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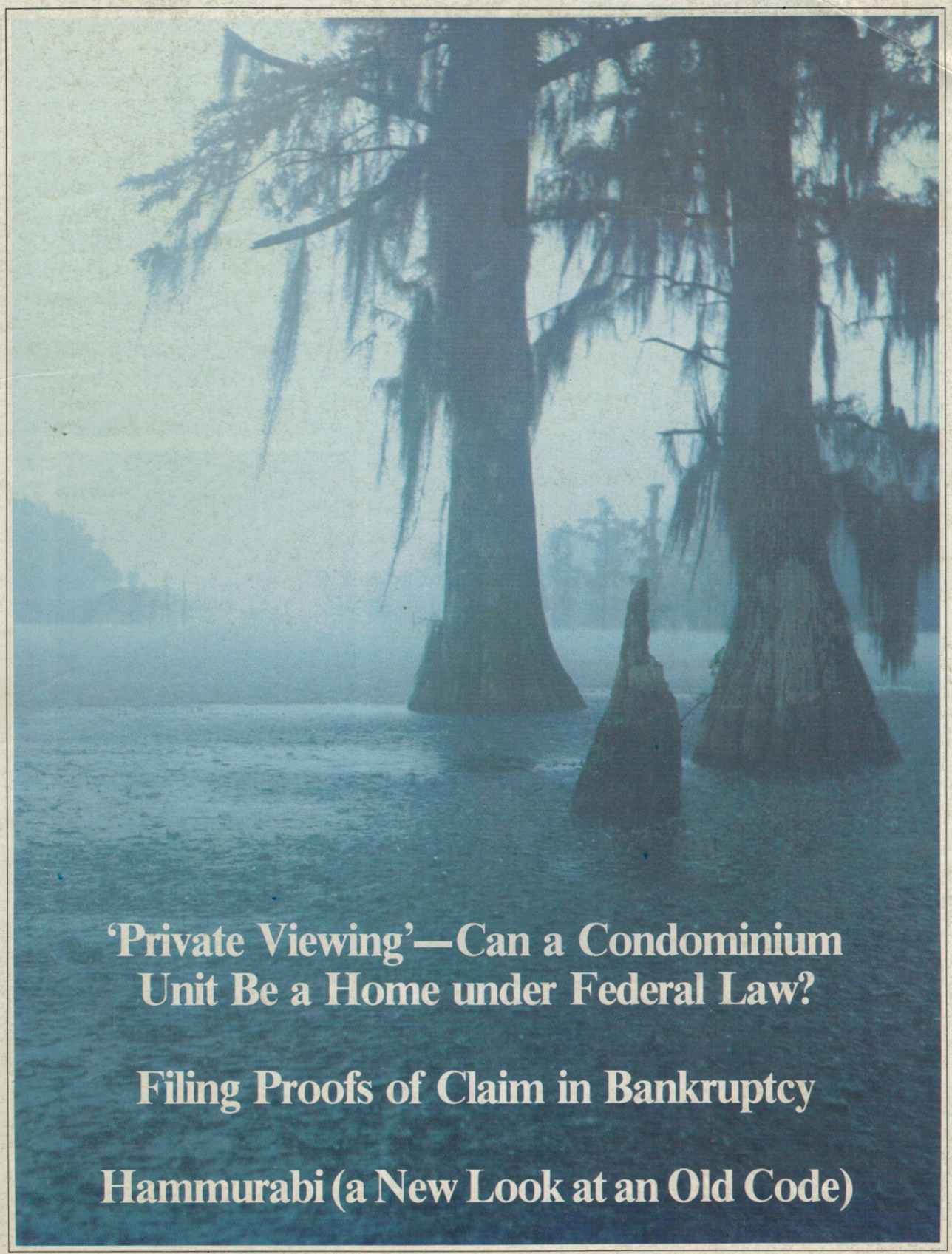

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Entertainment and Arts Law

Advising the Amateur Athlete to Preserve Eligibility

by Gregory J. Tarone

Much has been said and done in recent years about amateur status in sport. It is not all clear or understandable as a result. The paradox is that we expect a regulatory standard which varies from sport to sport, through age levels and across geographic boundaries. At The Florida Bar Annual Meeting last June, the Entertainment and Arts Law Committee's Subcommittee on Sports held a symposium to discuss the issues concerning amateur athletic status. The intent of the symposium was to gather representatives of amateur and professional sports to hear what they thought lawyers can do to help preserve amateur athletes' status so that the athletes may continue to compete and receive scholarship money for their education and to guide them prospectively through the planning of professional careers.

International Competition

As general counsel and director of legal affairs of the United States Olympic Committee (USOC), Ron Rowan has traversed the gamut of legal issues presented in amateur sports worldwide. His message to lawyers is: "Know when and how to be involved." Though Congress chartered the USOC in 1950, federal legislation did not coordinate amateur sports jurisdiction until the Amateur Sports Act of 1978,[1] which allows amateur sports — other than collegiate, high school, and certain other closed organization sports groups — to be under the jurisdiction of the National Governing Bodies (NGB) while the USOC coordinates and promotes amateur athletics involving other nations with the United States. Each NGB is vested with the power and responsibility of deciding who may compete in its respective sport. The USOC, as overseer of noncollegiate international amateur athletics, must afford full procedural and substantive due process by its inherent obligation under its congressional charter.[2]

It has been said that "international law is the law of the jungle" and the international sports federations can be simply characterized as a maze of organizations that even — or especially — courts cannot sort out. Americans are left with different sources for determining, as an example, what affects eligibility. Differences in political systems have their effects: communist countries have national centralized Olympic committees that decree the rules, while Americans have NGB's that set their own standards from Colorado Springs to New York to Florida to Texas to Indianapolis and other places, with the USOC coordinating all of them.

The Olympics was established for the sake of amateurs who could compete for love of sport and not money. Though the International Olympic Committee dictates what athletes must do to be eligible to participate,[3] when there is a question of noncollegiate eligibility, one should inquire with both the USOC and the NGB.

Collegiate Competition

Most publicity today is about collegiate athletes who lose their eligibility as a result of violating the National Collegiate Athletic Association's (NCAA) rules. The NCAA is a private, voluntary membership organization, and as such any athletes participating in intercollegiate competition at its member institutions must abide by its rules to compete. Since it is a privilege and not a constitutionally protected right to play at such institutions, only applicable procedural due process is owed to an athlete.[4] The various leagues and conferences are also members of the NCAA, but act independently on behalf of their members; they must follow NCAA rules, but can make stricter rules and enforce them as well. The Southeastern Conference (SEC) is an example of an NCAA member that has some rules that are stricter than the NCAA basic rules, such as being the only conference to declare that any student who becomes a professional in one sport is a professional in all sports.

Bob Barrett is associate commissioner for institutional relations in the SEC. His major message to lawyers is that the NCAA and its member conferences have separate rules, so a lawyer must know each of their rules and how they apply before advising an athlete. The way to handle an eligibility question is to first inquire with the legislative assistant at the NCAA and applicable member league or conference, if any, to be guided as to the posture of a client. There is little need for the services of an attorney before accepting a college athletic grant-in-aid scholarship, because the letters of intent signed in accepting such a scholarship are basically the same. There should never be *any* negotiation with an institution on an athlete's behalf, such as a counteroffer to a grant-in-aid scholarship letter of intent, since that would create "professional" status and sacrifice amateur status.

There are several NCAA rules that all athletes should be aware of to preserve their eligibility to participate in NCAA competition. The athlete, or athlete's parents, cannot accept *anything* of value from a prospective agent or team or company--not clothing, dinner, or even a soft drink. Any

gift or "extra benefit"[5] offered to the athlete also must be offered to all students at the respective institution. A lawyer cannot give a student athlete preferential treatment, charging a fee less than his normal fee, or else the attorney becomes a booster and must comply with the applicable rules. If an SEC athlete receives an "extra benefit" in one sport, as Bo Jackson found out when he accepted a plane ticket to visit the Tampa Bay Buccaneers for a physical exam, he loses his SEC eligibility to play intercollegiately in another SEC sport. Though an athlete can talk with any agent and ask a team or league about draftability, he cannot agree to agree or enter into an oral or written contract of any nature.

Examples of mistakes by amateur athletes that make them professionals by NCAA rules are: a 14-year old tennis player accepting shoes from Reebok and a racket from Wilson; a football player appearing at a shopping mall pep rally, because there is a commercial enterprise promoted thereby; and, an athlete appearing at a McDonald's restaurant to sign autographs for fans. An amateur cannot use his or her image or name for *any* commercially-connected enterprise. It should be noted, however, that loss of eligibility with the NCAA does not mean loss of eligibility with other collegiate governing bodies or the NGB's.

The problems found at the collegiate level are surely the most widespread, to a great extent because of the athlete's marketability in professional sports such as football, basketball and baseball. Though student athletes under NCAA regulations can receive permissible "actual and necessary expenses,"[6] no extra benefit may be received. As Jim Weaver, assistant athletic director for student services at the University of Florida, pointed out, it is sometimes difficult to know where you stand with the NCAA, such as the University of Florida coed volleyball player who entered and won a wet T-shirt contest and received a trip to the Caribbean as an award: "The NCAA said it was okay because winning had nothing to do with her athletic ability and every student had an opportunity to win."

The key, whether you are giving legal services or athletic equipment, is that all students must be offered the same. Amateur athletes, by NCAA rules, are not to be given preferential treatment.

Ed Moorhouse, a member of The Florida Bar and general counsel for the PGA Tour, Inc., presented an interesting scenario: a golf tournament with two-man amateur/professional teams, such as "scramble" play, in which the amateur receives an award, such as a plaque sanctioned by the NCAA, but the professional receives money. There is a question as to whether it would violate NCAA rules because the amateur helps the professional make money in a commercial enterprise.

Scholastic Competition

When considering high school eligibility rules, there is the National Federation of State High School Associations (NFSHSA). The issues that are often presented to Fred Rozelle, executive secretary of the Florida High School Activities Association (FHSAA), concern transferability, age and academic requirements.[7] Like the NCAA and SEC, the NFSHSA allows its state organization members to make more stringent rules. The FHSAA conducts all of its meeting and hearings "in the sunshine" under Florida law, and though it is a voluntary organization not chartered by the State of Florida or controlled by statute, the courts consider the FHSAA as "public" because all public schools in the state are members, and thus, all the normal procedural and substantive due process rules apply. Before filing suit in Florida against the FHSAA, however, administrative remedies must be exhausted.

Though the FHSAA rules apply only while an athlete is in high school, an interesting paradox can develop. The FHSAA does allow some "gifts"[8] — not gold or silver — outside the school system, but acceptance of these gifts may violate NCAA and its member league or conference rules. An example of a serious mishap is one golfer who won a New York tournament in which a car was awarded but not accepted, yet he was ruled ineligible to play in NCAA competition because he competed for the award. Plaques and ribbons as competitive awards are exempt, but it is always best to check with the NCAA, league and conference, and even USOC and NGB, if applicable, before the athlete competes to assure that qualified gifts are involved.

Lawyers' Role

The role of lawyers as advisors is clearly

important. As pointed out by Joe Kines, linebacker coach for the Tampa Bay Buccaneers, playing sports in high school and college is a privilege and not a constitutional right, so you play by the organization's rules, and lawyers are necessary to protect a player's — and even a coach's and institution's — interests. Our obligation is to discern what to do and not do within the regulatory framework of the respective sport and level of competition. Though it is the student-athletes' responsibility to know the rules, attorneys are capable of helping amateur athletes avoid the pitfalls of the regulatory maze by applying our skills so that the athletes can enjoy sports and the benefits of a grant-in-aid scholarship. Furthermore, if legal action is necessary and appropriate, it is essential that lawyers research all the proper sources and investigate all possible solutions before filing suit. According to the entire symposium panel, because of the ethical standards to which we are held, lawyers can be of particular help in planning and managing both a career in sports and a post-sports career.

The following is a list of references to help steer you to the appropriate source of information when representing an amateur athlete:

Organizations:

United States Olympic Committee, 1750 East Boulder St., Colorado Springs, Colorado 80909-5760; (303) 632-5551.

National Collegiate Athletic Association, P.O. Box 1906, Mission, Kansas 66201; (603) 384-3220.

Southeastern Conference, Suite 900, Central Bank Building, Birmingham, Alabama 35233; (205) 252-7415.

Florida High School Activities Association, P.O. Box 1173, Gainesville, Florida 32602-1173; (904) 372-9551.

National Association of Intercollegiate Athletics, 1221 Baltimore Avenue, Kansas City, Missouri 64105; (816) 842-5050.

National Junior College Athletic Association, P.O. Box 7305, Colorado Springs, Colorado 80933-7305; (303) 590-9788.

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Sports Law, George W. Schubert, Rodney K. Smith, Jesse C. Trentadue (West 1986).

The Law of Sports, John C. Weistart and Cym H. Lowell (Michie Co., 1985).

Law & Amateur Sports, edited by Ronald J. Waicukauski (Indiana University Press, 1982).

1987-88 Manual of the National Collegiate Athletic Association (1987).

NAIA Official Handbook (Revised 8/87).

National Junior College Athletic Association Handbook and Casebook 1987-88 (1987). RJ

[1] 36 U.S.C. 372-382b, 391-396 (hereinafter referred to as "The Amateur Sports Act").

[2] For a discussion of due process under The Amateur Sports Act, *see* LAW & AMATEUR SPORTS, edited by Ronald J. Waicukauski, pp. 123-129, (Indiana University Press, 1982).

[3] International Olympic Committee Charter, Rule 26.

[4] For a thorough discussion of due process and other constitutional limitations on regulatory authorities' powers, except for the IOC, over amateur athletes and their coaches, *see* SPORTS LAW, Schubert, Smith and Trentadue, Sec. 3.3 (West, 1986).

[5] Constitution and Interpretations of The National Collegiate Athletic Association, Art. 3-1-(g)(5).

[6] *Id.* at Art. 3-1-(h).

[7] *See* Florida High School Activities Association Bylaws, Art. 19.

[8] *See id.* at Art. 39-1-1.

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He writes this article on behalf of the Entertainment and Arts Law Committee, Joseph Z. Fleming, chairman.

Executive Directions

(Continued from page 6)

college degrees as do 51 percent of Citizen Dispute Settlement center mediators.

There are citizen dispute settlement centers in 16 counties including Alachua, Brevard, Broward, Dade, Duval (also covers Clay and Nassau), Hillsborough, Lake, Lee, Leon, Orange, Pinellas, Polk, Sarasota and Volusia.

Family mediation programs serve 18 counties. They are: Alachua, Brevard, Broward, Dade, Duval, Nassau, Clay, Escambia, Hillsborough, Indian River, Martin, Orange, Palm Beach, Pasco, Pinellas, Polk, Sarasota and Seminole.

Small claims/landlord-tenant mediation programs exist in Dade and Okaloosa counties. Circuit civil mediation programs for claims between $5,000 and $25,000 are in operation in Lee and Palm Beach counties.

Twelve voluntary bar associations have fee arbitration programs. The bar groups are Clearwater, Collier County, Dade County, Escambia-Santa Rosa, Hillsborough County, Jacksonville, Martin County, Okaloosa-Walton County, Palm Beach County, Sarasota County, Volusia County and West Pasco.

All but one of the state's 20 circuits have mediation programs. However, they vary greatly in the types of cases they handle and the procedures they follow.

So as you can see, ADR is here to stay as an option to litigation. It is in the best interest of the legal profession and clients to cooperate with consumer groups, legislators and others in designing and providing viable options to litigation, while protecting right to trial and due process of the law.

To that end a committee has been appointed—the Bar has formed a committee whose scope is the review, refinement and, if appropriate, development of alternative dispute resolution programs. The Bar has always been supportive of mechanisms that will enhance the justice system. The Bar will work toward improving the system while at the same time protecting the rights of individuals. RJ