

Sports Litigation Alert

Hiring Assistant Coaches: Lessons for Coaches, Job Candidates and Athletic Directors

By Donald Chance Mark, Jr.

Earlier this year, a jury in Hennepin County (MN) District Court awarded just under \$1.25 million to Jimmy Williams, former Oklahoma State University basketball assistant coach, who successfully claimed Coach Tubby Smith and the University of Minnesota offered him a job and subsequently rescinded the offer. In post-trial motions, the university moved to reverse the verdict or, in the alternative, for a new trial. The judge denied both motions. However, she reduced the jury verdict to \$1 million based on the Minnesota Tort Claims Act, which limits the amount of recoverable damages against governmental entities. This first-of-its-kind case presents a number of valuable lessons for head coaches, job candidates and athletic directors.

Details of the case

In March of 2007, Tubby Smith was hired as the head basketball coach at the University of Minnesota. As he assembled his staff, he made verbal offers to his son, Saul Smith, longtime coaching partner Ron Jirsa and Jimmy Williams. Williams had previously coached at the university under Bill Musselman and Jim Dutcher in the 1970s and 1980s. He brought to the staff knowledge about coaching and recruiting in both Minnesota and the Midwest. He also brought years of experience while coaching and recruiting at Tulsa, San Diego State, Nebraska and at Oklahoma State for both Eddie and Sean Sutton.

After verbally accepting Smith's offer, Williams made arrangements to terminate his position at Oklahoma State and to begin recruiting on behalf of Minnesota. He resigned his position at OSU, put his house up for sale and advised family and friends of his imminent move. In doing so, he gave up his guaranteed contract for the upcoming season (worth in excess of \$150,000), as well as his health and retirement benefits.

As he awaited instructions from his new coach, however, he was told that the athletic director would not approve the hire based upon past NCAA violations that occurred while at Minnesota in the 1970s and 1980s. By the time he received this information his old position had been filled at OSU, and he had received and

accepted an offer on the sale of his house.

When the athletic director refused to honor the offer made by Smith, suit was brought alleging various legal theories. Defendant University of Minnesota moved to dismiss the case arguing governmental immunity. The [trial judge dismissed the case](#) and Williams appealed to the Minnesota Court of Appeals.

The Court of Appeals reversed the Trial Court on the issues of negligent and fraudulent misrepresentation and the case was remanded for trial. Trial began on May 13, 2010 and on May 26, 2010 the jury found that Smith negligently misrepresented his authority to hire, that Williams had relied upon the misrepresentations and that the misrepresentations had caused Williams damages. The jury awarded \$1,247,293.00 in damages.

What does the case mean for the future of hiring assistant coaches?

Certainly, there are many lessons to be learned from this case for coaches, athletic directors and their potential candidates. For decades, head coaches have hired assistant coaches "sealing the deal" with a handshake or understanding over the phone. With coaching staffs changing so frequently and in such short time frames, signing on the dotted line can be delayed. The need to go on the road for recruitment often can mean that an assistant coach does not see his or her new office or sign a formal contract for weeks.

As evidenced by this case, a candidate should take caution in resigning from his or her current position before the new offer is official. A candidate should question and consider whether or not the head coach has final hiring authority. Moreover, he or she may wish to request written confirmation of a job offer — if not a signed contract, at least a memorandum or e-mail confirming mutual understanding of the offer and its basic terms (e.g. title of the position offered, compensation, length of agreement).

The predicament for some athletic programs lies in the fact that head coaches have traditionally been given the autonomy and authority to run their own programs and hire staff of their choosing. This practice has been long understood by assistant coach candidates, many of whom have relied solely on the word of the head coach. To avoid the problems faced by Jimmy Williams, assistant coach candidates need to be fully informed on the extent of the authority of head coaches. If an offer requires

final approval by an athletic director, this requirement must be clearly stated by the head coach. If the intention is now for institutions to have final say in staff hires, this must be clearly documented and completely understood by all parties.

Implement a policy and stick to it

First and foremost, athletic directors should develop and document a set policy regarding who has the final authority to hire assistant coaches. At some colleges and universities, perhaps all head coaches would be granted full freedom in this responsibility; at others, perhaps only certain head coaches would be granted this authority. Regardless of the final determinations, it is necessary that a clear and complete policy be developed, and athletic directors must ensure coaches understand and follow it completely. Moreover, if a head coach is granted full authority, as has been tradition, it is necessary that the hiring requirements are documented clearly.

In the fast-paced world of NCAA Division I athletics, getting coaches on the road for recruitment may seem like the most immediate need. However, as evidenced by *Jimmy Williams v. Tubby Smith and the Board of Regents of the University of Minnesota*, signing on the dotted line should come first. Implementing a hiring policy that is understood and strictly abided by the entire athletic department will make for smoother operations.

Donald Chance Mark Jr. is a founding member of the Minnesota-based law firm, Fafinski Mark & Johnson, and has more than 37 years of experience handling various trials and other litigation matters throughout the United States. He represented Jimmy Williams in *Jimmy Williams v. Tubby Smith and the Board of Regents of the University of Minnesota*.