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What's the Big Deal About Coaching Contracts?

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What's the Big Deal About Coaching Contracts?

JOHN H. FIELDER AND LARRY M. STARR

In this article, Fielder and Starr address the nature of the coaching contract for external coaches offering organizational and executive coaching to individual clients. They begin by reviewing salient characteristics of legal and consulting contracts then focus on coaching contracts. Subsequently, the authors examine coaching contracts from administrative and ethical perspectives. They discuss informal, nested contractual obligations and the expectations parties might have because of the contract entered into. Finally, Fielder and Starr offer concluding remarks about the complicated and complex nature of coaching contracts.

NATURE OF CONTRACTS: LEGAL AND CONSULTING

The general meaning of a contract is an agreement involving two or more agents or parties such as people, groups, organizations, or businesses that sets forth what each will or will not do. The modern understanding of a legal contract, whether written or oral, concerns a promise, action or performance between participants and a “consideration” which is commonly money but could be another agreed upon resource. The *Legal Dictionary* (section by Hill and Hill, 2005) presents seven distinct parts of a contract:

- offer from one party to another
- acceptance of the offer
- promise to perform
- value “consideration” often money, but including other resources that will be exchanged
- time or event when performance will occur or commitment will be met
- terms and conditions for the performance
- performance

According to the *American Bar Association Guide to Consumer Law* (1997), a valid contract need not be a “legalistic-looking document.” As long as the content of a contract meets legal requirements (i.e., it is signed or otherwise authorized by those named in the contract), it can be a handwritten, typed or emailed “agreement, letter of agreement or letter of understanding.” An oral contract is also a valid agreement but without physical evidence of the details may be difficult to interpret and ultimately to enforce. The value of a written contract, according

to Block (1981), however, is primarily for the sake of clarity, not enforcement.

As an emerging academic discipline, organizational and executive coaching has roots within organization development (OD). Indeed, the Academy of Management (1999) noted that one foundation skill for Master's Degree programs in organization development and change (OD&C) is coaching. As well, curriculum guidelines for teaching graduate programs of coaching proposed by the Graduate School Alliance for Executive Coaching (GSAEC), a global consortium of universities, includes that the coach be competent in negotiating and contracting.

The characteristics of an OD consulting contract were described by Peter Block (1981) in his book *Flawless Consulting*. According to Block, a consulting contract is meant to be a social understanding providing "explicit agreement of what the consultant and client expect from each other and how they are going to work together" (p. 42). He proffered that this is the opportunity to define how the work will unfold; thus a consulting contract which clearly states the interests and obligations of each party will optimize the probability of a successful working relationship.

Block wrote that mutual, voluntary consent and consideration are central to a consulting contract. A consultant who feels coerced by organizational expectations (or economic concerns) may agree to take whatever tasks are offered and under whatever terms suit the client. Block suggests this is a "bent over" contract position, and contaminates the contract (and the engagement) from the outset.

Consideration concerns the values provided to all parties. For the client, this is primarily the services the consultant is offering, but Block notes it may include other things as well. For the consultant, this clearly includes money, but also what Block calls "other needs and wants." For example, a consultant may seek a sense of professional integrity by having work valued by the client or others in management, or may value his/her competency to show honest progress rather than simply meeting quantitative organizational expectations.

The importance of a contract continues to remain a critical component of consulting as noted by the authors of the most widely used OD textbook (now in its 9th edition), Cummins and Worley (2009).

Regardless of the level of formality, all OD processes require some form of explicit contracting that result in either a verbal or written agreement. Such contracting clarifies the client's and practitioner's expectations about how the OD process will take place. Unless there is mutual understanding and agreement about the process,

there is considerable risk that someone's expectations will be unfulfilled. That can lead to a reduced commitment and support, to misplaced action, or to premature termination of the process (p. 79).

COACHING AS AN EMERGING ACADEMIC AND PROFESSIONAL DISCIPLINE

There are many types and definitions of coaching. For this article, we focus on the external coach, i.e., an individual from outside an organization who coaches an individual within an organization. We use the definition proffered by GSAEC in their proposed curriculum guideline, <http://www.gsaec.org/curriculum.html>:

Organizational and executive coaching is a development process that builds a leader's capabilities to achieve professional and organizational goals. A leader is an individual who has the potential of making a significant contribution to the mission and purpose of the organization. This coaching is conducted through one-on-one and group interactions, driven by evidence/data from multiple perspectives, and is based on mutual trust and respect. The coach, individual(s) being coached, and their organization(s) work in partnership to help achieve the agreed upon goals of the coaching.

Among the important challenges to be overcome by organizational and executive coaching and common to all academic and professional disciplines seeking maturity (e.g., medicine, law) are controls over how one enters the domain, engages in scholarship or practice, and interacts with others within or outside the scope of activity (Williams, 1995). Moreover, at least six criteria must be met in order to move toward professional and academic maturity (Bullock, Stallybass & Trombley, 1988):

1. There must be significant and defined barriers to entry.
2. There must be a shared body of knowledge within the community.
3. There must be formal qualifications at the university level denoting competency.
4. There must be regulatory bodies with power that can be exercised over coaching members in areas of admission, as well as definition of and delivery of discipline and sanctions.
5. Coaching must have an enforceable code of ethics.
6. Formal licensing or regulation for those who consult or practice coaching in the non-academic environment, perhaps by an independent group, must be in place.

A well-considered contract can help to move the emerging discipline forward by addressing some important components of performance, governance, and ethics.

By specifying the activities and timeline of a coaching engagement both parties acknowledge behavioral responsibilities.

COACHING CONTRACT CONSIDERATIONS

We begin, therefore, by considering a coaching contract that can be structured to resemble a general consulting contract when coaching is presumed to be a subset of consulting. Table 1 provides the contracted categories of activities for a six-month coaching contract offered by a large international consulting firm. By specifying the activities and timeline of a coaching engagement both parties acknowledge behavioral responsibilities.

Table 1. Consulting coaching contract categories

| Activities | Description |
|---|---|
| Initial meetings: Coaching objectives | Objectives are set and clarified with the client, manager, and others |
| First two weeks: Assessment process | Standardized, interview-based with online and 360° process |
| Within 30 days of assessment: Feedback and development planning | Review assessment results, identify strengths, development areas, and begin development plan |
| Within 30 days of assessment: Meeting with manager and HR | Solicit input development goals and objectives for priority, commitment. |
| As scheduled: Ongoing coaching sessions | Individual coaching on a regular basis attend to the development of stated objectives |
| As scheduled: Check-in with manager and HR | On a periodic basis to ensure that everyone is up to date on the process, and is aware of what continues to be needed to ensure the desired progress. |
| End of assignment: Final feedback and planning session | Engagement closes and outlines planning for ongoing development |
| Confidentiality | Adheres to agreed-upon controls over information disclosure |
| Project contingencies | Allows for agreed-upon adjustments due to unforeseen events or changes |
| Fees and invoicing | Invoicing and payment terms based on defined rates that follow the contract conditions agreed-upon by both parties |

Making promises about what each will or will not do is fundamental to a contract between a coach and client. Thus a provider may wish to specify not only what it promises to give but what it requires to be withheld. Since coaching has yet to develop a clear body of knowledge and as many coaches consider their methods to be proprietary, there can be a desire to state ownership rights within the contract. This can be incorporated within the topic of confidentiality. Table 2, for example, provides one example of language used by a large firm to describe the processes and materials provided to a corporate coaching customer.

Table 2. Confidentiality and ownership rights

Confidentiality: The information contained in the materials and as part of the method of presentation of materials constitutes valuable information, which is proprietary of the CONSULTING COMPANY. The Client company agrees to maintain all such information in strict confidence and only for use within its internal organization. The Client Company further agrees that during the term of this Agreement, and at all times thereafter, the Client Company shall not disclose, communicate or use for the direct or indirect benefit of any person, firm, association or company other than for itself, any information regarding the business methods, business policies, procedures, techniques, research or development projects or results, trade secrets, or other knowledge or processes used or developed by CONSULTING COMPANY, or any other confidential information relating to or dealing with the business operations or activities of CONSULTING COMPANY, made known or learned or acquired by the Client Company hereby.

ETHICAL ISSUES IN COACHING AND CONTRACTING

Normative ethics is concerned with the norms of behavior, principally in our relationships with others (Rachels & Rachels, 2007). Coaching is a complex set of relationships centered on the coach, the client who hires or accepts the coach, and other members of the organization who work with the client or coach. Since coaching as an academic and professional domain is in early development, those norms are themselves in development (Dean & Meyer, 2002). For example, coaching isn't a form of therapy, but it partakes of the close personal relationship characteristic of therapist and client. One of the attractions of coaching is its ability to significantly transform the quality of life and performance, but anything this powerful also has the capacity to harm. Ethical norms are designed to prevent harms that can arise in our relationships with others, hence the childhood admonitions not to lie, steal, cheat or hit.

Contracts are primarily designed to protect important interests of the parties, especially performance and compensation. The legal status of the contract provides the signatories with the means to demand that the contract terms be met. A useful question to ask is: What interests are at risk and important enough to put in the coaching contract? Each party wants to protect itself from certain kinds of harm and does so by requiring the other to promise to avoid them. If we look at the relationships at the heart of coaching, about what important harms should the parties be concerned? Consider the following three.

Conflict of interest

A conflict of interest is not the same as conflicting interests. This can be illustrated by the maxim, "You can have it done quickly, with high quality, with low cost: pick two." Thus, doing the job well and quickly conflicts with low cost, and similarly for any

other two choices. This is a normal feature of management and life itself. In contrast, a conflict of interest arises when an individual's obligations are challenged by other interests, usually but not always financial (Davis, 1988). This is the basis of widespread company policies prohibiting or restricting gifts from outside vendors. The concern is that employees will sacrifice the interests of the company for their personal interests in rewards from vendors. This is not the same thing as a bribe, where an employee consciously agrees to act unethically in exchange for something of value. A conflict of interest exists even if the employee's actions are perfectly correct. For example, if a coaching student gave his/her instructor an expensive gift and the instructor showed no favoritism in giving the student his/her grade for a course, a conflict of interest would still exist because the instructor has an incentive (interest) not to perform his professional obligation to give grades impartially.

When an organizational conflict of interest exists, observers may wonder if the person who received the gift really did act solely for the interest of the organization and not for his/her own interests. Certainly the other students would be suspicious. Even more important is the psychology of gifts. Those who receive gifts have been culturally conditioned to respond with gratitude and a desire to return the favor. The result is that favoritism may be subconscious, unknown to the person who thinks she is acting with objective judgment. It is very easy to think one is acting ethically when we are serving our own interests (Fielder, 2004).

For coaches, gifts from the client or any other significant stakeholder in a contractual relationship would clearly constitute a conflict of interest. It is a useful item to include in the contract because it clarifies relationships and shows the coach's ethical sensitivity. The best practice is to be aware of and avoid conflicts of interest, but sometimes this is not possible. If you have a financial interest in an organization that sells a special testing technique and plan to use it, you have a conflict of interest. In this kind of situation the best practice is to fully disclose the conflict of interest to the persons put at risk, i.e., those to whom you have a professional obligation as a coach. They can decide to waive the conflict of interest or insist that you use some other test.

Confidentiality

As noted in Tables 1 and 2, confidentiality of information provided by the coach to a client is important to define. But confidentiality also pertains to information about the client. When personal information is obtained, individuals can be harmed by the release of information which they wish to remain private. Information that would be embarrassing or damaging is presumed to be private and should be released only with the consent of the individual. This presumptive right to privacy is not absolute and can be superseded by more important

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considerations, such as a legal investigation¹. Typically, private information is shared with the stipulation that it remain confidential and not given to anyone other than those authorized.

Obviously confidentiality is an important issue in coaching, since the coach will gather personal information about the client from the client as well as sometimes from colleagues, superiors, and subordinates. A coaching contract should be clear about how the privacy of these individuals will be protected. Coworkers or others providing personal information or evaluations about the client need to be protected from any negative consequences that could result in their relationships with the client or others in the organization. Thus the coach promises, in the contract, to keep this information confidential and provide only anonymous feedback to the client. The following language (based on Orenstein, 2007) could be used:

All information shared by individuals during the interview process or any other information gathering process will be treated confidentially and will be used only to develop a profile for the client. The information will be discussed with the client in private meetings and will not be available to any other individual. In addition, all discussions with the client will be handled with complete confidentiality.

The language used here can present difficulty, however, if access to information is required to be shared with the organization that hired or appointed the coach. Clearly that person/group has interest in the progress of the coaching, but the client will be understandably reticent without knowing exactly what will be revealed to others in the organization that have shown enough interest in the client's career to hire a coach. For example, the following language may be placed in the contract for the client and coach to sign:

I understand and agree that certain topics discussed in coaching sessions may be anonymously and hypothetically shared with others including authorized management of the contracting company, and coaching professionals for training or consultation purposes.

¹An agreement to keep information confidential in a contract is enforceable as a contract term. If that term is breached, the breacher is liable for the provable damages caused by the breach. However, unlike a legally recognized profession such as physician and clinical psychologist, there is no separate legal confidentiality protection for information shared with a coach; if the coach is subpoenaed or otherwise legally compelled to testify about the confidential subject, the contract cannot be used to refuse to answer. In a job termination proceeding, for example, an executive coach as holder of information he/she agreed to keep confidential about the client or another organizational party could be compelled to testify (opinion cited by Larry Jacobson, JD, April 27, 2009; concurred by Jane Landes Foster, JD, April 27, 2009).

This part of the confidentiality section needs to be clear and detailed: with whom will the information be shared and in what form? It is in the best interests of the coach and the client that all parties are aware of and comfortable with the confidentiality arrangements. Clarity about confidentiality is essential to creating trust in the coach. Without trust there is no real disclosure or cooperation, only self-protection.

Another aspect of confidentiality concerns information about the organization that a coach learns in the coaching process. It is likely that some of this information would be valuable to competitors, investors, or others who have some interest in the organization. It is critical that this issue be addressed in the contract so that it is clear that all non-public information obtained by the coach will not be disclosed without the express consent of the person in the organization who has the authority to make that decision. As in other areas of confidentiality, this non-disclosure not only protects the organization, it also encourages the organization to make private information available that the coach needs to be effective.

Harm to clients

A thornier issue concerns harm that clients may suffer as a result of being coached. What should the contract contain about this possibility? Berglas (2002) cites an actual situation in which coaching was provided for an executive with a serious narcissistic personality disorder. The coaching obviously could not overcome this kind of mental illness, and in fact only provided the executive with ways to hide his disorder. A great deal of damage was done to the company before the problem was correctly diagnosed by a psychiatrist. Berglas recommends that companies should consider psychological evaluations when the person's symptoms are stubborn or severe and also before any executive coaching begins. Coaches may also consider including provisions in the contract for making referrals to mental health counselors when needed.

Contracts can include language that explicitly places the responsibility for any business repercussions squarely on the clients. Table 3 offers language that focuses on these decisions and outcomes.

Table 3. Responsibility for business decisions lies with the client

| |
|--|
| <p>We are deeply committed to providing you with advice that will contribute to the achievement of important business results. However, the final decision about acting on this counsel — and the responsibility for results achieved — is your own. CONSULTING COMPANY assumes no management responsibility for your business decisions or for policies or practices that you actually implement. Accordingly, CONSULTING COMPANY will be indemnified and held harmless from any claims, demands, causes of action or litigation including, but not limited to, all costs and reasonable attorneys' fees, which may arise or be incurred by reason of the services performed by CONSULTING COMPANY.</p> |
|--|

Other language may be inserted requiring the client to agree that they are responsible for their physical, mental, and emotional well-being and any other consequences in other areas of their lives. It can also distinguish coaching from therapy, and note that any previous or ongoing health condition or any relationship with a healthcare professional be acknowledged and approved. This will serve to clarify the relationship and protect the coach from any damage from working with clients with psychological problems. Table 4 presents language from one sample agreement.

Table 4. Full responsibility lies with the client

As a client, I understand and agree that I am fully responsible for my physical, mental and emotional well-being during my coaching calls, including my choices and decisions. I am aware that I can choose to discontinue coaching at any time.

I understand that coaching is a comprehensive process that may involve all areas of my life, including work, finances, health, relationships, education, and recreation. I acknowledge that deciding how to handle these issues, incorporate coaching into those areas, and implementing my choices are exclusively my responsibility.

I promise that if I am currently in therapy or otherwise under the care of a mental health professional, that I have consulted with the mental health provider regarding the advisability of working with a coach and that this person is aware of my decision to proceed with the coaching relationship.

I understand that coaching is not to be used as substitute for professional advice by legal, medical, financial, business, spiritual or other qualified professionals. I will seek independent professional guidance for legal, medical financial, business, spiritual or other matters. I understand that all decisions in these areas are exclusively mine and I acknowledge that my decisions and my actions regarding them are my sole responsibility.

INFORMAL NESTED CONTRACTUAL OBLIGATIONS

A member of an organization commonly has direct and indirect or “dotted” lines of reporting obligations often to ensure that information is adequately shared and to maintain an internal system of authority and accountability. For example, if Elaine, a department manager, believes that John, one of her direct reports, could benefit from coaching, it is appropriate to discuss the concern and opportunity with Larry her direct supervisor. For Larry to agree to the need and to the funding, he may ask Elaine to write a report in order to justify the external coach. If the report arguments are compelling, the request would be approved and Elaine could contact Rob in the Human Resource (HR) office which is responsible for locating and matching a coach with John. Rob may read the request report and may interview Elaine

and John in order to help determine the competencies for a coach. When a coach is selected, the contract and its details may be managed by Rob in the HR department and reviewed and perhaps signed by a representative of the legal department on behalf of the organization. Elaine and Larry join Rob as stakeholders in the organizational coaching relationship and its outcomes.

While the coach - client contract concerns the formal dyad relationship, there are other informal or nested relationships that exist in an organization. Since Elaine reports to Larry she may be asked to be kept up-to-date about John's progress. Rob may be asked or required by others to summarize the activities and outcomes of a coaching relationship particularly if coaches are being used as an HR-directed talent management strategy. Larry may meet with members of Elaine's team and by discussing project activities attempt to assess the ripple effects of John's coaching experience.

All of these relationships pose ethical issues for the coaching contract. As in medicine, law, and psychological counseling, the effectiveness of the helping relationship depends upon the willingness of the client to disclose relevant personal information. Such information may be embarrassing or put John at risk if disclosed to others. If that information will be shared with others, John may not be willing to provide important information to the coach, and this will diminish the effectiveness of the coaching. From an ethical standpoint, all the nested parties that have some stake in the coaching need to be clear and explicit about what information is confidential and what is not. One way to deal with this issue is for the parties to agree that any information passed on to Elaine, Rob, or Larry will be provided in general terms, without revealing any information John wishes to remain private. The coach could agree to allow John to read the reports before submitting them to insure that they contain no confidential information. A similar approach can be used for ownership of data or any other issue that may arise concerning the nested relationships associated with coaching.

WHAT IS EXPECTED FROM A COACH AND COACHING CONTRACT?

Fatien and Muller (2008) note that there are two common reasons why organizational/executive coaching takes place (see Feldman & Lankau, 2005; Kampa-Kokesh & Anderson, 2001). One is *remedial* in which current behaviors are not meeting or are interfering with job requirements and expectations compared to high performance in the past. Second is *developmental* in that additional and often specific skills or knowledge are sought for a person who has been targeted for organizational advancement or leadership. The directional focus within coaching also differs. Coaching may focus on interpersonal issues appropriate to external development such as improved levels of assertiveness and work/life balance; or

A member of an organization commonly has direct and indirect or "dotted" lines of reporting obligations often to ensure that information is adequately shared and to maintain an internal system of authority and accountability.

on intrapersonal development such as self-awareness and confidence (Kampa-Kokesh & Anderson, 2001; Wales, 2002).

Relying on an external coach, whether or not arranged by an internal agent such as the HR department, assumes a professional relationship and delivery of professional competencies. Furthermore, as the ability to establish and maintain a close personal connection with the client seems a primary characteristic of being an effective coach (Wasylyshyn, 2003) defining the nature of the boundaries around the relationship becomes important. When the coach and client presume the relationship is mostly “consulting” or based on a presumed technical expert business-partner metaphor, the written contract may define issues that pertain to activities that are more organizational and which address primarily business concerns. Yet, the personal, intimate or psychological relationship between coach and client should not be lost. The coach and the client have interests that should be explicit and agreed upon as noted by Block (1981) in order that each will know “how they are going to work together” but also allow all stakeholders to understand what could drive them apart.

CONCLUSIONS

We have proposed that a coaching contract should be concerned with denoting characteristics of the professional relationship between a coach and client in an organizational setting. We have described some of the important contractual requirements, conflicts, and choices from administrative and ethical perspectives. Planning how to manage these issues in advance and describing them in a document are not trivial matters because coaching is both complicated and complex.

That coaching is complicated means that there are many parts which when summed produce the whole. Constructing a contract involves identifying the parts, such as by listing them in the categories presented in Table 1. These parts can then be reduced into smaller parts (analyzed) in order to specify more detailed information as was suggested for the issue of confidentiality in Table 2.

Obviously, addressing the parts of a contract that focus on “what” is to be done in coaching is important; however, this focus is not sufficient. Coaching is more than the sum of its parts; the contract should be concerned with more than a set of steps or a description of its parts. Indeed, it is naïve to assume that a contract is adequate if it only presents the coach’s activities in exchange for payment. The contract should also acknowledge the complex, systemic, and qualitative aspects of coaching.

Coaching is also complex – the whole is greater than the sum of the parts. Complexity refers to “how” coaching is done as well as describing some of the meanings that can emerge from the inter-

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actions between the client, coach, and others in the workplace. For example, the contract might present some of the possible conflicts of interest and sources of potential harm to parties by defining how and to whom information will be released, mitigated or controlled. The contract might also include an understanding that coaching is likely to produce a ripple effect in the organization due to the client's self-development and learning as behavior changes to meet the objectives defined in the relationship.

Adaptive behaviors and outcomes are even more difficult to define and include in a coaching contract. For example, a coaching client may gain empowerment over events and people which can co-produce new insights about interests, choices, and performance that could not have been foreseen. While a contract is valuable because it can describe what each party will or will not do (often to protect rights and interests at a point in time), the complex nature of coaching argues that people will change their interests based on their experiences. While Block (1981) noted that the contract helps to describe how the work will unfold, the unfolding may go well beyond the scope of the work of coaching. As long as the coach, client and organization understand that the rights of the stakeholders will be maintained, but that the interests may change, the contract becomes essential to the coaching relationship.

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