

Rick Pitino and the “Cardinal” Morals Clause

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Few can boast of as many basketball coaching accolades as current University of Louisville coach, Rick Pitino. He is the only coach in National Collegiate Athletic Association (NCAA) history to have coached three separate schools to the Final Four (Kentucky, Louisville and Providence) and to have coached two separate schools to NCAA national titles (Kentucky and Louisville).¹ His .729 NCAA career winning percentage ranks thirteenth among all active NCAA coaches², and his .731 NCAA Tournament winning percentage ranks fourth among all active NCAA coaches.³ Not to be overshadowed by his college-level accomplishments, the Hall of Fame coach also holds the distinction of reviving the 1989 New York Knicks and coaching them to their first National Basketball Association (NBA) Atlantic Division title since 1971.⁴ Off the hardwood floor, however, Pitino’s reputation, character and morals have been perceived far less fondly in the public eye.

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¹ Dick Weiss, *Rick Pitino Adds Another Chapter in his Hall of Fame Career Winning NCAA Title with Louisville*, NEW YORK DAILY NEWS (Apr. 9, 2013), <http://www.nydailynews.com/sports/college/weiss-hall-career-fiery-pitino-article-1.1311298>.

² NCAA, 2012-13 NCAA MEN'S BASKETBALL RECORDS - ALL-DIVISIONS COACHING RECORDS, *available at* http://fs.ncaa.org/Docs/stats/m_basketball_RB/2013/coaching.pdf (last visited Apr. 4, 2013).

³ *University of Louisville Extends Pitino's Contract to 2016-17*, LOUISVILLE CARDINALS (Mar. 31, 2010), <http://www.gocards.com/sports/m-baskbl/spec-rel/033110aaa.html>.

⁴ *New York Knicks History - NBA*, CBSSPORTS.COM, <http://www.cbssports.com/nba/teams/history/NY> (last visited Apr. 4, 2013).

In early 2000, Pitino found himself as the coach of a struggling Boston Celtics squad. He had spent his entire coaching career building a reputation as a devout Roman Catholic and family man, who, through his basketball brilliance and composure, could turn any team around. After losing a close game to the Raptors due to a Vince Carter buzzer-beater, Pitino, frustrated with the loss, strayed from his normal composed demeanor.⁵ In one of the NBA's most well known press conference tirades, Pitino ripped both the Boston media and fans for their negativity, in addition to scoffing at Boston legends, Larry Bird, Kevin McHale and Robert Parish as being too old (unlike his current young, yet inexperienced roster).⁶ After resigning from the Celtics shortly thereafter⁷, Pitino found himself in a somewhat weak bargaining position with Louisville in 2001, due to the hit that his carefully crafted public image had taken.

Protecting itself from being the center of any potential Pitino controversy, Louisville insisted on inserting a "morals clause" in Pitino's 2001 employment contract, and again in extensions signed in 2007⁸ and 2010.⁹ Morals clauses, also referred to as "public image clauses," "good-conduct clauses," "moral turpitude clauses" or "morality clauses," are provisions sometimes included in player and coach employment contracts and sport endorsement

⁵ See *Clutch Carter: Buzzer-beater Pushes Raptors Past Celtics*, SPORTS ILLUSTRATED (Mar. 2, 2000), http://sportsillustrated.cnn.com/basketball/nba/news/2000/03/01/raptors_celtics_ap/.

⁶ See *id.*

⁷ Seth Davis, *Cardinal Ruler*, SIVAUULT (Nov. 19, 2001), <http://sportsillustrated.cnn.com/vault/article/magazine/MAG1024317/>.

⁸ *Rick Pitino Employment Contract*, COURIER-JOURNAL (Aug. 12, 2009), <http://www.courier-journal.com/article/20090812/SPORTS02/90812007/Rick-Pitino-s-employment-contract>.

⁹ *Rick Pitino Employment Contract* (Jul. 1, 2010), available at <http://media.kentucky.com/smedia/2012/03/26/16/14/6nXGD.So.79.pdf>. Pitino also signed an extension in 2012, although all terms of such extension are not publicly available. See Nick Coffey, *Terms of Rick Pitino's Contract Extension*, THE CARDINAL CONNECT (Oct. 31, 2012), <http://www.thecardinalconnect.com/2012/10/31/terms-of-rick-pitinos-contract-extension/>.

contracts;¹⁰ they provide the athlete's or coach's team, league, school or endorsement company the right to terminate, suspend, or otherwise punish such athlete or coach for engaging in criminal or reprehensible behavior, or conduct that may negatively impact his or her public image and, by association, the public image of such team, league, school or company.¹¹

Morals clauses, or rather restrictions on one's personal conduct outside the scope of his or her contractual relations, are nothing new. They have existed in the entertainment industry since the 1920s, when motion picture production companies would blame low film attendance on movie stars' private lives getting leaked to the press.¹² In the 1950s, film morals clauses were used to censor political conduct.¹³ Since the 1980s, however, morals clauses have become prolific in the sports industry, and in particular, in player and coach employment contracts, and in endorsement deals.¹⁴ League bylaws and constitutions also provide for restrictions on unruly league behavior, and grant league commissioners certain powers to take actions to preserve the "integrity of the game."¹⁵

¹⁰ Fernando M. Pinguelo & Timothy D. Cedrone, *Morals? Who Cares About Morals? An Examination of Morals Clauses in Talent Contracts and What Talent Needs to Know*, 19 SETON HALL J. SPORTS & ENT. L. 347, 351(2010).

¹¹ See Fernando Pinguelo, Panel III: Entertainers' and Athletes' Conduct Unrelated to their Employment at the Seton Hall University School of Law Sports & Entertainment Law Symposium: From the Arena to the Streets - the Pressures Placed on Athletes, Entertainers, and Management, (Nov. 7, 2008), in 19 SETON HALL J. SPORTS & ENT. L. 381, 485 (2009).

¹² Daniel Auerbach, *Moral Clauses as Corporate Protection in Athlete Endorsement Contracts*, 3 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 1, 3 (2005).

¹³ *Id.*

¹⁴ *Id.* at 4. A 1997 survey disclosed less than half of endorsement deals included morals clauses, and by 2003, over 75% of endorsement deals were estimated to have such clauses. Eric Fisher, *Sosa Flap to Change Endorsement Deals*, WASH. TIMES (June 8, 2003), at C03, available at <http://www.washingtontimes.com/news/2003/jun/8/20030608-124400-6755r/?page=all>.

¹⁵ See Sarah D. Katz, Note, "*Reputations ... A Lifetime to Build, Seconds to Destroy*": *Maximizing the Mutually Protective Value of Morals Clauses in Talent Agreements*, 20 CARDOZO J. INT'L & COMP. L. 185, 195-96 (2011).

As sports have become billion dollar industries, morals clauses offer third parties willing to invest in players and coaches certainty as to a positive, long-lasting relationship for their investment.¹⁶ Given that a company may pay an athlete or coach millions to be the spokesperson for its product, and may spend additional millions building its advertising and marketing campaign around such individual, morals clauses provide such companies with the needed flexibility to terminate or suspend any relationship if an athlete's or coach's public scandal or criminal behavior spells financial disaster for its investment.¹⁷ Morals clauses should be cautiously agreed to by players and coaches, because immoral behavior (and not merely a criminal conviction) may result in the termination of an agreement. As a result of the ambiguous nature of what can or cannot be deemed "immoral," it is thus critical that such clauses are defined with some degree of specificity. Nonetheless, players and coaches with bargaining leverage tend to favor narrow morals clauses in employment contracts and endorsement deals, whereas teams, leagues, schools and companies binding individuals to endorsement contracts tend to favor broad morals clauses that can be interpreted loosely.¹⁸ The scope and breadth of a morals clause can depend on the reputation and stature of the player, coach or endorser and his or her popularity.¹⁹

Rick Pitino is not the only high-profile sports figure to have been forced to accept a morals clause in an agreement; in fact, the list of sports professionals who have been suspended, fired, released, or otherwise disciplined due to breaches of a morals clause, has grown

¹⁶ Auerbach, *supra* note 12, at 3.

¹⁷ Brian R. Socolow, *What Every Player Should Know About Morals Clauses* (Aug. 2008), at 186, available at <http://www.loeb.com/whateveryplayershouldknowsboutmoralsclauses/>.

¹⁸ *Id.*

¹⁹ *Id.*

exponentially in the past decade.²⁰ When allegations arose against Michael Vick in 2007, that he bankrolled an illegal dog-fighting ring, Nike announced it would be suspending its endorsement deal with Vick;²¹ immediately after Vick's federal conviction, Nike terminated the endorsement contract.²² In 2010, Tiger Woods saw his endorsement deals with Accenture and AT&T severed after numerous marital infidelities became the focus of national media attention.²³ In late 2012, Nike, Trek and Oakley all terminated their endorsement contracts with Lance Armstrong after he stopped contesting the U.S. Anti-Doping Agency's doping allegations, thereby causing Armstrong to be stripped of his seven Tour de France titles.²⁴ Vick's, Woods' and Armstrong's respective endorsement deal terminations can be explained by companies' invocation of morals clauses.²⁵

Other high profile sports figures have been more successful in avoiding contract termination due to breaches of morals clauses. Former NBA player Jayson Williams' contract with the New Jersey Nets included a morals clause that provided for termination only if the "moral turpitude is an act of intentional moral impropriety."²⁶ Because Williams was charged

²⁰ *Id.*

²¹ *Id.* Vick's endorsement deal with Nike allowed Nike, in its sole discretion, to suspend the relationship even if Vick's actions fell short of a criminal conviction.

²² *Id.*

²³ Matthew Lynn, *Tiger Woods' Sponsors Should Forgive and Forget*, BLOOMBERG (Jan. 4, 2010), <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=avMnhZpNeHJc>.

²⁴ Brian R. Socolow, *Armstrong's Endorsement Contracts and the "Morals Clause"*, 9 SPORTS LITIGATION ALERT, (Nov. 2012), available at http://www.loeb.com/files/Publication/224938bf-3a94-4c96-a35d-2cbf7c4c23a5/Presentation/PublicationAttachment/b21a81ed-22ae-4879-a86f-31db8766fd08/Socolow_Brian_SportsLitigationAlert_Nov2012.pdf.

²⁵ See Lynn, *supra* note 23; Socolow, *supra* note 17; Socolow, *supra* note 24.

²⁶ Tom Canavan, *Agent Says Williams Will Not Void Contract if Convicted*, USA TODAY (Feb. 27, 2002), <http://usatoday30.usatoday.com/sports/nba/williams/2002-02-26-williams-nbc.htm>.

and convicted of manslaughter (a crime requiring no intent), the Nets could not invoke the morals clause and prematurely terminate Williams' contract.²⁷ In 2013, Rashard Mendenhall filed a lawsuit against Hanesbrands after the clothing company terminated its endorsement contract with the National Football League running back by relying on the endorsement contract's broadly-worded morals clause;²⁸ Mendenhall had tweeted controversial statements with respect to Osama bin Laden and the 9/11 attacks.²⁹ After U.S. District Court Judge James Beaty denied Hanesbrands' motion to dismiss,³⁰ both sides reached an out of court settlement.³¹ With the growth of Twitter and other forms of social media, companies like Hanesbrands may find it advisable in endorsement deals to include specifically tailored morals clauses linked to social media expression, to avoid enforcement issues.

Pitino's employment agreement was negotiated by a University of Louisville that was mindful of Pitino's poor handling of the media in Boston. To protect itself against a similar scandal, as well as potential enforceability issues concerning an overly vague morals clause, Louisville forced Pitino to accept two morals clauses in his employment contract: one, a specifically tailored clause that dealt with repercussions that could result from detrimental media actions, and a second, more broadly-worded morals clause that captured any acts of moral

²⁷ Auerbach, *supra* note 12, at 9.

²⁸ *Mendenhall v. Hanesbrands, Inc.*, 856 F.Supp. 2d 717 (M.D.N.C. 2012). Mendenhall's morality clause stated in pertinent part, "[i]f Mendenhall ... becomes involved in any situation or occurrences ... tending to bring Mendenhall into public disrepute, contempt, scandal, or ridicule, or tending to shock, insult, or offend the majority of the consuming public or any protected class or group thereof, then [Hanesbrands] shall have the right to immediately terminate this Agreement." *Id.* at 720.

²⁹ *Id.*

³⁰ *Id.*

³¹ Alan Robinson, *Mendenhall, Hanesbrands Reach Settlement*, PITTSBURGH TRIBUNE REVIEW (Jan. 17, 2013), <http://triblive.com/sports/steelers/3316257-74/mendenhall-hanesbrands-contract#axzz2PVPCaoNs>.

depravity.³² Sections 6.1.2 and 6.1.4 of his contract, in particular, stated the University of Louisville Athletic Association (“Employer”) could terminate Pitino’s agreement for the following actions:

6.1.2 Disparaging media publicity of a material nature that damages the good name and reputation of Employer or University, if such publicity is caused by the Employee’s willful misconduct that could objectively be anticipated to bring Employee into public disrepute or scandal, or which tends to greatly offend the public, or any class thereof on the basis of invidious distinction.

6.1.4 Employee’s dishonesty with Employer or University; or acts of moral depravity; or conviction of a felony or employment or drug related misdemeanor; or intoxication or being under the influence of a psychoactive substance when performing duties under this contract, when students athletes are present, when attending scheduled public events or appearances, or during media contacts.³³

In 2003, while out celebrating Louisville’s hiring of Reggie Theus as assistant coach, Pitino had sex with former model Karen Cunagin Sypher in a back room of a local restaurant.³⁴ A few weeks later, Sypher contacted Pitino - still a married father of five children - informing him she was pregnant with his child.³⁵ Upon learning the news, Pitino gave Sypher \$3,000.³⁶ Sypher used the money for an abortion, although Pitino later claimed he gave it to her as health insurance.³⁷

Six years later, Pitino began to receive voice mail messages from a man accusing him of sexually assaulting Sypher; the anonymous man, later linked to Sypher as a longtime friend,

³² See *Rick Pitino Employment Contract*, *supra* note 8.

³³ *Id.*

³⁴ *United States v. Sypher*, 684 F.3d 622 (6th Cir. 2012).

³⁵ *Id.*

³⁶ Andy Katz, *Report: Pitino Says He Paid for Abortion*, ESPN.COM (Aug. 12, 2009), <http://sports.espn.go.com/ncb/news/story?id=4392828>

³⁷ Shaun Assael, *Rick Pitino Extortion Trial: The Full Story*, ESPN.COM (Sept. 20, 2010), http://espn.go.com/espn/otl/blog/_/name/assael_shaun/id/5596620/rick-pitino-testimony-karen-cunagin-sypher-case.

threatened to go to the media with evidence supporting the allegations.³⁸ Pitino, the once reputable “family man,” retaliated by notifying federal authorities. Subsequently, in *United States v. Sypher*³⁹, Sypher was charged with six counts of criminal conduct arising from extortion efforts against Pitino.⁴⁰ After a nine-day trial, Sypher was convicted of trying to extort \$10,000,000 from Pitino and sentenced to seven years in federal prison.⁴¹ Though a victor in the courtroom, Pitino’s already flimsy reputation became more sullied from his sexual indiscretion.

When Pitino’s extramarital affair and alleged abortion hush money originally came to light, speculation ran rampant that Louisville would part ways with the coaching legend by invoking one, if not both, of his morals clauses. Pursuant to Section 6.1.8, Louisville could have argued that committing adultery and allegedly paying someone for an abortion was tantamount to “willful misconduct that could objectively be anticipated to bring him into public disrepute or scandal”; pursuant to Section 6.1.2, the university had the plausible argument that such acts, in addition to Pitino’s overall dishonesty, were of “moral depravity.”

Nonetheless, Pitino’s job at Louisville has, to this day, remained intact.⁴² In his reasoning as to why Louisville would not rid itself of Pitino, University of Louisville President James Ramsey stated, “[a]s we try to teach our students, when you make a mistake you admit it and right it as best you can. Coach has done that today.”⁴³

³⁸ Eamonn Brennan, *Pitino Extortion Trial Goes Ugly Early*, ESPN.COM (July 27, 2010), http://espn.go.com/blog/collegebasketballnation/post/_id/13675/pitino-extortion-trial-goes-ugly-early.

³⁹ No. 3:09-CR-0008585-1, 2010 WL 5393849 (W.D. Ky. 2010).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Will Graves, *Rick Pitino Told Police He Had Sex With Woman, Paid For Abortion*, THE HUFFINGTON POST, (Aug. 12, 2009), http://www.huffingtonpost.com/2009/08/12/rick-pitino-told-police-h_n_257123.html.

⁴³ *Id.*

In comparison to Pitino's "winning" morals clause outcome, none of Michael Vick, Tiger Woods or Lance Armstrong received contractual forgiveness upon giving apologies for their fleeting moral transgressions. Why then, is Pitino's situation so unique and what lessons can be learned from the Cardinal's salacious off-the-court controversy?

Despite the recent, prolific growth of morals clauses in sports contracts, teams, leagues, schools and companies still need to exercise prudent caution when enforcing any such clause. Ultimately, invocation turns on business considerations: will the non-breaching party gain more (financially or otherwise) by severing ties with the athlete or coach than by keeping the contractual relationship in place? Considerations such as reputational backlash and the non-breaching party's goodwill are also factors in the calculation. A decision to invoke a morals clause may ultimately turn on the reprehensibility of the action committed and the image that the non-breaching party is trying to portray⁴⁴: a basketball coach guilty of adultery may still be able to coach a college basketball team to an Elite 8 win against Duke, but he may be less suitable as an endorsee of a product associated with family values. Ultimately, had Pitino been convicted of a federal crime, it is likely Louisville would have parted ways with its prized coach who brought much revenue and prestige to the well-established basketball program.

Rick Pitino has, and may always be, a larger-than-life figure, at least in college basketball. Perceived by many in the State of Kentucky to be a flawless coach, Pitino has exhibited moral imperfections that have brought him, his teams and his family, public scorn. As sports continue to flourish as big businesses, expect schools, teams, leagues and companies to push for morals clauses similar to those in Pitino's Louisville contract. Because the stakes are so

⁴⁴ Auerbach, *supra* note 12, at 14-15.

high in today's current sports landscape, morals clauses are critical recipes to building an off-the-court winning relationship.