



News Release

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APPEALS COMMITTEE UPHOLDS DECISION FOR UNIVERSITY OF SOUTHERN
CALIFORNIA FORMER ASSISTANT COACH

INDIANAPOLIS – The NCAA Division I Infractions Appeals Committee has upheld the finding of violation and associated penalties for the former assistant football coach at the University of Southern California.

The NCAA Division I Committee on Infractions found that the former assistant coach spoke with agency partner (an individual who was in the process of forming a sports agency and marketing company in partnership with student-athlete 1 and his parents) who asked for assistance in convincing a then-current student-athlete 1 to adhere to an agreement with the agency and reimburse the agency partners for money and benefits previously provided to student-athlete 1. The committee found that the former assistant coach violated NCAA ethical conduct rules by providing false and misleading information about his knowledge of this telephone call and failing to report the potential violation.

In his appeal, the former assistant coach asserted that the finding of violation should be set aside because it was contrary to the evidence and resulted from procedural error. The former assistant coach also appealed the one-year show-cause penalty, which prohibits him from engaging in any recruiting activity with prospective student-athletes. The public report further details these show-cause restrictions.

The Infractions Appeals Committee stated in its report that, “As the committee considered the former assistant coach’s arguments, both written and oral, it became clear that the most pertinent issues devolved to matters of witness credibility.” This statement specifically related to the former assistant coach’s arguments that the Committee on Infractions allegedly relied on false statements in making its credibility determinations. The appellate committee considered all of the information presented by the Committee on Infractions and the former assistant coach. As a result, the appellate committee found that the evidence met the standard required by its prior reports, the applicable NCAA bylaw and other matters which properly guide its decisions. The appellate committee also did not agree with the former assistant coach’s remaining arguments on appeal, which the public report further details.

In considering the former assistant coach’s appeal, the Infractions Appeals Committee reviewed the notice of appeal; the transcript of the university’s Committee on Infractions hearing; and the submissions by the former head coach and the Committee on Infractions. This appeal decision is separate from the university’s appeal, which has not yet been decided.

The Infractions Appeals Committee may overturn a determination of fact or violation finding if the Committee on Infractions' finding is contrary to the evidence presented; the facts found by the committee do not constitute a violation of NCAA rules; or a procedural error affected the reliability of information that was used to support the findings. A penalty by the Committee on Infractions may be set aside on appeal if the penalty is excessive such that its imposition constitutes an abuse of discretion.

The members of the Infractions Appeals Committee who heard this case were: Christopher L. Griffin, Foley & Lardner LLP, chair; William Hoye, executive vice president for administration, planning and legal affairs at the Institute for the International Education of Students; Patti Ohlendorf, vice president for legal affairs at University of Texas at Austin; and David Williams, vice chancellor and general counsel at Vanderbilt University.

**REPORT OF THE
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION
DIVISION I INFRACTIONS APPEALS COMMITTEE**

April 29, 2011

Report No. 323

Former Assistant Football Coach

University of Southern California

Los Angeles, California

This report is filed in accordance with NCAA Bylaw 32.11 and is organized as follows:

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I. INTRODUCTION.

The former assistant coach at University of Southern California appealed to the NCAA Division I Infractions Appeals Committee specific findings of violations and penalties as determined by the NCAA Division I Committee on Infractions. In this report, the Infractions Appeals Committee addresses the issues raised by the former assistant football coach (hereinafter referred to as former assistant coach).

II. BACKGROUND.

The Committee on Infractions issued Infractions Report No. 323 June 10, 2010, in which the committee found violations of NCAA legislation in the football program. On the basis of those findings, the Committee on Infractions determined that this was a major infractions case and imposed penalties accordingly. [**June 9, 2010, issue of The NCAA News.**]

This case centered on violations of NCAA bylaws governing amateurism, unethical conduct and reporting of knowledge of NCAA violations.

After the Committee on Infractions issued its report, former assistant coach filed a timely notice of appeal June 24, 2010. A written appeal was filed August 11, 2010. A supplement to the written appeal was filed September 9, 2010. The Committee on Infractions filed its response October 4, 2010. The former assistant coach filed its rebuttal to the Committee on Infractions Response November 1, 2010. The case was considered by the Infractions Appeals Committee November 14, 2010 (see Section VI below).

III. VIOLATIONS OF NCAA LEGISLATION AS DETERMINED BY THE COMMITTEE ON INFRACTIONS. [Please note that the cites below are the cites as they appear in the Committee on Infractions report dated June 10, 2010.]

B-1 UNETHICAL CONDUCT; VIOLATIONS OF AMATEURISM LEGISLATION; FAILURE TO REPORT KNOWLEDGE OF NCAA VIOLATIONS. [NCAA Bylaws 10.1-(d), 12.01.1, 12.1.1, 12.1.2-(a), 12.3.1, 12.3.1.2 and 30.3.5 (2009-10 NCAA Division I Manual)]

Beginning in October 2004 and continuing until November 2005, two individuals (for the purposes of this report, "agency partners A and B" respectively), were in the process of forming a sports agency and marketing company, in partnership with student-athlete 1 and his step-father and mother ("the parents"). In the course of this relationship, agency partners A and B gave student-athlete 1 and his parents impermissible benefits in the form of cash, merchandise, an automobile, housing, hotel lodging and transportation. As a result of the receipt of these benefits, student-athlete 1 competed for the football team while ineligible. This

ineligibility began at least by December 2004 and encompasses the 2005 Orange Bowl game and the entire 2005 football season, including postseason competition. Further, the assistant football coach knew or should have known that student-athlete 1 and agency partners A and B were engaged in violations that negatively affected student-athlete 1's amateurism status. The assistant football coach provided false and misleading information to the enforcement staff concerning his knowledge of agency partner A's and B's activity and also violated NCAA legislation by signing a document certifying that he had no knowledge of NCAA violations.

- b. At least by January 8, 2006, the assistant football coach had knowledge that student-athlete 1 and agency partners A and B likely were engaged in NCAA violations. At 1:34 a.m. he had a telephone conversation for two minutes and 23 seconds with agency partner A during which agency partner A attempted to get the assistant football coach to convince student-athlete 1 either to adhere to the agency agreement or reimburse agency partners A and B for money provided to student-athlete 1 and his family. Further, during his September 19, 2006, and February 15, 2008, interviews with the enforcement staff, the assistant football coach violated NCAA ethical conduct legislation by providing false and misleading information regarding his knowledge of this telephone call and the NCAA violations associated with it. The assistant football coach failed to alert the institution's compliance staff of this information and later attested falsely, through his signature on a certifying statement, that he had no knowledge of NCAA violations.

IV. PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS. [Please note that cites below are cites as they appear in the Committee on Infractions report dated June 10, 2010.]

The Committee on Infractions imposed additional penalties because of the involvement of the former assistant coach in a number of the violations. The penalty[ies] imposed on former assistant coach are set forth in Part C-22.

In maintaining institutional control and a rules compliant athletics program, institutions must rely on the efforts of coaches and staff to abide by the rules and to share any information they have regarding potential rules violations. The assistant football coach had knowledge that student-athlete 1 and agency partners A and B likely were engaged in NCAA violations. He was not credible in his denials of knowing agency partner A or in his claimed failure to remember a

telephone call between him and agency partner A. The assistant football coach failed to report information to the compliance staff regarding potential NCAA violations related to the activities of agency partners A and B. He also attested, falsely, that he had no knowledge of NCAA violations. His conduct impeded the institution from fulfilling its responsibilities under NCAA bylaws. His conduct also resulted in findings that he violated NCAA ethical conduct legislation by providing false and misleading information to the enforcement staff as described in Finding B-1-b and that he violated NCAA Bylaw 30.3.5 by signing a document attesting, falsely, that he had no knowledge of NCAA violations involving the institution. For these reasons, the committee imposes on him a one-year show cause period beginning on June 10, 2010, and running through June 9, 2011, during which he is restricted as follows in his athletically related duties at the institution or any subsequent employing institution:

- a. The assistant football coach is prohibited from engaging in any on or off-campus recruiting activities or interactions with prospective student-athletes (or their parents or legal guardians) prior to their first full-time enrollment at any institution at which he is employed and whether or not they have signed a National Letter of Intent, accepted an offer of financial aid, or are recruited by the institution as these are or may be defined in NCAA bylaws. Prohibited activities include, but are not limited to, phone calls and phone conversations; contacts and evaluations as they are or may be defined in NCAA bylaws; electronic transmissions, general correspondence and other recruiting material as they are or may be defined in NCAA bylaws; official and unofficial visit activities; and activities or interactions with prospective student-athletes that are prohibited to a representative of the employing institution's athletics interests.
- b. If the assistant football coach is employed at the institution or another member institution at the time of the 2011 NCAA Regional Rules seminars, then he must attend a rules seminar at his own expense and, within one month provide to the Director - Committees on Infractions a list of the sessions he attended, together with his certification of attendance.
- c. Should an institution other than USC employ the assistant football coach while these penalties are in effect, it shall submit a report to the Director - Committees on Infractions no later than 30 days after its first employment of him. The report shall set forth the employing institution's understanding of the above-listed penalties that are in effect at the time of employment and its responsibilities to monitor compliance. Pursuant to NCAA Bylaw

19.5.2.2-(1) it may challenge the continued imposition of the above-listed penalties restricting the athletically related duties of the assistant football coach by scheduling an appearance before the Committee on Infractions to show cause why it should not be penalized for failure to comply with the penalties.

- d. At the end of the show-cause period imposed on the assistant football coach or upon termination of employment while the show-cause order is in effect, the president of USC or any subsequent employing institution shall provide a letter to the committee affirming that the penalties were complied with during the time of employment. If the president is unable to so affirm, he shall so inform the committee.

V. ISSUES RAISED ON APPEAL.

In his written appeal, the former assistant coach asserted that the finding of violation against him should be set aside because the finding of violation is clearly contrary to the evidence presented to the Committee on Infractions and there was a procedural error and, but for the error, the Committee on Infractions would not have made the finding of violation. Additionally, the former assistant coach asked that the penalties imposed against him be set aside. (Bylaws 32.10.4 and 32.10.4.1)

VI. APPELLATE PROCEDURE.

In considering the former assistant coach's appeal, the Infractions Appeals Committee reviewed the notice of appeal; the transcript of the institution's February 18 – 20, 2010, hearing before the Committee on Infractions and the submissions by the former assistant coach and the Committee on Infractions referred to in Section II of this report.

The hearing on the appeal was held by the Infractions Appeals Committee November 14, 2010, in Indianapolis, Indiana. The former assistant coach was present and was represented by his attorney. The Committee on Infractions was represented by the appeal coordinator for the Committee on Infractions and the director of the Infractions Committees. Also present were the vice president of enforcement; director of enforcement; director of agents, gambling and amateurism; associate director of enforcement; associate director of agents, gambling and amateurism and assistant general counsel of the NCAA. The hearing was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

VII. INFRACTIONS APPEALS COMMITTEE'S RESOLUTION OF THE ISSUES RAISED ON APPEAL.

The former assistant coach appeals finding B-1-b:

At least by January 8, 2006, the assistant football coach had knowledge that student-athlete 1 and agency partners A and B likely were engaged in NCAA violations. At 1:34 a.m. he had a telephone conversation for two minutes and 23 seconds with agency partner A during which agency partner A attempted to get the assistant football coach to convince student-athlete 1 either to adhere to the agency agreement or reimburse agency partners A and B for money provided to student-athlete 1 and his family. Further, during his September 19, 2006, and February 15, 2008, interviews with the enforcement staff, the assistant football coach violated NCAA ethical conduct legislation by providing false and misleading information regarding his knowledge of this telephone call and the NCAA violations associated with it. The assistant football coach failed to alert the institution's compliance staff of this information and later attested falsely, through his signature on a certifying statement, that he had no knowledge of NCAA violations.

The former assistant coach raises several issues in his appeal of that finding, set forth in full as follows:

- a. The Committee on Infractions used false statements to support its unethical conduct finding against former assistant coach.
- b. The Committee on Infractions' adverse credibility determinations against former assistant coach are clearly contrary to the evidence.
- c. The Committee on Infractions improperly relied on agency partner A's surreptitious audio tapes to conclude that agency partner A was credible.
- d. Former assistant coach was denied fair process because the enforcement staff excluded University of Southern California from participating in the interviews of agency partner A and his family.
- e. The Committee on Infractions had impermissible *Ex Parte* Communications with the enforcement staff about the infractions report.

- f. The NCAA has prejudged former assistant coach's appeal.

Issues Of Credibility.

As the committee considered the former assistant coach's arguments, both written and oral, it became clear that the most pertinent issues devolved to matters of witness credibility. Specifically, the former assistant coach's arguments regarding the Committee on Infractions' alleged reliance on false statements, the evidentiary basis of the Committee on Infractions' adverse credibility determinations, and the claimed exclusion of the former assistant coach's former employer from certain witness interviews turned principally on the Committee on Infractions' conclusions regarding the January 8, 2006, telephone call involving the former assistant coach and agency partner A, particularly its determination that agency partner A "call[ed] [the former coach] to try to get his money back." (Committee on Infractions Response Page No. 40.)

In all, these arguments are based on the Committee on Infractions' determination of the credibility of the former coach and agency partner A. The Committee on Infractions stated that it found agency partner A "credible in his report of the call," and recited the essence of that "report" as follows:

[Agency partner A] said that he phoned former assistant coach to ask him to intercede with student athlete 1 and get him to adhere to the agency agreement that he made with agency partners A and B. [agency partner A] said he also told former assistant coach that he did not intend to lose the money had given student-athlete 1 and his parents and preferred not to go public with the matter and implicate the institution. (Committee on Infractions Report Page No. 26)

The former assistant coach, of course, disputes these conclusions. He characterizes his disagreement in several ways, including that "the Committee on Infractions changed and mischaracterized [agency partner A's] . . . testimony," that "the Committee on Infractions' findings that [the former assistant coach] . . . was not credible are internally inconsistent, contradictory and based on false statements and mischaracterizations," and that while "the Committee on Infractions has discretion to make credibility findings[,] . . . the Committee on Infractions' credibility findings must be based on true and correct facts." (Written Appeal Page No. 1.)

The Standard of Review.

Bylaw 32.10.4.2 states, in relevant part, that a finding of violation made by the Committee on Infractions may be set aside on a showing that the finding “is clearly contrary to the evidence presented to the Committee on Infractions” As this Committee stated in the University of Mississippi case:

“A showing that there was some information that might have supported a contrary result will not be sufficient to warrant setting aside a finding nor will a showing that such information might have outweighed the information on which the committee based a finding. The Infractions Appeals Committee . . . will set aside a finding only on a showing that information that might have supported a contrary result clearly outweighed the information on which the Committee on Infractions based the finding.” (University of Mississippi, Public Infractions Appeals Committee Report, Page No. 10, May 1, 1995.)

Thus, the Committee on Infractions argues that its determinations discussed above are indeed matters of witness credibility, and, therefore, are within the authority of the Committee on Infractions to make:

Although University of Southern California¹ criticizes the Committee on Infractions for its speculation about the January 8 call, the Committee on Infractions appropriately did what fact finders are routinely required to do – weigh conflicting testimony and draw inferences based in part on the credibility of the witnesses involved, their motives, and the plausibility of the different accounts of the events in question. (Committee on Infractions Response to the University of Southern California’s Written Appeal Page No. 40.)

While this may be true as a general matter, it is equally true that this committee is not without a proper role in the review of evidence presented to the Committee on Infractions. And, we must caution that matters decided by the Committee on Infractions may not be insulated from review simply by denominating them “credibility determinations.” That said, this committee has considered all of the arguments presented by the Committee on Infractions and the former assistant coach, and in particular, the opposing characterizations of the January 8, 2006, telephone call. Some may consider

¹ The former assistant coach incorporated into his appeal sections of Southern California’s written appeal. This statement is found in the Committee on Infractions response to the written appeal of Southern California.

the evidence on which the Committee on Infractions based its conclusions regarding that call, and its decision to choose agency partner A's characterization of what occurred during the call, to be insufficient to support a finding of violation. However, we find that the evidence meets the standard required by this committee's prior reports, the applicable bylaw and other matters which properly guide this committee's decisions.

Alleged *Ex Parte* Communications.

The former assistant coach argues that the Committee on Infractions[']s shar[ing] its draft report with the enforcement staff so the staff could inform the Committee on Infractions of any 'factual errors' in the report" constituted improper *ex parte* communication which "create[s] a rebuttable presumption of prejudice." (Written Appeal Page No. 47.) This issue resulted in additional written communication following this committee's November 14, 2011, hearing on the former assistant coach's appeal. Specifically,

1. March 2, 2011, this committee requested that the Committee on Infractions provide to the Infractions Appeals Committee, and former assistant coach's counsel, a description of (a) what material, if any, was provided to the enforcement staff prior to the public release of the subject report; (b) the response, if any, which the Committee on Infractions received from the enforcement staff; and (c) what action, if any, was then taken by the Committee on Infractions or its staff (including any changes to the draft report).
2. March 7, 2011, the Committee on Infractions responded to the questions in the March 2, 2011, letter from the Infractions Appeals Committee:
 - a. What material, if any, was provided to the enforcement staff prior to the public release of the subject report? **Answer:** As set forth above, the infractions report with the Committee on Infractions' final determinations in the case was provided to the enforcement staff Tuesday, June 1, 2010.
 - b. The response, if any, which the Committee on Infractions received from the enforcement staff. **Answer:** As set forth above, five typographical errors were detected by director of enforcement and were sent to director and assistant director of the Infractions Committees in a June 2 e-mail message. Further, also as set forth above, there was verbal communication between assistant director of the Infractions Committees and associate director of

enforcement regarding Footnote 3 on Page No. 41 of the infractions report.

- c. What action, if any, was then taken by the Committee on Infractions or its staff (including any changes to the draft report).
Answer: The typographical errors were corrected and a sentence was clarified in Footnote 3 as described above.” (See letter from appeal coordinator for the Committee on Infractions dated March 7, 2001.)”

3. The former assistant coach was provided the opportunity to respond to the information provided by the Committee on Infractions. The former assistant coach notified the Infractions Appeals Committee March 14, 2011, that he had nothing further to add.

Based on this information, we find that no prejudice resulted from the communication between the Committee on Infractions and the enforcement staff which preceded the release of the Committee on Infractions’ report.

The “Prejudgment” of the Former Assistant Coach’s Appeal.

The former assistant coach argues that an e-mail from the NCAA’s associate director for public and media relations (“the associate director”) which responded to a posting on the website “USCfootball.com” criticizing the Committee on Infractions’ decision in this case demonstrates that “the NCAA . . . prejudged his appeal.” (Written Appeal Page Nos. 56-57) We reject the argument. First, we note that, at the time the associate director sent the e-mail at issue, the only part of “the NCAA” which had any judgment to render was this committee. We assure the former assistant coach that this committee had no role in the drafting or transmittal of the e-mail. Indeed, this committee did not know the e-mail existed until the former assistant coach raised it in this appeal. Second, and perhaps most important, we will not burden those charged with the NCAA’s media relations with a fear that their statements made in the execution of that duty will be used to argue that this committee has made up its mind about a case. Again, the former assistant coach, as well as others who read this report, may be assured that this committee bases its decisions on the record and the applicable adjudicatory principles. It does not consider other, extraneous matters, including those which are part of other legitimate activities of the NCAA.

VIII. CONCLUSION.

Finding of violation B-1-b as well as penalties C-22, C-22-a, C-22-b, C-22-c and C-22-d are affirmed.²

NCAA Infraction Appeals Committee³

Christopher L. Griffin, chair
William Hoye
Patti Ohlendorf
David Williams.

² According to the Division I Infractions Appeals Committee Policies and Procedures (See III.A.2.d at Page No. 4), any penalty that is appealed is automatically stayed through the course of the appeal process. This stay is triggered with the filing of the notice of appeal by the appellant and ends with the public release of the committee's decision. Therefore, the appellant's affirmed penalty C-22 (one-year show cause order) shall be applied April 29, 2011, through April 28, 2012.

³ William Hoye replaced Susan Cross Lipnickey who recused herself from this case. Additionally, Jack Friedenthal recused himself from this case and all parties agreed to proceed with a four-member panel.