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## Sporting Judgment

### Lawyers may face these issues when helping athletes

By James M. Quigley and Shana L. Vitek

The phone rings and your assistant tells you there is a prospective new client on the phone. You begin speaking with an individual who identifies himself as the agent for an NFL player, who you recognize as the league's top running back. He tells you he is seeking a top-notch divorce lawyer to hire on his client's behalf. During your initial consultation with the agent, he indicates that his client's net worth is about \$100 million, and growing exponentially with each touchdown. He proceeds to tell you that although his client is often gone for long stretches of time, he expects to have sole custody of his children, as the wife is "a total psycho." He is willing to pay for this, as well as his wife's silence on some "private matters," as, above all, he does not wish to see his name or any mention of the dissolution proceeding appearing in the newspaper or any other media outlet. The agent further indicates that he would like the matter to move quickly and indicates he does not want to have to produce detailed documentation, as he has some other business interests and investments that he does not want lawyers or accountants looking into.

Conceptually, representing an athlete, entertainer or other high-profile individual should be no different than representing anyone else in a divorce or other family law matter. However, the nuances within the laws and ethical rules may require an added level of insight.

**Issue 1: *The Engagement.*** When representing athletes, you will most likely have little or no direct contact with your famous client and instead will correspond with a representative. This can create quite the ethical predicament, especially when it comes to confidentiality and keeping the client informed about the progress of his case.

Rule 1.6 states in part that, "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent." If at all possible, meet with your client at least once at the beginning of the case. This way, you can get to know the goals of the client, and you can be sure you have the client's consent to pass along confidential information through certain other individuals. If an in-person meeting is completely out of the question, you should at least try your best to get a conference call with the client so that he can authorize the communication with his agent.

Next, when you open up the file, make sure to take



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appropriate precautions to ensure confidentiality within your own office. Comment 17 to Rule 1.6 specifies that although the rule does not require that the lawyer use special security measures if a method of communication affords a reasonable expectation of privacy, "special circumstances" may warrant "special precautions." Remember that your office staff is not bound by the rules. Rule 5.3 sets forth the responsibilities regarding nonlawyer assistants, making lawyers responsible for the actions of their support staff.

**Issue 2: *Advice to the client.*** Celebrities live in a different reality than the rest of us. They are used to special treatment and people telling them what they want to hear. However, as an attorney, it is your duty to tell the client how it is, not how they want it to be. For example, when Mr. Pro Bowl's agent tells you that his client wants to fight for sole custody of his five children and under no circumstance wants to pay support to his wife, what advice should you give? You know very well that as an NFL player, he is on the road for long stretches of time. Neither the facts nor the law support an award of custody to him. Further, custody or not, there is virtually no chance that he won't be ordered to pay support. However, you don't want the headline-making case to get up and walk out of your office.

Rule 2.1 requires you to render "candid" advice. Comment 1 states that, "a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client." You may want desperately to tell your famous client that you will do whatever it takes to get him custody of his children and pay no support. That may keep him in your office temporarily, but eventually it will become apparent that you have promised something that can't be delivered. In these situations, it is a good idea to present your client with all of his

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options so that he feels empowered with the knowledge to make decisions that will progress his case, accomplish his goals and not take the focus away from his professional life.

**Issue 3: *Filing of Pleadings.*** All court filings are generally contained in the public record. Gossip websites post celebrity court papers on the Internet, giving the general public easy and immediate access to the contents of the court file. As a result, extra caution must be exercised in drafting and filing pleadings and it must be assumed that these documents will be read not only by the opposing counsel and the judge, but by millions of other people as well.

Supreme Court Rule 137 applies to the filing of pleadings in a domestic relations matter. SCR 137 is similar to Rule 1.3 of the Professional Rules, in that it requires the attorney to have a reasonable belief that the motion is well grounded in fact and law. But another concept is added to the analysis, requiring that the pleading is “not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” If a pleading is signed in violation of this rule, the court may impose any appropriate sanctions against the party and/or the attorney who signed the pleading, including monetary sanctions or other penalties.

When filing a pleading that includes sensitive allegations against a celebrity, such as domestic violence, drug use or infidelity, you must proceed with extreme

caution. Ask yourself what goal the client is trying to accomplish by including the information in the public record. In the event you decide to file such a pleading, make sure that your client has signed off on each and every allegation. Prepare an affidavit to accompany the pleading to be signed by your client as well. It may also be advisable to request the court file remain under seal, which may protect you and your client from a libel action in the event the allegations are not completely correct.

**Issue 4: *Disclosure of financial information to opposing counsel, third parties and to experts.*** The discovery phase of these matters can last for years and require production of countless documents. This financial information is sensitive, and clients as well as their agents will be very wary of providing this type of information because of the chain reaction that can occur. For example, Mr. Pro Bowl’s agent might provide you with all of his financial documents, which would then be turned over to opposing counsel in the course of discovery. Subsequently, the documents will be turned over to Mrs. Pro Bowl who could then disseminate the information to her experts or to anyone else.

Prior to handing over any information pursuant to a discovery request, it is imperative to have a protective agreement in place and entered with the court. This will prevent Mrs. Pro Bowl or any of her attorneys from providing the financial information to anyone else, as a violation

of this protective order could result in a finding of contempt. These protective agreements should be comprehensive and consider the same safety measures that are in place in your own office.

**Issue 5: *Managing the Media.*** Because a celebrity’s image is intertwined with his livelihood, a messy divorce or other personal legal matter going public can steal the focus away from his professional life and potentially devastate his career. It is possible to be retained by your celebrity client, negotiate a resolution of the case and have a signed agreement all without anyone knowing that this process is in the works. In matters where the parties and attorneys are willing to work together amicably, there is no reason to file the petition for dissolution of marriage prior to the case being resolved outside of court. Upon obtaining a signed marital settlement agreement, the petition for dissolution, appearance and judgment for dissolution of marriage can all be filed on the same date.

Every practitioner would love the opportunity to represent a well-known athlete or entertainer, but adhering to a few basic principals under the Code of Ethics, you ultimately will not compromise your reputation or your license and in the process will earn the respect of your client, his or her advisors, the opposing counsel and even the judge. The respect you will gain for appropriately handling your high-profile case will enhance your reputation far more than the simple fact that you represented the high-profile individual in the first place.