

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

December 14, 2017

Decision No. 471

Former Assistant Football Coach

University of Alabama

Tuscaloosa, Alabama

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

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I. INTRODUCTION.

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

II. BACKGROUND.

On April 14, 2017, the Committee on Infractions issued Infractions Decision No. 471 in which the committee found violations of NCAA legislation in the sport of football. On the basis of those findings, the Committee on Infractions determined that this was a major infractions case and imposed penalties accordingly.

This case centered on violations of NCAA bylaws governing recruiting and unethical conduct. A panel of the committee considered this case through the cooperative summary disposition process in which all parties agreed to the primary facts and violations, as well as an expedited hearing process in relation to the imposition of an additional penalty in relation to the former assistant coach.

After the Committee on Infractions issued its decision, the former assistant coach filed a timely Notice of Appeal April 28, 2017. A written appeal was filed June 11, 2017. The Committee on Infractions filed its Response July 17, 2017. The former assistant coach filed his Rebuttal to the Committee on Infractions Response August 2, 2017. The case was considered by the Infractions Appeals Committee October 19, 2017 (see Section VII below).

III. FINDING OF FACT AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.

See Committee on Infractions decision for the former assistant coach Page Nos. 3 through 6 for the parties' agreements. A copy of the decision may be accessed via the NCAA Legislative Services Database for the Internet (LSDBi) at the following link: <https://web3.ncaa.org/lsdbi/>.

IV. ANALYSIS AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.

See Committee on Infractions decision for the former assistant coach Page Nos. 6 through 10. A copy of the decision may be accessed via LSDBi at the following link: <https://web3.ncaa.org/lsdbi/>.

V. PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS.

The panel upheld an additionally imposed two-year show-cause order for any member institution(s) employing the former assistant coach. Any institution employing the former assistant coach must restrict him from all off-campus recruiting activities as defined by NCAA Bylaw 13.02.14 (2016-17 Division I Manual) during the show-cause order. See Committee on Infractions decision for the former assistant coach Page Nos. 10 through 12 in relation to this (V-3) and all other agreed-upon penalties. A copy of the decision may be accessed via LSDBi at the following link: <https://web3.ncaa.org/lstdbi/>.

VI. ISSUES RAISED ON APPEAL.

In the former assistant coach's written appeal, the former assistant coach asserted that the penalty against him should be set aside as an abuse of discretion.

VII. APPELLATE PROCEDURE.

In considering the appellant's appeal, the Infractions Appeals Committee reviewed the Notice of Appeal; the record and transcript of the former assistant coach's March 27, 2017, 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 decision. Further, during the course of the appeal, the Infractions Appeals Committee realized that it did not have access to the summary disposition report for this case, it was provided and reviewed by all committee members before reaching final decision.

The oral argument on the appeal was held by the Infractions Appeals Committee October 19, 2017, in Indianapolis, Indiana. The former assistant coach and his representatives were present via videoconference. The Committee on Infractions was represented by the appeal coordinator and its managing director, as well as a director and an associate director of the Committees on Infractions. Also present were two of the directors of enforcement; an associate director of enforcement and the director office of legal affairs and assistant general counsel. The oral argument was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

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

In reviewing the decision in this case, the Infractions Appeals Committee may overturn a determination of fact or finding of violation only if:

- a. The committee's finding clearly is contrary to the evidence presented to the committee;
- b. The facts found by the committee do not constitute a violation of the Association's rules; or
- c. A procedural error affected the reliability of the information that was used to support the committee's finding.

"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, Infractions Appeals Committee Public Report (May 1, 1995), Page No. 10]

The hearing panel determines the credibility of the evidence.

Pursuant to Bylaw 19.10.1.1, a penalty prescribed by the hearing panel, including determinations regarding the existence and weighing of any aggravating or mitigating factors, shall not be set aside on appeal except on a showing by the appealing party that the hearing panel abused its discretion.

As we stated in the Alabama State University case:

"... we conclude that an abuse of discretion in the imposition of a penalty occurs if the penalty: (1) was not based on a correct legal standard or was based on a misapprehension of the underlying substantive legal principles; (2) was based on a clearly erroneous factual finding; (3) failed to consider and weigh material factors; (4) was based on a clear error of judgment,

such that the imposition was arbitrary, capricious, or irrational; or (5) was based in significant part on one or more irrelevant or improper factors.”
[Alabama State University, Infractions Appeals Committee Public Report (June 30, 2009), Page No. 23]

Through the summary disposition process, the parties agreed to the factual findings and conclusion that the former assistant coach committed unethical conduct related to NCAA recruiting legislation, a Level I aggravated violation. In his appeal, former assistant coach challenged the commencement date of the two-year show-cause order imposed by the Committee on Infractions (Notice of Intent to Appeal, Page No. 2) and argued the penalty should be applied from April 27, 2016, factoring in “time served” since his resignation from the institution on that date.

The Committee on Infractions argued the two-year show-cause order, which permitted the former assistant coach to participate in all coaching activities except off-campus recruiting, was already more lenient than the proscribed ranges set forth in the penalty guidelines for a Level I aggravated violation, and neither the NCAA bylaws nor past cases require consideration of “time served.” For these reasons, the Committee on Infractions argued it did not abuse its discretion in prescribing the two-year show-cause penalty to begin on the date it issued its decision, consistent with its standard practice.

In the record of this case, many of the factors identified by the former assistant coach as not considered were, in fact, included in the Summary Disposition Report and considered/reviewed by the Committee on Infractions. Further, the former assistant coach was provided substantial leniency by the Committee on Infractions. The prescription of a two-year show-cause order, which restricted only the former assistant coach’s ability to participate in off-campus recruiting, was a deviation from the prescribed range for a Level I aggravated violation. According to the penalty matrix found in Figure 19-1 (2016-17 NCAA Division I Manual) a Level I aggravated violation would be subject to a show-cause order ranging from a minimum of five years to a maximum of 10 years with a prohibition on all athletically related duties.

Therefore, the timing of the two-year show-cause penalty is not an abuse of discretion and is affirmed.

IX. CONCLUSION.

Penalty V-3 is affirmed.¹

NCAA Infractions Appeals Committee

Patti Ohlendorf, chair
Ellen M. Ferris
Jack Friedenthal
W. Anthony Jenkins
Susan Cross Lipnickey

¹ According to the Division I Infractions Appeals Committee Policies and Procedures [See 3. b. (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. However, the appellant requested and was granted relief from the application of the automatic stay by the Infractions Appeals Committee. Therefore, the appellant's affirmed penalty shall run consistent with the original penalty noted in the April 14, 2017, Committee on Infractions Report (April 14, 2017 through April 13, 2019).