



For NCAA college athletes, the game changed, literally, overnight.

In 2021, the National Collegiate Athletic Association (NCAA) promulgated rules allowing student-athletes to monetize their name, image, and likeness rights ("NIL" rights). In May of this year, the NCAA promulgated additional rules regarding "booster" involvement – to ensure the current NCAA rules regarding recruiting and pay-for-play restrictions. At this time, the use of image, and likeness rights for student-athletes enrolled in North Carolina educational institutions is governed by Executive Order, dated July 2, 2021. The current makeshift nature of NCAA rules and state laws, with only speculation of a federal law in sight, creates significant challenges and risks for businesses interested in this space.

At Ward and Smith, we are proud to represent clients in NIL matters. We assist businesses in negotiating endorsement agreements with student-athletes. We also assist those who are collaterally involved, including NIL collectives, donors, marketing agencies, software platform providers, and financial advisors.

Many of our clients have become interested in engaging with student-athletes to promote their brands, and we advise them on key components of negotiating this type of endorsement deal without violating the NCAA policies, university policies, and applicable federal and state laws. For example, clients ask us, how to approach student-athletes to fairly negotiate this type of deal. What is typical for a licensing fee? What about moral clauses that trigger termination of the agreement if the student-athlete fails to comply with it? What do we need to know about the applicable university's policies? How do we avoid play-for-pay violations from the NCAA? Is it our responsibility to comply with FTC endorsement requirements? What about how technology influences NIL rights? We are prepared to answer these questions and more.

In addition to exceptional legal experience, we have personal experience that positions us to advise businesses to create positive experiences in their deals, marketing efforts, or through software platforms that include student-athlete participation. Several Ward and Smith attorneys are former college athletes and understand the rigors of playing at the D-1 level. This unique perspective allows them to negotiate and memorialize more effective NIL deals on behalf of the firm's clients.

We can assist with a broad spectrum of business needs, including:

- NCAA guidance/NIL-specific regulatory and legal compliance
- University policy compliance
- Formation of business entities, including obtaining non-profit status for collectives and donor groups
- Brand protection and registration
- Social media advertising campaigns
- Endorsement deals
- Sweepstakes and promotions
- Data privacy
- Domain name issues
- Intellectual property licensing
- Appearance rights/photography releases

- IP enforcement
- Terms of use for software platforms
- Social media endorsement/disclosure guidelines compliance

The NIL Practice Group members are committed to our firm's core values of reliability, responsiveness, and value-added legal services. We thrive to keep up with a changing landscape of laws and regulations surrounding the commercialization of NIL rights, and we look forward to continuing to serve those interested and involved in this space.