

## CHAPTER 7 ►

### Making the Selection

How should an outstanding young athlete pick an agent or team of agents to negotiate his or her first contract? Some suggestions:

Get help. It is wise for the athlete to ask his or her parents, coach, and professors to help screen agents. Generally, the athlete's lack of business experience coupled with an agent's persuasive presentation can make it difficult for the athlete to make an objective decision. A trusted lawyer with some knowledge of the sports business may also prove valuable in interviewing the athlete's top choices and reviewing contracts before the athlete signs anything. Family, friends, or local counsel can also help the athlete determine what services will be required and whether it is better to retain one agent or management firm, or a combination of agent, lawyer, accountant, and other specialists.

Initially, except for first-round draft picks, most rookies need an agent only to negotiate their first contract. Afterward, the athlete can determine the best way to obtain other professional services. Some athletes are represented by two independent lawyers—a personal lawyer and a sports specialist. Some contracts are so complex that several specialists are required. Catcher Gary Carter hired a Canadian agent, an American agent, and one tax attorney from each country to help construct a new, long-term contract before the Montreal Expos traded him to the Mets.

Do not rely solely on educational background or titles such as lawyer, financial consultant, or certified public accountant. As one agent quipped, "Incompetence spans the educational and occupational horizons."

Ask a prospective agent for proof of educational background, training, and work experience—particularly in the sports field. The agent's experience and record is particularly crucial if he is going to manage money.

Ask which players' unions have certified the agent and with which states he is registered. Then, check with those unions and states to ensure that the agent is in good standing and has no history of disciplinary action.

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This chapter can be used as a checklist. To download this chapter, please visit <http://health.jbpub.com/ruxin/5e>.

Ask for character and professional references from clients and persons such as a lawyer not involved in sports, an accountant, or a law school professor if the agent is a young attorney. Talk with those references. Find out how long the clients have been with him.

Inquire about a particular agent's reputation through the players' association, other players, and even other agents. Ask the union whether any claims have been filed against him by players or other agents and whether he has filed any claims. If the claims were not resolved by mediation, you can ask to read the arbitration decisions to learn more about how the agent does business. (Being involved in an arbitration does not mean the agent was at fault.)

Try to speak with former clients to find out why they are former and not current clients. Otherwise, you may find yourself in the situation of a college senior who met a guy claiming to be a law student and promising he could do a good job negotiating an NBA contract. The athlete called him one night, and his wife said he was working at the Y. Assuming that the "law student" was working out at squash or in the weight room after a long day of studying, he called the Y. He discovered that the would-be agent was "doing LAW"—as in cleaning Lavatories And Windows.

Do online searches of the agent by name and name of the company, and check out the agent on social networking sites such as Facebook. If the agent uses Twitter, sign up as a follower.

Be wary of an agent who advises a football player to change positions or tells a basketball player he should shoot more and pass less to help his chances of getting drafted. Most reputable agents will not try to interfere in this manner.

If the agent will handle any of the athlete's funds, find out if he is bonded. A bond is a form of insurance that provides some protection for clients if an agent mishandles a client's funds. Bonding is not essential and may not indicate anything about the agent's ability, but it is an important factor to consider in evaluating the safety of trusting an agent with substantial amounts of money. Some states require agents to be bonded.

Ask the agent if he carries professional liability insurance. Practicing lawyers and NFL agents are required to do so. Most prudent agents will have a policy. Then ask if the agent or the firm has ever filed a claim with the insurer.

Question the agent in detail about the fees for each of the services provided, the agent's relationships with club management, the likely impact of other clients on your interests, the agent's attitude toward holding out, the length of the contract with you, circumstances under which you can dismiss the agent, whether the agent feels bound by any code of ethics, and any other topic that seems at all relevant.

Consider an agent's track record of maintaining clients for their entire career and after retirement. An agent who retains clients is secure enough to take a long-term approach to negotiations. One NFL general manager explained how an agent grudgingly accepted a lower salary for a first-round lineman in return for one fewer year on the agreement so that the termination date would coincide with contracts of several other offensive linemen who had joined the NFL

the previous season as very high draft picks. The agent could then demand top dollar for his client.

Reject an agent who seems more concerned with quick cash than with your long-term best interests. Some signs of this type of agent are:

- ▶ His clients usually sign contracts very soon after being drafted (because he fears the client will leave him for another agent).
- ▶ He talks more about bonus money (because he can take his cut out of the bonus) than other terms of the agreement, such as salary guarantees or length of contract (shorter may be better because the player can prove himself and then negotiate a better contract).
- ▶ He is more interested in collecting his 10 to 20% of an excessive fee he has insisted on for a speaking engagement for his athlete-client than in considering whether the athlete will benefit more from the exposure to the audience and the goodwill he might generate.

If the agent is not a practicing attorney, make sure he agrees to have a lawyer of your choice review your playing contract or any investment agreements. Even if such a review is not necessary, a reputable agent will not object to your retaining the option to consult an attorney before signing any legal documents.

Look for an agent who can and will devote enough time to your interests. Some agents overextend by taking on too many clients. Some clients may be neglected or be handed off to less-experienced associates as most negotiations occur during the same window of time.

Avoid an agent who offers money or gifts as an inducement to sign, especially if the contract is for several years. Any money an athlete receives before signing he will unknowingly pay back many times over. However tempting the money may look at the time, in most cases the agent will manipulate your money later to recoup anything he gave you for signing.

Be wary of outrageous claims by agents such as:

- ▶ “I represent many star athletes.” (Check this out carefully.)
- ▶ “I can get you \$5 million.” (Ask how much will be cash and how much will be guaranteed.)
- ▶ “I can get you drafted in the first round.”
- ▶ “You will not get drafted without my help.”
- ▶ “I will make you millions in investments in 3 or 4 years.”
- ▶ “I will guarantee to make you rich.”
- ▶ “You will not ever have to pay taxes.”
- ▶ “I will put you into oil wells, and I’ve never had a dry hole.”
- ▶ Anything else that sounds too fantastic to be true.

Ask any agent who promises endorsement deals what deals he has gotten and for whom. There are few endorsement opportunities, even for superstar athletes, in team sports.

Avoid an agent who, by his own practice or admission, is violating certain rules or laws. If this person is willing to cheat others openly, what will stop him from cheating you?

Look for an agent who will take the time to explain answers to any questions you ask, such as:

- ▶ Explain at least 10 exceptions to the NBA salary cap (for a list of 100 more questions to test a basketball agent's knowledge of the collective bargaining agreement, see Larry Coon's NBA Salary Cap FAQ website), or
- ▶ Describe the players' pension plan qualification rules and benefits.
- ▶ If I suffer a serious injury, what are my rights to get a second opinion, and how do you help your clients get an appointment with the best specialists?

Find an agent who will stick with you after you have signed the playing contract. Because the negotiation of a player's contract is not difficult for an experienced representative, the agent's job really begins after the first contract has been signed. Individual-sport athletes should ask several additional questions, all designed to find out what the agent knows about the sport worldwide and the people who are involved in the sport at all levels.

- ▶ Can my agent represent me in connection with business affairs that are, literally, worldwide in scope?
- ▶ Does my agent have experience in negotiating equipment contracts? Apparel contracts?
- ▶ Does he know the advertising agencies? The equipment makers?
- ▶ What is his track record in these areas?
- ▶ What are the logistics?

For individual-sport athletes and football players, another consideration is the training program offered by many agents. While the largest agencies run their own programs, other agents work with facilities or individual trainers. It has become standard practice for agents to arrange for intensive predraft training after the end of an athlete's college career to prepare their clients for the NFL combine and on-campus workouts. Typically, the agent will bear the cost—often \$10,000 to \$20,000—as long as the athlete does not terminate the agency agreement before signing his first contract.

Some athletes prefer that a parent or trusted friend screen potential agents. Doug Flutie's father developed a computer program to help select an agent for the Heisman Trophy winner. He analyzed the contracts obtained by 12 agents for prior years' draft choices and narrowed the choice to four finalists before picking a well-known agent who had watched Doug play since high school.

Involving family in the decision-making process is generally recommended. In fact, referring all inquiries to a parent or friend reduces the chance of an athlete

jeopardizing his or her college eligibility—as long as the relative or friend does not accept anything of value from an agent or a runner.

Some athletes and their families screen all sports agents through an adviser, such as a family attorney or a trusted alumnus of the athlete's college. Raghieb (Rocket) Ismail used an attorney who employed Ismail's mother and a chiropractor family friend to field calls from agents. The chiropractor reported up to 20 calls a day. A former *Sports Illustrated* writer helped Ismail assemble a team of advisers. But even that process did not prevent Ismail from making multiple disastrous investments. (See Chapter 19.) As always, the athlete must be certain that the adviser is impartial and has no ulterior motives.

Approximately 125 Division I schools have established panels to counsel student-athletes about professional careers. The NCAA permits university presidents to appoint university employees from outside the athletic department as panel members. Such panels provide information and expertise from a variety of sources to help athletes objectively evaluate the services and proposals made by agents. The value of each panel varies from school to school.

Penn State offers one of the most proactive career-counseling programs for prospective professional athletes. Its panel, which includes faculty with expertise in business, law, and finance, educates student-athletes about NCAA regulations, the role of agents, and tax and financial planning. The process begins with mailings to entering freshmen and meetings for the players and their parents, and includes distributing questionnaires to agents and financial advisers and participating in agents' interviews as requested by athletes or parents.

The University of Colorado's panel lists its services on its website:

- Individualized consulting on the process for evaluating pro sports career potential, including guidance concerning participation in combines, tryouts, and camps
- Opportunities to meet sports agents through an annual "agent fair"
- Assistance in interviewing agents or other professional advisors
- Workshop on managing personal finances
- Assistance in understanding agent contracts

The NCAA supports these panels through its website, videos and pamphlets, and a comprehensive handbook, including information on pro salaries, the elite athlete disability insurance program, and basic financial planning. It also distributes sport-specific informational memos. The NCAA has expanded the scope of the panel's role by authorizing members to assist student-athletes in arranging loans to purchase disability insurance and to review contracts offered by teams. Some panels have set up registration programs for agents who wish to contact student-athletes and be eligible for the screening process.

Choosing an agent is one of the most important and difficult decisions an athlete ever makes. The process has been described as "a gutter brawl" and "the perfect arena for a con man." It is a process that an athlete cannot afford to take

lightly. The athlete has a wide choice of agents—both competent and incompetent—competing for few available clients and the prospect of glamour, glory, and riches. The athlete should not rush into a decision; he or she should decide only after consulting parents, coaches, other players, and a nonagent lawyer. Reputable agents will welcome the heightened scrutiny. Finally, the athlete must feel comfortable with and trust the person representing him or her.

#### Choosing an Agent the UCLA Way

Understandably, many college players are unsure what to expect once agents come knocking. They want to retain their college eligibility, yet are naturally curious to hear what the agents have to offer and anxious to investigate a possible career in professional sports. Consider the experiences of four former UCLA football players and the father of a former UCLA first rounder—a rookie free agent, two first rounders, an eighth rounder, and an eleventh rounder—during a three-year stretch when UCLA received much national recognition. More than two decades later their stories remain instructive.

Following the 1987 draft, the Dallas Cowboys signed free agent flanker Karl Dorrell, the second-best receiver in UCLA history. After injuries ended his career during his rookie season, Dorrell began a coaching career. He was UCLA's first African American head coach. Wide receiver Mike Sherrard became the top-ranked receiver in the 1986 draft following his 4.23-second 40-yard dash at the Los Angeles Raiders' training camp. The Dallas Cowboys traded up and picked Sherrard eighteenth in the first round. He retired after the 1996 season with a career average of 15.3 yards per reception. The Los Angeles Rams drafted linebacker Steve Jarecki in the eighth round of the 1986 draft, but he signed with the Oakland Invaders of the USFL. The Rams chose Heisman Trophy candidate, tailback Gaston Green, as their No. 1 pick in 1988. He played five seasons, earning Pro Bowl honors as a Denver Bronco in 1991. Center Joe Goebel went to the San Diego Chargers in the eleventh round of the 1987 draft and later made headlines by deciding not to pursue an NFL career after his agent had negotiated the second-best contract in his round. Goebel played center for the Chargers during the 1987 strike but retired during training camp in 1988 and later became a mortgage industry executive.

Generally, more agents pursue players who are expected to be chosen in the early rounds of the NFL draft because their potential contracts are more lucrative and their chances of success are higher. Eighty agents wrote to 1986 first-rounder Mike Sherrard. Fifty agents sent letters to Karl Dorrell, and 30 agents called or wrote to Gaston Green's father in 1988 (Green Jr. asked that all inquiries be made directly to his father, Gaston Green, Sr.). Six agents contacted 1986 eighth-rounder Steve Jarecki, and six sought out 1987 eleventh-rounder Joe Goebel.

Most agents first contacted these players by writing to the university's athletic department. Athletes customarily read the cover letter, leafed through the sometimes elaborate attachments, and never called the agent. "The letters are too impersonal and legalistic," said Dorrell.

The players concurred that the most effective way for agents to meet athletes is through referrals. By his junior year, Dorrell knew many agents' names and approaches from discussions with senior Mike Sherrard. Jarecki met his agent because his roommate suggested the agent call him. Goebel first heard about his agent by talking with the team's academic adviser. Green Sr. consulted Sherrard and UCLA football coach Terry Donahue. Players find that the best referrals come from other players. "I asked pro football players if they liked their agents or knew about other agents," said Sherrard. However, gaining access to pro players is not always easy unless the players attended the same university. Sherrard found that former UCLA players were most responsive to his calls. Dorrell agreed that players are the best source for references. "Talk with players who have been represented by an agent," advised Dorrell. "Be careful about the player, though. He could be taking a cut from the agent for referrals."

For similar reasons, Dorrell felt it would be fruitless to ask one agent about another agent's reputation. "The agent has a vested interest," Dorrell said, "and might not give an objective opinion."

Some agents offer inducements such as money or cars to coax a player into signing early. "It's flattering in one sense," said Sherrard, "but what I want is someone who wins me over with their talent. Not someone who tries to buy me." Said Dorrell, who was not drafted: "One L.A. agent offered me a no-interest loan." Asked if the agent also discussed repayment of the loan, Dorrell replied, "No, he never said it had to be paid back. I just assumed I'd have to pay it back."

The agents looking at top draft picks would bring by girls and money. "Some athletes are eating it up [the attention]," according to Goebel. "If they tried that on me, I'd laugh. If any [agents] got to know me at all, they'd know I wouldn't accept any of that stuff. You've got to watch out. Some agents will sign 70 guys that way," Goebel said. Jarecki and Green Sr. said that no agents personally offered them any inducements. Yet Dorrell conceded that "a lot of guys signed before they were out of college."

Agents frequently influence players to sign predraft by proposing to increase their value by marketing the players to the NFL teams. Players have mixed reactions to this technique. Jarecki, an eighth-round pick, did not consider it necessary to market his abilities. Sherrard believed, "there's not too much an agent can do. They'll say, 'We can promote you,' but NFL teams spend lots of money on scouting." He added, "However, if you were a free agent, I could see how you'd want an agent promoting you." Green Sr. said the reasons most agents gave to sign predraft were that they could promote the athletes and prepare them for NFL scouting combine tests.

Dorrell remembered agents telling him, "The earlier you sign with me, the better I can market you." Dorrell admitted the reasoning is sound, agreeing that "it would have probably helped to have signed a couple of months earlier than I did. Most players sign in December. I chose an agent in March. An agent can speak with teams before the draft." Goebel did not consider the marketing aspect, saying, "I didn't think I'd get drafted anyway."

Everyone stressed the importance of taking time in choosing an agent. Both Goebel and Dorrell signed with an agent just before the draft. Green Sr. advised, “If they’re [athletes] patient, they would not miss out on any of that money.” Players who sign early, he said, “have to live with the fear of somebody finding out they signed early—their parents, the church, coaches. Their minds shouldn’t be on that while they’re out on the field.” Sherrard, a first rounder, also cautioned collegiate players, “You don’t need to look for an agent before your senior year.”

Donahue espoused the same philosophy, which he imparted to his players. “Donahue gives a talk each year about agents. He just tells us to stay away from agents,” said Sherrard. The team’s academic adviser reads aloud the NCAA regulations regarding football, said Goebel, but “it wasn’t really clear exactly what agents could do.” Leaving nothing to chance, Green Sr. got his answers straight from the NFLPA book.

Integrity ranks as the foremost quality that athletes seek in their agent, followed by reputation and competence. Sherrard looks for “a fella I can trust.” Dorrell looks for integrity in an agent and respect and reputation among the NFL teams. Jarecki concurred: “The number-one priority was integrity. I could tell he [his agent] was looking out for my best interest.” Green Sr. screened agents by the way they would “talk, act, dress and convince you they are knowledgeable at what they do.”

Goebel said that his agent “was the best of all. I was an extra effort for him. He cares a lot about people. It shows.” He added that his agent stood out because he did not earn all his income from being a sports agent. “He wasn’t relying on me [my player contract] for income,” Goebel said.

The approaches used by agents vary widely. Dorrell found that 90% of the agents offered what he termed the “we manage everything routine.” They promised to negotiate the player’s contract and handle money and investments. Dorrell did not trust this approach, saying, “Look what happened to Kareem [Abdul-Jabbar].” Sherrard concurred, “A lot of people want complete control of everything . . . power of attorney, investing your money. They act like you need a babysitter.”

Goebel found that “most agents had a full-service arrangement, obviously for their benefit. They get a cut.” He emphasized, “Nobody needs to handle your money. Your agent is just there to negotiate for you and handle legal matters.” Goebel’s agent solely negotiates contracts but can refer an athlete to financial advisers. Jarecki’s agent also concentrates on negotiating contracts but has “a partner who is a financial adviser.”

Green Sr. decided to interview financial advisers because “it’s a good learning experience for Gaston [Jr.]. They use jargon like CDs, treasury notes, money market accounts, and so on. They’re planners for people who have incomes of six or seven figures.”

Contrary to popular belief, an athlete’s family will not always advise the athlete in choosing an agent. Goebel said he was always independent in making his decisions, unbeknown to one agent who kept sending his family letters. “Obviously, he didn’t know how little a part my parents were playing in my decision. We [my parents and I] thought it was kind of funny.”

By contrast, Green Sr. prescreened all agents for his son, a first rounder. The 12 “finalists” individually met with both father and son at their home for “a 2-hour time frame, to meet the agents and get a feel for them.” Sherrard also sought his family’s advice: “I had my parents and uncle help me out, but we were all going through this for the first time. No one had much experience dealing with agents.”

For this reason, Gaston Sr. proposes that a directory be created with the telephone numbers of parents of signed players and distributed to parents of college athletes. “Parents, as adults, are better able to decide on an agent. Players are not sophisticated enough to know when they’re being hustled. The smoke gets in their eyes. Everyone tells them they’re so good, they don’t know when someone’s being unscrupulous. Youngsters really need someone to advise them.”

Sherrard proposes a different approach. He gained experience by speaking with about 25 of the 80 agents who contacted him. “The more I went to dinner with agents, the more I learned,” said Sherrard. “I’d ask them certain questions and see how they’d respond. After a while, I knew the right answers and could weed out the ones I didn’t want.”

Jarecki formed an unusual alliance in that a prominent agent [who was a friend’s father] advised him in his selection yet didn’t solicit Jarecki. “He was extremely knowledgeable,” said Jarecki. “If I needed an agent, he would handle it. Never did he ever say ‘Are you going to sign with me?’ Never, never.”

Agents’ presentations and qualifications run the gamut, as Green Sr. explained: “Some of ‘em let everyone in the world know they were agents. The way they dressed, the car they drove. It was prosperity. A high-profile prosperity, like ‘Look at me.’” Goebel remembered one agent’s hard sell: “He said I’d be a fool not to go with him. He even told me my stock as an NFL player had gone down since my junior year.”

Dorrell remarked, “Most agents were in their thirties or early forties. Some were from Georgia or New York. They all had different styles but got to the same point. The New York agents were more ‘showboat’ than the rest saying, ‘We’ll fly you out here [to New York].’” Jarecki found that most agents are in their thirties, forties, or early fifties but said, “Age was definitely not a factor in choosing an agent. Number one was integrity. Secondly, how they presented themselves to me. And third, what was their experience in sports?”

Some athletes prefer a top-name agent; others select a lesser-known agent capable of negotiating a good contract. “I wanted someone who had dealt with first-round draft choices before,” said Sherrard. “It’d be taking a big risk to get someone new [to the business] to negotiate my contract.” Sherrard conceded, “It’s tough on new guys getting into the industry, but I wasn’t willing to take any chances.” Green Sr. also opted for the more experienced sports agent because “there’s only a small percentage of those who know what they’re doing.”

Dorrell wrestled between choosing an agent who had established a rather good reputation with the NFL teams and a newcomer who could definitely negotiate a good contract and was well recommended. “It was the toughest decision of my life,” said Dorrell,

who went with the more experienced agent. In hindsight, he would have chosen the newcomer. “He knew what he was doing, he’s intelligent and well respected by those who know him, and we have a good rapport. I know he would’ve done a better job for me.” The agent he chose did not give him any personal attention. Jarecki didn’t feel it was necessary to sign with a prominent agent to get a good contract: “I didn’t need a heavyweight agent.”

Goebel said he would refuse to pay the fees some top agents charge. “What does he do to deserve that [large fee]? What he does is no different than any other negotiator,” he said. Goebel vowed that nobody had heard of his agent “and he got me the second-best contract [in my round].” Even athletes in the first four rounds do not need a prominent sports agent, Goebel said. “Any informed attorney who knows your record and capabilities, as well as the NFL salaries and related details, can negotiate a good contract. We [athletes] don’t like to take risks. We just must be intelligent in our selection of an agent. It’s a disease in American society today. People don’t investigate.”

Goebel, however, believes attorneys make better sports agents. “The agent should be an attorney. Definitely. Even though it’s a simple NFLPA contract, an attorney has the experience required.” Green Sr. also looked for an attorney-agent to represent his son, saying, “There are laws in California to govern a lawyer-agent. . . . Because they adhere to California law, there’s less chance they are unscrupulous. They have a code of ethics and must pass the [California State] Bar.” “It didn’t matter necessarily that they were an attorney as long as they had a proven track record,” said Jarecki.

Finally, the players and Green Sr. offered advice to college players. “If you love the game, give it your all,” suggested Goebel. “It’s a great game. Just be aware, there are a lot of sacrifices. Don’t be in a hurry [to sign]. Don’t let anyone talk you into anything. The optimum is a guy who isn’t solely a sports agent that doesn’t rely on you to make his living.”

Dorrell reiterated how best to research an agent’s record: “Talk with players who have been represented by an agent. Consider the player’s integrity, though.”

“My advice would be that agents are not anything without the athlete,” said Green Sr. He also stressed that during the selection process, the athlete “has to have someone to confide in, someone who has nothing to gain by it. If not the parents, maybe the coaches should get involved.”

Sherrard also is concerned about integrity—the agent’s. “If someone had to give me money or a car, I don’t know what their true talents are. Their true talents are bribing somebody,” said Sherrard. “I want to hear about why they’ll do a good job. Anyone can buy somebody.”

—Originally researched and written by Suzette Jacklin.