

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

April 6, 2018

Decision No. 473

Former Men's Basketball Program Assistant

University of Louisville

Louisville, Kentucky

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

I.	INTRODUCTION.	1
II.	BACKGROUND.	1
III.	FINDING OF FACTS AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.	1
IV.	ANALYSIS AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.	1
V.	PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS.	2
VI.	ISSUES RAISED ON APPEAL.	2
VII.	APPELLATE PROCEDURE.	2
VIII.	INFRACTIONS APPEALS COMMITTEE'S RESOLUTION OF THE ISSUES RAISED ON APPEAL.	3
IX.	CONCLUSION.	5

I. INTRODUCTION.

The former men's basketball program assistant at the University of Louisville appealed to the NCAA Division I Infractions Appeals Committee a specific finding of violation and penalty as determined by the NCAA Division I Committee on Infractions. In this decision, the Infractions Appeals Committee addresses the issues raised by the former men's basketball program assistant (hereinafter referred to as former program assistant).

II. BACKGROUND.

On June 15, 2017, the Committee on Infractions issued Infractions Decision No. 473 in which the committee found violations of NCAA legislation in the men's basketball program. 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 impermissible activities with student-athletes and prospective student-athletes, unethical conduct, head coach responsibility and failure to cooperate. Specific to the former program assistant, violations centered on failure to fully cooperate.

After the Committee on Infractions issued its decision, the former program assistant filed a timely Notice of Appeal June 30, 2017. A written appeal was filed August 9, 2017. The Committee on Infractions filed its Response October 9, 2017. The former program assistant filed his Rebuttal to the Committee on Infractions Response October 25, 2017. The case was considered by the Infractions Appeals Committee December 14, 2017 (see Section VII below).

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

See Committee on Infractions decision for the former program assistant Page Nos. 11 through 13. 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/lstdbi/>.

IV. ANALYSIS AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.

See Committee on Infractions decision for the former program assistant Page Nos. 17 through 19. A copy of the decision be accessed via LSDBi at the following link: <https://web3.ncaa.org/lstdbi/>.

V. PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS.

The Committee on Infractions imposed a one-year show-cause order against the former program assistant, which is set forth in Section V.11 of the Committee on Infractions infraction decision.

The former program assistant did not fully cooperate with the investigation. While he interviewed with the enforcement staff and provided some requested records, he declined to produce crucial phone records that, among other things, may have assisted the enforcement staff in determining who handed the escort \$200 in July 2014, immediately before she ventured to a local hotel. At the hotel, the escort and her daughter engaged in sexual intercourse with a prospect and the prospect's nonscholastic basketball team coach. The panel is not convinced that the former program assistant was unable to produce the requested phone records in a timely fashion. At the very least, if the former program assistant thought there were impediments to producing the requested records, he had an obligation to fully cooperate with the enforcement staff by explaining the perceived difficulties. Therefore, the former program assistant will be informed in writing by the NCAA that the panel prescribes a one-year show-cause order pursuant to former Bylaw 19.9.5.4. The show-cause period shall run from June 15, 2017, through June 14, 2018. If the former program assistant is employed by an NCAA member institution during the term of the show cause, he and the member institution shall schedule an appearance before a panel of the COI to determine whether he should be subject to the show-cause provisions of former Bylaw 19.5.2-(k).

VI. ISSUES RAISED ON APPEAL.

In his written appeal, the former program assistant asserted that the findings of violations against him should be set aside as clearly contrary to the information presented resulting in no penalty. (NCAA Bylaws 32.10.4.1 and 32.10.4.2)

VII. APPELLATE PROCEDURE.

In considering the former program assistant's appeal, the Infractions Appeals Committee reviewed the Notice of Appeal; the transcript of the institution's April 20, 2017, hearing before the Committee on Infractions and the submissions by the former program assistant and the Committee on Infractions referred to in Section II of this decision.

The oral argument on the appeal was held by the Infractions Appeals Committee December 14, 2017 in Atlanta, Georgia. The former program assistant was present (via teleconference) and was represented by his attorney. The Committee on Infractions was represented by the appeals coordinator for the Committee on Infractions, the managing director of the Office of Committees on Infractions (via teleconference) and two associate directors of the Office of Committees on Infractions. Also present were the managing director of enforcement, two associate directors of enforcement (one via teleconference) and the deputy general counsel for the NCAA. 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 factual findings and conclusions that one or more violations on a showing by the appealing party that:

- a. A factual finding is clearly contrary to the information presented to the panel;
- b. The facts found by the panel do not constitute a violation of the NCAA constitution and bylaws; or
- c. There was a procedural error and but for the error, the panel would not have made the finding or conclusion.

Bylaw 19.2.3 states that current and former institutional staff members have an affirmative obligation to cooperate fully with and assist the NCAA enforcement staff, the Committee on Infractions and the Infractions Appeals Committee to further the objectives of the Association and its infractions program. This committee is fully aware and recognizes the importance of the obligation of cooperation in assuring the functionality and maintaining the integrity of the Association's enforcement process and would generally find latitude in situations where there is a finding of an investigation being impeded.

In the March 12, 2012, University of North Carolina, Chapel Hill, infractions case, a former institutional staff member refused to turn over requested information and to submit to another interview during an ongoing investigation. In that case, the Committee on Infractions noted that Bylaw 10.1 applied to former and current institutional staff members and that "as long as the further requests are in good faith and not unduly burdensome, they must be complied with." [University of North Carolina, Chapel Hill

Committee on Infractions Public Report (March 12, 2012) Page No. 14] Using this guidance, the Infractions Appeals Committee has found previously that under circumstances where an individual subject to the obligation to cooperate has otherwise fully complied, but refuses to turn over jointly held bank records over the objection of a spouse, who is not subject to the NCAA requirement, such refusal would not constitute a violation of Bylaw 19.2.3 due to the substantial obstacle to appellant's compliance with that particular request [Former Prep School Coach - The University of Southern Mississippi Infractions Appeals Committee Public Report (April 6, 2017)]

In the present case, the panel of the Committee on Infractions, however, found the former program assistant failed to fully cooperate in violation of Bylaw 19.2.3 "when he refused to deliver requested phone records to the enforcement staff." (Committee on Infractions Decision Page No. 17). The panel attempted to differentiate the current case from the Former Prep School Coach - Southern Mississippi based on the nature of the records being phone rather than bank, the nature of the relationship of child to parent rather than spouses, and the potential to more easily redact the records at issue. Further, the panel noted, that the former program assistant's production at the panel's hearing of current billing information in regard to the phone at issue to substantiate ownership, indicated that there should be no reason why the former program assistant's mother could not have allowed him to retrieve the bills reflecting the charges and calling information for the limited period of 2014 the enforcement staff was interested in and was unpersuaded that the former program assistant was unable to produce those records (Committee on Infractions Decision Page Nos. 18-19).

The record before the Infractions Appeals Committee notes the otherwise full cooperation of the former program assistant, which occurred over several months and continued after his leaving the institution while working outside of intercollegiate athletics, and which included the production and physical retrieval of his bank records from multiple banks, production of the former program assistant's then current phone in his possession, and the completion of two interviews. (Written Appeal Page Nos. 8-10, Committee on Infractions Hearing Transcript Page Nos. 173-244) The former program assistant, just prior to the hearing before the panel of the Committee on Infractions, identified the phone records in question to be related to an account owned by his mother and that she refused to give permission for their release (Committee on Infractions Decision Page No. 19)

The former program assistant does not have the authority to produce the records as requested as they were his mother's records and rested outside of his authority, and permission from her as an individual not subject to the NCAA obligation of cooperation with ownership of and authority over the substantive calling records, whether wholly or in part, was not provided. They were not his records to produce and his mother objected

to their production. Additionally, the mother's actions in allowing billing information devoid of substantive calling information to be produced in one instance to show such control does not impact her objection to production of the substantive calling records.

Further, there is no indication that the former program assistant entered into an arrangement with someone not subject to the NCAA obligation of cooperation as a means to shield job-related information from scrutiny as the ownership of the phone has been in place prior to and through the facts that gave rise to the violations against the institution in this case, beginning prior to the former program assistant entering high school (Committee on Infractions Hearing Transcript Page No. 238). Additionally, the record indicates that the phone was primarily, if not fully, used for personal as opposed to business use. (Committee on Infractions Hearing Transcript Page No. 188)

As such, the Infractions Appeals Committee finds the factual findings of the hearing panel in this case do not constitute a violation of Bylaw 19.2.3. Again, while this committee is fully aware of the importance of the obligation of cooperation in assuring the functionality of the Association's enforcement process, a finding of failure to cooperate should not extend to a situation where there is adherence to all other manner of requests and failure to cooperate is predicated on failing to produce records that are not the individual's to produce and were not placed in the authority of an individual not subject to the NCAA obligation of cooperation for purposes of avoiding their potential production.

IX. CONCLUSION.

The Committee vacates the finding of a violation. Since no violation is found against the appellant, the committee also vacates the penalties imposed on the appellant.

NCAA Infractions Appeals Committee

David Williams, chair
Jack Friedenthal
W. Anthony Jenkins
Patti Ohlendorf.