



Published in the 2016 May/June issue of the *Hennepin Lawyer*, a membership publication of the Hennepin County Bar Association. Used with permission.
612-752-6000 thl@hcba.org

Representing Retired Athletes

By Jeffrey C. O'Brien and Carl Eller



A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

- Rule 1.1, Minnesota Rules of Professional Conduct

When Marshawn Lynch, a Super Bowl-winning professional football player for the Seattle Seahawks, recently announced his retirement from the NFL at age 29, it was reported that he had been living off endorsement revenue and had saved every penny of the \$49 million that he had earned as salary during his playing career. His teammates further disclosed that the man known to NFL fans as “Beast Mode” also served as their informal financial advisor by providing tips to his teammates on managing their IRAs.

Lynch's story was noteworthy as it flies in

the face of common stereotypes regarding professional athletes¹ and bucks the trend of athletes experiencing financial difficulties when their playing careers are over. Attorneys who represent athletes relative to their business and personal legal matters must understand the mind-set of a professional athlete, the culture of sports in which they are immersed, and the physical toll taken during the athlete's playing career. All of these factors are relevant to the attorneys' role as a trusted advisor to clients.

This article explores these issues in greater detail and provides some common legal matters to be addressed in representing an athlete client. It also discusses a new approach to be taken with respect to educating the athlete about these issues years in advance of the athlete's post-playing career.

Debunking Common Stereotypes

There is a widely held belief in our culture that any individual who at one time or another played professional sports is automatically wealthy. While the average player salary has certainly increased since the dawn of the NFL's free agency era in 1993, such increases do not necessarily translate into a lucrative retirement. A professional football player's career is not like that of the average person. Rather than finding an entry-level job that pays a pittance when just

out of college, the athlete can earn millions of dollars—more than the average person makes in an entire lifetime—in just one season. The young athlete's lucrative career is also likely to be short-lived. After just a few years, most pro football players are out of the game due to injuries and are forced into retirement and, usually, a much smaller income. That is when financial troubles often begin to surface.²

A second stereotype which impedes an athlete's development in retirement pertains to how society views athletes. Far from being “dumb jocks,” individuals who reach the professional level in their sport do so by devoting all of their physical and mental faculties to that effort. Once they reach that level, the mental conditioning necessary to succeed is equal to or greater than the physical conditioning.³

Understanding the Culture of Entitlement and Herolism™

“Herolism,” a term coined by Carl Eller, is a phenomenon that describes a retired athlete's voluntary effort toward self-destruction. The world of sports is a fantasy world in which athletes stop being human beings and start playing the role of the hero. Athletes are coddled and worshipped from the time they are teenagers, and when their playing days are over, the cheering abruptly stops and they cannot make the adjustment, because they are

addicted to sports and the hero-worship that comes with it.

Attorneys who represent retired professional athletes must be mindful of herolism. Eller believes that individuals who are afflicted with herolism exhibit traits similar to those who experience other compulsive disorders. Instead of becoming an enabler, attorneys representing retired athletes who have grown accustomed to the hero-worship during their careers must provide sobering advice as to the realities of a variety of legal situations. The attorney should be mindful of the rules outlined in the Preamble to the Rules of Professional Conduct. Namely, that, in addition to the lawyer's role representing clients, "a lawyer, as a member of the legal profession, is... an officer of the legal system and a public citizen having special responsibility for the quality of justice."

Dealing with the Physical Effects of the Sport

The physical effects of playing professional sports—particularly football—also affect an athlete's health in retirement and, in some instances, carry implications for the attorney-client relationship. Studies show that repeated head trauma and concussions can lead to brain diseases such as Alzheimer's, ALS, dementia, and chronic traumatic encephalopathy (CTE).

For attorneys, care must be taken to understand their athlete client's physical and mental condition and, if circumstances warrant, expand their representation to certain family members (such as a spouse or children) in order to provide the competent representation required by the Rules of Professional Conduct, particularly Rule 1.2.

Maximizing the Client's Personal Brand in Retirement

Attorneys working in a trusted advisor role can help position their athlete client(s)—current or retired—to take advantage of corporate and tax opportunities. An attorney can address questions such as: Who manages the athlete's contractual relationships? Does the athlete know when critical dates will expire? Who owns the athlete's image and name and other intellectual property? How does the athlete account for the money from endorsement contracts or special appearances? Does the athlete own investment or income property? Does a corporate entity protect the athlete from liability? Do the athletes know how much they can gift to someone without creating tax issues? Does the athlete want to create a foundation? What will the athletes do in their post-playing career? Can they trademark their identity?⁴

How I Started Representing Athletes

I am often asked how an attorney who practices in the "boring" areas of business and real estate transactions wound up representing some of his sports heroes. To be honest, it came about very organically.

About five years ago, I joined a Facebook group called the "Tommy Kramer Fan Club." As some readers may recall, Tommy Kramer was the quarterback for the Minnesota Vikings from 1977-1989. For many who grew up watching Kramer play, he was our hero. Growing up a Vikings fan, I had a Tommy Kramer No. 9 jersey, posters, football cards, and on and on.

The fan club group consisted of several hundred members from all over the country. We would post old game videos (such as Kramer's famous "Hail Mary" touchdown pass against the Cleveland Browns in 1980) or share stories of meeting him. I enjoyed posting in the group and meeting new people. It was a release from the daily grind of work.

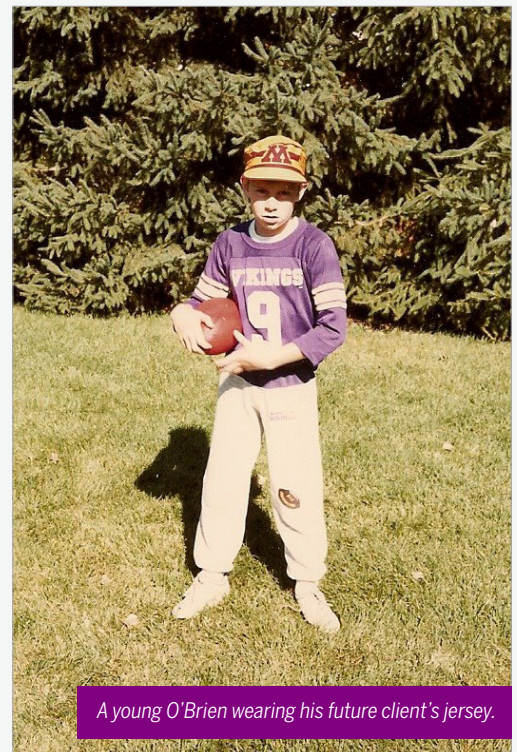
The group consisted not only of Vikings fans, but also a good number of Kramer's fans from his home state of Texas. He won a state high school football championship in Texas in 1971. That accomplishment, plus his years as an All-American quarterback at Rice University in Houston, has garnered him legendary status in the Lone Star State. In fact, one of his sisters and a close high school friend of his were part of the group and we connected and regularly chatted about our favorite QB.

This connection led to the ultimate introduction to the man himself. His Texas friends connected me with Kramer to discuss some business matters, and as the saying goes, the rest is history. At this time, not only do I handle various business matters for him related to his playing career, but I also helped him launch the Tommy Kramer Cancer Research Foundation, a nonprofit organization through which he operates his annual charity golf tournament for leukemia and lymphoma research. (Kramer's daughter, Cassie, is a two-time lymphoma survivor).

My other retired Vikings clients came to me in similar organic fashion. My co-author, Carl Eller, was introduced to me by a partner of mine. Shortly thereafter, I began working with Eller on the tax-exempt filing for the Retired Players Association. Others, such as Joe Kapp (quarterback of the 1969 NFL Champion Vikings and originator of the famous "40 for 60" slogan) and Robert Griffith (safety on the Vikings two NFC Championship teams in the 1990s), came to me via referral.

Although my work with retired professional athletes is just one niche of my practice, it is a very fun one. I get to work with guys that I admired growing up. In a way, I see my helping them with their legal issues now as a way to give back for inspiring me during their careers.

- By Jeffrey C O'Brien



A young O'Brien wearing his future client's jersey.

A New Approach

A new program, created by a retired athlete for the benefit of other current and retired athletes, attempts to better position athletes to adapt to the realities of life. The program creator is Carl Eller, a former Minnesota Viking and Hall of Famer. Called "Game Plan II," it will be taught by Eller at the University of Minnesota. The National Football League has agreed to supply 50 retired players to take the course online through the university.

The primary purpose of Game Plan II (GPII) is to help individuals begin to conduct their lives in a more organized manner. GPII is designed to provide opportunities for self-understanding, introduce the student to career options, and assist in examining and evaluating lifestyles, with a continuing emphasis on the world of the professional athlete. The premise of this course is that the professional athlete operates in a world that is different from that of the non-athlete. GPII is based on experiences with both athletes and non-athletes. The process of learning decision-making skills, life balance, self-understanding, and how to consider options is similar for both the athlete and non-athlete. Some of the specifics in these processes are unique to the athlete and require a considerably different approach.

Conclusion

By better understanding the world from which athletes come, attorneys who represent current and former athletes can better understand and relate to these clients. The results are an improved attorney-client relationship, increased trust, and—hopefully—overall improvement in the athlete's legal affairs.

¹ The authors wish to note that while this article focuses on current and former NFL players, the issues discussed are relevant to professional athletes from other major sports.

² *More Money, Same Bankruptcy Risk*, Caltech, <http://www.caltech.edu/news/more-money-same-bankruptcy-risk-46553#sthash.veEDkU3b.dpuf>.

³ *What Makes a Football Player Smart?*, The New Yorker, January 3, 2014.

⁴ Lee Hutton, *Athlete Representation from a Sports Attorney's Perspective: Show Me the Money...It's Not Just About the Contract*, Lommen, Abdo, Cole, King & Stageberg, P.A. Entertainment & Sports Law Symposium, November 12, 2009.



Carl Eller

Carl Eller is president of the Retired Players Association, a 501(c)(3) nonprofit devoted to education and advocacy on behalf of retired NFL players. Eller played for the Minnesota Vikings from 1964 to 1978 and was inducted into the Pro Football Hall of Fame in 2004.

Jeffrey C. O'Brien

jobrien@lommen.com

Jeffrey C. O'Brien is an attorney with the Minneapolis law firm of Lommen Abdo. As part of his business and real estate transactions practice, O'Brien represents a number of retired professional athletes.



THE *Very* best start.

A HEARTFELT DEDICATION TO NURTURING INTELLIGENCE

As the Twin Cities' premier child development experts for over 25 years, Kinderberry Hill has a proven reputation for providing the finest learning experience available for Minnesota's youngest learners.

 **KINDERBERRY HILL**
CHILD DEVELOPMENT CENTERS

VISIT KINDERBERRYHILL.COM TO SCHEDULE A TOUR.