

Sports Litigation Alert

Reprinted from Sports Litigation Alert, Volume 11, Issue 9, May 16, 2014. Copyright © 2014 Hackney Publications.

College Coaching Comebacks Petrino and Pearl Get Second Chances: The Moral(s) of the Story

By Brian Socolow

Bobby Petrino seems to turn every team that he coaches into a winner – and a cash cow. After Petrino took over the Louisville Cardinals in 2003, he increased the team's revenue from \$10 million to \$19 million in just three years. In his next college position, Petrino made the University of Arkansas Razorbacks the eighth-most valuable football program in the country, worth \$89 million in 2011. This past January, when Petrino, with an 83-30 record in his college coaching career, was available, the Cardinals wanted him back. During an early 2014 press conference, Athletic Director Tom Jurich announced that Petrino would finish his career at Louisville and would receive a total of \$24.5 million dollars over the next seven years, with several options for bonuses and other performance rewards.

Now, for the backstory. In 2012, while serving as head coach for the University of Arkansas football team, Petrino reportedly engaged in an extra-marital affair with a 25-year-old former volleyball player. A very publically-reported motorcycle accident revealed the relationship – and the fact that Petrino reportedly had hired his mistress, over 158 other applicants, to be a student athletic development coordinator, a university employee who directly reported to Petrino. After news of the affair and Petrino's favoritism broke, the University of Arkansas terminated him for cause – in order to cover up his affair.

Of course, Petrino is not the only coach whose success on the playing field and as a source of much-needed economic support has proved irresistible to college athletic programs. Auburn University recently announced that it had signed former Tennessee men's basketball coach Bruce Pearl to a six-year contract, reportedly worth \$2.2 million a year. Pearl, who led Tennessee to the NCAA tournament in each of his six

seasons, was fired for lying to the NCAA in March 2011 about the recruitment of Aaron Craft (a high school junior who ended up attending Ohio State). The NCAA gave Pearl a three-year show cause penalty, which prevents him having contact with potential recruits until it expires in August of this year. Pearl spent two years as a sports analyst for ESPN before being hired by Auburn. This is Pearl's third NCAA Division I head coaching position, and Auburn clearly hopes that Pearl's previous successes (he spent four seasons at the University of Wisconsin-Milwaukee and took the program to two NCAA tournaments, including a Sweet 16 appearance in 2005, and was 145-61 in his six seasons with the Vols) will help the team, which has not made an appearance in the NCAA Tournament since 2003.

While their professional credentials are undeniable, their less-than-sterling behavior in the past does – and should – raise concerns for any team that may want to hire (or rehire) coaches like Petrino and Pearl. Colleges (and professional sports teams) willing to trade the risk of giving second chances to athletes and coaches with somewhat checkered personal pasts for the potential economic upside that comes with almost guaranteed success on the playing are increasingly hedging their bets by requiring morals clauses in their contract, in

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an attempt to prevent situations in which the programs are embarrassed by, or lose money and support, due to less-than-upstanding conduct.

For example, Petrino's new deal with Louisville includes a morals clause that allows the university to terminate – or otherwise take some corrective action against – Petrino in the event that he tarnishes the university and its football program's reputation with some "immoral" conduct that tarnishes the reputation of the team or endorser. This type of contractual protection seems reasonable considering that the program or brand might pay an athlete or coach millions of dollars essentially to be its most public face, and then spends millions more to build its advertising and marketing campaign that the athlete or coach's name and achievements become associated with the company's products. When the coach or athlete's talents and achievements become overshadowed by scandal or criminal conduct, the team or brand understandably wants to disassociate itself. A morals clause in the contract allows the organization to part ways with the athlete or coach without breaching its contract.

The kind of behavior that triggers the moral clause often is a critical point in contract negotiations. In general, an athlete or coach will want a narrow morals clause – one with a short list of very specific actions that trigger the clause, such as a conviction on criminal charges, and limited remedies for the organization. Conversely, an athletic program or brand will want a broadly worded clause that allows them the sole discretion to determine whether the athlete or coach's actions warrant termination, a fine, or some other remedial action. The organization may also want to be able to take action if the athlete or coach publically criticizes its product or management.

The more successful the coach or athlete, the greater the bargaining power in negotiating the terms of the morals clause. Conversely, a coach or athlete's

less-than-sterling behavior in the past may give a team or brand the upper hand and the ability to compel a narrower morals clause. The morals clause in the Petrino-Louisville contract reportedly allows the school to terminate him for just cause in the event of "disparaging media publicity in material nature that damages the good name and reputation" of the university, "if such publicity is caused by [Petrino's] willful misconduct that could objectively be anticipated to bring [Petrino and Louisville] into public disrepute or scandal, or which tends greatly to offend the public." This clause allows for termination based on behavior that is not necessarily criminal, but would be considered inappropriate for a college coach, such as an affair with a co-ed, or Petrino's presence at an event where underage drinking and illegal drug use occurs. The agreement may also be triggered by poor sportsmanship or public criticism of Petrino's coaching decisions and style.

Whether the contract covers a high-priced hire like Petrino or Pearl or a less well known coach (or athlete), neither party to the agreement will want to rely on boilerplate language, but rather should think long and hard about what kind of behavior is acceptable, and what remedies – termination, fines, recoup of payments made – will best discourage that behavior and protect the sports program.

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