

SEARCH FIRMS

By Martin J. Greenberg

I. INTRODUCTION

When a university looks to fill a vacancy within their athletic department, the process for doing so is sophisticated. Whether a search firm is hired, or an athletic director is conducting the search, the qualifications that are sought in a Head Coach are extensive. These qualifications and factors include, but are not limited to: experience (game strategy), pedigree (prior experience), whether the coach is a position coach or a coordinator, whether the coach understands the game, academic progress achievement, education (advanced degree), personality characteristics, communication and media skills, fundraising capabilities, connections in the industry, networking, recruiting capabilities, compliance (administrative skills), head coaching experience, conflict resolution, reputation, search agencies (advocacy), family name (example: Pitino, Holtz), agent of coach, playing career, work ethic, ability to integrate into college life, public credibility, and whether a coach is known within the industry (peer ratings), to name a few.

In a recent athletic director search conducted for the University of South Florida, Eastman & Beaudine, Inc. asked the following questions of candidates that are reflective and indicative of the broad experiences and successes that search firms are looking for in their future potential hires:

1. What is the Budget for your Athletics department? The number of Men's and Women's sports? How many student athletes in your program?
2. How large is your current staff? How many of the staff have you hired/let go? Describe your style in managing a broad range of coaches and staff and how you interact with the President of the University, the Board, faculty and various committees?
3. Describe your record or overview of success within the key Men and Women's sports?
4. What programs have you put in place to enhance Student Athlete Welfare?
5. What steps have you taken to help Athletics bridge the gap with Faculty?

6. What steps have you taken to increase GPA among student-athletes? What tools, such as Champs Life Skills or tutoring programs have you instituted?
7. What programs have you put in place to increase Graduation rates, particularly in Football and Basketball? Please compare these rates with the Student body, your Conference and National rates?
8. What do you know about USF and the Tampa area? How do you see yourself contributing to it and fitting in with the University's culture?
9. What has your experience been with NCAA compliance? What is your idea of an effective compliance process? Please describe.
10. Do you have any recent violations and/or penalties? If so please describe them and provide reasons.
11. What has your experience been with your existing and prior conference office and staff?
12. Outline your experience in corporate sponsorship, ticket sales, fundraising, event planning and effective utilization of media.
13. Please give us an overview of your Fundraising/Revenue Generation – as to annual gifts, capital gifts, special events and telemarketing?
14. What steps have you taken to ensure the long term financial growth and stability of your department? What was your role?
15. How have you applied Title IX to activities such as fundraising, facilities development and program development? Please include your top five (5) successes in this area.
16. What specifically have you been responsible for with regard to developing new facilities and/or renovation of existing facilities? Did you outsource or were you responsible for the projects?
17. What are your thoughts on managing seasoned coaches and developing an environment conducive to the recruitment and retention of a diverse administrative and coaching staff? What successful coaches have you hired? What qualities do you look for when hiring coaches and other staff? Please provide specifics regarding your commitment to gender equity and ethnic diversity in hiring, including your record in hiring and promoting minority candidates. What multicultural programs, resources and/or programs have you implemented? How will you assure us that coaches will abide by the letter and spirit of the law, including NCAA and University rules and regulation?
- 17b. Describe how you evaluate employees within the Athletics Department – coaches and administrators.
- 17c. Have you been involved in implementing a professional development program for Athletics personnel? If so, please describe.
18. Describe the programs and/or initiatives you have put in place to maintain and develop a positive relationship with the community.
19. Have you gone through a NCAA certification yet? Tell us how your University fared.
20. What experience do you have with all facets of the media? Describe the ideal communication process and who should be the chief spokesperson for athletics?
21. How have you enhanced the image and identity of your university?

22. What experiences, if any, do you have with Conference realignment, what were those outcomes, and how did they line up or not line up with the desired outcomes?
23. Who are the 1 or 2 people you would consider professional mentors and why?¹

Search firms are as much a part of college hires as are athletic directors and the universities themselves. “So goes this burgeoning matrimony of ‘headhunters’ and heads of universities. As Division I athletic budgets swell, so do the number of universities that outsource their most critical searches to the professionals.”²

The university that started the trend of hiring outside or search firms was the University of Alabama, when Alabama hired Chuck Neinas ten years ago to recruit Nick Saban as their head football coach.³

“These days, it's almost reflexive. Universities employing search firms in the wake of prominent dismissals or departures is akin to a baseball manager going to his bullpen in the ninth or a quarterback audibling when he sees a blitz.”⁴

In fact, “It’s almost routine now that Division I schools are going to hire a search firm or a professional organization.”⁵

Scott Barnes, who is currently Vice President and Athletic Director at Oregon State University and formerly the Athletic Director at Utah State and the University of Pittsburgh, has said that search firms are involved in “‘about 80 to 90 percent’ of searches in college [athletics].”⁶

¹ Letter from Robert E. Beaudine, President, Eastman & Beaudine, Inc. to Dr. Judy Genshaft, President, University of South Florida (Jan. 21, 2014) (on file with author).

² Joey Knight, *Big-Money College Athletics Depends on Search Firms*, TAMPA BAY TIMES (Jan. 28, 2014), <http://www.tampabay.com/sports/colleges/big-money-college-athletics-depends-on-search-firms/2163030>.

³ Matt Barbato, *3 SEC Schools Paid A Lot of Money to Use Search Firms in Hiring New Head Coaches this Offseason*, SEC COUNTRY, <https://www.seccountry.com/sec/3-sec-schools-paid-a-lot-of-money-to-use-search-firms-in-hiring-new-head-coaches-this-offseason> (last visited June 8, 2017).

⁴ Knight, *supra* note 2.

⁵ *Id.*

⁶ Craig Meyer, *Does Pitt’s Use of Search Firm for Coach Represent Conflict of Interest?*, PITT. POST-GAZETTE (Mar. 28, 2016), <http://www.post-gazette.com/sports/Pitt/2016/03/29/Pitt-Panthers-search-firm-coach-Kevin-Stallings-Scott-Barnes-conflict-of-interest/stories/201603290068>.

“Once the BCS money started flowing in and the coaching salaries became astronomical, then the search firms followed,” said Bill Carr of CarrSports Consulting (Carr).⁷ “He estimates 60% to 70% of major Division I schools use search firms when hiring an athletic director or coach in a revenue sport.”⁸

College basketball analyst at ESPN, Jay Bilas, said “that search firms are ‘right or wrong, part of the business.’”⁹

In today’s world of college athletics, with “presidents and search committee members already being pulled in every direction by their normal demands, a search firm is a matter of practicality.”¹⁰

“Considering the hours and logistics of a typical vetting process, some insist that the efficiency of search firms (aka headhunters, executive selection firms, corporate search consultants) validates the expense.”¹¹

Search firms are “equipped with sprawling prospect databases.”¹² Often times they have large staffs and are additionally afforded discretion to do their work.¹³ This allows the search firm to “essentially handle the heavy lifting of a hiring process without doing the hiring [themselves].”¹⁴

“One way to shield the early search process and vetting is to outsource that effort to an independent contractor whose efforts, contacts and communications aren't necessarily subject to ... the Freedom of Information Act [(FOIA)].”¹⁵ Which, therefore, leaves little of the process open

⁷ Brent Schrottenboer & Rachel Axon, *Search Firms Come Under Scrutiny After Rutgers Flap*, USA TODAY (June 6, 2013), <http://www.usatoday.com/story/sports/ncaaf/2013/06/06/parker-executive-search-ncaa-rutgers/2398487/>.

⁸ *Id.*

⁹ Meyer, *supra* note 6.

¹⁰ Knight, *supra* note 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

to public records requests, except maybe the written agreements between the university and the search firm.

So, what purpose do search firms serve in college athletics? More than anything, a third-party firm allows plausible deniability from a school and coach as to whether or not they've made contact, along with removing the possibility of FOIA. The firms also can arrange travel, conduct public records searches, verify resumes, lead the vetting process, and more.

“It’s standard practice.”¹⁶

“I think it's become an industry unto itself now with search firms, in particular (searching for) athletic directors, commissioners, men's basketball and football coaches,” said former Lynn University Athletic Director John McCarthy, now a national college athletics consultant.¹⁷

Universities contract with search firms to find new candidates for coaching and athletic director vacancies, as well as other high-level administration positions. The search firm acts as an independent contractor with its sole purpose to procure a suitable candidate for high profile head coaching or other positions for the university.

“In recent years, administrators have become increasingly reliant on [search firms], which offer some mix of headhunting, background checks and a kind of Athletic Director concierge service.”¹⁸

“Search firms have been used for decades to place executives and presidents at major companies and universities, but only recently have they extended their reach to college coaching

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Kent Babb, *The Expensive, Effective Role of Search Firms in College Coaching Hires*, WASH. POST (Apr. 9, 2015), <https://www.washingtonpost.com/news/sports/wp/2015/04/09/the-expensive-effective-role-of-search-firms-in-college-coaching-hires/>.

[and athletic directors].”¹⁹ The responsibilities and duties of a college athletic director extends far beyond just the hiring of major coaches.²⁰ Often athletic directors cannot take the time to travel to personally meet or vet and research every prospective or possible candidate.²¹ Dan Parker of Parker Executive Search has indicated “that a search firm can work around the clock to put together extensive background checks.”²² A search firm “tries to know as much as possible about a coach, from personality and past performance down to things like possible alcohol problems or criminal backgrounds.”²³ Additionally, and “more importantly, the firm can work around the clock during the actual searches, which must be completed in a matter of weeks.”²⁴ Jed Hughes of Korn/Ferry “says that searches are ‘lightening fast,’ and that he is ‘on the clock 24/7 while on a search.’”²⁵

One of the advantages of utilizing a search firm is what Glenn Sugiyama (Sugiyama) of DHR International calls the “stealth option” or the “under-the-radar nature of the executive search.”²⁶ Search firms operate in an environment of secrecy.²⁷ It is very difficult for an athletic director to act quietly and search firms have a knack of “media avoidance.”²⁸ “The real value of secrecy is the insurance it provides against possible embarrassment.”²⁹ Carr indicates that “understanding a school’s ‘values, priorities, [and] social dimensions’” are “key to finding the right coach.”³⁰ Parker indicates that “his approach is to find coaches who can act as a team’s

¹⁹ Chris Smith, *Hired Guns: How Search Firms Are Changing the Business of College Coaching*, FORBES (Mar. 30, 2012), <http://www.forbes.com/sites/chris-smith/2012/03/30/hired-guns-how-search-firms-are-changing-the-business-of-college-coaching/#4413b0da6fdf>.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

CEO.”³¹ What this means is that “he hopes to find someone who can raise money, recruit players, and successfully interact with both administrators and the media.”³²

“The growing influence of search firms in college coaching is just the latest example of how college athletics are big business.”³³ However, Sugiyama says that fans should not be worried about the influence of search firms in college athletics: “we use specialists to fix our plumbing, repair our cars and prescribe medications, why wouldn’t [athletic directors] use a specialized professional to find a coach?”³⁴ Sugiyama poses a valid question “and athletic directors across the country have begun to agree with that logic in recent years.”³⁵

II. WHAT DUTIES OR SERVICES DO SEARCH FIRMS PERFORM?

A search firm brings accountability - they vet candidates, check references, do media checks, conduct background checks, and are accountable for those findings. Search firms also perform their functions in strict secrecy and confidentiality.³⁶

Search firms usually provide a university with some or all of the following services:

1. Define objectives and specifications
 - Understand the purpose and goals of the institution
 - Develop a position specification, if needed
 - Develop an aggressive timeline to meet the institution’s needs
2. Identify and assess candidates
 - Assist and advise the institution on advertising, if needed

³¹ *Id.*

³² *Id.*

³³ Smith, *supra* note 17.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Darren Heitner, *Are Executive Search Firms Worth The Cost To College Athletic Departments?*, FORBES (June 22, 2013), <http://www.forbes.com/sites/darrenheitner/2013/06/22/are-executive-search-firms-worth-the-cost-to-college-athletic-departments/#7beeab152213>.

- Thorough review of the search firm's proprietary database
 - Utilize the search firm's extensive contacts with thought leaders across the country
 - Conduct original research
 - Assess candidate qualifications
3. Facilitate process and interviews
- Coordinate all interviews and travel logistics
 - Assist client with interview preparation
 - Conduct extensive background and reference checks
 - Maintain complete confidentiality for candidates and clients
4. Negotiation/Closure and Candidate follow-up
- Recruit the preferred candidate
 - Offer extensive experience in high-level negotiations
 - Use of the search firm's Memorandum of Understanding
 - Follow-up communication with all candidates.³⁷

A. Some of the services provided by Korn Ferry International in a University of Michigan search included:

- Designate a consultant dedicated to the specific search.
- Meet on site with the search committee and other university staff to create a set of criteria that will outline key requirements and preferences of the ideal candidate.
- Provide a report that clearly defines the purpose of the position, its duty in support of the accountabilities, qualifications, and goals, for the first one to three years.

³⁷ *Our Search Process Sports*, PARKER EXECUTIVE SEARCH (2017), <https://www.parkersearch.com/search-process-higher-education>.

- Provide a communication plan with timeline tailored to committee’s needs.
- Recommend advertising strategy for nationwide recruitment campaign.
- Build a portfolio of prospects that match the criteria and also represents deep and broad diversity.
- Meet with search committee to review the list of candidates and assist in identifying semi-finalists for interviews.
- Support committee in drafting tailored interview questions, coordinate logistics for candidate interviews and facilitate one-site interviews.
- Provide credentialing of candidates throughout the search process to include:
 - Education
 - Employment
 - Licensure
 - Public media sources
- Designated consultant to interview candidate references.
- Facilitate the finalists’ interviews and related activities as requested by the University.
- Assist and advise on contract negotiations including, terms, salary, benefits, and relocation.³⁸

B. Some of the services provided by CarrSports Consulting, LLC (CSC) include:

- CSC Shall provide professional services to assist the University in its search for a Head Football Coach. CSC’s assigned scope of services is as follows:

³⁸ Executive Search Services Master Agreement between the Regents of the University of Michigan and Korn/Ferry International (Jul. 11, 2014) (on file with author).

- Review and consultation on the position description, Ideal Candidate Profile and the Football Program's Critical Issues.
- Identification and recruitment of qualified candidates.
- Presentation of candidates with credentials for interviews.
- Evaluations and verification of credentials.
- Logistical, stewardship, and follow-up services, as requested.

In addition, the CSC will assist the University in establishing the time line and process for the search and will participate in candidate interviews, as requested by the University.

- CSC shall review available University documents regarding its Football Program and its description of the Head Football Coach position, which will guide CSC in identifying and soliciting prospective candidates who are best-qualified for the position.
- CSC will identify highly qualified candidates and will communicate with them regarding the Head Football Coach position to determine their interest and availability. CSC will also assist in communicating with and evaluating any candidates identified by the University or nominated for the position by third parties as well as those who apply to the University. CSC will share all such information with the Athletics Director or his designee. CSC shall assist in the development, evaluation and classification of a pool of candidates sufficient in size and quality to enable the University to make its selection from a representative group of excellent candidates.³⁹

³⁹ Redacted Agreement for Services between CarrSports Consulting, LLC and University (Jun. 26, 2014) (on file with author).

C. The services to be provided by Collegiate Sports Associates in a University of Missouri search included:

- Assessment of interest in the position from priority candidate identified by the University.
- Identification and recruitment of high quality candidates that match the University's desired profile.
- Communication with priority candidates on behalf of the University.
- Management of confidential communication with final candidates.
- Consultation on the preparation of a "Candidate's Notebook."
- Educational and criminal background checks of final candidate(s).
- Consultation on employment contact.
- Consultation on introduction of the new Head Men's Basketball Coach to the campus and general public.⁴⁰

D. The services provided by Parker Executive Search in a Iowa State University search included:

- Original research and candidate identification will continue throughout the search process. The search firm uses both original research, as well as a careful review of our proprietary database to identify and recruit qualified candidates to compare and evaluate against the position requirements and each other.
- An assessment will continue throughout the search process. The search firm will obtain an understanding of accomplishments, capabilities, strengths and weaknesses, and

⁴⁰ Proposal and Letter of Agreement between Collegiate Sports Associates and the University of Missouri (Apr. 25, 2014) (on file with author).

potential for success for each candidate through background review, telephone interviews, and in some instances, personal interviews.

- The search firm will advise and facilitate the process. The search firm recommends candidates who are qualified and meet the specifications for the position, but the search firm does not have a vote in the final selection process.
- The search firm's role in interview scheduling. The search firm will make all arrangements and schedule candidates for interviews with the representatives of the University, with their approval.
- Consult with representatives of the University on determining dates and location for interviews.
- Make all meeting arrangements with hotel/meeting venue, including room reservations for University representatives and candidates.
- Schedule interview time and date with each candidate.
- Assist candidates with air and/or ground travel arrangements.
- Schedule or assist in scheduling additional interviews for final candidates.
- The search firm will assist with preparing for interviews, to include: appropriate questions and advising the University representatives on appropriate interviewing techniques, as requested.
- The search firm will work with the University in all candidate follow ups including recruiting the preferred candidate. The firm will be involved in working with the client in concluding the search process, including salary and benefit negotiations, when appropriate. Parker Executive Search encourages the use of a memorandum of understanding with the final candidates and will work with University representatives

to draft the document. In addition, the firm will continue to work with the successful candidate and maintain a close contact, including quarterly telephone conversations to ensure a smooth transition.

- Candidate notification. We will contact all candidates who have expressed an interest in the search as to the outcome of the search process and selection.
- Conduct background investigations on final candidates.
- Obtain written permission from each candidate to conduct background investigations.
- Conduct criminal, credit, and motor vehicle investigations.
- Confirm candidates' degrees.
- NCAA sanctions review.
- Conduct media reviews for potentially controversial areas of concern.
- Reference checking for each candidate.
- Ensure qualified candidates. Our search process is inclusive, not exclusive. All candidates expressing an interest will be given compete consideration.⁴¹

E. The summary of services provided by College Sports Solutions in a University of Missouri search included:

I. Summary of Services

- Meet initially with you and other University officials/search committee members to assist with the formulation of goals, processes, methodologies, timetables, and criteria for the search.

⁴¹ Letter from Dan Parker, Chairman, Parker Executive Search to Jaime Pollard, Director of Athletics, Iowa State University (Dec. 1, 2015) (on file with author).

- Assist the University in identifying viable candidates, including recruitment of potential candidates who have not applied, relying upon our extensive contacts and relationships with college athletics to find the optimum fit for Missouri.
- Provide confidential access via our company website to resumes, biographies, and other appropriate information on all candidates.
- Assist the University in vetting viable candidates, including:
 - Comprehensive biographical, statistical and career vetting through our exclusive data analysis process;
 - Comprehensive NCAA, personal and educational background checks.
- Provide immediate and ongoing counsel and advice to the University relative to process and selection.
- Provide counsel and advice to the University relative to each of the candidates, and potential “fit” in the program and the University.
- Act as the point of contact and liaison between all candidates and the University relative to the process, from initial contact through final interviews and selection, maintaining absolute confidentiality.
- Provide logistical and travel arrangements for the candidates to be interviewed.
- Be present for and assist with all telephone and in-person interviews as desired by the University.
- Assist with the negotiations of a contract with the selected candidate, as desired by the University.

II. Deliverables

- Initial meeting/interviews.

- Identification of the best pool of candidates.
- Access to candidate information via secure CSS website.
- Comprehensive background checks.
- Advice and counsel throughout the process.
- Confidential liaison between all candidates and university.
- Handle all logistics of the search.
- Presence at all interviews.
- Assistance with negotiation of contract.⁴²

III. HOW MUCH ARE SEARCH FIRMS PAID?

The agreement between the university and the search firm dictates the amount of compensation that the search firm receives. Generally, the amount to be billed is a fixed fee that is dictated by the search firm letter of agreement or contract. In addition to the fees, the agreement normally provides for reimbursement of any and all expenses as agreed to by the university. Some examples of financial arrangements between search firms and universities are as follows:

A. University of South Florida and Eastman & Beaudine, Inc., December 7, 2016:

Our normal professional fee for universities is 25% of the first year's compensation (base plus bonuses) for each individual employed. However, for football coach searches, we charge a flat fee rather than a percentage for first year compensation. For athletic departments in your budget range, we charge a flat fee of \$70,000 plus expenses.

⁴² Consulting Agreement between College Sports Solutions and the University of Missouri (Feb. 6, 2016) (on file with author).

- Our first invoice for half of our professional fee plus half of our fixed expense amount, will be sent upon execution of the contract and be due immediately.
- We will bill again in 30 days or upon completion of the search (whichever comes first) for our second professional fee plus second half of the fixed expense amount and any candidate expenses incurred.

In addition to professional fees, it is our practice to fix firm expenses for non-profit and university searches at \$5,000.00 (reduced from our normal amount of \$7,500.00 and includes all expenses incurred by Eastman & Beaudine – travel, lodging, administrative, communications, background research fees, MOU and contract-related assistance, etc.). This fixed amount will be divided between the billings. Other arrangements may be agreed to by the parties if necessary. Clients are responsible for reimbursement of direct expenses incurred by candidates including their travel, lodging, and related expenses. Candidate expenses are billed separately, as incurred.⁴³

B. University of South Carolina and Eastman & Beaudine, Inc., October 13, 2015

For this particular position, we have agreed to charge a flat fee of \$75,000.00 plus expenses. Because of the start date of the search, we will divide the fee into three billings of \$25,000.00.

- Enclosed is our invoice for the first 1/3 of our professional fee [of] \$25,000.00 as our initial retainer plus half of the fixed expense amount.
- We will bill again in 30 days for the second 1/3 of our professional fee and the second half of the fixed expense amount.

⁴³ Letter from Robert Beaudine, President, Eastman & Beaudine, Inc. to Mark Harlan, Director of Athletics, University of South Florida (Dec. 7, 2016) (on file with author).

- We will bill again 30 day after the final 1/3 of our professional fee.

In addition to professional fees, it is our practice to fix firm expenses for these searches at \$5,000.00 which includes all expenses incurred by Eastman & Beaudine - travel, lodging, administrative, communications, etc.). This fixed amount will be divided between the first and second billing. Clients are responsible for reimbursement of direct expenses incurred by candidates including their travel, lodging, and related expenses. Candidate expenses will be billed separately, as incurred.⁴⁴

C. University of Missouri and Collegiate Sports Associates, April 25, 2014

- Article IV. Payment. In consideration of the services provided by CSA to the University, the parties agree to the following fees:
 - Section 4.01: For delivery of the services described in Article II, Section 2.01 and Section 2.01A, the parties agree that the University will pay CSA a total of \$42,500.00 plus pre-approved expenses for travel, lodging, meals, materials, and other reasonable out-of-pocket business expenses related exclusively to the delivery of the services as described herein.
 - Section 4.02: Payments by the University to CSA will be made according to the following schedule:
 - Section 4.02.1 - \$42,500.00 payable upon appointment of the Head Men's Basketball coach.

⁴⁴ Letter from Robert Beaudine, President, Eastman & Beaudine, Inc. to Ray Tanner, Director of Athletics, University of South Carolina (Oct. 13, 2015) (on file with author).

- Section 4.02.2 – CSA will bill the University at the end of each month for approved out-of-pocket expenses. All payments are due within 30 days of billing.
- Article V: Guarantee. Should the appointed Head Men’s Basketball Coach elect to leave the University on his own accord within one year of the date of appointment, except for reasons of health, CSA will provide executive search services to hire a replacement at no additional fee. The University will reimburse CSA for pre-approved expenses for travel, lodging, meals, materials, and other reasonable out-of-pocket business expenses related exclusively to the delivery of the services as described herein.⁴⁵

D. University of Michigan and Korn/Ferry International, July 11, 2014

Exhibit B: Financial Arrangement Consulting Services

1.0 Consultant Fee.

Hiring Organization will pay Consultant a professional services fee (“Fee”) equal to a flat 29 percent of the first year’s cash compensation rate for the position that is the subject of this search. First year’s cash compensation shall include base salary plus one-time bonus payments for the position that is the subject of the search. The Fee shall be paid in installments as described below.

- Upon retention of Consultant by Hiring Organization, 30.0% of retainer fee.

⁴⁵ Letter of Agreement between Todd Turner, President, Collegiate Sport Associates, LLC. and Lisa Wimmenauer, Assoc. Director Business Services, University of Missouri (Apr. 25, 2014) (on file with author).

- After Consultant has presented the minimum number of qualified candidates specified in Exhibit A to Hiring Organization, 30.0% of retainer fee.
- After Consultant has presented the recommendation of the finalist(s) to the Hiring Organization, or 180 days after the commencement of the search, whichever occurs first, 30% of retainer fee.
- Final payment: The final installment shall be invoiced upon acceptance by the successful candidate of Hiring Organization's offer of employment and shall be equal to the amount of the Fee, as based upon the first year's cash compensation rate, minus all payments made pursuant to this section during the search. In the event that the actual first year's cash compensation is sufficiently less than the estimated amount stated herein so that the installments paid Consultant during the search exceed the actual Fee payable to Consultant, no addition Fee shall be invoiced upon placement.

Consultant minimum retainer fee: \$78,000.

2.0 Expenses.

2.1 Travel Expenses. Travel expenses must be itemized separately; actual and reasonable expenses according to the University policy as indicated in the Standard Practice Guide relating to travel expenses will be reimbursed with Consultant's invoice (<http://www.finance.umich.edu/procurement/travelexpense>).

2.2 Consultant will be reimbursed for reasonable, actual, out-of-pocket expenses on a monthly basis upon presentation of an invoice to Hiring Organization Accounts Payable. Expenses, including consultant travel and lodging, and other

expenses specific to this search, must be itemized separately and accompanied by original receipts (or acceptable copies if original receipts are not available). For travel involving multiple clients, including Hiring Organization, copies of the receipts together with documentation of our pro-rated share of the expenses will be sufficient if the actual receipts cannot be provided. Consultant will convey this reimbursement information to any applicants as needed. Consultant will reimburse any Prospect who interviews with Hiring Organization for his/her expenses incurred in doing so. Consultant will then invoice and be reimbursed by Hiring Organization for the actual and reasonable amount of such expenses.

2.3 Meal Expenses. Consultant will be reimbursed, actual, out-of-pocket meal expenses upon presentation of original receipts. Meal expenses shall include the meal, any non-alcoholic beverages, tips, and taxes. The maximum amount allowed for breakfast is \$25.00. The maximum allowed for lunch is \$25.00. The maximum allowed for dinner is \$55.00.

2.4 Hiring Organization Expenses. If Hiring Organization agrees to do so, Prospects who interview with Hiring Organization will be reimbursed directly by it. Hiring Organization retains the sole right to determine whether Prospects who interview with it will be reimbursed by the Consultant or directly by Hiring Organization.⁴⁶

⁴⁶ Master Agreement between Kenneth Kring, Co Managing Director Global Education Practice, Korn Ferry International and James Gorman, Interim Director Procurement, University of Michigan (Jul. 11, 2014) (on file with author).

E. Purdue University and DHR International, March 31, 2016

Consistent with the standards of the executive search profession, our professional fees are non-contingent and non-refundable and are equal to one-third of the first year estimated total cash compensation; however, we will conduct this search for a flat fee of \$100,000. Our fee is payable in three installments as follows: An invoice for the first installment will be sent upon the signed acceptance of this agreement and is payable upon receipt and as a non-refundable initial retainer. Invoices for the second and third installment will be sent in 30 and 60 days and are payable upon receipt. Also consistent with executive search practices, DHR International is reimbursed for search-related indirect out-of-pocket expenses which include allocated support expenses such as administrative, communications (voice and data), database management, and computer services, which historically have represented twelve percent of the applicable retainer. These expenses are billed with the initial retainer. Any direct, out-of-pocket expense such as candidate and consultant travel, lodging and videoconferencing will be billed on a monthly basis as incurred. DHR International's fees for professional services are confidential and proprietary, are a material factor and condition to DHR International's willingness to enter into this agreement, and shall not be disclosed by Purdue University.

Additionally, if any candidate presented by DHR is employed by Purdue University or any affiliate for a position other than that called for by this assignment, you agree

to pay DHR an amount equal to one-third of each additional hire's projected first year total cash compensation.⁴⁷

F. Iowa State University and Parker Executive Search, December 1, 2015

We will provide this search assistance for a fee of \$90,000. The fee will [be] invoiced in two equal retainers of \$45,000. The first invoice will be sent upon execution of this contract and the second invoices will be billed upon completion of the search and acceptance of the position by the selected candidate. In addition to the professional fee for this assignment, we will bill you for out-of-pocket expenses. These expenses include such items as conference calls, research and delivery services, background investigations, client interview expenses, as well as travel and interview expenses for the search consultants (if required). We make every effort to hold reimbursable expenses to a minimum and will ensure that our expenses are no more than 12% of the fee. Advertising, committee interview and travel expenses, and candidate travel expenses are not included in the 12% expense budget and will be invoiced separately to Iowa State University along with proper documentation.⁴⁸

⁴⁷ Letter from Glenn Sugiyama, Managing Partner, DHR International, Inc. to Morgan Burke, Vice President – Director of Intercollegiate Athletics, Purdue University (Mar. 31, 2016) (on file with author).

⁴⁸ Letter from Dan Parker, Chairman, Parker Executive Search to Jamie Pollard, Director of Athletics, Iowa State University (Dec. 1, 2015) (on file with author).

In an article entitled “College Football Coach Search Firms: Are they worth the money?” Jon Solomon reveals universities that hired search firms in 2016 and the total costs⁴⁹:

| UNIVERSITY | EMPLOYEE | SEARCH FIRM | AMOUNT PAID |
|------------------------------|-------------------|------------------------------|------------------------|
| UCF | Scott Frost | Parker Executive Search | \$120,000 |
| Iowa State | Matt Campbell | Parker Executive Search | \$97,553 |
| Missouri | Barry Odom | College Sports Solutions | \$84,721 |
| University of South Carolina | Will Muschamp | Eastman & Beaudine, Inc. | \$80,000 |
| Rutgers | Chris Ash | Eastman & Beaudine, Inc. | \$80,000 |
| Memphis | Mike Norvell | Eastman & Beaudine, Inc. | \$75,000 |
| Texas State | Everett Withers | Parker Executive Search | \$61,130 |
| University of Maryland | D.J. Durkin | Neinas Sports Services | \$51,588 |
| UTSA | Frank Wilson | Collegiate Sports Associates | \$50,000 |
| Georgia | Kirby Smart | CarrSports Consulting | \$42,175 |
| Louisiana – Monroe | Matt Viator | College Sports Solutions | \$25,000 |
| Miami | Mark Richt | Korn Ferry | Did not provide |
| Tulane | Willie Fritz | College Sports Solutions | Did not provide |
| University of Toledo | Jason Candle | DHR International | Approximately \$27,000 |
| North Texas | Seth Littrell | DHR International | Did not provide |
| Virginia | Bronco Mendenhall | Neinas Sports Services | Did not provide |

In the same article Jon Solomon states that some universities chose not to hire search firms⁵⁰:

| UNIVERSITY | NEW COACH |
|------------------|---------------|
| USC | Clay Helton |
| Georgia Southern | Tyson Summers |

⁴⁹ John Solomon, *College Football Coach Search Firms: Are They Worth The Money?*, CBS SPORTS (Apr. 12, 2016), <http://www.cbssports.com/collegefootball/writer/jon-solomon/25551682/college-football-coach-search-firms-are-they-worth-the-money>.

⁵⁰ *Id.*

| | |
|---------------|-------------------------|
| Hawaii | Nick Rolovich |
| Minnesota | Tracy Claeys |
| Syracuse | Dino Barbers |
| Virginia Tech | Justin Fuente |
| Bowling Green | Mike Jinks |
| BYU | Kalani Sitake |
| East Carolina | Scottie Montgomery |
| Illinois | Bill Cubit, Lovie Smith |
| Ball State | Mike Neu |
| Southern Miss | Jay Hopson |

Other reported, but not verified, examples of search firm hires, including the university, search firm, coach (year) and approximate fee, are as follows:

| UNIVERSITY | SEARCH FIRM | COACH | FEE |
|------------------------------------|------------------------------|------------------------|-----------|
| Tennessee ⁵¹ | Collegiate Sports Associates | Rick Barnes (2015) | \$51,000 |
| George Mason ⁵² | Parker Executive | Dave Paulson (2015) | \$50,000 |
| North Carolina State ⁵³ | Parker Executive | Kevin Keatts (2017) | \$90,000 |
| Missouri ⁵⁴ | Parker Executive | Cuonzo Martin (2017) | \$80,000 |
| Missouri ⁵⁵ | Collegiate Sports Associates | Kim Anderson (2014) | \$42,500 |
| Texas ⁵⁶ | Korn Ferry | Charlie Strong (2014) | \$267,000 |
| Colorado State ⁵⁷ | Spencer Stuart | Jim McElwain (2011) | \$250,000 |
| Connecticut ⁵⁸ | Alden & Associates | Paul Pasqualoni (2011) | \$50,000 |
| Iowa State ⁵⁹ | Parker Executive | Matt Campbell (2016) | \$90,000 |

⁵¹ Grant Ramey, *Five Vols hoops staffers released, two more undetermined*, THE DAILY TIMES, APR. 2, 2015. http://www.thedailytimes.com/sports/five-vols-hoops-staffers-released-two-more-undetermined/article_71de59fb-90cd-5e26-b4a9-bfa620d243fa.html

⁵² Babb, *supra* note 18.

⁵³ Jordan Wells, *Report: Indiana Will Use Firm For Coaching Search*, THEHOOSIER.COM, Mar. 19, 2017. <https://purdue.rivals.com/news/report-indiana-will-use-firm-for-coaching-search>

⁵⁴ Zach Osterman, *IU to utilize search firm in hiring Tom Crean Replacement*, INDYSTAR, Mar. 19, 2007. <http://www.indystar.com/story/sports/college/indiana/2017/03/19/indiana-hoosiers-tom-crean-fred-glass-parker-search-firm/99387880/>

⁵⁵ Dave Matter, *Mizzou paying firm \$80,000 for basketball coaching search*, ST. LOUIS POST-DISPATCH, Mar. 13, 2007. http://www.stltoday.com/sports/college/mizzou/mizzou-paying-firm-for-basketball-coaching-search/article_4e66fcf0-ada3-59c1-93ab-12260ae11393.html

⁵⁶ Babb, *supra* note 18.

⁵⁷ Smith, *supra* note 19.

⁵⁸ *Id.*

⁵⁹ Randy Peterson, *Parker Search charges Iowa State \$90K for Matt Campbell Search*, DES MOINES REGISTER, Dec. 2, 2015. <http://www.desmoinesregister.com/story/sports/college/iowa-state/football/2015/12/02/parker-search-charges-iowa-state-90k-matt-campbell-search/76665910/>

| | | | |
|--------------------------|------------------|--------------------|----------|
| Iowa State ⁶⁰ | Parker Executive | Steve Prohm (2015) | \$75,000 |
|--------------------------|------------------|--------------------|----------|

IV. MAJOR PLAYERS IN THE INDUSTRY

What follows are some of the major players in the industry, the location of their business, the founding date of the company, major principals, and some representative clients and placements:

| Search Firm | Location | Founding Year | Major Principals | Clients | Placements |
|---------------------------------------|------------------|---------------|--|--|--|
| Parker Executive Search ⁶¹ | Atlanta, Georgia | 1982 | Dan Parker, Chairman Laurie C. Wilder, President, Ryan Grant, VP Daniel Parker, VP Porsha Williams, VP | Bradley UConn Vanderbilt NC State Northwestern Pittsburgh Ohio. Central FL Central FL Iowa State Iowa State Texas State Texas State Fordham UW- Milwaukee Indiana Dayton Notre Dame Vanderbilt Miami NC State | Brian Wardle, HBC Bob Diaco, HFC Derek Mason, HFC Wes Moore, HWBC Chris Collins, HBC Mike Haywood, HFC Saul Phillips, HBC Scott Frost, HFC Johnny Dawkins, HBC Matt Campbell, HFC Steve Prohm, HBC Everett Wither, HFC Danny Kaspar, HBC Jeff Newbauer, HBC LaVall Jordan, HBC Archie Miller, HBC Anthony Grant, HBC Brian Kelly, HFC James Franklin, HFC Jim Larranaga, HBC Mark Gottfried, HBC |
| Eastman & Beaudine ⁶² | Plano, Texas | 1967 | Bob Beaudine, President and CEO | Arizona State Missouri Mississippi Baylor UCLA Wichita State Arkansas SMU Baylor Wichita State | Todd Graham, HFC Mike Anderson, HBC Hugh Freeze, HFC Art Briles, HFC Steve Alford, HBC Gregg Marshall, HBC Mike Anderson, HFC June Jones, HFC Scott Drew, HBC Gregg Marshall, HBC |

⁶⁰ *Id.*

⁶¹ *Sports Expertise*, PARKER EXECUTIVE SEARCH (2017), <https://www.parkersearch.com/practices-areas/sports/search-experience>.

⁶² EASTMAN & BEAUDINE (2017), <http://eastman-beaudine.com/>.

| | | | | | |
|--|--------------------------|------|--|---|--|
| Korn/Ferry ⁶³ | Los Angeles, California | 1969 | Gary Burnison, CEO Jed Hughes, Vice Chairman Liz Boardman, Senior Client Partner | Michigan Michigan USC USC Texas | Brady Hoke, HFC Jim Harbaugh, HFC Steve Sarkisian, HFC Andy Enfield, HBC Charlie Strong, HFC |
| Neinas Sports Services ⁶⁴ | Boulder, Colorado | | Chuck Neinas | Kansas San Diego State Colorado | David Beaty, HFC Chuck Long, HFC Mike Bohn, AD |
| Collegiate Sports Associates ⁶⁵ | West End, North Carolina | 2010 | Todd Turner, Pres. Pam Overton, VP | Missouri Oklahoma Virginia Tech Wake Forest Yale East Carolina Tennessee S. Methodist Miami | Kim Anderson, HBC Lon Kruger, HBC Buzz Williams, HBC Danny Manning, HBC Tony Reno, HFC Scottie Montgomery, HFC Rick Barnes, HBC Chad Morris, HFC Chuck Martin, HFC |
| CarrSports Consulting, LLC ⁶⁶ | Gainesville, Florida | 1997 | Bill Carr, President | Georgia James Madison UAB UAB Clemson | Kirby Smart, HFC Mike Houston, HFC Garrick McGee, HFC Jerod Haase, HBC Brad Brownell, HBC |
| College Sports Solutions ⁶⁷ | Atlanta, Georgia | 2013 | Jeff Schemmel, President and founder | Missouri South Dakota Tulane | Barry Odom, HFC Bob Nielson, HFC Willie Fritz, HFC |
| DHR International ⁶⁸ | Chicago, Illinois | 1989 | Geoffrey Hoffman, CEO Christine Greybe, President David H. Hoffman, Founder and Chairman Glenn Sugiyama Pat Richter, Partner | Stanford Kansas Colorado State Toledo North Texas | Jim Harbaugh, HFC Charlie Weis, HFC Mike Bobo, HFC Jason Candle, HFC Seth Littrell, HFC |
| Spencer Stuart ⁶⁹ | Chicago, Illinois | 1956 | Kevin M. Connelly, CEO | Michigan Colorado State | Brady Hoke, HFC Jim McElwain, HFC |

⁶³ KORN FERRY (2017), <http://www.kornferry.com/executivesearch>.

⁶⁴ NEINAS SPORTS SERVICES (2017), <http://www.neinassports.com/>.

⁶⁵ COLLEGIATE SPORTS ASSOCIATES (2017), <http://collegiatesportsassociates.com/search-process/>.

⁶⁶ CARRSPORTS CONSULTING, LLC (2017), <http://carrsportsconsulting.com/>.

⁶⁷ COLLEGE SPORTS SOLUTIONS (2017), <http://www.collegesportssolutions.com/expertise-and-services>.

⁶⁸ DHR INTERNATIONAL (2017), <http://www.dhrinternational.com/>.

⁶⁹ SPENCER STUART (2017), <https://www.spencerstuart.com/>.

| | | | | | |
|--|--|--|---------------------------|--|--|
| | | | Edward Speed, Chairman | | |
|--|--|--|---------------------------|--|--|

The search firm industry employs a who’s who of former administrators and coaches, including, but not limited to: Bill Carr, former athletic director at Florida and Houston; Rick Greenspan, former athletic director at Rice; Lew Perkins, former athletic director at Kansas; Todd Turner, former athletic director at Virginia, Connecticut, NC State, and Washington; Pat Richter, former athletic director at Wisconsin; and former coaches such as Lloyd Carr (Michigan), Eddie Fogler (South Carolina), and Dave Odom (Wake Forest); along with Chuck Neinas, who is a former Big 8 Commissioner, just to name a few.⁷⁰

V. ISSUES SURROUNDING COACHING SEARCH FIRMS

INTRODUCTION

It is now commonplace for a university to hire an outside search firm to locate, contact, and evaluate the backgrounds of potential coaching and athletic director candidates. They act as facilitators assisting universities in making the hiring decision. While this may be a growing practice, the hiring of a search firm does not come without some issues. These issues include: (a) thoroughness and confidentiality; (b) cost; (c) compatibility with the department or university; and (d) other.

ISSUES

A. THOROUGHNESS AND CONFIDENTIALITY IN THE HIRING PROCESS

When looking for a potential new coach or athletic director, confidentiality and thoroughness are of the utmost importance. Keeping the names of desired candidates out of the media is important for the university during the search process. Of more importance is ensuring

⁷⁰ George Dohrmann, *Big-Name Hunters*, SPORTS ILLUSTRATED, Apr. 8, 2013. <https://www.si.com/vault/2013/04/08/106307208/bigname-hunters>

that the candidate has a background that is void of any major implications of impropriety. This includes making certain that former employers, players, and coworkers had no complaints about the potential hire.

When a university is looking to fill a coaching or athletic director position, the university wants the search done as efficiently and quietly as possible. Part of efficiency is making sure the university can do the search without leaks of who they may contact or may hire. Universities find the best way to avoid leaks is to hire a third-party search firm. The search firm is beneficial in the fact that they can provide confidentiality, and hopefully do their work in a manner that keeps their activities confidential and out of the press.

The use of search firms can allow universities who are public to avoid having their decision-making process questioned.⁷¹ By utilizing the FOIA, reporters can gain access to the decision-making process and agreements that take place at a public university.⁷² The hiring of a search firm can act as a screen from reporters accessing this public information and records, therefore not holding the university publically accountable for their decisions.⁷³

When a university hires a search firm to look into the backgrounds of potential employees, they expect a thorough and complete job. The expectation is warranted considering the large amount of money a university spends on hiring a search firm. Unfortunately, the expectations of the university are not always met.

In 2013 Rutgers University paid the search firm, Parker Executive Search, \$70,000 to participate in the finding of and vetting of a new athletic director.⁷⁴ The search firm ultimately

⁷¹ Leigh Alan Klein, *Search Firm Accountability Is Needed*, BLUESTAR MEDIA (Mar. 8, 2017), <http://www.bluestarmedia.org/search-firm-accountability-needed/>.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Sean Gregory, *Money for Nothing: Rutgers Scandal Shines Bad Light on College Sports Search Firms*, TIME (May 30, 2013), <http://keepingscore.blogs.time.com/2013/05/30/money-for-nothing-rutgers-scandal-shines-bad-light-on-college-sports-search-firms/>.

suggested that the university hire Julie Hermann to fill the position.⁷⁵ Hermann had once been the volleyball coach at the University of Tennessee.⁷⁶ After she accepted the position at Rutgers, it was discovered by an outside third party that allegations of verbal abuse against Hermann existed.⁷⁷ These allegations came from her time at Tennessee.⁷⁸ While the university was aware of two discrimination lawsuits against Hermann, it was not aware of the abuse allegations.⁷⁹

Unfortunately, mistakes are made. Another such instance involved Parker Executive Search's assistance in the University of Iowa's 2015 presidential search, which led to the selection of businessman Bruce Harreld.⁸⁰ The search process was been severely criticized by faculty and students, some of whom question Parker's vetting of Harreld after his résumé inaccurately revealed his current employment.⁸¹ That is, Harreld's résumé claimed that he was the managing principal for a firm called Executive Strategy, LLC out of Avon, Colorado, but no such business with that name was registered with the Colorado Secretary of State's office.⁸² The errant résumé also disclosed a variety of writings that lists him as sole author of twelve articles and book chapters, several of which were co-authored with others.⁸³ It was estimated that the cost for the presidential search had exceeded \$300,000.⁸⁴

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Kellie Woodhouse, *Were The Vettors Vetted?* INSIDE HIGHER ED (September 17, 2015), <https://www.insidehighered.com/news/2015/09/17/parker-executive-search-under-scrutiny-recent-searches>.

⁸¹ *Id.*

⁸² Vanessa Miller, *Fourth University of Iowa Presidential Candidate: Bruce Harreld*, THE GAZETTE, Aug. 31, 2105. <http://www.thegazette.com/subject/news/education/higher-education/fourth-university-of-iowa-presidential-candidate-bruce-harreld-20150831>

⁸³ Carl H. Klauss, Professor, *Harreld's Actions Show Lack of Integrity*, IOWA CITY PRESS-CITIZEN, Sept. 22, 2015. <http://www.press-citizen.com/story/opinion/letters-to-the-editor/2015/09/22/harrelds-actions-show-lack-integrity/72627052/>

⁸⁴ Miller, *supra* note 82.

Parker has also come under fire for assisting the University of Minnesota select Norwood Teague as its athletic director in 2012.⁸⁵ Teague was ousted in August of 2015 over allegations that he sexually harassed two female employees, and sent one of them a slew of graphic text messages.⁸⁶ Minnesota President Eric Kaler faulted Parker for not uncovering a past complaint during the search process involving Teague's former employer, Virginia Commonwealth University, paying a former employee \$125,000 to settle a gender discrimination complaint brought against him by a women's basketball coach.⁸⁷ Parker received \$112,539.66, including a base fee, expenses, and food and provisions, as a fee for finding Teague.⁸⁸

The vetting process may be the most important function of a search firm for purposes of determining the suitability of a candidate as a proper fit for the university for purposes of maintaining the reputation and integrity of the university and its academics. Search firms are expected to be incredibly thorough in this function and process.

B. COST

As noted earlier in the article, search firms are an expensive proposition for universities. Some firms have retainer deposits upwards of \$20,000.⁸⁹ Some searches cost as little as the retainer, but others cost as much as \$250,000 or more.⁹⁰ For some major universities, the cost is not an excessive burden. However, money could be saved by completing the process without the assistance of a search firm. Often times the hiring of a search firm leads to the same result that would have occurred if the university would have done the work themselves. *Sports Illustrated* did

⁸⁵ Woodhouse, *supra* note 80.

⁸⁶ Shari L. Gross, *Norwood Teague Resigns as Athletic Director at University of Minnesota*, STAR TRIBUNE, Aug. 13, 2015, <http://www.startribune.com/u-s-teague-quits-after-groping-women-sending-graphic-texts/321038541/>

⁸⁷ Emma Nelson, *Search Firm Disputes Kaler Statements about Teague Vetting*, STAR TRIBUNE, Aug. 24, 2105. <http://www.startribune.com/search-firm-disputes-kaler-statements-about-teague-vetting/322715241/>

⁸⁸ Kevin Duchschere, *U paid \$112,00 to the Serach Firm that found Teague in 2012*, STAR TRIBUNE, Aug. 17, 2105. <http://www.startribune.com/u-paid-more-than-100-000-for-the-search-that-found-teague/322008001/>

⁸⁹ *See generally* Solomon, *supra* note 49.

⁹⁰ *Id.*

a cover article about search firms in the recent past.⁹¹ One meaningful passage from that article spoke directly to cost. The passage showed the differences in what universities pay and just how expensive it can be to fill one position.

Even at a time when budget cuts in higher education are common, more and more athletic department dollars are following the route of private industries and hiring headhunters. Search consultants now operate as the conduits to some of the best coaching and athletic director jobs in the country. Fees generally range from \$30,000 to \$90,000 for a Division I athletic director, men's basketball coach or football search Since 2005, Tennessee has paid more than \$360,000 to search [firms] to fill six positions. North Carolina State has spent \$255,000 for approximately 67 days of work over the past three years, including \$90,000 for a football search that lasted a week. In late 2011, Colorado State reportedly paid [a] firm . . . \$250,000 to find a football coach.⁹²

Many maintain that part of an athletic director's specific duties and responsibilities include the ability to hire a coach through the establishment of a network. In essence then, there would be no reason to hire a search firm. When Head Football Coach Bret Bielema left the University of Wisconsin for the University of Arkansas in December of 2012, Wisconsin's Athletic Director Barry Alvarez infamously said, "I won't use a search committee. Most search committees use me."⁹³ When it became time to replace Bielema, Alvarez, on his own, brought back former Wisconsin assistant coach Paul Chryst as head coach without a search firm.⁹⁴

When an athletic department has to be accountable for where its money is going, it can validate the use of a search firm with the results of the team or department. Although not all searches give way to successful coaches or teams, if just one search does, the department can rely on that result to continue its relationship with the search firm. This continuing relationship can equate to universities paying search firms significant amounts of money.

⁹¹ Dohrmann, *supra* note 70.

⁹² *Id.*

⁹³ Chris Vannini, *What is the value of search firms in college athletics?* WWW.COACHINGSEARCH.COM, Apr. 1, 2015, <http://coachingsearch.com/article?a=What-is-the-value-of-search-firms-in-college-athletics>

⁹⁴ *Id.*

C. COMPATIBILITY WITH THE DEPARTMENT OR UNIVERSITY

When looking to fill any type of job opening, compatibility with the employer is crucial. In the business of collegiate athletics, a coach or athletic director must fit into the educational community of the university. They must also fit the mindset of the athletic department and the culture of whichever team they will be leading. While different coaches teach and play in different styles, their personalities and commitment must match that of the university where they are coaching.

Finding the right fit starts in the interviewing process. An interview can be critical in determining whether a candidate will have the right personality and temperament to fit the sought out position. Search firms cannot guarantee a proper fit when looking for candidates to fill positions. Each search firm, like a university, has their own work cultures and mindsets and the cultures and mindsets of a search firm are not necessarily always compatible with those that the university is seeking in a new employee.

With the hiring of a search firm, the university is putting its trust in a third party to find someone that will fit the personality profile of the position they are filling, as well as the culture of the university. It is true that the university has the final say on who is hired, but the university is usually presented with a short list. Additionally, the university has obvious trust in the short list because the university has paid a significant amount of money to the search firm for that list.

One *Bleacher Report* article highlighted the trust that a university puts into a search firms' process.⁹⁵ The article discussed an anonymous coach who told the reporter that a search firm had done such extensive research on him and that within eight minutes of answering the phone for the

⁹⁵ Adam Kramer, *How a College Football Program Conducts a Coaching Search*, BLEACHER REPORT (Dec. 16, 2013), <http://bleacherreport.com/articles/1888821-how-a-college-football-program-conducts-a-coaching-search>.

first time, he was being offered a job.⁹⁶ Without significant time interviewing, it is difficult to say that personality and fit were big considerations. Taking the word of a third-party might be good when it comes to track record, background checks, and willingness to move across the country, but it can be dangerous to trust on personality.

According to Carr, “a university should never say to a search firm, ‘[s]elect and bring us five candidates to interview.’”⁹⁷ The reasoning behind his statement is that a university should not delegate too much authority to the search firm.⁹⁸ If the search firm has unilateral authority in determining which candidates interview for a position, the search firm can then “trade favors” with candidates in exchange for the chance to get the best jobs.⁹⁹ Lots of unethical behavior could result.

Carr further explains that “too many firms are currently taking the role of “Gatekeepers” and determining unilaterally which candidates are considered and which candidates advance in the process.¹⁰⁰ Search firms tend to assume they have the role of gatekeeper and then proceed to show favoritism to candidates who have given them business in the past.¹⁰¹ It becomes a *quid pro quo* exchange that eliminates candidates who have not played the search firm’s game.¹⁰²

Carr opined that “[t]he search firm must be entirely objective in its identification, review and recommendation of candidates for advancement in the search process. There can never be a pattern of certain candidates ‘ALWAYS’ being advocated by the same search firm for many different jobs, regardless of the circumstances.”¹⁰³ Every search must be unique to ensure that the

⁹⁶ *Id.*

⁹⁷ Email from Bill Carr to author dated October 29, 2015. On file with author.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Email from Bill Carr to author dated January 10, 2015. On file with author.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Email from Bill Carr to author dated October 29, 2015. On file with author.

ideal candidate is selected from each search.¹⁰⁴ The profile that is developed for each candidate should match what the university is looking for in the hiring process.¹⁰⁵

Not all hires proposed by search firms exactly work out for the university. For instance, the University of Pittsburgh hired Mike Haywood (Haywood) on December 16, 2010 as the head football coach.¹⁰⁶ Haywood was arrested in South Bend, Indiana on December 31, 2010 and charged with felony domestic violence.¹⁰⁷ Haywood was released on bond to find himself fired by the University of Pittsburgh.¹⁰⁸ However, in 2012 the domestic violence charges were dismissed after Haywood completed a pretrial diversion program, counseling and public service.¹⁰⁹

The other failure most often mentioned is the hiring of Billy Gillispie (Gillispie) as Kentucky's head basketball coach in 2007.¹¹⁰ Gillespie was fired after two seasons as head basketball coach. Gillispie was hired on April 6, 2007 and signed a memorandum of understanding.¹¹¹ Gillispie was fired as the Wildcats head basketball coach on March 27, 2009 without ever signing a formal contract "as his lawyer and the university fought over the wording."¹¹² Kentucky Athletic Director Mitch Barnhart stated: "[t]here is a clear gap in how the rules and responsibilities overseeing the program are viewed[.] It is a gap I do not believe can be

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ ESPN.com New Service, *Pittsburgh hires Mike Haywood*, ESPN.COM, Dec. 17, 2010.

<http://www.espn.com/college-football/news/story?id=5924001>

¹⁰⁷ ESPN.com New Service, *Pitt fires new coach Mike Haywood*, ESPN.COM, Jan. 2, 2011.

<http://www.espn.com/college-football/news/story?id=5978467>

¹⁰⁸ *Id.*

¹⁰⁹ Mary Kate Malone, *Former Notre Dame Coach Haywood's case dismissed*, SOUTH BEND TRIBUNE, Feb. 10, 2012. http://articles.southbendtribune.com/2012-02-10/news/31048844_1_michael-haywood-domestic-violence-case-texas-church

¹¹⁰ Jeffrey McMurry, *Kentucky hires Gillispie as basketball coach*, www.WKYT.COM, Apr. 6, 2007.

<http://www.wkyt.com/home/headlines/6902072.html>

¹¹¹ Jeffrey McMurray, *Gillispie still hasn't signed a formal contract with Kentucky*, USA TODAY, Nov. 16, 2007.

https://usatoday30.usatoday.com/sports/college/mensbasketball/sec/2007-11-16-kentucky-gillispie_N.htm

¹¹² ESPN.com News Services, *Gillispie, Kentucky part ways*, www.ESPN.COM, Mar. 28, 2009.

<http://www.espn.com/mens-college-basketball/news/story?id=4021232>

solved by just winning games."¹¹³ On May 27, 2009, Gillispie filed a lawsuit against the university for breach of contract and fraud stemming from the firing.¹¹⁴ The case was ultimately settled.¹¹⁵ Gillispie's personality, and not being able to find a proper balance between work and home, probably was an early indicator that Kentucky was not the right job for him.¹¹⁶ "One of the things I probably didn't do a good job of was understanding the [Kentucky] position and . . . how people view that position," Gillispie said.¹¹⁷

D. OTHER ISSUES

The hiring of a search firm can also lead to a lack of diversity, possible legal trouble, and unwarranted favoritism of candidates. Although not all of these problems are widespread, they can cause severe issues for a university.

1. Lack of Diversity

Diversity is highly valued in the sports context. Diversity can come in many forms including race and gender. Jennifer Hoffman discusses how the use of search firms can continue an unwanted trend.¹¹⁸ The trend of hiring white males to fill the role of head coaches and athletic directors does not promote diversity within sports.¹¹⁹ The continuing cycle of hiring white males can be linked to the use of the same search firms.¹²⁰ When a search firm is used to hire an athletic director, that athletic director may feel obligated to use that same search firm if a coaching vacancy

¹¹³ *Id.*

¹¹⁴ Brett Barrouquere, *Kentucky seeks to move Billy Gillispie lawsuit*, THE SAN DIEGO UNION-TRIBUNE, Jun. 29, 2009. <http://www.sandiegouniontribune.com/sdut-bkc-gillispie-lawsuit-062909-2009jun29-story.html>

¹¹⁵ Ryan Alessi, *UK settles with Gillispie for \$2.98 million*, LEXINGTON HARALD LEADER, Oct. 13, 2009. <http://www.kentucky.com/sports/college/kentucky-sports/uk-basketball-men/article44011008.html>

¹¹⁶ Brad Townsend, *A&M: Gillispie's last college station?* THE DALLAS MORNING NEWS, Feb. 11, 2007. <https://web.archive.org/web/20070930040659/http://www.dallasnews.com/sharedcontent/dws/spt/colleges/texasam/stories/021107dnspoagcoach.189240a.html>

¹¹⁷ IlliniHQ, *Ex-Illini Gillispie ready to get back to work*, THE NEWS-GAZETTE, Mar. 10, 2010. <http://www.news-gazette.com/sports/illini-sports/mens-basketball/2010-03-10/ex-illini-gillispie-ready-get-back-work.html>

¹¹⁸ Jennifer Hoffman, *The Old Boys' Network*, 5 J. FOR THE STUDY OF SPORTS AND ATHLETES IN EDUC. 9 (2011).

¹¹⁹ *Id.*

¹²⁰ *Id.*

arises.¹²¹ It is likely that the search firm will suggest coaches in the same way they suggested the hiring of the athletic director.¹²² This is a dangerous cycle. The dangerous cycle does not only harm a university in the public view, but it can lead to legal battles over the lack of diversity hires.

2. Legal Troubles

In addition to the possible legal trouble associated with lack of diversity, a university could be in trouble for the poaching of another university's coach or athletic director. It is common for an athletic director or a coaching candidate to come from other universities. Typically, there are no issues with the hiring of an athletic director or coach from another university because of buyout contract provisions, but it has the potential to lead to a breach of contract claim.

In one case, Kent State University sued its former basketball coach for breach of contract when he left to coach elsewhere.¹²³ The lawsuit resulted in damages being awarded to the university.¹²⁴ Search firms are not immune to potentially being involved in one of these lawsuits. Although the court did not allow Kent State to amend its Complaint, Kent State attempted to add Parker Executive Search to the list of defendants.¹²⁵ It is not far-fetched to think of a situation where a search firm could be found to have tortuously interfered with a contract between a university and its coach or athletic director.

3. Unwarranted Favoritism of Candidates

This article previously discussed how candidates can garner unwarranted favoritism due to the cycle of search firm hiring. One traceable incident includes the National Collegiate Athletic Association (NCAA) President Mark Emmert.¹²⁶ Emmert was the President at University of

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Kent State Univ. v. Ford*, 2015 Ohio 41, 26 N.E.3d 868.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Brent Schrottenboer & Rachel Axon, *Search Firms Come Under Scrutiny After Rutgers Flap*, USA TODAY (June 6, 2013), <http://www.usatoday.com/story/sports/ncaaf/2013/06/06/parker-executive-search-ncaa-rutgers/2398487/>.

Washington when they needed to hire a new athletic director.¹²⁷ Emmert hired Parker Executive Search to come to the conclusion that the man who was already serving as interim athletic director was the right fit.¹²⁸ After paying the search firm \$75,000, the favor to Emmert seemed to be returned.¹²⁹ When the NCAA was looking to hire a new president, Parker was hired to conduct the search that resulted in Emmert being named President of the NCAA.¹³⁰ Emmert has used Parker to help fill several vacancies on his staff.¹³¹

Fran Fraschilla, former head basketball coach at Manhattan’s St. Johns and New Mexico and a college basketball analyst for ESPN, has commented on the issue of favoritism. He has said that “there often is a quid pro quo to the university-search firm partnership — that by paying a firm hundreds of thousands of dollars to help with a coaching search, an athletic director may receive help from that company the next time a desirable athletic director position opens.”¹³²

Merrit Norvell, who is a former director of athletics at Michigan State University, former executive director at the National Association of Coaching, Equity and Development, and former executive vice president at DHR International, in answer to the question if there are relationships between search consultants and university administrators and coaches, said yes, “[t]hat’s true all the way from the presidents right down to the athletic department and the coaches. Some presidents use certain search firms because that’s the search firm that placed them in their job. It’s the same thing with athletic directors.”¹³³

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Meyer, *supra* note 6.

¹³³ *Id.*

Too frequently search firms determine their list of candidates based on who they favor.¹³⁴ Unfortunately this means that a search firm may not push for a candidate that they concluded could be a good fit for the university.¹³⁵ In the past, one search firm has been accused of using candidates that were finalists in another school's search for placement at their current schools.¹³⁶ If true, not only would the search firm not be finding the best possible fit, they would be taking money for work that was essentially done by someone else. "The process of hiring coaches and athletic directors should be more of a meritocracy than it is today," Carr says.¹³⁷

On November 9, 2015, University of Illinois' (Illinois) Interim Chancellor, Barbara Wilson, announced the firing of athletic director Mike Thomas (Thomas) amid an athletics scandal that culminated in an independent investigative report that found alleged abuse of Illinois' football players.¹³⁸ "Thomas' tenure was marked by accusations of mistreatment from players in three sports."¹³⁹ Thomas was hired through search firm, Parker Executive Search (Parker). Chairman Dan Parker "said his firm does not 'place' candidates in jobs; rather, its mission is to 'recruit, advise and facilitate.'"¹⁴⁰ Thomas's contract was extended in January of 2014 by Illinois, a sign that Parker says the university was pleased with the athletic director search results.¹⁴¹ "Critics say Parker pushes preferred candidates on schools, and sometimes those candidates are people who have helped steer business to the company."¹⁴²

¹³⁴ Dohrmann, *supra* note 70.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Shannon Ryan, *Illinois fires AD Mike Thomas amid damning report on football program*, CHICAGO TRIBUNE, Nov. 9, 2015, <http://www.chicagotribune.com/sports/college/ct-illinois-fires-mike-thomas-20151109-story.html>

¹³⁹ Teddy Greenstein, *Illinois has ties to search firm with bad recent run of Big Ten AD hires*, CHICAGO TRIBUNE, Nov. 24, 2015, <http://www.chicagotribune.com/sports/college/ct-illinois-athletic-director-search-firm-spt-1125-20151124-column.html>

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

We don't have a stable of candidates," [Chairman] Parker said. "If Illinois were to hire us, they'd tell us what they're looking for, then we'd identify candidates on a national basis. We literally have no vote in the (hiring) process. Our responsibility is to make sure a client has all the information to make an informed decision."¹⁴³

However, Parker does maintain an extensive database of potential candidate information including known contract details, NCAA violations, Academic Progress Report data, media details, along with some more personal details if available.¹⁴⁴ An industry insider told the Chicago Tribune that only Parker was an approved vendor with Illinois for purposes of executive searches, "meaning the school could hire the firm on a time-sensitive matter without soliciting bids from competitors."¹⁴⁵ Parker, though, had a string of bad luck with AD placements that "resulted in a firing (Thomas), a pressured resignation (Minnesota's Norwood Teague) and reams of controversy (Rutgers' Julie Hermann)."¹⁴⁶ Ultimately, Illinois chose Korn Ferry to conduct its search for a new athletic director at a cost of \$140,000.00.¹⁴⁷ The search concluded with the hiring of Josh Whitman, a former NFL football player and former Illinois tight end.¹⁴⁸

The facts are troubling because they expose what could be a serious issue of favoritism. Universities need to determine if the hiring of a search firm will actually lead to the best possible candidates or if hiring the search firm will simply lead to the hiring of someone that will later return the favor to the search firm.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ Jonathan Hettinger, *UI decides on firm for AD search*, THE NEWS-GAZETTE, Dec. 16, 2015. <http://www.news-gazette.com/news/local/2015-12-16/ui-decides-firm-ad-search.html>

¹⁴⁸ Staff Writer, *Illinois' new AD charged with brightening a bleak sports scene*, CHICAGO SUN-TIMES, Feb. 16, 2016. <http://chicago.suntimes.com/sports/illinois-new-ad-charged-with-brightening-a-bleak-sports-scene/>

VI. CONCLUSION

Today, the hiring of a search firms is common practice for universities across the country as evidenced by the high percentage of universities that actually contract to use the services of the search in the search for a new athletic director or coach. A search firm can provide a university with the ability to limit a large applicant pool to the very best available choices. Equipped with large databases of perspective candidates and appropriate staff, the search firm handles the heavy lifting of the hiring process without doing the process themselves. They can act with speed and most of their activities protect the university from FOIA. While in most instances the use of search firms has produced satisfactory results, some issues have been uncovered with respect to lack of oversight, cost, and compatibility. Universities across the country are in the mainstream using services of search firms and must be certain that they get the very best candidates out of the search who ultimately fulfill the job of coach or athletic director.

Search firms are the new power brokers in college athletics. Jim Phillips, Athletic Director at Northwestern University, aptly said it all¹⁴⁹. A search firm provides “a partner to provide outside counsel that can eliminate bias, maximize efficiency and confidentiality of the process, and ultimately help guide us to the most informed decision possible.”¹⁵⁰ The hiring of coaches and athletic directors are not small hires. Today, college athletics and their departments are multi-million dollar industries, and the decision of who ultimately becomes a head coach or athletic director can have a monumental impact upon the future of the athletic program.¹⁵¹ Universities should be aware that in some instances search firms push favorite candidates rather than cast a wide net, and not every person is a good fit for every job.¹⁵²

¹⁴⁹ Dohrmann, *supra* note 70

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

Search firms play an important part of the process and are being employed by universities in most of their hiring procurements. But what they do, and the assistance they can provide, will lay in the lap of the university who has the ultimate decision and responsibility.

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