The 1996 movie *Jerry Maguire* was all the justification needed for many to fall in love with the vocation of representing professional athletes. While the film touched on turbulent times encountered by sports agents in real life, it also promoted the fruits of what could be possible when an agent and an athlete are loyal to one another and benefit from the hard work accomplished on and off the field.

The stark reality of the sports agent industry is that there are plenty of disputes taking place between player and agent, as well
as agent versus agent, through respective players’ associations’ mandatory grievance procedures. These systems have been crafted with a key purpose being to shield the public from inner-industry fights that can become extremely emotional and expensive as they approach a hearing, which is a modified version of a trial in the realm of civil litigation.

Arbitrators, instead of sitting judges, actively preside over these pending disputes, oftentimes stepping in on multiple occasions with the overt intention of causing the parties to come to an early settlement. Many of the arbitrators chosen by the players’ associations to sit in disputes have long histories of dealing with issues concerning the players and agents in the league in which those individuals work and have an enhanced knowledge of the matters that have come before the tribunal in years past. This is important because they are to rely upon precedent, as a court of law would do, in drafting an opinion and award should a case make its way through an arbitration hearing.

For instance, from 1994 through 2008, arbitrator Roger Kaplan presided over almost every arbitration conducted through the National Football League Players Association (NFLPA) mandatory grievance procedure.¹ Arbitrator Kaplan has been used less frequently by the NFLPA starting in 2016 but remains one of the few arbitrators selected by the NFLPA to oversee disputes, and he continues to preside over the vast majority of NFLPA governed grievances.

Similarly, George Nicolau has been the arbitrator of choice for the National Basketball Players Association (NBPA) for decades. However, the NBPA has recently shifted to other qualified, experienced individuals to rule, largely based on Nicolau’s plethora of precedent, as Nicolau is in his nineties and has slowed down his practice.

The arbitrators are intended to be active, expedient, and confidential, which are terms rarely used in the context of describing civil litigation. While a civil litigator by trade may be able to quickly adapt to the various players’ associations’ regulations and case law, a seasoned practitioner in this area should have a tactical advantage based

Arbitration and Regulations Governing Players/Agents

on his or her knowledge and experience with using the applicable precedent, the general demeanor of the arbitrator, and the relaxed rules of evidence within a proceeding, at least at the early stages of a dispute. This is one area where I truly believe a sports lawyer can distinguish himself or herself from someone who merely dabbles in sports-related issues.

**NFLPA Regulations**

*It’s a shame I can make much more money representing an injured person in a car accident than I can representing a mid to late round draft pick.*

—Cleodis Floyd, NFLPA contract advisor

The business relationships between National Football League (NFL) players and the agents who represent them are governed by the NFLPA Regulations Governing Contract Advisors (NFLPA Regulations), which is infrequently updated in its long-form version but occasionally modified through the distribution of official NFLPA memoranda. Agents representing NFL players, referred to in the NFLPA Regulations as *contract advisors*, are explicitly governed by the regulations and may be sanctioned by way of suspension, revocation of licensure, and/or monetary fine for violation(s) of same.

In many ways, the NFLPA Regulations, much like regulations distributed by other players’ associations, act in a way that is similar to a state bar’s rules of professional conduct. They warrant what are acceptable practices of the profession and carry steep penalties for those who fail to perform according to the strict standards of the enforcement bodies that oversee those who have been certified.

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3. The most recently published long-form version of the NFLPA Regulations is amended through August 2016.
Disputes arising under the NFLPA Regulations are often governed by Section 5, which indicates that the arbitration procedure will be the exclusive method for resolving disputes that may arise from (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 the regulations; (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; and/or (6) a dispute between two or more contract advisors with respect to their individual entitlement to fees owed, whether paid or unpaid, by a player-client who was jointly represented by such contract advisors, or represented by a firm with which the contract advisors in question were associated.

In 2013, I had my first experience representing an agent in a dispute based on the NFLPA denying his Application for Certification. Seven years before that I had communicated with Cleodis Floyd for the first time. Floyd sent me an unsolicited email seeking information regarding the best websites to get football and basketball news, and he remained in touch as he went from an aspiring agent to law school student, practicing lawyer, and eventually NFLPA contract advisor applicant. Floyd’s criminal past never came up in conversation, as it had no reason to be discussed, until the NFLPA denied Floyd’s Application for Certification on June 25, 2013, based on Floyd’s alleged conduct that purported to adversely affect his service in a fiduciary capacity on behalf of players. Floyd came to me for help, and even though I understood that we would be arbitrating against the NFLPA, the entity responsible for crafting the NFLPA Regulations, and in front of an arbitrator paid for by the NFLPA, we had cause for a fight.

We appealed the NFLPA’s denial of Floyd’s Application for Certification and on September 6, 2013, argued our position in front of NFLPA-appointed arbitrator Roger P. Kaplan. Part of our argument was that the NFLPA did not have a reasonable basis to deny Floyd’s
application because Floyd’s background did not preclude him from being admitted to practice law in the state of Washington. Floyd testified and acknowledged that he had committed theft in his late teens, but that he had grown up and matured since that time, which included volunteering as a speaker in inner-city high schools where he shared his story and mentored student-athletes in not making the same mistakes that he made at an early age. After hearing Floyd’s side of the story, arbitrator Kaplan was left to determine whether Floyd’s prior criminal conduct served as sufficient grounds for the NFLPA to claim that Floyd “engaged in . . . conduct that significantly impacts adversely on [his] credibility, integrity or competence to serve in a fiduciary capacity on behalf of players.” Arbitrator Kaplan found that the NFLPA failed to meet its burden to prove that it had a “reasonable basis in the circumstances of the case under review” to deny Floyd’s application.4

Throughout my career, I have been contacted by many NFLPA contract advisors and those who were denied certification for one reason or another, and I have represented a handful of them in cases concerning disciplinary action taken by the players’ association. Two years after winning the Floyd case, I was contacted by Contract Advisor Vinnie Porter who asked whether I had any time to talk about possibly representing him in one such arbitration hearing that was set to occur in the beginning of 2016. On February 5, 2015, Porter received notice of a disciplinary complaint filed by the NFLPA’s Committee on Agent Regulation and Discipline (CARD), which claimed that Porter knowingly participating in a conspiracy designed to defraud athlete client investors out of millions of dollars by fraudulently concealing the price of an investment, the amount of equity being purchased, and the identities of other investors. It cited multiple sections of the NFLPA Regulations as grounds to suspend Porter from acting as a contract advisor through the resolution of any and all criminal complaints against him.