

PROTECTING YOUR POSSIBILITIES PODCAST WITH LUKE FEDLAM

Episode 66: Why an athlete needs their own lawyer | March 2, 2022

The following is a transcription of the audio podcast recording. It is largely accurate but in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors.

Luke: I'm sports attorney Luke Fedlam, and welcome to the Protecting Your Possibilities podcast. Each conversation we focus on sharing information and having conversations around how athletes can best educate and protect themselves or their life outside of their sports.

Thank you so much for tuning in to the Protecting Your Possibilities podcast. I'm your host, Luke Fedlam. And here we are with another episode. And I just got to say, first and foremost, thank you. Thank you all so much for tuning in, for listening. I've got a lot of comments, our last episode around NFT's people really appreciated the content and understanding it. And again, that's really what this podcast is all about protecting the possibilities that athletes have, that entrepreneurs and business owners have.

I mean, really, I'm hoping that this content continues to just positively impact your life, your business as you listen to it. And if it does, I'm just gonna ask that you go ahead and share that, share it on social media, share it with your network, so that others can be blessed by this information, hopefully, as well.

And so today, there's a topic that I want to bring up and spend a few minutes on that does come up quite a bit. And it's come up quite a bit recently in my world, and that really is the role of a lawyer in different situations. And I know you're probably thinking like, Okay, well, we could be talking for hours and hours about what that actually means. But I'm bringing it up, because this is a period of time where college football players are transitioning to get ready for the NFL draft. And so they're selecting agents to represent them. Basketball, college basketball is in this position of we've got conference tournament's coming up, we've got March Madness coming up, and then college basketball players will be hiring agents and moving on into the professional ranks. And then we also have college student athletes just across the board who are able to hire and engage marketing agents to represent them as it relates to name, image and likeness. And one of the more common questions that I get from both athletes and from parents or family members of athletes, is this idea that, hey, we talked to this agency that we're thinking about going with, they said that they have lawyers on staff, so we probably don't need to hire a lawyer. Is that right?

And I love this question, right? Because it really gets to the heart of what is your role as a lawyer? Who are you responsible to. And I think it just is important, whether we're thinking about it in this context of sports and athletes. Or if you're someone who is a business owner who is looking over a lease, or working with a realtor to identify a place to purchase or any other type of contracts that you might be engaged with another agency or organization who is working with you to help you, it's really important to understand how lawyers operate and who we're ultimately responsible to.

The easiest way to answer that is that as a lawyer, your ethical obligation is to protect the interests of your client. That is a pretty standard, pretty straightforward way of thinking about it right, that ultimately, a lawyer is responsible for their individual client.

So then it begs the question, then well, who is ultimately the client? And so this is why I think it's so important to have conversation, especially in the sports space about this. So if you are looking at an agency and evaluating an agency, to either be your player agent or to be your marketing agent, if that agency has what we would call in house counsel, which basically means they have lawyers that they have hired, who are employees of the agency. So that's what an in house lawyer is. Then ultimately, the client of that lawyer that in house lawyer is the company itself or is the agency.

Here's an example. Before working at Porter Wright, I worked for a large publicly traded company, and I was in house acquisitions counsel for that company. And so what that meant was, I would help that company when we would go around the world and buy other companies or other organizations. I was the lawyer representing the interests of that company. We also had outside counsel and outside counsel basically means lawyers from a law firm that would help us through that, but the client would be the company as well, right to that law firm. So if an agency has in house counsel, then ultimately the client of those attorneys that are in that agency, it is the agency itself, right. So the attorneys are looking for the best interest of the agency.

Now, if it's an agency that has counsel, that is, let's say outside counsel, so they're not big enough. They haven't decided yet that they're going to hire full time attorneys to be on staff and be employees of the agency, they might just hire outside counsel, which means they would go out and look at law firms, interview different lawyers, and ultimately select a law firm or select a lawyer that will represent them. And so in to that end, the agency becomes a client of that law firm. And so in that model, what that means then is that ultimately, the lawyers anything that they're reviewing, or anything that they are drafting, or creating or advising on, they're going to put the interests of their client, the agency first. There's nothing wrong with that, right? I mean, that is what we as lawyers, do, we put our client's interests first. And so if an agency were to hire a law firm, or a lawyer, that's what that law firm is going to do. They're going to put the interests of the agency first.

So how does that play out then in all of this, and then how does that relate to an athlete having their own individual lawyer on their team. So when it comes to understanding kind of how this starts to play out, if you were to say, a marketing agency, if you had a marketing agency, and let's say that that marketing agency had their own in house counsel, typically what that in house counsel is going to do is review and analyze any potential endorsement deal that a third party company brings to them to work with someone, you know, one of their clients, right, the talent or the athlete.

So let's just say Company X is a brand that that's out there. And they want to work with athlete A, and athlete A is excited to work with them. And so the company goes, or the brand goes through the agency and says, Hey, we want to work with one of your clients, that athlete A, we want to work with them. And so either that brand is going to provide their typical endorsement deal language and their endorsement contract, or they'll say, you know, work with the agency, and the agency may have a document that they've used before, and they modify it specifically for that particular transaction.

In doing all of that, the agency is oftentimes really focused on two primary aspects, which is very important. Number one, how much money is the athlete going to make? And number two, what

is it that they have to do? What services do they have to provide in order to make that money, I mean, those really are the top two matters or top two issues that the agent is looking to negotiate for the player. And we know that there are so much more language in these endorsement deals, those are the primary two things that the agents looking for.

So then the attorneys, if there's in house counsel for the agency, the attorneys in house are going to be looking over that agreement, and just making sure that everything makes sense making sure that there's no language that violates other deals that the athlete is a party to, and just making sure that things generally look good within that agreement, that the terms agree with each other, and that there's nothing that's kind of incorrectly reflected in the agreement. And then they send it to the athlete for the athlete to review and sign.

And this is where it is so important for athletes to have their own independent counsel on this. Now, I get it, you're listening to this, and you're like, Luke, this sounds so self-serving, because this is literally what you do. And you're right. This is exactly what I do. In my work working with individual athletes, I serve as their general counsel, I serve as the athletes counsel. And the difference here is that my ethical obligation, or any other lawyer who's working with the individual athlete, our ethical obligation is to the individual athlete. So when an agreement then gets drafted, negotiated by the agent and the brand, and is provided to the athlete, my role then is to review it from the mindset of what is going to afford my client the best protections in this agreement.

It's not a matter of, oh, I think you should make more money. I don't get involved as a non-agent, sports attorney, I don't get involved in the financial side of it, right. Whether what the value of an athlete's tweets are or IG posts are, that's not where my expertise lies, but where my expertise lies is in making sure that all of the language within the agreement is established in a way that gives the best protections to my client, the athlete, and this is important.

So when we think about it, where some of those things that could pop up one, I'm always looking to make sure that the right entity is involved, right. So if the athlete has a loan out company or an LLC that we've talked about on this podcast before, that we understand that the agreement is in-line, it's directly with that loan out company or with that LLC for the services of that individual athlete. I'm looking at things to make sure that there are no conflicts with any other deals that an athlete currently has. So if we're reviewing all the deals that the athlete has, we know all of the other contracts that are in place, and can make sure that there's nothing that would violate any type of action - exclusive language or any other terms of another agreement that the athlete might have.

But I'm also looking at so many other things. Intellectual property rights, usage rights, are so important. How long can the brand continue to use the athletes name image and likeness? Are the athletes, you know, intellectual property? When do they have to stop? Does do they have to stop at the same time that the contract ends when the term ends? Or is it a point in time after that, will they be able to use it forever. All of these things come together in a way that we want to make sure that the athlete is best protected. We're looking at indemnification language, if something were to happen, you know, if something were to go wrong on set during a photo shoot or a video shoot, who can the athlete hold responsible for that? And is it a high standard? A standard like it has to only be in the instances of gross negligence? Or can it be any instances of negligence if somebody negligently fixed a lighting structure and it ended up falling down and injuring the athlete? Does the athlete have any type of recourse to go after those individuals for any damages that they experienced to their person. So thinking through and making sure that

we understand all of the various aspects of a contract that an athlete is going to sign before they sign? It is so critically important.

So when I have these conversations, usually it's around this time of year when parents may ask, Hey, this agency says that they have lawyers on staff. So do we really need to have our own outside lawyer? My answer is always yes. From the perspective of you want to make sure that you have your advocate, right? You have your professional who's advocating for your protection throughout this the negotiation of an agreement. And ultimately, I want agents to go and do what they do. I want them to make as much money as possible for our clients - for our shared clients, right. But at the end of the day, I have to make sure that the athlete is protected before they sign anything, and that all possible protections that make sense within that particular agreement. That they're afforded to the athlete so that the athlete can be protected as they move on throughout their professional career.

So hopefully, this was helpful. If you're a business owner, you may think about it very similarly, you might think about it in the sense of, if you happen to be working with a realtor and the realtor has lawyers that are in house lawyers at the real estate company or the realtors company. They don't always necessarily have your best interests in mind, they want to get a deal done. So you want to make sure that you have again, outside counsel who's reviewing that for your benefit, so that you understand because just because someone is a lawyer doesn't mean that they are a lawyer who is ethically obligated to put your individual interests first.

And if you've hired a lawyer, and you are a client of a lawyer individually or through your entity, then that's when you can be sure that that lawyer is looking out for your best interest and ultimately, when we think about protecting possibilities, that's what it's all about.

So hopefully you found some value out of this episode. If so, please do feel free to share it with others. Feel free to comment. reach back out to me if you have additional questions about it. Feel free to reach out I love responding to questions and comments and ideas that arise out of these podcast episodes. But again, thank you so much for tuning in. Thank you for your support of the Protecting Your Possibilities podcast.

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