

NATIONAL SPORTS LAW

NEGOTIATION COMPETITION 2022

ROUND ONE

“Reading Them Like a Book”

GENERAL FACTS FOR BOTH TEAMS

Sports and literature are, and forever will be, tied together at the hip. The iconic stories that come from the fields and courts of play rival the most compelling literary narratives for their thrilling action, dashing heroes, and heart-stopping twists and turns.

While there are certainly fictional stories about sports that stir the interest of eager readers, some of the best sports stories are retellings of real-life events that give fans an inside look into the protagonists and antagonists of some of our favorite moments. Books like *Friday Night Lights*, *The Boys of Summer*, and *A League of Their Own* are revered by fans both of the genre specifically and of sports in general. Among the most treasured of sports, books are biographies of (and autobiographies by) figures like Jackie Robinson, Michael Jordan, and Billie Jean King that give fans a different perspective on their favorite sports personalities. For these reasons, the sports nonfiction genre has become a lucrative market for publishers, yielding millions of dollars in sales—and in advances paid by publishers to popular sports figures to tell their stories.

Akashic Books is an independent book publisher that has a unique focus that leads to a unique set of authors. While bigger name publishers focus on earning potential first, Akashic mainly looks for urban literary fiction and political nonfiction by authors who either are unable to secure deals with larger publishers for any reason or simply do not want to work with the larger corporate publishers. Founded in Brooklyn, NY, in 1997 by former punk rock bassist Johnny Temple, Akashic gained notoriety in the publishing world in 2011 when they published Adam Mansbach’s parody “children’s book for adults,” *Go the F*** to Sleep*. After an unintended advanced release of the book by PDF went viral, the book hit No. 1 on Amazon.com’s bestseller list in May 2011—six months before it was scheduled to release. Using that esteem as a springboard, Akashic has been able to establish itself within the literary world as a publisher

willing to take risks on manuscripts ignored by other publishers but whose brand marks alone signal a certain level of avant-garde quality.

One of Akashic’s most popular book categories is their “Edge of Sports” imprint,¹ which features sports-centered memoirs and biographies by sports figures and personalities. Unlike other sports publishers, however, Akashic’s Edge of Sports book imprint does not feature books focusing solely on the traditional sports biography topics like winning and losing, the values of hard work, and the trial and tribulations of reaching the big stages, but instead topics like athlete activism and issues like race, gender, and mental illness. For example, the books Akashic has published in this imprint include memoirs by 2016 Olympic swimmer Anthony Ervin—a swimmer of dual African American descent and Jewish heritage who also struggled with Tourette’s syndrome—and Ryan O’Callaghan, an offensive lineman for the New England Patriots who came out as gay after his NFL career ended.

Such a category fits well with the personality of University of South Carolina (UofSC) women’s basketball head coach Dawn Staley. After a successful playing career playing for the University of Virginia, in the American Basketball League and the WNBA, and as a gold medalist with the U.S. Women’s National Basketball Team in the 1996 Summer Olympics, Staley went back home to Philadelphia as head coach of the Temple Owls women’s basketball team, leading a program that had only reached one NCAA tournament in around eighty years to six NCAA tournaments in eight years. In 2008, Coach Staley was named the head coach at UofSC, driving the program to their first #1 overall ranking in 2014 and leading the team to four Final Four appearances and two national championships, including in the most recent 2021-22 season.

Beyond her on-court success, Coach Staley has also received notoriety for her willingness to speak out about social issues including race, gender, and representation both within her sport and beyond. When Coach Staley led UofSC to their first national championship in 2017, she was the second Black woman coach to ever lead a NCAA basketball program to a title. In light of that fact, Staley has repeatedly spoken out about the lack of Black female representation in the coaching ranks including penning an op-ed for *The Players’ Tribute* in 2018 headlined “Where Are All the Black Coaches?” Coach Staley also in 2018 filed a defamation lawsuit against then-Missouri athletic director Jim Sterk after Sterk accused Staley of promoting a racist atmosphere on her team.

¹ See <http://www.akashicbooks.com/subject/edge-of-sports/>.

Coach Staley—drawing from her background growing up in the housing projects of North Philadelphia—has also been outspoken against police brutality and has been one of the leading figures calling for a stronger response by the U.S. government against the Russian detention of WNBA star Britany Griner.

Most recently, Coach Staley has drawn controversy for her decision to cancel a planned two-game series with the Brigham Young University (BYU) women’s basketball team following an incident during a BYU/Duke University women’s volleyball match where BYU fans were accused by a Duke player of repeatedly yelling racial slurs. While BYU banned a fan in regard to the incident, an investigation by the BYU athletic department yielded no corroborating evidence of the Duke player’s claim, and the fan’s attendance privileges were later reinstated. However, Coach Staley has still refused to reschedule the games with BYU, citing her own investigation into the incident. In response, a 14-member group of the South Carolina legislature has opened their own investigation into the incident while condemning Staley’s purported “reckless regard for the truth” by attacking BYU, calling on Staley to reschedule the games and issue an apology.

Coach Staley has regularly conveyed to her representatives in recent months a desire to organize her thoughts on a variety of social topics into a memoir, and these desires have reached a fever pitch in light of the political outcry against her. At the same time, Staley has also repeatedly expressed a deep admiration of the types of books Akashic has published, stating that she feels like her thoughts will fit well within that reputational sphere. Following through on these desires, representatives for Coach Staley have reached out to Akashic Books to express Staley’s interest in publishing a memoir with Akashic. Understanding the weight and power of Coach Staley’s reputation and the stories that she could potentially tell, representatives for Akashic eagerly set up a meeting where the two sides could discuss the opportunities and expectations for a potential publishing agreement. While the two sides have agreed that most of the finer details of the publication contract (including, most notably, terms of the editorial process) would be worked out in later negotiations, both parties have given their representatives full authorization to be creative and—if possible—craft a mutually beneficial agreement to advance each side’s interests.

CONFIDENTIAL FACTS FOR AKASHIC BOOKS

Akashic Books managing editor Johanna Ingalls was frankly shocked when Coach Staley’s representatives got in touch with her to inquire about Staley publishing her memoirs with Akashic. She absolutely agrees that Akashic would be a fabulous fit for Staley, given her nature and reputation as someone who can be outspoken on issues like race and gender. But despite the success of books like “Go the F*** to Sleep,” Akashic is still a tiny outlet, with just four full-time staff members and without the significant resources that a larger corporate publisher can boast.

At the same time, Akashic has grown largely because of their willingness to take risks on underserved projects, including authors who have been pushed out by what Akashic refers to as “the soulless churn of corporatized big publishing” and manuscripts that target those outside the mainstream demographics. Akashic is a good fit for Coach Staley, in Ingalls’s opinion, because they are not afraid of taking on manuscripts that the larger publishers may see as overly controversial and thus both financially and reputationally risky. While Akashic cannot offer the financial resources as those larger publishers, they can offer an outlet where Coach Staley can tell her story and speak her truth without the filters of a corporatized editing process.

However, Coach Staley should understand Akashic’s limitations regarding resources. For the average author at most publishing houses, advance payments have historically been around \$50,000 but have been dropping in recent years due to the consolidation of the bigger outlets that have historically been willing to hand out the bigger advances. As a result, the more recent standard advance payment paid by even the bigger publishing house is generally between \$20,000 and \$30,000. But Akashic, as a much smaller publishing house, generally gives out even smaller advances: \$5,000 is the standard, but they often prefer to go completely without an advance. Akashic paying any advance over \$10,000 is very rare and reserved for only the most unique of authorship circumstances.

Akashic recognizes that Coach Staley would be one of those circumstances as a high-profile and nationally-known basketball coach. But while an author like Coach Staley can often demand an advance of six- or seven-figures, such an upfront payment is completely outside Akashic’s realm of possibility. An advance in the low five-figures would be more feasible, though they can go up to \$75,000 if the advance were structured to not be paid all upfront. Akashic hopes that Coach Staley is serious about the reputational fit, because Akashic will simply not be able to

compete with other publishers if she is shopping her memoirs around looking for the highest possible sum.

Where Akashic feels like they can draw in authors is in their generous royalty packages. Royalties are generally calculated through a certain percentage per book sold, with 20 percent per book sold being the standard rate. Of note, royalties are paid against the advance, so whatever Coach Staley would receive in an advance would have to be made up in royalties before Staley would receive a royalty payment. But that is frequently not an issue for Akashic authors, given the low advances that they offer, and the ever-increasing frequency of the increasingly popular no advance, higher royalties arrangement where Akashic thrives.

With an author like Coach Staley, Akashic envisions that the book will receive substantially more buzz and thus sales than other books. Indeed, the no advance, higher royalties arrangement might be well suited for an author like Coach Staley, as this buzz will allow both Akashic and Staley to profit more together than Coach Staley would with a low advance that is quickly lapped by book sales. Such an arrangement would also give Akashic much more room for error on their profit margin. So if Coach Staley is willing to not take an advance, Akashic would be willing to split profits with her evenly with a 50 percent royalty. If she insists on taking an advance, the royalty percentage she receives would have to go down significantly in order to ensure that Akashic recoups that initial investment with enough overage to make it worth their while. A royalty of \$50,000 or above would require royalties much closer to the standard ten percent rate, for example.

Part of the reason why Akashic is less than comfortable with a higher advance is due to the risky nature of the publishing business—especially in this situation. When Akashic gives out publication contracts with an advance, most of the time the advance is based on their assessment of a completed manuscript submitted and pitched to Akashic by the author that only needs a certain amount of editing and polish to be completed. Coach Staley, on the other hand, has only submitted a pitch with no manuscript—and a rough and uncertain pitch, at that. The authors signed by Akashic without a completed manuscript are rarely given any advance by Akashic, as writing a book is a major endeavor: a fair amount of the no-manuscript publishing contracts handed out by Akashic never yield a manuscript at all. This creates significant risk for Akashic, as if any money was given upfront that money would simply be lost.

Akashic realizes and fully understands that Coach Staley’s proposed memoir is strictly just an idea and that even Coach Staley likely has little idea at this stage as to what stories will be told within its pages. In fact, if Coach Staley can provide any additional information about the book’s content, it would go a long way towards making Akashic more comfortable with a commitment. Akashic expects that Coach Staley’s upbringing in North Philadelphia—a topic she has alluded to but has seemingly been hesitant to go into more detail on in her public interviews and authored *The Players’ Tribute* pieces—will be covered, and they are incredibly excited about reading those stories. They also hope that more information concerning her defamation lawsuit against the Missouri athletic director will be included and that Coach Staley will also go into more detail about her rationale behind her recent decision to cancel the series with BYU. A hesitancy by Staley to include any of these story points would make the book significantly less interesting to Akashic.

Additionally, Akashic is not comfortable with committing to any certain sum without knowing more about the timeline for the book: particularly when an initial manuscript will be completed. This reservation is complicated by the fact that unlike many of Akashic’s authors, Coach Staley’s authorship would just be a side gig, and one that would almost certainly not be a priority compared to her very involved day job as an NCAA Division I basketball coach. Akashic would be much more willing to commit to any advance—let alone one around or above their standard \$5,000-\$10,000—if Coach Staley can provide information or give a firm and binding commitment on when a completed manuscript will be delivered (preferably within 24 months).

Akashic would also accept a commitment from Coach Staley to work with a ghostwriter or coauthor who can help her get her story down on the page. Having a professional author who can do the bulk of the immense amount of work it takes to write an author based on conversations with Staley would go a long way towards making Akashic more comfortable with the risk involved with this potential arrangement.

Another important threshold negotiation point is the grant-of-rights clause. The grant-of-rights clause is a standard publishing contract clause that refers to how much of the copyright the publisher will be able to exploit in both publishing the book and beyond. Akashic expects that they will produce the book in hardcover, softcover, ebook, and audiobook formats, and wants to ensure that they will receive the rights in order to do so. But the right to produce derivative works like movies and television projects is another story. It is standard industry practice for publishers to take on these rights, but unlike the big house publishers, Akashic does not have the staff to vet

pitches and sell author works to television and movie studios. As such, Coach Staley will be out of luck if she is hoping for Akashic to take on that responsibility—at least until Akashic is able to add staff members to take on those roles in the future, which is part of their strategic vision even if it has not yet been realized. Alternatively, if Coach Staley and her representatives want to take on those responsibilities themselves, Akashic would be thrilled to let them do so while taking a small (20 percent) cut of net cash received for any of these derivatives for the trouble of foregoing this industry standard practice.

As a final important point, Akashic is tentatively interested in Coach Staley’s thoughts on the potential of using members of her team to help promote the book. While Akashic does not want to set a precedent of being an outlet that allows coaches to use a book deal as a backdoor way to pay players, they feel that signing a few of her more popular current, future, and past athletes to small (around \$5,000 to 10,000 each) name, image, and likeness deals to endorse and showcase the book on social media would be a great way to promote the book. These deals should not be signed until the book is ready to be published and delivered but knowing that Coach Staley would be receptive to such an arrangement would boost the book’s financial prospects for Akashic in a big way.

If Coach Staley wanted Akashic to commit to any of these deals now, on the other hand, then such commitments would have to come out of Akashic’s budget for an advance payable to Coach Staley directly. But Akashic does know that if they make such a commitment now, they can easily put committed money into a savings account where it can accrue interest until the book is ready to go and the athlete deals are ready to be signed and paid out.

CONFIDENTIAL FACTS FOR COACH DAWN STALEY

An avid reader in her limited spare time, Coach Staley has always been a huge fan of the sports genre as getting to know some of her favorite athletes has provided inspiration for her own path through the world of sports. And given her background coming from the projects of North Philadelphia, Staley has long wished to add her own story to the vast array of sports stories—an array that, she feels, is overwhelmingly lacking in representation by women of color like her. In the same way that she was given inspiration by reading about her own childhood heroes from the basketball court, Staley wants to use her upbringing to provide inspiration to young people of the next generation—especially if some young women of color can be inspired to pursue a path like hers and add diversity to a women’s basketball scene that is still lacking in women of color in coaching roles.

While Coach Staley has never written a full-length book before, she deeply enjoyed putting pen to paper in her five *Players’ Tribute* articles. It has been a while since those articles were written and published—the last one, a plea for more Black coaches in basketball, came in November 2018—she feels that she is bursting at the seams with ideas of what to write and how to write about it. She wants to tell her story of coming up through the projects, getting a chance to play at the prestigious Dobbins Tech high school in Philadelphia and the University of Virginia for Debbie Ryan and her philosophies on coaching, and feels that telling those stories would be both therapeutic for her personally and hopefully inspiring for those reading. But more importantly, Coach Staley wants to write about race and gender, including her experiences fighting for success and respect as one of the few Black female coaches in her league and the long way that Black women still have to go in the basketball scene.

For those reasons, Coach Staley believes that Akashic Books is the perfect publisher for her to be able to tell her truths. Staley is a huge fan of Akashic’s Edge of Sports imprint, deeply appreciating books like NBA veteran Etan Thomas’s collection of interviews, essays, and reflections from various sports figures on police brutality and white supremacy and journalist Jessica Luther’s brilliant exposé on rape culture in college football. Coach Staley is very interested in making her own mark alongside those works and feels that they are examples demonstrating that Akashic fits well with her own personal brand. She would simply not feel comfortable with any other publishing house, and as such has not pursued publication elsewhere. She knows that

dozens of publishers would jump at the chance to publish her work, but she is just not confident that the other publishers would be willing to publish the type of memoirs that she wants to publish.

Of course, she knows Akashic is not a big-name corporate publisher and does not have the resources of one. In doing her research, she found that while for most authors advances are typically around \$20,000-\$50,000, Akashic is known for only paying advances of around \$5,000, going up or beyond \$10,000 only in very rare cases. That is not necessarily a problem. Upfront money is not a huge concern for Coach Staley—after all, her day job pays her plenty, particularly in light of the seven-year, \$22.4 million contract extension she signed last October—but the book should still be worth her while.

Coach Staley is also concerned about precedent, and she wants to receive more than a token amount for writing the book to set an example for future female authors of color in sports. Since precedent is the concern, she feels that the overall deal that she receives is much more important than the structure. As far as the advance is concerned, it can be payable over any set period between now and the release date, but it should be quite a bit beyond the \$5,000-\$10,000 that Akashic normally pays authors, and given her brand value, preferably also well beyond the \$50k that is standard for most authors at the larger publishing houses. A six-figure sum is preferable to set a strong precedent that the stories told by female authors of color have value.

Regardless of the advance, Coach Staley also wants to ensure that the publication of her memoir with Akashic is more of a partnership type of arrangement than one where she provides—or is provided—a service. Such an arrangement would be reflected in the royalty provisions in the agreement, which are generally calculated through a certain percentage per book sold. Of note, royalties are paid against the advance, so whatever Coach Staley would receive in an advance would have to be made up in royalties before Staley would receive a royalty payment. Coach Staley understands that a 20 percent per book sold royalty is a standard rate, but she also feels that her name would be a primary driver of sales, rather than the content of the book itself. In other words, her reputation would be the primary driver rather than any work performed by Akashic, and the royalty payment should reflect that. As such, she would prefer to see something closer to a 50/50 split in royalties, especially if the advance is lower than the \$100,000 that she thinks her brand value is worth.

Another aspect of the deal that could help create more of a partnership agreement is in construction of the grant-of-rights clause. The grant-of-rights clause is a standard publishing

contract clause that refers to how much of the copyright the publisher will be able to exploit in both publishing the book and beyond. Coach Staley understands that Akashic will likely insist on rights to publish the book itself in a variety of formats, including audiobooks, and she is perfectly fine giving up those rights without question.

Where Coach Staley's concerns lie is in the right to produce derivative works like movies and television projects. From her research, she has seen that it is a common industry practice for authors to give over these rights to the publisher, leading to the author having very little control over when, where, and how these derivative works are created. Staley wants to avoid that situation at all costs. She does not foresee any situation where she would want her book turned into a movie or television project unless it is the absolute right project by the absolute right creators, so she insists on having complete control over the rights to all derivative works. At the very least, she should have a right of refusal over any projects that Akashic selects as derivative of the book. Given this, Coach Staley does not see why Akashic should get any sort of cut of the money earned from derivative works; after all, why should they get anything from those works if they are not doing any work to create them. If necessary, Coach Staley will give up a small cut of revenue from these rights to acknowledge Akashic's role in getting the original work into the public—but will give no more than a 20 percent cut.

Another way that Akashic can help Coach Staley see the deal as a partnership arrangement is by helping her in her day job. The last thing that Staley wants is for her memoirs to be a selfish endeavor that does not acknowledge the people who have helped to get her to where she is today: namely the amazing athletes on her past, present, and future teams. Given the recent shift in NCAA policy that now allows college athletes to profit from the use of their names, images, and likenesses, Coach Staley sees an opportunity to use her memoir as a creative backdoor way to allow her athletes to share in the profits of college athletics. And if done right, employing her athletes to help promote the book should help drive sales, allowing both her and Akashic to profit more handsomely from its publication.

Along these lines, beyond the standard advance and royalties that she would receive for the book Coach Staley would also like Akashic to commit to signing her entire team—including the role players and walk-ons—to endorsement deals that would pay them to promote the book on social media once it is ready for release. That would commit Akashic to fifteen such deals in total, and Coach Staley would insist that they are worth at least \$5,000 each and preferably over \$10,000.

However, Coach Staley does not want to favor one player over any other, so all of the athletes on her team should receive such a deal and they should all be paid equally. While the role players on her team would certainly not drive sales as much as the stars, her coaching philosophy requires equal partnership and equal participation: any name, image, and likeness deal that she helps facilitate in any way for her team should ensure those principles are fulfilled.

With all of this said, Coach Staley has not completed a manuscript: in fact, she has hardly more than sketches at this time. Staley expects that will be a primary area of concern for Akashic and she would understand those concerns if they are raised; her day job keeps her quite busy and writing a memoir simply cannot be a priority for her. But one measure that she is strongly hesitant to take is to hire a ghostwriter, even if it is at Akashic's sole expense (rather than out of the advance). Her memoirs need to reflect her own experience and thoughts and thus her own words; having someone tell her truth for her would just feel wrong, even if she has significant control and veto power over the ghostwriter's final project. She is confident based on her experiences with *The Players' Tribute* that she can get the book done within two years, but she would not be unwilling and unable to commit to a firm release date, as she does not want to tie herself down in case other things come up. For example, she has not entirely ruled out a potential coaching gig in the 2024 Summer Olympics; while she announced earlier that she will not return, she does not want to completely rule out the possibility if they need her by making other binding commitments.

As a final note, while her ideas for her memoirs are still very much still sketches and ideas, she already knows one area that she does not want to cover: the recent incident involving her cancellation of the BYU/South Carolina home-and-home series. While the topic is clearly of great topical interest, the topic is far too politically sensitive. Any wrong words on this topic or a perception that she is trying to profit from the scandal could give ammo to those in the South Carolina legislature who would revel in her ruin while also jeopardizing her relationship with her athletic director and university president. Furthermore, the people close to the incident that spoke with Staley in her decision-making process requested confidentiality, and she wants to be sure to honor that request. Her feelings on the matter might change later as things play out, but at least for now, she knows that is one area she will try to stay far away from in her writings.