

Ignorance Isn't Bliss



Finding your way through the
legal labyrinth

By William H. Lindberg, JD, MCC

A painfully vivid fact of life in today's world, especially in the United States, but not limited to the United States, is that we live in a tremendously litigious world. A sophisticated coach is acutely aware that there are many legal risks that may ensnare an unsuspecting practitioner. In the legal sphere, ignorance is not bliss and can be seriously harmful to a coach's financial well-being. Fortunately, there are some steps coaches can take to insulate themselves from what could be a catastrophic impact on their coaching business. By following some common sense practices, coaches can significantly reduce their exposure to adverse litigation or financial harm.

The purpose of this article is to alert you to some of the potential legal pitfalls involved in being a coach and engaging in the work that coaches do. In addition, there are numerous resources for coaches to consult for further information. Moreover, different jurisdictions around the world can vary in

approaches to resolving legal issues. Laws and regulations, as well as legal precedents in Anglo-American jurisdictions, can be highly specific and determinative to the outcome of a legal question. Among the more important resources a coach may need to employ, therefore, is competent legal counsel to assist them with the nuances of actual or potential legal issues they may be facing. The guidelines in this article are generally valid and can serve as a starting point to additional inquiry. A competent legal advisor can be invaluable, however, and the well-known legal adage, "One who represents himself has a fool for a client" has been vividly demonstrated on many occasions. It is difficult for someone immersed in a legal issue to retain the perspective and objectivity to make prudent decisions.

How can I minimize the legal risks in being a coach?

One of the initial decisions that a coach must make is what form you will use in your business.



This topic alone is extremely complicated, but there are some general factors to consider. In general, there are several forms of business that may be chosen: a sole proprietorship, partnership, corporation, or LLC (Limited Liability Company). The level of complexity varies. If you begin coaching on your own, as many coaches do, the sole proprietorship business form might be sufficient. If you collaborate with other partners or colleagues, it may well be advisable to seek the services of a business lawyer to determine the structure that would best suit you. In addition to selecting a business form that may minimize your legal and financial exposure, professional liability insurance may also assist you in minimizing your risks. This is especially true if you engage in executive coaching where the financial stakes may be very high.

Other types of insurance are also important to consider, such as property, disability, business insurance, etc. For further information, see Dorcas Kelley's *The Business of Coaching: A Comprehensive Guide to Starting and Growing Your Coaching Practice*, 2003, Clarity in Action.

For a more thorough discussion of business form selection see Anderson and Williams, *Law and Ethics in Coaching: How to Solve and Avoid Difficult Problems In Your Practice*, Chapter 8, "Legal Issues and Solutions for Coaches", 2006, John Wiley & Sons, Inc.

Contracting is king

Among the most important best practices in effective coaching is thorough and careful contracting. If

you are able to effectively contract with your client, you have a formidable head start in clarifying your work and achieving great results for your client. Effective contracting can be a rigorous process and takes a significant amount of discipline on the part of both the coach and the client. There are a number of technical legal requirements for contracts, but the primary elements of a contract are an offer, acceptance and an exchange of value (known as *consideration*) between the coach and the client.

A written agreement is highly desirable. Typically, these agreements are known as engagement letters. The more specific (within reason) the contract can be, the less likely a client or coach will be to claim that something was ambiguous. Inasmuch as contracts are drafted in language, total clarity is not possible, but a written agreement helps assure that both parties understand the nature of the coaching to be performed. This is even more important in corporate coaching agreements where the complexity of the arrangement is likely to be higher and a corporate sponsor will most likely be involved.

ICF Code of Ethics (approved 1/22/2005) (Sections 12-13).

12. *I will construct clear agreements with my clients and I will honor all agreements made in the context of professional coaching relationships.*

13. *I will ensure that, prior to or at the initial session, my coaching client understands the nature of coaching, the bounds of confidentiality, financial arrangements, and other terms of the coaching agreement.*

In addition to logistical details

specifying terms of the coaching relationship, many coaches also append an 'Ethical Addendum' specifying the ethical precepts to which they subscribe. This ethical addendum can foster a deep conversation with the client and also shows that the coach subscribes to independent ethical principles.

For a more comprehensive discussion of the contracting process in general, see Peter Block's *Flawless Consulting: A Guide to Getting Your Expertise Used 2nd. Ed.* 2000, Jossey Bass.

Qualifications under the microscope

In the realm of qualifications, a coach is well served by accuracy and ill served by overreaching. Again, the ICF Code of Ethics is instructive:

ICF Code of Ethics (approved 1/22/2005) (Sections 14-15)

I will accurately identify my qualifications, expertise and experience as a coach.

I will not give my clients or prospective clients information or advice that I know to be misleading.

There has been an exponential growth in the area of credentialing of coaches and this level of interest is very likely to continue and accelerate. Along with increased attention on credentialing, there will likely be an increased attention on the components of what credentialing entails. The criteria for credentialing will create what lawyers and judges describe as a 'standard of care.' If a coach, especially a credentialed coach, displays behavior at a lesser level than what they are credentialed as, a lawyer might very



“If a coach, especially a credentialed coach, displays behavior at a lesser level than what they are credentialed as, a lawyer might very forcefully argue that a coach has exhibited negligence.”

forcefully argue that a coach has exhibited negligence. Although the field of coaching is a relatively new field and there are no reported appellate cases here, this pattern would be consistent with other professions in terms of the standard of care aspect of tort law. Therefore, it can be wise for a coach to be somewhat circumspect when it comes to what they promise they can deliver for a client. Moreover, unless otherwise agreed, a coach's expertise is likely to be in the process of working with a client, not in specific subject-matter expertise.

Keeping it all straight

As a coach's business grows, it can be increasingly possible for a client's situation to blur in the coach's mind with the situation of another client. The practice of effective, secure record keeping is vital to preserve and monitor a client's progress during the coaching relationship. One matter to be aware of, however, is that unlike some other fields such as doctor-patient confidentiality or attorney-client confidentiality, there is no legally recognized privilege of confidentiality.

ICF Code of Ethics (Section 22) I will respect the confidentiality of my client's information, except as otherwise

authorized by my client, or as required by law. Thus, if a court were to subpoena a coach's records, the coach would face the difficult decision of complying with the subpoena or facing contempt of court. It may be appropriate to note this to a client, even though the likelihood of this happening is minimal.

Obviously, as a small business, good financial record-keeping and paying appropriate estimated taxes, or other sales/use, value-add taxes are important to avoid running afoul of the law or tax authorities. If you create passive income products, you will also need to pay appropriate sales taxes. If you employ others, the whole range of payroll and withholding taxes may come into play. Your legal or tax advisor can assist you with the details in this domain so that you do not miss filing deadlines or other reporting requirements.

Conclusion

As you can see from the foregoing set of legal issues, there are many things to consider when launching your coaching business. These examples are illustrative, but by no means complete. As you consider producing intellectual property, the whole array

of copyright and trademark law must also be considered. If you conduct workshops or seminars, it is vitally important to respect others' work products, or else infringing on someone's creative work may embarrass you. As coaching continues to grow, and the economic impact of coaching expands, the range of potential legal issues will most certainly expand. There are more than a sufficient number of lawyers in the marketplace eager to redress aggrieved clients. By following the precautions and suggestions in this article and equipping yourself to be the most competent coach you can be, you will lessen the likelihood of becoming a defendant in an action brought by a client-plaintiff. •

Disclaimer- This article is designed to provide accurate and authoritative information in regard to the subject matter covered. Neither the author nor the publisher is engaged in the rendering of professional or legal services. If legal services are required, the services of a competent legal professional familiar with your specific situation should be sought.

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