FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

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June 16, 1986

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20004

Dear Mr. Steele:

This Complaint is filed with the Federal Election Commission ("FEC") pursuant to 2 U.S.C. 432(e)(1), 2 U.S.C. 434(b)(4)(A), 2 U.S.C. 441b, 11 C.F.R. 101.1(a), 11 C.F.R. 104.3(b)(2)(i), 11 C.F.R. 106.3(a) and (b), and 11 C.F.R. 114.9(e) against Tom McMillen ("McMillen"), the McMillen for Congress Committee, 2 Village Green, Crofton, Maryland 21114, and the Capital Bullets, Inc. (hereinafter "Washington Bullets").

I. INTRODUCTION

Tom McMillen is guilty of a flagrant travelling violation and the FEC must blow the whistle. From July 1985 until he retired with the elimination of the Washington Bullets from the playoffs on April 27, 1986, McMillen had two pursuits. He toured the country playing in the National Basketball Association ("NBA") and, at the

same time, was a candidate for Congress from Maryland's 4th Congressional District.

Reports on file with the FEC suggest that McMillen combined his pursuits lucratively -- and illegally. During that period he received contributions totalling $70,000 from supporters in 17 NBA cities. During those same 10 months, McMillen's Washington Bullets visited those cities 42 times for NBA games. McMillen has freely admitted conducting fundraising activities in NBA cities while travelling for the Bullets. See Exhibits 1 & 2. Despite the clear language of the law, McMillen has failed either to reimburse the Bullets for this travel, 11 C.F.R. 106.3(a) and (b), allocate the travel to his campaign, id., or report any of it as expenditures on his campaign's FEC reports, id., 2 U.S.C. 434(b)(4)(A).

The FEC must investigate this persistent pattern that demonstrates the height of arrogance -- McMillen's acceptance of illegal corporate contributions made by the Washington Bullets that furthered the McMillen campaign's fundraising, 2 U.S.C. 441b, and the McMillen campaign's practice of avoiding reporting and public scrutiny. 2 U.S.C. 434(b)(4). It is bad enough that McMillen thinks good dribbling qualifies him for the House of Representatives, but it's time for the FEC to call a foul when an NBA team that is a corporation subsidizes a candidate's travel and fundraising. This is raising "palming" violations to a new art form.

In addition, McMillen violated 2 U.S.C. 432(e) by delaying filing his Statement of Candidacy until October 29, 1985. According to the McMillen campaign's FEC reports, this is well after he had

raised $5,000, automatically triggering the fifteen-day period in which a federal candidate must file. 2 U.S.C. 431(2).

The facts of this situation and the provisions of the Federal Election Campaign Act ("FECA") demand further investigation by the FEC to expose this fundamental abuse of the federal election laws.

II. THE LAW

A. Reporting Travel

Federal election law includes precise rules governing travel by federal candidates when their trip includes campaign activities or fundraising:

> Where a candidate conducts any campaign-related activity in a stop, the stop is a campaign-related stop and travel expenditures made are reportable.

11 C.F.R. 106.3(b)(3). The regulations also hold that "travel expenses paid for by a candidate from personal funds, or from a source other than a political committee, shall constitute reportable expenditures if the travel is campaign-related". 11 C.F.R. 106.3(b)(1). In addition, "[a]ll expenditures for campaign-related travel paid for by a candidate from a campaign account or by his or her authorized committees or by any other political committee shall be reported." 11 C.F.R. 106.3(a).

Thus, if a candidate visits a city and conducts any planned campaign activities (such as soliciting funds or advocating his election), the trip is "campaign related." The expenditures for that trip are allocable to the candidate's campaign and must be

included on the candidate's committee's FEC reports even if the candidate was also travelling as part of his regular job.

B. Corporate Contributions

Corporate contributions are specifically prohibited.

> It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office. . . .

2 U.S.C. 441b(a). This prohibition applies whether the contribution is in the form of money, goods or services. Candidates cannot accept contributions of transportation from corporations, or from acquaintances who are corporate executives and have the use of their company's plane.[1/]

C. Failure to Report

The foundation of the FECA is the requirement that campaigns report their expenditures and contributions. It is this public scrutiny of a campaign's activities that, according to the statutory scheme, is the principle safeguard against abuse. By failing to report disbursements for travel, a campaign not only violates the FECA, 2 U.S.C. 434(b)(4), but also violates the public trust by hiding from view the key fundraising tool of the campaign.

1/ A candidate, or person travelling on behalf of a candidate, who uses an airplane which is owned or leased by a corporation or labor organization other than a corporation or labor organization licensed to offer commercial services for travel in connection with a Federal election must, in advance, reimburse the corporation or labor organization for the cost of the travel at rates spelled out in the FECA. 11 C.F.R. 114.9(e).

D. Filing Statement of Candidacy in Timely Manner

The FECA expressly holds that an individual becomes a candidate for federal office when his campaign raises more than $5,000. 2 U.S.C. 431(2); 11 C.F.R. 100.3(a)(1). Upon reaching this threshhold, the candidate has 15 days to file a Statement of Candidacy (FEC Form 2). 2 U.S.C. 432(e)(1); 11 C.F.R. 101.1(a). Failure to do so is a violation of the FECA.

II. FACTS

Since McMillen began raising money for the 1986 election, he has received more than $70,000 of his campaign contributions from contributors living in metropolitan areas with an NBA franchise.[2/] The McMillen For Congress Committee's FEC reports for July 31, 1985 through April 15, 1986 reveal a persistent pattern of contributions being received in large blocks either on, or a short time after, the Bullets' appearance in that NBA city. See Exhibit 3, attached. Yet McMillen's campaign committee reports only limited disbursements for travel, none of them for the "purpose" of reimbursing the Bullets or for McMillen's travel to the NBA cities where he raised funds. This warrants an FEC investigation into whether McMillen's willful manipulation of his position as a

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2/ In total, the McMillen campaign reported receipt of $70,192 from NBA cities: New York - $32,136; Los Angeles - $7,450; Cleveland - $5,710; San Antonio/Dallas - $4,850; Atlanta - $4,786; Denver - $3,910; Philadelphia - $2,475; Indianapolis - $2,450; New Jersey - $1,875; Detroit - $1,250; Milwaukee - $1,050; Portland - $1,000; Boston - $950; Chicago - $250, and Utah - $50.

professional basketball player violated 2 U.S.C. 434(b)(4)(A), 2 U.S.C. 441b and 11 C.F.R. 106.3(a) and (b) and 114.9(e) since he failed to report illegal corporate contributions that drastically reduced the costs of his fundraising.

The flagrant nature of this violation is obvious from published news articles reporting McMillen's stated objective of using his travel with the Bullets to advocate his election and solicit funds. As The (Annapolis, Maryland) Capitol reported on February 3, 1986:

> . . . many of McMillen's out-of-state contributions came from people he has met through his travels with the Washington Bullets . . .
>
> Jay H. Zises of New York City is a sports fan who held a fund-raiser for McMillen . . .

(Attached as Exhibit 1). The McMillen campaign's FEC reports and the Bullets 1985-86 schedule provide abundant examples of apparent wrongdoing in both 1985 and 1986.[3/]

In 1985, McMillen's Bullets travelled to New Jersey (in the New York suburbs) on November 5 and December 28 and to New York on

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3/ An FEC investigation is needed to uncover the full scope of McMillen's scheme because the FECA does not require candidate committees to report the dates contributions are made or the dates disbursements are actually incurred. Under the FECA, the "date of receipt" of a contribution listed in the publicly filed reports is the date the campaign "obtains possession of the contribution," 11 C.F.R. 102.8(a), rather than the date the check is written or mailed. Similarly, the "date of disbursement" for an expenditure listed in the publicly filed reports is the date that the expenditure is made by the campaign, 11 C.F.R. 104.3(b)(4)(i), rather than the date on which it was incurred. Thus, the bank accounts of McMillen's campaign committee must be investigated by the FEC to uncover the full extent of his illegal campaign fundraising scheme.

November 19. McMillen's campaign reported receiving a consistent flow of contributions from New York fans totalling $6,786 from early November through the end of 1985. Exhibit 3. Yet McMillen's campaign reported no disbursements for travel to New York, not even for the Zises fundraiser. See Exhibit 1.

The Bullets opened the regular season in Atlanta on October 25, 1985. In the month following that road trip, McMillen's campaign reported receiving $1,100 in contributions from the Atlanta area, with an additional $350 arriving within the next two weeks. A $72.00 reimbursement was made by the McMillen Committee to an Atlanta patron on October 24 for food and beverage. But no travel reimbursements appear on the McMillen Committee's FEC report for a trip to Atlanta.

The Bullets travelled to Boston on October 9 for a pre-season game and again on November 15. Boston fans kicked in $950 to McMillen's campaign before the end of 1985.

November 25-26 took the Bullets to Dallas and San Antonio. On December 3, the McMillen campaign reported receiving $1,250 from Texas fans. Again, the McMillen campaign failed to report any disbursements for travel to Texas.

The close of 1985 brought a flood of new contributions from NBA cities McMillen visited with the Bullets. The McMillen campaign reported receiving $2,660 on December 31. Those contributions included $1,350 attributable to the generosity of New York and New Jersey fans (November 19 and December 28); $510 from Cleveland (where the Bullets played October 29); $200 from Philadelphia

(December 4), and $100 from Boston (November 15). But, again, there are no disbursements for travel costs to those cities on the FEC reports.

Despite the apparent fundraising contacts and events throughout 1985 in different NBA cities, the McMillen Committee's Year-End Report reflected only three travel-related entries -- none of them for the "purpose" of reimbursing the Bullets or paying for travel to an NBA city. The FEC reports indicate an October 15 disbursement to Freeway Airport, Inc. of Maryland for $870, a December 3 entry to Talbert Transportation of $135 for bus rental and an October 3 "travel reimbursement" to McMillen for $173. Thus, McMillen violated the FECA (1) if he conducted <u>any</u> campaign related activity during his trips to any NBA city to which the Bullets paid his travel costs and (2) if he conducted <u>any</u> campaign related activity on an out-of-town trip and failed to report the cost of his travel as a campaign disbursement.

McMillen did not reform with the start of the New Year, as evidenced by the NBA schedule and the McMillen campaign's FEC First Quarter Report for January 1, 1986 to March 30, 1986.

The Bullets travelled to Los Angeles to play the Lakers on January 5, and the Clippers the next month on February 17. The McMillen campaign reported receiving contributions from the Los Angeles area, no doubt due to McMillen's efforts on those trips, on January 15 ($250), February 6 ($100), February 14 ($1,850), February 19 ($750), February 28 ($2,050), March 14 ($250) and March 26 ($100).

McMillen's campaign does report disbursements for these Los Angeles trips -- a disbursement for "postage" on January 29 to a Beverly Hills company and a disbursement for "limo service" in Los Angeles paid on February 28. But the campaign fails to report any disbursement for McMillen's travel to Los Angeles -- although he was there and playing for the Bullets, see Bullets' schedule (attached as Exhibit 4) and there raising money for his congressional campaign, as confirmed by The Washington Post, which reported on April 16, 1986: "As he had done earlier, McMillen received the backing of a number of celebrities, including a group who attended a Beverly Hills reception given by entertainment executive Lew Wasserman." See Exhibit 2.

Texas fans contributed to McMillen's campaign, with the contributions reported shortly after the Bullets came to town. The Bullets visited Houston on January 11, and McMillen's campaign reported $1,000 in contributions received on January 30. The McMillen campaign failed to report any disbursements for travel to Texas.

Milwaukee hosted McMillen's Bullets on January 16, 1986. A little over two weeks later McMillen's campaign reported $1,000 in contributions from the area. The Bullets visited again on February 28, and on March 14 another contribution ($50) was reported.

The Bullets visited Denver on February 18. The McMillen campaign on February 28 reported receiving contributions from Denver fans totalling $2,860. Another $100 came in on March 6, with $50

more on March 14 and $300 more on March 26. No reimbursements for travel to Denver were reported.

The Bullets travelled to Indianapolis on January 29, February 25, and March 14. Indianapolis patrons contributed $1,125 to McMillen -- $875 on February 14, $250 on February 19, $275 on March 14 (when the Bullets were in town) and $50 on March 26. No disbursements for travel were reported.

Cleveland, Ohio, welcomed the Bullets on March 12 and added $100 to the campaign fund on March 14. An additional $500 was reported on March 31. The McMillen campaign failed to report any disbursements for travel to Cleveland.

The saga concluded in Philadelphia where the Bullets played on February 20 and March 21. The McMillen campaign reported contributions on March 14, March 26 and March 31 totalling $250. The McMillen campaign again reported no disbursements for travel.

According to the First Quarter FEC Report, McMillen received unspecified travel reimbursements on January 22 ($713) and February 3 ($590) -- far less than the cost that the Bullets paid for McMillen's NBA travel. None of McMillen's FEC reports list the "purpose" of the disbursement as reimbursing the Bullets or paying for McMillen's travel to an NBA city.

The law states that if McMillen participated in <u>any</u> fundraising efforts on <u>any</u> out-of-town trip, his total travel expenditures must be reported and paid for by a source other than a corporation. McMillen's campaign shows no such disbursements. And

the federal election laws make clear that any travel by a candidate on aircraft paid for by a corporation must be paid for in advance by the campaign at the cost of a first-class ticket. If McMillen was travelling on the Bullets' tab, he accepted an illegal corporate contribution. If the Bullets paid for McMillen's travel, they made an illegal corporate contribution.

The basis of this Complaint is the orchestrated and systematic expenditures which appear to have been made by the Washington Bullets, a corporation, on behalf of its former employee, Tom McMillen, and of the gross negligence of McMillen and his McMillen for Congress Committee in accepting these illegal contributions.

IV. VIOLATIONS

Reports filed by the McMillen campaign portray a fundraising effort that parallels the Washington Bullets 1985-1986 schedule. The reports suggest persistent abuse of the FECA by the McMillen campaign but need FEC investigation to uncover the full extent of the scheme.

As the facts make obvious, McMillen took full advantage of his employment with the Washington Bullets to orchestrate fundraising events to coincide with his appearances in NBA cities. Exhibit 3. Under the law, any time McMillen conducted any campaign-related activity in a city, the trip became a campaign-related stop and the travel expenditures became reportable. 11 C.F.R. 106.3(b)(2). Thus, if congressional candidate Tom McMillen, in town to play for the Washington Bullets,

contacted any potential contributors, advocated his election to anyone, actually received any contributions, or subsequently received any contributions as a result of his contacts on any of his trips, then the trip was campaign related and fully reportable and allocable.

Despite this clear legal requirement, the McMillen campaign failed to report any travel-related disbursements to any of the NBA cities in which McMillen raised funds in conjunction with Washington Bullets games in those cities. By masking this campaign activity from public view, McMillen violated the most basic tenant of election law -- that public scrutiny of a campaign's activities is the crucial protection against abuse.

Accordingly, McMillen violated the FECA on every trip during the 1985-86 NBA season in which he conducted any campaign related business, including any contact with potential donors. The definitive proof that he violated the law comes from his FEC reports which show the persistent pattern of Bullet games in a city followed within the next few weeks by contributions from that city.

The fact that fundraisers were held in close proximity to the arrival and/or departure of the Washington Bullets, and the Committee's failure to provide sufficient evidence of any travel-related reimbursements to attend these fundraisers, indicates McMillen's acceptance of transportation provided by the Bullets in the course of his employment while, at the same time, he was raising funds and campaigning in his effort to be elected to the United States House of Representatives.

Thus, McMillen is guilty of accepting illegal corporate contributions from the Washington Bullets (2 U.S.C. 441b) to pay for his travel (11 C.F.R. 106.3(a),(b), 11 C.F.R. 114.9(e)) and of failing to disclose and report all his travel expenditures (2 U.S.C. 434(b)(4)(A), 11 C.F.R. 104.3(b)(2)(i)), and the Washington Bullets are guilty of making illegal corporate contributions to the McMillen campaign (2 U.S.C. 441b). In addition, McMillen's failure to file as a candidate in a timely fashion violates 2 U.S.C. 432(e), 2 U.S.C. 431(2), and 11 C.F.R. 101.1(a).

V. CONCLUSION

The undersigned hereby requests that the FEC investigate these potential violations and enforce, as necessary, the FECA and the FEC's regulations protecting the proper use of campaign funds by candidates for the United States House of Representatives.

VI. VERIFICATION

The undersigned swears that the allegations and facts set forth in this Complaint are true to the best of his knowledge, information and belief.

Subscribed and sworn to before me this 19th day of June, 1986.

Notary Public

My Commission Expires: July 1, 1990

The Capital
2/3/86

Exhibit 1

Celebs provide a boost

McMillen's fund doubles Neall's

By PAT RIVIERE
Staff Writer

With help from such national celebrities as Howard Cosell, Democratic candidate Tom McMillen has raised twice as much as Republican Del. Robert Neall in the race for the 4th Congressional District seat.

McMillen, a professional basketball player and Crofton businessman, has raised $190,262.09, according to his financial report filed with the Federal Elections Commission on Friday.

Neall, a Davidsonville banker and House minority leader, reported raising $96,731.78.

McMillen's campaign war chest was boosted with donations from national celebrities like Cosell, Sen. John D. Rockefeller and author Herman Wouk, while Neall's contributions were primarily from Maryland residents.

Both candidates said they reached their fund-raising goals for the year.

Neall reported receiving 90 percent of his funds from Maryland residents. McMillen reported receiving 52 percent of his money from in-state.

Both candidates reported about the same percentage of individual and political action committee contributuions. McMillen received 69 percent of his contributions from individuals while Neall reported 72 percent of his funds came from individuals.

Jerry Grant, McMillen's campaign manager, said many of McMillen's out-of-state contributions came from people he has met through his travels with the Washington Bullets and from people who routinely give to political campaigns.

Jay H. Zises of New York City is a sports fan who held a fund-raiser for McMillen that netted several $500 contributions.

Cosell contributed $1,000 to McMillen, Rockefeller gave $25 and Wouk gave $250. Manhattan real estate developer Donald Trump contributed $1,000.

McMillen also got contributions from north county Democratic Clubs. Lake Shore gave $260; Roland Terrace, $200; and Stoney Creek, $200.

Neall, who has been endorsed by retiring

(Continued on Page 8, Col. 1)

McMillen funds top Neall's

(Continued from Page 1)

Rep. Marjorie S. Holt, R-Anne Arundel, received $1,000 from the Friends of Marjorie Holt committee.

"What is most reassuring to me is that over 70 percent of the total receipts came from within the district, from the people I hope to represent in Congress," Neall said.

Neall's campaign got a $10,445.64 boost from Neall's state campaign committee.

McMillen has loaned his campaign $28,409.14 since 1983.

Some contributors gave to both candidates. Leo Doyle of Crofton gave $40 to McMillen and $50 to Neall.

Mr. and Mrs. Sike Sharigan of Annapolis gave $100 to McMillen and Nancy Sharigan gave $350 to Neall.

Neall reported having $66,200.26 in available cash while McMillen reported a $85,838.33 balance.

The 4th Congressional District includes all of Anne Arundel County and parts of Howard and Prince George's counties.

Judith A. Balent, 43, a Pasadena businesswoman, announced Friday that she will oppose Neall for the 4th District's Republican nomination.

While McMillen remains the only announced Democratic candidate, Annapolis businessman John Pantiledes has hinted that he will oppose McMillen in the Democratic primary.

Exhibit 2
The Washington Post
April 16, 1986

Rep. Mikulski Surges in Md. Fund Raising

By Michel McQueen
and Sandra Sugawara
Washington Post Staff Writers

Rep. Barbara A. Mikulski, who has a commanding lead in statewide polls in her bid to become Maryland's next U.S. senator, has far surpassed her opponents in raising money in the first three months of the year, according to campaign finance reports filed yesterday with the Federal Election Commission.

Mikulski, a Baltimore Democrat, led the pack of four Democrats and two Republicans by raising $300,586 from Jan. 1 to March 31—a third more than her nearest rival. Overall, her total campaign fund-raising effort is about even with that of Rep. Michael D. Barnes, a Montgomery County Democrat, who was more successful at raising funds last year.

"A year ago, opponents said she couldn't win votes, but the polls showed she could . . . . Last fall, opponents said she couldn't raise the money, but this quarter showed she could raise the money," said an exultant Wendy Sherman, Mikulski's campaign manager.

In the most hotly contested race in Virginia, for the 10th Congressional District seat, challenger John G. Milliken, a Democratic member of the Arlington County Board, raised more money during the latest quarterly reporting period than GOP incumbent Frank Wolf. Milliken, who announced his candidacy Feb. 15, raised $112,722, compared with Wolf's $93,058. Wolf still had more cash on hand for his campaign because of funds raised last year.

In the crowded race to replace Barnes in Maryland's Montgomery County-based 8th Congressional District, state Sen. Stewart Bainum Jr. continued to outdistance his six opponents in fund raising, collecting $149,708 in the three-month period ending March 31.

Mikulski's dominance in recent fund raising appears to solidify her position as the front-runner in the crowded race to replace retiring Republican Sen. Charles McC. Mathias Jr., whom Mikulski unsuccessfully challenged in 1974 when she

See FEC, C8, Col. 1

FEC, From C1

was a member of the Baltimore City Council.

Barnes, with $176,212, was second among the Democrats in fund raising during the most recent quarter, which he ended with slightly more cash on hand than Mikulski. He reported $303,710 in cash, compared with $286,147 for Mikulski.

Gov. Harry Hughes, who formally entered the race only two days ago but has been raising funds for months, collected $132,000, the least of the four Democrats.

Baltimore County Executive Donald P. Hutchinson, struggling to remain a factor in the race after dismal showings in several polls, remained competitive in raising funds with receipts of $156,380. With several hundred thousand dollars available for his Senate race from a political treasury he established when he became county executive, he has consistently had the most cash on hand of all the candidates and wound up this reporting period with $375,100.

Starting today, he will dip into his campaign fund for the first time with a series of commercials designed to increase his name recognition.

The five-minute commercials will air on Baltimore television stations for one week, and will be followed by one-minute and 30-second spots for several weeks afterward.

Of the two Republicans in the Senate race, Baltimore businessman Richard P. Sullivan raised $191,746, almost twice as much as the $108,822 collected by former White House aide Linda Chavez. However, Sullivan contributed $100,000 of his own money to his campaign. The remainder came mainly from $1,000 contributions from business executives, while Chavez, who also collected from business leaders, received four times as much from political action committees.

Several other candidates, including Debra Freeman, a supporter of extremist Lyndon LaRouche, and Bob Kaufman, a member of the Socialist Party, are also vying for the Senate seat. They could not be reached yesterday for details about their campaign finances. All of the financial reports for this quarter had to be postmarked by midnight last night and filed with the FEC.

In Montgomery County, the closest rival to the leading fund-rainer, Bainum, was Montgomery County Council member Esther P. Gelman. The last to enter the congressional race formally, Gelman reported raising $78,776, including $13,000 that she originally collected when she planned to run for reelection to the council.

But Bainum, with a total of $202,046, has received more than twice as much as the candidate with the next highest receipts, Republican Del. Constance Morella.

CAMPAIGN FUNDS

AMOUNT RAISED FROM JAN. 1 TO MARCH 31, 1986

Candidate	Affiliation	Amount
Maryland candidates for U.S. Senate		
Barbara A. Mikulski	Democrat	$300,586
Michael Barnes	Democrat	$176,212
Donald P. Hutchinson	Democrat	$156,380
Harry R. Hughes	Democrat	$132,000
Richard P. Sullivan	Republican	$191,746
Linda Chavez	Republican	$108,822
Maryland candidates for Congress, 8th District		
Stewart Bainum Jr	Democrat	$149,708
Esther P. Gelman	Democrat	$78,776
Leon G. Billings	Democrat	$29,493
Carlton Sickles	Democrat	$21,395
Wendell Holloway	Democrat	$11,447
Constance Morella	Republican	$38,495
William Shephard	Republican	$11,612
Maryland candidates for Congress, 4th District		
C. Thomas McMillan	Democrat	$69,018
Robert R. Neall	Republican	$47,077
Virginia candidates for Congress, 10th District		
John G. Milliken	Democrat	$112,722
Frank Wolf	Republican	$93,058

SOURCE: Federal Election Commission

In the already hard-fought race to replace Republican Rep. Marjorie Holt in the Anne Arundel-based 4th Congressional District, Republican Del. Robert Neall slightly narrowed the fund-raising gap between himself and his chief Democratic rival, Washington Bullets basketball player Tom McMillen.

McMillen, who collected more money than any other candidate for federal office in Maryland in the previous reporting period, raised $69,018, compared with Neall's $47,077 in the most recent quarte As he had done earlier, McMilla received the backing of a number celebrities, including a group wh attended a Beverly Hills receptic given by entertainment executiv Lew Wasserman. But McMille who already has spent abou $31,000 on direct-mail and med efforts, ended the period with on about $4,000 more cash on har than Neall.

Staff Writer Molly Sinclair contributed to this report.

CONTRIBUTION HISTORY
(1985-86 Season)

Contributions From:

City	Amount Received	Date	Dates of Bullets Visits
New York			11/05/85
	$ 500	11/12/85	
	350	11/19/85	11/19/85
	100	12/03/85	
	3,536	12/09/85	
	1,000	12/13/85	
			12/28/85
	1,350	12/31/85	
Los Angeles			01/05/86
			01/06/86
	250	01/15/86	
	100	02/06/86	
			02/13/86
	1,850	02/14/86	
			02/17/86
	750	02/19/86	
	2,050	02/28/86	
	250	03/14/86	
	100	03/26/86	
Cleveland			10/29/85
	610	12/31/85	
			02/22/86
			03/12/86
	100	03/14/86	
	500	03/31/86	
San Antonio/Dallas/ Houston			11/26/85
			11/27/85
	1,250	12/03/85	
			01/11/86
	1,000	01/30/86	
Atlanta			10/25/85
	600	10/29/85	
	100	11/05/85	
	100	11/11/85	
	200	11/12/85	
	100	11/19/85	
	100	12/06/85	
	250	12/17/85	
Denver			02/18/86
	2,860	02/28/86	
	100	03/06/86	
	50	03/14/86	
	300	03/26/86	

Contributions From:

City	Amount Received	Date	Dates of Bullets Visits
Philadelphia			12/04/85
	100	12/19/85	
	200	12/31/85	
			02/21/86
	100	03/14/86	
			03/21/86
	50	03/26/86	
	100	03/31/86	
Indianapolis			01/29/86
	875	02/14/86	
	250	02/19/86	
			02/25/86
	275	03/14/86	
			03/15/86
	50	03/26/86	
New Jersey			11/05/85
	125	12/09/85	
			12/28/85
	500	12/31/85	
Detroit			11/12/85
	1,000	12/06/85	
			12/11/85
			02/01/86
	250	03/06/86	
Milwaukee			01/16/86
	1,000	02/03/86	
			02/28/86
	50	03/14/86	
			03/18/86
Boston			10/09/85
	350	11/05/85	
	500	11/14/85	
			11/15/85
	100	12/31/85	
			02/05/86
	100	03/14/86	
Chicago			01/14/86
	25	02/06/86	
	25	02/14/86	
	100	03/26/86	

Exhibit 4

Bullets 1985–86 Schedule

OCTOBER

Fri.	25	@ Atlanta (WDCA)	7:30 p.m.
Tue.	29	@ Cleveland (WDCA)	7:30 p.m.
Thu.	**31**	**CLEVELAND (WTOP, HTS)**	**7:30 p.m.**

NOVEMBER

Sat.	**2**	**BOSTON (WTOP, HTS)**	**7:30 p.m.**
Tue.	5	@ New Jersey (WDCA)	7:30 p.m.
Wed.	**6**	**SAN ANTONIO (HTS)**	**7:30 p.m.**
Fri.	**8**	**DETROIT (WTOP, HTS)**	**7:30 p.m.**
Tue.	12	@ Detroit (WTOP)	7:30 p.m.
Fri.	15	@ Boston (WDCA, WTOP)	7:30 p.m.
Sat.	**16**	**PHILADELPHIA (WTOP, HTS)**	**7:30 p.m.**
Tue.	19	@ New York (WDCA)	7:30 p.m.
Wed.	**20**	**CLEVELAND (HTS)**	**7:30 p.m.**
Fri.	**22**	**NEW YORK (WTOP)**	**8:00 p.m.**
Sun.	**24**	**CHICAGO (WTOP, HTS)**	**6:00 p.m.**
Tue.	26	@ Dallas (WTOP)	8:30 p.m.
Wed.	27	@ San Antonio (WTOP)	8:30 p.m.
Sat.	**30**	**DETROIT (WTOP)**	**7:30 p.m.**

DECEMBER

Tue.	**3**	**PORTLAND (WTOP)**	**7:30 p.m.**
Wed.	4	@ Philadelphia (WDCA, WTOP)	7:30 p.m.
Fri.	**6**	**SEATTLE (WTOP, HTS)**	**7:30 p.m.**
Sun.	**8**	**SACRAMENTO (WTOP)**	**6:00 p.m.**
Wed.	11	@ Detroit (WDCA, WTOP)	7:30 p.m.
Thu.	**12**	**MILWAUKEE (WTOP, HTS)**	**7:30 p.m.**
Tue.	**17**	**UTAH (WTOP, HTS)**	**7:30 p.m.**
Thu.	19	@ Chicago (WDCA, WTOP)	8:30 p.m.
Sat.	**21**	**L.A. LAKERS (WTOP, HTS)**	**8:00 p.m.**
Sun.	**22**	**NEW YORK (WTOP, HTS)**	**6:00 p.m.**
Fri.	**27**	**ATLANTA (WTOP)**	**7:30 p.m.**
Sat.	28	@ New Jersey (WDCA)	7:30 p.m.
Mon.	**30**	**INDIANA (WTOP)**	**6:00 p.m.**

JANUARY

Thu.	2	@ New York (WDCA, WTOP)	7:30 p.m.
Fri.	**3**	**MILWAUKEE (WTOP)**	**8:00 p.m.**
Sun.	5	@ L.A. Lakers (WDCA, WTOP)	10:30 p.m.
Mon.	6	@ Sacramento (WTOP)	10:30 p.m.
Wed.	8	@ Phoenix (WTOP, HTS)	9:30 p.m.
Thu.	9	@ Utah (WTOP)	9:30 p.m.
Sat.	11	@ Houston (WDCA)	8:30 p.m.
Mon.	**13**	**L.A. CLIPPERS (WTOP)**	**7:30 p.m.**
Tue.	14	@ Chicago (WDCA)	8:30 p.m.
Thu.	16	@ Milwaukee (WDCA, WTOP)	8:30 p.m.
Fri.	**17**	**NEW JERSEY (WTOP, HTS)**	**7:30 p.m.**
Sun.	**19**	**CHICAGO (WTOP)**	**1:00 p.m.**
Thu.	**23**	**PHOENIX (WTOP)**	**7:30 p.m.**
Sat.	**25**	**ATLANTA (HTS)**	**7:30 p.m.**
Wed.	29	@ Indiana (WDCA)	7:30 p.m.
Fri.	**31**	**BOSTON (WTOP, HTS)**	**7:30 p.m.**

FEBRUARY

Sat.	**1**	@ Detroit (WTOP)	7:30 p.m.
Wed.	**5**	@ Boston (WDCA, WTOP)	7:30 p.m.
Thu.	**6**	**DETROIT (WTOP)**	**7:30 p.m.**
Sun.	**9**	**ALL-STAR GAME AT DALLAS**	**1:30 p.m.**
Tue.	11	@ Portland (WTOP)	10:30 p.m.
Thu.	13	@ Golden State (WTOP)	10:30 p.m.
Sat.	15	@ Seattle (WTOP)	10:30 p.m.
Mon.	17	@ L.A. Clippers (WTOP)	10:30 p.m.
Tues.	18	@ Denver (WTOP, HTS)	9:30 p.m.
Fri.	21	@ Philadelphia (WDCA, WTOP)	7:30 p.m.
Sat.	22	@ Cleveland (WTOP)	8:00 p.m.
Mon.	**24**	**NEW JERSEY (WTOP, HTS)**	**7:30 p.m.**
Tue.	25	@ Indiana (WTOP)	7:30 p.m.
Thu.	**27**	**GOLDEN STATE (WTOP, HTS)**	**7:30 p.m.**
Fri.	28	@ Milwaukee (WDCA, WTOP)	9:00 p.m.

MARCH

Sun.	**2**	**MILWAUKEE (WTOP)**	**1:00 p.m.**
Tue.	4	@ New York (WDCA)	7:30 p.m.
Thu.	**6**	**NEW YORK (WTOP, HTS)**	**7:30 p.m.**
Sat.	**8**	**BOSTON (WTOP, HTS)**	**7:30 p.m.**
Wed.	12	@ Cleveland (WTOP, HTS)	7:30 p.m.
Fri.	**14**	**DENVER (WTOP, HTS)**	**7:30 p.m.**
Sat.	15	@ Indiana (WDCA)	7:30 p.m.
Mon.	**17**	**NEW JERSEY (WTOP, HTS)**	**7:30 p.m.**
Tue.	18	@ Milwaukee (WTOP)	8:30 p.m.
Fri.	21	@ Philadelphia (WDCA)	7:30 p.m.
Sat.	**22**	**INDIANA (WTOP, HTS)**	**7:30 p.m.**
Mon.	**24**	**PHILADELPHIA (WTOP, HTS)**	**7:30 p.m.**
Wed.	**26**	**DALLAS (WTOP, HTS)**	**7:30 p.m.**
Fri.	28	@ Boston (WDCA)	7:30 p.m.
Sat.	**29**	**HOUSTON (WTOP, HTS)**	**7:30 p.m.**

APRIL

Tue.	1	@ Atlanta (WDCA)	7:30 p.m.
Thu.	3	@ New Jersey (WDCA)	7:30 p.m.
Fri.	**4**	**ATLANTA (WTOP, HTS)**	**7:30 p.m.**
Sun.	**6**	**CLEVELAND (WTOP)**	**1:00 p.m.**
Tue.	**8**	**INDIANA (WTOP, HTS)**	**7:30 p.m.**
Fri.	11	@ Chicago (WDCA, WTOP)	8:30 p.m.
Sun.	**13**	**PHILADELPHIA (WTOP, HTS)**	**12:30 p.m.**

NOTE: All Times Eastern Standard. HTS schedule subject to change and additions.

Pre-Season

10/4 Geo. Mason & (NY)
10/9 Winchester, MA (v. Boston)
10/12 Baltimore & (DALLAS)
10/19 Chicago (in Chicago)
10/20 Richmond — playing Philadelphia

Post-Season

4/18 at Philadelphia
4/20 at Philadelphia
4/22 at D.C.
4/24 at D.C.
4/27 at Philadelphia

permanent

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 17, 1986

Mr. Douglas Ritter, Jr.
P.O. Box 1044
Severna Park, MD 21146

Dear Mr. Ritter:

This letter will acknowledge receipt of a complaint filed by you which alleges possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Mr. Tom McMillen, the McMillen for Congress Committee, and the Capital Bullets Basketball Club, Inc. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to this office. We suggest that this information be sworn to in the same manner as your original complaint. For your information, we have attached a brief description of the Commission's procedures for handling complaints. We have numbered this matter under review MUR 2188. Please refer to this number in all future correspondence. If you have any questions, please contact Lorraine F. Ramos at (202) 376-3110.

Sincerely,

Charles N. Steele
General Counsel

By: Lawrence M. Noble
Deputy General Counsel

Enclosure

Pre-Season

10/4 Geo. Mason & (NY)
10/9 Worchester, MA (v. Boston)
10/12 Baltimore & (DALLAS)
10/19 Chicago (in Chicago)
10/20 Richmond — playing Philadelphia

Post-Season

4/18 at Philadelphia
4/20 at Philadelphia
4/22 at D.C.
4/24 at D.C.
4/27 at Philadelphia

permanent

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 17, 1986

The Capital Bullets Basketball Club, Inc.
1 Harry S. Truman Drive
Landover, MD 20785

Re: MUR 2188

Gentlemen:

This letter is to notify you that the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2188. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

If you have any questions, please contact John Drury, the attorney assigned to this matter, at (202) 376-8200. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

By: Lawrence M. Noble
Deputy General Counsel

Enclosures
Complaints
Procedures
Designation of Counsel Statement

Permanent

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 17, 1986

Mr. Tom McMillen
2 Village Green
Crofton, MD 21114

Re: MUR 2188

Dear Sir:

This letter is to notify you that the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2188. Please refer to this number in all future correspondence.

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If you have any questions, please contact John Drury, the attorney assigned to this matter, at (202) 376-8200. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

By: Lawrence M. Noble
Deputy General Counsel

Enclosures
Complaints
Procedures
Designation of Counsel Statement

permanent

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 17, 1986

McMillen for Congress Committee
2 Village Green
Crofton, MD 21114

Re: MUR 2188

Gentlemen:

This letter is to notify you that the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2188. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

If you have any questions, please contact John Drury, the attorney assigned to this matter, at (202) 376-8200. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

By: Lawrence M. Noble
Deputy General Counsel

Enclosures
Complaints
Procedures
Designation of Counsel Statement

GCC#1072

MANATT, PHELPS, ROTHENBERG, TUNNEY & EVANS
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
ATTORNEYS AT LAW
1200 NEW HAMPSHIRE AVENUE, N. W.
SUITE 200
WASHINGTON, D. C. 20036
TELEPHONE (202) 463-4300

LOS ANGELES
11355 WEST OLYMPIC BOULEVARD
LOS ANGELES, CALIFORNIA 90064
(213) 312-4000

July 29, 1986

Lawrence M. Noble
Deputy General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2188

Dear Mr. Noble:

On behalf of the McMillen for Congress Committee, I am requesting an extension of time of 15 days, until August 21, 1986, in which to respond to the complaint filed in the above referenced matter. The Committee received the complaint on July 22 and its response would be due on August 6 This extension is necessary in order to permit the Committee adequate time to review its contribution records and prepare a full response to the factual allegations of the complaint.

I appreciate your prompt consideration of this request. If you have any questions, I can be reached at 463-4320.

Sincerely,

David M. Ifshin
Manatt, Phelps, Rothenberg,
Tunney & Evans

DMI/ppl

GCH1072

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2188

NAME OF COUNSEL: David M. Ifshin

ADDRESS: Manatt, Phelps, Rothenberg, Tunney & Evans
1200 New Hampshire Avenue, N.W.
Suite 200
Washington, D.C. 20036

TELEPHONE: 202/463-4320

Of counsel:
Lyn Oliphant
2233 Wisconsin Avenue, N.W.
Suite 318
Washington, D.C.

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

7-24-96
Date

Signature

RESPONDENT'S NAME: GERALD L. GRANT - Director
McMILLEN for Congress

ADDRESS: 2 Village Green
Clinton MD 21114

HOME PHONE: 301-255-5266

BUSINESS PHONE: 301-858-0233

96 JUL 29 P5:08

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

3 3 0 4 0 5 7 1 8 7 4

GCC# 1073

Drury

Arent, Fox, Kintner, Plotkin & Kahn

Washington Square 1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

Joseph E. Sandler
(202) 857-6234

July 30, 1986

BY HAND

Lawrence M. Noble, Esq.
Deputy General Counsel
Federal Election Commission
Room 657
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2188

Dear Mr. Noble:

We represent the Capital Bullets Basketball Club Inc. (the "Bullets") in the above-referenced MUR. A statement of Designation of Counsel is enclosed.

The Bullets received the Complaint on July 21, 1986 and a response would be due on August 5, 1986. Some additional time will be required to review and analyze the relevant records and to prepare a full response. We respectfully request that the Commission grant an extension of time of 15 calendar days in which to file a response, so that the response would be due on August 20, 1986.

Thank you for your kind consideration.

Sincerely yours,

Joseph E. Sandler

Joseph E. Sandler

Enclosure

cc: John Drury, Esq. (w/encl. - By Hand)

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2188

NAME OF COUNSEL: Joseph E. Sandler

ADDRESS: Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D. C. 20036

TELEPHONE: (202) 857-6234

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

Date 7-29-86

Signature David M. Osnos
David M. Osnos,
Corporate Secretary

RESPONDENT'S NAME: Capital Bullets Basketball Club, Inc.
(T/A Washington Bullets)

ADDRESS: The Capital Centre
One Harry S. Truman Drive
Landover, Maryland 20785

HOME PHONE: (301) 229-0372

BUSINESS PHONE: (202) 857-6150

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 6, 1986

Joseph Sandler, Esquire
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

RE: MUR 2188
The Capital Bullets Basketball Club, Inc.

Dear Mr. Sandler:

This is in reference to your letter dated July 30, 1986, requesting an extension of 15 days to respond to the Commission's letter stating that a complaint has been filed against your client. After considering the circumstances presented in your letter, the Commission has determined to grant you your requested extension. Accordingly, your response will be due on August 20, 1986.

If you have any questions, please contact John Drury, the attorney assigned to this matter at (202) 376-8200.

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 6, 1986

David Ifshin, Esquire
1200 New Hampshire Avenue, NW
Suite 200
Washington, DC 20036

Re: MUR 2188
McMillen for Congress Committee

Dear Mr. Ifshin:

This is in reference to your letter dated July 29, 1986, requesting an extension of 15 days to respond to the Commission's letter stating that a complaint has been filed against your client. After considering the circumstances presented in your letter, the Commission has determined to grant you your requested extension. Accordingly, your response will be due on August 21, 1986.

In your July 30, 1986 telephone conference with John Drury of this Office, you indicated that you represent not only the McMillen for Congress Committee, but Tom McMillen as well. If this is so, then please have Mr. McMillen sign, date and return to this Office the enclosed Statement of Designation of Counsel. Since the Office of General Counsel cannot discuss with you MUR 2188 as it pertains to Mr. McMillen until he has designated you as his counsel, the completed statement should be forwarded to this Office as soon as possible.

If you have any questions, please contact John Drury, the attorney assigned to this matter at (202) 376-8200.

Sincerely,

Charles N. Steele
General Counsel

By: Lawrence M. Noble
Deputy General Counsel

Enclosure
Statement of Designation of Counsel

CCH#1275

86 AUG 20 A10:25

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2188

NAME OF COUNSEL: David M. Ifshin

ADDRESS: Manatt, Phelps, Rothenberg, Tunney & Evans
1200 New Hampshire Ave., N.W.
Suite 200
Washington, D.C. 20036

TELEPHONE: Ifshin - 463-4320
Oliphant - 333-4591

Carolyn U. Oliphant
Suite 318
2233 Wisconsin Ave., N.W.
Washington, D.C. 20007

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

8-14-86
Date

Signature

RESPONDENT'S NAME: C. Thomas McMillen

ADDRESS: c/o McMillen for Congress Committee
2 Village Green
Crofton, Maryland 21114

HOME PHONE:

BUSINESS PHONE: 858-0233

86 AUG 20 P3:14

3 3 0 4 3 7 1 8 8 4

FEC#1278

Arent, Fox, Kintner, Plotkin & Kahn

Washington Square 1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

Writer's Direct Dial Number

August 20, 1986

86 AUG 20 P3:20

RECEIVED
FEDERAL ELECTION COMMISSION
GENERAL COUNSEL

Lawrence M. Noble
Deputy General Counsel
Federal Election Commission
Room 657
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2188

Dear Mr. Noble:

This letter responds to the Complaint filed against the Capital Bullets Basketball Club, Inc. ("the Bullets") in the above-referenced matter. In essence, the Complaint charges that the Bullets made an illegal corporate contribution by furnishing their players with travel expenses to out-of-town basketball games, because one of those players, Tom McMillen, allegedly conducted campaign activity during his free time on some of those trips. For three reasons, that charge is utterly meritless:

First, the Bullets' conduct which is alleged to violate the Federal Election Campaign Act consisted of nothing more than providing travel and expenses to its players for out-of-town basketball games. The Bullets are legally obligated to provide such travel and expenses to all of their players under the Collective Bargaining Agreement between the National Basketball Association ("NBA") and the National Basketball Players' Association ("NBPA"), and by the team's

Uniform Player Contract with each player. Any attempt by the Bullets to require or accept reimbursement of such travel expenses, or to require that a player refrain from political activity during his free time on these trips as a condition for payment, would violate the two contracts, implicate the Bullets in grievance and arbitration procedures, and violate the National Labor Relations Act. Surely Congress did not intend or contemplate that a corporation would have to violate the federal labor laws to comply with FECA, nor that the Commission should become involved in regulating working conditions governed by collective bargaining agreements.

Second, the purposes and structure of FECA, the Commission's regulations, and common sense all compel a finding that, for purposes of § 441b, a corporation does not make an contribution or expenditure "in connection with any election" merely because its employee conducts campaign activity during his free time on a business trip which the company requires him to make, in the ordinary course of its business, to a place and at a time chosen by the company, and on which he makes no use of company time or resources beyond that needed to perform his job.

Third, section 106.3(b) of the Commission's regulations, on which the Complaint is primarily based, is irrelevant. The Bullets have no right, reason or desire to regulate the use of their players' free time while on the

road. It would be absurd to find that the team's trips for basketball games are transformed into "campaign stops" by a particular player's use of his free time over which the team has no control.

These points are discussed in more detail below.

I. The Bullets Were Legally Required To Cover McMillen's Travel Expenses Under Labor Agreements and the Federal Labor Laws

The only conduct by the Bullets alleged anywhere in the Complaint to violate FECA is that the Bullets paid the expenses of Tom McMillen for travel, with the team, to and from scheduled Bullets basketball games outside of Washington (i.e., "away" games). Indeed, the Bullets did furnish this travel and pay travel expenses for McMillen, in exactly the same way and to the same extent as they did for all members of the team. The Bullets were required to do so by their labor contracts and by the federal labor laws.

The National Basketball Players' Association ("NBPA") is the exclusive bargaining representative for players employed by NBA teams. The NBPA has entered a Collective Bargaining Agreement with the NBA, dated October 10, 1980, which remains in full force and effect with certain modifications not relevant here. A copy of the Agreement is attached hereto as Exhibit A.

Article V of the Collective Bargaining Agreement provides, in pertinent part:

> Section 1. Each Member agrees to use its best efforts to make the following arrangements for its players while they are "on the road":
>
> (a) To have their baggage picked up by the porters.
>
> (b) To have them stay in first class hotels.
>
> (c) To have extra-long beds available to them in each hotel.
>
> Section 2. Each Member agrees to provide first class transportation accommodations on all trips in excess of one hour, except when such accommodations are not available. (emphasis added).

Further, Article I of the Agreement requires that the contract between each player and his team be a Uniform Player Contract, in one of three versions attached to the Agreement; the version to be used depends on whether the player is a rookie or veteran and is to be employed for more than a single season. The Uniform Player Contract forms cannot be modified, except as specifically allowed in the Collective Bargaining Agreement. (The Uniform Player Contracts are attached hereto as Exhibit B.)

One of the paragraphs which appears in all three versions of the Uniform Player Contract, and cannot be amended, is paragraph 3 which provides:

> 3. The Club agrees to pay all proper and necessary expenses of the Player, including the reasonable board and lodging expenses of the Player while playing for the Club "on the road" and during training camp if the Player is not then living at home. The Player, while "on the road" (and at training camp only if the Club does not pay for meals directly), shall be paid a meal expense allowance as set forth in the Agreement currently in effect between the National Basketball Association and National Basketball Players Association. No deductions from such meal expense allowance shall be made for meals served on an airplane. While the Player is at training canmp (and if the Club does not pay for meals directly), the meal expense allowance shall be paid in weekly installments commencing with the first week of training camp. For the purposes of this paragraph, the Player shall be considered to be "on the road" from the time the Club leaves its home city until the time the Club arrives back at its home city. In addition, the Club agrees to pay $50.00 per week to the Player for the four weeks prior to the first game of the Club's schedule season that the Player is either in attendance at training camp or engaged in playing the exhibition schedule. (emphasis added).

These provisions obligated the Bullets to pay the travel expenses of every player, including McMillen, for all of the "away" games played by the Bullets during the Bullets' 1985-86 season.

In a letter to us, attached hereto as Exhibit C, the General Counsel of the NBA has confirmed that every NBA team "is unquestionably obligated to pay the traveling expenses (including transportation, lodging and meal money) of its players in connection with the club's 'away games.'" That is

what the Bullets did for McMillen during the 1985-86 season, and the Complaint alleges nothing more.

Indeed, the only way the Bullets could have avoided the conduct alleged to violate FECA would have been to require McMillen to reimburse them for travel expenses if he engaged in "political activity" (however defined) or to refrain from "political activity" during his free time on trips for "away" games, as a condition for payment. Any attempt to do either would have violated the Collective Bargaining Agreement and Uniform Player Contract.

As the NBA's General Counsel explains in his letter (Exhibit C):

> [N]o NBA club would be permitted under the Uniform Player Contract or the Collective Bargaining Agreement to condition its payment of player's travelling expenses on compliance with restrictions on the use of his free time while on the road, other than restrictions specified in the Uniform Player Contract or the Collective Bargaining Agreement; needless to say, none of the specified restrictions involves political activity in any way. Indeed, we would doubt the legal validity of any such restriction were the NBA and the NBPA to attempt to impose it.
>
> * * *
>
> [A]ny attempt by the Bullets to recover reimbursement from Mr. McMillen of all or part of the travel expenses relating to him which are contemplated under the Uniform Player Contract and Collective Bargaining Agreement to be paid by the club will clearly violate the provisions

of both such documents and expose the Bullets to liability thereunder and under the Federal labor laws.

Thus, any effort by the Bullets (i) to condition payment of McMillen's travel expenses on his refraining from "political activity" during his free time on the road; (ii) to decline to pay travel expenses on the ground that he engaged in such activity, if he did so engage; or (iii) to require or accept reimbursement of travel expenses by McMillen, would violate the Collective Bargaining Agreement and the Uniform Player Contract.

The NBPA or McMillen would be entitled under Article XXI of the Collective Bargaining Agreement to file a grievance, which would be referred to a Grievance Panel consisting of persons appointed by the NBA and NBPA. If the Grievance Panel was unable to resolve the dispute, the Bullets, the NBA or the NBPA could refer the dispute to binding arbitration. Were the NBPA unwilling to do so, McMillen could bring suit against the Bullets under section 301 of the National Labor Relations Act.

In an arbitration arising from the Bullets' failure to pay travel expenses, the arbitrator could well refuse even to consider a contention that FECA somehow precluded the Bullets from fulfilling their clear contractual obligation. An arbitrator "has no general authority to invoke public laws

that may or may not be in conflict with the collective bargaining agreement." Bristol Borough School District, 70 LA 143, 146 (Dec. of Arbitrator, 1978). To the same effect, see, e.g., Struck Construction Co., 74 LA 369 (1980); Cessna Aircraft Co., 72 LA 367 (1979).

Even were an arbitrator to consider but reject the application of FECA as a bar to the Bullets' performance of the Collective Bargaining Agreement, the Bullets would have no recourse, since parties may not seek relief from the courts for an arbitrator's alleged mistake in applying law external to a collective bargaining agreement. See, e.g., American Postal Workers Union v. U.S. Postal Service, 789 F.2d 1 (D.C. Cir. 1986).

Further, were the Bullets to attempt unilaterally to propose restrictions on political activity by players, either generally or as a condition for reimbursement of travel expenses, the NBPA would be entitled to demand collective bargaining about that subject. Refusal by the Bullets to bargain would constitute a violation of section 8(a) of the National Labor Relations Act, which is enforced by the National Labor Relations Board.

Neither the Commission nor the courts have ever been called upon to consider the recognition to be given the federal labor laws in applying FECA. In other areas, however, including antitrust and shipping, the courts have

found that agreements in ordinary collective bargaining contracts about wages and working conditions are basically exempt from the application of federal statutes. As the Supreme Court stated in explaining the labor exemption to the antitrust laws:

> Such contracts are the product of bargaining compelled by the labor laws, which themselves were enacted pursuant to the power of Congress to regulate commerce in the public interest. They are also the kind of contracts that the courts, because of the collective-bargaining regime established by the labor laws, in the main have declared to be beyond the reach of the antitrust laws, the statutes specifically designed to protect the commerce of the United States from anticompetitive restraints.

Federal Maritime Comm'n v. Pacific Maritime Assoc., 435 U.S. 40, 57 (1978).

Nothing in the language or history of FECA suggests that Congress ever contemplated or intended the Commission to regulate wages, working conditions or other matters normally and properly covered by collective bargaining agreements negotiated pursuant to the National Labor Relations Act. That is precisely what the Commission would be required to do were it to attempt to adjudicate the lawfulness, under FECA, of the normal payment of travel expenses by an NBA team to one of its players as mandated by the NBA/NBPA Collective Bargaining Agreement. Nor could it reasonably be suggested

that Congress intended that compliance with FECA would ever require an employer to violate the federal labor laws. The Commission should therefore find that the Bullets' payment of travel expenses is beyond the scope of the Act and the Commission's jurisdiction.

II. The Bullets' Payment of McMillen's Travel Expenses Was Not Made In Connection with a Federal Election

Section 441b of the Act forbids corporate contributions or expenditures "in connection with any election" for Federal office. The purpose and structure of the law, the FEC's regulations, and common sense all dictate that a corporation does not make a forbidden contribution or expenditure "in connection with any election" merely because one of its employees conducts campaign activity during his free time on a business trip, which the company requires him to make in the ordinary course of its business, to a place and at a time chosen by the company, and on which the employee makes no use of the company's time or resources beyond that needed to perform his job.

First, the payment of travel expenses in these circumstances simply does not implicate the purposes of the law. The purposes of section 441b were explained in FEC v. National Right to Work Committee, 459 U.S. 197, 207-08 (1982):

> [T]o ensure that substantial aggregations of wealth amassed by the substantial advantages which go with the corporate form of organization should not be converted into political "war chests" which could be used to incur political debts from legislators who are aided by the contributions. . . . The second purpose . . . is to protect the individuals who have paid money into a corporation or union for purposes other than the support of candidates from having that money used to support political candidates to whom they may be opposed. (Citations omitted.)

Neither of these purposes is involved when a corporation simply pays for a business trip by its employee, and confers nothing of value on the candidate or campaign beyond that which any employee would receive for the same trip, to enable him to do the same work. In the instant case, it is absurd to suppose that McMillen could in any way be "indebted" to the Bullets merely for performing their contractual obligation, to every member of the team, to pay travel expenses to "away" games. The Bullets did McMillen no favor. The times and places of the games were established by the NBA. He was transported to those places to play basketball and he did so. And he had the same free time as every other member of the team, to do with as he pleased.

Nor could the shareholders of the Bullets, or any team, object to the performance by the team of its normal contractual obligation to pay the travel expenses of its

players. To the contrary, shareholders could well have legal standing to challenge a team's failure to pay such expenses.

Second, inherent in the broader definitions of "contribution" and "expenditure" contained in section 431 of the Act is the concept that a forbidden corporate contribution must involve some political motivation. Those definitions require that a contribution or expenditure be made "for the purpose of influencing any election for Federal office." In FEC v. Mass. Citizens for Life, 769 F.2d 13 (1st Cir. 1985), prob. jur. noted, 106 S. Ct. 783 (1986), the Court adopted the FEC's position that the broader section 431 definition applies to corporate expenditures. Indeed, the requirement that a contribution be made "for the purpose of influencing" a federal election was contained in 18 U.S.C. § 610, the law from which section 441b was derived and on which it is based.

In interpreting 18 U.S.C. § 610, the courts have recognized that the giving of value by a corporation for legitimate business reasons, with no political motivation, does not constitute an illegal contribution. For example, in Miller v. American Tel. & Tel. Co., 507 F.2d 759 (3d Cir. 1974), the court held that AT&T's forgiveness of telephone bills owed by the Democratic National Committee (DNC) would not necessarily constitute a forbidden contribution:

> [P]laintiffs must shoulder the burden of proving an impermissible motivation underlying the alleged inaction. In the absence of direct proof of a partisan purpose on the part of the defendants, plaintiffs may produce evidence sufficient to justify the inference that the only discernible reason for the failure to pursue the debtor was a desire to assist the Democratic Party in achieving success in a federal election. At a minimum, plaintiffs must establish that legitimate business justifications did not underlie the alleged inaction of the defendant directors. [507 F.2d at 765 (emphasis added).]

It is manifest that the Bullets' payment of McMillen's travel expenses was not made for the purpose of influencing a federal election. The payment was made solely for legitimate business reasons: to enable McMillen to play basketball for the team.

Finally, the FEC's own regulations applicable to corporate employees recognize that no forbidden contribution is created by an employee's use of corporate resources which does not go beyond that normally required for him to perform his job. Section 114.9(a) of the regulations expressly permits employees of a corporation to --

> make occasional, isolated, or incidental use of the facilities of a corporation for individual volunteer activity in connection with a Federal election and will be required to reimburse the corporation only to the extent that the overhead or operating costs of the corporation are

> increased. As used in this paragraph, "occasional, isolated, or incidental use" generally means --
>
> (i) When used by employees during working hours, an amount of activity during any particular work period which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period; . . . (emphasis added).

Thus, an employee may use corporate facilities for campaign activity, even during working hours, as long as the company's overhead and operating costs are not increased and as long as the employee performs the normal amount of work expected of him during those hours. Whatever the literal application of this provision to candidate-employees, it would make no sense to read the statute as permitting one employee to conduct campaign activity during working hours under the conditions described in section 114.9(a), while forbidding another employee, such as McMillen, to conduct the same activity under those exact same conditions -- i.e., no increase in corporate overhead or operating costs and all required work performed -- outside working hours on a business trip.

Similarly, section 106.3(d) of the regulations provide that costs incurred by Members of Congress for trips between Washington and their districts are not reportable, presumably because such trips are necessary to the

performance of Members' duties. And the use of government transportation for such trips is not subject to reimbursement, even if the Member conducts campaign activity on the trip. See, e.g., Congressman Donald E. Young, MUR 1729 (General Counsel's Report). If the government can pay for a Member's travel to his district, even if he conducts campaign activity, it makes no sense to hold that a basketball team cannot pay for its players' travel to out-of-town basketball games because one player conducts campaign activity.

Thus, the purposes and structure of the statute, and the Commission's own regulations, all lead to the same inescapable conclusion as does common sense: that a corporation does not make a forbidden contribution merely because an employee conducts political activity during his free time on a business trip, which the employee is required to make at a time and to a place determined solely by the company, in order to perform his job. In the instant case, it would make no sense to conclude that, by paying McMillen's travel expenses to "away" games, the places and times for which were established solely by the NBA, in exactly the same way and on the same terms as those expenses were paid to every other member of the team, the Bullets made a contribution "in connection with a Federal election." Clearly, they did not.

III. Section 106.3(b) of the Regulations Is Irrelevant

In the face of the purpose and structure of the statute, the regulatory scheme and common sense, the Complaint relies primarily on a single provision of the reporting regulations, section 106.3(b)(3), which provides that:

> (3) Where a candidate conducts any campaign-related activity in a stop, the stop is a campaign-related stop and travel expenditures made are reportable. Campaign-related activity shall not include any incidental contacts.

Although the term "incidental contacts" is nowhere defined, the Commission's "Explanation and Justification" states that: "Incidental contacts on an otherwise non-campaign stop do not make the stop campaign-related."

This reporting regulation, applied to candidates generally, cannot logically be applied in determining if payment by a corporation of its employee's travel expenses for a business trip constitutes a corporate contribution or expenditure. Business trips commonly leave the employee with some free time, for which he is not accountable to the company, as long as he performs all work required and expected of him. It cannot be the case that the expenses of any travelling salesman in this country can be instantly transformed into an illegal campaign contribution merely

because, instead of staying in his hotel room in the evening watching TV or seeking solace in a bar, the same salesman commendably chooses to share his views with other citizens on public policy subjects of national concern. The application of section 441b to a corporation cannot depend on what its employees do with their free time on business trips.

By the same token, from the Bullets' perspective, none of McMillen's trips were "campaign-related stops," any contacts made by McMillen during his free time on the road were necessarily "incidental," and section 106.3(b) is thus inherently irrelevant. McMillen was required to make every one of those trips to play basketball for the team. He attended all games and all required meetings and practice sessions. And what he did with his free time was his own business.

With certain exceptions specifically set forth in Club rules and the Uniform Player Contract relating to the player's physical condition, the Bullets have no right to regulate the use by McMillen or any other player of his free time. That is true regardless of whether that time is spent watching TV, playing ping-pong, or developing an interest in public office.

Indeed, the Bullets are not authorized, nor, understandably, do they desire, either to "police" or

"babysit" the professional athletes in their employ. As the General Counsel of the NBA states in his letter (Exhibit C):

> [T]he common practice of NBA clubs is not to regulate the use of free time of any player while its team is on the road. To do so would be impossible as a practical matter.

Surely, the lawfulness of the Bullets' conduct under FECA cannot depend on a players' decision about how to use his free time, a decision which the team has no right, reason or desire to control. And surely the Bullets' road trips are not turned into "campaign stops," and travel costs into illegal contributions, because McMillen uses his free time to campaign (if that is what he did), while another player -- who travels on the same plane, gets paid the same travel expenses and gets the same free time -- chooses to use that time for something else.

The absurdity of such a result speaks for itself. We submit that section 106.3(b) of the regulations is irrelevant in determining whether the Bullets have made an illegal corporate contribution and that, for the reasons discussed above, they clearly have not done so.

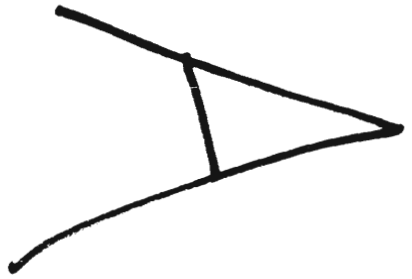
CONCLUSION

For the reasons stated above, the Commission should find that there is no reason to believe that the Bullets have committed any violation of the Federal Election Campaign Act.

Respectfully submitted,

Joseph E. Sandler

Joseph E. Sandler
Counsel for the Capital Bullets
Basketball Club, Inc.



COLLECTIVE BARGAINING AGREEMENT

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AGREEMENT made and entered into this 10th day of October, 1980 by and between the NATIONAL BASKETBALL ASSOCIATION ("NBA") and the NATIONAL BASKETBALL PLAYERS ASSOCIATION ("Players Association").

DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

(a) "**Member**" or "**Team**" means any team which is a member of the NBA or which operates a franchise in the NBA.

(b) "**Commissioner**" means the Commissioner of the NBA.

(c) "**College Draft**" means the NBA's annual draft of basketball players.

(d) "**Player Contract**" means a written agreement between a person and a Member pursuant to which such person is employed by such Member as a professional basketball player.

(e) "**Uniform Player Contract**" means the standard forms of Player Contract provided for use in the NBA in Article I, Section 1 below, and any predecessor or successor forms.

(f) "**Option Clause**" means any clause in a Player Contract which authorizes any extension or renewal of such contract beyond its stated term.

(g) "**Rookie**" means a person who has been selected by a Member in a College Draft and who has never signed a player contract with a team in any professional basketball league.

(h) "**Veteran**" means a person who has signed at least one player contract with a team in any professional basketball league.

(i) "**Veteran Free Agent**" means a Veteran who completes his Player Contract by rendering the playing services called for thereunder.

(j) "**Negotiate**" means, with respect to a player or his representatives on the one hand, and a Team or its representatives on the other hand, to engage in any written or oral communication relating to the possible employment of such player by such team as a basketball player, regardless of who initiates such communication.

ARTICLE I

Uniform Player Contract

Section 1. (a) Except as provided in Section 11 of this Article, the Player Contract to be entered into by each Player and the Member by which he is employed shall be a Uniform Player Contract in one of the following forms:

(1) In the case of a Rookie to be employed for a single season, Exhibit A-1 attached hereto.

(2) In the case of a Veteran to be employed for a single season, Exhibit A-2 attached hereto.

(3) In the case of a Rookie or Veteran to be employed for more than a single season, Exhibit A-3 attached hereto.

(b) Except with respect to compensation arrangements and/or methods of payment, no amendments to the forms of Uniform Player Contract provided for by Section 1(a) of this Article shall be permitted with respect to paragraphs 1, 2, 3, 7, 8, 9, 11, 12, 13, 14, 15, 16, 19, 20(a), 20(f), 21, 22, 23, and 24. No amendments to other paragraphs of the forms of Uniform Player Contract provided for by Section 1(a) of this Article, other than the allowable amendments set forth in Exhibits AA-1 through AA-19 attached hereto, shall be permitted. Any amendment to a Uniform Player Contrat, other than an allowable amendment, shall be null and void. Notwithstanding the foregoing, a Player and a Member may, in their individual contract negotiations, supplement the provisions of a Uniform Player Contract as provided in Section 3 of this Article.

(c) Unless obligated to do so by contract made prior to April 1, 1980, no Member shall make any direct or indirect payment of any monies for fees or otherwise to an agent, attorney, or representative of a Player (for or in connection with such person's representation of such Player); nor shall any Player Contract provide for such payment. The foregoing shall not, however, prevent a Member from sending a Player's regular pay check to a Player's agent, attorney, or representative if so instructed by the Player.

(d) In the event that a Player Contract is entered into by a so-called "player corporation," or by any other entity (in whatever form) other than an individual player personally, the Player shall also execute a personal guarantee in the form and substance of Exhibit A-4 attached hereto, or in such other form (including, but not limited to, a form providing for escrow arrangements) as may be agreed upon by a Player and a Member.

Section 2. In cases where a Player and a Member are parties to a currently effective Uniform Player Contract, each such Contract shall, upon the execution of this Agreement, be deemed amended in the following respects:*

(a) The last sentence of Paragraph 6(b) of each such Contract shall be deemed amended to read as follows:

"The Club's obligations hereunder shall be reduced by any workmen's compensation benefits (which, to the extent permitted by law, the Player hereby assigns to the Club) and any insurance provided for by the Club whether paid or payable to the Player, and the Player hereby releases

*Unless otherwise noted, the amendments described shall apply to veteran and rookie and single-season and multi-season Uniform Player Contracts.

the Club from any and every other obligation or liability arising out of any such injuries."

(b) Paragraph 6(c) of each such Contract shall be deemed to have been deleted, and a new Paragraph 6(c), providing as set forth below, shall be deemed to have been substituted in place and instead thereof:

"(c) The Player hereby releases and waives every claim he may have against the Association and every member of the Association, and against every director, officer, stockholder, trustee, partner, and employee of the Association and/or any member of the Association (excluding persons employed as players by any such member), arising out of or in connection with any fighting or other form of violent and/or unsportsmanlike conduct occurring (on or adjacent to the playing floor or any facility used for practices or games) during the course of any practice and/or any exhibition, championship season, and/or playoff game."

(c) The first three sentences of Paragraph 17 of each such Contract shall be deemed amended to read as follows:

"17. The Player and the Club acknowledge and agree that the Player's participation in other sports may impair or destroy his ability and skill as a basketball player. The Player and the Club recognize and agree that the Player's participation in basketball out of season may result in injury to him. Accordingly, the Player agrees that he will not engage in sports endangering his health or safety (including, but not limited to, professional boxing or wrestling, motor-cycling, moped-riding, auto racing, skydiving, and hang-gliding); and that, except with the written consent of the Club, he will not engage in any game or exhibition of basketball, football, baseball, hockey, lacrosse, or other athletic sport, under penalty of such fine and suspension as may be imposed by the Club and/or the Commissioner of the Association."

(d) Paragraph 18 of each such Contract shall be deemed amended so as to include, immediately preceding the last sentence of said Paragraph, the following:

"Upon request, the Player shall consent to and make himself available for interviews by representatives of the media conducted at reasonable times."

(e) The second sentence of Paragraph 20(a) of each such Contract shall be deemed amended to read as follows:

"If neither the Club nor the Association shall cause such alleged default or alleged failure to be remedied within five (5) days after receipt of such written notice, the National Basketball Players Association shall, on behalf of the Player, have the right to request that the dispute concerning such alleged default or alleged failure be referred immediately to the Impartial Arbitrator in accordance with Article XXI, Section 2 (b) of the Agreement currently in effect between the National Basketball Association and the National Basketball Players Association."

(f) Paragraph 20(b) (2) of each such contract shall be deemed amended to read as follows:

"(2) at any time, fail, in the sole opinion of the Club's management, to exhibit sufficient skill or competitive ability to qualify to continue as a member of the Club's team (provided, however, that if this contract is

terminated by the Club, in accordance with the provisions of this sub-paragraph, during the period from the fifty-sixth day after the first game of any schedule season of the Association through the end of such schedule season, the Player shall be entitled to receive his full salary for said season); or"

(g) Paragraph 20(c) of each such contract shall be deemed amended to read as follows:

"(c) If this contract is terminated by the Club by reason of the Player's failure to render his services hereunder due to disability caused by an injury to the Player resulting directly from his playing for the Club and rendering him unfit to play skilled basketball, and notice of such injury is given by the Player as provided herein, the Player shall be entitled to receive his full salary for the season in which the injury was sustained less all workmen's compensation benefits (which, to the extent permitted by law, the Player hereby assigns to the Club) and any insurance provided for by the Club whether paid or payable to the Player by reason of said injury."

(h) The fourth sentence of Paragraph 22 in each Rookie Single Season contract shall be deemed amended to read as follows:

"The compensation payable to the Player with respect to such additional period shall not be less than the compensation payable with respect to the one year period covered by this contract (as described in the following sentence) or the minimum salary provided for by the Agreement currently in effect between the National Basketball Association and the National Basketball Players Association with respect to such additional period, whichever is greater; and all other non-monetary terms contained in this contract shall be applicable in such additional period."

(i) Section 35(d) of the "Excerpt from Constitution of the Association," as appended to each such contract, shall be deemed amended so to provide for a fine upon a player of up to $10,000 for conduct described in said Section, which fine may be imposed by the Commissioner or his designee. Any fine or suspension which, under this Agreement or a Uniform Player Contract, the Commissioner is empowered to impose, may be imposed by the Commissioner or his designee.

Section 3. In their individual contract negotiations, a Player and a Member may supplement the provisions of a Uniform Player Contract, but (except for an allowable amendment as provided for in Section 1(b) of this Article I) may not agree upon a contract term that contradicts, changes, or is inconsistent with a Uniform Player Contract provision. No Player Contract shall provide for the waiver by a Player of any benefits or the sacrifice of any rights to which the Player is entitled by virtue of a Uniform Player Contract or this Agreement.

Section 4. (a) Except as provided in Article I, Section 11, no Player Contract covering a player's playing season shall provide for compensation of less than the following:

(1) For the 1979-1980 season: $35,000

(2) For the 1980-1981 season: $37,500

(3) For the 1981-1982 season: $40,000

(b) Players on the Active List or Injured List of any Member on February 2, 1980, whose agreed-upon compensation for the 1979-1980 season was

less than $35,000 (and only such players), shall receive, from the Member (or **pro rata** from the Members) by which such Player was employed during the 1979-1980 season, a payment equal to the difference between the compensation actually received by such Player during the 1979-1980 season and the compensation he would have received had his compensation for such season been $35,000. Such payment shall be made on or before October 15, 1980. Following the payment of such adjustment, and for the duration of any compensation arrangements made with respect to the 1979-1980 season, such Player shall be compensated at the rate of $35,000 per playing season.

(c) In determining whether a Player Contract satisfies the minimum compensation requirements established by this Section, signing bonuses and other bonuses not contingent upon a Player's attaining a particular level of performance shall be considered as part of the compensation provided for by a Player Contract; provided that such Player Contract makes clear that the total compensation for each season (including bonuses) equals or exceeds the minimum compensation for such season.

(d) Nothing in this Section shall alter the respective rights and liabilities of a Player and a Member, as provided for in the Uniform Player Contract, with respect to the termination of a Player Contract.

Section 5. (a) a Member's obligation to reimburse a Player for "reasonable" expenses related to the assignment of a Player Contract from one Member to another (in accordance with Paragraph 11 of a Uniform Player Contract) shall extend to the reimbursement of the actual expenses incurred by such Player, provided that such expenses result directly from the assignment and are ordinary and reasonable, and provided, further, that, prior to his actually incurring such expenses, the Player consults with the Member to which his contract has been assigned (furnishing an estimate of such proposed expenses, if requested by the Member), so as to afford such assignee-Member an opportunity to make alternative arrangements for the move of the Player.

(b) Solely as a guide to the determination of the expenses that are ordinary and reasonable, Members shall be grouped, in accordance with their geographical location, into "Zones." The "Eastern Zone" shall consist of Atlanta, Boston, Buffalo, Cleveland, New Jersey, New York, Philadelphia, and Washington. The "Central Zone" shall consist of Chicago, Dallas, Detroit, Houston, Indiana, Kansas City, Milwaukee, and San Antonio. The "Western Zone" shall consist of Denver, Golden State, Los Angeles, Phoenix, Portland, San Diego, Seattle, and Utah. If a Player Contract is assigned between Members in the same Zone, the ordinary and reasonable expenses shall be deemed to approximate $1,600; between a Member in the Eastern Zone and a Member in the Central Zone — $1,750; between a Member in the Central Zone and a Member in the Western Zone — $2,100; between a Member in the Eastern Zone and a Member in the Western Zone — $2,700.

(c) In addition to the foregoing, a Player whose contract is assigned from one Member to another shall receive from the assignee-Member a sum equal to three months' rent on his living quarters in the city from which he is transferred; provided, however, that such payment shall be made only if and to the extent that the Player is legally obligated for such rent, and shall not exceed $750.

(d) Prior to its reimbursing an assigned Player as provided above, an assignee-Member may require satisfactory proof that the Player has paid the amounts for which he seeks reimbursement, and, in the case of rent reimbursement, satisfactory proof that the Player is legally obligated to pay such rent and the amount thereof.

Upon notice to the Player, the assignee-Member may, as an alternative to reimbursement, pay the expenses incurred upon assignment (in accordance with the foregoing provisions of this Section) directly to the persons, firms, or corporations involved.

(e) So as to minimize the potential liability of NBA Members under this Section, a Player who does not establish permanent or year-round residence in the home city (or geographic vicinity thereof) of the Member by which he is employed shall use his best efforts (i) to obtain a short-term lease on the living quarters he selects, and (ii) to procure lease provisions authorizing him to sublet such premises and/or granting such Member the option to take over such lease in the event the contract of such Player is assigned to another NBA Member.

Section 6. No Player shall attend the regular training camp of any Member unless he is a party to a Player Contract then in effect. For the purposes of this Section 6, a Player shall be considered to be a party to a Player Contract then in effect if such Contract has been renewed in accordance with an Option Clause permitted by this Agreement.

Section 7. (a) The meal expense allowance, provided for in Paragraph 3 of the Uniform Player Contract, shall be as follows:

For the 1979-1980 season: (but only for Players on the Active or Injured List of any Member on February 2, 1980): $30 per day, pursuant to a schedule providing $5 for breakfast, $9 for lunch, and $16 for dinner.

For the 1980-1981 season: $31 per day, pursuant to a schedule providing $6 for breakfast, $9 for lunch, and $16 for dinner.

For the 1981-1982 season: $32 per day, pursuant to a schedule providing $6 for breakfast, $9 for lunch, and $17 for dinner.

(b) Players on the Active List or Injured List of any Member on February 2, 1980 (and only such Players) shall receive, from the Member (or **pro rata** from the Members) by which such Player was employed during the 1979-1980 season, a payment equal to the difference between the meal expense allowance actually received by such Player during the 1979-1980 season (prior to implementation of the new allowance) and the amount of such allowance as provided for above for the 1979-1980 season. Such payment is to be made on or before October 15, 1980.

Section 8. For the purposes of Paragraph 3 of the Uniform Player Contract, the "home city" of an NBA Club shall be deemed to include only the city in which the facility regularly used by the Club for home games is located and any other location at which such home games are played, provided that such other location(s) is not more than 75 miles from such city.

Section 9. In addition to any other rights a Member may have by contract or by law, when a Player, without proper and reasonable cause, fails or refuses to render the services required by a Player Contract and/or when a Player is, for proper cause, suspended in accordance with the terms of such Contract, the compensation payable to the Player for the year during which such refusal or failure and/or suspension occurrs may be reduced as follows:

a. By $150 for each missed (training or regular season) day of practice;

b. By $500 for each missed exhibition game; and

c. By 1/82nd of the compensation as payable for each missed regular season or playoff game.

Section 10. A Player's obligation (pursuant to Paragraph 16 of a Uniform Player

Contract) "to participate, upon request, in all other reasonable promotional activities of the Club and the Association" shall be deemed satisfied if, during each year of the period covered by such Contract, the Player makes four individual personal appearances and four group appearances for or on behalf of or at the request of the Club by which he is employed. A Player shall be reimbursed for the actual expenses incurred in connection with such appearances, provided that such expenses result directly from the appearance and are ordinary and reasonable.

Section 11. On or after the 55th day following the first game of any scheduled season, and solely for the purpose of replacing an injured player, a Member may enter into a Player Contract with another person, which Contract may, notwithstanding the provisions of Paragraph 20(b)(2) of the Uniform Player Contract, provide that such person will be compensated only for the period actually spent in the service of such Member. The duration of such Contract shall be limited to 10 days or a period encompassing 3 games played by such Member, whichever is longer, and no Member may enter into such a Contract with the same person more than twice during the course of any one season. Nothing in this Section shall prohibit a Member from terminating a Player Contract pursuant to the provisions thereof and paying to the Player involved only such sums as required by such Contract.

Section 12. Option Clauses in Player Contracts made or entered into prior to April 29, 1976 may not be exercised and shall be deemed deleted and eliminated as of April 29, 1976, except as provided in Article XXII, Section 1(b)(3) below.

ARTICLE II

Medical, Health and Welfare Program

Section 1. The NBA and its Members shall provide a uniform, league-wide medical, health, and welfare program, pursuant to which each Player (during the period that a Player Contract between the Player and a Member is in effect) shall receive the group life, medical, and dental benefits set forth in Exhibit B attached hereto. In addition, each Player shall (during the period that a Player Contract between the Player and a Member is in effect, except for the period prior to the time that a Player participates in a regular season game for any Member for the first time) be insured for disability pursuant to and in accordance with the disability benefits policy attached hereto as Exhibit B-1. Notwithstanding the foregoing, if, under the laws of the applicable jurisdiction any Member is prohibited from insuring any Player for $75,000, such Member shall be deemed to have satisfied its obligation to provide group term and accidental death and dismemberment insurance in the amount of $75,000 by providing for said Player the maximum amount of insurance allowable under the laws of the applicable jurisdiction and by paying on behalf of all of its Players to an insurance agent or company designated by the Member's Player representative, on or before November 1 of each year, an amount determined by multiplying $3.00 times each $1,000 of difference (or part thereof, between the amount of insurance provided for all Players and $75,000 for each Player.

Section 2. It is agreed and understood that the NBA's obligation to provide the disability benefits policy attached as Exhibit B-1 is conditioned upon the total premium for such policy (covering the 1979-1980, 1980-1981, and 1981-1982 seasons) being no more than $2,325,000, plus any proportionate additional premium resulting from the addition of a new Member or Members to the NBA and/or the increase in Active List maximum to 12 players. If such policy is cancelled or terminated (other than

by the NBA), it is agreed and understood that the NBA's liability with respect to disability benefits (including any premiums paid prior to any such cancellation or termination) shall not in any event exceed $2,325,000 (plus an amount equal to the proportionate additional premium that would have resulted under such policy from the addition of a new Member or Members to the NBA and/or the increase in Active List maximum to 12 players).

Section 3. The NBA shall use its best efforts to assure that claims for benefits under the above insurance programs are processed in a reasonably expeditious and efficient manner. The procedure for the filing and processing of disability claims, and the resolution of any disputes with respect to such claims, shall be as set forth in Exhibit B-2 attached hereto.

ARTICLE III

Compensation and Expenses in Connection with Military Duty

Section 1. A Player drafted into military service during the season, or a Player serving on active duty with a reserve unit during the season, shall be compensated for so long as the Player remains on the Active List of the Member, and in such amount as may be negotiated between the Player and the Member by which he is employed.

Section 2. A Player serving on military weekend duty with a reserve unit during the season shall be entitled to reimbursement for any net out-of-pocket expenses incurred by such Player in traveling to and from his place of duty to enable him to join his Club for purposes of participating in a regularly scheduled season game.

Section 3. In the event that the Player Contract of a Player who is required to serve on military weekend duty with a reserve unit is sold, exchanged, assigned or transferred to another Club, the Player shall be entitled to reimbursement for any out-of-pocket expenses incurred by such Player in traveling during the off season to and from his home and his place of military weekend duty with a reserve unit; provided that (a) the Player makes reasonable efforts to change his reserve unit location to one located reasonable close to his home and (b) such obligation to reimburse the Player shall cease six months from the date that such Player's contract is sold, exchanged, assigned, or transferred.

ARTICLE IV

Procedure with Respect to Playing Conditions at Various Facilities

When a new franchise is granted or when an existing franchise moves to another city, the Players Association shall, upon request and within a reasonable period of time, have the right to inspect the facility to be used by such franchise. Similarly, the Players Association shall, upon reasonable notice to the Member(s) involved and the NBA, have the right to inspect the regular training camp and regular practice facilities used by such Member(s). If, following such inspection, the Players Association is of the opinion that the playing conditions at such facility will endanger the health and safety of NBA players, it shall promptly notify the Commissioner in writing. Promptly following such notice, representatives of the Players Association, and the Member involved, and the Commissioner or his designee shall meet in an effort to resolve the matter. If no resolution satisfactory to the

Players Association, the Member and the Commissioner is reached, the issue whether the playing conditions at the facility in question will endanger the health and safety of NBA players will, without interruption of the schedule or training camp or practice activities, immediately be submitted to and determined by the Impartial Arbitrator in accordance with the provisions of Article XXI, Section 2(h); provided, however, that the Impartial Arbitrator need not render an award within 24 hours of the conclusion of the hearing, but shall issue his award as expeditiously as possible under the circumstances.

ARTICLE V

Travel Accommodations, Locker Room Facilities, and Parking

Section 1. Each Member agrees to use its best efforts to make the following arrangements for its players while they are "on the road":

(a) To have their baggage picked up by porters.

(b) To have them stay in first class hotels.

(c) To have extra-long beds available to them in each hotel.

Section 2. Each Member agrees to provide first class transportation accommodations on all trips in excess of one hour, except when such accommodations are not available.

Section 3. Each Member agrees to use its best efforts to improve locker room facilities and to stabilize the temperature in locker rooms to make it consistent with the temperature on playing courts.

Section 4. Each Member agrees to make parking facilities available to its players without charge in connection with games and practices conducted at the facility regularly used by such Member for home games and/or practices.

ARTICLE VI

Playoffs and Players' Playoff Pool

Section 1. The players' playoff pool for the 1979-1980, 1980-1981, and 1981-1982 seasons shall be in the amounts set forth below:

1979-1980	$1,325,000
1980-1981	$1,400,000
1981-1982	$1,500,000

Section 2. The number of teams participating in the playoffs shall not exceed twelve. The total number of playoff games to be played by any four teams shall not exceed twenty-four, and the total number of playoff games to be played by any or all of the remaining eight teams shall not exceed twenty-one. Notwithstanding the foregoing, however, the NBA shall have the right to increase the number of teams participating in the playoffs to fourteen. In the event of such increase, the total number of playoff games to be played by any four teams shall not exceed twenty-four, and the total number of playoff games to be played by any or all of the remaining ten teams shall not exceed twenty-one, and $50,000 shall be added to the amounts set forth in Section 1 for the year or years in which such increase is made.

Section 3. The players' representative shall meet with the Commissioner on or about February 1 of each year to jointly agree upon the distribution of the playoff pool among the teams. In the event that agreement on the distribution is not reached, the reasonable decision of the Commissioner will be final.

ARTICLE VII

Severance Payments

The NBA agrees to make one or more payments to each Player terminating his employment with a Member of the NBA, other than by breach of his Player Contract, in accordance with the direction of the Players Association as to the amount and manner of such payments; provided that such directions are signed by the President of the Players Association and delivered to the Commissioner, in writing, not later than 30 days prior to the date on which payment is to be made; and provided further, that such directions reasonably carry out the purposes of the parties to make severance pay payments. With respect to each period set forth below, the total amounts to be provided by the NBA during each such period, pursuant to all directions given by the Players Association shall not exceed the amounts set forth below with respect to such period:

From June 1, 1979 to May 31, 1980 - an amount equal to (i) $24,000 times the number of Members in the NBA during such period, plus (ii) any amount not designated from amounts to be provided during prior periods.

From June 1, 1980 to May 31, 1981 - an amount equal to (i) $24,000 times the number of members in the NBA during such period, plus (ii) any amount not designated from amounts to be provided during prior periods.

From June 1, 1981 to May 31, 1982 - an amount equal to (i) $24,000 times the number of Members in the NBA during such period, plus (ii) any amount not designated from amounts to be provided during prior periods.

ARTICLE VIII

Dues Check-Off

During the period covered by this Agreement, each Member agrees to check-off, from the compensation of each Player who is a member of the Players Association and who has so authorized the Member in writing, all dues as may be assessed against such Player by the Players Association, and to remit such dues to the Players Association at the times and in the manner specified in the Player's written authorization. The Players Association reaffirms that it is its responsibility to obtain from Players and file with NBA Members written check-off authorizations.

ARTICLE IX

National Basketball Association Players' Pension Plan

Section 1. The National Basketball Association Players' Pension Plan will, subject to the approval of the Internal Revenue Service, be amended so as to effectuate the following changes (effective as of February 2, 1981):

(a) **Section 1.10** shall be amended so as to add the following:

"Any Contract may provide for the allocation of amounts received by an Insurer under the Plan to said Insurer's general account or to one or more of its separate accounts (including separate accounts maintained for the collective investment of assets of qualified retirement plans)."

(b) A new Section 1.22 shall be added and shall provide as follows:

"**Section 1.22** 'National Consumer Price Index' shall mean the Consumer Price Index for urban consumers ('CPI-U')."

(c) Sections 6.2, 6.3, and 6.4 shall be amended to read as follows:

"**Section 6.2.** The annual cost of funding for the current and past service benefits for any Player on the Active List on February 2, 1968 (or on any subsequent February 2, prior to February 2, 1981), or on the Injured List on February 2, 1973 (or on any subsequent February 2, prior to February 2, 1981), shall be paid by the Member on whose Active List or Injured List, as the case may be, the Player appears on February 2 of the Plan Year involved. The annual cost of funding for the current and past service benefits for any Player on the Active List or Injured List on February 16, 1981 (or on any subsequent February 16) shall be paid by the Member on whose Active List or Injured List, as the case may be, the Player appears on February 16 of the Plan Year involved.

"**Section 6.3.** The annual cost of funding for the current and past service benefits for any Player (i) on the Suspended or Armed Services List on February 2, 1968 (or on any subsequent February 2, prior to February 2, 1981), or on the Injured List on February 2, 1968 (or on any subsequent February 2, prior to February 2, 1973), and (ii) on the Active List of any Member for 50 percent or more of the total Championship Games played by each Member during the Regular Season which includes such February 2 and which ended before February 2, 1981, shall be paid by the Member on whose Active List the Player appears for the most days during the Regular Season involved. The annual cost of funding for the current and past service benefits for any Player (i) on the Suspended or Armed Services List on February 16, 1981 (or on any subsequent February 16) and (ii) on the Active List of any Member for 50 percent or more of the total Championship Games played by each Member during the Regular Season which includes February 16, 1981 (or any subsequent February 16), shall be paid by the Member on whose Active List the Player appears for the most days during the Regular Season involved.

"**Section 6.4.** The annual cost of funding for the past service benefits for any Player not on any Roster during the Plan Year involved shall be paid by the Member having rights to the services of such Player, as a Player, on February 16 of the Plan Year involved (or February 2, if the Plan Year involved ended prior to February 2, 1981) or, if no Member has such rights on said February 16 (or February 2, as the case may be), by the Member last having such rights prior to said February 16 (or February 2, as the case may be)."

(d) A new Section 8.3 shall be added and shall provide as follows:

"**Section 8.3.** If any court of competent jurisdiction issues an order inconsistent with this Section, and the Committee thereafter notifies the Player or any Beneficiary of such order, then, unless and until such order is set aside, the following provisions shall apply:

(a) No action shall be required by the Association, Insurer, Committee or any other person to prevent such order from being complied with.

(b) Thirty days after giving such notice, such order may be complied with."

(e) A new Section 13.16 shall be added and shall provide as follows:

"Section 13.16. The Committee may appoint an Insurer under this plan to act as an investment manager to manage any assets of the Plan; provided that (a) the Insurer is qualified, under the laws of more than one state, to perform such services and (b) the Insurer has acknowledged, in a writing delivered to the Committee, that it is a fiduciary with respect to the Plan."

Section 2. In performing the functions assigned to it by Sections 3.5 and 3.6 of the Pension Plan, the Pension Committee shall consult with a representative designated by the Players Association. In the absence of agreement between the Committee and said representative, the Committee shall, solely with respect to the determinations required by Sections 3.5 and 3.6, follow the directives of the Players Association. The Players Association hereby accepts full and complete responsibility for the investment policy and the results thereof that flow from the Committee's compliance with the Players Association's directives.

ARTICLE X

Scheduling

Section 1. Each Member agrees that in no event will it play more than 82 regular season games.

Section 2. (a) Games scheduled to be played on December 25, January 1, and Good Friday shall not commence prior to 6 p.m. (local time), unless the Players Association consents thereto, which consent shall not be unreasonably withheld. The Players Association will consent to the earlier commencement of at least one game on each of such dates if such game is to be televised nationally, and provided that the Teams involved are in the same time zone or otherwise in close geographic proximity.

(b) Teams at home on December 25 and January 1 shall not conduct practices, and no such team shall depart for an away game or series of away games prior to 3 p.m. (local time) on such dates, unless reasonable transportation arrangements for such game or games cannot be made at or after 3 p.m. (local time).

Section 3. No Team shall be required to play a scheduled game on the same day that such Team has traveled across two time zones, except in unusual circumstances and unless the Players Association consents thereto, which consent shall not be unreasonably withheld.

Section 4. The NBA shall use its best efforts to establish an exhibition game schedule pursuant to which excessive travel will be avoided and reasonable periods of time between games will be allotted.

Section 5. The parties hereto shall arrange for representatives of the Players Association to meet with such representatives of the NBA and its Members as may be designated by the Commissioner to discuss the subject of scheduling

ARTICLE XI

NBA All-Star Game

Section 1. Commencing with the February 1980 NBA All-Star Game, Players on the winning team in the NBA All-Star Game shall each receive $2,000. Players on the losing team shall each receive $1,000.

Section 2. Each Player who participates in the NBA All-Star Game may invite a guest, who shall be reimbursed for the cost of round-trip first-class air transportation between the home city of the Member by which such Player is employed and the site of the All-Star Game.

Section 3. Players not invited to participate in the NBA All-Star Game shall have three days off during the All-Star Game break.

ARTICLE XII

Medical Treatment of Players and Release of Medical Information

Section 1. Each Member agrees that a Player requiring the care and treatment of an orthopedic surgeon will, so far as practicable, be referred to and treated by one orthopedic surgeon (rather than several).

Section 2. Representatives designated by the Players Association shall participate in meetings of the committee of team physicians for the purpose of discussing matters related to the medical care and treatment of Players.

Section 3. Each Member may make public medical information relating to the Players in its employ, provided that such information relates solely to the reasons why such Players have not been or are not rendering services as a Player.

ARTICLE XIII

Exhibition Games

Section 1. The annual Basketball Hall of Fame exhibition game shall not be considered as one of the eight exhibition games prior to the schedule season referred to in Paragraph 1 of the Uniform Player Contract.

Section 2. In addition to the exhibition games provided for by Paragraph 1 of the Uniform Player Contract, and during each of the playoff series conducted during the term of this Agreement, any NBA team, which qualifies for the playoffs but is not required to participate in the first round thereof, may arrange and require its Players to participate in one inter-squad game or scrimmage with another similarly situated NBA team; provided that such game or scrimmage is not open to members of the general public.

ARTICLE XIV

Prohibition of No-Trade Contracts

No Player Contract made or entered into after the 1980-1981 NBA playoffs may contain any prohibition or limitation of an NBA Member's right to assign such contract to another NBA Member.

ARTICLE XV

Limitation on Deferred Compensation

The NBA shall have the right to enact a uniform rule, applicable to all NBA Members, limiting the amount of "deferred compensation" provided for by the terms of a Player Contract to no more than 10% (or any higher percentage up to and including 50%) of the total compensation called for by such Player Contract. Such rule, if and when enacted, shall apply prospectively only, and shall not apply to any Player Contract made and executed prior to the date of its enactment. For the purposes of this provision, "deferred compensation" shall mean money and other items of value payable to a Player during a period commencing more than two years after the playing term covered by a Player Contract.

ARTICLE XVI

Written Club Rules

No later than September 1, 1980, each Member shall establish written rules for the government of its Players (as applicable during the training season, regular season, playoffs, and off-season) supplementing and becoming part of the Uniform Player Contract. Such rules, and any subsequent amendments thereto, shall be available for inspection at reasonable times by any Player and by a designated representative of the Players Association.

ARTICLE XVII

Right of Set-Off

When a Member terminates a Player Contract after February 2, 1980, in circumstances where such Member, following the termination, continues to be liable for the compensation called for by such Contract, the Member's liability for such compensation shall be reduced by any amounts earned by the Player (for services as a player) from any NBA Member during the period covered by the terminated Contract (including, but not limited to, amounts earned but not paid during such period). In the event of successive terminations of Player Contracts involving the same Player, the Member first to terminate shall be entitled to the right of set-off provided for by this Article until its compensation liability has been eliminated in its entirety, and the right of set-off shall then pass in order to the Member(s) terminating any subsequent Contract(s). In calculating the amount of set-off to which a Member may be entitled pursuant to this Article, deferred compensation payable to a Player for or with respect to a period covered by the terminated Contract shall be discounted on an annual basis by a percentage equal to the prime rate as set by Citibank, N.A. and in effect at the time the agreement providing for such deferred compensation was made.

ARTICLE XVIII

Pay TV, Cable TV, Etc.

Section 1. The NBA and the Players Association disagree as to whether the NBA or any of its Members has the right to use, distribute, or license any performance by the players, under this Agreement or the Uniform Player Contract, for Pay TV, Cable TV, any form of cassette or cartridge system, or other means of distribution known or unknown. By entering into this Agreement, the parties specifically reserve any rights, legal or otherwise, on this point that they may own.

Section 2. Notwithstanding Section 1 above, the Players Association, for itself and present and future NBA players, covenants not to sue (or finance any suit against) the NBA, any of its Members, or their agents, successors, assigns, or licensees, with respect to the use, distribution, or license, for Pay TV, Cable TV, any form of cassette or cartridge system, or other means of distribution known or unknown, of any performances by any player rendered under this Agreement or prior or subsequent collective bargaining agreements, or under Player Contracts made pursuant thereto, during any period up to and including the conclusion of the 1986-1987 NBA playoffs.

Section 3. The Players Association expressly reserves its rights to bargain collectively on the subject described in Section 1 above at the expiration of this Agreement. Such reservation shall not, however, preclude the NBA from contending that the subject described in Section 1 above is not a mandatory subject of collective bargaining.

ARTICLE XIX

Miscellaneous

Section 1. Each Member agrees to have a minimum of eleven players on its Active List at all times and to have a minimum of eight players on the bench for all regularly scheduled season games. During the 1981-1982 season, each Member may have a maximum of twelve players on its Active List at any time.

Section 2. The players, acting jointly, may annually submit to the Commissioner one written critique of referees, without reference to any individual referee.

Section 3. Each Member agrees to provide retired players with three or more years of NBA service with the opportunity to purchase two tickets at box office prices to its NBA home games, and to hold such tickets for such players, provided tickets are available and the retired players provide the Member with 48 hours advance notice of their desire for such tickets.

Section 4. The NBA will use its best efforts to have NBA Members comply with the terms and provisions of this Agreement.

Section 5. Each NBA Member [hereinafter "such Member"] hereby releases and waives every claim it may have against any player employed by other NBA Members for injuries sustained by any player in the employ of such Member which arise out of or in connection with any fighting or other form of violent and/or unsportsmanlike conduct during the course of any exhibition, championship season and/or playoff game.

ARTICLE XX

No-Strike Provision and Other Undertakings

Section 1. Neither the Players Association nor its members shall engage in any strikes, cessations or stoppages of work, or any other similar interference with the operations of the NBA or any of its Members.

Section 2. The Players Association agrees that it will not engage in any concerted activities to breach, induce the breach of, or threaten to breach, or induce the breach of, any Player Contract.

Section 3. The Players Association will use its best efforts to prevent each Player from rendering, or threatening to render, services as a professional basketball player for another professional basketball team during the term of a Player Contract between such Player and the Team for which he plays (except as said Player Contract may be assigned, sold, or transferred in accordance with the provisions thereof); to prevent each Player from refusing, or threatening to refuse, to participate in any scheduled exhibition game, regular season game, All-Star Game, or playoff game; to prevent each Player from otherwise breaching, or threatening to breach, such Player Contract; and to prevent each Player from making any demand upon the NBA or any of its Members, including, but not limited to, a demand, accompanied by threats that the Player will render services as a professional basketball player for another professional basketball team, that such Player Contract be renegotiated during the term thereof; provided, however, that this provision is not intended to prevent any Player from entering into negotiations with a Member with respect to the salary to be paid to said Player for the playing season following the last playing season covered by any Player Contract, or renewal or extension thereof.

Section 4. The NBA and the Players Association agree that a Player who publicly demands a renegotiation of his Player Contract, and who threatens to withhold the services he has agreed to render under such Player Contract or to perform at a level below his full capabilities unless such renegotiation takes place, shall be considered to have engaged in conduct impairing the faithful and thorough discharge of the duties incumbent upon the Player within the meaning of paragraph 4 of the Uniform Player Contract.

Section 5. No Player who is a party to a Player Contract with a Member shall, during the term of such Contract (including any permissible option year), enter into negotiations with another Member except as permitted by Article XXII, Section 1(c)(3)(b).

ARTICLE XXI

Grievance and Arbitration Procedure

Section 1. Any dispute (such dispute hereinafter being referred to as a "Grievance") involving the interpretation or application of, or compliance with, the provisions of this Agreement or the provisions of a Player Contract (except as provided in Paragraph 9 of a Uniform Player Contract) shall be resolved exclusively in accordance with the procedures set forth in this Article, provided, however, that disputes arising under Article XXII of this Agreement shall be resolved in the manner provided for in such Article.

Section 2. Processing of Grievances.

(a) General.

(1) Grievances may be initiated, as set forth below, by a Player, a Team, the NBA, or the Players Association, except that the Players Association may not initiate a Grievance involving player discipline without the approval of the player(s) concerned.

(2) No party may initiate a Grievance until and unless it has first discussed the matter with the party or parties against whom the Grievance is to be initiated in an attempt to settle it.

(3) A Grievance must be initiated within 20 days from the date of the occurrence upon which the Grievance is based, or within 20 days from the date upon which the

facts of the matter became known or reasonably should have become known to the party initiating the Grievance, whichever is later.

(b) Initiation of Grievances.

(1) Subject to the provisions of Section 2(a);(i) a Player or the Players Association may initiate a Grievance by filing written notice thereof with a Team and furnishing a copy of such notice to the NBA; and (ii) a Team may initiate a Grievance by filing written notice thereof with the Players Association and furnishing copies of such notice to the player(s) involved and to the NBA.

(2) Subject to the provisions of Section 2(a), the NBA may initiate a Grievance by filing written notice thereof with the Players Association and with the Impartial Arbitrator

(c) Consideration by the Grievance Panel.

(1) If a Grievance initiated by a Player, the Players Association, or a Team is not disposed of to the satisfaction of the parties involved within 30 days following the filing of the notice provided for in Section 2(b)(1), such Grievance shall (unless the parties agree to submit the matter directly to the Impartial Arbitrator) be referred to a Grievance Panel, consisting of two persons appointed by the NBA and two persons appointed by the Players Association.

(2) Within 20 days following such reference, the Grievance Panel shall meet, on a date and at a time and place agreed upon by the NBA and the Players Association, to consider the Grievance. Attendance at such meeting by only one of the persons appointed by the NBA and only one of the persons appointed by the Players Association shall constitute a quorum. Notwithstanding the number of their appointees in attendance, both the NBA and the Players Association shall each be entitled to cast two votes at any meeting of the Grievance Panel. Meetings of the Grievance Panel shall ordinarily be held in New York, but, if the parties involved agree, such hearings shall be held in Chicago (if the Team involved is located in the "Central Zone," as defined in Article I, Section 5(b), or in Los Angeles (if the Team involved is located in the "Western Zone").

(3) At all meetings of the Grievance Panel, the parties to the Grievance, and the NBA and the Players Association shall have the right to present, by testimony or otherwise, any evidence they deem relevant to the Grievance and its resolution.

(4) If, following such presentation, the Grievance Panel resolves any Grievance by majority vote or by mutual agreement, such resolution shall constitute full, final, and complete disposition of the Grievance, and shall be binding upon the Player(s) and Team(s) involved and the parties to this Agreement.

(5) If the Grievance Panel fails to resolve a Grievance within five days following its meeting thereon, either the Team involved, or the Players Association, or the NBA may, within 20 days following the meeting of the Grievance Panel, appeal such Grievance to the Impartial Arbitrator, by filing written notices thereof with the Impartial Arbitrator, the party or parties against whom such appeal is taken, and the NBA.

(d) Hearings Before and Decisions by the Impartial Arbitrator.

(1) Upon his receipt of a notice of Grievance initiated by the NBA pursuant to Section 2(b)(2), or his receipt of a notice of appeal of a Grievance filed pursuant to Section 2(c)(5), the Impartial Arbitrator shall, after consultation with the NBA and the Players Association, designate a time and place for hearing such Grievance. As soon as practicable following the conclusion of such hearing, the Impartial Arbitrator

shall render a written decision which shall constitute full, final and complete disposition of the Grievance, and shall be binding upon the Player(s) and Team(s) involved and the parties to this Agreement.

(2) Hearings before the Impartial Arbitrator shall ordinarily be held in New York, but, if the parties involved agree, shall be held in Chicago or Los Angeles. All such hearings shall be conducted in accordance with the Voluntary Labor Arbitration Rules of the American Arbitration Association.

(3) The Impartial Arbitrator shall have jurisdiction and authority only to interpret, apply, or determine compliance with the provisions of this Agreement and the provisions of Player Contracts; provided, however, that the Impartial Arbitrator shall have jurisdiction and authority to resolve disputes arising under Article XXII of this Agreement in the manner provided for in such Article. The Impartial Arbitrator shall not have jurisdiction or authority to add to, detract from, or alter in any way the provisions of such agreements.

(4) The parties to this Agreement have agreed upon the appointment of George Nicolau, Esq., as Impartial Arbitrator, who shall serve for the duration of this Agreement; provided, however, that as of September 1, 1980, and as of each successive September 1, either of the parties to this Agreement may discharge the Impartial Arbitrator by serving 30 days' prior written notice upon him and upon the other party to this Agreement. The parties shall thereupon either agree upon a successor Impartial Arbitrator or select a successor from an American Arbitration Association list of prominent professional arbitrators, alternately striking names from such list until only one remains. The Impartial Arbitrator so discharged shall continue to serve until his successor is agreed upon or selected.

(e) Special Procedure With Respect to Disputes Arising Under Paragraphs 6 and 20(c) of the Uniform Player Contract.

(1) Notwithstanding the foregoing, disputes arising under Paragraph 6 or 20(c) of a Uniform Player Contract as to (i) whether a Player was in sufficient good condition to play skilled basketball, as to (ii) whether the Player was injured as a direct result of participating in any basketball practice or game played for the Club, and/or as to (iii) whether such injury disabled the Player and/or rendered him unfit to play skilled basketball shall be processed and determined in the same manner as a Grievance under Sections 2 and 3 of this Article, except that a physician designated by the President of the American College of Orthopedic Surgeons (or such other similar organization as the parties agree may be most appropriate to the issues in dispute) shall conduct a physical examination of the Player and shall perform the functions of the Impartial Arbitrator. The physician so designated shall render a written decision which shall constitute full, final and complete disposition of the dispute, and shall be binding upon the Player(s) and Team(s) involved and the parties to this Agreement.

(2) All other disputes arising under Paragraphs 6 or 20(c) of a Uniform Player Contract (including, but not limited to, a dispute as to whether the suspension of a Player or the termination of a Player Contract was by reason of such Player's physical condition, injury, or disability) shall not be subject to the special procedure set forth in Section 2(e)(1), but rather shall be processed and determined in the same manner as any other Grievance under Sections 2 and 3 of this Article.

(f) Special Procedure with Respect to Certain Disciplinary Action.

(1) Notwithstanding the foregoing, all disputes involving a fine or suspension imposed upon a Player by the Commissioner (or his designee) for conduct on the

playing court, or involving action taken by the Commissioner (or his designee) concerning the preservation of the integrity of, or the maintenance of public confidence in, the game of basketball, shall be processed exclusively as follows:

Within 20 days following written notification of the action taken by the Commissioner (or his designee), a Player affected thereby or the Players Association may appeal in writing to the Commissioner. The Commissioner shall designate a time and place for hearing, which shall be commenced within 10 days following his receipt of the notice of appeal. As soon as practicable following the conclusion of such hearing, the Commissioner shall render a written decision, which decision shall constitute full, final, and complete disposition of the dispute, and shall be binding upon the Player(s) and Club(s) involved and the parties to this Agreement. In the event such appeal involves a fine or suspension imposed by the Commissioner's designee, the Commissioner, as a consequence of such appeal and hearing, shall have authority only to affirm or reduce such fine or suspension, and shall not have authority to increase such fine or suspension.

(2) In the event a matter filed as a Grievance in accordance with the provisions of Section 2(b) gives rise to issues involving the integrity of, or public confidence in, the game of basketball, the Commissioner may, at any stage of its processing, order that the matter be withdrawn from such processing and thereafter be processed in accordance with the procedure provided in Section 2(f)(1).

(g) Disputes With Respect to the Terms of a Player Contract.

(1) If either the NBA or the Players Association asserts that a term of a Player Contract (other than an allowable amendment as permitted by Article I, Section 1(b)) contradicts, changes, or is inconsistent with a Uniform Player Contract provision, either may have the dispute involving such contract term resolved by initiating a Grievance. If such a Grievance is initiated by the NBA, the 20-day time period referred to in Section 2(a)(3) of this Article XXI shall commence with the date upon which the NBA received the Player Contract (or amendment thereto) containing the disputed term. If such a Grievance is initiated by the Players Association, the 20-day time period referred to in Section 2(a)(3) of this Article XXI shall commence with the date upon which the Player Contract (or amendment thereto) containing the disputed term was first made available for inspection by the Players Association.

(2) If, as a result of the grievance and arbitration procedure, a term of a Player Contract is found to contradict, change, or to be inconsistent with a Uniform Player Contract provision, such term shall either be deleted from the Player Contract and have no force or effect, or reformed and/or revised by the club and the player so that it does not contradict or change and/or is not inconsistent with a Uniform Player Contract provision. The Player Contract shall, however, in all other respects remain valid and binding upon the parties thereto. Nothing set forth above shall affect in any manner the Commissioner's authority with respect to the approval or disapproval of Player Contracts pursuant to Paragraph 14 of the Uniform Player Contract, and the fact that the Commissioner has approved or not disapproved a Player Contract containing an individually negotiated term alleged by the NBA to contradict, change, or to be inconsistent with a Uniform Player Contract provision shall not be referred to in the course of the grievance and arbitration procedure and shall not be considered in any manner or for any purpose by the Grievance Panel or Arbitrator.

(h) Expedited Procedure.

1. Subject to Article XXII, Section 3(b), notwithstanding the foregoing, in the event of a dispute arising under Article IV or Article XX of this Agreement, or under

Paragraph 20(a) of a Uniform Player Contract (but only insofar as such paragraph provides), or in the event of an alleged breach by a Player of Paragraph 9 of a Uniform Player Contract, the NBA, or the Players Association, or a Team may request that such dispute or alleged breach be referred immediately to the Impartial Arbitrator. In any such case, the dispute or alleged breach shall be asserted by notice in writing or by telegram, return receipt requested, given to the other party or parties, the NBA, and the Impartial Arbitrator.

(2) In addition, disputes or questions, which under Article XXII are to be arbitrated pursuant to the Expedited Procedure, shall, except with respect to notice, be arbitrated in the manner set forth in this Section 2(h).

(3) The Impartial Arbitrator shall convene a hearing with respect to such dispute or alleged breach at the earliest possible time, but in no event later than 24 hours following his receipt of such notice. If the Impartial Arbitrator is not immediately available and the parties are unable to agree upon another impartial arbitrator, the American Arbitration Association shall appoint such other impartial arbitrator.

(4) The award, which shall be issued not later than 24 hours after the conclusion of the hearing, shall be in writing and may be issued with or without opinion. If any party desires an opinion, one shall be issued but its issuance shall not delay compliance with and enforcement of the award. The award shall constitute full, final and complete disposition of the dispute or alleged breach, and shall be binding upon the Player(s) and Team(s) involved and the parties to this Agreement.

(5) The failure of any party to attend the hearing as scheduled shall not delay the hearing, and the Impartial Arbitrator is authorized to proceed to take evidence and issue an award as though such party were present.

Section 3. Miscellaneous.

(a) Each of the time limits set forth herein may be extended by mutual agreement of the parties involved.

(b) If any grievance is not resolved in accordance with the prescribed time limits within any step, unless an extension of time has been mutually agreed upon, either the Player, the Players Association, the NBA or a Team, as the case may be, after notifying the other party of its intent in writing, may proceed to the next step.

(c) In any meeting or hearing provided for herein, a Player may be accompanied by a representative of the Players Association who may participate in such meeting or hearing and represent the Player. In any such meeting or hearing, the NBA and any other party may attend and be accompanied by a representative who may participate in such meeting or hearing and represent the NBA and any such party.

(d) The parties recognize that a Player may be subjected to disciplinary action for just cause by his Team or by the Commissioner (or his designee). Therefore, in Grievances regarding discipline, the issue to be resolved shall be whether there has been just cause for the penalty imposed.

(e) Nothing contained herein shall excuse a Player from prompt compliance with any discipline imposed upon him. If discipline imposed upon a Player is determined to be improper by a final disposition under this Article, the Player shall promptly be made whole.

(f) Nothing contained in this Article shall be deemed to limit or impair the right of the NBA or any Team to impose discipline upon a Player(s) or to take any other action not inconsistent with the provisions of a Player Contract or this Agreement.

(g) No suspension of less than 5 days' duration imposed by a Club or the Commissioner (or his designee), no fine of $250, or less if imposed by a Club, and no fine of $2,500 or less if imposed by the Commissioner (or his designee) shall be appealable to the Impartial Arbitrator.

(h) All costs of arbitration, including the fees and expenses of the Impartial Arbitrator, shall be borne equally by the parties thereto; but each party shall bear the cost of its own witnesses, counsel, and the like.

ARTICLE XXII

College Draft, Option Clauses, Compensation Between Teams and Right of First Refusal

Section 1. In order to increase the number of Teams in the NBA with which present and future NBA players may negotiate and sign Player Contracts during their careers, the NBA rules relating to the College Drafts, Option Clauses and compensation between teams, described in Sections 1(a)(1), 1(b)(1) and 1(c)(1) below, will be modified and/or eliminated in the manner set forth in this Article.

(a) College Draft

(1) Under present NBA rules, a Team which drafts a player in a College Draft is the only Team with which such player may negotiate and sign a Player Contract. The present NBA rules place no time limitation on the duration of the exclusive right of a Team, obtained in the College Draft, to negotiate with such player.

(2) Commencing with the College Draft which is to be held between April 29, 1976 and June 10, 1976, and with respect to the College Draft to be held each year thereafter in the period March 1 to June 10, up to and including the College Draft to be held in 1986:

(a) A Team which drafts a player shall, during the period from the date of such draft (hereinafter "initial draft") to the date of the next College Draft (hereinafter "subsequent draft"), be the only Team with which such player may negotiate or sign a Player Contract, provided that, on or before the September 5 immediately following the initial draft, such Team has tendered to such player a Player Contract in the form prescribed in Article I, Section 1(a) above, or in any other applicable collective bargaining agreement, giving the player at least 30 days to accept (a "required tender"). In order to qualify as a required tender, such Player Contract must, on or before said September 5, be either personally delivered to the player or his representative, or mailed (i.e., deposited in an official depository under the exclusive care and custody of the United States Post Office Department) to the last known address of the player or his representative, and such Player Contract must also be:

(i) A Player Contract with a stated term of no more than one year, which contract must call for at least the minimum salary, if any, then applicable in the NBA, and may contain an Option Clause of one year, exercisable once for at least the same salary; or

(ii) A Player Contract with a stated term of four years, calling for a salary in years one through four, respectively, of at least $75,000, $90,000, $100,000 and $110,000, and providing that in the event the contract is terminated by the team in accordance with Paragraph 20(b)(2) or 20(c) of the Uniform Player Contract, the team shall nevertheless be obligated to pay the player the guaranteed amount of $120,000 less all amounts paid or owing to the player as a result of

services rendered under such Player Contract (but not including incentive compensation) prior to the termination of the contract; or

(iii) A Player Contract with a stated term of five years, calling for a salary in years one through five, respectively, of at least $75,000, $90,000, $100,000, $110,000 and $125,000, and providing that in the event the contract is terminated by the team in accordance with Paragraphs 20(b) (2) or 20(c) of the Uniform Player Contract, the team shall nevertheless be obligated to pay the player the guaranteed amount of $165,000 less all amounts paid or owing to the player as a result of services rendered under such Player Contract (but not including incentive compensation) prior to the termination of the contract. If, under the four-year and five-year Player Contracts described in Sections 1(a), (2)(a)(ii) and (iii) above, the player's services are terminated in accordance with Paragraphs 20(b) (2) or 20(c) of the Uniform Player Contract before the player has received the guaranteed amount in full, the balance of the guaranteed amount shall be paid to him pro rata over the remainder of the stated term of the contract, in equal annual installments commencing on the January 15 after his services are terminated. In the event, however, that the player's services are so terminated after the date which would, under Paragraph 20(b) (2) of the Uniform Player Contract, entitle the player to receive full payment of his salary for the season during which his services are terminated, the player shall receive such full payment during that season, and any part of the guaranteed amount still owing by the team shall be paid in equal annual installments over the stated term of the contract commencing with the January 15 following such payment. If, within the period between the initial and subsequent draft, such player has not signed a Player Contract with the Team which drafted him in the initial draft, such Team loses the exclusive right, which it obtained in the initial draft, to negotiate with the player and the player is then eligible to be drafted by any Team in the subsequent draft.

(b) A Team which, in the subsequent draft, drafts a player who (i) was drafted in the initial draft, (ii) received a required tender from the Team which drafted him in the initial draft and (iii) did not sign a Player Contract with such first Team prior to the subsequent draft, shall, during the period from the date of the subsequent draft to the date of the College Draft held in the following year, be the only Team with which such player may negotiate or sign a Player Contract, provided such Team has made a required tender. If such player has not signed a Player Contract within the period between the subsequent draft and the next College Draft with the Team which drafted him in the subsequent draft, that Team loses its exclusive right, which it obtained in the subsequent draft, to negotiate with the player, and the player is free to negotiate and sign a Player Contract at any time thereafter with any Team, and any Team is then free to negotiate and sign a Player Contract with such player, without any penalty or restriction, including, but not limited to, compensation between Teams or first refusal rights of any kind.

(c) If a player is drafted in an initial draft and (i) receives a required tender, (ii) does not sign a Player Contract with a Team prior to the subsequent draft and (iii) is not drafted by any Team in such subsequent draft, the player is free to negotiate and sign a Player Contract at any time thereafter with any Team, and any Team is then free to negotiate and sign a Player Contract with such player, without any penalty or restriction, including, but not limited to, compensation between Teams or first refusal rights of any kind.

(d) If a player is drafted by a Team and that Team does not make a required tender to such player, the player is free to negotiate and sign a Player Contract with

any Team on the September 6 following such draft and at any time thereafter, and any Team is then free to negotiate and sign a Player Contract with such player, without any penalty or restriction, including, but not limited to, compensation between Teams or first refusal rights of any kind.

(e) If a player is drafted by a Team in either an initial or subsequent draft and, during a period in which he may negotiate and sign a Player Contract with only the Team which drafted him, signs a player contract with a professional basketball team not in the NBA that covers at least the season immediately following said initial or subsequent draft, then such Team shall retain the exclusive NBA rights to negotiate with and sign the player for the period ending one year from the earlier of the following two dates: (i) the date the player notifies such Team that he is available to sign a Player Contract with such Team immediately, provided that such notice will not be effective until the player is under no contractual or other legal impediment to sign with such Team, or (ii) the date of the College Draft occurring in the twelve-month period from September 1 to August 30 in which the player notifies such Team of his availability and intention to play in the NBA during the season immediately following said twelve-month period, provided that such notice will not be effective until the player is under no contractual or other legal impediment to play with such Team for said season. If during said one-year period the player signs a player contract with a team in another professional basketball league and (a) the player has not made a bona fide effort to negotiate a Player Contract with the Team with the exclusive NBA rights to negotiate with and sign such player or (b) if such bona fide effort is made and such Team makes a bona fide offer of a Player Contract to such player, then such Team shall retain the exclusive NBA right to negotiate with and sign the player for additional one-year periods as measured in the preceding sentence; but if the player has made such bona fide effort and such Team fails to make a bona fide offer of a Player Contract to such player, then in no event shall said exclusive NBA right be retained. If the player does not sign a player contract with a team in any professional basketball league within the applicable one-year period, the player is free to negotiate and sign a Player Contract with any Team at any time thereafter, and any Team is then free to negotiate and sign a Player Contract with such player, without any penalty or restriction, including, but not limited to, compensation between Teams or first refusal rights of any kind. Notice hereunder shall be given as provided in Section 1(d) (11) below.

(f) A person whose high school class has graduated shall become eligible to be selected in a College Draft if he renounces his intercollegiate basketball eligibility by written notice to the NBA at least 45 days prior to such draft. If such person is selected in such draft by a Team, the following rules apply:

(i) If the player does not thereafter play intercollegiate basketball, then the Team which drafted him shall, during the period from the date of such draft to the date of the draft in which the player would, absent renunciation of intercollegiate eligibility, first have been eligible to be selected, be the only Team with which the player may negotiate or sign a Player Contract, provided that such Team makes a required tender to the player each year. For purposes hereof, the draft in which such player would, absent renunciation of such intercollegiate eligibility, first have been eligible to be selected, will be deemed the "subsequent draft" as to that player, and the rules applicable to a player who has been drafted in a subsequent draft will apply. If the player, having been selected in a draft for which he was eligible by virtue of renunciation of intercollegiate eligibility, has not signed a Player Contract with the Team which

drafted him in such draft following required tenders by that Team and is not drafted in the draft in which he would, absent renunciation of intercollegiate eligibility, first have been eligible to be selected, he is free, at any time thereafter, to negotiate and sign a Player Contract with such player, without any penalty or restriction, including, but not limited to, compensation between Teams or first refusal rights of any kind.

(ii) If the player does thereafter play intercollegiate basketball, then the Team which drafted him shall, during the period from the date of such draft to the date of the draft in which the player would, absent renunciation of intercollegiate eligibility, first have been eligible to be selected, be the only Team with which the player may negotiate or sign a Player Contract, provided that such Team makes a required tender to the player each year. For purposes hereof, the draft in which such player would, absent renunciation of intercollegiate eligibility, first have been eligible to be selected, will be deemed the "initial draft" as to that player, and the rules applicable to a player who has been drafted in an initial draft will apply. If the player, having been selected in a draft for which he was eligible by virtue of renunciation of intercollegiate eligibility, has not signed a Player Contract with the Team which drafted him in such draft following required tenders by that Team and is not drafted in the draft in which he would, absent renunciation of intercollegiate eligibility, first have been eligible to be selected, he is free, at any time thereafter, to negotiate and sign a Player Contract with any Team and any Team is then free to negotiate and sign a Player Contract with such player, without any penalty or restriction, including, but not limited to, compensation between Teams or first refusal rights of any kind.

(g) A person whose high school class has graduated, who has not been selected in a College Draft, and who signs a player contract with a professional team not in the NBA shall thereupon become eligible to be selected in the next College Draft, and if so selected, shall be treated as though he were a player referred to in Section 1(a) (2)(e) above.

(3) In the event that the exclusive right to negotiate with a player is assigned by a Team to another Team, in accordance with NBA procedures, the Team to which such right has been assigned shall have the same, but no greater, right to negotiate with such player as enjoyed by the Team assigning such right, and such player shall have the same, but no greater, obligation to the Team to which such right has been assigned as he had to the Team assigning such right.

(4) Nothing contained herein shall prevent violations by Teams of the exclusive NBA rights to negotiate with or sign players, as set forth or referred to in Sections 1(a) (2) and 1(a) (3) above, from being dealt with by the NBA in accordance with the applicable provisions of the NBA Constitution and By-laws. Other than as specifically agreed to in this Agreement or specifically made part of the Uniform Player Contract, nothing contained in this Agreement shall be deemed to be an agreement by the Players Association to any provision of the NBA Constitution and By-laws.

(b) Option Clauses

(1) Paragraph 22 of the Uniform Player Contract in effect prior to April 29, 1976 in the NBA contained an Option Clause that:

(a) granted to the Team an option to renew the contract for only one year beyond the stated term of such contract (the "option year");

(b) was exercisable only once; and

(c) provided that the compensation payable with respect to the option year may be no less than 100% of the compensation payable to the player with respect to the last year of the stated term of such Player Contract and that all other non-monetary terms applicable in the last year of the Player Contract were applicable in the option year. As used in this Agreement, the term "compensation," when relating to remuneration of a player, means money and any other rights or property that were received by and/or may be deemed to have accrued to the player under his Player Contract during the last year of the stated term.

(2) Option clauses heretofore exercised by any Team are not subject to reexercise.

(3) Option Clauses in existing Player Contracts made or entered into prior to April 29, 1976 may not be exercised and shall be deemed to have been deleted and eliminated as of April 29, 1976, except for the following:

(a) Option Clauses, which must have been exercised by tendering a Player Contract on or before August 1, 1976, for the option year covering the 1976-1977 playing season; and

(b) Option Clauses which, as reflected by their written terms, have been the subject of specific negotiation on substantive matters (such as, without limitation, economic terms).

(4) For purposes of Section 1(b)(3)(b) above, an Option Clause shall be deemed to have been the subject of specific negotiation on substantive matters (such as, without limitation, economic terms) if, for example and without limitation:

(a) it expressly provides for compensation in excess of one hundred and one per cent (101%) of the compensation payable with respect to the last year of the stated term of the Player Contract containing such a clause; or

(b) it appears separate and apart from Paragraph 22 of the Uniform Player Contract and expressly states that it has been specifically negotiated between a player and a Team.

(5) For purposes of Section 1(b)(3)(b) above, an Option Clause shall not have been the subject of specific negotiation on substantive matters (such as, without limitation, economic terms) solely because, for example and without limitation:

(a) it appears only in the form of the Uniform Player Contract then used in the NBA; and/or

(b) it recites that the player's agreement to the Option Clause was considered in determining the total compensation specified in his Player Contract; and or

(c) it effects a change in the date specified in Paragraph 22 of the Uniform Player Contract by which a Player Contract must be tendered to a player for there to be a timely exercise of the option; and/or

(d) it defines or describes the amount of total compensation that must be paid to satisfy the requirement that a player receive for an option year no less than 100% of the compensation payable with respect to the last year of the stated term of his Player Contract, and or the terms of payment thereof which may vary from the terms of payment of the last year of the stated term of his Player Contract.

(6) From April 29, 1976 to the end of the 1986-1987 season, Player Contracts entered into shall not contain any Option Clause except that:

(a) There may be an Option Clause in a Player Contract signed by a Rookie, but only if such contract has a stated term of not more than one year, subject to Section

6(b) below. Such Option Clause may authorize the extension of such contract for no more than one year beyond the stated term, may be exercisable only once, and shall provide that the compensation payable with respect to the option year shall be no less than 100% of the total compensation payable with respect to the stated one-year term of the contract and that all other non-monetary terms contained in such Player Contract shall be applicable in the option year.

(b) There may be an Option Clause in (i) a Veteran's contract or (ii) a Rookie's contract which is for a stated term of more than one year, provided that such Option Clause is specifically negotiated between such Veteran or Rookie and a Team, authorizes the extension of such contract for no more than one year beyond the stated term, is exercisable only once and provides that the compensation payable with respect to the option year is no less than 100% of the total compensation payable with respect to the last year of the stated term of such contract and that all other non-monetary terms applicable in the last year of the stated term of such contract shall be applicable in the option year. Any Player Contract for a Veteran or such a Rookie may contain an option in favor of the player. Other than the Uniform Player Contract to be used for a Rookie to be employed for a single season, no Option Clause may appear in a Uniform Player Contract.

(7) The parties to a Player Contract may define or describe the amount of total compensation that must be paid to satisfy the requirement that a player receive for an option year no less than 100% of the compensation payable with respect to the last year of the stated term of the player's Player Contract.

(c) Compensation Rule

(1) Under the compensation rule applicable as of April 29, 1976, and currently applicable in the NBA when a Veteran Free Agent signs a Player Contract with a Team (hereinafter the "new Team") other than the Team for which he had last previously played (hereinafter the "prior Team"), if the new Team and prior Team are unable to agree upon the compensation to be paid to the prior Team for the loss of such Veteran Free Agent, the Commissioner, who has full, complete and final jurisdiction of any dispute involving the new Team and the prior Team, is authorized, but not required, to make an award of compensation to the prior Team. The award by the Commissioner may take the form of assignment of Player Contract(s) and/or draft choice(s) and/or cash. Although the decision of whether to award compensation and, if so, what form of compensation is fair and equitable, lies in the sole discretion of the Commissioner, the purpose of the compensation rule described above is not to serve as a penalty, but is to ensure that a Team which loses such a player is, to the nearest extent possible, made whole for the loss of such player.

(2) The current compensation rule described in Section 1(c)(1) above will remain in effect until the end of the 1980-81 season and there shall be no other compensation obligation, rule, practice, policy, regulation or agreement created or applied in the NBA during that period. During that period, a Veteran Free Agent may negotiate and sign a Player Contract with any Team and any Team may negotiate and sign a Player Contract with any Veteran Free Agent without any penalty or restriction subject only to the compensation rule described in Section 1(c)(1) above. No compensation obligation, rule, practice, policy, regulation or agreement shall apply to any Veteran Free Agent who seeks to negotiate or sign a player contract with or play with any team in any professional basketball league other than the NBA.

(3) For purposes of application of the compensation rule described above and for the Right of First Refusal described below in Section 1(d):

(a) Playing services called for under any permissible option year must be rendered in order for a player to be deemed a Veteran Free Agent, provided, however, that a player and a Team may agree otherwise. A player who has not rendered the playing services called for under any permissible option year may notify the team to whom the option obligation was owed, on or before July 15 of any year, that he desires to render his playing services to such team for the immediately following NBA season (a "tender of services"). If, on or before the August 15 following a tender of services, the team notifies the player that it accepts his tender of services for the immediately following NBA season under the same contractual terms and conditions applicable in the unfulfilled option year, then the player shall be obligated to render his playing services to the team for such season under such terms and conditions. If the team does not notify the player, on or before August 15 following a tender of services, that it accepts his tender of services for the immediately following NBA season under the same terms and conditions applicable in the unfulfilled option year, then the player shall be deemed a Veteran Free Agent, free to negotiate and sign a Player Contract with any NBA team subject only to the compensation rule described in Section 1(c)(1) above. A player who has not rendered the playing services called for under any permissible option year and who has not made a tender of services shall not be deemed a Veteran Free Agent and may not negotiate or sign a Player Contract with any other NBA team. The notices provided for in this Section 1(c)(3)(a) shall be in writing and sent by registered mail, return receipt requested. Such notices shall be deemed to have been given upon mailing.

(b) A Veteran Free Agent shall be free to negotiate and sign a Player Contract with any Team and any Team shall be free to negotiate and sign a Player Contract with any Veteran Free Agent commencing on the day following the conclusion of all NBA playoff games in the last season covered by his Player Contract.

(4) No compensation obligation, rule, practice, policy, regulation or agreement shall apply to (a) the signing by a Team of any free agent other than a Veteran Free Agent, or (b) the signing (upon his return to the NBA) by a Team of a Veteran Free Agent who, having become a Veteran Free Agent after April 29, 1976, played in another professional basketball league for at least two seasons, or (c) the signing (upon his return to the NBA) by a Team of a Veteran Free Agent who became a Veteran Free Agent prior to April 29, 1976 and, who, after becoming a Veteran Free Agent, played in another professional basketball league.

(5) Notwithstanding its expiration at the end of the 1980-1981 season, the compensation rule set forth in Section 1(c)(1) above shall apply to any NBA player who (i) becomes a Veteran Free Agent commencing at the end of the 1979-1980 season, (ii) chooses not to render playing services to an NBA team during the 1980-1981 season despite having received an offer of a Player Contract (without an Option Clause) for only that season which specifies compensation for the 1980-1981 season of 100% of the compensation payable to the player for the 1979-1980 season and all other non-monetary terms contained in his Player Contract for the 1979-1980 season and (iii) signs a Player Contract with another NBA team to commence with the 1981-1982 season. No right of first refusal shall be applicable to such Veteran Free Agent with respect to such transaction.

(d) Right of First Refusal

(1) No compensation obligation, rule, practice, policy, regulation or agreement of any kind shall be applicable to any Veteran Free Agent during the period from the day following the last NBA playoff game of the 1980-1981 season to the last day of the 1986-1987 season. During the aforesaid period, a Veteran Free Agent may negotiate and sign a Player Contract with any Team and any Team may negotiate and sign a Player Contract with any Veteran Free Agent without any penalty or restriction, subject only to the prior Team's Right of First Refusal described below in the other subsections of this Section 1(d) (or to the compensation rule in the situation described in Section 1(c)(5) above), and there shall be no other right of first refusal rule, practice, policy, regulation or agreement created or applied in the NBA during the aforesaid period.

(2) When a Veteran Free Agent receives an offer to sign a Player Contract from a Team (the new Team) other than the prior Team, which he desires to accept, he shall give to the prior Team a completed certificate substantially in the form of Exhibit C (the "Offer Sheet"), signed by the Veteran Free Agent and the new Team, which shall contain the "Principal Terms" (as defined below) of the new Team's offer. The prior Team, upon receipt of the Offer Sheet, may exercise its Right of First Refusal, which shall have the legal consequences hereinafter set forth below in this Section 1(d)(2).

(a) If, within fifteen (15) days from the date it receives an Offer Sheet, the prior Team gives to the Veteran Free Agent a "First Refusal Exercise Notice" substantially in the form of Exhibit D, such Veteran Free Agent and the prior Team shall be deemed to have entered into a binding agreement, which they shall promptly formalize in a Player Contract, containing (i) all the Principal Terms (subject to Section 1(d)(6) below), (ii) those terms of the Uniform Player Contract not modified by the Principal Terms, and (iii) such additional terms, not less favorable to the Veteran Free Agent than those contained in the Offer Sheet, as may be agreed upon between the Veteran Free Agent and the prior Team.

(b) If the prior Team does not give the First Refusal Exercise Notice within the aforementioned fifteen (15) day period, the player and the new Team shall be deemed to have entered into a binding agreement, which they shall promptly formalize in a Player Contract, containing (i) all the Principal Terms; (ii) those terms of the Uniform Player Contract not modified by the Principal Terms, and (iii) such additional terms, not less favorable to the Veteran Free Agent than those contained in the Offer Sheet, as may be agreed upon between the Veteran Free Agent and the new Team (subject to the last sentence of Section (3)(c) below).

(c) There may be only one Offer Sheet signed both by a Team and a Veteran Free Agent outstanding at any one time. An Offer Sheet, before it is given to the prior Team, may be revoked or withdrawn only upon the written consent of the new Team and the Veteran Free Agent. An Offer Sheet, after it has been given to the prior Team, may be revoked or withdrawn only upon the written consent of the prior Team, the new Team and the Veteran Free Agent. In either of such events, a Veteran Free Agent shall again be free to negotiate and sign a Player Contract with any Team, and any Team shall again be free to negotiate and sign a Player Contract with such Veteran Free Agent, subject only to the prior Team's renewed Right of First Refusal.

(3) For purposes of this Section 1(d), the Principal Terms shall include, without limitation, the matters covered by Sections 1(d)(3)(a) — 1(d)(3)(e) below:

(a) the money the new Team will pay (and lend, on described terms) to the

Veteran Free Agent and/or his designee (currently and/or as deferred compensation in specified installments on specified dates) in consideration for his services as a basketball player under the Player Contract ("Money") and the security therefor, if any, and if the amount of Money is variable and/or is subject to calculation, a description of the variation and the method of calculation;

(b) a description of property other than Money which the new Team will pay, provide or make available to the Veteran Free Agent and/or his designees in consideration of his services as a basketball player under the Player Contract ("Property");

(c) a description of investment opportunities (including financing terms thereof, if any) which the new Team will provide or make available to the Veteran Free Agent and/or his designees ("Investments");

(d) modifications of and additions to the terms contained in the Uniform Player Contract requested by the Veteran Free Agent and acceptable to the new Team, which relate to non-compensation terms of the Veteran Free Agent's employment as a basketball player (which shall be evidenced either by a copy of the Uniform Player Contract, marked to show changes, or by a brief written summary contained on or attached to the Offer Sheet);

(e) Money, Property and Investments the new Team will pay, provide or make available to the Veteran Free Agent and/or his designees, in consideration for described services by him or others, other than as a basketball player.

(4) If any item of property or investments of the Principal Terms contained in an Offer Sheet in such that its fair market value cannot readily be estimated by the prior Team, the Veteran Free Agent and/or the new Team shall commence an arbitration (the "Valuation Arbitration"), pursuant to the Expedited Procedure described in Article XXI, Section 2(h) above, before the Veteran Free Agent gives the Offer Sheet to the prior Team. The prior Team and the NBA shall not be entitled to notice of or to participate in the Valuation Arbitration. The Impartial Arbitrator in such Valuation Arbitration shall make an independent determination in writing only as to the fair market value of such items. In arriving at his determination, the Impartial Arbitrator shall consider relevant information (including appraisals and estimates) furnished to him by the new Team and/or the Veteran Free Agent and, if he deems it necessary, may obtain (consistent with the Expedited Procedure) appraisals or opinions as to fair market value by independent persons qualified to render the same. It shall not be inconsistent with the Expedited Procedure for the Impartial Arbitrator in his reasonable discretion to adjourn for a short period of time a hearing for the purpose of obtaining such appraisals or opinions. The Impartial Arbitrator's determination shall be final and binding on the new Team, the prior Team and the Veteran Free Agent only for purposes of the Right of First Refusal, and a copy of the determination in any such Valuation Arbitration shall be attached to the Offer Sheet given to the prior Team.

(5) Along with the descriptions of the Property and Investments and the copy of the determination in the Valuation Arbitration, if any, the Offer Sheet shall include or have attached, in written form, all material statements and information furnished (orally or in writing) by the new Team to the Veteran Free Agent or his representative about such items of Property and Investments which would be relevant to the prior Team's evaluation of the new Team's offer other than the new Team's estimates and opinions, if any, of the value of such items.

(6) If the prior Team gives a First Refusal Exercise Notice, the Player Contract created thereby shall be deemed to contain the following additional provisions:

(a) The prior Team shall not be obligated to pay, provide or make available to the Veteran Free Agent and/or his designees, in kind, any terms within the Principal Terms which are unique or otherwise cannot be obtained or duplicated by the prior Team without unreasonable effort or expense ("Unique Terms");

(b) The prior Team shall be obligated to pay, provide or make available to the Veteran Free Agent and/or his designees, and the Veteran Free Agent shall be obligated to accept, in substitution for Unique Terms, substantially equivalent terms or, if substantially equivalent terms cannot be obtained by the prior Team without unreasonable effort or expense, cash equal to the fair market value of the Unique Terms, in either case payable to the Veteran Free Agent and/or his designees at the same or approximately the same time as would have been payable by the new Team pursuant to the Offer Sheet. The prior Team shall not be obligated to pay, provide or make available to the Veteran Free Agent and/or his designees, substantial equivalents of (i) intangible benefits or advantages that might accrue to the Veteran Free Agent as a consequence of living and playing in the geographic area of the new Team or (ii) promises by the new Team of a try-out, audition or introduction for the possibility of performing services or earning income other than as a basketball player. Within ten days following its giving of a First Refusal Exercise Notice, the prior Team shall give the Veteran Free Agent written notice of the items, if any, it deems to be Unique Terms and the substantially equivalent terms it proposes to pay, provide or make available in substitution for such Unique Terms and/or the amount of cash equal to the fair market value of the Unique Terms it proposes to pay, provide or make available in substitution for substantially equivalent terms. If such written notice is not so given, the prior Team shall have waived any right it may have to contend that the Principal Terms contain any Unique Terms.

(7) The Expedited Procedure as provided for in Article XXI, Section 2(h) above, shall be the exclusive method for resolving the disputes set forth in this Section 1(d)(7), and the question set forth in Section 1(d)(4) above, by the Impartial Arbitrator whose decision shall be final and binding upon all parties thereto:

(a) A dispute between a Veteran Free Agent and a prior Team as to whether a term within the Principal Terms is a Unique Term and/or any dispute as to any matter referred to in Section 1(d)(6)(b) above.

The Impartial Arbitrator shall not have the power to terminate the binding agreement between the Veteran Free Agent and the prior Team, but the Impartial Arbitrator shall have the power only to direct the prior Team to pay, provide or make available to the Veteran Free Agent and/or his designees either (i) the term in dispute, in kind, if the Impartial Arbitrator rules that such term is not a Unique Term; or (ii) a substantially equivalent term determined by the Impartial Arbitrator, in substitution for a Unique Term; or (iii) if the Impartial Arbitrator rules that substantially equivalent terms cannot be obtained by the prior Team without unreasonable effort or expense, cash equal to the fair market value of the Unique Term as valued in the Valuation Arbitration or, if not so valued, then as determined in the arbitration hereunder.

(b) A dispute between the player and either the prior Team or the new Team, as the case may be, relating to their respective obligations to formalize their binding agreements created under Sections 1(d)(2)(a) or 1(d)(2)(b) above, or as to whether the binding agreement is between the Veteran Free Agent and the new Team or the

Veteran Free Agent and the prior Team.

The Impartial Arbitrator shall not have the power to terminate any such binding agreement, but he shall have the power only to direct the parties to formalize such binding agreement into a Player Contract in accordance with the terms of such Sections, as interpreted by the Impartial Arbitrator.

(c) A dispute initiated by the prior Team as to whether a Valuation Arbitration should have been commenced as to any item of Property or Investments prior to the giving of the Offer Sheet to the prior Team.

If the Impartial Arbitrator finds that the Valuation Arbitration should have been commenced by the new Team and/or the Veteran Free Agent, he shall make a determination in writing of the fair market value of such items and shall extend the fifteen (15) day period referred to in Section 1(d)(2)(a) above to ten (10) days after he notifies the prior Team of his determination of the fair market value of such items, which notification shall promptly be given. If the Impartial Arbitrator finds that the Valuation Arbitration need not have been commenced, the prior Team shall in no event be entitled to any extension of said fifteen (15) day period, regardless of when the Impartial Arbitrator makes such finding. Any arbitration pursuant to this Section 1(d)(7)(c) must be commenced by the prior Team within seven (7) days of its receipt of the Offer Sheet.

(8) A Veteran Free Agent shall have no less than 165 days from the last playoff game of the preceding season to give an Offer Sheet to the prior Team. However, notwithstanding any other provision of this Section 1(d), a Veteran Free Agent shall not be entitled to give an Offer Sheet to the prior Team during the 200 day period commencing with the 166th day after the last NBA playoff game of the preceding season if all of the following conditions have been met by the prior Team:

(a) the prior Team tendered a Player Contract to such Veteran Free Agent on or before the 150th day after the last playoff game of the preceding season with the condition that it could be accepted by the Veteran Free Agent up to and including the 165th day after such last playoff game of the preceding season; and

(b) such Player Contract had a stated term of only the next season (whether or not the next season already commenced prior to the tender); and

(c) the compensation stated to be payable in the tendered Player Contract was no less than 100% of the compensation payable to the Veteran Free Agent with respect to the last season in which he played, to be reduced, if applicable, pro rata to reflect the number of regular season games played by the Team prior to acceptance, if any, by the Veteran Free Agent of such Player Contract; and

(d) the tendered Player Contract contained all other non-monetary terms contained in the Veteran Free Agent's contract for the last season in which he played.

If all of such conditions were met by the prior Team and if the Veteran Free Agent does not accept the prior Team's tendered Player Contract by the 165th day after the last playoff game of the preceding season, the Veteran Free Agent shall not play for any other Team during that season but shall be free to negotiate and sign a Player Contract with any Team commencing with the next succeeding season, without any penalty or restriction, subject only to the prior Team's renewed Right of First Refusal, including the provisions of this Section 1(d)(8).

(9) (a) Unless otherwise specifically negotiated by a Veteran Free Agent, no right of first refusal rule, practice, policy, regulation or agreement shall apply to the

signing of a player contract with or the playing with any team in any professional basketball league other than the NBA by any Veteran Free Agent.

(b) No right of first refusal, rule, practice, policy, regulation or agreement shall apply to (i) the signing by a Team of any free agent other than a Veteran Free Agent or (ii) the signing (upon his return to the NBA) by a Team of a Veteran Free Agent who, after becoming a Veteran Free Agent, played in another professional basketball league for at least two playing seasons.

(10) Within ten (10) days after the giving of an Offer Sheet to the prior Team, the Veteran Free Agent shall cause a copy thereof to be given to the NBA, and within ten (10) days after the giving of a First Refusal Exercise Notice to the Veteran Free Agent, the prior Team shall cause a copy thereof to be given to the NBA. At any time after the giving of an Offer Sheet to a prior Team, the NBA may require the new Team to cause a copy thereof to be given to the NBA. Subject to Section 2(b) below, the NBA shall have the right to prepare and circulate to all NBA teams a list containing no more than the names of all players who shall become Veteran Free Agents as of the day following the last playoff game of that NBA season ("Veteran Free Agent List"), and no other list relating to Veteran Free Agents. A Veteran Free Agent List may so be circulated, but without any further explanation, between April 1 and May 1 of each year following the date of this Agreement up to and including 1987. If a Veteran Free Agent List is so circulated, a copy thereof shall be sent to the Players Association.

(11) Any Offer Sheet, First Refusal Exercise Notice or other writing required or permitted to be given under this Section 1(d) shall be either by hand delivery or by prepaid certified or registered mail addressed as follows:

To any Team: addressed to that Team at the principal address of such Team as then listed on the records of the NBA or at that Team's principal office, to the attention of the Team's general manager;

To the NBA: addressed to the NBA at Olympic Tower, 645 Fifth Avenue, New York, New York, 10022, to the attention of the Commissioner;

To a Veteran Free Agent: to his address listed on the Offer Sheet and, if the Veteran Free Agent designates a representative on the Offer Sheet and lists such representative's address thereon, a copy shall be sent to such representative at such address.

An Offer Sheet shall be deemed given only when actually received by the prior Team. A First Refusal Exercise Notice shall be deemed given when sent by the prior Team. Other writings required or permitted to be given under this Section 1(d) shall be deemed given only when actually received by the party to whom addressed.

Section 2. Additional Undertakings.

(a) From April 29, 1976 until the last day of the 1986-1987 season, no Member, alone or by reason of any express or implied Agreement or understanding, shall fail or refuse to negotiate with, or enter a Player Contract with any NBA player who is free to negotiate and sign a Player Contract with any Team, on any of the following grounds:

(i) the player has previously been subject to the exclusive negotiating rights obtained by another Member in a College Draft; or

(ii) the player has previously been subject to the option of another Team; or

(iii) the player has previously refused or failed to enter into a Player Contract containing an Option Clause; or

(iv) the player has become a Veteran Free Agent, or

(v) the player is or has been subject to the Right of First Refusal described in Section 1(d) above.

(b) From the last day of the 1980-1981 season until the last day of the 1986-1987 season, no Member shall directly or indirectly communicate or disclose to any other Member or to the NBA (other than as provided in Section 1(d) (10) above) that it has negotiated with or is negotiating with any Veteran Free Agent who is subject to the Right of First Refusal unless and until an Offer Sheet shall have been given to the prior Team.

(c) From the last day of the 1980-1981 season until the last day of the 1986-1987 season,

(i) no Member shall make an offer to a Veteran Free Agent subject to the Right of First Refusal which includes any Principal Terms which are (a) designed to serve the purpose of defeating the prior Team's ability to evaluate and meet the new Team's offer, and (b) not intended to be bona fide terms offered by the new Team to the Veteran Free Agent; and

(ii) no player who has become a Veteran Free Agent subject to the Right of First Refusal shall induce any new Team or cause any new Team to be induced to make an offer which violates the undertaking in Subsection (i) immediately above.

(d) The College Draft, Option Clause, and compensation rule, applicable as of April 29, 1976 and as described in Sections 1(a) (1), 1(b) (1) and 1(c) (1), shall not at any time in the future be reinstituted, implemented or proposed by the NBA or any Team for use in the NBA.

(e) Prior to the last day of the 1986-1987 season, no changes will be proposed or sought as to the practices and procedures set forth in Section 1 of Article XXII of this Agreement.

(f) Nothing contained in Sections 2(a), 2(b) or 2(c) above shall be deemed to govern the rights of the parties following the 1986-1987 season, so as either to permit or phohibit the practices referred to therein.

(g) The Players Association hereby covenants not to sue the NBA, any of its Members, or Madison Square Garden Corporation, their agents, successors or assigns, with respect to any claim relating to or arising out of the claims set forth in the complaint, amended and supplemental complaint, and second amended and supplemental complaint in the case of **Oscar Robertson, etal. v. National Basketball Association, et al.**, 70 Civ. 1526 (RLC) in the United States District Court, Southern District of New York (the "Robertson Action") including, without limitation, the NBA rules, practices and regulations (applicable as of April 29, 1976) relating to the College Draft, the Option Clause, the compensation rule, the trading of players, tampering, maintenance of certain lists, maintenance of a Uniform Player Contract, and the sharing of salary information, provided, however, that nothing contained in this Section 2(g) shall prevent the Players Association from asserting that the NBA or any of its members has breached the terms of this Agreement or of any Player Contract or from challenging any matter referred to in Section 3(e) below or shall affect the provisions of Section 2(d) above.

(h) Subject to the terms of the Stipulation and Settlement Agreement referred

of the NBA to contend otherwise) that the same is not a mandatory subject of collective bargaining or a subject over which they are otherwise required to collectively bargain, nor do they concede that the same is a mandatory subject of collective bargaining or a subject over which they are otherwise required to collectively bargain.

(h) Pursuant to Paragraph 3 of the Stipulation and Settlement Agreement referred to above, the Players Association is to act as "Receiving Agent" to distribute the "Settlement Fund" described in said Paragraph 3, the last seven annual installments of which are to be made out of revenues payable to the NBA from any network television contract which is in effect while any part of the Settlement Fund remains unpaid and which covers the telecast of NBA games. The Players Association hereby acknowledges that, merely by reason of its acting or having acted as Receiving Agent with respect to the Settlement Fund or by reason of the fact that such revenues are being or have been used to pay a portion of the Settlement Fund, it will not in the future claim, propose or in any manner request entitlement to any revenues payable to the NBA from any network television contract. The Players Association shall not, in any proceeding involving collective bargaining, use or refer to in any way the fact that revenues payable to the NBA from one or more network television contracts are being or have been used to pay a portion of the Settlement Fund or that the Players Association has been designated a Receiving Agent with respect to said Fund.

ARTICLE XXIII
Recognition Clause

The NBA recognizes the Players Association as the exclusive collective bargaining representative of persons who are employed by NBA Members as professional basketball players (and/or who become so employed between the date of this Agreement and June 1, 1982); and the Players Association warrants that it is duly empowered to enter into this Agreement for and on behalf of such persons. The NBA and the Players Association agree that, notwithstanding the foregoing, such persons and NBA Members may, on an individual basis, bargain with respect to and agree upon the provisions of Player Contracts, but only as and to the extent permitted by this Agreement.

ARTICLE XXIV
Savings Clauses

Section 1. In the event that any provision hereof is found to be inconsistent with the Internal Revenue Code (or the rules and regulations issued thereunder), the National Labor Relations Act, or the rules and regulations of any other Government agency, or is determined to have an adverse effect upon the right of the NBA (or any successor entity) to a tax exemption under Section 501(c)(6) of the Internal Revenue Code of 1954 (or any successor section of like import), then the parties hereto agree to make such changes as are necessary to avoid such inconsistency or to obtain or maintain such exemption retaining, to the extent possible, the intention of such provision.

Section 2. This Agreement is subject to any wage-control legislation as is or may be applicable, and to any orders, rules, or regulations promulgated thereunder or otherwise by any governmental authority.

ARTICLE XXV
Integration Clause

This Agreement, together with the exhibits hereto, constitutes the entire understanding between the parties and all understandings, conversations and communications, oral and written (including any draft of this Agreement) between the Members of the NBA and the Players Association, or on behalf of any of them, are merged into and superseded by this Agreement and shall be of no force or effect, except as expressly provided herein. No such understandings, conversations, communications or drafts shall be referred to in any proceeding by the parties. Further, no understanding contained in this Agreement shall be modified, altered or amended, except by a writing signed by the party against whom enforcement is sought. This Agreement is made under and shall be governed by the internal law of the State of New York, except where federal law may govern.

ARTICLE XXVI

Term of Agreement

Except as otherwise provided herein, this Agreement shall be effective from the date hereof and shall continue in full force and effect until June 1, 1982.

NATIONAL BASKETBALL ASSOCIATION

By _____
Lawrence F. O'Brien, Commissioner
Per Authority Granted by
National Basketball Association
on February 2, 1980

NATIONAL BASKETBALL
PLAYERS ASSOCIATION

By _____
Robert Lanier

— NOTES —

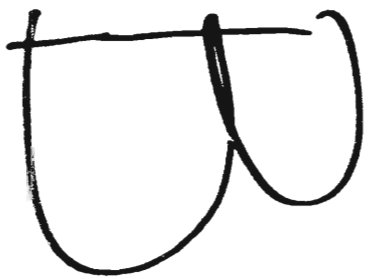

Exhibit A-1

NATIONAL BASKETBALL ASSOCIATION

UNIFORM PLAYER CONTRACT

(Rookie—Single Season)

THIS AGREEMENT made this ..... day of ..... 19 ..... by and between ..... hereinafter called the "Club"), a member of the National Basketball Association (hereinafter called the "Association") and ..... whose address is shown below (hereinafter called the "Player")

WITNESSETH:

In consideration of the mutual promises hereinafter contained, the parties hereto promise and agree as follows:

1. The Club hereby employs the Player as a skilled basketball player for the term of one year from the 1st day of September 19 ..... The Player's employment shall include attendance at training camp, playing the games scheduled for the Club's team during the schedule season of the Association, playing all exhibition games scheduled by the Club during and prior to the schedule season, playing (if invited to participate) in the Association's All-Star Game and attending every event (including, but not limited to, the All-Star Game luncheon and/or banquet) conducted in association with the All-Star Game, and playing the playoff games subsequent to the schedule season. Players other than rookies will not be required to attend training camp earlier than twenty-eight days prior to the first game of the Club's schedule season. Rookies may be required to attend training camp at an earlier date. Exhibition games shall not be played on the three days prior to the opening of a team's regular season schedule, nor on the day prior to a regularly scheduled game, nor on the day prior to and the day following the All-Star Game. Exhibition games prior to the schedule season shall not exceed eight (including intra-squad games for which admission is charged) and exhibition games during the regularly scheduled season shall not exceed three.

2. The Club agrees to pay the Player for rendering services described herein the sum of $ ..... less all amounts required to be withheld from salary by Federal, State and local authorities and exclusive of any amount which the Player shall be entitled to receive from the Player Playoff Pool) in twelve equal semi-monthly payments beginning with the first of said payments on November 1st of the season above described and continuing with such payments on the first and fifteenth of each month until said sum is paid in full; provided, however, if the Club does not qualify for the playoffs, the payments due subsequent to the conclusion of the schedule season shall become due and payable immediately after the conclusion of the schedule season.

3. The Club agrees to pay all proper and necessary expenses of the Player, including the reasonable board and lodging expenses of the Player while playing for the Club "on the road" and during training camp if the Player is not then living at home. The Player, while "on the road" and at training camp only if the Club does not pay for meals directly, shall be paid a meal expense allowance as set forth in the Agreement currently in effect between the National Basketball Association and National Basketball Players Association. No deductions from such meal expense allowance shall be made for meals served on an airplane. While the Player is at training camp (and if the Club does not pay for meals directly), the meal expense allowance shall be paid in weekly installments commencing with the first week of training camp. For the purposes of this paragraph, the Player shall be considered to be "on the road" from the time the Club leaves its home city until the time the Club arrives back at its home city. In addition, the Club agrees to pay $50.00 per week to the Player for the four weeks prior to the first game of the Club's schedule season that the Player is either in attendance at training camp or engaged in playing the exhibition schedule.

4. The Player agrees to observe and comply with all requirements of the Club respecting conduct of its team and its players, at all times whether on or off the playing floor. The Club may, from time to time during the continuance of this contract, establish reasonable rules for the government of its players "at

home" and "on the road," and such rules shall be part of this contract as fully as if herein written and shall be binding upon the Player. For any violation of such rules or for any conduct impairing the faithful and thorough discharge of the duties incumbent upon the Player, the Club may impose reasonable fines upon the Player and deduct the amount thereof from any money due or to become due to the Player during the season in which such violation and/or conduct occurred. The Club may also suspend the Player for violation of any rules so established, and, upon such suspension, the compensation payable to the Player under this contract may be reduced in the manner provided in the Agreement currently in effect between the National Basketball Association and the National Basketball Players Association. When the Player is fined or suspended, he shall be given notice in writing, stating the amount of the fine or the duration of the suspension and the reasons therefor.

5. The Player agrees (a) to report at the time and place fixed by the Club in good physical condition; (b) to keep himself throughout the entire season in good physical condition; (c) to give his best services, as well as his loyalty to the Club, and to play basketball only for the Club and its assignees; (d) to be neatly and fully attired in public and always to conduct himself on and off the court according to the highest standards of honesty, morality, fair play and sportsmanship; and (e) not to do anything which is detrimental to the best interests of the Club or of the Association.

6. (a) If the Player, in the judgment of the Club's physician, is not in good physical condition at the date of his first scheduled game for the Club, or if, during the season, he fails to remain in good physical condition (unless such condition results directly from an injury sustained by the Player as a direct result of participating in any basketball practice or game played for the Club during such season), so as to render the Player, in the judgment of the Club's physician, unfit to play skilled basketball, the Club shall have the right to suspend such Player until such time as, in the judgment of the Club's physician, the Player is in sufficiently good physical condition to play skilled basketball. In the event of such suspension, the annual sum payable to the Player shall be reduced in the same proportion as the length of the period during which, in the judgment of the Club's physician, the Player is unfit to play skilled basketball, bears to the length of the season.

(b) If the Player is injured as a direct result of participating in any basketball practice or game played for the Club, the Club will pay the Player's reasonable hospitalization and medical expenses (including doctor's bills), provided that the hospital and doctor are selected by the Club, and provided further that the Club shall be obligated to pay only those expenses incurred as a result of continuous medical treatment caused solely by and relating directly to the injury sustained by the Player. If, in the judgement of the Club's physician, the Player's injuries resulted directly from playing for the Club and render him unfit to play skilled basketball, then, so long as such unfitness continues, but in no event beyond the term of one year referred to in paragraph 1 of this contract, the Club shall pay to the Player the compensation prescribed in paragraph 2 of this contract. The Club's obligations hereunder shall be reduced by any workmen's compensation benefits (which, to the extent permitted by law, the Player hereby assigns to the Club) and any insurance provided for by the Club whether paid or payable to the Player, and the Player hereby releases the Club from any and every other obligation or liability arising out of any such injuries.

(c) The Player hereby releases and waives every claim he may have against the Association and every member of the Association, and against every director, officer, stockholder, trustee, partner, and employee of the Association and/or any member of the Association (excluding persons employed as players by any such member), arising out of or in connection with any fighting or other form of violent and/or unsportsmanlike conduct occurring on or adjacent to the playing floor or any facility used for practices or games) during the course of any practice and/or any exhibition, championship season, and/or play-off game.

7. The Player agrees to give to the Club's coach, or to the Club's physician, immediate notice of an injury suffered by him, including the time, place, cause and nature of such injury.

8. Should the Player suffer an injury as provided in the preceding section, he will submit himself to a medical examination and treatment by a physician designated by the Club. Such examination when made at the request of the Club shall be at its expense, unless made necessary by some act or conduct of the Player contrary to the terms of this contract.

9. The Player represents and agrees that he has extraordinary and unique skill and ability as a basketball player, that the services to be rendered by him hereunder cannot be replaced or the loss thereof adequately compensated for in money damages, and that any breach by the Player of this contract

will cause irreparable injury to the Club and to its assignees. Therefore, it is agreed that in the event it is alleged by the Club that the Player is playing, attempting or threatening to play, or negotiating for the purpose of playing, during the term of this contract, for any other person, firm, corporation or organization, the Club and its assignees (in addition to any other remedies that may be available to them judicially or by way of arbitration) shall have the right to obtain from any court or arbitrator having jurisdiction, such equitable relief as may be appropriate, including a decree enjoining the Player from any further such breach of this contract, and enjoining the Player from playing basketball for any other person, firm, corporation or organization during the term of this contract. In any suit, action or arbitration proceeding brought to obtain such relief, the Player does hereby waive his right, if any, to trial by jury, and does hereby waive his right, if any, to interpose any counterclaim or set-off for any cause whatever.

10. The Club shall have the right to sell, exchange, assign or transfer this contract to any other professional basketball club and the Player agrees to accept such sale, exchange, assignment or transfer and to faithfully perform and carry out this contract with the same force and effect as if it had been entered into by the Player with the assignee club instead of with this Club. The Player further agrees that, should the Club contemplate the sale, exchange, assignment or transfer of this contract to another professional basketball club or clubs, the Club's physician may furnish to the physicians and officials of such other club or clubs all relevant medical information relating to the Player.

11. In the event that the Player's contract is sold, exchanged, assigned or transferred to any other professional basketball club, all reasonable expenses incurred by the Player in moving himself and his family from the home city of the Club to the home city of the club to which such sale, exchange, assignment or transfer is made, as a result thereof, shall be paid by the assignee club. Such assignee club hereby agrees that its acceptance of the assignment of this contract constitutes agreement on its part to make such payment.

12. In the event that the Player's contract is assigned to another club the Player shall forthwith be notified orally or by a notice in writing, delivered to the Player personally or delivered or mailed to his last known address, and the Player shall report to the assignee club within forth-eight hours after said notice has been received or within such longer time for reporting as may be specified in said notice. If the Player does not report to the club to which his contract has been assigned within the aforesaid time, the Player may be suspended by such club and he shall lose the sums which would otherwise be payable to him as long as the suspension lasts.

13. The Club will not pay and the Player will not accept any bonus or anything of value for winning any particular Association game or series of games or for attaining a certain position by the Club's team in the standing of the league operated by the Association as of a certain date, other than the final standing of the team.

14. This contract shall be valid and binding upon the Club and the Player immediately upon its execution. The Club agrees to file a copy of this contract with the Commissioner of the Association prior to the first game of the schedule season or within forty-eight (48) hours of its execution, whichever is later; provided, however, the Club agrees that if the contract is executed prior to the start of the schedule season and if the Player so requests, it will file a copy of this contract with the commissioner of the Association within thirty (30) days of its execution, but not later than the date hereinabove specified. If pursuant to the Constitution and By-Laws of the Association the Commissioner disapproves this contract within (10) days after the filing thereof in his office, this contract shall thereupon terminate and be of no further force or effect and the Club and the Player shall thereupon be relieved of their respective rights and liabilities thereunder.

15. The Player and the Club acknowledge that they have read and are familiar with Section 35 of the Constitution of the Association, a copy of which, as in effect on the date of this Agreement, is attached hereto. Such section provides that the Commissioner and the Board of Governors of the Association are empowered to impose fines upon the Player and/or upon the Club for causes and in the manner provided in such section. The Player and the Club, each for himself and itself, promises promptly to pay to the said Association each and every fine imposed upon him or it in accordance with the provisions of said section and not permit any such fine to be paid on his or its behalf by anyone other than the person or club fined. The Player further authorizes the Club to deduct from his salary payments any fines imposed on or assessed against him.

16. Notwithstanding any provisions of the constitution or of the By-Laws of the Association, it is

agreed that if the Commissioner of the Association shall, in his sole judgment, find that the Player has bet, or has offered or attempted to bet, money or anything of value on the outcome of any game participated in by any club which is a member of the Association, the Commissioner shall have the power in his sole discretion to suspend the Player indefinitely or to expel him as a player for any member of the Association and the Commissioner's finding and decision shall be final, binding, conclusive and unappealable. The Player hereby releases the Commissioner and waives every claim he may have against the Commissioner and or the Association, and against every member of the Association and against every director, officer, stockholder, trustee and partner of every member of the Association, for damages and for all claims and demands whatsoever arising out of or in connection with the decision of the Commissioner.

17. The Player and the Club acknowledge and agree that the Player's participation in other sports may impair or destroy his ability and skill as a basketball player. The Player and the Club recognize and agree that the Player's participation in basketball out of season may result in injury to him. Accordingly, the Player agrees that he will not engage in sports endangering his health or safety (including, but not limited to, professional boxing or wrestling, motorcycling, moped-riding, auto racing, sky-diving, and hang-gliding); and that, except with the written consent of the Club, he will not engage in any game or exhibition of basketball, football, baseball, hockey, lacrosse, or other athletic sport, under penalty of such fine and suspension as may be imposed by the club and/or the Commissioner of the Association. Nothing contained herein shall be intended to require the Player to obtain the written consent of the Club in order to enable the Player to participate in, as an amateur, the sport of golf, tennis, handball, swimming, bowling, softball or volleyball.

18. The Player agrees to allow the Club or the Association to take pictures of the Player, alone or together with others, for still photographs, motion pictures or television, at such times as the Club or the Association may designate, and no matter by whom taken may be used in any manner desired by either of them for publicity or promotional purposes. The rights in any such pictures taken by the Club or by the Association shall belong to the Club or to the Association, as their interests may appear. The Player agrees that, during the playing season, he will not make public appearances, participate in radio or television programs or permit his picture to be taken or write or sponsor newspaper or magazine articles or sponsor commercial products without the written consent of the Club, which shall not be withheld except in the reasonable interests of the Club or professional basketball. Upon request, the Player shall consent to and make himself available for interviews by representatives of the media conducted at reasonable times. In addition to the foregoing the Player agrees to participate, upon request, in all other reasonable promotional activities of the Club and the Association.

19. The Player agrees that he will not, during the term of this contract, directly or indirectly entice, induce, persuade or attempt to entice, induce or persuade any player or coach who is under contract to any member of the Association to enter into negotiations for or relating to his services as a basketball player or coach, nor shall he negotiate for or contract for such services, except with the prior written consent of such member of the Association. Breach of this paragraph 19 in addition to the remedies available to the Club, shall be punishable by fine to be imposed by the Commissioner of the Association and to be payable to the Association out of any compensation due or to become due to the Player hereunder or out of any other moneys payable to him as a basketball player. The Player agrees that the amount of such fine may be withheld by the Club and paid over to the Association.

20. (a) In the event of an alleged default by the Club in the payments to the Player provided for by this contract, or in the event of an alleged failure by the Club to perform any other material obligation agreed to be performed by the Club hereunder, the Player shall notify both the Club and the Association in writing of the facts constituting such alleged default or alleged failure. If neither the Club nor the Association shall cause such alleged default or alleged failure to be remedied within five (5) days after receipt of such written notice, the National Basketball Players Association shall, on behalf of the Player, have the right to request that the dispute concerning such alleged default or alleged failure be referred immediately to the Impartial Arbitrator in accordance with Article XXI, Section 2(h) of the Agreement currently in effect between the National Basketball Association and the National Basketball Players Association. If, as a result of such arbitration, and award issues in favor of the Player, and if neither the Club nor the Association complies with such award within ten (10) days after the service thereof, the Player shall have the right, by a further written notice to the Club and the Association, to terminate this contract.

(b) The Club may terminate this contract upon written notice to the Player after such Player's failure

with the waiver procedure provided for in subparagraph (f) of this paragraph 20) if the Player shall do any of the following:

(1) at any time, fail, refuse or neglect to conform his personal conduct to standards of good citizenship, good moral character and good sportsmanship, to keep himself in first class physical condition or to obey the Club's training rules; or

(2) at any time, fail, in the sole opinion of the Club's management, to exhibit sufficient skill or competitive ability to qualify to continue as a member of the Club's team (provided, however, that if this contract is terminated by the Club, in accordance with the provisions of this subparagraph, during the period from the fifty-sixth day after the first game of any schedule season of the Association through the end of such schedule season, the Player shall be entitled to receive his full salary for said season); or

(3) at any time, fail, refuse or neglect to render his services hereunder or in any other manner materially breach this contract.

(c) If this contract is terminated by the Club by reason of the Player's failure to render his services hereunder due to disability caused by an injury to the Player resulting directly from his playing for the Club and rendering him unfit to play skilled basketball, and notice of such injury is given by the Player as provided herein, the Player shall be entitled to receive his full salary for the season in which the injury was sustained, less all workmen's compensation benefits (which, to the extent permitted by law, the Player hereby assigns to the Club) and any insurance provided for by the Club paid or payable to the Player by reason of said injury.

(d) If this contract is teminated by the Club during the period designated by the Club for attendance at training camp, payment by the Club of the Player's board, lodging and expense allowance during such period to the date of termination and of the reasonable traveling expenses of the Player to his home city and the expert training and coaching provided by the Club to the Player during the training season shall be full payment to the Player.

(e) If this contract is teminated by the Club during the playing season, except in the case provided for in subparagraph (c) of this paragraph 20, the Player shall be entitled to receive as full payment hereunder a sum of money which, when added to the salary which he has already received during the season, will represent the same proportionate amount of the total sum set forth in paragraph 2 hereof as the number of days of the season then past bear to the total number of days of the schedule season, plus the reasonable traveling expenses of the Player to his home.

(f) If the Club proposes to terminate this contract in accordance with subparagraph (a) of this paragraph 20, the applicable waiver procedure shall be as follows:

(1) The Club shall request the Association Commissioner to request waivers from all other clubs. Such waiver request must state that it is for the purpose of terminating this contract and it may not be withdrawn.

(2) Upon receipt of the waiver request, any other club may claim assignment of this contract at such waiver price as may be fixed by the Association, the priority of claims to be determined in accordance with the Association's Constitution or By-Laws.

(3) If this contract is so claimed, the Club agrees that it shall, upon the assignment of this contract to the claiming club, notify the Player of such assignment as provided in paragraph 12 hereof, and the Player agrees he shall report to the assignee club as provided in said paragraph 12.

(4) If the contract is not claimed, the Club shall promptly deliver written notice of termination to the Player at the expiration of the waiver period.

(5) To the extent not inconsistent with the foregoing provisions of this subparagraph (f) the waiver procedures set forth in the Constitution and By-Laws of the Association, a copy of which, as in effect on the date of this agreement, is attached hereto, shall govern.

(g) Upon any termination of this contract by the Player, all obligations of the Club to pay compensation shall cease on the date of termination, except the obligation of the Club to pay the Player's compensation to said date.

21. In the event of any dispute arising between the Player and the Club relating to any matter arising under this contract, or concerning the performance or interpretation thereof (except for a dispute arising under paragraph 9 hereof), such dispute shall be resolved in accordance with the Grievance and Arbitration Procedure set forth in the Agreement currently in effect between the National Basketball Association and the National Basketball Players Association.

22. The Club shall have the option to renew and extend this contract for an additional period of one year. Such option shall be exercisable only once and may be exercised by the Club's mailing to the Player, at his address shown below, or if none is shown, then at his address last known to the Club, and on or before August 1 next following the playing season covered by this contract, an Option Exercise Notice substantially in the form annexed hereto. If the Club exercises its option as provided for herein, this contract shall be deemed renewed and extended for an additional period of one year. The compensation payable to the Player with respect to such additional period shall not be less than the compensation payable with respect to the one year period covered by this contract (as described in the following sentence) or the minimum salary provided for by the Agreement currently in effect between the National Basketball Association and the National Basketball Players Association with respect to such additional period, whichever is greater; and all other non-monetary terms contained in this contract shall be applicable in such additional period. The Player and the Club agree that the compensation payable to the Player with respect to the one year period covered by this contract is $ .....

The Club's right to renew this contract, as herein provided, and the promise of the Player not to play otherwise than for the Club and its assignees, have been taken into consideration in determining the amount of compensation payable under paragraph 2 hereof.

23. Nothing contained in this contract or in any provision of the Constitution or By-Laws of the Association shall be construed to constitute the Player a member of the Association or to confer upon him any of the rights or privileges of a member thereof.

24. This contract contains the entire agreement between the parties and there are no oral or written inducements, promises or agreements except as contained herein.

EXAMINE THIS CONTRACT CAREFULLY BEFORE SIGNING IT

IN WITNESS WHEREOF the Player has hereunto signed his name and the Club has caused this contract to be executed by its duly authorized officer.

W[illegible]

.....

By .....
Title

.....
Player

Player's Address

OPTION EXERCISE NOTICE

To: _____ **Date:** _____
(Name of Player and Address)

_____

_____

This is to inform you that .....
(Name of Club as set forth on Uniform Player Contract)

has exercised the option provided for in Paragraph 22 of the Uniform Player Contract, dated .....

.....

.....
Name of Club

By .....
Title:

EXCERPT FROM CONSTITUTION OF THE ASSOCIATION

MISCONDUCT OF OFFICIALS AND OTHERS

35. (a) The provisions of this Section shall govern all members, and officers, managers, coaches, players and other employees of a member, and all officials and other employees of the Association, all hereinafter referred to as "persons." Each member shall provide and require in every contract with any of its officers, managers, coaches, players or other employees that they shall be bound and governed by the provisions of this Section. Each member, at the direction of the Board of Governors or the Commissioner, as the case may be, shall take such action as the Board or the Commissioner may direct in order to effectuate the purposes of this Section.

(b) The Commissioner shall direct the dismissal and perpetual disqualification from any further association with the Association or any of its members, of any person found by the Commissioner after a hearing to have been guilty of offering, agreeing, conspiring, aiding or attempting to cause any game of basketball to result otherwise than on its merits.

(c) Any person who gives, makes, issues, authorizes or endorses any statement having, or designed to have, an effect prejudicial or detrimental to the best interests of basketball or of the Association or of a member or its team, shall be liable to a fine not exceeding $1,000, to be imposed by the Board of Governors. The member whose officer, manager, coach, player or other employee has been so fined shall pay the amount of the fine should such person fail to do so within ten (10) days of its imposition.

(d) If in the opinion of the Commissioner any other act or conduct of a person at or during a pre-season, championship, playoff or exhibition game has been prejudicial to or against the best interests of the Association or the game of basketball, the Commissioner shall impose upon such person a fine not exceeding $1,000 in the case of a member, officer, manager or coach of a member, or $10,000 in the case of a player or other employee, or may order for a time the suspension of any such person from any connection or duties with pre-season, championship, playoff or exhibition games, or he may order both such fine and suspension.

(e) The Commissioner shall have the power to suspend for a definite or indefinite period, or to impose a fine not exceeding $1,000, or inflict both such suspension and fine upon any person who, in his opinion, shall have been guilty of conduct prejudicial or detrimental to the Association.

(f) The Commissioner shall have the power to levy a fine of $1,000 upon any Governor or Alternate Governor who, in the opinion of the Commissioner, has been guilty of making statements to the press damaging to the Association.

(g) Any person who, directly or indirectly, entices, induces, persuades or attempts to entice, induce, or persuade any player, coach, trainer, general manager or any other person who is under contract to any other member of the Association 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 Commissioner 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 Commissioner shall have the power to suspend such person for a definite or indefinite period, or to impose a fine not exceeding $5,000, or inflict both such suspension and fine upon any such person.

(h) Any person who, directly or indirectly, wagers money or anything of value on the outcome of any game played by a team in the league operated by the Association shall, on being charged with such wagering, be given an opportunity to answer such charges after due notice, and the decision of the Commissioner shall be final, binding and conclusive and unappealable. The penalty for such offense shall be within the absolute and sole discretion of the Commissioner and may include a fine, suspension, expulsion and or perpetual disqualification from further association with the Association or any of its members.

(i) Except for a penalty imposed under subparagraph (h) of this paragraph 35, the decisions and acts of the Commissioner pursuant to paragraph 35 shall be appealable to the Board of Governors who shall determine such appeals in accordance with such rules and regulations as may be adopted by the Board in its absolute and sole discretion.

EXCERPT FROM BY-LAWS OF THE ASSOCIATION

3.07 *Waiver Right.* Except for sales and trading between Members in accordance with these By-Laws, no Member shall sell, option or otherwise transfer the contract with, right to the services of, or right to negotiate with, a Player without complying with the waiver procedure prescribed by these By-Laws.

3.08 *Waiver Price.* The waiver price shall be $1,000 per Player.

3.09 *Waiver Procedure.* A Member desiring to secure waivers on a Player shall notify the Commissioner, and the Commissioner, on behalf of such Member, shall immediately notify all other Members of the waiver request. Such Player shall be assumed to have been waived unless a Member shall timely notify the Commissioner by telegram and telephone of a claim to the rights of such Player. Once a Member has notified the Commissioner to attempt to secure waivers on a Player, such notice may not be withdrawn. A Player remains the financial responsibility of the member placing him on waivers until the waiver period set by the Commissioner has expired.

3.10 *Waiver Period.* If the Commissioner distributes notice of request for waiver at any time during the Season or within four weeks before the beginning of the Season, any Members wishing to claim rights to the Player shall do so by giving notice by telephone and telegram of such claim to the Commissioner within 48 hours after the time of the Commissioner's notice. If the Commissioner distributes notice of request for waiver at any other time, any Member wishing to claim rights to the Player shall do so by sending notice of such Claim to the Commissioner within ten days after the date of the Commissioner's notice. A team may not withdraw a claim to the rights to a Player on waivers.

3.11 *Waiver Preferences.* In the event that more than one Member shall have claimed rights to a Player placed on waivers, the claiming Member with the lowest team standing at the time the waiver was requested shall be entitled to acquire the rights to such Player. If the request for waiver shall occur between Seasons or prior to midnight November 30th, the standings at the close of the previous Season shall govern.

If the won and lost percentages of two claiming Teams are the same, then the tie shall be determined, if possible, on the basis of the Championship Games between the two teams, during the Season or during the preceding Season, as the case may be. If still tied, a toss of the coin shall determine priority. For the purpose of determining standings, both conferences of the Association shall be deemed merged and a consolidated standing shall control.

3.12 *Players Acquired Through Waivers.* A Member who has acquired the rights and title to the contract of a Player through the waiver procedure may waive such rights at any time, but may not sell or trade such rights for a period of 30 days after the acquisition thereof, provided, however, that if the rights to such Player were acquired between schedule Seasons, the 30 day period described herein shall begin on the first day of the next succeeding schedule Season.

3.13 *Additional Waiver Rules.* The Commissioner or the Board of Governors shall from time to time adopt such additional rules (supplementary to these By-Laws) with respect to the operation of the waiver procedures as he or it shall determine. Such rules shall not be inconsistent with these By-Laws and shall apply to but shall not be limited to the mechanics of notice, inadvertent omission of notification to a Member and rules of construction as to time.

— NOTES —

Exhibit A-2

NATIONAL BASKETBALL ASSOCIATION

UNIFORM PLAYER CONTRACT

(Veteran—Single Season)

THIS AGREEMENT made this ..... day of ....., 19 ..... by and between .....

(hereinafter called the "Club"), a member of the National Basketball Association (hereinafter called the "Association") and .....

whose address is shown below (hereinafter called the "Player").

WITNESSETH:

In consideration of the mutual promises hereinafter contained, the parties hereto promise and agree as follows:

1. The Club hereby employs the Player as a skilled basketball player for the term of one year from the 1st day of September 19 ..... The Player's employment shall include attendance at training camp, playing the games scheduled for the Club's team during the schedule season of the Association, playing all exhibition games scheduled by the Club during and prior to the schedule season, playing (if invited to participate) in the Association's All-Star Game and attending every event (including, but not limited to, the All-Star Game luncheon and/or banquet) conducted in association with the All-Star Game, and playing the playoff games subsequent to the schedule season. Players other than rookies will not be required to attend training camp earlier than twenty-eight days prior to the first game of the Club's schedule season. Rookies may be required to attend training camp at an earlier date. Exhibition games shall not be played on the three days prior to the opening of a team's regular season schedule, nor on the day prior to a regularly scheduled game, nor on the day prior to and the day following the All-Star Game. Exhibition games prior to the schedule season shall not exceed eight (including intra-squad games for which admission is charged) and exhibition games during the regularly scheduled season shall not exceed three.

2. The Club agrees to pay the Player for rendering services described herein the sum of $ ..... (less all amounts required to be withheld from salary by Federal, State and local authorities and exclusive of any amount which the Player shall be entitled to receive from the Player Playoff Pool) in twelve equal semi-monthly payments beginning with the first of said payments on November 1st of the season above described and continuing with such payments on the first and fifteenth of each month until said sum is paid in full; provided, however, if the Club does not qualify for the playoffs, the payments due subsequent to the conclusion of the schedule season shall become due and payable immediately after the conclusion of the schedule season.

3. The Club agrees to pay all proper and necessary expenses of the Player, including the reasonable board and lodging expenses of the Player while playing for the Club "on the road" and during training camp if the Player is not then living at home. The Player, while "on the road" (and at training camp only if the Club does not pay for meals directly), shall be paid a meal expense allowance as set forth in the Agreement currently in effect between the National Basketball Association and National Basketball Players Association. No deductions from such meal expense allowance shall be made for meals served on an airplane. While the Player is at training camp (and if the Club does not pay for meals directly), the meal expense allowance shall be paid in weekly installments commencing with the first week of training camp. For the purposes of this paragraph, the Player shall be considered to be "on the road" from the time the Club leaves its home city until the time the Club arrives back at its home city. In addition, the Club agrees to pay $50.00 per week to the Player for the four weeks prior to the first game of the Club's schedule season that the Player is either in attendance at training camp or engaged in playing the exhibition schedule.

4. The Player agrees to observe and comply with all requirements of the Club respecting conduct of its team and its players, at all times whether on or off the playing floor. The Club may, from time to time during the continuance of this contract, establish reasonable rules for the government of its players ...

home" and "on the road," and such rules shall be part of this contract as fully as if herein written and shall be binding upon the Player. For any violation of such rules or for any conduct impairing the faithful and thorough discharge of the duties incumbent upon the Player, the Club may impose reasonable fines upon the Player and deduct the amount thereof from any money due or to become due to the Player during the season in which such violation and/or conduct occurred. The Club may also suspend the Player for violation of any rules so established, and, upon such suspension, the compensation payable to the Player under this contract may be reduced in the manner provided in the Agreement currently in effect between the National Basketball Association and the National Basketball Players Association. When the Player is fined or suspended, he shall be given notice in writing, stating the amount of the fine or the duration of the suspension and the reasons therefor.

5. The Player agrees (a) to report at the time and place fixed by the Club in good physical condition; (b) to keep himself throughout the entire season in good physical condition; (c) to give his best services, as well as his loyalty to the Club, and to play basketball only for the Club and its assignees; (d) to be neatly and fully attired in public and always to conduct himself on and off the court according to the highest standards of honesty, morality, fair play and sportsmanship; and (e) not to do anything which is detrimental to the best interests of the Club or of the Association.

6. (a) If the Player, in the judgment of the Club's physician, is not in good physical condition at the date of his first scheduled game for the Club, or if, during the season, he fails to remain in good physical condition (unless such condition results directly from an injury sustained by the Player as a direct result of participating in any basketball practice or game played for the Club during such season), so as to render the Player, in the judgment of the Club's physician, unfit to play skilled basketball, the Club shall have the right to suspend such Player until such time as, in the judgment of the Club's physician, the Player is in sufficiently good physical condition to play skilled basketball. In the event of such suspension, the annual sum payable to the Player shall be reduced in the same proportion as the length of the period during which, in the judgment of the Club's physician, the Player is unfit to play skilled basketball, bears to the length of the season.

(b) If the Player is injured as a direct result of participating in any basketball practice or game played for the Club, the Club will pay the Player's reasonable hospitalization and medical expenses (including doctor's bills), provided that the hospital and doctor are selected by the Club, and provided further that the Club shall be obligated to pay only those expenses incurred as a result of continuous medical treatment caused solely by and relating directly to the injury sustained by the Player. If, in the judgement of the Club's physician, the Player's injuries resulted directly from playing for the Club and render him unfit to play skilled basketball, then, so long as such unfitness continues, but in no event beyond the term of one year referred to in paragraph 1 of this contract, the Club shall pay to the Player the compensation prescribed in paragraph 2 of this contract. The Club's obligations hereunder shall be reduced by any workmen's compensation benefits (which, to the extent permitted by law, the Player hereby assigns to the Club) and any insurance provided for by the Club whether paid or payable to the Player, and the Player hereby releases the Club from any and every other obligation or liability arising out of any such injuries.

(c) The Player hereby releases and waives every claim he may have against the Association and every member of the Association, and against every director, officer, stockholder, trustee, partner, and employee of the Association and/or any member of the Association (excluding persons employed as players by any such members), arising out of or in connection with any fighting or other form of violent and/or unsportsmanlike conduct occurring on or adjacent to the playing floor or any facility used for practices or games) during the course of any practice and/or any exhibition, championship season, and/or play-off game.

7. The Player agrees to give to the Club's coach, or to the Club's physician, immediate notice of any injury suffered by him, including the time, place, cause and nature of such injury.

8. Should the Player suffer an injury as provided in the preceding section, he will submit himself to a medical examination and treatment by a physician designated by the Club. Such examination when made at the request of the Club shall be at its expense, unless made necessary by some act or conduct of the Player contrary to the terms of this contract.

9. The Player represents and agrees that he has extraordinary and unique skill and ability as a basketball player, that the services to be rendered by him hereunder cannot be replaced or the loss thereof adequately compensated for in money damages, and that any breach by the Player of this contract

will cause irreparable injury to the Club and to its assignees. Therefore, it is agreed that in the event it is alleged by the Club that the Player is playing, attempting or threatening to play, or negotiating for the purpose of playing, during the term of this contract, for any other person, firm, corporation or organization, the Club and its assignees (in addition to any other remedies that may be available to them judicially or by way of arbitration) shall have the right to obtain from any court or arbitrator having jurisdiction, such equitable relief as may be appropriate, including a decree enjoining the Player from any further such breach of this contract, and enjoining the Player from playing basketball for any other person, firm, corporation or organization during the term of this contract. In any suit, action or arbitration proceeding brought to obtain such relief, the Player does hereby waive his right, if any, to trial by jury, and does hereby waive his right, if any, to interpose any counterclaim or set-off for any cause whatever.

10. The Club shall have the right to sell, exchange, assign or transfer this contract to any other professional basketball club and the Player agrees to accept such sale, exchange, assignment or transfer and to faithfully perform and carry out this contract with the same force and effect as if it had been entered into by the Player with the assignee club instead of with this Club. The Player further agrees that, should the Club contemplate the sale, exchange, assignment or transfer of this contract to another professional basketball club or clubs, the Club's physician may furnish to the physicians and officials of such other club or clubs all relevant medical information relating to the Player.

11. In the event that the Player's contract is sold, exchanged, assigned or transferred to any other professional basketball club, all reasonable expenses incurred by the Player in moving himself and his family from the home city of the Club to the home city of the club to which such sale, exchange, assignment or transfer is made, as a result thereof, shall be paid by the assignee club. Such assignee club hereby agrees that its acceptance of the assignment of this contract constitutes agreement on its part to make such payment.

12. In the event that the Player's contract is assigned to another club the Player shall forthwith be notified orally or by a notice in writing, delivered to the Player personally or delivered or mailed to his last known address, and the Player shall report to the assignee club within forty-eight hours after said notice has been received or within such longer time for reporting as may be specified in said notice. If the Player does not report to the club to which his contract has been assigned within the aforesaid time, the Player may be suspended by such club and he shall lose the sums which would otherwise be payable to him as long as the suspension lasts.

13. The Club will not pay and the Player will not accept any bonus or anything of value for winning any particular Association game or series of games or for attaining a certain position by the Club's team in the standing of the league operated by the Association as of a certain date, other than the final standing of the team.

14. This contract shall be valid and binding upon the Club and the Player immediately upon its execution. The Club agrees to file a copy of this contract with the Commissioner of the Association prior to the first game of the schedule season or within forty-eight (48) hours of its execution, whichever is later; provided, however, the Club agrees that if the contract is executed prior to the start of the schedule season and if the Player so requests, it will file a copy of this contract with the commissioner of the Association within thirty (30) days of its execution, but not later than the date hereinabove specified. If pursuant to the Constitution and By-Laws of the Association the Commissioner disapproves this contract within (10) days after the filing thereof in his office, this contract shall thereupon terminate and be of no further force or effect and the Club and the Player shall thereupon be relieved of their respective rights and liabilities thereunder.

15. The Player and the Club acknowledge that they have read and are familiar with Section 35 of the Constitution of the Association, a copy of which, as in effect on the date of this Agreement, is attached hereto. Such section provides that the Commissioner and the Board of Governors of the Association are empowered to impose fines upon the Player and/or upon the Club for causes and in the manner provided in such section. The Player and the Club, each for himself and itself, promises promptly to pay to the said Association each and every fine imposed upon him or it in accordance with the provisions of said section and not permit any such fine to be paid on his or its behalf by anyone other than the person or club fined. The Player further authorizes the Club to deduct from his salary payments any fines imposed on or assessed against him.

16. Notwithstanding any provisions of the constitution or of the By-Laws of the Association, it is

agreed that if the Commissioner of the Association shall, in his sole judgment, find that the Player has bet, or has offered or attempted to bet, money or anything of value on the outcome of any game participated in by any club which is a member of the Association, the Commissioner shall have the power in his sole discretion to suspend the Player indefinitely or to expel him as a player for any member of the Association and the Commissioner's finding and decision shall be final, binding, conclusive and unappealable. The Player hereby releases the Commissioner and waives every claim he may have against the Commissioner and/or the Association, and against every member of the Association and against every director, officer, stockholder, trustee and partner of every member of the Association, for damages and for all claims and demands whatsoever arising out of or in connection with the decision of the Commissioner.

17. The Player and the Club acknowledge and agree that the Player's participation in other sports may impair or destroy his ability and skill as a basketball player. The Player and the Club recognize and agree that the Player's participation in basketball out of season may result in injury to him. Accordingly, the Player agrees that he will not engage in sports endangering his health or safety (including, but not limited to, professional boxing or wrestling, motorcycling, moped-riding, auto racing, sky-diving, and hang-gliding); and that, except with the written consent of the Club, he will not engage in any game or exhibition of basketball, football, baseball, hockey, lacrosse, or other athletic sport, under penalty of such fine and suspension as may be imposed by the club and/or the Commissioner of the Association. Nothing contained herein shall be intended to require the Player to obtain the written consent of the Club in order to enable the Player to participate in, as an amateur, the sport of golf, tennis, handball, swimming, hiking, softball or volleyball.

18. The Player agrees to allow the Club or the Association to take pictures of the Player, alone or together with others, for still photographs, motion pictures or television, at such times as the Club or the Association may designate, and no matter by whom taken may be used in any manner desired by either of them for publicity or promotional purposes. The rights in any such pictures taken by the Club or by the Association shall belong to the Club or to the Association, as their interests may appear. The player agrees that, during the playing season, he will not make public appearances, participate in radio or television programs or permit his picture to be taken or write or sponsor newspaper or magazine articles or sponsor commercial products without the written consent of the Club, which shall not be withheld except in the reasonable interests of the Club or professional basketball. Upon request, the Player shall consent to and make himself available for interviews by representatives of the media conducted at reasonable times. In addition to the foregoing the Player agrees to participate, upon request, in all other reasonable promotional activities of the Club and the Association.

19. The Player agrees that he will not, during the term of this contract, directly or indirectly entice, induce, persuade or attempt to entice, induce or persuade any player or coach who is under contract to any member of the Association to enter into negotiations for or relating to his services as a basketball player or coach, nor shall he negotiate for or contract for such services, except with the prior written consent of such member of the Association. Breach of this paragraph in addition to the remedies available to the Club, shall be punishable by fine to be imposed by the Commissioner of the Association and to be payable to the Association out of any compensation due or to become due to the Player hereunder or out of any other moneys payable to him as a basketball player. The player agrees that the amount of such fine may be withheld by the Club and paid over to the Association.

20. (a) In the event of an alleged default by the Club in the payments to the Player provided for by this contract, or in the event of an alleged failure by the Club to perform any other material obligation agreed to be performed by the Club hereunder the Player shall notify, both the Club and the Association in writing of the facts constituting such alleged default or alleged failure. If neither the Club nor the Association shall cause such alleged default or alleged failure to be remedied within five (5) days after receipt of such written notice, the National Basketball Players Association shall, on behalf of the Player, have the right to request that the dispute concerning such alleged default or alleged failure be referred immediately to the Impartial Arbitrator in accordance with Article XXI, Section 2 (a) of the Agreement currently in effect between the National Basketball Association and the National Basketball Players Association. If, as a result of such arbitration, and award issues in favor of the Player, and if neither the Club nor the Association complies with such award within ten (10) days after the service thereon, the Player shall have the right, by a further written notice to the Club and the Association, to terminate this contract.

(b) The Club may terminate this contract upon written notice to the Player (but only after complying

with the waiver procedure provided for in subparagraph (f) of this paragraph 20) if the Player shall do any of the following:

(1) at any time, fail, refuse or neglect to conform his personal conduct to standards of good citizenship, good moral character and good sportsmanship, to keep himself in first class physical condition or to obey the Club's training rules; or

(2) at any time, fail, in the sole opinion of the Club's management, to exhibit sufficient skill or competitive ability to qualify to continue as a member of the Club's team (provided, however, that if this contract is terminated by the Club, in accordance with the provisions of this subparagraph, during the period from the fifty-sixth day after the first game of any schedule season of the Association through the end of such schedule season, the Player shall be entitled to receive his full salary for said season); or

(3) at any time, fail, refuse or neglect to render his services hereunder or in any other manner materially breach this contract.

(e) If this contract is terminated by the Club by reason of the Player's failure to render his services hereunder due to disability caused by an injury to the Player resulting directly from his playing for the Club and rendering him unfit to play skilled basketball, and notice of such injury is given by the Player as provided herein, the Player shall be entitled to receive his full salary for the season in which the injury was sustained, less all workmen's compensation benefits (which, to the extent permitted by law, the Player hereby assigns to the Club) and any insurance provided for by the Club paid or payable to the Player by reason of said injury.

(d) If this contract is terminated by the Club during the period designated by the Club for attendance at training camp, payment by the Club of the Player's board, lodging and expense allowance during such period to the date of termination and of the reasonable traveling expenses of the Player to his home city and the expert training and coaching provided by the Club to the Player during the training season shall be full payment to the Player.

(e) If this contract is terminated by the Club during the playing season, except in the case provided for in subparagraph (c) of this paragraph 20, the Player shall be entitled to receive as full payment hereunder a sum of money which, when added to the salary which he has already received during the season, will represent the same proportionate amount of the total sum set forth in paragraph 2 hereof as the number of days of the season then past bear to the total number of days of the schedule season, plus the reasonable traveling expenses of the Player to his home.

(f) If the Club proposes to terminate this contract in accordance with subparagraph (b) of this paragraph 20, the applicable waiver procedure shall be as follows:

(1) The Club shall request the Association Commissioner to request waivers from all other clubs. Such waiver request must state that it is for the purpose of terminating this contract and it may not be withdrawn.

(2) Upon receipt of the waiver request, any other club may claim assignment of this contract at such waiver price as may be fixed by the Association, the priority of claims to be determined in accordance with the Association's Constitution or By-Laws.

(3) If this contract is so claimed, the Club agrees that it shall, upon the assignment of this contract to the claiming club, notify the Player of such assignment as provided in paragraph 12 hereof, and the Player agrees he shall report to the assignee club as provided in said paragraph 12.

(4) If the contract is not claimed, the Club shall promptly deliver written notice of termination to the Player at the expiration of the waiver period.

(5) To the extent not inconsistent with the foregoing provisions of this subparagraph (f) the waiver procedures set forth in the Constitution and By-Laws of the Association, a copy of which, as in effect on the date of this agreement, is attached hereto, shall govern.

(g) Upon any termination of this contract by the Player, all obligations of the Club to pay compensations shall cease on the date of termination, except the obligation of the Club to pay the Player's compensation to said date.

21. In the event of any dispute arising between the Player and the Club relating to any matter arising under this contract, or concerning the performance or interpretation thereof (except for a dispute arising under paragraph 9 hereof), such dispute shall be resolved in accordance with the Grievance and Arbitration Procedure set forth in the Agreement currently in effect between the National Basketball Association and the National Basketball Players Association.

22. Nothing contained in this contract or in any provision of the Constitution or By-Laws of the Association shall be construed to constitute the Player a member of the Association or to confer upon him any of the rights or privileges of a member thereof.

23. This contract contains the entire agreement between the parties and there are no oral or written inducements, promises or agreements except as contained herein.

EXAMINE THIS CONTRACT CAREFULLY BEFORE SIGNING IT

IN WITNESS WHEREOF the Player has hereunto signed his name and the Club has caused this contract to be executed by its duly authorized officer.

WITNESS:

.....

.....

By .....
Title

.....
Player

Player's Address .....

ALL STATE ...IAL SUPPLY CO. ONE COMMERCE DRIVE, CRANFORD, NEW JERSEY 07016

NATIONAL BASKETBALL ASSOCIATION
OLYMPIC TOWER · 645 FIFTH AVENUE · NEW YORK, N. Y. 10022 · 212-826-7000

OFFICE OF THE GENERAL COUNSEL

August 1, 1986

David M. Osnos, Secretary
Capital Bullets Basketball Club, Inc.
T/A Washington Bullets
1050 Connecticut Avenue, N.W.
Washington, DC 20036

Dear Mr. Osnos:

Pursuant to our telephone conversation yesterday, this will confirm that each club in the National Basketball Association is unquestionably obligated to pay the travelling expenses (including transportation, lodging and meal money) of its players in connection with the club's "away" games, in other words, the games played by its team in the home cities of other league teams. This obligation is imposed not only by the Uniform Player Contract but also by the Collective Bargaining Agreement between the NBA and the National Basketball Players Association.

We further confirm our understanding that the common practice of NBA clubs is not to attempt to regulate the use of the free time of any player while its team is on the road. To do so would be impossible as a practical matter.

Furthermore, no NBA club would be permitted under the Uniform Player Contract or the Collective Bargaining Agreement to condition its payment of a player's travelling expenses on compliance with restrictions on the use of his free time while on the road, other than restrictions specified in the Uniform Player Contract or the Collective Bargaining Agreement; needless to say, none of the specified restrictions involves political activity in any way. Indeed, we would doubt the legal validity of any such restriction were the NBA and the NBPA to attempt to impose it.

We understand that former Bullets' player Tom McMillen is seeking election as a member of the United States House of Representatives and, in such connection, is alleged to have engaged in political activities during his free time while the Bullets team was on the road during the 1985-86 NBA season. Even assuming Mr. McMillen did so, we believe that any attempt by the Bullets to recover reimbursement from Mr. McMillen of all or part of the travel expenses relating to him which are contemplated under the Uniform Player Contract and Collective Bargaining Agreement to be paid by the club will clearly violate the provisions of both such documents and expose the Bullets to liability thereunder and under the Federal labor laws.

Please feel free to furnish a copy of this letter to the Federal Election Commission and to contact me if any further information is required.

Very truly yours,

Gary B. Bettman

Gary B. Bettman
General Counsel

GBB/dw

BCC #1304

FEC

HAND DELIVERED

86 AUG 22 A9:26

August 21, 1986

Charles N. Steele
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

86 AUG 22 P3:57

FEC
GENERAL COUNSEL

Re: MUR 2188

Dear Mr. Steele:

This letter constitutes the response of the McMillen for Congress Committee and C. Thomas McMillen to the above-referenced complaint. The complaint alleges that Mr. McMillen and his principal campaign committee accepted a prohibited contribution from the Capital Bullets by allowing the Bullets to pay Mr. McMillen's travel expenses to play with the Bullets in NBA games during 1985 and 1986. For the following reasons, set forth in full below, the FEC should find no reason to believe that a violation of the Act has occurred and should dismiss this frivolous complaint.

First, the complaint sets forth no evidence of wrongdoing. The underlying legal theory of the complaint is that Mr. McMillen engaged in campaign activity during every stop to play in a Bullets game during 1985-86. In support of this allegation, the complaint merely lists every contribution received by the McMillen Committee from any individual in a city that happens to have an NBA basketball team. The complaint then makes a giant leap

to the conclusion that all of these contributions were received as a result of campaign activity conducted while Mr. McMillen was travelling with the Bullets to those cities. As set forth below, the facts do not support this conclusion.

Second, to the extent that Mr. McMillen engaged in any campaign activity during his trips to play with the Bullets, that activity was merely incidental and informal and falls squarely within the express provision in the FEC regulations which provides that "campaign related activity shall not include any incidental contacts."

Third, Section 441b of the Act cannot be construed to prohibit a corporation from paying its employee the compensation and related expenses for performing his duties pursuant to his contract. The Bullets simply paid Mr. McMillen the expenses which they are obligated to pay him pursuant to his contract. That contract is a Uniform Player Contract mandated under the Collective Bargaining Agreement between the National Basketball Association and the National Basketball Players' Association. Mr. McMillen fulfilled all of his obligations to appear, attend practice sessions and team meetings, and play in basketball games in each of the cities listed in the complaint. The payment of his expenses to attend these games constitutes a part of his compensation for his services to the team.

Under no circumstances can the payment of these expenses be considered as made "for the purpose of influencing an election." Thus it is impossible to conclude that Mr. McMillen or his committee knowingly accepted a prohibited corporate contribution under Section 441b.

Finally, the complaint makes a separate allegation that Mr. McMillen failed to file his Statement of Candidacy in a timely fashion. Again, the complaint is factually incorrect. Mr. McMillen and his committee, which has been in existence since 1983, complied fully with the filing requirements of the Act.

LEGAL FRAMEWORK

Under the FEC regulations, the principal campaign committee of a candidate is required to pay for or report all expenses of the candidate for campaign-related travel. 11 C.F.R. Section 106.3.

> Where a candidate conducts any campaign-related activity in a stop, the stop is a campaign-related stop and travel expenditures made are reportable. Campaign-related activity shall not include any incidental contacts.

11 C.F.R. Section 106.3(b)(3).

Section 441b of the Act prohibits corporations from making contributions or expenditures in connection with federal elections. 2 U.S.C. Section 441b. A "contribution" is any payment or provision of anything

of value "for the purpose of influencing any election for Federal office." 2 U.S.C. Section 431(8)(A)(i); 11 C.F.R. Section 100.7(a). Compensation paid by an employer to an employee who engages in political activity on his or her own time is not considered a contribution by the employer. 11 C.F.R. Section 100.7(a)(3).

BACKGROUND

For eleven years, Tom McMillen played basketball in the NBA. During these years, he travelled to 22 cities visiting each from two to six times per year. From 1980 to 1984 he became increasingly active in the national Democratic party, serving as a member and as Assistant Chair of the DNC Finance Council. During these eleven years, Mr. McMillen cultivated personal friends in each of the cities to which he regularly travelled. These friendships are based on common interests in sports, business and politics. While on road trips with the Bullets during these years, Mr. McMillen frequently met with and dined with these friends and acquaintances.

After the many years of travel to these cities, Mr. McMillen has over 1,000 friends in these 22 cities. When he decided to seek election to the House of Representatives, these individuals naturally supported his efforts. Many of these individuals have contributed to the McMillen campaign, some on their own initiative and some as a result of

campaign solicitations through direct mail, by telephone and in the course of personal visits with the candidate.

1. The complaint does not provide any evidence that out-of-state contributions resulted from campaign activity by the candidate while on road trips with the Bullets.

Under the FEC regulations a complaint should contain a clear and concise recitation of the facts which describe a violation of the Act or regulations. 11 C.F.R. Section 111.4(d)(3). This complaint contains no recitation of facts constituting a violation, unless it has become a violation of the Act to receive contributions from out-of-state contributors. The complaint gives no evidence that Mr. McMillen engaged in any campaign-related activity while on his road trips with the Bullets. Instead, the complaint tries to draw a comparison between the dates of Bullets' games in a city and the dates of contributions received from individuals in that city. Careful scrutiny of the chart attached to the complaint demonstrates the paucity of this so-called "evidence."

For example, the chart includes contributions received from a city up to two months after a Bullets visit. See Complainant Exhibit 3 - Cleveland. The Bullets visit was on October 29, 1985. Contributions from Cleveland were received on December 31, 1985. In most instances, the chart

shows receipt of a small amount of funds weeks after a Bullets visit. This shows no correlation to Mr. McMillen's presence in the city. Indeed, these contributions are very likely the result of direct mail solicitations or personal telephone calls by the candidate from Maryland. According to the newspaper account attached to the complaint, as of the January 31, 1986 year end report, covering 1985, 48% of the campaign's contributions were from out-of-state. Based on this percentage, it is not surprising that out-of-state contributions happened to arrive from a state within two months of a Bullets game, since the campaign's mailing list includes a large number of out-of-state supporters.

Thus, on its face, the evidence upon which the complaint is based does not support the complainant's allegation.

2. Any campaign-related activity by Mr. McMillen while travelling with the Bullets was incidental in nature.

Of the 13 cities and 33 Bullets' visits listed in the Chart attached to the complaint, with two exceptions addressed below, there was no campaign-related activity. Mr. McMillen has never disguised the fact that he meets with friends on his visits to cities with the Bullets, and that in the course of those visits, there may be discussion of his campaign. As set forth above, Mr. McMillen regularly met, dined with and spoke to his friends in various cities while travelling with the Bullets. Once he became a

candidate, those conversations obviously included discussion of his campaign. It is impossible to draw any correlation between these informal conversations with friends and any contributions received up to two months later from these cities. This activity certainly does not transform a trip to play in a basketball game into a "campaign-related stop". In fact, such personal calls and visits with friends do not even rise to the level of "incidental campaign activity." Surely it would be an absurd result if the FECA were interpreted to preclude Mr. McMillen from making telephone calls to or visiting friends while travelling to games with the Bullets.

As mentioned above, in two instances out of these 33 Bullets' trips, there was incidental campaign activity. In Atlanta on October 24, 1985, and in Los Angeles on February 16, 1986, friends of Mr. McMillen's held small receptions in their homes in order to enable their personal friends to meet him. The campaign paid all expenses since Mr. McMillen discussed his candidacy. In both cases, the home parties were held on the day preceding the Bullet's game which Mr. McMillen was required to attend under his contract. In both cases, Mr. McMillen attended all required team meetings, practices and played in the game the following day, fulfilling fully his requirements under his contract. These home parties were clearly "incidental campaign activity" within the

the meaning of the FEC regulations.

The complaint alleges that every visit of the Bullets to a city was a "campaign-related stop" for Tom McMillen, and that, therefore, under 11 C.F.R. Section 106.3(b)(3) and 2 U.S.C. Section 441b, the Bullets were precluded from paying his travel expenses. On the contrary, Mr. McMillen's activity in Los Angeles and Atlanta is precisely the type of activity which the Commission has defined as non-campaign-related because it was incidental.

Under the regulations,

> Campaign related activity shall not include any incidental contacts.

11 C.F.R. Section 106.3(b)(3). The Explanation and Justification for this section explains:

> Incidental contacts on an otherwise non-campaign stop do not make the stop campaign-related.

The E&J provides an example in which the purpose of a trip by a candidate is to make a speech to a civic association luncheon. If the candidate advocates his election at the speech, the trip is campaign-related. On the other hand, if the candidate meets after the speech with attendees and there advocates his election, the trip is not campaign-related. In comparison, Mr. McMillen's obvious purpose in his trips to Los Angeles and Atlanta was to play basketball for the Bullets, which he did. At no time in connection with his

responsibilities to play for the Bullets did he advocate his election. The fact that friends held small home parties for him in these two cities during his free time, does not transform the purpose of the trip into campaign-related.

Thus, to the extent that there was any campaign activity by Mr. McMillen while travelling with the Bullets, it was purely incidental and did not constitute "campaign-related activity" within the meaning of Section 106.3(b)(3) of the regulations.

3. Neither McMillen for Congress nor Mr. McMillen knowingly accepted a prohibited corporate contribution from the Capital Bullets.

Pursuant to the Collective Bargaining Agreement and Uniform Player Contract, the Bullets provided Mr. McMillen with the same travel arrangements as every other Bullet player. In effect, Mr. McMillen's travel expenses were part of his compensation for playing with the Bullets since he was required by the contract to travel frequently to the 22 NBA cities. That compensation was in return for his services as a basketball player which he dutifully performed. Under no circumstances can the payment of this compensation be considered as for the purpose of influencing an election within the meaning of 2 U.S.C. Sections 431(8)(A) and 441b.

Under the FEC regulations, compensation paid to an employee by an employer does not result in a contribution if the employee fulfulls all of the responsibilities of his or

job, even if the employee engages in political activity during what would otherwise constitute normal working hours. 11 C.F.R. Section 100.7(a)(3). In this case, Mr. McMillen engaged in political activity only in his own free time. Section 106.3(b)(3) should not be interpreted in such a way as to deprive Mr. McMillen of his free time simply because his compensation included payment for his travel expenses for the frequent and regular travel required by his job. Since the Bullets are required by the Collective Bargaining Agreement and contract to pay these expenses, it would be grossly unfair and very likely unconstitutional to prohibit Mr. McMillen from engaging in political activity in his own free time when he was required by contract to be out-of-town to play with the Bullets.

Under these circumstances, in which Mr. McMillen was treated like every other NBA basketball player and engaged in political activity only in his free time, it is impossible to find that the candidate or his committee accepted a prohibited corporate contribution.

4. McMillen for Congress and Tom McMillen fully complied with the filing requirements of the Act.

The complaint alleges that Mr. McMillen failed to file his Statement of Candidacy in a timely fashion. This allegation is similarly without merit.

On April 15, 1983, the original 1984 Friends of Tom

McMillen Committee filed with the FEC, and was properly designated by the candidate as his principal campaign committee. After the 1984 election, the committee filed a letter with the Clerk of the House requesting that the committee be transferred to a 1986 committee, in compliance with 11 C.F.R. Section 101.1(a). At all times, the Committee was registered, reporting and properly designated as the principal campaign committee. Even though this letter complied with the requirements of Section 101.1(a), the Clerk of the House suggested in October 1985 that a new Statement of Candidacy form should be filed. This form, changing the name of the committee to McMillen for Congress was filed in October 1985.

Thus, the allegation that the candidate did not timely file his Statement of Candidacy is incorrect, since the information required by that Statement was filed by letter with the Clerk of the House immediately after the 1984 election, as is specifically permitted under Section 101.1(a).

CONCLUSION

For the foregoing reasons, the FEC should find no reason to believe that a violation of the Act was committed by McMillen for Congress or by C. Thomas McMillen and should

dismiss this complaint.

Respectfully submitted,

David M. Ifshin by CWO
David M. Ifshin

Carolyn U. Oliphant
Carolyn U. Oliphant

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/CHERYL A. FLEMING

DATE: SEPTEMBER 17, 1986

SUBJECT: MUR 2188 - FIRST GENERAL COUNSEL'S REPORT
SIGNED SEPTEMBER 15, 1986

The above-captioned matter was received in the Commission Secretary's Office Tuesday, September 16, 1986 at 11:14 A.M. and circulated to the Commission on a 24-hour no-objection basis Tuesday, September 16, 1986 at 4:00 P.M.

There were no objections received in the Office of the Secretary of the Commission to the First General Counsel's Report at the time of the deadline.

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington,DC 20463

FIRST GENERAL COUNSEL'S REPORT

RECEIVED
FEC
SECRETARY
1986 SEP 15 P 3:07

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION:

MUR #2188
DATE COMPLAINT RECEIVED
BY OGC: June 19, 1986
DATE OF NOTIFICATION TO
RESPONDENT: July 17, 1986
STAFF MEMBER: John Drury

COMPLAINANT'S NAME: Douglas Ritter, Jr.

RESPONDENTS' NAMES: C. Thomas McMillen
The McMillen for Congress Committee
The Capital Bullets Basketball Club, Inc.

RELEVANT STATUTES: 11 C.F.R. §§ 106.3(b)(1), 106.3(b)(3), 106.3(a), 2 U.S.C. § 434(b)(4)(A), 11 C.F.R. § 104.3(b)(2)(i); 11 C.F.R. § 114.9(e); 2 U.S.C. § 441b; 2 U.S.C. § 432(e)(1), and 11 C.F.R. § 101.1(a)

INTERNAL REPORTS CHECKED: C Index, E Index

FEDERAL AGENCIES CHECKED: None

On June 19, 1986, this Office received a complaint in the above-captioned matter from Douglas Ritter, Jr. Although the complaint was complete in virtually all respects, there was a problem in contacting the complainant since Mr. Ritter did not provide his correct address in the materials which he forwarded to this Office. The complainant did have a telephone listing in the Washington area, but service had been discontinued and the telephone company could provide no current address for the complainant. This Office finally was able to locate Mr. Ritter through press reports contemporaneous with the date of the complaint.

By letter dated July 17, 1986, this Office was finally able to complete the required acknowledgments and notifications. By letters dated July 29 and 30, 1986 respectively, the Capital Bullets and Tom McMillen and his committee requested extensions of time in which to respond to the complaint. These requests were granted, and responses were received on August 20 and 22, 1986. This Office is currently reviewing these responses, and a report incorporating analysis of the respondent's answers will be forwarded to the Commission in the near future.

Charles N. Steele
General Counsel

Date 9/15/86

BY: _____
Lawrence M. Noble
Deputy General Counsel

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
C. Thomas McMillen	)	
	)	MUR 2188
McMillen for Congress	)	
Bruce S. Hughes, as treasurer	)	
	)	
Capital Bullets Basketball Club, Inc.	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

A. Complaint

On June 19, 1986, this Office received a complaint from Douglas Ritter, Jr. alleging a number of violations in connection with travel by C. Thomas McMillen paid for by the Capital Bullets Basketball Club, Inc. ("the Bullets"). According to the complaint, Congressman McMillen, while playing for the Washington Bullets between July, 1985, and April 27, 1986, conducted fundraising activities in the cities to which the Bullets traveled in his campaign for a seat in the House of Representatives from Maryland's Fourth Congressional District. The complainant states that, during this period, Congressman McMillen received contributions totalling $70,000 from supporters in 17 cities where the Bullets played. The complainant contends that Congressman McMillen was obligated to reimburse the Bullets for his travel and that his failure to do so resulted in a violation of 2 U.S.C. § 441b(a) by the Bullets and by Congressman McMillen and McMillen for Congress ("the Committee") and a violation of 11 C.F.R. § 114.9(e) by McMillen and the Committee. The complainant also maintains that the candidate and the

Committee should have allocated the travel to his campaign pursuant to 11 C.F.R. § 106.3(a) and (b) and that the cost of such travel should have been reported as expenditures in accordance with 2 U.S.C. § 434(b)(4)(A) and 11 C.F.R. § 106.3(a) and (b).[1/]

In addition, the complainant alleges that Congressman McMillen violated 2 U.S.C. § 432(e) and 11 C.F.R. § 101.1(a) by delaying the filing of his Statement of Candidacy until October 29, 1985. He states that the Committee reports indicate that this date falls more than fifteen days after McMillen raised $5,000.

In making his allegations that the travel in question was campaign-related, complainant maintains that the Committee's reports "reveal a persistent pattern of contributions being received in large blocks" from contributors in an NBA city either during or shortly after the Bullets' appearance in that city. The complainant attached a list displaying fifteen of the cities to which the Bullets traveled, the amounts received from these cities, the dates on which contributions were received, and the dates of the Bullets' visits. The contributions on the list totalled $26,531. These contributions were received during periods ranging from the day of a game to over two months after a

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1/ In making the allegation that the Committee did not report expenditures for McMillen's trips to NBA cities, the complainant asserts that there are relatively few disbursements reported for travel in general. Complainant states that McMillen violated the reporting sections not only if he conducted any campaign-related activity during the trips taken by the Bullets, but also if he conducted any campaign related activity on any out-of-town trip.

Bullets game in a particular city. For example, he lists $1,100 in contributions from the Atlanta area within the four weeks after a Bullets game in that city. He lists $6,836 from New York contributors between November 12, 1985, and the end of the year and links these contributions to games with the New Jersey Nets and the New York Knickerbockers on November 5 and November 19 repectively. He also lists $5,350 in contributions from the Los Angeles area between January 15 and March 26, 1986, linking these contributions to the Bullets' games in Los Angeles on January 5 and February 17, 1986.

In making these allegations, complainant also refers to fundraisers in NBA cities. He refers specifically to two fundraisers, one in New York held by Jay Zises and one in Los Angeles held by Lew Wasserman. Complainant also refers to a $72 reimbursement to "an Atlanta patron" for food and beverages on October 24, 1985, the day before a Bullets game in Atlanta.[2/]

The complainant also maintains that the Committee's failure to report expenditures for travel to and from such cities is an indication of "McMillen's willful manipulation of his position as a professional basketball player."

2/ It should be noted that the complainant may have overstated the relevant figures. He refers to $70,000 in total contributions from NBA cities between July, 1985, and the end of the season. A review by this Office of the reports filed prior to the complaint, the 1985 Year End and the 1986 April Quarterly, indicates a figure closer to $55,000. In addition, as indicated in the list attached by the complainant, many of the contributions from these cities were made before the NBA season began. Nevertheless, the complainant has stated a claim under the Act, has indicated a pattern of contributions after Bullets road appearances, and has specifically alleged the occurrence of certain fundraisers in NBA cities.

B. Responses

1. Response of the Bullets

The response of counsel for the Bullets was received on August 20, 1986. This response addresses the allegation of violations of 2 U.S.C. § 441b(a). The response is divided into three arguments.

Counsel first points out that the Bullets were merely fulfilling the club's legal obligation to provide travel and expenses to all of their players under the Collective Bargaining Agreement between the National Basketball Association ("NBA") and the National Basketball Players' Association ("NBPA") and under the Uniform Player Contract. Counsel states that the Bullets made such provision "in exactly the same way and the same extent as they did for all members of the team." Counsel states that any attempt by the Bullets to require or accept reimbursement of such expenses or to require that a player refrain from political activity during his free time on these trips would violate both the collecting bargaining agreement and the Uniform Player Contract, could give rise to a grievance against the Bullets, and would violate the National Labor Relations Act. Counsel encloses copies of the NBA-NBPA agreement and the Uniform Players contract, plus a letter from the General Counsel of the NBA.

Counsel refers to Article V of the Collective Bargaining Agreement which requires each team to provide "first class" hotel and transportation accommodations. Counsel also refers to

paragraph 3 of the NBA Uniform Player Contract (Veteran-Single Season) which provides that "[t]he Club agrees to pay all proper and necessary expenses of the Player, including the reasonable board and lodging expenses of the Player while playing for the Club 'on the road'. . . ." Counsel also quotes the letter from the General Counsel of the NBA, stating that every NBA team "is unquestionably obligated to pay the traveling expenses (including transportation, lodging and meal money) of its players in connection with the club's 'away' games...." Counsel also quotes the NBA General Counsel in asserting that any attempt to recover a reimbursement because of the use of free time for political purposes would have violated the Collective Bargaining Uniform Player Agreement and the Uniform Player Contract because "'none of the specified restrictions [on use of free time] involves political activity in any way.'"

Counsel then proceeds to present the difficulties that would face the Bullets had McMillen brought a grievance against the Bullets under the NBA-NBPA Agreement in response to an attempt to obtain reimbursement. He argues that an arbitrator might not have been able to consider the application of public laws other than the National Labor Relations Act. He also maintains that in any ensuing litigation between the Bullets and McMillen, the collective bargaining agreement might very well have been exempt from the application of federal statutes other than the federal labor laws. He also states that nothing in the history of the Federal Election Campaign Act of 1971, as amended, suggests that

Congress intended to have the Commission adjudicate the lawfulness of a normal payment of travel expenses mandated by a collective bargaining agreement.

Counsel's second argument is that the Bullets' payments of McMillen's travel expenses were not violative of 2 U.S.C. § 441b(a) because they were not made in connection with a federal election. Counsel states that the two purposes of that section which were enunciated in Federal Election Commission v. National Right to Work Committee, 459 U.S. 197, 207-8 (1982), i.e., the protection of the election process against the influence of "vast aggregations of wealth" and the protection of shareholders or others with a pecuniary interest, are not implicated. Counsel maintains that it is absurd to suppose that McMillen could be indebted to the Bullets for the performance of the contractual obligation owed to every member of the team. Maintaining that the Bullets did McMillen no favor, counsel states that

> [t]he time and places of the games were established by the NBA. He was transported to those places to play basketball and he did so. And he had the same free time as every other member of the team, to do with as he pleased.

He further states that the Bullets' shareholders would not object to the Bullets' fulfillment of this contractual obligation.

Counsel also argues that the Bullets' payments were not made for the purpose of influencing an election. Counsel cites Miller v. American Telephone & Telegraph Co., 507 F 2d 759 (3d Cir. 1974) for the principle that it must be established that "legitimate business reasons did not underlie" the alleged conduct, and he

contends that the payments for travel were solely for legitimate business reasons; i.e., to enable McMillen to play for the team.

Counsel also addresses the issue of the relevance of 2 U.S.C. § 441b(a) by referring to 11 C.F.R. §§ 114.9(a) and 106.3. Counsel argues that, according to 11 C.F.R. § 114.9(a)(1)(i), a corporate employee "may use corporate facilities for volunteer campaign activity, even during working hours, as long as the company's overhead and operating costs are not increased and as long as the employee performs the normal amount of work expected of him during those hours." Counsel maintains that it would make no sense, therefore, to forbid another employee, the candidate, "to conduct the same activity under those exact same conditions -- i.e., no increase in corporate overhead or operating costs and all required work performed -- outside working hours on a business trip." [Emphasis included.] Referring to 11 C.F.R. § 106.3(d), counsel also asserts that

> [i]f the government can pay for a [Congressman's] travel to his district, even if he conducts campaign activity, it makes no sense to hold that a basketball team cannot pay for its players' travel to out-of-town basketball games because one player conducts campaign activity.

Counsel's third argument is that the complainant relies on 11 C.F.R. § 106.3(b)(3) and that this section is irrelevant. This section states:

> Where a candidate conducts any campaign-related activity in a stop, the stop is a campaign-related stop and

> travel expenditures made are reportable. Campaign-related activity shall not include any incidental contacts.

Counsel quotes the Explanation and Justification for this provision as stating that "[i]ncidental contacts on an otherwise non-campaign stop do not make the stop campaign-related."

Counsel maintains that this section cannot be applied "in determining if payment by a corporation of its employee's travel expenses for a business trip constitutes a corporate contribution or expenditure." He states that business trips usually leave free time for which the employee is not accountable to the company and, therefore, the "application of section 441b to a corporation cannot depend on what its employees do with their free time on business trips."

Counsel argues, in addition, that, from the Bullets' perspective, none of McMillen's trips were campaign-related and any contacts made during his free time were "necessarily" incidental. His obligation was to play basketball for the team, and the Bullets had no control over any political activity by McMillen on his free time.

2. Response of the McMillen Committee

The response of counsel for both the Committee and Congressman McMillen was received on August 22, 1986. Before presenting four substantive arguments, counsel set out the background of McMillen's travels. They maintain that he visited many NBA cities during his eleven year career; that, between 1980 and 1984, he became increasingly active in national Democratic

activities; that he made a number of friendships in NBA cities based on sports, business, and politics; that, while on Bullets' road trips during his career, he "frequently met with and dined with these friends;" and that, when he became a candidate, these friends contributed to his campaign either on their own initiative, through solicitations, or "in the course of personal visits by the candidate."

Counsel first argue that the complaint does not provide any evidence that out-of-state contributions resulted from campaign activity by the candidate while on road trips with the Bullets or even that he engaged in any campaign activity while on such trips. Counsel maintain that the complainant's attempt to draw a comparison between the dates of the Bullets' road games and dates of contributions received from persons in certain cities does not withstand scrutiny. Counsel point out that some contributions from particular cities were received over two months after trips to such cities and, in most instances, the list attached to the complaint shows receipt of a small amount of funds weeks after a Bullets visit. Counsel maintain that these contributions were probably the result of direct mail solicitations or phone calls from Maryland by the candidate and that, since almost half of the campaign's contributions came from out-of-state, it is not surprising that contributions from certain cities would arrive within two months of Bullets games in those cities.

Counsel's second argument is that any campaign-related activity by McMillen while traveling with the team was incidental

in nature. They contend that, with the exception of a small reception in Atlanta and a small reception in Los Angeles, there was no campaign activity on the road trips. Counsel categorize these receptions as "incidental campaign activity" and also state that they were paid for by the campaign. Counsel state that, while traveling with the Bullets, McMillen met and spoke with friends in various cities and that, once he became a candidate, his conversations included discussions of the campaign. Counsel maintain that it is "impossible to draw any correlation between these informal conversations with friends and any contributions received up to two months later from these cities." In addition, counsel contend that these conversations "do not even rise to the level of 'incidental campaign activity.'"

Counsel's third argument is that the payments for travel were not corporate contributions, but were, instead, a fulfillment by the Bullets of an obligation under the Collective Bargaining Agreement and the Uniform Player Contract in return for McMillen's services as a basketball player. Counsel point out that, under 11 C.F.R. § 100.7(a)(3), compensation paid by an employer to an employee rendering services to a campaign does not result in a contribution if the employee fulfills all the responsibilities of his or her job, even if the services are rendered during what would otherwise constitute normal working hours. In light of this regulation, counsel believe that 11 C.F.R. § 106.3 should not be interpreted to prohibit McMillen from engaging in political activity during non-work time.

The fourth argument pertains to the allegation that Congressman McMillen did not file his Statement of Candidacy in a timely manner. Counsel state:

> On April 15, 1983, the original 1984 Friends of Tom McMillen Committee filed with the FEC, and was properly designated by the candidate as his principal campaign committee. After the 1984 election, the committee filed a letter with the Clerk of the House requesting that the committee be transferred to a 1986 committee, in compliance with 11 C.F.R. Section 101.1(a). At all times, the Committee was registered, reporting and properly designated as the principal campaign committee. Even though his letter complied with the requirements of Section 101.1(a), the Clerk of the House suggested in October 1985 that a new Statement of Candidacy form should be filed. This form, changing the name of the committee to McMillen for Congress was filed in October 1985.
>
> Thus, the allegation that the candidate did not timely file his Statement of Candidacy is incorrect, since the information required by that Statement was filed by letter with the Clerk of the House immediately after the 1984 election, as is specifically permitted under Section 101.1(a).

II. LEGAL ANALYSIS

A. Allegations as to Failures to Report and Corporate Contributions

1. Campaign-Related Travel

Section 106.3 of the Commission Regulations addresses the treatment of payment for campaign-related travel as expenditures and the definition of campaign-related travel. Section 106.3(a) provides that "[a]ll expenditures for campaign-related travel paid for by a candidate from a campaign account or by his or her authorized committees or by any other political committee shall

be reported." According to 11 C.F.R. § 106.3(b)(1), travel expenses paid for by a candidate from personal funds or from a source other than a political committee shall constitute reportable expenditures. Section 106.3(b)(2) provides that where a candidate's trip involves both campaign-related and non-campaign related stops, the expenditures allocable for campaign purposes are reportable and are calculated on a cost per mile basis starting at the point of origin of the trip via every campaign-related stop and ending at the point of origin. Section 106.3(b)(3) states that "[w]here a candidate conducts any campaign-related activity in a stop," the stop is campaign-related, but that "[c]ampaign-related activity shall not include any incidental contacts."

The Explanation and Justification of section 106.3 explains the concept of a campaign "stop," stating that where a candidate makes one campaign-related appearance in a city, the trip to that city is campaign-related. The Explanation and Justification explains "incidental contacts" by example. It states that, if a candidate makes a non-political speech to a civic association luncheon and, upon leaving, chats with a few attendees about his upcoming campaign, that conversation would not make the appearance campaign-related.

In this matter, the complainant has disclosed a pattern of contributions to the Committee which, he contends, illustrates that McMillen conducted campaign activities on Bullets' road trips. In addition, complainant has mentioned specifically or

alluded to three fundraisers, two of which have been acknowledged by counsel for the Committee and Congressman McMillen. Such fundraisers would be more than incidental contacts. In addition, the contributions from the various NBA cities may have resulted from other contacts that were more than incidental, despite the broad characterization of "incidental contacts" provided by the Committee's counsel. Such contacts may have included visits and dinners with friends where the discussion of the campaign went beyond the nature of a casual conversation initiated by a supporter. It appears, therefore, that some or all of the trips by McMillen to the various cities in which the Bullets played may have been campaign-related stops.

2. Source of Travel Expenditures

Section 441b(a) of Title 2 prohibits the making and acceptance of contributions by corporations in connection with a federal election. The complainant asserts that, because McMillen's travel to the cities in question was paid for by the Bullets, the payments resulted in corporate contributions by the Bullets.

The facts in this matter, however, are more closely analogous to situations presented in Advisory Opinions wherein the Commission has considered the issue of whether compensation paid by an employer to an employee who was a federal candidate is a contribution. In AO 1979-74, the Commission was presented with a situation in which a lobbyist for corporations was a federal candidate. The Commission determined that the compensation from

his clients would not result in corporate contributions because he would be compensated exclusively in consideration of services performed by him, his rate of compensation would be equal to that earned by lobbyists who perform similar services, and he did not expect to use his client's facilities for campaign purposes. In making this determination, the Commission stated that, in a series of earlier opinions (AOs 1977-45, 1977-68, and 1978-6), it had set forth three criteria which, if satified, would mean that compensation received by a candidate would not qualify as a contribution to the candidate from the employer. They were: (1) the compensation results from bona fide employment genuinely independent of one's candidacy; (2) the compensation is exclusively in consideration of services performed by the candidate; and (3) the compensation does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time.

In the present matter, the payments for travel arose from bona fide employment independent of candidacy, i.e., McMillen's employment as a basketball player for the Bullets. Here, the Bullets' payment for his travel was exclusively in return for his services as a basketball player. It appears that the payment for travel expenses was the standard payment made by the Bullets for all of its players pursuant to the NBA-NBPA Agreement and the Uniform Player Contract. No allegation has been raised that the Bullets made any special provision for McMillen such as later flights or loosened curfews. The response of the Bullets,

although not specifically addressing the question of specific privileges for McMillen, makes the point three times that McMillen "travel[ed] on the same plane, [was] paid the same travel expenses and [received] the same free time" as the other players. It appears, therefore, that the payments should not be considered as a contribution by the Bullets.

Complainant has also alleged that the failure of McMillen or the Committee to reimburse the Bullets resulted in a violation of 11 C.F.R. § 114.9(e). This section states that a candidate who uses an airplane which is owned or leased by a corporation, other than an airline or air service corporation, in connection with a federal election must reimburse the corporation. This section, however, would only be applicable if the candidate were using a team plane. It appears, instead, that the players traveled in first class accommodations on commercial airlines.

Based on the foregoing analysis, this Office recommends that the Commission find no reason to believe that the Capital Bullets Basketball Club, Inc. violated 2 U.S.C. § 441b(a) and no reason to believe that C. Thomas McMillen and McMillen for Congress and Bruce S. Hughes, as treasurer, violated 2 U.S.C. § 441b(a). Since 11 C.F.R. § 114.9(e) appears inapplicable, this Office also recommends that the Commission find no reason to believe that Congressman McMillen and the Committee and Mr. Hughes, as treasurer, violated that regulatory provision.

3. Reporting

Although it seems that the Bullets did not make contributions to or expenditures for the McMillen campaign, the payments made were, according to 11 C.F.R. § 106.3(a) and 106.3(b)(3), campaign-related expenditures reportable under C.F.R. § 106.3(b)(1). Questions thus arise as to who should be deemed to have made these expenditures and, consequently, how they should be reported.

Section 110.10(a) of the Commission's Regulations states that candidates for federal office may make unlimited expenditures from personal funds. Section 110.10(b) sets out the definition of personal funds. According to 11 C.F.R. § 110.10(b)(1), personal funds means:

> Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either:
> (i) Legal and rightful title, or
> (ii) An equitable interest.

Under the NBA-NBPA Agreement and the Uniform Player Contract, McMillen was entitled to the Bullets' provision of travel expenses in return for his fulfillment of his player obligations. It is an established legal principle that an interest in a contract is a property right, i.e., "that the right to perform a contract and to reap the profits resulting from such performance, and also the right to performance by the other party, are property rights." Annotation, Liability for Procuring Breach of Contract, 26 A.L.R. 2d 1240-1241 (1952). Although

McMillen's right to have the Bullets pay for his travel does not qualify as legal title, the fact that he was in the process of continuously performing his obligations under the contract means that he was entitled, without the fulfillment of any further condition, to have the Bullets pay for his travel. In addition, were the Bullets to withhold such payment or make him pay for such travel out of his pocket, he could bring the matter to arbitration under Section 20 of the Uniform Player's contract and, according to the responses of counsel for the Bullets and counsel for the NBA, recover an award under the contract. Therefore, it may be said that McMillen's entitlement to the travel was analogous to the concept of legal and rightful title. In addition, by virtue of the fact that he was performing his part of the employment contract and, in return, had his travel expenses paid for, McMillen had access to the assets in question. It appears, therefore, that the payments for travel constituted the personal funds of McMillen and, according to 11 C.F.R. § 106.3(b)(1), should have been reported as expenditures for campaign-related travel made by the candidate.

This Office notes that, according to 11 C.F.R. § 100.8(b)(22), payments by a candidate from his or her personal funds, as defined by 11 C.F.R. § 110.10(b), for the candidate's routine living expenses which would have been incurred without candidacy, including the costs of food and residence, are not expenditures. It is true that the payments for travel would have had to be made whether McMillen was a candidate or not. The expenses for

travel, however, were not routine living expenses along the lines of food, residence, clothing, or heat. They were payments for an activity which, although related to his job, enabled McMillen to seek contributions from persons in various cities around the country.

Since this situation involves a use of the candidate's personal funds, the amount paid for travel expenses should be reported as an in-kind contribution from the candidate and an expenditure by the Committee.[3/] Section 434(b)(2)(A) of Title 2 requires the reporting of the total amount of all contributions from persons other than political committees during the reporting period and calendar year. Section 434(b)(3)(A) requires the identification of each person who contributes in excess of $200 to the reporting committee, along with the date and amount of such contribution. Section 434(b)(4)(A) of Title 2 requires the reporting of the total of all expenditures during the reporting period and calendar year made to meet candidate or committee operating expenses. Section 434(b)(5)(A) requires the reporting of the name and address of each "person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date,

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3/ In addition to the requirement of 11 C.F.R. § 106.3(b)(1) requiring the reporting of travel expenses as expenditures, 11 C.F.R. § 104.13(a) requires that in-kind contributions be reported as contributions and expenditures.

amount, and purpose of such operating expenditure." Because the amounts paid by McMillen for campaign-related travel have not been reported, this Office recommends that the Commission find reason to believe that the Committee and Mr. Hughes, as treasurer, violated 2 U.S.C. §§ 434(b)(2)(A), 434(b)(3)(A), 434(b)(4)(A), and 434(b)(5)(A).

4. Investigation

In order to ascertain the extent of possible reporting violations, the Commission should ask Congressman McMillen and the Committee to list the campaign-related contacts outside of incidental contacts on the Bullets' road trips. The relevant contacts would be fundraisers, small parties, and conversations with individuals in which the campaign-related conversation went beyond a mere response to an isolated question about the status of his campaign for the House. (Therefore, dinners with supporters would be included.) This information will enable the Commission to determine which travel stops were campaign-related stops. The Commission should also attempt to determine the amount of payments for those road trips that can be categorized as campaign-related. This Office recommends that the Commission approve a letter requesting the Bullets to state the cost for the travel for an individual player on each of the Bullets' trip to cities where a game was played. Although adjustments may have to be made in accordance with 11 C.F.R. § 106.3(b)(2) to take into account trips to cities where campaign-related activity did not occur, information from the Bullets as to the cost of

travel will still be useful in obtaining an estimate of the amount of funds expended for campaign-related travel on the road trips to NBA cities.

B. Allegation as to the Failure to File a Statement of Candidacy in a Timely Manner

Section 432(e)(1) of Title 2 states that each candidate shall designate in writing a political committee to serve as the principal campaign committee no later than 15 days after becoming a candidate. According to 11 C.F.R. § 101.2, this designation shall take form of a Statement of Candidacy on FEC Form 2 or a letter containing the same information as FEC Form 2. According to 2 U.S.C. § 431(2), when an individual or another person designated by that individual receives contributions aggregating in excess of $5,000 or makes expenditures in excess of $5,000, that individual becomes a candidate.

Counsel for the candidate and the Committee have made the argument that the Statement of Organization for the original 1984 committee, Friends of Tom McMillen, was filed in a timely manner on April 15, 1983, and that timely amendments were filed so that "[a]t all times, the Committee was registered, reporting and properly designated as the principal campaign committee."

It appears from the documents and reports filed by the candidate and by both of his campaign committees that counsel are confusing the Committee's Statement of Organization to be filed pursuant to 2 U.S.C. § 433(a) with the Statement of Candidacy. Although the Friends of Tom McMillen filed a 1983 Mid-Year Report indicating that McMillen had qualified as a candidate by mid-

April, 1983, no Statement of Candidacy was filed during that period. On January 31, 1984, the treasurer of Friends of Tom McMillen sent a letter to the Clerk of the House stating that Mr. McMillen was no longer a candidate for Congress in 1984 and expressing a desire to redesignate the committee for 1986. This appears to be the statement referred to by counsel as having been filed "[a]fter the 1984 election." This letter, however, does not contain a significant portion of the information of a Statement of Candidacy required by 11 C.F.R. § 101.1(a), e.g., the candidate's address, the party affiliation and the appropriate Congressional district. Although this letter contains certain information and although the Commission's data coders have listed it as a Statement of Candidacy, it does not appear to have been a Statement of Candidacy. According to counsel for the Committee and Congressman McMillen, "the Clerk of the House suggested in October 1985 that a new Statement of Candidacy form should be filed," and the form "changing the name of the committee to McMillen for Congress was filed in October 1985." It appears that this statement, filed on October 29, 1985, was the first Statement of Candidacy filed by McMillen for either the 1984 or 1986 elections. Even if the Commission were to assume that only the activity occurring after the January 31, 1984, letter should be construed as triggering candidacy status for 1986, this statement was filed well after $5,000 in contributions were received or $5,000 in expenditures were made for the 1986 elections.

Based on the foregoing analysis, it appears that Congressman McMillen failed to comply with the requirements for filing a Statement of Candidacy for 1984 and 1986. This Office recommends, therefore, that the Commission find reason to believe that Congressman McMillen violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a).

III. RECOMMENDATIONS

1. Find no reason to believe that the Capital Bullets Basketball Club, Inc. violated 2 U.S.C. § 441b(a).

2. Find no reason to believe that Congressman C. Thomas McMillen, McMillen for Congress and Bruce S. Hughes, as treasurer, violated 2 U.S.C. § 441b(a).

3. Find no reason to believe that Congressman C. Thomas McMillen, McMillen for Congress and Bruce S. Hughes, as treasurer, violated 11 C.F.R. § 114.9(e).

4. Find reason to believe that McMillen for Congress and Bruce S. Hughes, as treasurer, violated 2 U.S.C. §§ 434(b)(2)(A), 434(b)(3)(A), 434(b)(4)(A), and 434(b)(5)(A).

5. Find reason to believe that Congressman C. Thomas McMillen violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a).

6. Approve the attached letters.

5/22/87
Date

Lawrence M. Noble
Acting General Counsel

Attachments
1. Response of counsel for the Bullets
2. Response of counsel for Congressman McMillen and the McMillen Committee
3. Proposed letter to counsel for the Bullets
4. Proposed letter to counsel for Congressman McMillen and the McMillen Committee.

FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

MEMORANDUM TO: LAWRENCE M. NOBLE
ACTING GENERAL COUNSEL

FROM: MARJORIE W. EMMONS / SUSAN GREENLEE SG.

DATE: MAY 28, 1987

SUBJECT: OBJECTION TO MUR 2188: General Counsel's Report Signed May 22, 1987

The above-captioned document was circulated to the Commission on Tuesday, MAY 26, 1987 at 4:00 P.M.

Objections have been received from the Commissioners as indicated by the name(s) checked:

Commissioner Aikens	X
Commissioner Elliott	
Commissioner Josefiak	X
Commissioner McDonald	X
Commissioner McGarry	
Commissioner Thomas	X

This matter will be placed on the Executive Session agenda for JUNE 2, 1987.

Please notify us who will represent your Division before the Commission on this matter.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
C. Thomas McMillen	)	
	)	
McMillen for Congress and Bruce S. Hughes, as treasurer	)	MUR 2188
	)	
	)	
Capital Bullets Basketball Club, Inc.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of June 2, 1987, do hereby certify that the Commission took the following actions in MUR 2188:

1. Decided by a vote of 6-0 to find no reason to believe that the Capital Bullets Basketball Club, Inc. violated 2 U.S.C. § 441b(a).

   Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision.

2. Decided by a vote of 6-0 to find no reason to believe that Congressman C. Thomas McMillen, McMillen for Congress and Bruce S. Hughes, as treasurer, violated 2 U.S.C. § 441b(a).

   Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision.

(continued)

3. Decided by a vote of 6-0 to find no reason to believe that Congressman C. Thomas McMillen, McMillen for Congress and Bruce S. Hughes, as treasurer, violated 11 C.F.R. § 114.9(e).

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision.

4. Decided by a vote of 5-1 to find reason to believe that McMillen for Congress and Bruce S. Hughes, as treasurer, violated 2 U.S.C. §§ 434(b)(2)(A), 434(b)(3)(A), 434(b)(4)(A), and 434(b)(5)(A) and 11 C.F.R. § 106.3(b)(1).

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively; Commissioner Aikens dissented.

5. Decided by a vote of 5-1 to find reason to believe that Congressman C. Thomas McMillen violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a), but take no further action.

Commissioners Aikens, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Elliott dissented.

6. Decided by a vote of 6-0 to direct the Office of General Counsel to send appropriate letters to the respondents, that the letter to the Capital Bullets Basketball Club, Inc. not include any questions or requests for information, and that the letter to the C. Thomas McMillen for Congress Committee have a separate list of questions asking about campaign-related events that were pre-arranged events conducted in conjuntion with trips paid for by the Capital Bullets.

(continued)

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision.

7. Decided by a vote of 6-0 to reconsider decision number 2 noted above.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for reconsideration.

8. Decided by a vote of 5-1 to find no reason to believe that Congressman C. Thomas McMillen, McMillen for Congress and Bruce S. Hughes, as treasurer, violated 2 U.S.C. § 441b(a).

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Josefiak dissented.

Attest:

June 3, 1987
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 15, 1987

Joseph E. Sandler, Esquire
Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Ave., N.W.
Washington, D.C. 20036-5339

Re: MUR 2188
Capital Bullets
Basketball Club, Inc.

Dear Mr. Sandler:

On July 17, 1986, the Federal Election Commission notified your client, the Capital Bullets Basketball Club, Inc. ("the Bullets") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On June 2, 1987, the Commission, on the basis of the information in the complaint and information provided by you, determined that there is no reason to believe the Bullets violated 2 U.S.C. § 441b(a). Accordingly, the file has been closed in this matter as it pertains to the Bullets.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. § 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. If you have any questions, please contact Jonathan Levin at (202) 376-5690.

Sincerely,

Lawrence M. Noble
Acting General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 16, 1987

David M. Ifshin, Esquire
Carolyn U. Oliphant, Esquire
Manatt, Phelps, Rothenberg,
Tunney & Evans
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Re: MUR 2188
C. Thomas McMillen
McMillen for Congress
Bruce S. Hughes, as treasurer

Dear Mr. Ifshin and Ms. Oliphant:

On July 17, 1986, the Federal Election Commission notified your clients, C. Thomas McMillen and McMillen for Congress ("the Committee") and Bruce S. Hughes, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaint were forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on June 2, 1987, found reason to believe that the Committee and Mr. Hughes, as treasurer, violated 2 U.S.C. §§ 434(b)(2)(A), 434(b)(3)(A), 434(b)(4)(A), and 434(b)(5)(A) and 11 C.F.R. § 106.3(b)(1), and no reason to believe that Congressman McMillen and the Committee and Mr. Hughes, as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.9(e). Specifically, it appears that, although the payments by the Capital Bullets for the travel expenses of Congressman McMillen related to road trips during which pre-arranged campaign-related events occurred were not corporate contributions by the Bullets, such payments constituted the personal funds of Congressman McMillen according to 11 C.F.R. § 110.10(b)(1) and should have been reported as contributions and expenditures from him on the Committee's reports pursuant to 11 C.F.R. § 106.3(b)(2).

On that date, the Commission also found reason to believe that Congressman McMillen violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a), but determined to take no further action in this regard. Specifically, it appears that Congressman McMillen did not file a complete Statement of Candidacy until October 29, 1985, more than 15 days after he became a candidate under 2 U.S.C. § 431(2) for 1984 and 1986.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your clients. You may submit any factual and legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions, within 15 days of your receipt of this letter. Statement should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your clients, the Commission may make determinations of probable cause to believe that violations have occurred and proceed with conciliation.

If your clients are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel is not authorized to give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Scott E. Thomas
Chairman

Enclosure
Interrogatories

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2188
)

INTERROGATORIES

TO: Bruce S. Hughes, Treasurer
McMillen for Congress
9 Crofton Depot
2135 Defense Highway
Crofton, MD 21114

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within 15 days of your receipt of this request.

INSTRUCTIONS

In answering these interrogatories, furnish all information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any information that is requested by any of the following interrogatories, describe the type of information in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery requests shall refer to the time period from July, 1985, to April, 1986.

The following interrogatories are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

"Pre-arranged campaign-related event" means any event which fits all of the following criteria:

(1) It was planned ahead of time.
(2) It was planned for a specific time and place.
(3) People were invited to this event.
(4) At some point during the event, the candidate or someone connected with the campaign or the event made a presentation or speech concerning C. Thomas McMillen's candidacy for the U.S. House of Representatives.

You are asked to answer the following interrogatories:

For the period of July, 1985, through April, 1986, list all pre-arranged campaign-related events related to the campaign of C. Thomas McMillen which took place on Bullets' road trips. For each event, state:

(a) the location of the event (i.e., city and address and/or the name of the building);

(b) the date and time of the event;

(c) the nature of the event, e.g., large reception, small party;

(d) the number of persons in attendance at the event;

(e) the persons who organized the event, including the name, address, and occupation of each person and the position of each person with the campaign; and

(f) the amount of funds raised as a result of the event.

CCC#3651

MANATT, PHELPS, ROTHENBERG & EVANS
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
ATTORNEYS AT LAW

1200 NEW HAMPSHIRE AVENUE, N.W.
SUITE 200
WASHINGTON, D.C. 20036

TELEPHONE (202) 463-4300

LOS ANGELES
11355 WEST OLYMPIC BOULEVARD
LOS ANGELES, CALIFORNIA 90064
(213) 312-4000

June 22, 1987

87 JUN 22 P3:23

RECEIVED
FEDERAL ELECTION
GENERAL COUNSEL

VIA MESSENGER

Mr. Jonathan Levin
Federal Election Commission
999 E Street, N.W., Room 657
Washington, DC 20463

Re: MUR 2188
C. Thomas McMillen
McMillen for Congress
Bruce S. Hughes, as treasurer

Dear Mr. Levin:

This letter is to request an extension of time of 20 days, extending the time for our response to July 23, 1987, to respond to Notice of Reason to Believe in MUR 2188. The reason for the request for an extension is that Jerry Grant, McMillen for Congress campaign manager, who is in possession of material facts in this matter, will be unavailable to counsel until after July 1, 1987.

Sincerely,

David M. Ifshin

David M. Ifshin

DMI:jb
cc: Carolyn Oliphant

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 23, 1987

David M. Ifshin, Esquire
Manatt, Phelps, Rothenberg & Evans
1200 New Hampshire Avenue, N.W.
Suite 200
Washington, D.C. 20036

RE: MUR 2188
McMillen for Congress
Bruce S. Hughes, as treasurer

Dear Mr. Ifshin:

Pursuant to your request, dated June 22, 1987, the Office of the General Counsel is granting a 20-day extension of time in which to file a response in the above-captioned matter. Your response is due, therefore, on July 23, 1987, as stated in your letter.

If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
Acting General Counsel

BY: Lois G. Lerner
Associate General Counsel

GCC 4002

RECEIVED AT THE FEC
HAND DELIVERED
87 JUL 23 AM : 24

Lawrence M. Noble
Acting General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

87 JUL 23 P3:34

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

Re: MUR 2188

Dear Mr. Noble:

The enclosed interrogatory responses are submitted pursuant to the Commission's letter of June 16, 1987. Since the Commission found no reason to believe that Congressman McMillen's travel expenses to Bullets games constituted corporate contributions, the Committee does not understand the purpose or focus of the Commission's continued investigation into this matter. Nevertheless, to the best of the recollection of Committee staff, the enclosed answers are submitted.

As to the finding that the Committee should have reported the cost of Congressman McMillen's travel expenses as personal contributions from Mr. McMillen to the Committee and as expenditures by the Committee, the Committee believes that there is no FEC precedent for such a finding. Since the candidate-related activity was clearly incidental to the overall trip and the payment of the expenses, as the Commission found, was not for the purpose of influencing the election, the regulations do not require any reporting of the travel costs, either as contributions or expenditures for the purpose of influencing the election.

Moreover, since the Committee relied on the regulations at 11 C.F.R. Section 106.3(b)(3) that the travel need not be allocated since incidental, no further action should be taken in this matter. The Committee had no way of determining in advance that the Commission would determine subsequently that these travel expenses that were mandated under the Bullets' contract should be considered the personal funds of Congressman McMillen. Under these circumstances, the Committee urges the Commission to close its file in this matter.

If you have any questions concerning the enclosed interrogatory response, please contact me at 333-4591.

Sincerely,

Carolyn U Oliphant

Carolyn U. Oliphant
2233 Wisconsin Avenue, N.W.
Suite 214
Washington, D.C. 20007

Enclosure

RESPONSE OF THE MCMILLEN FOR CONGRESS
COMMITTEE TO FEC INTERROGATORIES DATED
JUNE 16, 1987

The following response is submitted on behalf of C. Thomas McMillen, McMillen for Congress Committee and Bruce S. Hughes, as treasurer, to the FEC interrogatories of June 16, 1987. The Committee has made every effort to obtain the information requested by the Commission, however, the campaign did not maintain records of all the information requested by the interrogatories. Where such records are not available, the Committee has provided estimates to the best of its recollection.

1. (a) Atlanta, Georgia
4215 Lake Forest Drive

(b) October 24, 1985
Evening, approximately 7 p.m.

(c) Home party

(d) Approximately 50 persons

(e) Temi & Marvin Silver - no campaign position
4215 Lake Forest Drive
Atlanta, Georgia

(f) Approximately $3,500

2. (a) Beverly Hills, California
514 Doheny Road

(b) February 16, 1986
Afternoon, approximately 2 p.m.

(c) Home party

(d) Approximately 30 persons

(e) Lynne Wasserman - no campaign position
514 Doheny Road
Beverly Hills, California

(f) Approximately $4,000

3. (a) Denver, Colorado
Denver-Bullets game

(b) February 18, 1986

(c) Campaign purchased approximately 40 tickets to Bullets/Denver game, and gave the tickets to Tom Hoog who invited friends to attend the game. After the game, Mr. McMillen met with the group outside the locker room briefly.

(d) Approximately 40

(e) Tom Hoog - no campaign position
1877 Broadway, Suite 4505, Boulder, CO 80302

(f) Approximately $3,500

4. (a) Salt Lake City, Utah
Not certain of location, to the best of the Committee's recollection, the hotel where the Bullets stayed

(b) January 9, 1986
Breakfast

(c) Breakfast in hotel coffee shop with Mr. McMillen. No solicitation, but the candidate spoke about his candidacy.

(d) Approximately 15

(e) Scott Matheson - no campaign position
1846 Michigan Avenue, Salt Lake City, UT 84108

(f) No funds raised

I declare under penalty of perjury that I am authorized to sign these responses on behalf of the McMillen for Congress Committee; as to the foregoing responses based on information and belief, I believe them to be true and correct; and as to the foregoing responses based on my personal knowledge, they are true and correct.

July 22, 1987

Jerry Grant
Manager, McMillen for Congress Committee

86e

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: THE COMMISSION

FROM: MARJORIE W. EMMONS/JOSHUA MCFADDEN JM

DATE: SEPTEMBER 16, 1987

SUBJECT: STATEMENT OF REASONS FOR MUR 2188

Attached is a copy of the Statement of Reasons in MUR 2188 received in the Commission Secretary's Office September 16, 1987 at 12:59 P.M.

FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2188
C. Thomas McMillen)
)

STATEMENT OF REASONS

In MUR 2188, the Commission adopted the General Counsel's recommendation to find reason to believe that Congressman C. Thomas McMillen violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a) but voted to take no further action.

In its consideration of the matter, the Commission noted that the treasurer of the Friends of McMillen had sent a letter to the Clerk of the House in January, 1984, stating that Mr. McMillen was no longer a candidate for Congress in 1984 but expressing a desire to redesignate the committee for 1986. Although this letter did not appear to fulfill the requirements of a Statement of Candidacy, it did contain certain information regarding the candidate's intentions with respect to the 1986 election. The Commission further noted that, after a request from the Clerk of the House that a new Statement of Candidacy form be filed, the candidate promptly filed a Statement of Candidacy in October, 1985.

Upon considering these circumstances and the proper ordering of Commission priorities and resources, see Heckler v. Chaney, 470 U.S. 821, 832 (1985), the Commission concluded that no further action was warranted.

9/16/87

Scott E. Thomas,
Chairman

9/16/87

Thomas J. Josefiak,
Vice-Chairman

9-16-87

Joan D. Aikens,
Commissioner

9/16/87

John Warren McGarry,
Commissioner

9/16/87

Danny Lee McDonald,
Commissioner

SENSITIVE

RECEIVED
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88 JAN -5 PM 1:18

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
McMillen for Congress	)	MUR 2188
Bruce S. Hughes, as treasurer	)	

EXECUTIVE SESSION
JAN 12 1988

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter involves allegations in connection with payments by the Capital Bullets Basketball Club, Inc. ("the Bullets") for the travel of Congressman C. Thomas McMillen, who was employed by the Bullets at the time of the payments. According to the complaint, Congressman McMillen, while playing for the Bullets between July, 1985, and April, 1986, conducted campaign fundraising activities in the cities to which the Bullets traveled in his campaign for a seat in the House of Representatives from Maryland's Fourth Congressional District. The complaint also alleged that Congressman McMillen filed his Statement of Candidacy in an untimely manner.

On June 2, 1987, the Commission found no reason to believe that the Bullets violated 2 U.S.C. § 441b(a) in connection with payments for travel. On that date, the Commission also found no reason to believe that Congressman McMillen and McMillen for Congress ("the Committee") and Bruce S. Hughes, as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.9(e) in connection with those payments. With respect to the apparent failure to report the payments, which were analyzed by this Office as the personal funds of the candidate, the Commission found reason to believe that the Committee and Mr. Hughes, as

treasurer, violated 2 U.S.C. § 434(b)(2)(A), 434(b)(3)(A), 434(b)(4)(A), 434(b)(5)(A), and 11 C.F.R. § 106.3(b)(1). With respect to the apparent late filing of the Statement of Candidacy, the Commission found reason to believe that Congressman McMillen violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a) but decided to take no further action.

At the Commission's direction, this Office drafted interrogatories for the Committee. These questions were aimed at obtaining a list and description of all of the pre-arranged campaign-related events that took place on the Bullets' road trips. By obtaining this information, this Office could determine whether a trip to a certain city was campaign-related and ultimately determine the amount of expenditures for travel that went unreported, i.e., the extent of the apparent reporting violation.

On July 23, 1987, this Office received a letter from counsel for the Committee with a response to the interrogatories from the manager of the Committee. The response listed and described four events, each in a different city. (See Attachment 1.) The descriptions of these events indicate that they each were non-incidental in nature and were, therefore, campaign-related activities. Thus, the stops in those cities were campaign-related. See 11 C.F.R. § 106.3(b)(3).

II. ANALYSIS

In order to determine the amount not reported, this Office requires information as to the amount spent for travel. This Office, therefore, has attempted to seek this information through the Committee's counsel, who is often difficult to contact. Counsel for the Committee is attempting to obtain this information from the Bullets but states that she has encountered difficulties. According to her, the Bullets state that they do not always have the same number of persons on each road trip and that it may be difficult to determine the travel costs for an individual traveler on a particular road trip. Counsel also states that the Bullets have not made the provision of this information a priority. Therefore, this Office has drafted interrogatories to be sent to the Bullets.*/

Section 106.3(b)(2) of the Commission Regulations states that when a candidate's trip involves both campaign-related and non-campaign-related stops, the expenditures allocable for campaign purposes "are calculated on the actual cost-per-mile of the means of transportation actually used, starting at the point of origin of the trip, via every campaign-related stop and ending at the point of origin." 11 C.F.R. § 106.3(b)(2). A review of the Bullets' 1985-1986 schedule indicates that the campaign-

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*/ Although these questions could be addressed to the Committee, this Office believes that, in light of the Committee's inability to obtain this information, it would be better to contact the Bullets directly.

related events took place on road trips involving Bullets games in a number of cities. Information as to the fares for McMillen for each of these road trips plus information readily available as to the approximate total mileage will enable this Office to compute the cost per mile of the transportation in accordance with 11 C.F.R. § 106.3(b)(2). Therefore, this Office has drafted questions as to the fares for each of the road trips and as to the additional travel costs for each city in which a campaign-related event occurred, i.e., payments for food, lodging, per diem payments, and other expenses.

III. RECOMMENDATION

1. Approve the attached letter and interrogatories.

1/5/88
Date

Lawrence M. Noble
General Counsel

Attachments
1. Response of McMillen for Congress
2. Proposed letter and interrogatories to be sent to the Bullets

Staff Person: Jonathan Levin

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/SUSAN GREENLEE

DATE: JANUARY 6, 1988

SUBJECT: OBJECTION TO MUR 2188: General Counsel's Report signed January 5, 1988

The above-captioned document was circulated to the Commission on Wednesday, January 6, 1988, at 11:00

Objections have been received from the Commissioners as indicated by the name(s) checked:

Commissioner Aikens _____
Commissioner Elliott _____
Commissioner Josefiak _____
Commissioner McDonald _____
Commissioner McGarry _____
Commissioner Thomas X

This matter will be placed on the Executive Session agenda for January 12, 1988.

Please notify us who will represent your Division before the Commission on this matter.

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/SUSAN GREENLEE SG

DATE: JANUARY 7, 1988

SUBJECT: COMMENTS ON MUR 2188: General Counsel's Report signed January 5, 1988

Attached is a copy of Commissioner McDonald's vote sheet with comments regarding the above-captioned matter.

Attachment:
copy of vote sheet

BALLOT

SENSITIVE

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DATE & TIME TRANSMITTED: WEDNESDAY, JANUARY 6, 1988 11:00

COMMISSIONER: AIKENS, ELLIOTT, JOSEFIAK, [redacted]D, McGARRY, THOMAS

RETURN TO COMMISSION SECRETARY BY FRIDAY, JANUARY 8, 1988 11:00

SUBJECT: MUR 2188 - General Counsel's Report
Signed January 5, 1988

8804062030

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FEDERAL ELECTION COMMISSION
88 JAN -7 AM 11:47

( ) I approve the recommendation

( ) I object to the recommendation

COMMENTS: Glendening recused

DATE: 1-7-88 SIGNATURE

A DEFINITE VOTE IS REQUIRED. ALL BALLOTS MUST BE SIGNED AND DATED.

PLEASE RETURN ONLY THE BALLOT TO THE COMMISSION SECRETARY.

PLEASE RETURN BALLOT NO LATER THAN DATE AND TIME SHOWN ABOVE.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
McMillen for Congress) MUR 2188
Bruce S. Hughes, as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of January 12, 1988, do hereby certify that the Commission took the following actions in MUR 2188:

1. Decided by a vote of 6-0 to reject the recommendations contained in the General Counsel's report dated January 5, 1988, and instead take no further action in this matter.

   Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision.

2. Decided by a vote of 6-0 to close the file in MUR 2188, direct the Office of General Counsel to send an appropriate letter, and place a Statement of Reasons on the public record.

   Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

Jan 12, 1988
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

January 22, 1988

David Osnos, Esquire
Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

RE: MUR 2188
Capital Bullets Basketball
Club, Inc.

Dear Mr. Osnos:

This is to advise you that the entire file in this matter has now been closed and will become part of the public record within 30 days. Should you wish to submit any legal or factual materials to be placed on the public record in connection with this matter, please do so within ten days. Such materials should be sent to the Office of the General Counsel.

Should you have any questions, contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 22, 1988

Carolyn U. Oliphant, Esquire
c/o Manatt, Phelps, Rothenberg,
Tunney & Evans
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036

RE: MUR 2188
McMillen for Congress
Bruce S. Hughes, as treasurer

Dear Ms. Oliphant:

On June 16, 1987, you were notified that the Federal Election Commission found reason to believe that McMillen for Congress ("the Committee") and Bruce S. Hughes, as treasurer, violated 2 U.S.C. § 434(b)(2)(A), 434(b)(3)(A), 434(b)(4)(A), and 434(b)(5)(A), and 11 C.F.R. § 106.3(b)(1). On July 23, 1987, this Office received the Committee's response to the reason to believe findings and interrogatories.

After considering the circumstances of the matter, the Commission determined, on January 12, 1988, to take no further action against the Committee and Mr. Hughes, as treasurer, and closed its file. A Statement of Reasons explaining the Commission's decision will be sent to you shortly.

The file will be made part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within ten days of your receipt of this letter. Such materials should be sent to the Office of the General Counsel.

If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

January 22, 1988

Douglas D. Ritter, Jr.
991 St. Margaret's Drive
Annapolis, MD 21401

RE: MUR 2188

Dear Mr. Ritter:

This is in reference to the complaint you filed with the Federal Election Commission received on June 19, 1987, concerning payments by the Capital Bullets Basketball Club, Inc. ("the Bullets") for the travel of C. Thomas McMillen while he was a candidate for the House of Representatives and the alleged failure of Mr. McMillen to file a Statement of Candidacy in a timely manner.

On June 2, 1987, the Commission found no reason to believe that the Bullets violated 2 U.S.C. § 441b(a) and no reason to believe that Congressman McMillen and McMillen for Congress ("the Committee") and Bruce S. Hughes, as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.9(e) in connection with payments for travel. With respect to the apparent failure to report the travel payments, which were analyzed by this Office as the personal funds of the candidate, the Commission found reason to believe that the Committee and Mr. Hughes, as treasurer, violated 2 U.S.C. § 434(b)(2)(A), 434(b)(3)(A), 434(b)(4)(A), and 434(b)(5)(A), and 11 C.F.R. § 106.3(b)(1). Finally, with respect to the apparent late filing of the Statement of Candidacy, the Commission found reason to believe that Congressman McMillen violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a) but decided to take no further action. A General Counsel's Report reviewed by the Commission before making these determinations and a Statement of Reasons explaining the Commission's decision to take no further action with respect to the allegation as to the filing of the Statement of Candidacy are enclosed.

After considering the circumstances of this matter, the Commission, on January 12, 1988, determined to take no further action against the Committee and Mr. Hughes, as treasurer, and closed the file in this matter. A Statement of Reasons explaining the Commission's decision will be sent to you shortly. This matter will become part of the public record within 30 days.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
General Counsel's Report
Statement of Reasons

FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

THIS IS THE END OF MUR # 2188

DATE FILMED 4/6/88 CAMERA NO. 2

CAMERAMAN GPC

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THE FOLLOWING MATERIAL IS BEING ADDED TO THE PUBLIC FILE OF CLOSED MUR 2188.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 16, 1988

Carolyn U. Oliphant, Esquire
Manatt, Phelps, Rothenberg,
Tunney & Evans
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036

RE: MUR 2188
McMillen for Congress
Bruce S. Hughes, as treasurer

Dear Ms. Oliphant:

On January 22, 1988, the Office of the General Counsel sent a letter informing you of the Commission's determination to take no further action and to close the file in the above-captioned matter. In that letter, this Office stated that a Statement of Reasons explaining the Commission's decision would be sent to you shortly.

Enclosed are a Statement of Reasons adopted by the Commission and a Statement of Reasons signed by Commissioner Josefiak. If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosure
Statements of Reasons

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 16, 1988

Douglas D. Ritter, Jr.
991 St. Margaret's Drive
Annapolis, MD 21401

Re: MUR 2188

Dear Mr. Ritter:

By letter dated January 22, 1988, the Office of the General Counsel informed you of determinations made with respect to the complaint filed by you against C. Thomas McMillen, McMillen for Congress ("the Committee") and Bruce S. Hughes, as treasurer, and the Capital Bullets Basketball Club, Inc. Enclosed with that letter was a General Counsel's Report and a Statement of Reasons explaining the Commission's decision to take no further action with respect to the allegation as to the filing of the Statement of Candidacy.

Enclosed please find a Statement of Reasons adopted by the Commission explaining its decision to take no further action and to close the file in this matter and a Statement of Reasons signed by Commissioner Josefiak.

This document will be placed on the public record as part of the file of MUR 2188.

If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosure
Statements of Reasons

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