

Oliver Decision One for Common Sense

Written by Jordan Kobritz
Tuesday, 03 March 2009 00:24



Andy Oliver has been trapped in the NCAA's rules regarding player agents.

Andy Oliver started the 2009 baseball season for **Oklahoma State University** the same way he ended the 2008 season – pitching the Cowboys to a victory. But it was a win in the courtroom that enabled the lefthander to resume his college career on the diamond.

Oliver was suspended indefinitely by the NCAA last May, and in December, the NCAA decreed that the pitcher should sit out 70% of OSU's 2009 schedule. Oliver's transgression was a violation of the "no agent" rule in NCAA Bylaw 12.3. The bylaw states that an individual is ineligible for participation in an intercollegiate sport if he or she ever agrees to be represented by an agent, a rule that is virtually impossible to enforce and is therefore more honored in the breach than in the observance.

But Bylaw 12.3.2 creates an exception to the no agent rule by allowing a student-athlete to "consult" with an attorney, with the additional proviso in Bylaw 12.3.2.1 that an attorney cannot discuss a contract with a professional sports team, nor can an attorney be present during such discussions.

In June of 2006, Oliver was drafted out of high school by the Minnesota Twins. His attorney at the time requested that he be present during contract discussions with a Twins representative in

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the Oliver home. The attorney assured the pitcher and his family that his presence would not endanger Oliver's college eligibility.

The discussions proved fruitless and Oliver accepted a scholarship to OSU. When Oliver informed his attorney early last year that he would be consulting another "advisor" - code for agent - the attorney sent the pitcher a statement in the amount of \$113,750.00 for legal services related to the failed negotiations with the Twins. When Oliver refused to pay the bill, the attorney reported the bylaw violation to the NCAA. After the NCAA suspended Oliver, he obtained an injunction pending the outcome of a trial.

In a decision that, if sustained on appeal, will have far reaching consequences for student-athletes, a Federal District Court in Ohio ruled that NCAA Bylaw 12.3.2 was an attempt to regulate the role of attorneys; that such action was against the public policy of every state in the union and was therefore void. Judge Tygh Tone said the NCAA can't tell a student-athlete he can consult with an attorney and then tell the attorney how to represent his client, i.e., when he can be present for negotiations and when he should stay in his office.

During the trial, the NCAA countered that the no agent rule was actually designed to protect student-athletes, pointing to Article 2.9 of the NCAA Constitution which states that "...student-athletes should be protected from exploitation by professional and commercial enterprises." How that is to be accomplished without adequate legal representation at the most crucial stage of negotiations - especially when the other side is far more experienced and prepared than the student-athlete - the NCAA was unable to say.

The no agent rule is absurd on its face. If an athlete's parent is an attorney or an agent - or even a former professional athlete - he or she may have adequate representation. But if you failed to choose your parents wisely, you are at an extreme disadvantage when it comes to one of the most important decisions of your young life.

The judge also took a swipe at Bylaw 19.7, which states that the NCAA can impose retroactive punishment on student-athletes and member institutions if a student-athlete is allowed to play under an injunction and that order is later overturned. The bylaw serves as both a disincentive to seek court redress and a reluctance on the part of member institutions to allow a student-athlete to participate in athletic competition until the litigation process is complete.

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The NCAA has already stated its intention to appeal Judge Tone's decision. Critics have taken issue with some of the judge's language, calling it overly broad and not based on sound legal reasoning. And a number of issues remain unanswered, including whether an agent who is not an attorney can represent a student-athlete to the same extent as an attorney.

But for now, thanks to Andy Oliver, the NCAA can't deny student-athletes effective legal representation.

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