

Insights: Publications

Ever Negotiated a Head Coach's Contract? | Part I

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Years ago, when I was a first-year law student, I had the serendipitous good fortune to meet the Head Football Coach at the school I was attending and to build a good relationship with him. When the University proposed to extend his contract, he reached out and inquired, “you are in law school...will you take a look at my contract for me?”

Being a sports fan, I jumped at the chance to secure and serve my first ever client in a realm that I loved. After reviewing my Contracts course notes and case book to prepare, I was stunned that the University's proposed contract with its highest profile employee was all of two pages. And it was nothing more than the simplistic memorialization of what could be characterized as a basic “handshake” deal--the contract term, the annual salary, some incentives and the applicable law. It took little time to review that agreement as, truthfully, even a first-year law student could have done (and did) so.

Over subsequent decades, the complexity and sophistication (and of course the dollar value) of the contracts entered by major schools with their head coaches has expanded many-fold. While schools are quick to point the finger at agents and the increased mobility of coaches, the fact of the matter is that in large measure, their own rapacious quest for athletics success and the associated riches that accompany it is the primary driver of such expansion. Regardless, the need for the competent representation of college (and professional) coaches--who have no union or Collective Bargaining Agreement to address fundamental contractual and legal protections--is manifest and more important than ever.

Like that first contract that I handled in law school, the modern coach's contract still contains provisions addressing the core “top-line” issues—contract term, compensation and boilerplate provisions. However, most current agreements, particularly at major schools, provide benefits never contemplated by old school coaches such as the use of private jets, country club memberships, stadium suites, concert tickets, luxury vehicles and many others. These agreements also increasingly include the establishment of a “salary pool” and bonuses for assistant coaches and staff, many of whom work under limited one and two-year contracts.

With these lucrative dollars and benefits, perhaps it is not as surprising as it should be that many coaches simply approve and sign the contract placed in front of them without conducting any meaningful review...“we agreed on the key terms, we are a partnership headed for success, and I trust them” often is the signing day refrain. Of course, rarely is trust or performance the issue at the signing table when everyone envisions the blue skies ahead without any turbulence or legal issues along the way.

Particularly in an undertaking that is dependent in significant measure upon the behavior and performance of athletes as young as 17 years old, the relative rights, duties, conflicts, ambiguities, procedures and risks inherent in a head coach's contract must be identified, evaluated and understood using the same legal principles that apply to any employment or other significant contract. That said, a review of all of the typical clauses in coaching contracts is beyond the scope of this discussion. Instead, this series of articles shall focus upon the most important scheme in a coach's contract (other than the term and compensation)--the details and interplay among the termination and buy-out provisions.

Every college coach's contract provides specific circumstances under which the agreement may be terminated for cause. Likewise, these contracts contain termination "without cause" provisions which often are referred to as "termination for convenience" clauses. Because these provisions implicate important and valuable rights, responsibilities and outcomes, it is essential that the coach and his representative possess a clear understanding of the terms that will govern any divorce that may occur in the future. In Part I of this series, we examine the Termination for Cause Provision found in every head coach's contract.

Termination For Cause. The right to terminate a contract for default arises when a material provision of the agreement has been breached or a party has failed to perform. The rights and liabilities of the parties are controlled by the common law and the terms of the contract. Utilizing the terms of the contract, parties can expand, limit or redefine the grounds for a termination for default. This is the genesis of the Termination for Cause provision that has become a standard term in college/university coaching contracts.

The basic aim of the Termination for Cause provision is to articulate and define the types of misconduct or neglect that are so serious as to warrant the termination of the coach's employment and the cessation of any obligation on the part of the school to make any further payment of compensation or benefits. Given the high financial stakes and reputational concerns associated with a termination for cause, all aspects of this termination provision, both substantive and procedural, must carefully be drafted, reviewed and understood *before* the contract is entered and performance has commenced.

Termination for Cause provisions enumerate a variety of specific grounds constituting "cause" for the termination of a coach. Some, but not nearly all, of the more common grounds for cause found in modern coaching contracts include:

- i. Violation of federal, state or municipal laws;
- ii. Violation of the school's policies or athletic department rules;
- iii. Violation of NCAA or conference rules;
- iv. Engaging in fraudulent, dishonest, unethical or immoral conduct;
- v. Conduct which may have occurred during any prior employment for which the NCAA could hold the coach responsible;
- vi. Any conduct that misleads the school or its Athletic Director;
- vii. Any consumption of alcohol or drugs to such a degree that it affects the Coach's ability to perform his duties or that reflects adversely on the University; and,
- viii. Any other violation of a material duty, term, condition or representation contained in the Agreement.

With regard to these and other grounds for "cause" specified in the contract, it is not difficult to see that ambiguities and elements of subjectivity are inherent. For example, paragraphs (i), (ii) and (iii) above refer to the

violation of laws, rules and policies yet the term “violation” is neither defined nor illustrated. Must it be a material (and what constitutes materiality?) violation or does any such violation allow for the coach's termination for cause? Does an unproven charge or a simple arrest constitute a violation? What standard applies to the determination that a violation of paragraphs (iv), (vi) or (vii) above has occurred sufficient to terminate the coach for cause? These are questions that should be asked and resolved in any contracting process, particularly when a coach's career and reputation are at stake. Clear, unambiguous language is paramount, and best practice is to define the significant terms and, if necessary, enumerate specific examples of prohibited conduct.

Paragraph (viii) above warrants specific discussion. As referenced earlier, this is a broad “catch-all” provision that is found in most coaching contracts. This is a baited trap for several reasons. First, it is undifferentiated and not paired with any illustrative examples. More important, this seemingly innocuous provision carries with it the legal effect of causing a violation of *any* material duty, obligation or representation made by the coach in the contract to transform itself into a basis for a termination for cause.

Most coaching contracts provide “General Duties and Responsibilities” and/or certain “Specific Duties and Responsibilities” that the coach must discharge. General duties often include, among others, the exercise of loyalty and best efforts, compliance with the rules and standards of the school, the NCAA and the pertinent conference in which the school is a member. Specific duties often include emphasizing education, supervising assistant coaches, marketing and promoting the pertinent team's program, maintaining discipline, meeting with the media and coordinating with the Athletic Director to strive to obtain the program's goals. In some instances, both sets of duties are combined in one general provision.

While set forth in the contract, these and other duties imposed upon the coach are found *outside* of the Termination for Cause provision itself. As noted however, a material default of any of them (or any other duty or representation in the contract) is, via language like paragraph (vii) above, incorporated by reference as an enumerated cause basis for termination. Thus, the material default of any of the duties in the contract, whether specifically delineated in the Termination for Cause provision or not, places the coach at risk of such termination. Accordingly, appropriate attention should be devoted to ensuring that *all* of the duties undertaken by the coach (and representations made by the coach) in the entire contract are well-defined, clear and as unambiguous as possible.

It is worth noting that there are serious procedural dynamics involved in any termination for cause. The implication is that by outlining the procedural steps that will be taken by the school to terminate the coach for cause in the contract, all aspects of due process are satisfied. While such a conclusion would be worthy of vigorous debate, the coach and his representative must understand the practical reality that the school holds the leverage with this issue and that there is little room to negotiate. However, understanding the details of the process that will be employed if the school seeks to terminate for cause underscores the importance of making certain that the substantive terms in the Termination for Cause provision are negotiated, defined, clear and fair.

Although the procedure for terminating for cause varies from school to school (in large part due to the laws of the pertinent jurisdiction and the policies of the school), they tend to follow the same general scheme. As a threshold matter, if the school has any reason to believe that cause may exist, it retains the right to conduct a review or investigation and the coach agrees to cooperate fully, including their submission to an interview under oath. One individual, usually the Athletic Director, retains the exclusive right (with or without an investigation) to make the unilateral determination that cause exists to terminate the coach. Thereafter, the coach is provided

with notice of the termination for cause and typically has the right to *request* an internal review. Often this request is made to the President or Chancellor of the school who may or may not grant the request in their sole discretion. If a review is allowed, typically it is conducted by a panel of school employees arranged by the President and usually involves an evidentiary hearing. If the panel upholds the decision, the coach's only option is to commence litigation against the school and often only in state court.

Having represented several coaches in contract negotiations as well as termination review proceedings, several things are clear. First, most coaches do not read (or at best they gloss over) the Termination for Cause provision when they sign their contract. At that point in time, they are confident that the acts specified as constituting cause are so egregious, and the coach is such an above-board person, that there is no situation in which those terms ever could come into play. In practice however, the ambiguities and other flaws in contract language discussed above often enable a seemingly minor issue to nonetheless transform into an arguable basis for cause...read, clarify and understand the entire contract prior to signing.

Second, with the escalation in compensation and benefits being paid to coaches, the corresponding pressure on coaches *and* the Athletic Directors who hire them to perform and deliver (i.e., win and generate revenue) likewise has escalated. I have dealt with situations in which, under such circumstances, things are not going well for the coach/his team, and the Athletic Director asserted or threatened termination for cause as a basis to remedy a hiring mistake by removal or as a platform to negotiate an economic arrangement more favorable than what the contract requires. In fact, one commentator recently quoted a Power 5 Athletic Director as telling him, *"[i]f you've got a strong desire to make a coaching change, you can start to fall in love with your legal argument...[y]ou get with lawyers and pretty soon its like, 'see, this is what the contract really says. Next thing you know, you're off to court.'"*^[1]

Third, internal school termination review proceedings involve a panel of school employees, appointed by the President of the school, sitting in judgment of the conduct of the school (their own employer) in terminating a coach they know the school wants to fire. It doesn't take an expert in legal ethics to understand and appreciate the blatant conflicts of interest and inherent prejudice to the coach and their position. I experienced this recently in a proceeding before a Big-10 school's Termination Review Panel. The Panel was professional and ran an otherwise respectable day-long evidentiary proceeding. However, it was clear from the outset that its decision to uphold the school's decision was made before opening statements even were offered (the main issue being whether a misdemeanor arrest alone, that subsequently was dismissed for the complete lack of any supporting evidence, constituted cause for termination under a provision similar to paragraph (i) above).

Finally, the de novo "appeal" to the state court sitting in the school's home jurisdiction carries significant risk for the coach as well. As a threshold matter, no coach wants to file a lawsuit against their former school, regardless of merit, and face the prospect of being viewed by future school employers as a coach who is willing to sue them. Without question, such action exponentially decreases the coach's marketability and likelihood of being hired in the future. In addition, recent litigation involving schools and players versus the NCAA in eligibility cases brought in the same localized state courts demonstrates that judges, particularly those who attended the pertinent school and/or are elected to the bench by voters within that jurisdiction, face serious pressure under such circumstances. Schools are well aware of these dynamics and the leverage they generate in any settlement discussions.

For all of these reasons, thoughtful drafting, clarity and attention to detail with termination for cause provisions helps balance the interests and minimize the risk of disputes for both the schools and their coaches.

[1] *Jerome Tang Situation Is Indefensible, But It's Not Easy Out There For Athletic Directors*, <https://www.nytimes.com>, February 20, 2026, by Joe Rexrode.

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