

THE NCAA’S “NO-AGENT” RULE: BLURRING AMATEURISM

*Matthew Stross**

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INTRODUCTION

I often say if I had a son who was left-handed and threw 95, I’d want to know what his worth was. I’ve been in business a long while, and I wouldn’t know what it would be. So we need to provide somehow within our rules an opportunity for a young man to be

* B.A., The Ohio State University, 2010; J.D. Candidate, The University of Mississippi School of Law, 2013. The author would like to thank the editors of the MISSISSIPPI SPORTS LAW REVIEW for their assistance and hard work making this article a reality. Additionally, would like to thank Professor William Berry III for his guidance and dedication to teaching and the development of his students.

informed and still not professionalize himself, which may require a review of our current regulation.

– Dennis Poppe NCAA Vice President of
Baseball and Football ¹

Every June, Major League Baseball (MLB) holds its annual First-Year Player Draft.² In 2011, there were 1,530 players drafted, a majority of whom were either high school graduates who have not yet attended college or college players from a four-year college who have completed their junior or senior years.³ While MLB rules govern who is eligible for the draft,⁴ the National Collegiate Athletic Association (NCAA) rules govern eligibility with which drafted players must concern themselves if they intend to turn down a professional contract offer and continue to play collegiate baseball.

The NCAA Bylaws permit only amateur student-athletes to participate in intercollegiate athletics, and a violation of the NCAA's amateurism rules, before enrollment or during the student-athlete's career at a university, render the student-athlete ineligible for NCAA competition.⁵ Additionally, the NCAA has an extensive set of bylaws regulating the relationships between agents and student-athletes.⁶ The bylaw provision known as the "no-agent" rule states, "[A]n individual shall be ineligible for participation in an intercollegiate sport if he or she ever has agreed (orally or in writing) to be represented by an agent for the purpose of

¹ Aaron Fitt, *NCAA Tournament, "No Agent" Rule Could Change*, BASEBALL AMERICA (Jan. 10, 2011), <http://www.baseballamerica.com/today/college/news/2011/2611133.html> [hereinafter *Rule Could Change*.]

² *Official Rules*, MLB.com, <http://mlb.mlb.com/mlb/draftday/rules.jsp>.) [hereinafter *Official Rules*].

³ Dimity Loselivich, *2011 MLB Draft Results: Tracking All the Late-Round Steals of Day 3*, BLEACHER REPORT (Jun 8, 2011), <http://bleacherreport.com/articles/727637-2011-mlb-draft-results-tracking-all-the-late-round-steals-of-day-3>.

⁴ *Official Rules*, *supra* note 2.

⁵ *2011-2012 NCAA Division I Manual*, Bylaw 12.01.3, 61 (2011), available at http://grfx.cstv.com/photos/schools/wast/genrel/auto_pdf/2011-12/misc_non_event/ncaa-d-i-manual.pdf [hereinafter *NCAA Manual*].

⁶ *NCAA Manual*, *supra* note 5, Bylaw 12.3, at 70.

marketing his or her athletics ability or reputation in that sport.”⁷

A student-athlete, however, may secure advice from a lawyer concerning a proposed professional sports contract.⁸ The NCAA does not consider such contact with a lawyer to be representation by an agent so long as the lawyer is not present during contract negotiations with a professional organization and does not have any contact with a professional organization on behalf of his or her client.⁹ It is this “no-agent” rule that players drafted in the MLB First-Year Player Draft must consider.

Once drafted, a player must consider his options, deciding to either continue play as an amateur or forfeiting his or her college eligibility and signing a contract with a professional team. This decision is often not as simple as accepting a scholarship or a signing bonus. Players must weigh many factors in making this decision, including their current market value, their potential market value, and the value of the scholarship.¹⁰ Many players seek advice in order to determine their actual value.¹¹ While the NCAA does not forbid all advice regarding a player’s decision, “the limits they impose on that advice is simply not fair and is atypical of any other big-money contract a person may have the good fortune of negotiating.”¹²

Student-athletes may seek advice from family members, coaches, and in the case of college juniors, their college’s athletic department.¹³ While such advice is important, it is often not adequate, and in some cases, the advice may be contrary to the

⁷ *NCAA Manual*, *supra* note 5, Bylaw 12.3.1, at 70.

⁸ *NCAA Manual*, *supra* note 5, Bylaw 12.3.2, at 70.

⁹ *NCAA Manual*, *supra* note 5, Bylaw 12.3.2.1, at 70.

¹⁰ David Wade, *Inside the Rules: The NCAA “No Agent” Rule*, THE HARDBALL TIMES (Feb. 8, 2011) <http://www.hardballtimes.com/main/article/inside-the-rules-ncaa-no-agent-rule>. [hereinafter *Inside the Rules*].

¹¹ *Rule Could Change*, *supra* note 1.

¹² *Inside the Rules*, *supra* note 10.

¹³ Richard T. Karcher, *The NCAA’s Regulations Related to the Use of Agents in the Sport of Baseball: Are the Rules Detrimental to the Best Interest of the Amateur Athlete?*, 7 VAND. J. ENT. L. & PRAC. 215, 219 (2005).

best interests of the student-athlete.¹⁴ Retaining an advisor and/or a lawyer gives the student-athlete the tools to make an informed decision while negotiating with a professional baseball club—a club that employs a team of lawyers, scouts, and statisticians.¹⁵ This information gap and the obvious disparity in bargaining power support the notion that student-athletes need to be able to seek the advice of an impartial and competent advisor.

This article argues that the “no-agent” rule, prohibiting legal counsel during contract negotiations, undermines student-athlete’s best interests and violates public policy. The NCAA should revise its “no-agent” rule to allow legal involvement in all aspects of contract negotiation without affecting a student-athlete’s eligibility.

Part I of this Article discusses the current rules that student-athletes must follow. This section includes a discussion of the current MLB draft rules, the NCAA’s rules on eligibility and amateurism, judicial deference to the NCAA, and the case of *Oliver v. NCAA*. Part II of this Article discusses the need for a change to the current rules, as well as, the flaws in the NCAA’s current promulgation of the rules of amateurism. This section includes a discussion of the actual purpose of the “no-agent” rule, the blurred line between amateur and professional sports, the unique nature of the sport of baseball, the interests protected by the current rules, and the problems in enforcing the current “no-agent” rule. Finally, Part III argues that lawyers should be free to negotiate on behalf of the student-athlete in all contract talks with a professional baseball organization without putting the eligibility of the student-athlete in jeopardy.

I. CURRENT RULES REGULATING THE STUDENT-ATHLETE

The NCAA adamantly advertises the notion of student-athletes “going pro in something other than sports.”¹⁶ This campaign seeks to inform the public about the academic focus of

¹⁴ Glenn M. Wong, Warren Zola & Chris Deubert, *Going Pro in Sports: Providing Guidance to Student-Athletes in a Complicated Legal and Regulatory Environment*, 28 CARDOZO ARTS & ENT. L. J. 553, 557-58 (2011).

¹⁵ *Inside the Rules*, *supra* note 10.

¹⁶ Wong, Zola & Deubert, *supra* note 14, at 554.

many collegiate athletes. While the NCAA focuses these advertisements on those athletes who will utilize the college degree obtained while on scholarship and not play sports professionally, the reality of college athletics is that a number of student-athletes will become professional athletes upon leaving college. Those individuals who become professional athletes, either high school students going directly to the pros or college juniors and seniors after leaving college, must know the NCAA rules governing student-athlete's eligibility, as well as the consequences of breaking said rules.

A. Baseball Draft Rules

MLB holds its annual First-Year Player Draft in June by conference call among the 30 Major League clubs.¹⁷ Players eligible for the First-Year Player Draft include high school players that have graduated from high school but not yet attended college, college players who have completed their junior or senior year or are 21 years of age or older, and junior college players.¹⁸ Unlike other professional sports drafts, eligible players do not have to request to be on the draft list.¹⁹ Once the draft takes place, the team has the exclusive right to negotiate a contract with the players it drafts.²⁰ Drafted players must decide by mid-July whether to sign the major league contract and go professional or to reject the offer and retain their college eligibility.²¹

The timing of the First-Year Player Draft creates issues for both high school and college student-athletes. For college students the Draft occurs during the college season and for high school students, the draft occurs in the summer before they begin their college career.²² Drafted college students must carefully negotiate their potential contracts while preserving eligibility during their

¹⁷ *Official Rules*, *supra* note 2.

¹⁸ *Id.*

¹⁹ See Wong, Zola & Deubert, *supra* note 14, at 563.

²⁰ Karcher, *supra* note 13, at 219.

²¹ Mike Persinger, *New Draft System Adds Intrigue to June Event*, MLB.COM (Apr. 18, 2012, 10:00 AM), http://mlb.mlb.com/news/article.jsp?ymd=20120417&content_id=28917386&vkey=news_mlb&c_id=mlb.

²² *Inside the Rules*, *supra* note 10.

ongoing season.²³ Drafted high school students must be careful not to jeopardize their NCAA eligibility before even entering college.²⁴

For baseball, the NCAA permits drafted student-athletes to negotiate with the professional team and still maintain their college eligibility.²⁵ The student-athlete will lose his NCAA eligibility if he signs with the professional baseball team, hires an agent to promote his athletic ability to a professional team, and/or allows a lawyer to be present during contract negotiations between the student and the team.²⁶ Given the high stakes and complexity of a professional contract, the threat of losing eligibility for a recent high school graduate creates unnecessary stress to a decision potentially worth millions of dollars.²⁷

B. The NCAA and Amateurism

The stated mission statement of the NCAA is “to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports.”²⁸ All student-athletes participating in collegiate sports must be amateurs and their participation “should be motivated primarily by education and by the physical, mental and social benefits to be derived.”²⁹ The NCAA furthers its promotion of amateurism through the stated purpose that “student-athletes should be protected from exploitation by professional and commercial enterprises.”³⁰

In order to protect the “line of demarcation” and preserve amateurism in intercollegiate sports, the NCAA enacted bylaws defining what conduct results in an athlete losing his or her amateur status, and therefore losing collegiate eligibility. One

²³ T. Matthew Lockhart, *Oliver v. NCAA: Throwing a Contractual Curveball at the NCAA's "Veil of Amateurism"*, 35 U. DAYTON L. REV. 175, 182 (2010).

²⁴ *Inside the Rules*, *supra* note 10.

²⁵ Note, *Sherman Act Invalidation of the NCAA Amateurism Rules*, 105 HARV. L. REV. 1299, 1310-11 (1992).

²⁶ *NCAA Manual*, *supra* note 5, Bylaw 12.3.2, at 70.

²⁷ *Inside the Rules*, *supra* note 10.

²⁸ *NCAA Manual*, *supra* note 5, Bylaw 1.3.1, at 1.

²⁹ *NCAA Manual*, *supra* note 5, Bylaw 2.9, at 4.

³⁰ *Id.*

such bylaw is the “no-agent” rule. The “no-agent” rule states that “[a]n individual shall be ineligible for participation in an intercollegiate sport if he or she ever has agreed (orally or in writing) to be represented by an agent for the purpose of marketing his or her athletics ability or reputation in that sport.”³¹ Additionally, a student-athlete can lose eligibility if the athlete, a member of the athlete’s family or a friend receives any benefits from someone considered an agent.³² A student-athlete’s knowledge of a violation, either committed by the student-athlete or their friends and family, is irrelevant concerning the university’s declaration of ineligibility.³³

An exception to the “no-agent” rule comes into play in collegiate baseball. Because of the nature of the MLB draft, as discussed in the previous section, student-athletes are automatically eligible for the draft, and once drafted, student-athletes must negotiate a contract with the drafting team. Under NCAA rules, it is permissible for the student-athlete, a student-athlete’s legal guardian, or the university’s professional sports counseling panel to enter into negotiations with a professional baseball organization without the athlete automatically losing amateur status.³⁴ While hiring and retaining an agent is still impermissible, “[s]ecuring advice from a lawyer concerning a proposed professional sports contract shall not be considered contracting for representation by an agent.”³⁵ The NCAA does not classify the lawyer as the player’s agent so long as the lawyer is not present during the discussions of a contract offer with the professional organization and/or the lawyer does not have any direct contact with a professional organization on behalf of the student-athlete.³⁶

³¹ *NCAA Manual*, *supra* note 5, Bylaw 12.3.1, at 70.

³² J. Winston Busby, *Playing For Love: Why the NCAA Rules Must Require a Knowledge-Intent Element to Affect The Eligibility of Student-Athletes*, 42 CUMB. L. REV. 135, 149 (2012); *NCAA Manual*, *supra* note 5, at 70.

³³ Busby, *supra* note 32, at 150; *NCAA Manual*, *supra* note 5, Bylaw 14.11.1, at 187.

³⁴ *NCAA Manual*, *supra* note 5, Bylaw 12.2.4.3, at 69.

³⁵ *NCAA Manual*, *supra* note 5, Bylaw 12.3.2, at 70.

³⁶ *NCAA Manual*, *supra* note 5, Bylaw 12.3.2.1, at 70.

The NCAA's stated goal with respect to amateurism, as well as their determination of when a lawyer moves past being an advisor and becomes an agent has led to litigation. Suing the NCAA, however, is not an easy task as courts generally provide judicial deference to the NCAA.³⁷

The case of *NCAA v. Tarkanian*, in which the Supreme Court held that the NCAA is not a state actor and therefore does not need to provide constitutional due process protections, provides an example of the judicial deference accorded to the NCAA.³⁸ Later, in *Bloom v. NCAA*, a Colorado appellate court accepted Jeremy Bloom's argument that he was a third-party beneficiary to the contract between the NCAA and the University of Colorado, and gave him standing.³⁹ The court, however, refused to strike down the NCAA rule prohibiting student-athletes from entering into endorsement deals.⁴⁰ The court held that the rule was "rationally related to the legitimate purpose of retaining the clear line of demarcation between intercollegiate athletics and professional sports."⁴¹

Additionally, in *Banks v. NCAA*, Lee Banks, a former Notre Dame football player, sued the NCAA on a claim that the "no-agent" and the "no-draft" rules violated antitrust laws.⁴² The court held that the rules did not violate antitrust law because the rules did not have an anticompetitive effect on the market, preserved amateurism, protected the educational values of college football, and are pro-competitive in nature.⁴³ The *Banks* court also held that professional agents' involvement in college football would turn amateur athletics into a sham and would turn collegiate football into a minor league "farm system" solely operating to prepare athletes for the National Football League (NFL).⁴⁴ One recent case involving amateurism and the "no-agent" rule is *Oliver*

³⁷ Lockhart, *supra* note 23, at 186.

³⁸ *NCAA v. Tarkanian*, 488 U.S. 179 (1988).

³⁹ *Bloom v. NCAA*, 93 P.3d 621 (Colo. App. 2004).

⁴⁰ *Id.* at 626.

⁴¹ *Id.* at 626. (internal quotations omitted).

⁴² *Banks v. NCAA*, 977 F.2d 1081 (7th Cir. 1992).

⁴³ *Id.* at 1088-94.

⁴⁴ *Id.* at 1091.

v. NCAA.⁴⁵ In *Oliver*, baseball player Andrew Oliver sued to enjoin the NCAA from enforcing the "no-agent" rule.⁴⁶

C. The Andrew Oliver Case

Considering the judicial deference historically given to the NCAA in similar lawsuits, Oliver had a steep burden to overcome in presenting his claim. When the lawsuit began, Oliver was a junior at Oklahoma State University.⁴⁷ The basis for the lawsuit, however, arose after Oliver graduated from Vermilion High School in Erie County, Ohio in 2006.⁴⁸ In June of that year, the Minnesota Twins drafted Oliver and he subsequently retained the services of Robert Baratta, Tim Baratta, and Icon Sports Group, as advisors and attorneys.⁴⁹ The Minnesota Twins met with Oliver and his father at the Oliver family home to discuss a professional contract.⁵⁰ Tim Baratta, at his own request, also attended this meeting.⁵¹ At this meeting, the Twins offered Oliver \$390,000 to join their organization; however, at the advice of his father, Oliver rejected the offer and chose to attend Oklahoma State and play baseball collegiately.⁵²

Tim Baratta's presence in the Oliver home during the contract negotiation triggered an NCAA investigation into possible rule violations. In May of 2008, the NCAA suspended Oliver from playing baseball.⁵³ In response, Oliver filed a lawsuit in the Erie County Court of Common Pleas.⁵⁴ In his claim, Oliver asked the court to declare, Bylaw 12.3.2.1 (the "no-agent" rule) arbitrary and capricious and sought a permanent injunction to allow him to continue his college baseball career.⁵⁵

⁴⁵ *Oliver v. NCAA*, 920 N.E.2d 203 (Ohio Com.Pl. 2009).

⁴⁶ *Id.* at 207.

⁴⁷ *Id.* at 206.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 207.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 203.

⁵⁵ *Oliver Complaint* ¶¶95-106; *see also* Lockhart *supra* note 19. Plaintiff's Verified Complaint for Declaratory, Equitable & Legal Relief with a Jury Demand Endorsed Herson and Application for a T.O.R. and Preliminary Injunction with a Request for a

The NCAA argued that “its bylaws are rationally related to the NCAA constitution and preserving the amateur model of collegiate athletics, and that the bylaws, in particular Bylaw 12.3.2.1, help retain a clear line of demarcation between collegiate and professional sports.”⁵⁶ Despite this argument, the NCAA lawyers

could not come up with a single explanation of how its Bylaw 12.3.2.1 promotes amateurism, and it could not come up with a single specific harm that would befall it, if it were required to allow student-athletes the full benefit of legal counsel when negotiating contracts that the [NCAA] allows them and their parents to negotiate.⁵⁷

Judge Tygh M. Tone did not agree with the NCAA’s argument and broke from the tradition of judicial deference, granting Oliver’s request.⁵⁸

Judge Tone held that “it is impossible to allow student-athletes to hire lawyers and attempt to control what that lawyer does for his client.”⁵⁹ He also held that, despite the NCAA’s argument, the “no-agent” rule does not retain a clear line of demarcation between professionalism and amateurism.⁶⁰ In the holding, Judge Tone stated that defining a professional athlete as one who receives payment better preserves the line of demarcation.⁶¹ Additionally, Judge Tone opined that it is an attorney’s duty to represent the best interests of his or her client and the state is the only entity with power to regulate that relationship.⁶² Finally, Judge Tone held that Bylaw 12.3.2.1 was arbitrary and capricious and that the Bylaw allowed for the

Hearing Date, Briefing Schedule, and Expedited Discovery at ¶¶ 95-106, *Oliver v. NCAA*, 920 N.E.2d 203 (Ohio Com. Pl. 2009) (No. 2008-CV0762), 2008 WL 5533376; see generally Lockhart *supra* note 23.

⁵⁶ *Oliver*, 920 N.E.2d at 209.

⁵⁷ Richard G. Johnson, *Submarining Due Process: How the NCAA Uses its Restitution Rule to Deprive College Athletes of Their Right of Access to the Courts*, 11 FLA. COASTAL L. REV. 459, 631 (2010).

⁵⁸ Lockhart, *supra* note 23, at 177.

⁵⁹ *Oliver*, 920 N.E.2d at 214.

⁶⁰ *Id.*

⁶¹ *Id.* at 215.

⁶² *Id.* at 214-15.

“exploitation of the student-athlete by professional and commercial enterprises, in contravention of the positive intentions of the defendant.”⁶³

Judge Tone decided the *Oliver* case in February of 2009, however, the NCAA settled with Oliver in October of 2009 to the amount of \$750,000, therefore vacating Judge Tone’s Order.⁶⁴ By settling the case and vacating the Order, the NCAA could continue to enforce Bylaw 12.3.2.1.⁶⁵ Many believe, however, that “the fight over the legality of the bylaw is not over”⁶⁶ and that “the *Oliver* case opened the door for future challenges to NCAA bylaws by student-athletes.”⁶⁷ Sports attorney Jeffrey Kessler explained, “[a]nother court can come to exactly the same conclusion and hold the policy unlawful, and the fact that the decision has been vacated does not make its reasoning any less persuasive.”⁶⁸

Despite the vacating of Judge Tone’s order, he was correct in finding Bylaw 12.3.2.1 arbitrary and capricious. Judge Tone correctly held that “allowing a person to hire an attorney to review a contract, but prohibiting that same attorney from negotiating that contract on behalf of the student-athlete, does not further any of the NCAA’s alleged interests. “In fact, while trying to protect the athletes, the NCAA is actually hindering them.”⁶⁹ The *Oliver* case opened the door to further lawsuits against the NCAA with respect to the right to retain an attorney when negotiating professional sports contracts.

II. THE NEED FOR CHANGE

As Judge Tone stated in *Oliver*, the “no-agent” rule, in its current state, is not serving the interests of the student-athlete.⁷⁰

⁶³ *Id.* at 214.

⁶⁴ Lockhart, *supra* note 23, at 178.

⁶⁵ Brandon D. Morgan, *Oliver v. NCAA: NCAA's No Agent Rule Called Out, But Remains Safe*, 17 SPORTS LAW. J. 303, 314 (2010).

⁶⁶ Lockhart, *supra* note 23, at 179.

⁶⁷ *Id.*

⁶⁸ *Id.* (quoting Liz Mullen, *NCAA: We'll Still Enforce Rule That Drew Suit*, STREET & SMITH'S SPORTSBUSINESS JOURNAL (Oct. 19, 2009), available at <http://www.sportsbusinessjournal.com/article/63861>).

⁶⁹ Lockhart, *supra* note 23, at 197.

⁷⁰ *Oliver v. NCAA*, 920 N.E.2d 203, 215 (Ohio Com.Pl. 2009).

The NCAA continues to maintain that the rule helps to preserve amateurism in collegiate athletics; however, this argument is flawed. The line of demarcation between professionalism and amateurism is already blurred, and merely allowing a lawyer to do their job and negotiate a contract will not deliver a deathblow to amateurism, but could actually serve as a catalyst to help clarify the NCAA's position on amateurism.

The "no-agent" rule currently promulgated by the NCAA interferes with the attorney-client relationship, creates an environment that works against the best economic interest of student-athletes, and leads to unequal bargaining power for the student-athlete in contract negotiations. Few individuals actually get the chance to negotiate a professional contract and a failure to capitalize on that opportunity works against the interests of all parties involved.⁷¹ Given the predicament facing collegiate baseball players, forcing them to either enter into negotiations with a MLB team unrepresented or forfeit their eligibility by hiring an attorney to ensure a fair negotiation, it can be said, "the NCAA's no-agent cure here is worse than the NCAA's feared plague."⁷²

A. Examining the Purpose Behind the "no-agent" Rule

The NCAA holds its bylaws to be valid because they are in place to protect amateurism and the educational aspect of intercollegiate sports.⁷³ If amateurism and education were in fact the goals of the NCAA, then student-athletes would maintain their eligibility so long as they remain unpaid and unsigned by a professional organization. As noted by Professor Richard Karcher,

[s]imply permitting a student-athlete to retain competent representation to contact professional clubs and to advocate on his behalf to obtain a result that is in his own best interests, financially or otherwise, would not destroy the line

⁷¹ Wong, Zola & Deubert, *supra* note 14, at 555.

⁷² Virginia A. Fitt, *The NCAA's Lost Cause and the Legal Ease of Redefining Amateurism*, 59 DUKE L. J. 555, 590 (2009).

⁷³ *Oliver*, 920 N.E.2d at 209.

of demarcation any more than allowing the student-athlete or professional sports counseling panel to engage in the same conduct."⁷⁴

Merely allowing legal representation during the course of contract negotiations will not destroy the principles of amateurism. Collegiate sports and professional sports remain different in many aspects. One such aspect differentiating collegiate sports from the professional level is that student-athletes have no direct representation within the governing bodies or a vote regarding athlete eligibility.⁷⁵ Professional sport leagues have players' associations that enter into collective bargaining agreements with the professional league.⁷⁶ These collective bargaining agreements, as well as the players' associations, give professional athletes a voice that a collegiate athlete does not have. Courts have held that collegiate athletes have no contract with the NCAA and the only way to gain standing to challenge a NCAA bylaw is to prove that the student-athlete is a third-party beneficiary.⁷⁷ This difference in organizational structure illustrates that the NCAA can and does maintain the line of amateurism in other ways in addition to the "no-agent" rule.

In promulgating amateurism, the NCAA differentiates itself from the professional sport leagues. Even though the NCAA may claim that the "no-agent" rule preserves the amateurism of intercollegiate athletics, and although "member institutions agree to a rule or bylaw does not mean that the bylaw is sacrosanct or that it is not arbitrary or capricious."⁷⁸ As held in *Oliver*, it is important to examine if the rule truly supports the NCAA's goal of promoting amateurism or if said rule only controls the student-athletes for no justifiable reason.⁷⁹

⁷⁴ Karcher, *supra* note 13, at 224.

⁷⁵ Jan Stiglitz, *NCAA-Based Agent Regulation: Who Are We Protecting?*, 67 N.D. L. REV. 215, 219 (1991); Matthew J. Mitten & Timothy Davis, *Athlete Eligibility Requirements and Legal Protection of Sports Participation Opportunities*, 8 VA. SPORTS & ENT. L.J. 71, 116 (2008).

⁷⁶ Wong, Zola & Deubert, *supra* note 14, at 589.

⁷⁷ See *Bloom, v. NCAA*, 93 P.3d 621 (Colo. App. 2004); see also *Oliver v. NCAA*, 920 N.E.2d 203 (Ohio Com.Pl. 2009).

⁷⁸ Johnson, *supra* note 57, at 466.

⁷⁹ Lockhart, *supra* note 23, at 198.

B. The Blurred Line

As previously stated, the NCAA claims that the “no-agent” rule is in place to protect the line of demarcation between professional and amateur athletics. Despite the NCAA’s justification, there are already more egregious instances that blur the line of demarcation than the potential consequences of allowing lawyers to negotiate contracts on behalf of student-athletes. Even Congress questioned the boundaries; Congressman William Thomas, Chairman of the House Ways and Means Committee, sent a letter to the NCAA asking, “[b]eyond rules prohibiting compensation for college athletics, what action has the NCAA taken to ‘retain a clear line of demarcation between major college sports and professional sports?’”⁸⁰

The judiciary and the NCAA attempt to shield the NCAA from becoming essentially a minor league for the professionals,⁸¹ as evidenced by the NCAA trying to convince the public of that through its “going pro in something other than sports” commercials.⁸² While the NCAA is actively trying to create the perception it is not simply grooming student-athletes for potential professional careers, in reality, the NCAA is “the primary stepping stone to several professional athletic markets.”⁸³ Especially in baseball where “signability”⁸⁴ is a huge factor, “[f]or the most talented collegiate athletes, college play can resemble major league tryouts with ever-escalating potential salaries and bonuses.”⁸⁵

In addition, the NCAA’s own bylaws further blur the line between amateur and professional athletics. While prohibiting a student-athlete from retaining an advisor to contact professional teams on the student’s behalf, the bylaws permit student-athletes,

⁸⁰ Busby, *supra* note 32, at 157.

⁸¹ See *Bloom v. NCAA*, 93 P.3d. 621 (Colo. App. 2004).

⁸² Wong, Zola & Deubert, *supra* note 14, at 554.

⁸³ Thomas R. Kobin, *The National Collegiate Athletic Association’s No-Agent and No Draft Rules: The Realities of Collegiate Sports Are Forcing Change*, 4 SETON HALL J. SPORT L. 483, 485 (1994).

⁸⁴ See Karcher, *supra* note 13, at 220 (“This term, widely used among scouts, players, and agents, refers to the amount of money it will cost a team to sign a particular player to a professional contract if that player is drafted.”).

⁸⁵ Fitt, *supra* note 73, at 568.

on their own, to ask a professional sports organization about their draft eligibility or individual market value.⁸⁶ Furthermore, the bylaws permit student-athletes and their legal guardians to negotiate contracts with professional sports organizations on their own.⁸⁷ Therefore, while the NCAA bylaws prohibit the use of agents, this causes athletes to lose their amateur status, the NCAA allows students to perform, essentially, the same actions without expert help.

In addition, student-athletes may also talk with an agent at any time, as long as there is no agreement or future promise to sign with said agent.⁸⁸ While the NCAA bylaws permit contact with an agent, student-athletes must be careful not to cross the line and agree to representation from an agent, lest they face eligibility issues.

The NCAA bylaws further complicate the separation between amateur and professional sports by allowing student-athletes, under certain conditions, to participate on the profession level while retaining amateur status. NCAA athletes are allowed to tryout⁸⁹ and practice with professional teams, both before and after enrollment in college.⁹⁰ The bylaws also permit collegiate athletes to compete against professionals,⁹¹ compete with professional athletes before a student's initial full-time enrollment in college,⁹² and compete with a professional athlete as a teammate, so long as the professional receives no payments to play on that team.⁹³

The NCAA also places restrictions on the character of interactions between professional and collegiate levels. Some restrictions set out that a student-athlete cannot receive compensation above their actual and necessary expenses,⁹⁴ they

⁸⁶ *NCAA Manual*, *supra* note 5, Bylaw 12.2.4.1, at 69.

⁸⁷ *NCAA Manual*, *supra* note 5, Bylaw 12.2.4.3, at 69.

⁸⁸ Wong, Zola & Deubert, *supra* note 14, at 575.

⁸⁹ *See NCAA Manual*, *supra* note 5, Bylaws 12.2.1.2-12.2.1.3, at 67.

⁹⁰ *See NCAA Manual*, *supra* note 5, Bylaw 12.2.2.2, at 68.

⁹¹ *NCAA Manual*, *supra* note 5, Bylaw 12.2.3.1, at 68.

⁹² *NCAA Manual*, *supra* note 5, Bylaw 12.2.3.2.1, at 68.

⁹³ *NCAA Manual*, *supra* note 5, Bylaw 12.2.3.2.2, at 68.

⁹⁴ *NCAA Manual*, *supra* note 5, Bylaw 12.2.2.2, at 68.

cannot miss class,⁹⁵ and they cannot become a representative for a professional sports team.⁹⁶ By allowing this type of interaction between amateur and professional athletes, the NCAA further blurs the line separating professionalism and amateurism.

In addition to allowing contact with professional athletes and organizations, the NCAA bylaws contain a provision allowing professional athletes to compete as amateur-student athletes. NCAA Bylaw 12.1.3 states that, “[a] professional athlete in one sport may represent a member institution in a different sport and may receive institutional financial assistance in the second sport.”⁹⁷ By allowing a professional athlete to regain amateur status so long as they compete in a different sport, the NCAA further complicates the already blurred line.

This problem, however, is not completely the fault of the confusing NCAA bylaws. Modern technology, including Twitter, Facebook, the Internet, and video games, also must accept some of the blame. Twitter and Facebook allow increased communication between professional athletes and college athletes, making it easy for professional and college athletes to interact in entirely new ways. Now it is possible to comment about a game over Twitter, to directly Tweet at each other, and to “friend” one another on Facebook. All of these communications are out in the open and easy for the public to view. Because these communications are in the public forum, it leads to the public perception that these college and professional athletes are similar entities. The Internet, specifically the numerous sports websites and blogs, creates a celebrity culture out of collegiate and professional athletes. The sheer amount of information one can find on college and professional athletes serves to further blur of the line of demarcation. Lastly, video games featuring NCAA sports create a commercial market out of student-athletes’ likenesses, in the same manner as their professional counterparts.

Student-athletes have a distorted image of their own amateurism as well. While it is true that many people dream to play sports professionally, “[m]ore than one in five Division I male

⁹⁵ *NCAA Manual*, *supra* note 5, Bylaw 12.2.1.3, at 67.

⁹⁶ *NCAA Manual*, *supra* note 5, Bylaw 12.2.2.2, at 68.

⁹⁷ *NCAA Manual*, *supra* note 5, Bylaw 12.1.3, at 67.

athletes hope to play professionally.”⁹⁸ Additionally, in Division I football, “59% of student-athletes reported that athletics were the primary reason for attending their college.”⁹⁹ The figures are even greater for Division I baseball and men’s basketball, where 79% and 68%, respectively, of the student-athletes responded that their primary reason for attending college was athletics.¹⁰⁰ The figure for all other men’s sports was 72%, indicating that athletics are a primary reason why male athletes attend college.¹⁰¹

Because of these many reasons, it is time for the NCAA to redefine amateurism. Additionally, courts should look to the intended purpose of the bylaws to ensure they actually accomplish their goal to preserve amateurism and protect student-athletes, and not harm or unnecessarily restrict student-athletes. Lastly, given the fact that the line is already extremely blurred, it is not rational for one to believe that simply allowing a lawyer to help a high school or college athlete negotiate a contract with a professional organization should force that athlete to forfeit his amateurism and collegiate eligibility.

C. The Unique Nature of the Sport of Baseball

The specific characteristics of college baseball make it much different from other big collegiate sports, such as football and basketball. As the Article previously notes, courts and the NCAA do not want collegiate athletics to become a minor league for the professional level.¹⁰² While this may become a problem for football and basketball, professional baseball already has an established minor league system. Additionally, unlike football or basketball, student-athletes enter into the MLB draft without forfeiting their college eligibility, and after the draft, they may negotiate a contract with a professional organization and still return to play collegiately.¹⁰³ Baseball student-athletes attempt to negotiate the

⁹⁸ Fitt, *supra* note 73, at 589.

⁹⁹ Wong, Zola & Deubert, *supra* note 14, at 555.

¹⁰⁰ *Id.* at 556.

¹⁰¹ *Id.* at 556-57.

¹⁰² Todd Fisher, *Amateurism and Intercollegiate Athletics: The Double Standard of Section 12.2.4.2.1*, 3 SPORTS LAW. J. 1, 6 (1996).

¹⁰³ NCAA Manual, *supra* note 5, Bylaw 12.2.4.3, at 69.

best deal possible before making the decision to sign a professional contract or retain their collegiate eligibility.¹⁰⁴ Therefore, “[a]s applied to MLB’s amateur draft, the NCAA’s eligibility rules produce results that have little to do with the preservation of amateurism.”¹⁰⁵ Given the different characteristics of baseball when compared to other major sports, it is only fair to apply a different interpretation of amateurism as well. Because of the nature of baseball, as opposed to football or basketball, it is necessary for student-athletes to have complete access to adequate representation for contract negotiations, in order to protect their best interests.

D. Whose Interests Are The Current Rules Protecting?

The NCAA bylaws make it clear that the purpose of the organization is to maintain athletic programs as an integral part of the education system, to preserve the amateur status of collegiate athletics, and to protect student-athletes from exploitation by professional and commercial organizations.¹⁰⁶ The NCAA claims they are trying to protect the amateur athlete, but this is not true.¹⁰⁷ Professor Karcher stated that if the NCAA’s true goal were to protect the student-athlete, “it would seemingly be in the athlete’s best interest to have competent representation to deal with professional sports organizations and the complex business and legal issues that surround the world of professional sports.”¹⁰⁸ While claiming the “no-agent” rule protects student-athletes and their amateur status from unscrupulous agents, in reality, by prohibiting the student-athlete from retaining a lawyer to advocate on his behalf, the rule is to the detriment of the student-athlete.¹⁰⁹

The NCAA maintains that, although agents and lawyers may not participate in negotiating contracts, they still have the ability

¹⁰⁴ Ethan Lock, *Unreasonable NCAA Eligibility Rules Send Braxton Banks Truckin*, 20 CAP. U. L. REV. 643, 651 (1991).

¹⁰⁵ *Id.*

¹⁰⁶ *NCAA Manual*, *supra* note 5, Bylaw 2.9, at 4.

¹⁰⁷ Karcher, *supra* note 13, at 216.

¹⁰⁸ *Id.* at 215.

¹⁰⁹ *Id.* at 216.

to provide a means of protecting the interests of student-athletes through Professional Sports Counseling Panels.¹¹⁰ The NCAA enacted a rule giving member institutions the option to set up Professional Sports Counseling Panels and gives the Panels authority to assist student-athletes in a manner that an agent or lawyer would not have.¹¹¹ These Panels consist of three people; they must all be staff members at the institution and only one member can be from the athletic department.¹¹² The essential purpose of the Panel is to provide information to student-athletes that they may not be able to obtain elsewhere.¹¹³ Additionally, these panels can have direct contact with professional teams and may review proposed contracts.¹¹⁴ The NCAA has not found that these panels, by negotiating with a professional team, blur the line of demarcation between amateurism and professionalism, however, it continues to state that a lawyer doing the same thing would threaten an athlete's amateur status—a confusing stance no doubt.

The NCAA would like to point to the rules establishing and allowing the use of Professional Sports Counseling Panels as an example of their dedication to the protection of the student-athlete; however, these rules are actually too weak to protect student-athletes. The creation of a Professional Sports Counseling Panel by a university is not mandatory, therefore, many universities do not take the opportunity to create or properly use the Panels.¹¹⁵ Even if a university has a Panel and student-athletes utilize this service, there is no guarantee the guidance they receive will be unbiased and serve the best interests of the student-athlete.¹¹⁶ Given that the Panel is comprised of university staff members, there is no way to guarantee the Panel will not provide advice to a student-athlete that actually serves the best interests of the university.¹¹⁷

¹¹⁰ Wong, Zola & Deubert, *supra* note 14, at 575.

¹¹¹ *NCAA Manual*, *supra* note 5, Bylaw 12.3.4, at 70.

¹¹² Karcher, *supra* note 13, at 218.

¹¹³ *Id.*

¹¹⁴ *NCAA Manual*, *supra* note 5, Bylaw 12.3.4, at 70.

¹¹⁵ Wong, Zola & Deubert, *supra* note 14, at 575-576.

¹¹⁶ Karcher, *supra* note 13, at 218.

¹¹⁷ Stiglitz, *supra* note 77, at 218.

The NCAA rule creating the Professional Sports Counseling Panel also fails to address this problem with respect to high school athletes drafted in the MLB First-Year Player Draft. The Professional Sports Counseling Panel is only in place at the university-level, to provide guidance to current student-athletes attending a member institution that established a Panel. Therefore, drafted high school students “are prohibited under the NCAA Bylaws from receiving any assistance in contacting professional teams to secure a tryout, determining their market value, or negotiating a contract with a professional sports organization.”¹¹⁸ Because the NCAA fails to make these Panels mandatory and ensure high school students have equal access to assistance, proves the NCAA’s lack of concern for the interests of student-athletes.

The NCAA continues to stick to the platform that they care about amateurism, protecting the educational integrity of collegiate athletics, and protecting its student-athlete. It is hard to overlook, however, the blatant commercial interests of the NCAA. The NCAA and its member institutions generate millions of dollars every year, which serves to further public skepticism directed towards amateurism in collegiate athletics.¹¹⁹ One of the ways the NCAA supports itself, is through the revenues generated by selling broadcast rights to televise collegiate athletic events.¹²⁰ In addition to the NCAA, other entities gain wealth through the on-field efforts of amateur student-athletes; many college coaches garner income through lavish salaries and media enterprises benefit by generating massive advertising revenues for airing college athletic events.¹²¹ Given the current landscape of college athletics, it is easy to see how college sports are a \$60 billion industry.¹²² Indeed, with the amount of money at stake in college athletics, the NCAA structures many of its rules to further its member institutions’ commercial interests.¹²³ The NCAA rules,

¹¹⁸ *Id.* at 219.

¹¹⁹ Busby, *supra* note 33, at 175.

¹²⁰ Amy Christian McCormick & Robert A. McCormick, *The Emperor’s New Clothes: Lifting the NCAA’s Veil of Amateurism*, 45 SAN DIEGO L. REV. 495, 496 (2008).

¹²¹ *Id.*

¹²² *Id.* at 497.

¹²³ *Id.* at 506.

including those regulating academics, agents, and amateurism, allow a university to field a team of talented athletes rather than promote academic enrichment or protect the economic interests of the student.¹²⁴

Thomas R. Kobin argued that, "it is selfish for the NCAA to make millions of dollars from the student-athletes playing football and then turn around and make it more difficult for the student-athlete to make money playing football professionally."¹²⁵ This argument also applies to all the other sports governed by the NCAA. The NCAA must reexamine some of its policies in order to protect, not punish, the student-athlete's interest when others, including the member institutions, athletes' families, and professional organizations, have failed to do so.

E. Fairness and the Current Rules

One argument that emerges in the debate over the "no-agent" rule is its lack of fairness with respect to the student-athlete. A high school or college athlete can always play it safe and keep lawyers away from contract negotiations, but the problem then becomes a question of fairness.¹²⁶ How is it fair to force high school or college students and their families, some with limited educational backgrounds, to negotiate a contract with a professional organization without the necessary resources?¹²⁷ Richard Johnson, the attorney representing Andrew Oliver in his suit against the NCAA, raised a question about the lack of fairness in the current "no-agent" rule. Johnson argued, "[w]hat kind of lawyer would let an 18-year-old kid negotiate a contract like that by himself? That would be malpractice. That's why the rule is invalid on its face, because it interferes with the ethical obligation a lawyer has to protect his client."¹²⁸

¹²⁴ *Id.*

¹²⁵ Kobin, *supra* note 87, at 523.

¹²⁶ *Inside the Rules*, *supra* note 10.

¹²⁷ *Id.*

¹²⁸ Aaron Fitt, *Headed to Trial – Oliver Case May Have Lasting Ramifications*, BASEBALL AMERICA (Dec. 22, 2008), <http://www.baseballamerica.com/today/college/on-campus/2009/267366.html>.

In addition to the “no-agent” rule being unfair as it currently stands, the NCAA exhibits unfair and inconsistent practices in how it enforces the rule. The NCAA proved the inconsistency in its selection of who to punish for violations of the “no-agent” rule, as well as in the punishment administered for violating the rule.¹²⁹ In choosing which student-athletes to punish for violating the “no-agent” rule, the NCAA exhibits a history of waiting for a third party to call attention to a possible violation, instead of practicing active enforcement and oversight of the rules.¹³⁰

In the situation involving Andrew Oliver, the NCAA did not take action against him until Oliver’s initial representative, Tim Baratta, sent evidence of the violation to the NCAA.¹³¹ This was nearly two years after the violation occurred. Furthermore, in the cases of Jeremy Sowers¹³² and James Paxton,¹³³ the NCAA also waited until media outlets reported the possible violations of the “no-agent” rule. Additionally, when levying punishments, the NCAA is also inconsistent. Andrew Oliver initially received a one-year suspension and a lost one-year of collegiate eligibility,¹³⁴ while Jeremy Sowers received a six-game suspension for his violation of the “no-agent” rule,¹³⁵ and James Paxton received a suspension for refusing to submit to an interview with the NCAA and ultimately chose to leave college.¹³⁶

The inconsistent enforcement of the “no-agent” rule compounds the unfairness of the rule. The truth of the matter is that most athletes drafted by a MLB club use an agent or lawyer to communicate on their behalf, in violation of the “no-agent”

¹²⁹ Johnson, *supra* note 57, at 630.

¹³⁰ *Id.* at 622.

¹³¹ Oliver v. NCAA, 920 N.E.2d 203, 207 (Ohio Com.Pl. 2009).

¹³² See Karcher, *supra* note 13, at 222 (“Before his freshman year at Vanderbilt, Jeremy Sowers and his family retained an advisor regarding a proposed contract after he was drafted in the first round by the Cincinnati Reds. The advisor had contact with one or more of the representative of the Reds organization.”).

¹³³ See Blank & Dahl, *NCAA Baseball Rules Concerning Advisors Have Created Confusion*, <http://www.blankanddahl.com/articles/?p=263>. (“In 2009, Kentucky withheld James Paxton from play because the NCAA wanted to question him about a published report that his advisor had direct contact with the [Toronto] Blue Jays”).

¹³⁴ Oliver, 920 N.E.2d 203 at 207.

¹³⁵ Morgan, *supra* note 65, at 316.

¹³⁶ See Blank & Dahl, *supra* note 133.

rule.¹³⁷ Additionally, the NCAA is aware of this behavior. Dennis Poppe, NCAA Vice President of Baseball and Football, acknowledged this, saying, “[w]e all know what’s going on in the real world. Let’s just make it right.”¹³⁸ Given the wide spread use of agents and lawyers by amateur baseball players and the knowledge of this practice by the governing body, it is time to change this unfair policy in order to better protect student-athletes.

III. PROPOSAL FOR A CHANGE

The *Oliver* court was correct in holding that, “the student-athlete should have the opportunity to have the tools present that would allow him to make a wise decision without automatically being deemed a professional, especially when such contractual negotiations can be overwhelming even to those who are skilled in their implementation.”¹³⁹ MLB organizations employ a team of scouts, statisticians, and lawyers to place them in the best possible position to negotiate a contract.¹⁴⁰ Because high school and college athletes have to negotiate against one of these organizations without the help of a lawyer, it places them on unequal bargaining ground and is a clear disadvantage. The solution to this problem is simple, the NCAA must change their “no-agent” rule and strike from the rule the provision prohibiting lawyers from contacting professional baseball organizations on behalf of student-athletes and from negotiating with said organization.

Further, allowing lawyers to negotiate on behalf of student-athletes would not damage the NCAA’s principle of amateurism. Permitting student-athletes to utilize legal representation would, in fact, more closely line up with the NCAA’s goal of protecting student-athletes from exploitation by commercial and business enterprises. Lastly, the NCAA must redefine its standard of amateurism to more accurately reflect the current realities of

¹³⁷ *Rule Could Change*, *supra* note 1.

¹³⁸ *Id.*

¹³⁹ *Oliver v. NCAA*, 920 N.E.2d 203, 215 (Ohio Com.Pl. 2009).

¹⁴⁰ *Inside the Rules*, *supra* note 10.

collegiate sports. By making changes to the “no-agent” rule and more accurately defining amateurism, the NCAA could better achieve its goal of protecting student-athletes.

The NCAA needs to change their “no-agent” rule, or risk having the rule struck down in court. The *Oliver* court established precedence for successfully challenging the rule and, although ultimately vacated, the legal reasoning behind the Order in *Oliver* still stands.¹⁴¹ The NCAA has no regulatory authority over the attorney-client relationship; therefore, prohibition of legal counsel during negotiations with professional organizations is an unlawful intrusion into the attorney-client relationship.¹⁴² Additionally, there are the ethical requirements of the legal profession that bind all lawyers engaged in the practice of law.¹⁴³ It is because of these requirements that a lawyer has a duty to negotiate a contract for his client.

By prohibiting student-athletes from negotiating professional contracts with the guidance of legal representation, the NCAA limits student-athlete’s ability to effectively negotiate the contract that the NCAA permits them to negotiate.¹⁴⁴ Student-athletes generally do not have experience with the business aspects of professional sports, and therefore they are unable “to adequately assess his market value or effectively negotiate a professional contract.”¹⁴⁵ Because of this lack of experience, the student-athlete needs the counsel of a lawyer to avoid exploitation by powerful commercial organizations.

While the NCAA allows universities to establish Professional Sports Counseling Panels help to protect the interests of their student-athletes and assist in negotiations with professional organizations, it does not adequately replace the need for a competent and independent lawyer to negotiate on the student-athlete’s behalf. Additionally, not all student-athletes’ interests are best served by the Panels, either because they are in high school or attend a college that does not have a Panel; therefore,

¹⁴¹ Morgan, *supra* note 65, at 314.

¹⁴² *Oliver*, 920 N.E.2d at 216.

¹⁴³ *In re Dwight*, 573 P.2d 481 (Ariz. 1977).

¹⁴⁴ Johnson, *supra* note 57, at 619.

¹⁴⁵ Karcher *supra* note 13, at 224.

they are not able to receive the potential benefits. By simply permitting the student-athlete to receive help from a lawyer solves this problem.

One of the issues addressed by the "no-agent" rule is the marketing of a student-athlete's abilities to a professional team.¹⁴⁶ The NCAA could easily keep this section of the rule in place, by allowing only student-athletes drafted by a professional team to retain counsel to help negotiate a contract. By doing this, it would help address the disparity in bargaining power between a student-athlete and the professional team and prevent lawyers from acting as an agent to attempt to raise the student-athlete's draft stock.

Allowing a lawyer's presence during contract negotiations would not damage the NCAA principle of amateurism. Allowing representation in negotiations does no more to destroy the separation between amateurism and professionalism than the Professional Sports Counseling Panel currently does.¹⁴⁷ The NCAA already permits student-athletes to negotiate a professional contract without fearing the consequences of losing their eligibility and permits them to seek assistance, as long as that student-athlete is fortunate enough to go to a college with a Professional Sports Counseling Panel in place. By simply leveling the playing field for all athletes, college and high school alike, and allowing them to seek help from a lawyer, the NCAA could ensure they are protecting the interests of all student-athletes.

CONCLUSION

As the "no-agent" rule currently stands, a student-athlete is more likely to make a mistake while negotiating a professional contract.¹⁴⁸ Without the help of a reputable and competent advisor, the student-athlete has to determine his market value on his own.¹⁴⁹ With the rise of professional salaries and the celebrity associated with professional sports, sound legal counsel is

¹⁴⁶ *NCAA Manual*, *supra* note 5, Bylaw 12.3.2, at 70.

¹⁴⁷ Morgan, *supra* note 65, at 311-12.

¹⁴⁸ Fisher, *supra* note 109, at 5.

¹⁴⁹ *Id.*

necessary for a student-athlete to successfully navigate all the possible opportunities available.¹⁵⁰

The *Oliver* case provides a model to change the NCAA's "no-agent" rule.¹⁵¹ In that case, the court broke from the traditional judicial deference given to the NCAA, finding the "no-agent" rule to be void on the grounds of public policy.¹⁵² Despite a settlement between the parties, leading to the vacation of the Order declaring the NCAA Bylaw void, the case provides a winning path for future legal challenges to the rule.¹⁵³ Trial testimony shows "the Defendant NCAA could not come up with a single explanation of how Bylaw 12.3.2.1 promotes amateurism, and it could not come up with a single harm that would befall it, if it were required to allow student-athletes the full benefit of legal counsel, when negotiating contracts that the Defendant NCAA allows them and their parents to negotiate."¹⁵⁴ The Major League Baseball Players Association (MLBPA) also expressed support for the *Oliver* decision. The General Counsel for the MLBPA issued a statement on behalf of the union, stating it "believes that all individuals dealing with professional sports franchises should have access to representation. We hope the *Oliver* case furthers that goal."¹⁵⁵ Additionally, the NCAA expressed its willingness to reexamine the rule. Dennis Poppe stated, "[w]e're looking at the differences between sports, ways that we can still maintain the principles of college athletics, but most importantly make sure these kids are informed. They've got a decision to make, and they've got to have the information."¹⁵⁶

Now that the court in *Oliver v. NCAA* laid the legal framework for future challenges and the NCAA acknowledges the existence of a problem, the time is right to change the "no-agent" rule. Whether the NCAA wants to admit it or not, the line of demarcation between amateurism and professionalism is in peril. The NCAA must realize that changing the "no-agent" rule to allow

¹⁵⁰ Wong, Zola & Deubert, *supra* note 14, at 572.

¹⁵¹ Lockhart, *supra* note 23, at 197.

¹⁵² *Oliver*, 920 N.E.2d at 212.

¹⁵³ Morgan, *supra* note 65, at 314.

¹⁵⁴ Johnson, *supra* note 57, at 630.

¹⁵⁵ Lockhart, *supra* note 23, at 198.

¹⁵⁶ *Rule Could Change*, *supra* note 1.

legal representation on behalf of student-athletes in contract negotiations with professional organizations, a duty already legally and ethically imposed upon lawyers, will serve to level the playing field in negotiations between professional teams and amateur athletes. Only when the NCAA implements the necessary changes, will they be able to say they truly are protecting the interests of student-athletes.

