel, and assist Player in the negotiation, execution, and enforcement of his playing contract(s) in the National Football League. In performing these services, Contract Advisor acknowledges that he/she is acting in a fiduciary capacity on behalf of Player and agrees to act in such manner as to protect the best interests of Player and assure effective representation of Player in individual contract negotiations with NFL Clubs. Contract Advisor shall be the exclusive representative for the purpose of negotiating player contracts for Player. However, Contract Advisor shall not have the authority to bind or commit Player to enter into any contract without actual execution thereof by Player. Once Player agrees to and executes his player contract, Contract Advisor agrees to also sign the player contract and send a copy (by facsimile or overnight mail) to the NFLPA and the NFL Club within 48 hours of execution by Player.

Sample

Player and Contract Advisor (check one): [ ] have [ ] have not entered into any agreements or contracts relating to services other than the individual negotiating services described in this Paragraph (e.g. financial advice, tax preparation). If the parties have, complete 3(A) and 3(B) below.

A. Describe the nature of the other services covered by the separate agreements:

_____

_____

_____

B. Contract Advisor and Player hereby acknowledge that Player was given the opportunity to enter into any of the agreements described in Paragraph 3(A) above and this Standard Representation Agreement, without the signing of one agreement being conditioned upon the signing of any of the other agreements in violation of Section 3(B)(22) of the NFLPA Regulations Governing Contract Advisors.

_____ Contract Advisor _____ Player

4. Compensation for Services

A. If a Contract Advisor succeeds in negotiating an NFL Player Contract acceptable to Player and signed by Player during the term hereof, Contract Advisor shall receive a fee as set forth in subparagraph B below. CONTRACT ADVISOR AND PLAYER AGREE AND ACKNOWLEDGE THAT THE AMOUNT OF SUCH FEE IS FREELY NEGOTIABLE BETWEEN THEM, EXCEPT THAT NO AGREED UPON FEE MAY BE GREATER THAN:

(1) Three percent (3%) of the compensation received by Player for each playing season covered by a Player Contract which is the result of negotiations between Contract Advisor and an NFL Club; or

(2) The lesser percentage specified in Section 4(B)(1)(a) of the Regulations in a case where Player signs a one-year tender as a Franchise, Transition, or Restricted Free Agent player.

B. The fee for Contract Advisor's services shall be as follows (Both Contract Advisor and Player must initial the appropriate line below):

	Contract Advisor	Player
Three Percent (3%)	_____	_____
Two-and-one-half Percent (2 1/2%)	_____	_____
Two Percent (2%)	_____	_____
One-and-one-half Percent (1 1/2%)	_____	_____
One Percent (1%)	_____	_____
Other (specify below)	_____	_____

_____

_____

_____

Sample

In computing the allowable fee pursuant to this Paragraph 4 the term "compensation" shall include only base salaries, signing bonuses, reporting bonuses, roster bonuses, Practice Squad salary in excess of the minimum Practice Squad salary specified in Article XXXIV of the Collective Bargaining Agreement, and any performance incentives actually received by Player. The term "compensation" shall not include any "honor" incentive bonuses (i.e. ALL PRO, PRO BOWL, Rookie of the Year), or any collectively bargained benefits.

5. Payment of Contract Advisor's Fee

Contract Advisor shall not be entitled to receive any fee for the performance of his/her services pursuant to this Agreement until Player receives the compensation upon which the fee is based. However, Player may enter into an agreement with Contract Advisor to pay any fee attributable to deferred compensation due and payable to Player in advance of when the deferred compensation is paid to Player, provided that Player has performed the services necessary under his contract to entitle him to the deferred compensation. Such fee shall be reduced to its present value as specified in the NFLPA Regulations (see Section 4(B)). Such an agreement must also be in writing, with a copy sent to the NFLPA.

In no case shall Contract Advisor accept, directly or indirectly, payment of any fees hereunder from Player's club. Further, Contract Advisor is prohibited from discussing any aspect of his/her fee arrangement hereunder with any club.

6. Expenses

A. Player shall reimburse Contract Advisor for all reasonable and necessary communication expenses (i.e., telephone and postage) actually incurred by Contract Advisor in connection with the negotiation of Player's NFL contract. Player also shall reimburse Contract Advisor for all reasonable and necessary travel expenses actually incurred by Contract Advisor during the term hereof in the negotiation of Player's NFL contract, but only if such expenses and approximate amounts thereof are approved in advance by Player. Player shall promptly pay all such expenses upon receipt of an itemized, written statement from Contract Advisor.

B. After each NFL season and prior to the first day of May following each season for which Contract Advisor has received fees and expenses, Contract Advisor must send to Player (with a copy of the NFLPA) an itemized statement covering the period beginning March 1 of the prior year through February 28th or 29th of that year. Such statement shall set forth both the fees charged to Player for, and any expenses incurred in connection with, the performance of the following services: (a) individual player salary negotiations, (b) management of player's assets, (c) financial, investment, legal, tax and/or other advice, and (d) any other miscellaneous services.

7. Disclaimer of Liability

Player and Contract Advisor agree that they are not subject to the control or direction of any other person with respect to the timing, place, manner or fashion in which individual negotiations are to be conducted pursuant to this Agreement (except to the extent that Contract Advisor shall comply with NFLPA Regulations) and that they will save and hold harmless the NFLPA, its officers, employees and representatives from any liability whatsoever with respect to their conduct or activities relating to or in connection with this Agreement or such individual negotiations.

Sample

8. Disputes

Any and all disputes between Player and Contract Advisor involving the meaning, interpretation, application, or enforcement of this Agreement or the obligations of the parties under this Agreement shall be resolved exclusively through the arbitration procedures set forth in Section 5 of the NFLPA Regulations Governing Contract Advisors.

9. Notices

All notices hereunder shall be effective if sent by certified mail, postage prepaid to the following addresses.

If to the Contract Advisor: _____

_____

_____

If to the Player: _____

_____

10. Entire Agreement

This Agreement, along with the NFLPA Regulations, sets forth the entire agreement between the parties hereto and cannot be amended, modified or changed orally. Any written amendments or changes shall be effective only to the extent that they are consistent with the Standard Representation Agreement as approved by the NFLPA.

Sample

11. Filing

This contract is signed in quadruplicate. Contract Advisor agrees to deliver two (2) copies to the NFLPA within five (5) days of its execution; one (1) copy to the Player; and retain one (1) copy for his/her files. Contract Advisor further agrees to submit any other executed agreements between Player and Contract Advisor to NFLPA.

12. Term

The term of this Agreement shall begin on the date hereof and shall remain in effect until such time that it is terminated by either party in which case termination of this Agreement shall be effective five (5) days after written notice of termination is given to the other party. Notice shall be effective for purposes of this paragraph if sent by confirmed facsimile or overnight delivery to the appropriate address contained in this Agreement. Notwithstanding the above, if this Standard Representation Agreement is being signed by a prospective rookie player (a "rookie" shall be defined as a person who has never signed an NFL Player Contract) prior to the date which is thirty (30) days before the NFL Draft, then this Agreement shall not be terminable by Player until at least 30 days after it has been signed by Player.

If termination pursuant to the above provision occurs prior to the completion of negotiations for an NFL player contract(s) acceptable to Player and signed by Player, Contract Advisor shall be entitled to compensation for the reasonable value of the services performed in the attempted negotiation of such contract(s) provided such services and time spent thereon are adequately documented by Contract Advisor. If termination pursuant to the above provision occurs after Player has signed an NFL player contract negotiated by Contract Advisor, Contract Advisor shall be entitled to the fee prescribed in Paragraph 4 above for negotiation of such contract(s).

In the event that Player is able to renegotiate any contract(s) previously negotiated by Contract Advisor prior to expiration thereof, and such renegotiated contract(s) for a given year equals or exceeds the compensation in the original contract, the Contract Advisor who negotiated the original contract shall still be entitled to the fee he/she would have been paid pursuant to Paragraph 4 above as if such original contract(s) had not been renegotiated. If Contract Advisor represents Player in the renegotiation of the original contract(s), and such renegotiated contract(s) for a given year equals or exceeds the compensation in the original contract, the fee for such renegotiation shall be based solely upon the amount by which the new compensation in the renegotiated contract(s) exceeds the compensation in the original contract(s), whether or not Contract Advisor negotiated the original contract(s).

In the event that the Player renegotiates any contract(s) and the renegotiated compensation for a given year is less than the compensation in the original contract, the fee to the Contract Advisor who negotiated the original contract shall be his/her fee percentage applied to the new compensation, but only after the new compensation is reduced by the percentage which the compensation was reduced from the original contract. The fee to the Contract Advisor who negotiated the new contract shall be his/her fee percentage applied to the new compensation, but only after the new compensation is reduced by the compensation applicable to the original Contract Advisor's fee as calculated pursuant to the immediately preceding sentence.

If the Contract Advisor's Certification is suspended or revoked by the NFLPA or the Contract Advisor is otherwise prohibited by the NFLPA from performing the services he/she has agreed to perform herein, this Agreement shall automatically terminate, effective as of the date of such suspension or termination.

13. Governing Law

This Agreement shall be construed, interpreted and enforced according to the laws of the State of _____.

Contract Advisor and Player recognize that certain state statutes regulating sports agents require specified language in the player/agent contract. The parties therefore agree to the following additional language as required by state statute:

Sample

D-6

EXAMINE THIS CONTRACT CAREFULLY BEFORE SIGNING IT

IN WITNESS WHEREOF, the parties hereto have hereunder signed their names as hereinafter set forth.

(CONTRACT ADVISOR)	(PLAYER)
(Street Address)	(Street or P.O. Box)
(City, State, Zip Code)	(City, State, Zip Code)
(Telephone)	(In-Season Telephone)
(Fax Number)	(Off-Season Telephone)
(Player's Birthdate)	(College/University)

Print Name and Signature of PARENT or GUARDIAN (if Player is Under 21 Years of Age)

(Street Address)

(City, State, Zip Code)

(Telephone)

Sample

NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS

SRA DISCLOSURE FORM
FOR RECRUITING ASSISTANCE PAYMENTS

I, _____ (Contract Advisor), hereby disclose to

_____ (Player) that I, or my agency, have paid or promised to pay, directly or indirectly, the money or any other thing of value as indicated below (excluding salaries or other compensation paid to my employees or employees of my agency) to the person(s) or entities listed below in return for recruiting or helping to recruit Player to sign a Standard Representation Agreement (SRA):

All Recruiting Person(s) or Entities:

1. _____ (Print Full Name)	2. _____ (Print Full Name)
_____ (Street Address)	_____ (Street Address)
_____ (City, State, Zip Code)	_____ (City, State, Zip Code)
_____ (Telephone)	_____ (Telephone)
_____ (Money or Other Thing of Value)	_____ (Money or Other Thing of Value)

Sample

[Provide information for any additional persons on additional forms.]

I hereby certify that the above information is true and complete. I further acknowledge my obligation pursuant to my Application for Certification, Section 10(h), to keep a current list on file with the NFLPA of all persons who solicit, recruit or recommend players on my behalf, including contact information and any fee arrangement.

_____ (Signature of Contract Advisor)	_____ (Date Disclosure form given to Player)

ACKNOWLEDGEMENT AND APPROVAL OF PLAYER

I, _____(Player), hereby acknowledge receiving this SRA Disclosure Form on the date set forth above, and have had adequate time to consider this information prior to signing the SRA. Thus, I am aware of the money or other thing of value paid or to be paid to recruiter(s) as described above and approve of same.

_____ (Signature of Player)	_____ (Date)

[Note: Contract Advisor must attach this completed and signed SRA Disclosure Form to the SRA and submit it to the NFLPA, Salary Cap and Agent Administration Department. If this SRA Disclosure Form is completed after submission of the SRA to the NFLPA, then the Contract Advisor must submit this SRA Disclosure Form to the NFLPA promptly after it is signed.]

NFLPA REGULATIONS GOVERNING CONTRACT ADVISORS

SECTION 5 GRIEVANCE NOTIFICATION FORM

I, _____ (Grievant), hereby file the attached Section 5 grievance against you, _____ (Respondent), pursuant to Section 5 of the NFLPA Regulations Governing Contract Advisors.

GRIEVANT:	RESPONDENT
_____ (Print Full Name)	_____ (Print Full Name)
_____ (Street Address)	_____ (Street Address)
_____ (City, State, Zip Code)	_____ (City, State, Zip Code)
_____ (Telephone)	_____ (Telephone)
_____ (Fax)	_____ (Fax)

Sample

Type of Grievance (Check only one):

_____ Dispute between a Player and Contract Advisor

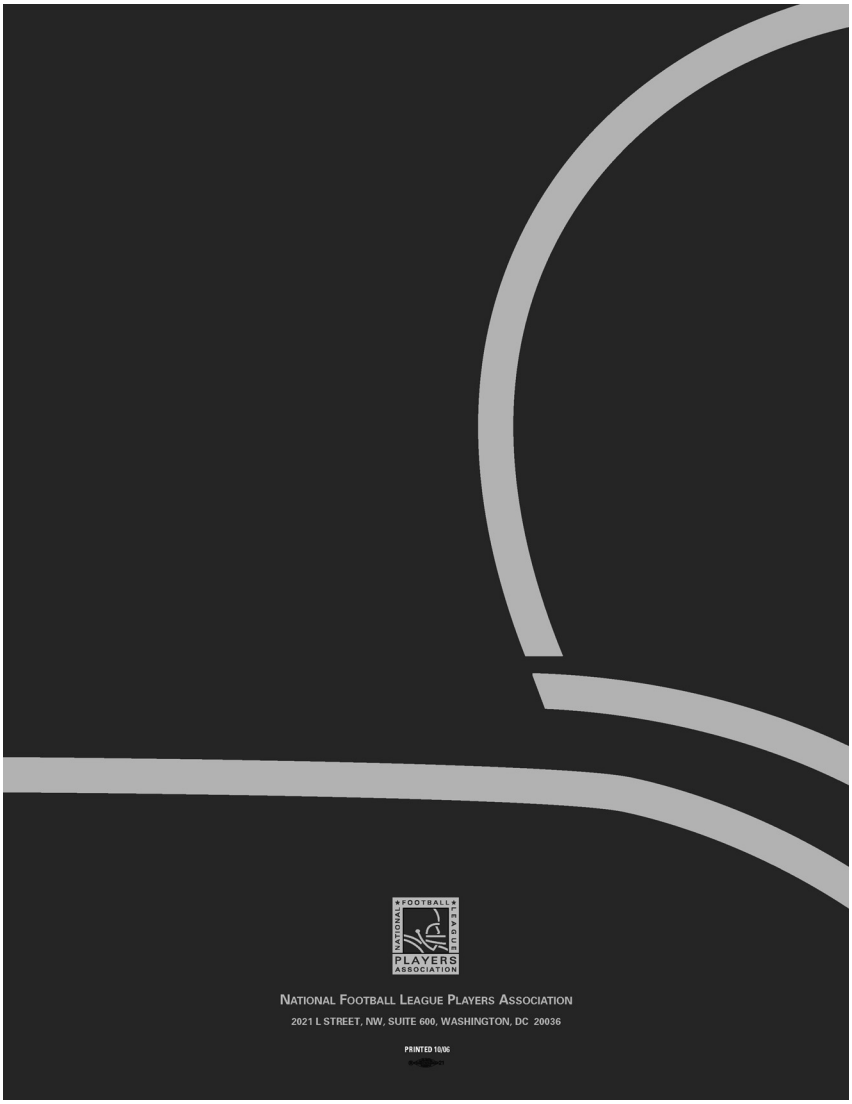
_____ Dispute between two (2) Contract Advisors with respect to a violation of Section 3 B(21).

Instruction for Respondent:
The Respondent shall answer the grievance in writing and shall serve it upon the Grievant by prepaid certified mail or personal delivery within twenty (20) days of receipt of the grievance, with a copy to the NFLPA. The answer shall admit or deny the facts alleged in the grievance and shall also briefly set forth, where applicable, the reasons why the Respondent believes the grievance should be denied.

Send all correspondence to the NFLPA Legal Department.

NOTES

[redacted]


NATIONAL FOOTBALL LEAGUE
PLAYERS ASSOCIATION
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2021 L STREET, NW, SUITE 600, WASHINGTON, DC 20036
PRINTED 10/06

LETTER SUBMITTED BY BERNARD PARRISH

From: Bernard Parrish [mailto:bpp12@yahoo.com]
Sent: Friday, December 15, 2006 4:39 PM
To: Smietanka, Ray; Prill, Leslie
Subject: Statement by Bernie Parrish

I endorse the statements and testimony of LaVar Arrington, Richard Karcher and Larry Friedman with respect to the NFLPA's arbitration process. The NFLPA's arbitration practices have spent excessive funds pursuing disciplinary actions against certain agents with a negative impact on the player's funds resulting in insufficient benefits for retired and disabled players. I would appreciate the opportunity to present my concerns about the operation of the NFLPA to the sub committee members in hope of future hearings.

Bernie Parrish 352-378-6348 bpp12@yahoo.com
Cleveland Browns 1959-1966
A founder of NFLPA and NFL Player Retirement Plan
Author of best selling book on NFL: *They Call It A Game*

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