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## NBA labor contract appears to be paper thin; will anything be done?

At the conclusion of every case, I remind my clients of their essential responsibility of ensuring the enforcement of their settlement contract or judgment. I emphasize to them the notion that without enforcement, rules are just words on a piece of paper.

This notion was recently emphasized during the NBA free agency period for the 2019-20 basketball season because of suspicions that players and teams had violated NBA free agency rules without repercussions.

Compliance and enforcement issues are prevalent across all areas of law in different ways, and sports law is no exception. There is great variation in how and when violations of laws, contracts and judgments are addressed depending on each set of circumstances. Sometimes, the cost and/or burden of enforcement outweighs the benefit, resulting in no action being taken. This creates a mindset that some rules are just made to be bent or broken.

This mindset has been prevalent regarding a suspected disregard of key NBA free agency timing rules by some NBA teams and players. These teams and players seem to capitalize on a realization that free agency rules are just words on paper — that paper being the collective bargaining agreement between the NBA and the National Basketball Players Association. The spe-

cific rules are included within collective bargaining agreement's Article II and Article XI.

According to Article II, Section 15, no player and team may enter into any oral or written agreement about terms of the player's employment during the moratorium period, with various specified exceptions.

The moratorium period occurs after the NBA Finals for the previous season has ended. This period is important because it gives the league time to analyze financial data from the prior year and set the upcoming salary cap and other figures which would be necessary for teams to determine their budget for acquiring and retaining talent.

This year, the moratorium period was defined as June 30 at 6 p.m. Eastern Time to July 6 at noon Eastern Time. However, the league permitted players and teams to communicate strictly for scheduling starting June 29 at 6 p.m. Eastern Time.

According to the collective bargaining agreement Article XI, Section 1, an unrestricted free agent is free to negotiate beginning on the first day of the moratorium period and free after the moratorium period to sign a player contract with any team.

In summary, according to the labor agreement rules, any player labeled as an unrestricted free agent could only engage in substantive discus-



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sions with new teams starting on June 30 at 6 p.m. Eastern Time and only permitted to execute an oral or written agreement with a new team from noon on July 6 and forward.

The compliance and enforcement of the NBA free agency rules were questioned this year because of several reports of negotiations happening between teams and players before June 30 and also reports of deals being made between teams and players before July 6. Confirmation of

many of the reported deals occurred almost instantaneously after the moratorium period ended.

According to the media, some of the suspected free agency timing rule-breakers included the Boston Celtics and Kemba Walker, the Detroit Pistons and Derrick Rose, the Brooklyn Nets, Kyrie Irving, and Kevin Durant, and the Los Angeles Clippers and Kawhi Leonard.

Maybe the lack of detail and strong word choices in the labor agreement free agency rules have caused people to view them as malleable, leading to increased violations by teams and players and also leading to the league letting things slide.

For example, the free agency rules do not include strong language like "shall" or "shall not," but instead use words like "may" or "is free." Further, they do not set forth default or potential consequences if a violation occurs and do not set forth procedure if a suspected violation occurs.

There are, however, more powerfully written clauses at Articles 35 and 35A of the NBA Constitution regarding the "anti-tampering rules," which could apply to some, but not all, CBA free agency rule violation scenarios.

For example: Article 35(e) provides: "Any [p]layer who, directly or indirectly, entices, induces, persuades or

attempts to entice, induce or persuade any [p]layer, [c]oach, [t]rainer, [g]eneral [m]anager or any other person who is under contract to any other [m]ember of the [a]ssociation to enter into negotiations for or relating to his services or negotiates or contracts for such services shall, on being charged with such tampering, be given an opportunity to answer such charges after due notice and the [c]ommissioner shall have the power to decide whether or not the charges have been sustained; in the event his decision is that the charges have been sustained, then the [c]ommissioner shall have the power to suspend such [p]layer for a definite or indefinite period, or to impose a fine not exceeding \$50,000, or

inflict both such suspension and fine upon any such [p]layer.”

The constitutional anti-tampering rules do not apply to player’s agents or anyone not employed by the NBA. They also do not mention the moratorium period and would not apply to a player with an expired contract who makes a deal within the moratorium period.

Other clauses of Articles 35 and 35A of the constitution also give the commissioner broad authority to impose penalties for a wide range of misconduct. But, the commissioner’s authority has only been used sporadically regarding historical violations of labor agreement’s free agency rules.

I have seen many nonsports

post-decree cases where one party develops a status quo of breaking the rules of their settlement agreement or judgment due to a lack of enforcement by the other party, who typically complies.

The “rule follower” is negatively affected whereas the “rule breaker” is advantaged and continues violating the agreement until and unless there are significant consequences. Things are panning out similarly in the NBA regarding violations of free agency rules.

After a recent NBA governors’ meeting following the moratorium period, the NBA reportedly launched an investigation into the timing of early reports of free agency deals. It is unknown if that investigation is for seeking

retribution against violators or to merely determine if changes need to be made to the rules.

If the NBA is genuinely seeking compliance with free agency rules, they should be rewritten in the next labor agreement or supplemented to provide stronger, more detailed language, definite and enforceable consequences and procedure for addressing suspected violations, similar to the language of Article 35(e) of the NBA constitution.

It’s possible that the NBA is hesitant to redraft and strictly enforce certain free agency rules due to the time, energy and resources that would need to be dedicated to the cause. Perhaps, the cost doesn’t outweigh the benefit.